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GAPS IN SERVICES IN THE CRIMINAL JUSTICE SYSTEM

*~ Indigenous
Public Safety
and Policing
Forum ~*

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OVERVIEW

1. What is the Criminal Justice System?
2. Statistics and gaps.
3. Parliament and the Courts' intention to address the over-representation of Indigenous peoples in the justice system: *R. v. Gladue*, [1999] 1 S.C.R. 688 (*Gladue*).

1. WHAT IS THE CRIMINAL JUSTICE SYSTEM?

An overview of the criminal justice system can be provided by breaking it down into 4 parts:

1. Policing.
2. Courts.
3. Corrections.
4. Parole.

| Federal | Provincial/Terroitorial | Community |
|--|--|-----------------------------|
| Department of Justice Department of Public Safety | Ministry of Attorney General Ministry of Public Safety | Community Based Partners |
| Federal Government Responsibilities | | |
| Department of Justice | Department of Public Safety | |
| Supreme Court Judges Federal Statutes Prosecutions | Royal Canadian Mounted Police Correctional Service Canada National Parole Board Canadian Security Intelligence Service Canadian Border Services Agency | |
| Provincial Government Responsibilities | | |
| Administration of Justice Provincial Correctional Institutions Regulatory Laws Provincial Probation/Parole Provincial Police | | |
| Community Partners, i.e. | | |
| Volunteers Community Chaplains Voluntary Sector Agencies Contracted Agencies | | |

OVERVIEW OF THE CRIMINAL JUSTICE SYSTEM

Source:
Correctional
Services
Canada –
Speakers
Binder

2. STATISTICS & GAPS

Background and Context

- 24.4% of the federal incarcerated population is Indigenous even though they represent 4.3% of the Canadian population
- Since March 2005, the Indigenous inmate population has increased by 52.4%. As a group, Indigenous people accounted for half of the total growth in the federal inmate population.
- An Indigenous person's chance of incarceration is 10x higher than a non-Indigenous person.
- This growth rate is occurring while at the same time there is a decrease in the non-Indigenous population.

2. STATISTICS & GAPS CONT'D

- Indigenous inmates are sentenced to longer terms, and spend more time in segregation and maximum security.
- 1/3 of Indigenous inmates were segregated at least once during 2014-15 and also have the longest average stays in segregation.

PROVINCIAL STATISTICS

In Manitoba

- 70% of incarcerated adult males
 - 80% of incarcerated youth
 - 90% of incarcerated adult females are Indigenous
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- This is similar to other Prairie Provinces where the highest numbers of residential schools were.

INDIGENOUS WOMEN

- One in three federally sentenced women offenders are Aboriginal, even though they represent only 4% of the population.
- The representation of Indigenous women in the federal correctional system has increased by nearly 90 per cent in the last 10 years, making them the fastest-growing group being sent to federal prisons
- Highest concentration in the Prairie Region.
- Recent growth in correctional populations is primarily attributable to rising number of Indigenous admissions and readmissions.

VICTIMS OF CRIME

- On the whole, Indigenous people are 58% more likely than non-Indigenous people to be the victims of crime.
- Indigenous women are 5 times more likely to experience violence than any other population in Canada and the violence they experience is typically more severe than that experienced by non-Indigenous females.
- Between 1980 and 2012, 16 per cent of all women murdered were Indigenous women.

INDIGENOUS CHILDREN

- Indigenous children are 8 times more likely to end up in state care than that of non-First Nation children and there is well documented chronic underfunding of First Nation child welfare services.
- The number of First Nations children in care outside their own homes today is three times the number of children in residential schools at the height of their operation.
- “We believe many of the reasons why the numbers of Aboriginal people are so disproportionately high in the child welfare system are the same as the reasons why they are so over-represented in the criminal justice system.”

Report of the Aboriginal Justice Inquiry of Manitoba,
<http://www.ajic.mb.ca/volume1/chapter14.html>

INDIGENOUS YOUTH

- Indigenous youth today make up about 6% of Canada's total youth population, yet they account for approximately 46% of its incarcerated youth population.
- Street gangs have proliferated with increased urbanization.
- Suicide is also five to six times more prevalent among Indigenous youth than non-Indigenous youth.
- Among youth, homicides and suicides are the leading causes of death.

3. Parliament and the Courts'
intention to address the
overrepresentation of
Indigenous peoples in the
justice system:
R. v. Gladue, [1999] 1 S.C.R. 688

3. GLADUE

- Parliament enacted section 718.2(e) of the *Criminal Code* in 1996 which places a statutory duty on sentencing judges to consider the unique circumstances of Aboriginal offenders.
- In *R. v. Gladue*, [1999] 1 S.C.R. 688 (*Gladue*), the Supreme Court of Canada held:

“Sentencing judges, as front-line workers in the criminal justice system, are in the best position to re-evaluate these criteria to ensure that they are not contributing to ongoing systemic racial discrimination.”

R. V. IPEELEE, 2012 SCC 13

The SCC revisited its decision in Gladue and found that the situation had only worsened. It held:

To be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples. These matters, on their own, do not necessarily justify a different sentence for Aboriginal offenders. Rather, they provide the necessary context for understanding and evaluating the case-specific information presented by counsel.

WHERE DO WE GO FROM HERE?

Numerous Reports/Recommendations:

- RCAP 440 recommendations over a 20 year plan
- Penner Report (1983)
- Manitoba Justice Inquiry (2001)
- Ipperwash Inquiry, Ontario (2007)
- Office of the Correctional investigator recommendations (Annual & Special Reports)
- United Nations Declaration on Indigenous Peoples (2007)
- First Nations Representation on Ontario Juries (2013)
- TRC – Calls to Action (2015)