

BRIDGING THE GAP: INDIGENOUS COMMUNITY INVOLVEMENT IN CRIMINAL JUSTICE INITIATIVES AND ITS IMPACT ON REDUCING DISPROPORTIONATE REPRESENTATION IN THE CRIMINAL JUSTICE SYSTEM

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“Until we realise that [Aboriginal people] are not simply “primitive versions of us” but a people with a highly developed, formal, complex and wholly foreign set of cultural imperatives, we will continue to misinterpret their acts, misperceive their problems, and then impose mistaken and potentially harmful remedies.”¹

Introduction

In recent years it has become recognised internationally that Indigenous community participation in criminal justice initiatives is crucial if the gap between Indigenous and non-Indigenous experiences in the criminal justice system is to be bridged. Currently, it is a shared experience of Indigenous communities worldwide that their people suffer tragic overrepresentation in all facets of the criminal justice system, from arrest through to incarceration. There are two fundamental causes that perpetuate this overrepresentation. The first is the socio-economic disadvantage faced by Indigenous communities as a result of the ongoing impact of colonisation. Secondly, fundamental differences in the world view of Indigenous peoples and the

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¹ Rupert Ross, “Dancing with a Ghost: Exploring Indian Reality,” unpublished manuscript, Kenora, 1987, pp. 5–6; see also his “Leaving Our White Eyes Behind: The Sentencing of Native Accused,” [1989] 3 C.N.L.R. 1. Cited in A C Hamilton “Chapter 2 – Aboriginal Concepts of Justice” in Volume 1: The Justice System and Aboriginal People of Report of the Aboriginal Justice Inquiry of Manitoba (November 1999) The Aboriginal Justice Implementation Commission <<http://www.ajic.mb.ca/volumel/chapter2.html>>

conceptual backbones of Western legal systems towards the notions of justice, crime and punishment create an environment of isolation and misunderstanding that provide for negative experiences for many Indigenous people in their dealings with Western legal systems. From these it becomes apparent that the involvement of Indigenous communities in criminal justice initiatives aimed at countering these two fundamental causes could be beneficial in reducing the worrying overrepresentation and recidivism rates of Indigenous peoples.

Australia and Canada are two countries in which there have been extensive moves towards Aboriginal communities implementing and being actively involved in initiatives aimed at rectifying the excessive involvement of their peoples in the criminal justice system. In order to examine the importance of this, this article will first provide a statistical overview of Australian and Canadian Aboriginal criminal justice involvement, as well as statistics depicting the socio-economic disadvantage facing Australian and Canadian Indigenous communities. Such information provides an important foundation for the following examination of the rationale behind Indigenous community involvement in criminal justice initiatives. Finally, this article will discuss a number of criminal justice initiatives that cover both the alleviation of the isolation and misunderstanding faced by Indigenous people in criminal justice processes, and crime prevention through the minimisation of leading social and economic factors causing involvement in crime. It is important to note that there are concerns associated with some of the material discussed in this article, such as the experience of victims, and the overwhelming focus on the culture of young male offending, which will not be addressed.

A. The background

In Australia's criminal justice statistics, Aboriginal and Torres Strait Islander peoples account for approximately 2.5% of the Australian population², but in March 1996 made up 19% of the Australian prison

² Australian Bureau of Statistics "National Aboriginal and Torres Strait Islander Social Survey, 2008 (2008) Australian Bureau of Statistics

population, making an overrepresentation rate of 18.3.³ Further to this, in 1995 Indigenous Australians were 27 times more likely to be held in police custody than non-Indigenous people.⁴ These statistics improved little in the following decade, with Indigenous people still being 13 times more likely than non-Indigenous people to have been incarcerated in 2006, and representing 24% of the total prisoner population.⁵ Alarmingly, between 1990 and 1996, Aboriginal people were also 16.5 times more likely than non-Indigenous people to die in custody.⁶ Aboriginal and Torres Strait Islander peoples also suffer from high rates of arrest, with one in six Indigenous people aged 15 years and over having been arrested in the five years prior to the 2002 survey. In 2002, 35% of Indigenous Australians "reported having been formally charged at some time in their lives."⁷

Further, Indigenous Australians suffer severe disadvantage in all areas of socio-economic status. In 2008, only 21% of Indigenous people aged 15 – 64 years had completed Year 12 education or equivalent, in comparison to 54% of non-Indigenous people. Of Indigenous people aged 20 – 24 years, 31% had completed Year 12 or equivalent, less than half the completion rate of 76% for non-Indigenous people.⁸ Further, in 2008 "the unemployment rate for Indigenous people was more than three times the unemployment rate of the [general]

<<http://abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4714.0Main%20Features12008?opendocument&tabname=Summary&prodno=4714.0&issue=2008&num=&view=>>

³ Chris Cunneen, "Reconciliation in the Community: How do we make it a reality through policing and custodial issues?" (Australian Reconciliation Convention, Melbourne Convention and Exhibition Centre, Melbourne, Australia, 26 May 1997).

