

Justice as Healing

A Newsletter on Aboriginal Concepts of Justice

Native youth and alternative justice in Lethbridge

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This project began with an offer to conduct a field evaluation of the Youth Justice Committee (YJC) in Lethbridge, in collaboration with Native Counseling Services of Alberta (NCSA). As our study continued it expanded to all of the interrelated programs and agencies that deal with young Native offenders in Lethbridge, and the neighbouring Peigan and Blood Reserves.

Background

Community disposition panels for young offenders have gained wide acceptance since first appearing in Manitoba 20 years ago. Section 69 of the *Young Offenders Act* authorizes YJCs to “assist ... in any aspect of the administration of this Act, or in any programs or services for young offenders.” This broad authority is restricted, in practice, by Provincial regulations, and by agreements between individual YJCs and local justice-system officials. Section 69 prohibits any remuneration of YJC members.

The initiative for the establishment of YJCs in Alberta came from the RCMP in 1993. There are presently 43 YJCs in the Province. Urban police departments apparently have little interest in the YJC concept; most Alberta YJCs are located in rural communities served only by RCMP detachments, or on Indian Reserves.

Alberta YJCs are responsible to the Alternative Measures Division of Community Corrections (Alberta Justice), which administers prisons and youth detention centres. The decision to link Alberta YJC's with corrections rather than the courts apparently reflects resistance from Youth Court judges, who were reluctant to relinquish any adjudicative authority. To form a new YJC, citizens must obtain letters of support from the local Crown Prosecutor and judges.

Alberta YJCs have adopted different procedural relationships with the Crown, police and courts. Four accept referrals directly from the RCMP or local police. Of the rest, half receive their referrals from the Crown and local probation office after a charge has been laid, and half receive their referrals from the courts after a conviction. Thus YJCs variously function as alternatives to prosecution, and sentencing alternatives after conviction.

Sheila Courtreille, regional director of NCSA in Lethbridge, was impressed by the Native YJC she had seen while employed at Slave Lake, and advocated the establishment of a similar program when she came to Lethbridge.

The Lethbridge YJC was organized in February 1995. It currently has 54 members, dwarfing the YJCs in rural Alberta communities, which tend to function with five or six members. Members serve in panels of seven or eight. Although the Lethbridge YJC was an initiative of the local NCSA office, the Province insisted that it be open to all youth, regardless of their ethnicity. In its first ten months of operation, the Lethbridge YJC had only three Native members, although originally it was contemplated that panels would be half Native. Thus far, only 7 Native youth have been seen (6 percent of total caseload).

The constitution of the Lethbridge YJC refers to “the education, disposition and reconciliation of the offender within a community context,” as well as public education regarding crime and prevention. It also prescribes that, “as far as is practical,” the members “should reflect the various components of the community” with respect to age, ethnicity, religion, gender, and occupations.

After a charge is laid, the City Police may recommend that the youth be referred to the YJC. This recommendation is reviewed by the Crown to ascertain the likelihood that prosecution would result in a conviction, and whether the youth meets four Province-wide criteria: age between 12 and 17 at the time of

the arrest, no prior convictions, no previous referrals to a YJC, and no violence, drugs, perjury, theft or destruction of property worth over \$1,000, or impaired driving. If the Crown approves the recommendation, the youth's file is sent to the local probation office for the Alternative Measures program. This may result in a referral to the YJC, or other action.

After being referred to the Lethbridge YJC, the youth is assigned to a panel. The leader of the panel contacts the victim and schedules the first meeting, with clerical assistance from the probation office. If the youth fails to appear for a panel meeting without an acceptable excuse, the file is returned to the probation office.

If the youth appears as scheduled, the panel conducts an informal interview, recesses to formulate a recommendation, and discusses their recommendation with the youth and (if present) his/her parents. Three months are ordinarily allowed for the youth to comply with the panel's recommended "consequences," or the file is returned to the Crown. One member of the panel is generally assigned to maintain contact with the youth and monitor compliance.

Lethbridge judges will soon be able to refer cases to the YJC, as an alternative to sentencing after a conviction. Recommendations will be reported back to judges for approval in the form of court orders.

Methodology

Our questionnaire was completed by 21 (39 percent) of the members of the YJC, and 9 members were interviewed in depth. YJC case records were summarized by age, gender, ethnicity, and nature of the offences.

