

**A REVIEW AND COMPILATION OF THE
RECOMMENDATIONS OF
TWENTY-TWO MAJOR REPORTS
FROM 1967 TO 1990 ON
ABORIGINAL PEOPLE AND THE
CRIMINAL JUSTICE SYSTEM**

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RECOMMENDATION COMPILATION

Overview of the Extracted Reports

Twenty-two reports published from 1967 to 1990 were reviewed and recommendations extracted (see Figure 1). Three other influential reports were also reviewed but not included because they contained no recommendations. (Canadian Sentencing Commission [1987] M. Jackson [1988] *Justice Behind Walls*, and D. Schmeiser [1974] *Indians and the Law*).

Justice Behind Walls (Jackson, 1988) contains no Native-specific recommendations in deference to the report *Locking Up Natives in Canada* (of the same year and by the same author). This latter report is included in the compilation. The Canadian Human Rights Commission *Annual Report* (1988) also makes no recommendations, as such, concerning Native involvement in the Criminal Justice System, although it does make a number of observations. These include: self-government is an important issue; "ways must be found to remove bias and to dispel the view of some Natives that the justice system is 'white law'"; that the R.C.M.P. continue to recruit Native officers; that non-Native police officers receive thorough cross-cultural training; that senior police management show a firm commitment to understanding the context and concerns of Native life; that the police, Court system and Correctional Institutions have to do more to gain the trust of Native communities; that persons expand cultural and educational opportunities and programs for Native inmates; and that the issue of Native needs has to be raised to the highest level of the national agenda.

Sixteen of the compiled reports deal specifically with Native involvement in the Criminal Justice System. Six have chapters or sections on Native involvement. Five of these reports could be roughly categorized as having a Native point of view, because of the identity of the researchers or of the main participants (these are 'starred' in Figure 1).

Indians and the Law (1967) is commonly acknowledged as the report that first brought Native involvement in the Criminal Justice System to public awareness. (The Hawthorne Report also had considerable impact, although it only looked at Native Criminal Justice System involvement in the wider societal, socio-economic perspective.) The *Report of the 1975 Conference* seems to have been the most influential report with its recommendations being repeated in almost all reports up to the present. The framework developed at that Conference also seems to be the guide for the actions of Governments and Native communities until very recently. This Conference was called at the instigation of Alberta and was historic, not only for its impact, but because, for the first time, high-level Government decision-makers and Native community leaders and service providers met, discussed concerns and proposed solutions. It was mentioned in several reports that the time was ripe for another such Conference, but no action has been taken so far.