⁴ *Ibid.*

⁵ Australian Bureau of Statistics "Law and Justice Statistics: Aboriginal and Torres Strait Islander people, a snapshot, 2006" (2006) Australian Bureau of Statistics <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4722.0.55.003/>>

⁶ Cunneen, above n3.

⁷ Australian Bureau of Statistics Crime and Justice: Aboriginal and Torres Strait Islander People: Contact with the Law" (2005) Australian Bureau of Statistics <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/2f762f95845417acea25706c00834efa/a3c671495d062f72ca25703b0080cd1!OpenDocument>>

⁸ Australian Bureau of Statistics, above n2.

population (16.6% and 5.0% respectively).⁹ In the same year, “25% of Indigenous people aged 15 years and over lived in a dwelling where one or more additional bedrooms [were] required”, and 28% lived in a dwelling that had major structural problems.¹⁰ Such poor socio-economic statistics are reflected in the disproportionate instance of Indigenous crime; for example, Indigenous people who had been incarcerated were more likely than those who had not been to be unemployed (30% compared to 12%). The impact of socio-economic factors on substance abuse is also evident in criminal justice statistics. “Among Indigenous people who have been incarcerated, 30% reported risky/high risk levels of long-term alcohol consumption [...], compared with 14% of those who had not been incarcerated.”¹¹

Canadian information paints an equally bleak picture. Canadian Indigenous people represented only 2.6% of the total population in 2003/2004, yet accounted for 18% of all admissions to federal custody and for 21% of all admissions to provincial/territorial sentenced custody.¹² In some regions, however, this figure is much higher. For example, Aboriginal people constitute approximately 12% of the Manitoba population, yet they account for over one-half of the 1600 people incarcerated each day in Manitoba’s correctional institutions.¹³ Further, “between 1997 and 2000, Aboriginal people were 10 times more likely to be accused of homicide than non-Aboriginal people”,¹⁴ reflecting the disparity between the national violent crime rate and the violent crime rate for Indian bands – 9.0 per 1000, compared with 33.1 per 1000.¹⁵

Canadian Aboriginal people share similar poor socio-economic

⁹ Ibid.

¹⁰ Ibid.

¹¹ Australian Bureau of Statistics, above n5.

¹² Jodi-Anne Brzozowski, Andrew Taylor-Butts and Sara Johnson

“Victimisation and offending among the Aboriginal population of Canada”
(June 2006) Statistics Canada <<http://www.statcan.gc.ca/pub/85-002-x/85-002-x2006003-eng.pdf>>

¹³ A C Hamilton “Chapter 4 - Aboriginal Overrepresentation” above n1

¹⁴ Brzozowski, Taylor-Butts and Johnson, above n12.

¹⁵ Hamilton, above n13.

indicators as Indigenous Australians. Of Canada's Aboriginal population, 48% had not completed high school, compared with 31% of the non-Aboriginal population, while 4% of the Aboriginal population had acquired a university degree compared with 16% of the non-Aboriginal population.¹⁶ Further, “[i]n 2001 the rate of unemployment was 19% for the Aboriginal population, compared to a rate of 7% for the non-Aboriginal population.”¹⁷ Reflecting similar living conditions to Australian Indigenous people, the average Aboriginal household in Canada had twice as many people as non-Indian households, with their homes being three times more likely to be in need of major repair.¹⁸ The substance abuse associated with such poor socio-economic indicators is again reflected in Canadian criminal justice statistics. In incidents where it was known if alcohol or drugs were involved, 89% of Aboriginal people accused of homicide had consumed an intoxicant at the time the crime was committed. This is well above the 61% of non-Aboriginal accused.¹⁹ In addition, nine out of ten Aboriginal adults in correctional services in Saskatchewan had a substance abuse need.²⁰

The statistics for both Canada and Australia depict parallel, grim situations. It is from this background that the push for Indigenous community participation in criminal justice initiatives arises. The rationale is persuasive, and is supported in Australia and Canada by government bodies, the judiciary, Indigenous groups and communities alike.