We conducted more than 50 interviews with parents, foster parents and other Native adults in Lethbridge, as well as the Peigan and Blood Reserves. Most were identified through adult life-skills classes. We also interviewed Native adults in a Lethbridge addiction centre, *i.e.*, adults who have themselves been repeatedly in difficulty with the law, and Native youth at Streets Alive, an urban youth drop-in centre.

Finally, we conducted interviews with probation officers, family-services professionals, Native courtworkers, and Native counsellors in Lethbridge, and with police, corrections officers, and elders on both Reserves. Lethbridge police repeatedly declined to be interviewed.

Research results:

Caseload analysis

Thus far, the Lethbridge YJC has acted on 108 referrals. The age of youths at the time of referral tells an interesting story. Half of them (55 percent) were 14 years old. Other age-classes comprised only between 5 and 20 percent of the total. This suggests an age-threshold for activities that attract the attention of police. Since Provincial guidelines forbid the referral of *second*-time offenders to alternative measures, the scarcity of 15, 16, and 17-year-olds among the referrals is consistent with a fairly constant age at time of first offence.

Most accusations against these youths involved damage to property (71 percent), chiefly theft (41 percent) and burglary (18 percent). A much smaller proportion involved violence (11 percent), but this could be an artifact of the Provincial guidelines governing referrals to the YJC, which in principle exclude *all* offences of violence. Females are a relatively small proportion of referrals (28 percent), but are more likely to be accused of assaults.

Only seven Native youth (6 percent) have been referred to the YJC thus far. Four of them missed their first appointment. Two never did appear. One youth who did meet with the YJC later disappeared and did not carry out his sentence. On the other hand, we spoke with at least three Native parents who did not learn about the existence of the YJC until after their children had gone through Youth Court.

Native youth and the police

The small proportion of Native youth among YJC referrals requires some explanation. According to statistics maintained by the Province, Natives comprise 59 percent of the Lethbridge youth who are “in care,” due to personal problems, addiction, neglect, or abuse. There are no official statistics on the proportion of Native youth in detention or prison, but the corrections personnel we interviewed agreed that more than half their charges were Native.

This suggests that non-Native youth in Lethbridge are about *five times* more likely to be referred to alternative measures, than Native youth.

Police play the crucial role in determining whether an individual youth will be referred to the YJC, therefore the department’s lack of official commitment or interest has been a critical flaw. Its refusal to discuss the YJC with us was especially unfortunate, in view of the fact that some Native professionals and parents accused the police of “pushing Native youth through the system” deliberately.

Coordination issues

Another problem, we found, is the jurisdictional gap between the Reserves and Lethbridge. A large proportion of Native youth who come into contact with the Lethbridge police are residing temporarily with relatives or friends in town, often so that they can attend school, or because of inadequate housing on the Reserves. Investigating officers often have difficulty locating a responsible adult in Lethbridge. The result is an excessive tendency to transfer Native youth to Lethbridge Social Services, which in turn tends to remand the youth to the social services agency on his or her home Reserve. The charges are meanwhile transferred to the Cardston or Pincher Creek courts, which are nearer the Reserves. The youth tend to reappear in Lethbridge, months later, and the cycle repeats.

Since the Remand Centre in Lethbridge has space for only 12 youth (although it sometimes houses up to 18), Native youth who are detained in Lethbridge and *not* transferred to other jurisdictions are likely to be housed at the Young Offenders Centre in Calgary. This clearly does not facilitate appropriate youth services, family involvement, or non-punitive measures such as local community service and restitution.

Only two probation officers serve the Youth Court in Lethbridge; each of them may carry a caseload of more than 150 offenders making it impossible to devote any meaningful time to individuals. Programs for urban Native youth are not tapped by Community Corrections, moreover; hence once a Native youth is charged, he or she is effectively removed from the few supports that currently exist in the city.

Even when youth are referred to the Lethbridge YJC, we found that an average of three months has elapsed since the offence. This delay undoubtedly reduces the efficacy of whatever sanctions the YJC imposes on the offender, and seems unnecessary.

