

**THE CHALLENGE FOR CHANGE:
REALIZING THE LEGACY OF THE
ABORIGINAL JUSTICE INQUIRY REPORT**

by

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Manitoba Keewatinook Inninew Okimowin (MKO) is a political organization that represents twenty-nine First Nation communities in Northern Manitoba. The objectives of MKO are generally to maintain, strengthen, enhance, lobby for, and defend the rights of First Nation peoples within its jurisdiction and to promote, develop, and secure a standard and quality of life deemed desirable and acceptable by its member First Nations.

Southern Chiefs' Organization (SCO) was created in 1998 by member southern First Nations seeking to establish an independent political forum to protect, preserve, promote, and enhance First Nation peoples' inherent rights, languages, customs, and traditions. SCO's directives are to assist member southern First Nations in the advancement and achievement of their goals as mandated by the Chiefs-in-Summit; promote and assist member First Nations in providing good government for their First Nations; assist member First Nations in promoting and defending Treaty and Aboriginal rights; and assist member First Nations in holding the Crown and the federal and provincial governments responsible in the fulfillment of their fiduciary duties and other responsibilities and obligations to First Nations.

Canadian Centre for Policy Alternatives (CCPA) is an independent, non-profit research institute concerned with issues of social and economic justice. Founded in 1980, the CCPA is one of Canada's leading progressive voices in public policy debates. The CCPA's Manitoba Office was established in 1997. The office publishes research reports and regular opinion pieces on current issues.

SUMMARY

The over-representation of Aboriginal women in prison relative to their numbers in the general population has reached alarming proportions in this province.

These women face some of the most severe hardships in our society, including the intergenerational affects of residential schools and colonial state policies such as the “Indian Act,” poverty, histories of physical and sexual abuse, debilitating mental health issues, and problems with drugs and alcohol. By all accounts, incarceration has only compounded the women’s troubles.

Simply building a new prison will not resolve the current situation. A more imaginative and comprehensive plan is required. Manitoba has the benefit of the legacy of the Aboriginal Justice Inquiry Report. There is much in this report that is instructive in fashioning such a plan.

The overriding goal should be to reduce the numbers of women involved in the criminal justice system. This involves strengthening women’s ties to their children, families, and communities.

A restorative justice approach, based on a holistic approach to healing and a community-based model that (re)builds the social safety net, would ensure that women are provided with access to the range of multi-faceted services they need (recovery from substance abuse and victimization, academic upgrading, job-skill training, and parenting skills programming).

Because the numbers of women are small and they pose a minimal risk to social safety, most can be accommodated in the community by means of open-custody facilities, group homes, home placements, and halfway houses.

As an alternative to the traditional prison regime, two healing lodges based on Aboriginal cultures and traditions should be established to provide for women who require a more structured environment and access to intensive programming: one in the North and one in the South of the province. Long Plain First Nation is willing to host such a facility in the South. These facilities would be available to both provincially and federally sentenced women.

Aboriginal peoples should be actively involved in the provision of services and resources. The University College of the North (UCN), through the development of an Aboriginal Justice College, should be directed to the successful training of Aboriginal staff.

A provincially and federally supported committee should be established with representation from Aboriginal organizations, Aboriginal women’s organizations, and women’s organizations to oversee and implement a holistic strategy for women in conflict with the law. Every effort should be made to include women who have had first hand experience with the criminal justice system.

INTRODUCTION

Prison cannot remedy the problem of poverty on reserves. It cannot deal with immediate or historical memories of the genocide that Europeans worked upon our people. It cannot remedy violence, alcohol abuse, sexual assault during childhood, rape and other violence Aboriginal women experience at the hands of men. Prison cannot heal the past abuse of foster homes, or the indifference and racism of Canada's justice system in its dealings with Aboriginal people. (Adelberg and the Native Women's Association of Canada 1993: 79)

In July of 2002, Justice Minister Gordon Mackintosh announced that the Portage Correctional Institution for Women (PCI) would be closed. In December of 2004, the Minister announced the appointment of a three-person committee to consult on the best location for a new women's facility in the province. The committee has until March 31, 2005 to make its recommendations.

For many observers, these announcements have been a long time in coming. Some fourteen years ago, the Aboriginal Justice Inquiry (AJI) recommended that the Portage Correctional Institution "is an inappropriate facility for women and should be closed" (Hamilton and Sinclair 1991: 501). By all accounts, conditions at Portage have actually worsened since that time (Comack 2000; Elizabeth Fry Society of Manitoba 2000). That the government is now taking action on this matter is therefore a welcomed move.

Nevertheless, the decision to build a new facility is not one that can be made in haste – nor can it be made isolation. The issues that pertain to women who come into conflict with the law in this province are varied and complex. Most concerning is that the over-representation of Aboriginal women in prison relative to their numbers in the general population has reached alarming proportions. By all accounts, incarceration has only compounded the troubles these women have to contend with in their lives. Indeed, criminologists tell us that imprisonment is much more likely to cause criminal behaviour than to prevent it. It is important, therefore, to fashion a response that will alleviate – not exacerbate – the levels of crime in our communities.