B. The rationale

There are a number of fundamental and intertwined reasons that provide legitimate bases for Indigenous community involvement in the criminal justice system. The inherent clash of worldviews experienced by Aboriginal offenders in the system is at the heart of the rationale.

¹⁶ Brzozowski et al, above n12.

¹⁷ Ibid.

¹⁸ Hamilton, above n13.

¹⁹ Brzozowski et al, above n12

²⁰ Ibid.

The Aboriginal worldview and its concepts of justice are in profound conflict with the Western ideas of crime, punishment and justice. Therefore, when Aboriginal offenders interact with the Western justice system, they experience misunderstanding and isolation stemming from the denial of their own beliefs, and the imposition of concepts that are foreign to them and their community. Further, there is a strong argument for Aboriginal communities being a key force in establishing and carrying out crime prevention initiatives. The central idea behind this is that inherent in the socio-economic status of Aboriginal people that adversely affects their involvement in the criminal justice system is the lack of self-determination and the breakdown of traditional social and power structures. Therefore, when Aboriginal communities are given the autonomy to implement their own initiatives it reduces criminal activity within their communities, as well as empowering the community. This provides an important element of self-determination and a reintroduction of key social structures that are important in maintaining social harmony and reducing Indigenous involvement in the criminal justice system. Here, it is helpful to look at bodies that have expressed their support for community involvement.

The New South Wales Law Reform Commission Report ‘Sentencing: Aboriginal offenders’ was a key Australian source that highlighted the need for Aboriginal community involvement in sentencing. The opening sentence to its section ‘The Aboriginal community’s role in sentencing’ summarises the issue well – “Given the alarming number of Aboriginal people coming before the court, it is clear that the justice system is not as responsive to Indigenous members of the community as it should be.”²¹ The report goes on to express the view that it is necessary for Aboriginal people to play a more extensive role in initiatives aimed at reducing Indigenous offending, in addition to having greater involvement in all stages of the criminal justice process. It also notes that this is central to achieving cultural relevance in the system, as well as “empowering communities where the traditional

²¹ NSW Law Reform Commission *Sentencing: Aboriginal Offenders* (NSWLRC Report 96, 2000) <<http://www.lawlink.nsw.gov.au/lrc.nsf/pages/r96chp4>>

Indigenous authority structures and social cohesion may have broken down.”²² In concluding, the Report states that such involvement by Indigenous communities is the only way to make the system relevant, and less alienating and discriminatory for Aboriginal people, and, in turn, to reduce offending and recidivism rates.

Prior to this report, the importance of Indigenous community involvement in criminal justice initiatives had been asserted in Australia in The Royal Commission into Aboriginal Deaths in Custody Report. This Report highlighted the importance of Indigenous communities playing an instrumental role in creating diversionary programs aimed at reducing offending, as well as within the criminal process. The Report substantiated this position by recognising that “the most significant contributing factor [to overrepresentation of Aboriginal people in custody] is the disadvantaged and unequal position in which Aboriginal people find themselves in the society – socially, economically and culturally.”²³ The Report highlighted the importance of Aboriginal involvement, basing it on the proposition that:²⁴

Aboriginal people have for two hundred years been dominated to an extraordinary degree by the non-Aboriginal society and that the disadvantage is the product of that domination... The elimination of this disadvantage requires an end of domination and an empowerment of Aboriginal people; that control of their lives, of their communities must be returned to Aboriginal hands.

From the Royal Commission into Aboriginal Deaths in Custody Report, and the NSW Law Reform Commission Report it is evident that the Australian rationale for Indigenous community involvement is grounded in the need for Indigenous communities’ self-determination

²² Ibid.

²³ Aboriginal and Torres Strait Islander Commission *Royal Commission into Aboriginal Deaths in Custody* (ATSIC Annual Report, 1991–1992)

<http://www.austlii.edu.au/au/other/IndigLRes/riadic/national/vol1/17.html>

²⁴ Ibid.

and empowerment as pre-conditions to effecting reductions in the number of Aboriginal people coming before the criminal justice system. In Canada, the approach is a little different. While recognising the need for self-determination and empowerment, Canadian proponents take a more metaphysical approach, identifying the inherent ideological differences between Aboriginal and Western worldviews. This, perhaps, can be explained by the greater advancement of the rights of Aboriginal people in Canada to self-determination – Australian efforts to restore Indigenous communities with self-determination pale in comparison to the progress already made in Canada in this respect.

