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Chapter Nine
Violence towards Aboriginal Women and Children

The Aboriginal Justice Inquiry devoted a chapter to dealing with issues facing Aboriginal women and children. One of the most significant was the issue of domestic violence. This chapter of the AJIC report contains separate sections on the ways that society responds to violence against Aboriginal women and violence against children. It reviews policy developments since the AJI report and makes recommendations.

Violence towards Aboriginal women

The AJI noted that one in three Aboriginal women experienced spousal abuse, a much higher rate than that experienced by non-Aboriginal women. According to the AJI, 53 percent of Aboriginal women who responded to a survey by the Indigenous Women's Collective for the AJI said they had been physically abused. Seventy-four percent of those women said that they had not sought help (AJI, Volume I, page 483). A study done for the AJIC by Dr. Jane Ursel confirmed the continuance of this heightened risk among Aboriginal women. It indicated that Aboriginal women represented 37 percent of the victims in the Winnipeg Family Violence Court between 1992 and 1997, even though they represented only 12 percent of the city's female population (Ursel, page 13).

The AJI was told that women often experience extensive abuse before they turn to the authorities for assistance. And when they did, they testified that the police were not always receptive to their complaints.

Aboriginal women surveyed by the Indigenous Women's Collective indicated that the police response received by others discouraged them from going to the police for help. They complained of the lack of understanding of the problem by officers, and their lack of sensitivity. They believe the police do not understand the situation of the abused woman and the needs of children. (AJI, Volume I, page 483)

Evidence was presented to the Inquiry that suggested the police did not always consider spousal abuse a serious crime. In other instances, women spoke of being removed from their home by the police after they had made an initial complaint about a violent spouse. "Others told of situations where police attended in the home, saw the situation was calm when they were there and told the woman everything would be all right. When the police left, the violence became worse than before." (AJI, Volume I, page 483) The situation of women in remote communities was even more precarious. The AJI pointed out that a call for help may not be answered for a day or more, and housing shortages made it very difficult for someone to leave an abusive relationship and remain in her home community

Evidence was presented to the effect that women did not feel comfortable in bringing their concerns to the Inquiry. When offenders were incarcerated, they were eventually returned to their home communities without having received treatment, often without the victim's receiving any advance notice of their return.

The AJI report also articulated a belief in the need to protect and assist victims, and for the use of strong measures in dealing with offenders.

Counselling and support for the victims of abuse are essential. Of course, stopping the abuse is the best possible solution and may lead to a continuation of the family unit. If it appears that abuse is likely to continue, the victim should be assisted to terminate the relationship. This cannot be done without a great deal of local support.

We believe that if communities make it known that physical or sexual abuse will not be tolerated and that offenders will be dealt with harshly, there will be a significant reduction in abuse. Traditional Aboriginal means of punishment may be particularly helpful in these situations. Public ridicule and shunning, if applied with the support of the leadership in a community, may be as effective a deterrent as imprisonment.

The physical or sexual abuse of a family member, or of anyone else for that matter, must be treated as extremely serious. The community must support that attitude.

The support of chiefs and councillors is needed to provide the necessary feeling of security to women in Aboriginal communities. The local police, whether they be band constables or members of an Aboriginal police force, members of the City police forces or the RCMP, should be encouraged to remove offenders at the first sign of abuse. (AJI, Volume I, page 488)

The above passage is one of the few sections of the AJI report that speaks of measures conceived of as either harsh or punitive--although it should be noted that the AJI was of the opinion that, in certain

circumstances, community-based measures could be harsher and more punitive than incarceration.

The AJI report also contained a strong criticism of Aboriginal leaders for failing to take a more forceful position on domestic violence.

Most chiefs and council members are male and often exhibit bias in favour of the male partner in a domestic abuse situation. This can effectively chase the woman from her home and community.

The unwillingness of chiefs and councils to address the plight of women and children suffering abuse at the hands of husbands and fathers is quite alarming. We are concerned enough about it to state that we believe that the failure of Aboriginal government leaders to deal at all with the problem of domestic abuse is unconscionable. We believe that there is a heavy responsibility on Aboriginal leaders to recognize the significance of the problem within their own communities. They must begin to recognize, as well, how much their silence and failure to act actually contribute to the problem. (AJI, Volume I, page 485)

The AJI recommended that:

- Police forces establish family abuse teams which include police officers and social workers trained in dealing with domestic disputes. Such teams should make extensive use of electronic record-keeping and community resources.