It is our position that deliberations over the replacement of the PCI must be informed by a broader, more comprehensive plan; one that is premised on a clear sense of ‘who are the women?’ that are the subject of these changes, and ‘what are their most pressing needs?’ Such a plan should specify a guiding philosophy or set of principles. In this regard, Manitoba has the benefit of the legacy of the Aboriginal Justice Inquiry. While by no means an infallible document, the AJI Report has much to offer in framing a comprehensive plan.

The purpose of this paper, therefore, is to contribute to the development of a plan for responding to the needs of Manitoba women who come into conflict with the law. The discussion will be organized as follows:

Part One draws on the available literature and recent history pertaining to women who have been incarcerated in Manitoba to clarify who these women are and to map out the nature of the troubles they encounter in their lives.

Part Two focuses on the recommendations contained in the reports of the Aboriginal Justice Inquiry and the subsequent Aboriginal Justice Implementation Commission (AJIC) (2001). Two arguments are advanced in this section. First, the recommendation of the AJIC to establish a new correctional facility for women (from which the appointment of a consultation committee followed) should not be taken in isolation from the Commission’s overall strategy, which is based on principles of community or restorative justice. Second, while the mandate of the AJIC was to propose methods of implementing appropriate recommendations from the AJI report, only select recommendations of the AJI were considered. It is our view that there is much more in the AJI report that is instructive.

Because of our firm belief that the women whose lives will be most affected by these decisions should be included in these deliberations, Part Three reports on suggestions made during a Sharing Circle conducted with women at the Portage jail.

Drawing on the previous sections, Part Four considers some of the steps that could be taken to realize the legacy of the Aboriginal Justice Inquiry and meet the needs of Manitoba women who come into conflict with the law.

PART ONE: ABORIGINAL WOMEN IN CONFLICT WITH THE LAW

Over-represented and over-incarcerated

The over-representation of Aboriginal peoples in Canadian prisons is a problem of historic proportions that is now widely recognized (Jackson 1988-89; Hamilton and Sinclair 1991; Royal Commission on Aboriginal Peoples 1996; La Prairie 1996). The statistics are telling:

- While Aboriginal people comprise 2 percent of the adult Canadian population, they make up 17 percent of the prison populations across the country (Statistics Canada 2000).
- The over-representation of Aboriginal people is greatest in the Prairie provinces. In 1998-99, the proportion of Aboriginal persons admitted to adult provincial facilities in Saskatchewan (76 percent) was almost ten times higher than their proportion in the provincial adult population (8 percent). While Aboriginal people made up 4 percent of the adult population in Alberta, they comprised 38 percent of admissions to provincial custody. In Manitoba, where 9 percent of the population is Aboriginal, 59 percent of admissions to provincial facilities were Aboriginal persons (Statistics Canada 2001).
- The over-representation of Aboriginal women is even more acute. In its one day snapshot of persons held in provincial custody in Manitoba on September 6, 2000, the Aboriginal Justice Implementation Commission (2001) found that while 63 percent (731 of 1153) of men held in custody were Aboriginal, 73 percent (41 of 56) of the women were Aboriginal.

Also widely recognized is the connection between the over-incarceration of Aboriginal peoples and the historical forces that have shaped contemporary Aboriginal communities. The processes of colonization – including colonial state policies such as the “Indian Act” and the intergenerational effects of residential schools – have led to the economic, social, and political marginalization of Aboriginal peoples (Royal Commission on Aboriginal Peoples 1996; Hamilton

and Sinclair 1991). As the Supreme Court of Canada has acknowledged, “Many aboriginal people are victims of systemic and direct discrimination, many suffer the legacy of dislocation, and many are substantially affected by poor social and economic conditions (*Gladue* 1999: 20).

Incarcerating women

“Our country is ... distinguished as being a world leader in putting people in prison.” (*Gladue* 1999: 15)

Women represent a small proportion of adults charged with a Criminal Code offence in Canada. In 2001, for instance, only 17 percent of adults charged were women (Statistics Canada 2002). Given that women are also more likely to commit less serious offences than men (Hannah-Moffat and Shaw 2000: 18), it is not surprising to find that women make up an even smaller proportion of adults incarcerated in Canada’s prisons. A one-day survey of all inmates who were on register in adult correctional facilities in Canada on October 5th, 1996 found that women comprised only 1.5% of the federal population and 7% of the provincial and territorial populations of Canada’s prisons (Finn et al. 1999).

Nevertheless, while women comprise only a small percentage of those incarcerated, compared with other countries, Canada makes far greater use of imprisonment for women (Shaw 1991; Boritch 1997). Margaret Shaw suggests that the main reason for this finding appears to be the greater use of short-term incarceration for Canadian women. For instance, the One Day Snapshot conducted in 1996 (Finn et al. 1999) found that 51 percent of females in provincial institutions were serving aggregate sentences of less than 6 months (compared with 44 percent of males).

The historically small number of women incarcerated in Canadian prisons (relative to their male counterparts) has led them to be deemed “too few to count” and thus not the subject of attention by criminal justice officials (Adelberg and Currie 1987). While attention has been recently focused on women held under federal sentence in Canada – especially since the release of the *Creating*

Choices task force report in 1990 – very little attention has been devoted to the much larger population of women held in provincial jails across the country. One consequence of this inattention is that we know little about who these women are. Nevertheless, there is a small body of work that has been produced that can address this issue.