This approach is particularly apparent in the Report of the Aboriginal Justice Inquiry of Manitoba. The underlying premise of the Report is that Aboriginal people and European-Canadians hold different worldviews that colour the way they see and interpret the world in which they live. In discussing their differing meanings of justice, the Report notes the dominant view in Canada emphasises “punishment of the deviant as a means of making that person conform, or as a means of protecting other members of society.”²⁵ This is juxtaposed with Aboriginal justice systems, which aim to “restore the peace and equilibrium within the community, and to reconcile the accused with his or her own conscience and with the individual or family who has been wronged.”²⁶ On a basic level, this difference can be characterised as punishment versus conflict resolution. This inherent difference requires an alternative system of justice to be made widely available to Aboriginal communities, in which they can assert their own justice and values in order to more effectively deal with criminality. The importance of Aboriginal community involvement in addressing the socio-economic factors affecting crime causation is also expressed in the Report. It asserts that:²⁷

The avenues through which Aboriginal people might be able to escape

²⁵ Hamilton, above n1.

²⁶ Ibid.

²⁷ Hamilton, above n13

from their current social conditions, such as the justice system, the education system, economic development in their communities and the institutions of local government, are perceived by Aboriginal people to be under the control of external governments.

As such, it is crucial that Aboriginal people are empowered to address the social injustices and disadvantages faced by their communities if they are to rectify overrepresentation of their peoples in the criminal justice system.

This importance of alternative systems and diversionary efforts to counter Aboriginal overrepresentation was accepted and promoted by the Canadian judiciary in the case *R v Gladue*.²⁸ This was the first case to interpret the meaning of the 1996 amendment of section 718.2(e) of the Canadian Criminal Code, concerning sentencing and Aboriginal offenders (Appendix 1). In the Court's discussion, it was held that special consideration should be paid to the circumstances of Aboriginal offenders, as required by the section, "because those circumstances are unique, and different from those of non-Aboriginal offenders."²⁹ After recognising the worrying rates of incarceration of aboriginal offenders, the Court acknowledged, "sentencing innovation by itself cannot remove the causes of aboriginal offending and the greater problem of aboriginal alienation from the criminal justice system."³⁰ This is because Aboriginal people have suffered from systemic discrimination, a legacy of dislocation and are affected by social and economic conditions, and further, incarceration is a culturally inappropriate and ineffective rehabilitation method.³¹ Therefore, restorative justice is more effective in addressing the needs of Aboriginal offenders as it incorporates "the needs, experiences, and perspectives of aboriginal people or aboriginal communities."³² This is because restorative justice, unlike the traditional Western justice system, is based on the concept that "all things are interrelated and that

²⁸ *R v Gladue* [1999] 1 S.C.R 688

²⁹ Ibid, at [37], emphasis original

³⁰ Ibid, at [65]

³¹ Ibid, at [68]

³² Ibid, at [73]

crime disrupts the harmony which existed prior to its occurrence”, and therefore those who were closely affected by the crime – the offender, the victim, and the Aboriginal community – need to have much more input into sentencing.³³

From this small cross-section of reports and cases it becomes clear that there is great support in favour of the involvement of Indigenous communities in criminal justice initiatives. Clearly, this support would not be so widespread if there was no evidence to sustain such a practice as being effective. As such, it is important to examine some examples in which Indigenous communities have been involved in programs and initiatives aimed at reducing Aboriginal offending, and the effect they have had on those communities in which they have operated.

C. The evidence

This section will discuss a variety of initiatives that have been implemented in Canada and Australia by or in conjunction with Aboriginal communities, and the impact they have had on Aboriginal offending and crime prevention. First, sentencing circles will be discussed, followed by an assessment of Indigenous community justice groups, and finally a discussion of two crime prevention programs.³⁴

1. Sentencing circles

Sentencing circles were first implemented in the Territorial Court of Yukon in Canada in 1992.³⁵ A similar pilot program was introduced in Nowra, New South Wales, Australia in 2002.³⁶ Put simply, sentencing

³³ Ibid, at [71]

³⁴ It should be noted that in these discussions I will provide as much information as possible regarding the effect of such programs, however, in some cases statistical information, or otherwise, is not available.