The AJIC has been informed that this recommendation has not been implemented. The stated reasons were the cost of implementation and an absence of strong empirical evidence supporting the efficacy of the abuse teams. However, in 2001 the Winnipeg Police Service did initiate the Winnipeg Police Services Early Intervention Pilot Project, a project that does appear to reflect the spirit of the AJI recommendation. This is how the project was described by Ursel:

> Constables on the "beat" will continue to be first responders. However, when these officers report a pattern of, as yet, non-criminal escalation, these cases would be referred to the early intervention team. The team consists of a police officer and social worker who would follow up with the family in question. The police officer could conduct further investigation to ensure that violence had not occurred and the social workers could assess risk and provide referrals to services to support the potential victim and treatment for the potential abuser. This team would then have a close connection to service providers in the community to ensure that referrals are made to agencies who could intervene quickly and appropriately given the identified needs of the couple. (Ursel, page 21-22)

The AJI commented on the lack of supports available to Aboriginal women who were the victims of domestic violence. It stated that:

> [T]here are no Aboriginal shelters, other than one in Winnipeg, no Aboriginal safe homes and no Aboriginal second-stage housing anywhere. The only shelter established and directed by Aboriginal people is Ikwe Widdjiitiwin in Winnipeg It is designed to deal exclusively with the unique cultural and social issues of Aboriginal women. (AJI, Volume I, page 487)

This led the AJI to recommend that:

- Shelters and safe homes for abused women and children be established in Aboriginal communities and in urban centres. These shelters should be controlled by Aboriginal women who can provide culturally appropriate services.

The AJI recognized that spousal abuse was a very serious matter that required immediate and direct intervention to save lives. The report criticized government for the slowness and inadequacy of police response, the lack of culturally appropriate treatment facilities, and the lack of culturally appropriate shelters. The AJI was also cognizant of the fact that the male-dominated power structures in Aboriginal communities did not always respond to the needs of victims of spousal abuse in an appropriate manner.

At the same time the AJI's recommendations were in keeping with the Inquiry's overall commitment to restorative and community-based visions of justice. The AJI recognized that the underlying causes of domestic violence could not be addressed by the justice system, but instead, by strengthening Aboriginal communities.

In their presentations to the Inquiry, Aboriginal women called for a healing of the people--women, men, children, families, communities, Aboriginal women, we are told generally want to "fix" the problem and stay with the partner. They believe this can be done by programs that treat the whole family. Their philosophy is that strong, healthy families make strong, healthy communities. While they agree that some short-term crisis intervention often is needed, they want to go from that point to one where there is treatment provided for the family as a unit, including both the parents and the children.

Aboriginal women ask for treatment that will focus on the whole person and the whole family unit. They believe this approach must include traditional Aboriginal teachings and healing. To achieve that type of an approach, the leaders of programs must themselves be Aboriginal with some skills or training.

We agree that, instead of sending all abusers to jail, there should be a careful screening process. Where jail does not appear to be the best

answer to the situation, we suggest that abusers be required to attend a culturally appropriate treatment program with other members of the family. We believe this will be more effective than fines, restraining orders or community service orders. (AJI, Volume I, pages 493-494)

The AJI cited the Hollow Water Resource Group as a potential model for a community-based treatment and healing program.

Police, government, community agencies, and Aboriginal organizations have initiated major policy and program initiatives since the AJI report was submitted. Training and protocols for police on the handling of these cases, combined with the emergence of zero-tolerance policies, enhanced victim services, and improved programs to manage offenders, have led to a more comprehensive response to domestic violence in Manitoba. Before discussing the AJIC's recommendations, it is worthwhile to review the developments of the past two decades.

Manitoba and Domestic Violence Policy: 1983-2001

The women's movement of the 1970s and 1980s brought the issues of violence against women and domestic violence onto the national stage. Initially, the movement lobbied for improved services, such as shelters, housing, and counselling, for the victims of family violence. Attention in the 1980s turned increasingly to the justice system. In response to what was seen as a long-standing judicial and police indifference to the issue of domestic violence, pressure grew to treat violence against spouses and other family members as criminal assaults.

Police attitudes and procedures came under serious scrutiny. As was reported to the AJI, many believed that the police did not treat matters of domestic violence as real crimes. Instead, domestic violence was viewed as a domestic matter that was best resolved with a lecture and a warning. There was a further sense that police were more likely to take a more interventionist approach if the victims were non-Aboriginal and of a higher socio-economic status.