Who are the women?

A study done by Elizabeth Comack (1993) involved collecting data on the social characteristics of women admitted to the Portage jail between 1988 and 1993. In all, 727 women were included in the study.¹ Two-thirds (486) of the women admitted to the prison over this six-year period were Aboriginal. Of these, almost half (49%) were living off the reserve and one-quarter had been living on a reserve. The remaining women were non-status (7%) and Métis (19%).

As a group, the women at Portage are young (27% were less than 25 years of age; 26% were between 25 and 29 years of age). Aboriginal women tended to be younger; 56% were under the age of 30 compared with 46% of non-Aboriginal women. In terms of their marital status, Aboriginal women were more likely to be single than non-Aboriginal women (51% compared with 42%). With regard to education, while the vast majority (82%) of Aboriginal women had less than grade 11, the majority (56%) of non-Aboriginal women had grade 11 or more. As well, while unemployment was prevalent among the women admitted to Portage, Aboriginal women were substantially more likely to be unemployed than non-Aboriginal women (90% compared to 73%).

¹ This number included all but three of the women admitted to the prison during this period. Twenty-nine of the women had been admitted more than once. In these cases, the most recent admission information was recorded.

Table 1 Offence Type (Sentenced Admissions) for Aboriginal and Non-Aboriginal Women Admitted to the Portage Jail, 1988 to 1993

	Aboriginal Women's Offences	Non-Aboriginal Women's Offences
Person	108 18.5%	25 9.8%
Property	138 23.7%	102 39.8%
Public order	16 2.7%	8 3.1%
Admin of justice	101 17.3%	28 10.9%
Alcohol & drug	133 22.8%	66 25.8%
Driving-related	76 13.0%	15 5.9%
Other	11 1.9%	12 4.7%
	583 100%	256 100%

Source: Comack 1993: 16

As indicated in Table 1, property offences made up the largest percentage of offences for which Aboriginal and non-Aboriginal women were admitted to the prison under sentence (24% and 40%). Aboriginal women were more likely to be admitted for an offence against the person (19% versus 10%), and to have administration of justice charges (17%) than non-Aboriginal women (11%).² Both Aboriginal and non-Aboriginal women had a significant percentage of alcohol and drug-related offences (23% for Aboriginal women and 26% for non-Aboriginal women). Aboriginal women were also more likely to have been previously incarcerated as adults as compared with non-Aboriginal women (43% versus 30%).

These findings coincide with what is generally known about women in prison. As Kelly Hannah-Moffat and Margaret Shaw (2000: 19) note, women prisoners share a number of factors with men in prison: they are young, poor, with little formal education or certified job skills; their offences usually include high levels of involvement with alcohol and drug use; and both Aboriginal women

² Administration of justice offences are an indication of the women's difficulties in adhering to court imposed restrictions or requirements. They include 'breaches' such as failure to appear in court.

and men are over-represented. However, Hannah-Moffat and Shaw also note some distinct differences between female and male prisoners:

- two-thirds of women in prison are mothers and are far more likely to be the primary or sole caregivers than men;
- women's health needs are different and often greater than those of men;
- Aboriginal women are even more over-represented than Aboriginal men;
- women's criminal histories are generally less extensive and serious than men's;
- women are less likely to be reconvicted and are generally seen as better 'risks' than men;
- women have higher reported levels of physical, sexual, and emotional abuse as children and adults than men;
- overall, women have lower education and job-skill training than men, and more poverty and welfare dependence;
- women are more likely than men to be diagnosed as having mental health problems.

Hannah-Moffat and Shaw go on to note that women also experience and respond to prison differently than men. "Women tend to feel the 'pains of imprisonment' more than men, and to express their feelings in different ways." For instance, "in general, there is less overt violence in women's prisons, but a greater likelihood that women will slash or injure themselves or attempt suicide." These authors therefore suggest that the context of women's offending and their experiences both outside and inside prison (as well as their reactions to imprisonment) are quantitatively and qualitatively different from those of men.

The women's troubles

Given that women who are confined to prison encounter structural barriers and limited choices in their lives, it is understandable that they are 'women in trouble' (Comack 1996). As one woman who spoke with Comack described it, women admitted to the Portage jail bring with them "miles of problems" – including

histories of violence and abuse, problems with drugs and alcohol use, and their struggles to provide and care for their children. Given their difficult backgrounds, many of the women admitted to Portage also have mental health issues.

abuse histories

While violence against women and children is a widespread and pervasive problem in our society (Johnson 1996), research has shown that a large percentage of women who are admitted to Canadian prisons have histories of physical and sexual abuse.