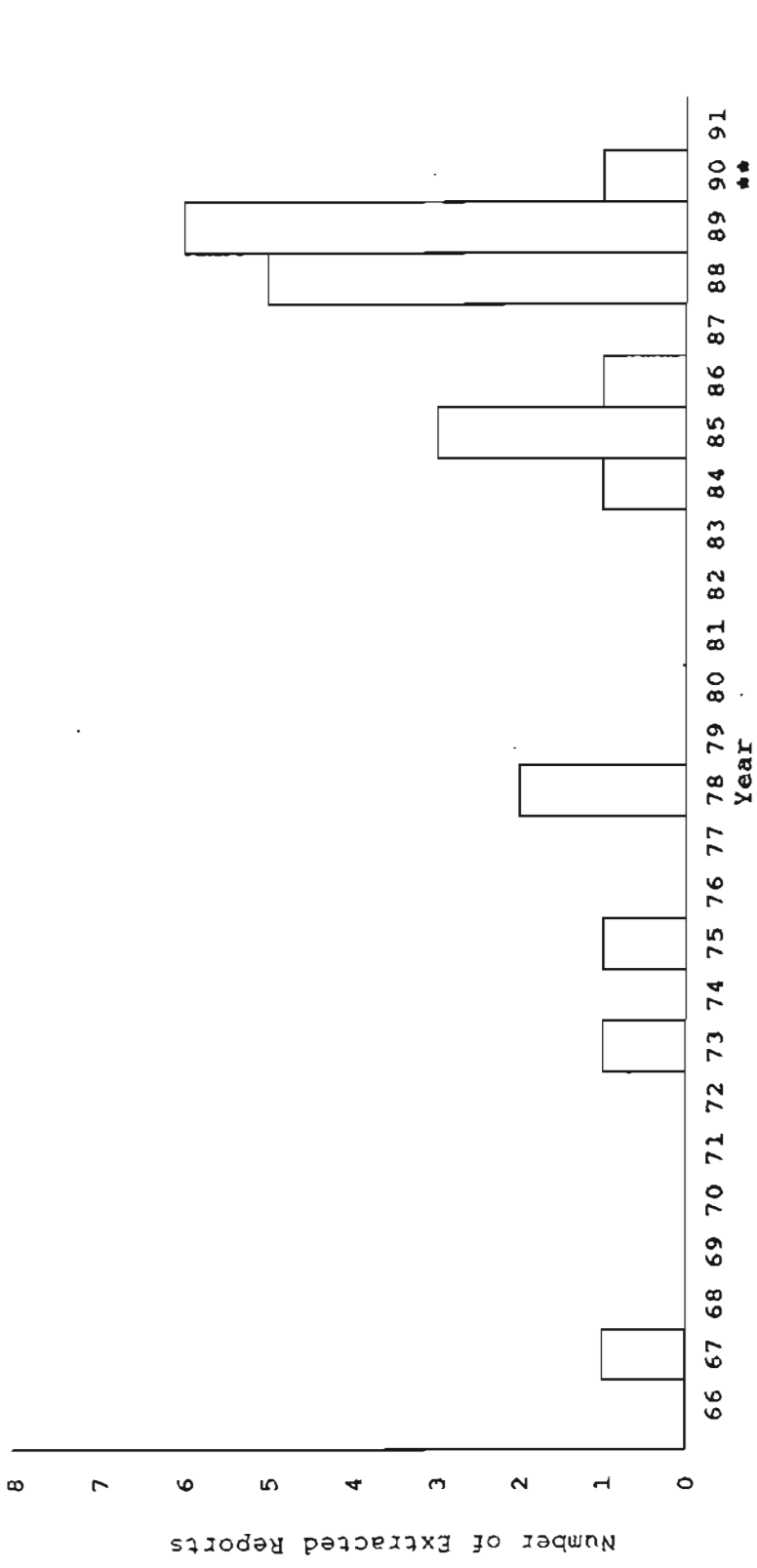
FIGURE 1
REPORTS EXTRACTED, BY YEAR

- 1967 Canadian Corrections Association. *Indians and the Law*. Ottawa: Canadian Welfare Council (Monture Report) (Laing Report).
- 1973 Task Force on Policing on Reserves, *Report*. Ottawa: Indian Affairs and Northern Development.
- 1975 * National Conference and the Federal-Provincial Conference on Native Peoples and the Criminal Justice System. *Native Peoples and Justice*. Ottawa: Ministry of the Solicitor General.
- 1978 Alberta Board of Review, *Native People in the Administration of Justice in the Provincial Court of Alberta*. Edmonton: Alberta Department of the Attorney General (Kirby Commission).
- 1978 * Metis and Non-Status Indian Crime and Justice Commission, *Report*. Ottawa: Supply and Services, Canada.
- 1984 Advisory Committee to the Solicitor General of Canada on the Management of Correctional Institutions, *Report*. Ottawa: Solicitor General Canada (Carson Committee Report).
- 1985 * Government of Canada, Government of Saskatchewan and Federation of Saskatchewan Indian Nations. *Reflecting Indian Concerns and Values in the Justice System*.
- 1985 McCaskill, Don. *Patterns of Criminality and Correction Among Native Offenders in Manitoba: A Longitudinal Analysis*. Saskatoon: Correctional Services of Canada.
- 1985 Task Force on Program Review, Study Team. *Improved Program Delivery: Indians and Natives*. Ottawa: Supply and Services, (Nielsen Report).
- 1986 Clark, G.S. and Associates. *Native Victims in Canada: Issues in Providing Effective Assistance*. Ottawa: Solicitor General Canada.
- 1988 Jackson, Michael. *Locking Up Natives in Canada: A Report of the Canadian Bar Association Committee on Imprisonment and Release*.
- 1988 * Morse, Brad and Lock, Linda. *Native Offenders' Perception of the Criminal Justice System*. Ottawa: Supply and Services (for Canadian Sentencing Commission).
- 1988 Standing Committee on Justice and Solicitor General. *Taking Responsibility*. Ottawa: House of Commons (Daubney Commission).