YJC personnel and practices

In response to our interviews and questionnaires, Lethbridge YJC members agreed that their participation was both personally rewarding and educational, and that the main strength of the YJC process was the possibility of developing “creative” responses to youth offenders. As should be expected of such a new organization, concerns were expressed about the need for more explicit guidance and training for volunteers, more efficient and transparent administration, and better information on opportunities for placing youth in community services.

The *most* frequently expressed weakness in the current process was inadequate representation of Native people, and parents on the panels. Nearly all (90 percent) respondents are professionals such as teachers and social workers who work with youth, and they generally acknowledge the need for panels to better reflect the social and ethnic diversity of Lethbridge.

Several respondents expressed their uneasiness about dealing with Native youth, and thought there should be some training in this field. A few felt that Native youth could never be served effectively by non-Native panels. When they were asked why so few Native youth have been referred, none of the respondents

mentioned discrimination. Some felt that Natives might be avoiding the YJC because it is perceived as all-white, while others referred to Native apathy as a factor.

Community perceptions

Interviews with Native parents revealed lack of knowledge of the YJC and understanding of the legal system in general, both in the city and on the Reserves. Among urban Native adults interviewed, only one out of ten had ever heard of the YJC, and none could describe what it does. At least one mother expressed anger that her son had just been sentenced by Youth Court, without ever being informed about the YJC as an option. There was general agreement on the need for greater public awareness of the YJC, not only targeting Native parents and youth but for social-welfare professionals who serve Native families. Community fora, workshops, flyers, posters, and going out on the street with the youth were among the suggestions our respondents volunteered.

In general, we encountered feelings of intimidation by the legal process. Those parents whose children had been involved with the law expressed a sense of loss of control over their children, complaining that none of the relevant agencies consult with them.

At the same time, most parents expressed feelings of helplessness in managing their own children, and frustration at the lack of support for parents and families. Public agencies only seem to pay attention, parents complained, after an offence has been committed.

Nearly all of the Native parents interviewed agreed it was a good idea to develop alternatives which divert Native youth from (what they perceive as) a vicious circle of discrimination, ineffective sanctions and criminalization. About as many were pessimistic about the future of the YJC as those who were optimistic, however, noting that neither the YJC nor the court system is designed to address the root causes of youth violence or addiction. Very few respondents expressed interest in becoming YJC members, however, even after the program was explained in detail. The YJC is still regarded as alien, non-Native, and as an arm of the court system.

Some Native parents expressed safely, concern about the ability of non-Native panelists to understand Native youth; even more parents were concerned about the ability of adults generally to understand youth. Most respondents felt that YJC panels should ordinarily include non-Native as well as Native members, since that reflects social reality in Lethbridge, and does not segregate Native youth.

A common thread in many Native parents' responses was the need to involve Native people in YJC panels who can accept youth offenders and give them personal guidance, including adults *and youth* who have been in trouble with the law themselves. Many Native parents also stressed the importance of follow-up with individual youth, the need to involve victims as well as the offender's extended family, and the usefulness of opening the YJC to repeat offenders.

Those Native professionals who were familiar with the Lethbridge YJC cautioned that it is still dominated by the paradigm of punishment rather than healing. Unlike Native-controlled programs, they felt it pays minimal attention to the victim, and does not involve the family or community sufficiently in decision making or follow-up. YJC members feel that these perceptions are based on insufficient experience with the actual working methods of panels.

Prescriptions for healing

Native adults' diagnoses of youth problems were many and varied, ranging from discrimination and addiction to peer pressure, absence of family guidance, and lack of discipline. A common theme was the need for places where youth can "hang out" safely, and talk to sympathetic Native adults. "A centre for kids, a place to go for everybody," one Native youth explained, "where there are people they can look up to." Our respondents generally felt that this should be the first priority for Native youth services, in Lethbridge and on Reserves.

Native police officers we interviewed shared this view, and Blood elder George Goodstriker told us that youth need responsibilities and challenges, as well as a sense of family and belonging that their own

natural extended families too often fail to provide. He conceived of “a place of healing” where youth can access adults who are supportive and positive models, and take up meaningful challenges for themselves as contributors to the community.

The Native professionals we interviewed stressed the destructive effects of residential schools on Native parents’ self-confidence and skills in guiding and disciplining their own children. They also felt that families were spending much less time with their children, *e.g.*, going to bingo and leaving the children to fend for themselves.