- The Canadian Task Force on Federally Sentenced Women, for example, found that of the 191 women interviewed, over two-thirds (68%) said they had been physically abused as children or adults, and half of them (53%) sexually abused at some stage of their lives. Among Aboriginal women, these figures were considerably higher: 90% (35) said they had been physically abused during their lives, usually regularly over long periods, and 61% (24) sexually abused (Shaw et al. 1991: vii and 31).
- A study by the Native Women's Association of Canada (Sugar and Fox 1989: 6) found that "27 of the 39 women [69%] interviewed described experiences of violence: rape, regular sexual abuse, the witnessing of a murder, watching our mothers repeatedly beaten, beatings in juvenile detention centers at the hands of staff or other children." Thirty-four of the 39 women (87%) had been victims of abuse as adults (1989: 7).
- The research mentioned earlier by Comack (1993) found that 81 percent of the Aboriginal women and 71 percent of the non-Aboriginal women admitted to the Portage jail between 1988 and 1993 reported histories of abuse. There were a number of similarities between what was found to be the case for the women at Portage and other studies on violence against women. For one, abusers were overwhelmingly male, and were likely to be someone well known to the woman (an intimate partner or family member). For another, the aggression was likely to be repeated over a period of several years.

drug and alcohol dependencies

A report for the Task Force on Federally Sentenced Women noted “It is often acknowledged that drugs and alcohol play a large part in the lives of many women involved in the criminal justice system” (Shaw et al 1991: 25). Almost three quarters of the federally sentenced women interviewed by the task force researchers reported that drugs and alcohol played a major part in their lives. Among the Aboriginal women interviewed, drugs and alcohol abuse was an even greater problem. Of the 39 Aboriginal women interviewed, 10 were addicted to drugs, 12 to alcohol, and 12 to both; most women were heavily addicted over long periods.

Many of the women who spoke with AJI Commissioners Hamilton and Sinclair also admitted that the consumption of alcohol was a contributing factor to their criminal involvement. The Commissioners noted, however, “while alcohol was mentioned by Aboriginal women at Portage, it was not the most significant factor that caused them to be there.” In addition to histories of abuse, “many felt trapped in an impossible economic and social situation from which there was little chance of escape” (Hamilton and Sinclair 1991: 499).

caring for children

As noted above, two-thirds of women in prison are mothers and are likely to be the primary or sole caregivers of their children. According to the AJI:

Many of the women were concerned particularly that their children had been taken away from them and that their criminal involvement had led to questions being raised about their competency as parents. Many of them had stated that it was in order to feed and provide for their children that they had committed their crimes in the first place. (Hamilton and Sinclair 1991: 499)

women with mental health issues

In a report prepared for the DisAbled Women’s Action Network (DAWN) on federally sentenced women with mental disabilities, Yvonne Peters (2003) notes that “the institutional warehousing of persons with intellectual and mental disabilities is no longer an acceptable practice.” Yet, the relentless cuts to social

and health programs over the past two decades have meant that many women with mental disabilities “fall through the cracks in the system.” And many of these women end up in the criminal justice system. Peters also notes the connections between experiencing mental disabilities and histories of physical and sexual abuse: “Many problems experienced by incarcerated women can be linked directly to past experiences of early and/or continued sexual abuse, physical abuse and assault” (Peters 2003: 7). She contends that:

Prisons are an inappropriate place for persons with mental disabilities because of the primacy of security as the objective of the prison authorities, the stress caused by such an environment and the lack of effective mental health services ... [T]he prison environment as a whole ... creates and exacerbates women’s mental health concerns. (Peters 2003: 21)

In a similar fashion, organizations like the Canadian Association of Elizabeth Fry Societies (CAEFS) take the position that “women with mental health problems do not belong in prisons and that the treatment, support and assistance they need should be provided to them in the community, rather than in prison” (Peters 2003: 21).

Attending to women’s needs

The book, *Women in Trouble* (Comack 1996), which was based on in-depth interviews with women at the Portage jail, revealed a significant irony: only after the women were caught up in the criminal justice system did they receive access to the resources they needed to begin resolving their troubles. These resources included:

- Putting Aboriginal women in contact with their indigenous culture (ceremonies were being held on a regular basis);
- Access to economic resources (under the community work program, prisoners could gain employment at local businesses);
- Providing counselling for problems with alcohol use;

- Finding someone with whom they could talk about their troubles (an Abuse Hurts program was offered by staff at the prison, and a counsellor from the local women's shelter visited on a regular basis).

That the women had to come to prison to access these kinds of resources tells us how difficult the conditions are in their own communities. In fact, for some of the women, prison had become a safe place, a temporary refuge from their violence-filled lives. As one of the women (who experienced violence daily from an abusive partner) reported: "*I like it. At least it's safe for a while. Nobody's pestering me*" (Comack 1996: 142). Even so, as the AJI Commissioners noted in 1991: "We found existing programs [at Portage] to be inadequate" (Hamilton and Sinclair 1991: 501).

Worsening conditions and the pressure for change

The interviews for Comack's study were conducted in 1992. Since that time, the situation at Portage has changed considerably. After the riot at the Headingly jail in April of 1996, all of the women held at the Remand Centre in Winnipeg were transferred to the PCI in order to make room for the men while Headingly was being repaired. This led to severe overcrowding at the women's prison, as the number of women rose to over 70 (The official capacity of Portage is 44).

The overcrowding meant that many of the programs that had been offered were unavailable, as staff resources were devoted to managing the more immediate needs of the women (such as scheduling meal times and finding enough places for them to sleep). Because of concerns over rivalling gangs (who identify by their clothing), the prison instituted uniforms for the women,³ and the women housed on the two floors of the prison were not allowed to mix. Restrictions even extended to limiting the access to black and red beads for doing beadwork, as these were considered to be 'gang colours.'