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- 1988 Task Force on Aboriginal Peoples in Federal Corrections. *Final Report*. Ottawa: Solicitor General Canada.
- 1988 Task Force on Legal Aid. *Report*. Edmonton: Attorney General Alberta.
- 1988/89 "K" Division: *Native Policing Study*. Edmonton: R.C.M.P. (Cooper Report).
- 1989 Head, Robert H.D. *Policing For Aboriginal Canadians: The R.C.M.P. Role*. R.C.M.P. Headquarters, Ottawa.
- 1989 * Native Advisory Committee. *Response to the Task Force on Aboriginal Peoples in Federal Corrections*.
- 1989 Race Relations and Policing Task Force. *Report*. Toronto: Government of Ontario.
- 1989 R.C.M.P. *Policing for a Pluralist Society '89*. Ottawa, Ontario, March 28 - 31, 1989.
- 1989 Royal Commission on the Donald Marshall, Jr. Prosecution. *Digest of Findings and Recommendations*. Halifax: Royal Commission.
- 1990 Task Force on Indian Policing. *Indian Policing Policy Review: Task Force Report*. Ottawa: Indian and Northern Affairs, Canada.

The real proliferation in reports began in the mid-1980's (see Figure 2). Seventeen of the twenty-two reports were released between 1984 and 1990 (and note that this does not include the anticipated Blood and Manitoba Inquiry Reports). In 1988 and 1989, alone, 11 reports were published. This suggests that, in the last five to six years, something has occurred to make all levels of Government acutely aware and concerned with Native involvement in the Criminal Justice System. Considering the repetition of recommendations it could be speculated that this "something" is an awareness that earlier recommendations were not implemented, or that current strategies are not effective (but perhaps with a hope that more of the same might be).



* Note: These reports are either completely dedicated to Native people (16) or partly (5).
 ** Note: This does not include up-coming Blood Inquiry, Manitoba Reports.

FIGURE 2
 PUBLISHING DATES AND NUMBER OF EXTRACTED REPORTS*

Trends in Recommendations

Despite recurring patterns of recommendations (see Figure 3: "Top Ten Recommendations"), there have been changes in the type of recommendations made over the years. The Reports between 1967 and 1978 made wide-ranging recommendations that put the Criminal Justice System in a wider societal context. These recommendations included alcohol treatment, diversion, economic development and recreation as crime prevention strategies.

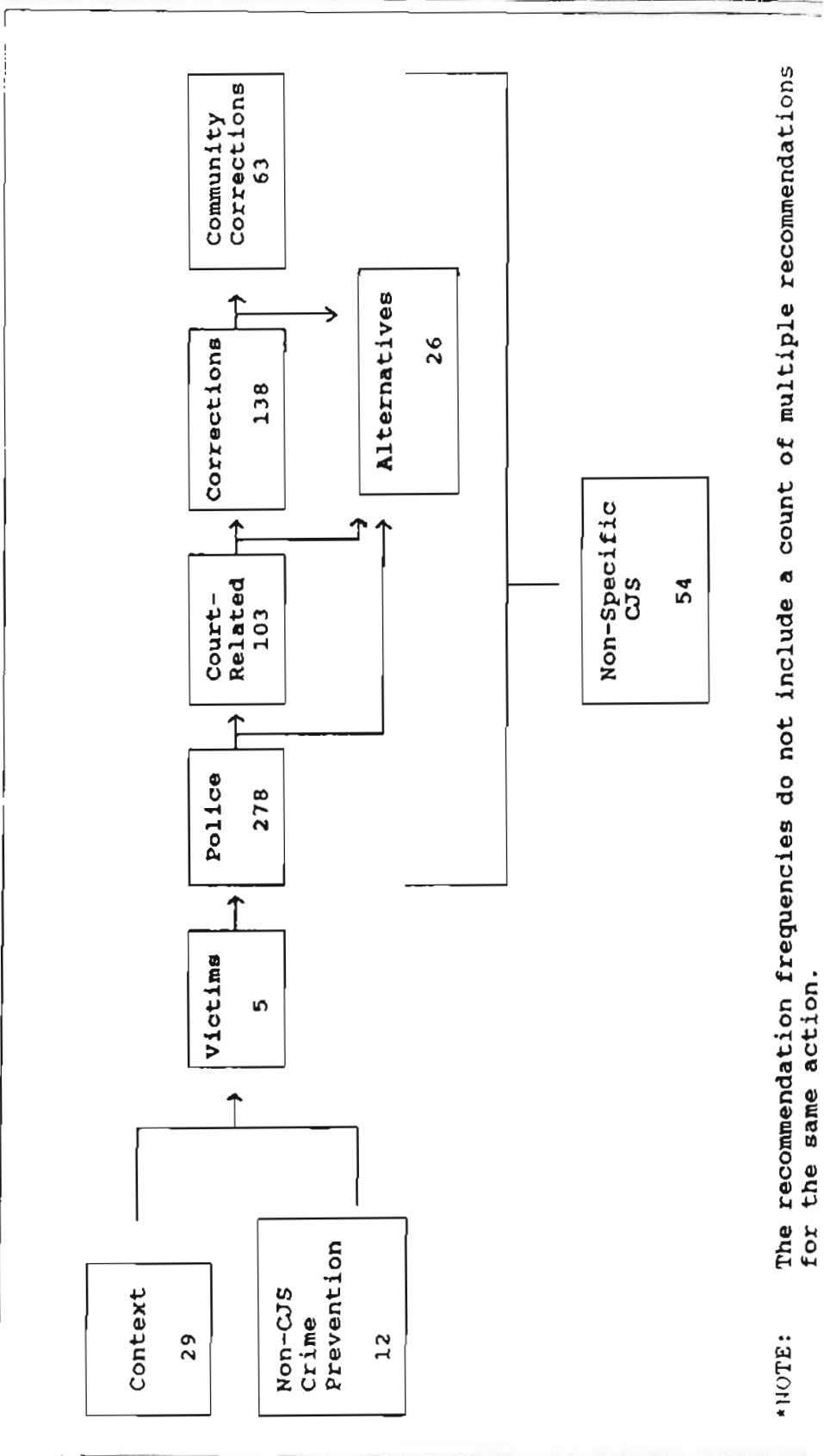
Of the later reports, only *Policing in a Pluralistic Society* (1989) includes such recommendations. Later reports tend to be very Criminal Justice System-specific and frequently focus on only one component, such as the Police (especially the Police), the Courts, or corrections. It should be noted that: 1) only one report deals with Native victims of crime; and, 2) recommendations dealing with specific services are concentrated in certain reports (e.g., the policing studies). In addition to these reports there have been an increasing number of reports on discrimination, education and socio-economic conditions which may account for the decrease in contextual recommendations in the Criminal Justice reports.