Most parents and professionals noted the paucity of recreational opportunities for Native youth in Lethbridge. There are a variety of mainstream school and after-school programs, but all involve user-fees and equipment costs that Native youth and families cannot afford.

Although we encountered considerable optimism about counselling and mentoring by elders, both among parents and Native professionals, some Native police officers we interviewed were more skeptical. Youth learn to “manipulate the system” as early as age 9, we were told, and meeting with elders – a facility which does exist on the Reserves – has simply become another hurdle to be jumped, like seeing the judge. If parents and kin do not earn the respect of their children at an early age, Native police argued, their children will not listen to elders.

The ability of young offenders to learn to manipulate the system was echoed in our interviews with probation officers and Native social services professionals. There was a general feeling that Native youth are able to avoid accepting responsibility, and escape the few Native rehabilitation programs which currently exist.

Discussion

Despite the best of intentions, the Lethbridge YJC has failed to have a significant impact on Native youth. There is reason to believe that the police prefer to send non-Native youth to the YJC, while the Crown tends to transfer Native cases to other jurisdictions – even when the youth concerned are likely to return to Lethbridge. Criteria for referral are lacking, as are procedures for coordination and tracking of cases between related agencies.

Community awareness of the YJC is minimal. This can be remedied easily; however, a greater problem is the community perception of the YJC as essentially the same as the courts albeit a little less formal. The procedures and sanctions of the YJC do not appear conciliatory or rehabilitative in Native eyes, and this negative perception is shared by Native professionals as well as parents. The YJC will be unable to boost Native membership, nor the interest of Native youth and families in participating, until its procedures [deal] more with Native values of justice and beliefs about efficacy.

A particular issue raised by Native parents and professionals is the value of including *previous offenders and youth* on YJC panels. At present, the YJC accepts applications from individuals with a criminal record, provided they were not convicted on child abuse. The YJC does not accept panelists under the age of 18. If it is correct that youth and “reformed” adults are more influential role models than completely “clean” citizens – who moreover frequently come from a different social class – it would suggest a re-orientation of YJC recruitment policy.

As noted earlier, 90 percent of Alberta YJCs await the Crown or the courts. They only see cases that were serious enough for the Crown to believe it can win a conviction *or* where a conviction has already been obtained. Only 10 percent of Alberta’s YJCs consider cases referred directly by local police, and which may fall *below* that threshold – that is, cases where there is clearly “trouble,” but no clearly provable case under the *Criminal Code*.

We feel that most YJCs intervene *too late* in the careers of youth offenders. Instead of connecting youth with responsible people in the community as soon as problems appear, the existing procedures await a *provable criminal act*. This may arise years later, and at a stage in the youth’s development when he or she is far more alienated, and less amenable to the possibility of re-integration. Our statistics on age at time of referral to the YJC suggest that children as young as 10-12 years should be given high priority.

One reason that Alberta YJCs have avoided early intervention has been accusations that acting on “cheap charges” (*i.e.*, complaints that could not result in convictions) would violate section 11 of the Charter. Community Corrections has begun monitoring YJCs to ensure that they do *not* engage in this practice. Unfortunately, this may weaken the most effective YJCs in the Province. Another flaw, we believe, is that the Alberta program *excludes* the most common early warning signs of youth trouble – impaired driving, drugs, and violence against others. There is reason to fear that this rule screens out the most troubled youth, and those who are most likely to commit serious offences as adults.

Conclusions

The concerns we have raised about the current Lethbridge YJC are not intended to disparage the volunteers who have contributed so much of their time and effort to keep the program alive. The major change required is a fundamental re-orientation of the roles and functioning of “alternative measures” under the *Young Offenders Act*, particularly in relation to urban Native youth. This requires changes in relevant Alberta regulations, and the procedures of justice and social services agencies at both the Provincial and municipal levels. Resources must also be shifted from institutions that deal with offences committed by teenagers, to programs that intervene supportively and non-punitively with pre-teens. A YJC format that reflect Native justice concepts and includes Native youth and adults that were once offenders could have a much greater impact on Native youth, assuming that police cooperate in the non-discriminatory referral of Native youth. The greatest impact, however, would probably come from a totally different kind of program: drop-in and recreational facilities that give Native youth a chance to develop relationships at an early age with responsible Native adults.

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