³ Including, as was discovered during a recent sharing circle with the women, previously worn underwear. As one of the women reported: "We are provided with used and stained underwear as part of our clothing issue. We are not even supplied with Javex to disinfect the stained and unhygienic apparel."

The situation at Portage was eased somewhat four and one-half years later – in October of 2000 – when the reconstruction at Headlingly was completed and the women were allowed back into the Remand Centre. Nevertheless, concerns remained as to the provision of appropriate programs and services for the women, as well as problems with the physical structure and location of the prison.

In response to these concerns, the Elizabeth Fry Society of Manitoba filed two complaints with the Manitoba Human Rights Commission (MHRC) in December of 2001, charging the province's corrections system discriminates against incarcerated women on the basis of sex and fails to reasonably accommodate the special needs of incarcerated women, especially Aboriginal women, pregnant women, women who have children, and women who have disabilities. In its report of November, 2004, the MHRC concluded that there appears to be differential treatment between incarcerated men and women with respect to available programming, visits with family and children, access to recreational facilities, and space devoted to mental health treatment. Meeting the nutritional needs of pregnant women appeared to be lacking. The Commission found evidence of differential treatment of Aboriginal women compared to Aboriginal men. While incarcerated Aboriginal men have access to a Sweat Lodge at Headingly, no such access exists for incarcerated Aboriginal women at Portage. The Commission also concluded that programming specific to Aboriginal women's needs is lacking at Portage.

Similar concerns have been expressed at the federal level. In March of 2001, the Canadian Association of Elizabeth Fry Societies (CAEFS), supported by a number of human rights organizations, approached the Canadian Human Rights Commission (CHRC) with regard to a number of concerns pertaining to the treatment of federally sentenced women, particularly Aboriginal women. Given the wide range of concerns raised, an agreement was reached between the CHRC and CAEFS to proceed with a special report on the matter. The CHRC released its report in December of 2003.

In its report, the CHRC found that “While some progress has been made, systemic problems continue to affect the correctional system and the treatment of federally sentenced women.” The Commissioners stated that “Differences between individuals and groups that relate to prohibited grounds of discrimination must lead to changes in how systems are designed, how policies are developed, and how practices are implemented” (Canadian Human Rights Commission 2003: 71). In particular, the report noted that “a correctional system predicated on male norms, needs and behaviours, and a gender-neutral view of criminogenic factors cannot adequately serve federally sentenced women” (p. 49).

The Commission noted that Aboriginal women accounted for 29 percent of the women incarcerated in federal prisons, and 46 percent of the women classified as maximum security:

The situation of federally sentenced Aboriginal women, including the fact of their over-representation in our prisons and at maximum security levels, is a pressing issue requiring immediate action. Changes to the security classification system must ensure that Aboriginal women are treated fairly and incarcerated in the least restrictive environment possible and, where desired, in Aboriginal communities under section 81 of the *Corrections and Conditional Release Act*. Programming strategies and programs must also be developed to meet their reintegration needs.

The CHRC report made a total of 19 recommendations to address systemic barriers to equality for federally sentenced women.

There is now a widespread consensus on the view that the Portage jail is unable to meet the needs of the women who are sent there. There is also evidence that the treatment of women by the correctional system – at both the federal and provincial levels – constitutes systemic discrimination. A dramatic sea change is necessary in order to remedy this unacceptable state of affairs. The AJI report offers us guidance in meeting this challenge for change.

PART TWO: LESSONS TO BE LEARNED FROM THE AJI

The Aboriginal Justice Implementation Commission (AJIC) released its report in July of 2001. The AJIC was established by the Manitoba government in 1999.

The Commission was “charged with reviewing those recommendations made in the 1991 *Report of the Aboriginal Justice Inquiry of Manitoba* for which the Province of Manitoba is responsible and accountable, and with proposing methods of implementing appropriate Aboriginal Justice Inquiry (AJI) recommendations” (AJIC 2001, Executive Summary: 1).

Because the focus of the AJIC was on community justice and community development initiatives, the report did not contain a set of recommendations that pertain to correctional institutions in Manitoba. However, the Commissioners noted in their report that “the condition of the Portage Correctional Institution requires comment.” In quoting the recommendation of the AJI that “the Portage Correctional Institution be closed,” the Commissioners commented that its continuing operation ten years later was “a shameful state of affairs that should not be allowed to continue.” The report then cited the AJI recommendation that the women in the PCI be moved to either community custody or the Milner Ridge Correctional Centre. Since Milner Ridge is currently being used to house domestic violence offenders, the Commissioners held that the “AJI’s recommendation to make Milner Ridge a co-correctional facility may not be appropriate” (AJIC 2001, Chapter Six: 25). As such, the AJIC made two recommendations regarding women’s incarceration:

6.9 The Portage Correctional Institution be closed.

6.10 The Government of Manitoba establish a new correctional facility for women that provides them with adequate treatment, training, and cultural and spiritual supports, and provides the greatest possible number of opportunities for community integration.