³⁵ NSW Law Reform Commission, above n21.

³⁶ Ivan Potas, Jane Smart, Georgia Brignell, Brendan Thomas, Rowena Lawrie and Rhonda Clarke “Circle Sentencing in New South Wales: A Review and

circles are a form of restorative justice where “individuals are invited to sit in a circle with the accused and discuss together what sentences should be imposed.”³⁷ The aim of sentencing circles is to give Aboriginal offenders a sentencing process that is more in line with Aboriginal conceptions of justice, which are very much concerned with community involvement, healing, restoration of balance and rehabilitation. As such, the key objectives of sentencing circles are to:³⁸

- a) Include members of Aboriginal communities in the sentencing process;
- b) Increase the confidence of Aboriginal communities in the sentencing process;
- c) Reduce barriers between Aboriginal communities and the courts;
- d) Provide more appropriate sentencing options for Aboriginal offenders;
- e) Provide effective support to victims of offences by Aboriginal offenders;
- f) Provide for greater participation of Aboriginal offenders and their victims in the sentencing process;
- g) Increase the awareness of Aboriginal offenders of the consequences of their offences on their victims and the Aboriginal communities to which they belong; and
- h) Reduce recidivism in Aboriginal communities.

The most important part of the process is community involvement in sentencing. As Australian Chief Justice James J Spigelman noted:³⁹

There is a good deal of evidence that sentences which carry the support of the elders of the local Aboriginal community have a much greater impact on the individual offender than any sentence

Evaluation” <<http://www.austlii.edu.au/au/journals/AILR/2004/16.html>> at 1

³⁷ Royal Commission on Aboriginal Peoples *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (RPAC 1996) at 110

³⁸ Potas et al, above n36 at 5.

³⁹ James J Spigelman, Chief Justice of New South Wales “Dr Charles Perkins AO Annual Memorial Oration 2005” (University of Sydney, 27 October 2005)

imposed by a white magistrate. The sense of shame imposed by the [circle sentencing] process itself appears to be much more effective, particularly in reducing recidivism.

In addition, such involvement of the Indigenous community shows a move towards empowerment and self-determination.

Sentencing circles in both countries have had a positive effect on recidivism rates, and the experience of Aboriginal people in their relations with the criminal justice system. As McNamara noted:⁴⁰

Circle sentencing will not be a magic solution to many of the weaknesses in the current criminal justice system which operate to the detriment of Indigenous people. However, the manner in which circle sentencing has developed... in Canada does suggest that it has the potential to affect an important, if relatively modest, shift in the relationship between the criminal justice system and Aboriginal offenders, victims and communities.

Statistics in both countries reflect this. In Whitehorse, Canada, for example, Justice Stuart reported that recidivism rates had reversed for those sentenced by circles, with 75% not reoffending compared to 75% reoffending after being sentenced in courts.⁴¹ Similarly, of the first ten cases to be heard in the Nowra circle sentencing pilot only one person reoffended, and there was a clear reduction in alcohol abuse in most people sentenced by the circle.⁴² From this it becomes clear that circle sentencing, through its emphasis on community involvement, is effective in achieving its objectives of reducing Aboriginal involvement

⁴⁰ Luke McNamara "Indigenous Community Participation in the Sentencing of Criminal Offenders: Circle Sentencing" <[http://www.austlii.edu.au/cgi-bin/sinodisp/au/journals/IndigLawB/2000/72.html?stem=0&synonyms=0&query=title\(Indigenous%20Community%20Participation%20in%20the%20Sentencing%20of%20Criminal%20Offenders:%20Circle%20Sentencing%20\)>](http://www.austlii.edu.au/cgi-bin/sinodisp/au/journals/IndigLawB/2000/72.html?stem=0&synonyms=0&query=title(Indigenous%20Community%20Participation%20in%20the%20Sentencing%20of%20Criminal%20Offenders:%20Circle%20Sentencing%20)>) at 6

⁴¹ Kevin Libin, "Sentencing circles for aborigines: Good justice?" *National Post* (Canada, 26 February 2009)

⁴² Potas et al, above n36.

