

THE ISSUE OF ABORIGINAL JUSTICE

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Read the following excerpt and answer the following questions dealing with the issue of **Aboriginal justice**:

The Issue of Aboriginal Justice

In 2005 Manitoba had more than 150 000 Aboriginal people — roughly 14 percent of the province’s population. Under the justice system of the province, they have the right to expect fair and equal protection of and under the law and the same services and level of service from the province as all other Manitobans.

In 1999, however, a government-appointed committee reported that Aboriginal people were not being treated like other residents. The shooting of Winnipeg Aboriginal leader J.J. Harper in 1988 triggered the need to address this situation. The report, following up on an earlier investigation in 1991, claimed that **the justice system had failed Manitoba’s Aboriginal people on a massive scale. Police arrested Aboriginal people in grossly disproportionate numbers.** The committee found that the Aboriginal population in some provincial prisons approached **60 percent**. A similar percentage was imprisoned in federal prisons such as Stoney Mountain Penitentiary. Figures for Aboriginal women and youth in jail were even higher than the figures for Aboriginal males.

It was also reported that when arrested, **Aboriginal people were more likely than non-Aboriginal people to be denied bail. They spent more time in pre-trial detention and less time with their lawyers. They were also more likely to spend time in jail than to receive non-custodial sentences such as probation or supervised community service.**

The report went on to note that the Manitoba justice system had failed Aboriginal people and had denied them justice. Aboriginal people in Manitoba also suffered other injustices. A long list of faults and inadequacies could be found in the system; twenty-five areas needing change were noted. Faults ranged from lack of proper legal aid to poor communication with defendants.

The Remedies

The **Aboriginal Justice Inquiry Report** made a number of recommendations for reform. Some dealt with reforming the Manitoba justice system itself. Others considered efforts to establish an Aboriginal justice system to run alongside the provincial system.

The Manitoba government dealt with specific issues such as health care and child welfare. By 2005 Manitoba’s Justice Minister Gord Mackintosh claimed the government had acted on the report. More than 90 percent of the recommendations had been implemented or were underway. Aboriginal leaders such as the Assembly of Manitoba Chiefs were unconvinced.

In 2005 Southern Grand Chief Chris Henderson said he thought that only about 20 percent of the recommendations had been honoured and implemented by the Manitoba government. Aboriginal leaders thought that more work was necessary to show cooperation. This was true, especially in relations between police and the Aboriginal community. Progress on this front was made, however, when

a public safety protocol was signed between the RCMP and the Southern Chiefs' Organization. The agreement aimed at more cooperation between the provincial police in southern Manitoba and the Aboriginal community.

Full Aboriginal self-government may be far in the future. Steps toward an Aboriginal justice system have been taken by the Manitoba government and by the federal Department of Corrections. The issues are complex, and Aboriginal and non-Aboriginal communities have a long history of mistrust and impatience. Many obstacles remain. The beginning of healing and cooperation, nevertheless, can be seen in the years since the 1980s.

Alternatives to Crowded Jails and Courts: Restorative Justice Sentences

When dealing with the issue of youth offenders, we saw that too many youths, Aboriginal and non-Aboriginal, went into some form of custody. Too many adults who had committed only minor offences were also confined. To remedy this, two principles are now being used throughout the justice system: **restorative justice and alternative sentencing**. Using the principle of restorative justice, **the justice system tries to rehabilitate or reform offenders**. It gives young offenders the chance to accept **personal responsibility** for their actions and to return to society with a desire to **obey the law**. They are more likely to grow and be restored to their old or better self. **Restorative justice** aims to allow offenders to become less anti-social and to want to become members of society who can contribute something in their own way. Restorative justice is rooted in Aboriginal traditions and is slowly being practised in Canadian criminal law. It is a principle used for treating offenders inside and outside of prison.

Alternative sentencing is an aspect of restorative justice that is being used across the country. A section of the Criminal Code now states that imprisonment is to be used only as a last resort for all Canadian offenders. In 1996 the federal government passed **Bill C-41** to deal with low-risk offenders. Rather than put these offenders in custody, **the court may order the offender to serve the sentence in the community**. Other measures were also made available to the courts. **Some other measures available include**

- serving sentences in the community and meeting with police or social workers,
- making restitution to the victim of the crime,
- attending victim and offender mediation sessions, and
- meeting with many members of the community for counseling (community conferencing).



FIGURE 6-18

In 1988 J.J. Harper was shot and killed when police mistook him for a car thief. His death, along with the 1971 murder of Helen Betty Osborne, led Manitoba's NDP government set up the Aboriginal Justice Inquiry. Osborne was a high school student originally from Norway House Indian Reserve who was abducted and murdered near The Pas, Manitoba.