It is largely as a result of these two recommendations that Justice Minister Gordon Mackintosh announced the closure of the Portage jail and subsequently

appointed the three-person committee to consult on the best location for a new women's facility in the province.

Two issues of concern emerge here:

First, the recommendation to establish a new correctional facility should not be taken in isolation from the overall strategy adopted by the AJIC. This strategy is one based on principles of community justice, that is, a community-based, restorative justice model. According to the AJIC report, one of the key priorities within this model is the implementation of measures that "reduce the use of incarceration and that encourage correctional program service delivery in communities" (AJIC 2001: Executive Summary: 4). With respect to the AJIC recommendations, therefore, "community integration" should be a key consideration in any deliberations regarding women in conflict with the law.

Second, while the mandate of the AJIC was to propose methods of implementing appropriate Aboriginal Justice Inquiry (AJI) recommendations, the Commissioners chose to focus on only select recommendations of the AJI that pertain to the incarceration of women. In this regard, there is much more in the AJI report that is instructive:

1. Incarceration of women, in general, as a problem

Commissioners Hamilton and Sinclair were clear in pointing to the problems with incarcerating women:

Studies have shown that women's prisons tend to increase women's dependency; stress women's domestic, rather than employment, role; aggravate women's emotional and physical isolation; destroy family and other relationships; and engender a sense of injustice. In other words, they appear to accomplish the opposite of what is intended. (Hamilton and Sinclair 1991:503)

One of the recommendations included in the AJI report was that

Alternatives to incarceration appropriate to Aboriginal cultures be developed for Aboriginal women. (p. 501)

Indeed, since the AJI Report of 1991, both Parliament – in adding section 718.2(e) to the sentencing principles of the Criminal Code – and the Supreme Court of Canada – in its decision in *Gladue* (1999) – have acknowledged the issue of over-incarceration and systemic discrimination against Aboriginal peoples, and the need to consider alternatives to incarceration in the sentencing of Aboriginal peoples.

2. Short-term sentences as a problem

The AJI also acknowledged that sentencing women to short terms of incarceration is counter-productive:

The programming problems at Portage la Prairie highlight the problem with sending female offenders to large and distant correctional facilities to serve very short sentences. The sentence creates tremendous disruption in the offender's life, often leading to the break-up of families and loss of employment. The system's impact is almost exclusively punitive, and victimizes innocent children and communities as much as, or more than, it punishes offenders. (Hamilton and Sinclair 1991: 502)

As the Elizabeth Fry Society of Manitoba (2000:11) noted in its position paper, there is a need “to re-think the historic tendency to imprison women on short-term sentences, especially considering that imprisonment, more often than not, complicates rather than resolves a woman’s ability to overcome her troubles.”

3. Location as a problem

The AJI noted the difficulties encountered in sentencing women to custody at the Portage jail: “It is far from the homes of those from the North, making it impossible for family members, including children, to visit. The same problem exists for families in Winnipeg who find it difficult to visit and remain in contact with incarcerated women” (p. 502). The Commissioners also commented that the (then) proposed healing lodge in Saskatchewan would not resolve the issue of location and distance for Manitoba women, and that “more imaginative means of dealing with Aboriginal women offenders are required” (p. 503). One of the recommendations made by the AJI was that:

All women who are now sent to a federal penitentiary outside the province be permitted to serve their sentences in Manitoba. (p. 504)

4. Security issues

Pre-dating the CHRC's report on federally sentenced women (which was critical of the use of a male model for the security classification of women prisoners) and the finding of the Arbour Inquiry (1996) that women in conflict with the law are "high needs/low risk," the AJI noted that few, if any, of the women at Portage were security risks (p. 503).

The perception that women and girls have become more violent since the AJI Commissioners fashioned their recommendations merits comment here. Criminologists have responded to the charge that violence by girls has been increasing over the last decade. Anthony Doob and Jane Sprott (1998), for instance, examined court data from 1991 to 1996 on youth charged with assaults. While the data showed an increase in girls charged with lower level assault charges, level three assault charges actually decreased over the period. Similarly, Marge Reitsma-Street's analysis of charges against girls in 1980 and 1995/96 showed that despite increased public concerns about the rise in personal injury offences by girls and their participation in violent, gang-related activities, "the increase in personal injury charges is not for serious violent crime" (Reitsma-Street 1999: 350).

One factor that has changed in the past decade has been the response of school authorities and the criminal justice system, especially in the form of zero-tolerance policies. As Doob and Sprott (1998: 188) note:

Such policies can be expected to result in increased numbers of minor cases of violence – these are the cases that are likely to have been ignored in the past. As expected, the increase over the years in court processing of cases of minor assault is dramatic.

Zero-tolerance policies have also had an impact on the numbers of women charged with violent offences. Comack, Chopyk, and Wood's (2000) analysis of Winnipeg Police Service data on men and women charged with a violence offence between 1991 and 1995 showed that changing police protocols

have brought more women into the criminal justice system on violent crime charges. Prior to the implementation of the zero-tolerance policy on domestic violence in 1993, only 25 percent of all the violence charges against women involved partner violence. After zero-tolerance was implemented, this figure rose to 58 percent. While the vast majority (80 percent) of these charges were eventually stayed by the Crown, it is evident that such policies have had a net-widening effect.

