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JUSTICE

RESEARCH NOTES

What Is the Relevance of Justice Research and Development in the 1990s?

The dramatic social, political and economic changes taking place in Canada today bring into question many assumptions about long-held societal values and goals and the legal and other mechanisms that can best serve indi-

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vidual and national aspirations. This complex of forces poses an enormous challenge for the development of fair and equitable justice policies.

The Department of Justice Research and Development Directorate recently undertook a planning exercise that resulted in a comprehensive three-year plan to help the Department meet the demands of the 1990s. Uppermost in this plan was the development and maintenance of a sound information base.

The following excerpts from that planning document illustrate the overall rationale for the research and development program. It will also help to explain why the Department believes it is important that its research reports and the results

of the development activities generated here be shared more widely. A continuing objective is to make these materials available for comment, criticism and use by all Canadians who believe that good information — and, in particular, information obtained from good social science research and demonstration projects — provides a powerful instrument for sensitive and innovative problem solving. That, for example, is one of the major purposes of *Justice Research Notes*.

Organization of the Policy Research Function

The Research and Development Directorate is responsible for a highly interdependent set of functions, all of which are intended to support and improve the ability of the Department to be innovative and effective in response to challenges and opportunities. The Directorate is responsible for all the social science-based (empirical) research; for the development and evaluation of demonstration projects; for statistical analysis; and, in conjunction with the Canadian Centre for Justice Statistics and the Ministry of the Solicitor General, for the promotion and development

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The Pursuit of Research and Its Application

In sum, the Department of Justice engages in social science policy research to collect new knowledge concerning the workings of the justice system, the nature and extent of the "underlying problem", and the likely impact and outcomes of various alternatives. Because so little research has been done on the Canadian justice system, and because major gaps exist in national justice statistics (especially in critically important areas such as the courts), the emphasis in this research is usually placed on describing the justice system.

Department of Justice policymakers and decisionmakers use social science research as an instrument of innovative social problem solving. Research is directed at finding and exploiting new opportunities that further the Department's policy and program objectives. The findings are used to supplement other types of information, such as public opinion polls, traditional legal research, and arguments propounded by lobby groups. ◀

Justice for Canada's Native Peoples: What and How Well Are Governments Doing?

by Phyllis Doherty and Albert Currie,
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The problems faced by native people in Canada's justice system have become a highly visible public issue during the past few years. The Royal Commission on the Donald Marshall Jr. Prosecution in Nova Scotia, the Public Inquiry into the Administration of Justice and Aboriginal People in Manitoba, the Public Inquiry into Policing on the Blood Indian Band Reserve in Alberta, the Task Force on the Impact of the Criminal Justice System on Indians and Metis in Alberta, and the recently formed Steering

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Committee on Native Justice Issues in British Columbia — all have brought these problems sharply to the fore.

More than ever, demands by native people for greater self-determination are exerting an influence on the direction of policy and program development in Canada. Shared federal-provincial responsibilities in the justice field, and the pursuit by both levels of government of new and more creative solutions to the problems of native people

and the justice system, have made imperative the sharing of ideas and information about innovative projects and programming.

An important step to address this need was taken at the June 1989 meeting of ministers of justice in Charlottetown when it was proposed that a national inventory be produced of programs, projects, and research on the justice system and native people. It was suggested that further discussions by ministers and senior officials would benefit from an up-to-date listing of Canadian programs, innovative projects, and current and recent research.

This listing, the *National Inventory of Aboriginal Justice Programs, Projects, and Research*, has been prepared by the Department of Justice and is available for distribution. It is hoped that it will facilitate the process of information sharing among provinces and the federal government; further, that it will be of particular value to departmental officials and to researchers, program managers and policy officers at a time when native justice issues are high on the public agenda and when planning is needed to improve the access of indigenous people to the best services that the justice system can provide.

Some Experimental Programs

The more than 250 programs, projects, and research studies included in the inventory bear evidence of a substantial amount of government-sponsored activity in the areas of policing, corrections and aftercare.

In addition, a number of experimental programs have recently been developed to improve access to the justice system and to assure greater fairness of treatment for native people.

Following are three examples.

- The Department of Justice sponsored the pilot phase of an experimental project developed by Legal Aid Manitoba using resident paralegal workers of aboriginal origin in remote communities. Paralegal workers assist lawyers on the court circuit in case preparation and also provide legal information and other general counselling about the law and legal problems to natives. The project was highly successful in improving the quality of justice in the affected communities, as indicated by the substantial

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increase in the number of family law cases and other healthy indicators coinciding with the presence of the paralegal workers. The project has now been integrated into the core program of Legal Aid Manitoba.