in the criminal justice system. Perhaps most importantly, however, it breaks down the misunderstanding and systemic discrimination that many feel within the system, with one elder commenting to Nowra Magistrate Doug Dick, “This is not white man’s law anymore, it’s the peoples’ law.”⁴³

2. Indigenous community justice groups

Indigenous community justice groups are a key initiative in crime prevention. Such justice groups focus on countering the key motivators behind crime in the community, such as unemployment, poor school attendance and substance abuse. As the Indigenous community is the driving force, such programs are effective in addressing the needs of their community, and provide empowerment through community control and self-management. The Queensland community justice groups operating in Palm Island and Kowanyama have been exceptionally successful in “realising sustained reductions in youth detention and recidivism.”⁴⁴ Similar programs have been implemented across Canada, although evaluations of their success are limited.

Queensland community justice groups implemented in the above communities provide important services to the Indigenous community. Central to this is the identification by the community of the most pressing issues resulting in criminal activity. Primarily, the groups are involved in providing guidance around, and providing services in relation to, issues such as parental supervision, recreational opportunities, social infrastructure, counselling and support services and community facilities.⁴⁵ The underlying aim here is to rebuild traditional community structures, in addition to providing early interventions as an alternative to direct contact with the formal system. For example, in Kowanyama, women elders conduct night patrols of

⁴³ Spigelman, above n39.

⁴⁴ Paul Chantrill “Community Justice in Indigenous Communities in Queensland: Prospects for Keeping Young People out of Detention” <http://www.austlii.edu.au/au/journals/AILR/1998/18.html> at 1

⁴⁵ Ibid, at 5.

the town to “break up fights, resolve disputes and return children who are at risk of offending to their homes. Their status as elders in the community gives them an authority, which in many circumstances proves more effective than that of the police.”⁴⁶ Further, there is an emphasis on the accountability of community members. This is done through methods that incorporate traditional local custom. For example, where parents have been neglecting their familial responsibilities the concept of public shaming is invoked by avoiding people or making them not welcome at particular homes; forbidding access to the community canteen; asking people to leave the community for varying periods of time; growling and shaming (public humiliation) to promote socially acceptable behaviour.⁴⁷

Such practices have been very effective. The community justice programs were implemented in 1993–94, and in 1994 there was a significant decrease in juvenile offences in both communities where groups were established. In Kowanyama, prior to implementation, there were approximately 40 to 50 offences per month. This decreased to nil for March to November 1994 and to two offences between December 1994 and March 1995. Further, there were only three recorded juvenile offences for the first six months of 1997.⁴⁸ Evidently, the involvement of the Indigenous community has been essential in addressing Indigenous overrepresentation in the criminal justice system. Despite this, there needs to be greater funding support from the government in order to maintain the effectiveness of such programs. Logically, it is in the best interests of governments to provide additional funding, given the cost of running a community justice group for one year is less than that of incarcerating a juvenile offender for the same period.⁴⁹

⁴⁶ Michael Limerick “Indigenous community justice groups: the Queensland experience”

<<http://www.austlii.edu.au/au/other/alrc/publications/reform/reform80/04.html>> at 4.

⁴⁷ Chantrill, above n44 at 9

⁴⁸ Ibid, at 3.

⁴⁹ Limerick, above n46 at 5

Similar initiatives also exist in many Canadian provinces, however, their success is not widely published. It can be inferred from their continued funding and promotion by the Aboriginal Justice Strategy that operates under the Department of Justice, however, that they are effective in achieving their aims. One such program is the Esketemc Alternative Measures Program which “delivers a holistic, culturally and community appropriate service, coordinated across various Federal and Provincial jurisdictions and community agencies, to meet the needs of the Esketemc community.”⁵⁰ According to the Department of Justice, the Program deals with a wide range of issues affecting Aboriginal involvement in the criminal justice system, including healing circles, community work, educational programs, interventions, treatment and circle sentencing. Such services are provided with that aim of providing a safe environment where the community can facilitate the resolution of crime, and to promote healings, recovery and prevention.⁵¹ This provides another example of how Indigenous community involvement in initiatives is important in addressing Indigenous criminal justice issues.

3. Specialised crime prevention programs

Specialised crime prevention programs implemented by Indigenous communities have been critical in countering specific causes of crime in certain communities. Across Australia and Canada many Aboriginal communities have established their own programs to address such issues. Two key examples of this are the Mt Theo Outstation in Yuendumu, Australia and the Gwich'in Outdoor Classroom Project in Fort McPherson and Aklavik, Canada.