The perception that women prisoners are now more violent than in previous years also needs to be placed in context. Over the last decade, the severe overcrowding at Portage (coupled with the absence of programming and other resources) created incredible tension in the prison, and led to an emphasis on enhanced security on the part of the prison administration. Under such conditions, it should be no surprise that the women held there might respond negatively.

5. Community Custody and Co-Correctional Facilities (Milner Ridge):

The AJIC cited the AJI's recommendation that women be moved either to community custody or the Milner Ridge Correctional Centre. Milner Ridge was referred to in the AJI report in reference to the potential for co-correctional facilities to respond to the needs of women in conflict with the law. The report cites the example of Indian Ridge Corrections Centre, near Arlington, Washington, which was converted to a co-correctional facility in 1988. The conversion of Milner Ridge to a co-correctional facility was then cited as a first step in this process.

The AJIC deemed Milner Ridge to be an inappropriate choice – given that it is now used to house domestic violence offenders. As well, the use of co-correctional facilities may not be the most suitable way of responding to women's needs (especially given the large number of women who have experienced violence at the hands of men). Nevertheless, the AJI recommendation of community custody was not considered by the AJIC. Indeed, two other AJI recommendations have a bearing on this issue:

Culturally appropriate group homes be established in urban areas by Aboriginal women's organizations where urban Aboriginal women can serve any term of incarceration to which they may be sentenced, with access to programs of recovery from substance abuse, recovery from victimization and dependency, academic upgrading and training, and parenting skills. (p. 504)

Aboriginal women living in isolated or rural communities be held in open custody facilities in their home communities. Such women would be free to attend to their families, to work or to obtain education during the day, to attend counseling sessions in the evenings. (p. 504)

As noted above in the discussion of the CHRC report on federally sentenced women, there is legislative precedent at the federal level for accommodating the supervision of women in their home communities. Section 81 of the *Corrections and Conditional Release Act* provides for the transfer of a woman to the care and custody of an Aboriginal community to serve her sentence under the community's supervision. Nevertheless, the CHRC (2003: 11) observed that "no section 81 agreements for Aboriginal women are currently in place."

Given the small number of women who are currently sentenced to secure custody (and for short terms), and the minimal risk that these women pose to public safety, the implementation of group homes and open custody facilities may well provide the kinds of resources needed. One advantage of this approach is that women would be better able to access resources in their communities, which would reduce the expense of offering programs in an institutional setting. As well, it would enhance the women's ability to remain connected with their children, families, and communities.

PART THREE: WHAT THE WOMEN AT PORTAGE HAD TO SAY

I have been in and out of this facility since the 1970s. Nothing has changed. It is time something changes. This system is not working.
(statement made by a resident of PCI during a Sharing Circle, August, 2004)

In August 2004, the Director of Justice and Community Justice Development Coordinator from the Southern Chiefs Organization and the Director of Probations from Manitoba Keewatinook Ininew Okimowin visited the Portage Correctional Institution to tour the facility and to meet with the women who were held there.

During the Sharing Circle, the women reaffirmed the problems encountered with the current conditions at the prison – including the lack of culturally sensitive programming. As several of the Aboriginal women reported:

All that is offered by way of cultural spirituality are Sharing Circles. Our participation was refused because we were demanded to work. This is our right to engage in our cultural beliefs.

The women also shared some of the changes they envisioned for the future. Among the recommendations offered by the women were:

Opportunities to practice their Aboriginal culture:

- Sweat Lodges
- traditional teachings
- language classes
- pipe ceremonies
- powwows
- cultural awareness training for staff

Healthier living conditions:

- a less crowded living environment
- regular access to exercise and fresh air
- a supportive and respectful environment

- consistency of rules

Adequate Programming:

- parenting skills
- recovery from abuse histories
- healthy coping mechanisms
- arts and crafts

Skills training:

- educational upgrading
- employment training
- access to reading materials

Staffing:

- better communication between staff and residents
- Aboriginal staff
- staff who are linked to Child and Family Services

It is worth noting that the suggestions offered by the women at Portage are very much in keeping with the five principles for change advocated by *Creating Choices*, the Task Force on Federally Sentence Women Report (1990):

- empowerment of women;
- provision of meaningful choices for women;
- treating women with respect and dignity;
- provision of a physically and emotionally supportive environment; and
- the sharing of responsibility for women's welfare between institutional staff, community members, and the women themselves.

Clearly, the women who are the subjects of the current deliberations have keen insights as to what they need. We would be well advised to take their standpoint into account in determining the direction and nature of any proposed changes.

PART FOUR: MEETING THE CHALLENGE

Research has shown that women who come into conflict with the law face some of the most severe hardships in our society. Most live in poverty, and struggle to provide for their children. Most have histories of physical and sexual abuse, and many deal with debilitating mental health issues. In the absence of meaningful alternatives, many turn to drugs and alcohol to cope with their circumstances. Aboriginal women face a double oppression – as women and as members of a colonized group. Under these conditions, is it any wonder than involvement in crime occurs? It is important, therefore, to fashion a response to meet these women's needs that will not compound the troubles they confront.