FIGURE 3
"TOP TEN" TRENDS IN RECOMMENDATIONS
(In no particular order)

- *Have cross-cultural training for non-Native staff.*
- *Employ more Native staff.*
- *Have more community-based programs in corrections.*
- *Have more community-based alternatives in sentencing.*
- *Have more special assistance to Native offenders.*
- *Have more Native community involvement in planning, decision-making and service delivery.*
- *Have more Native advisory groups at all levels.*
- *Have more recognition of Native culture and law in Criminal Justice System service delivery.*
- *Emphasize crime prevention programs.*
- *Self-determination must be considered in planning and operation of the Criminal Justice System.*

Some of the Criminal Justice reports contain recommendations specific to the internal administration of each component. These recommendations have been excluded from the compilation except where there might be some direct impact on service delivery to Native people.

The number of recommendations made concerning each component of the Criminal Justice System is a reasonable indication of where most of the investigative focus has been so far (see Figure 4). The Police have come under the heaviest scrutiny, followed at some distance by corrections, Court-related services and community corrections.



*NOTE: The recommendation frequencies do not include a count of multiple recommendations for the same action.

FIGURE 4
NUMBER OF RECOMMENDATIONS BY COMPONENT OF THE CRIMINAL JUSTICE SYSTEM*

It should be noted that there has been very little focus at the front-end of the system, that is, at the level of victim services and primary crime prevention aimed at the prevention of criminal behaviour rather than "target-hardening". At the front end of the system it should also be noted that the majority of Criminal Justice System-related crime prevention recommendations are aimed at target-hardening, in that a certain level of crime is accepted, so that prevention focuses instead on lessening the impact of crime among certain groups (e.g., youth, women) or on certain places (e.g., through improved security in malls). Recommendations for programs such as drug and alcohol education, legal education, and Criminal Justice System education, have the premise that increased knowledge will prevent crime. Few recommendations recognize other supposed criminogenic factors such as lack of employment opportunities, lack of self-esteem, lack of role models, etc. (It should be noted that the primary crime prevention recommendations were pulled out of the "alternatives" section for the purposes of this analysis).

Alternatives at the sentencing, corrections and community corrections stage have also not received a great deal of attention, except in the general and often repeated form, that more alternatives are necessary. The general trends within each component of the Criminal Justice System have been extracted and summarized (see Figure 5). It should be noted that the breakdown into eight areas is quite arbitrary and was done this way mainly for the sake of ease of categorization. The eight areas are: alternatives, community corrections, context, corrections, court-related, non-specific criminal justice, police and victims.