- The Department of Indian Affairs and Northern Development and the Department of Justice are co-sponsoring a project with the Arctic Public Education and Information Society in the Northwest Territories and the Public Legal Information Society of Newfoundland to develop what is called a "theatre" approach to delivering information to native people in remote communities. This approach is an attempt to provide legal information to people whose cultures are based largely on an oral tradition. A prototype presentation is now nearing completion.
- The Ministry of the Solicitor General is sponsoring a Community Development Worker Project in Shamattawa, Manitoba. Currently in its preliminary stages, this project

is aimed at developing a strategy for community development across a broad range of justice issues: crime prevention, police-community relations and community corrections.

Provincial Initiatives

At the provincial level, the inventory highlights a number of programs that attempt to devolve administrative responsibility for justice programs and services to local communities. British Columbia, Saskatchewan, Manitoba and Quebec have developed contractual arrangements with individual Indian bands to deliver "fine option" and "community service order" programs. These are programs in which a presiding judge may, instead of levying a fine, order the offender to perform a community service. The contractual arrangements that have been worked out represent an interesting approach to introducing a measure of local control over the administration of justice while maintaining appropriate and mutually satisfactory links with the mainstream justice system. It is suggested that these programs might be applied in other areas of the justice system.

However, according to the information provided for this inventory, Manitoba is the only jurisdiction that has conducted evaluations of community service order and fine option programs. The only program documentation reported by other jurisdictions appears in annual reports or as financial audits. This is of some concern, because much of the value of experimental projects or innovations to ongoing programs comes from careful evaluations that can furnish solid empirical information about the strengths and weaknesses of new strategies. Full documentation would be valuable not only for program development, but

would also avoid implementation problems for other jurisdictions.

Exploring Traditional Justice Systems

The inventory lists a number of programs and projects under the headings "Alternative Systems" and "Traditional Systems". Many of these are, in fact, funding mechanisms to allow organizations to explore the concept of traditional native justice systems rather than develop projects per se. Notable exceptions are the following projects, which are attempting to introduce practices rooted in indigenous culture ("customary" practices) into the justice process: Community Justice Committees in Manitoba; the St. Theresa Youth Court Project, also in Manitoba; and the "Tribal Justice System for CATCO"* study in the Yukon. Because the mainstream justice system exerts such an immediate and powerful effect on the fates of individuals and on safety and security in communities, it is a powerful symbol of community control. Hence, with self-determination high

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on the political agenda today, an important area of research and development clearly involves experimental projects, with thorough evaluations, designed to explore aspects of community justice incorporating contemporary customary practices.

* Coalition Bands of Teslin, Champagne/Aishihik and Old Crow (CATCO).

Justice Education and Native People

The inventory contains a number of justice-related education programs designed to prepare native people for assuming a variety of roles within the justice system. This integrated approach represents a major step forward in making the system more responsive to native people. The program of Legal Studies for Aboriginal People, sponsored by the Department of Justice, has been

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evaluated three times since 1977, and the Native Human Justice Program in Saskatchewan is currently being evaluated.

This education approach appears to be widespread in many parts of Canada. The effectiveness of the objectives of the various programs and their cumulative impact are of major interest for planning and development at the national level.

Evaluations and Basic Research Still Needed

As noted earlier, preparation of this inventory revealed a marked absence of program and project evaluations. These are urgently needed to determine what does and what does not work in this complex field.

Until recently, there has been a notable lack of basic research in Canada to support the development of well-focused experimental

projects and to inform the policymaking process. (Within the past year, several research projects on crime patterns and the use of customary practices to resolve disputes have begun, but results are not yet available.) As a consequence, there is no solid knowledge base to define, properly and reliably, the nature of aboriginal justice problems such as urban crime, the retention and application of customary law, the range of community diversity and needs, the meaning and causes of the disproportionate numbers of native people in conflict with the law, and the incidence and types of crime among native people.

The Inventory as a Working Tool

As resources permit, the inventory will be updated by the Department. It has been well received and is proving to be a valuable tool for a broad variety of people working in the field of aboriginal justice: practitioners, policy officers, program managers and researchers, as well as organizations involved in funding special projects. In addition to its descriptive material, the inventory contains the names and addresses of contact persons and the titles of program reviews and evaluations, which should facilitate professional contacts and lead to a broader diffusion of information about current activities in the field. ◀

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National Inventory of Aboriginal Justice Programs, Projects, and Research. May 1990. Research Section, Department of Justice. For copies, contact: Research Section, Department of Justice Canada, Ottawa K1A 0H8. (613) 957-9632.