Building a new prison will not solve the current situation in Manitoba. A more imaginative and comprehensive approach to working with women in conflict with the law is required. It is in this spirit that we offer the following ideas.

Restorative justice

As a starting point, the overriding goal should be to reduce the numbers of women involved in the criminal justice system. A key way to realize this goal is by fashioning a plan capable of strengthening women's ties to their children, their families, and their communities. As Aboriginal women told the AJI Commissioners: "strong healthy families make strong healthy communities" (Hamilton and Sinclair 1991: 493). Following on the AJIC, a restorative justice approach offers the most potential for realizing this goal.

Adoption of a holistic approach

Women's needs cannot be reduced to what has been referred to as 'criminogenic risk factors.' This strategy only succeeds in translating the hardships that women confront (which are systemic and located in conditions emanating from broader social factors) into a problem of individual women. Instead, a holistic approach to healing envisages:

- The individual in context of the family

- The family in context of the community
 - The community in context of the larger society
 - The impact of socio-economic problems such as poverty, unemployment, welfare dependence, and poor housing on mental well being.
- (Frank 1992: 8)

A community-centred strategy

Priority should therefore be given to (re)building the social safety net and strengthening communities. Following on the holistic approach, a range of multi-faceted services, including programs of recovery from substance abuse and victimization, academic upgrading, job-skill training, and parenting skills programming should be made available in a community setting.

Recognition of women's diverse needs

The context of women's offences and their experiences are both quantitatively and qualitatively different from those of men. Programs and resources that are women-centred are therefore required. At the same time, although women who come into conflict with the law share many factors and experiences in common, they are not all the same. Recognition of the diversity of women's needs is therefore important. In particular, culturally sensitive programs and resources should be provided in Aboriginal communities (run and organized by Aboriginal groups).

Keeping women in the community where they belong

The majority of women who come into conflict with the law pose a minimal risk to social safety. Therefore, we need to rethink the costs and benefits of holding women in custody on remand or sentencing women to short terms of imprisonment in secure custody facilities. Incarceration is an expensive venture. The estimated costs of keeping a person in prison (as of 2000) is \$316 per day; the cost of alternatives to incarceration, such as probation, bail supervision, and community work orders, range from \$5 to \$25 per day (CAEFS 2002). Women

should not have to go to prison to access the resources they need to resolve their troubles.

If an adequate bail supervision program were made available, many women would not be spending long periods in custody on remand, awaiting their trial dates. For those women who are sentenced to custody in Manitoba, most receive short-term sentences. These sentences could be served in open-custody facilities (for those women who require a more structured environment), in a group home setting, and through home placements. Halfway house beds could be provided for women with mental health issues. Such options should not create increased conditions and controls on women, but could work in tandem with community-based programs and resources to promote restorative justice.

Emphasis on healing and recovery

As an alternative to a traditional prison regime, healing lodges could provide for women who are sentenced to longer periods of secure custody and who require a more structured environment and access to intensive programming.

The Okimaw Ohci Healing Lodge for federally sentenced women (located near Maple Creek, Saskatchewan) has demonstrated the potential of providing intensive support for women who are sentenced to longer periods of secure custody. Nevertheless, one of the deficits of Okimaw Ohci is that it is a geographically isolated facility and therefore difficult to access – which denies Manitoba women the support of their family members and friends.

A healing facility for women should be established in the South based on the Aboriginal cultures and traditions of the Southern peoples. This facility would be available for women who are sentenced to long periods of secure custody – including both provincially and federally sentenced women. Long Plain First Nation, an Ojibway community, has expressed a willingness to host such a facility.

As well, a healing lodge should be established in the North based on the Aboriginal cultures and traditions of the Northern peoples.⁴ This facility would be available for women who are sentenced to long periods of secure custody – including both provincially and federally sentenced women

Training of staff

Because the vast majority of women who come into conflict with the law in Manitoba are Aboriginal, it is important that Aboriginal peoples be actively involved in the provision of services and resources to these women. The University College of the North (UCN) has been given a mandate to develop an Aboriginal Justice College. The programming at the Aboriginal Justice College should be directed to the successful training of Aboriginal staff for both community-based resources as well as a healing lodge.

Implementation

The AJI took the position “that women be involved in the implementation of our recommendations, and that they be represented on the various administrative bodies that will become necessary” (p. 507). In order to realize the legacy of the AJI, a provincially and federally supported committee should be established with representation from Aboriginal organizations, Aboriginal women’s organizations, and women’s organizations in the province to oversee and implement a holistic strategy for women in conflict with the law. Every effort should be made to include the input of women who have had first hand experience with the criminal justice system.

⁴ Twenty-three of the 29 First Nations represented by Manitoba Keewatinook Ininew Okimowin in Manitoba are Cree.

CONCLUDING REMARKS

Perhaps now more than ever before, this particular historical juncture offers a unique opportunity to meet the challenge for change by fashioning an innovative and effective strategy for meeting the needs of Manitoba women who come into conflict with the law. The fact that these women are “too few to count” can no longer be used to justify their neglect and relegation to a secondary status in society. To ensure that the number of criminalized women does not increase, we need to fashion a response that is not premised on a ‘bigger and better jail’ but on meaningful, community-based alternatives.

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