The number of trends varies considerably among each category. The compilations themselves, with a total of over 700 recommendations, would have to be scanned for the specific innovative concepts that are, of necessity, excluded from the general trends.

FIGURE 5
GENERAL TRENDS IN RECOMMENDATIONS

Alternatives

- *Sports and recreation programs, economic development, employment and cultural development are forms of crime (and alcohol abuse) prevention.*
- *Few recommendations were made after 1978 about need for alcohol treatment.*
- *Diversion programs are needed.*
- *Native people have the right to set up alternative criminal justice systems. More innovative alternatives are needed.*

Community Corrections

- *Hire Native staff at all levels.*
- *Have more community-based residential/half-way houses.*
- *Make parole more accessible for Native offenders.*
- *Provide more assistance to Native inmates in preparing for parole hearing.*
- *Have more Native involvement in National Parole Board.*
- *Have Native-contracted service delivery.*
- *More communication with the Native community is needed.*
- *On-going cross-cultural training is needed.*
- *More use of community corrections for Native offenders is needed.*

Context

- *Assist Native communities in cultural revitalization.*
- *Economic development is needed.*
- *Address causative factors (of crime) such as economics, education, etc.*
- *Self-determination must be considered.*

Corrections

- *Native advisory groups at all levels of government and of service provision are needed.*
- *The community needs more information about and involvement in corrections.*
- *Native agencies should provide services on contract for Native offenders.*
- *Native-tailored programming in institutions should be available.*
- *A wider range of Native programming is needed.*
- *Elders should be recognized and given authority.*
- *Spiritual programs should be allowed.*
- *A wider range of vocational and other programming for female offenders is needed.*
- *More community-based facilities for Native offenders are needed.*
- *More recognition and support of Native Brotherhoods and Sisterhoods is needed.*
- *More Native liaison officers with more authority are needed.*
- *Non-Native staff should receive cross-cultural training in orientation and on an on-going basis.*
- *Hire Native staff at all levels.*

Court-Related

- *Hire Native staff at all levels.*
- *Cross-cultural training for Non-Native staff is needed at all levels, but especially for Judges.*
- *Hold Court in Native communities.*
- *Develop community-based dispute resolution, mediation, community service and diversion programs.*
- *Incorporate community values in alternative programs.*
- *Provide qualified interpreters.*

Court-Related - cont'd...

- *Expand and upgrade Courtworker services.*
- *Establish a fully-functional Justices of the Peace program.*
- *Make Legal Aid more accessible to Native people, especially in isolated areas.*
- *More education is needed about law, Criminal Justice System operation, alternatives.*
- *No major specific recommendations are made about prosecution.*
- *Increase use of community-based alternatives in sentencing, i.e., use "incarceration as a last resort".*
- *More situational information should be considered in sentencing.*
- *More community assistance/information is needed in sentencing.*
- *Natives have the right to develop their own legal system/to have an increased voice in law reform.*

Non-Specific Criminal Justice

- *On-going program evaluation mechanisms are needed.*
- *Respect for customary laws should be incorporated into the system.*
- *A criminal justice research/information centre is needed.*
- *Better statistical monitoring is needed at all levels.*
- *Develop programs to assist Native people to qualify for Criminal Justice System jobs.*

†Police

- *Expand policing services to Native communities.*
- *Up-grade Band Constable program.*
- *Have non-political, community-based Police Advisory Committees.*
- *More consultation and information exchange with Native communities and Native organizations by all levels of Police is needed.*
- *More community involvement in policing process is needed.*

› *Police - cont'd...*

- *More community workshops are needed.*
- *More crime prevention emphasis is needed, especially with youth.*
- *Reconsider the hiring criteria for Natives.*
- *Hire more Natives through a variety of means.*
- *Indian Special Constables should be up-graded to regular members, including receiving appropriate training, duties, privileges and pay.*
- *Fulfil the original objectives of the Indian Special Constable program.*
- *Improved Police-community relations are needed.*
- *Have cross-cultural training.*
- *Improve cross-cultural training.*
- *Cross-cultural training should be on-going.*
- *Native policing should have more status and authority within Police forces.*
- *Acknowledge and deal with the problem of prejudiced members.*
- *Increase community-based policing.*
- *Special consideration is needed re: choice of officers for Native policing.*
- *Have Native community liaison officers.*

Victims

- *Community-based victim services are needed for Native people.*