Mt Theo Outstation was established in 1994 in the remote Aboriginal community of Yuendumu to provide cultural respite and rehabilitation. This was a direct response to the high instances of petrol sniffing in the community, a leading cause of crime and poor school attendance in

⁵⁰ Department of Justice “Community-Based Justice Programs – British Columbia” (2009) Department of Justice

<<http://www.justice.gc.ca/eng/pi/ajs-sja/prog/bc-cb.html>>

⁵¹ Ibid.

the community. The key part of this program was the removal of youth who showed signs of substance abuse from the town to the Outstation, located 160 kilometres away. While at the Outstation, the young people are placed on a rehabilitation and detoxification program, participate in gardening projects and community employment projects, in addition to being involved in traditional cultural activities such as artefact making and hunting. The young people remain at Mt Theo until the elders believe the youth have broken their habit and can be re-introduced into the community without relapsing. The program has enjoyed exceptional success. Removing and rehabilitating the most chronic petrol sniffers and 'ring leaders' has prevented the entrenchment of the petrol sniffing culture among other young people. For example, in early 1997, there were 60 youths sniffing petrol in the community. After taking the 14 most chronic sniffers to the Outstation, and implementing a youth program, the number of young people in the community sniffing was reduced to two.⁵² Community members have noted a significant decrease in youth gangs and crime, as well as greater school attendance and youth participation in community activities. Evidently, the Yuendumu Aboriginal community has been highly effective in controlling community-oriented programs, particularly through their use of traditional methods of removal and cultural study. As such, Mt Theo provides strong evidence for the beneficial nature of Indigenous community involvement in crime prevention initiatives.

The Gwich'in Outdoor Classroom Project was a culture-based crime prevention program aimed at children aged 6 – 12 who were subject to "multiple risk factors associated with crime, such as lack of attachment to school and to community role models, addictions, involvement in youth gangs and lack of parental support."⁵³ It included an outdoor camp, a breakfast program, and in-school programming involving life and communication skills, Elders and traditional learning. The life

⁵² Andrew Stojanovski and Johnny Japangardi Miller "The Mt Theo Story" (1999) Mt Theo <http://www.mttheo.org/mttheo_story.htm>

⁵³ National Crime Prevention Centre "Promising and Model Crime Prevention Programs" (2000) Public Safety Canada <http://www.publicsafety.gc.ca/res/cp/res/2008_pcpr-eng.aspx#toc_2b>

skills and Elder involvement targeted risk factors linked to negative behaviour such as learning difficulties and early school leaving. The inclusion of traditional cultural elements was key in stimulating learning and encouraging attendance among students. The program was very successful, with an evaluation noting that cultural relevance and the use of Gwich'in traditions, values and customs was a major strength of the program.⁵⁴ Further, when comparing the program site to a non-program site, there was significance difference in school achievement levels, with the program site rating much higher. Further, the breakfast program was key, improving monthly school attendance rates by 20%. Reflecting the importance of cultural learning, “75% of students who performed below the average grade level in the standard classroom outperformed their peers in cultural skills in the outdoor classroom.”⁵⁵ From this it becomes clear that Aboriginal community involvement in crime prevention programs is critical, particularly in that it makes the program relevant to those it is aimed at, while also allowing targeted assistance to take place.

Conclusion

It is evident from the various programs and initiatives in which Indigenous communities are involved that such involvement is beneficial and can have positive impacts on Indigenous criminal justice statistics. This is true in both Australia and Canada where Indigenous communities have played instrumental roles in criminal justice system initiatives, as well as those aimed at crime prevention. Therefore, it is clear that if the significant gap between Indigenous and non-Indigenous experiences and involvement in the criminal justice system in countries such as Australia and Canada is going to be bridged, Indigenous communities need to be able to assert their self-determination and be empowered to take control of their peoples' futures. Central to this is the assertion of Indigenous notions of justice through appropriate, community-based justice processes such as sentencing circles, as well as in crime prevention programs. Without

⁵⁴ Ibid.

⁵⁵ Ibid.

such involvement, Indigenous people will continue to suffer misunderstanding, isolation and overrepresentation in the criminal justice system, and the gap will remain unbridged.

Appendix 1

Section 718.2(e) Canadian Criminal Code:

“A court that imposes a sentence shall also take into consideration the following principles: - all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.”