In response, new approaches were developed. These policies were meant both to send a social message, and to intervene in a manner that incapacitated, deterred, and rehabilitated violent people. For the past two decades, the Manitoba government has been among the North American leaders in this area. The following chart outlines the major initiatives undertaken by the government during this period.

1983	The Attorney General requested police lay charges when there are reasonable and probable grounds to indicate that a crime has occurred, regardless of the relationship between the victim and the accused.

1986	The Women's Advocacy Program was created to assist women whose partners have been charged, by assessing the victim's risk, developing safety plans, and preparing women for court where necessary.
1990	The Family Violence Court was developed as a specialized criminal court with specialized prosecutors and designated intake, screening, preliminary hearings, and trials.
1992	Community Probations established a program to provide treatment for offenders in domestic violence cases.
1993	Winnipeg Police Service introduced its mandatory charging policy.
1997	The Family Violence Unit with Manitoba Justice was expanded so that Crown attorneys can follow cases from bail hearings through trial to appeal.
2000	Winnipeg Police Services created the position of Domestic Violence coordinator. Manitoba Corrections established a unit at Headingley Jail for domestic violence offenders.
2001	Winnipeg Police Services introduced a pilot project focussed on early intervention in domestic violence cases.

Policing

Perhaps the most publicly understood aspect of these policy initiatives has been the mandatory charging policy, which the Justice department refers to as a zero-tolerance policy. The policy is summarized in a September 1999 directive from the Manitoba Department of Justice:

> The Attorney General's policy regarding domestic violence is straightforward: there is zero tolerance. This means the discretion conferred on those responsible for enforcing the criminal law ought, at each stage of the proceedings, to be exercised in favour of sanctions where a lawful basis to proceed exists. In practical terms, this requires that where there is evidence to support charges, they will be laid. Where there is evidence to support conviction, the case will proceed to trial as soon as possible. If a Judge errs at the trial, or imposes an inappropriate sentence, an appeal will be taken to a higher court. (Guideline No. 2:DOM:1)

This policy change had a dramatic impact. From 1983 to 1993, the number of spousal assault charges in Winnipeg increased from 629 to 3743. Jane Ursel reviewed the data from the Winnipeg Family Violence Court for the period from 1992 to 1997. She noted that the major differences between Aboriginal and non-Aboriginal accused were in the area of socio-economic status.

Characteristics of Spouse Abuse Cases Resulting in Arrest by Ethnicity of Accused Winnipeg 1992-1997				
	Aboriginal		Non Aboriginal	
Employment Status	Number	Percentage	Number	Percentage
Employed	954	20%	4,189	53%
Unemployed	535	11%	1,041	13%
Social Assistance	3,086	66%	2,311	30%
Other*	105	3%	311	4%

* The other category includes student, homemaker and retired. (Ursel page 14)

Ursel also noted that the majority of domestic calls made to the police in 2000 came from Districts 1 and 3, "core area communities which have a high ratio of low income individuals and a high ratio of Aboriginal households." (Ursel, page 15)

Prosecution

While the mandatory charging policy has led to a significant increase in charges, as would be expected, a high percentage of these cases result in stays of prosecution. From 1991 to 1997, 46 percent of the cases in the Winnipeg Family Violence Court were stayed, while 43 percent ended in guilty pleas. The other 13 percent proceeded to trial. At trial, 48 percent of the cases were dismissed, 19 percent ended in findings of not guilty, and 28 percent ended in guilty findings. The key reason for the stays has been the decision on the part of the complainant not to testify.

The reasons for a complainant's deciding not to testify against someone whom she had earlier accused of domestic violence are numerous and complex. It should be remembered that the reason why a person would have called the police in the initial instance would be to guarantee immediate personal safety. Issues as divergent as a reconciliation or the commencement of divorce proceedings, or a

focus on economic, domestic, or housing issues, may lead a person to decide not to continue with an involvement in a prosecution. If the abuse continues, the individual may--and often does--decide to participate in a subsequent prosecution.

In theory, the Crown does not win or lose cases, it merely seeks to administer the law. However, the culture of our justice system is an adversarial one, and a policy that, at one stage, brands an activity "a real crime" by arresting the offender has been seen by some as being defective--and an abuse of state power--if it fails to achieve appropriate levels of "real outcomes"--namely, convictions and guilty pleas. In some jurisdictions complainants have found themselves forced to testify and charged for refusing to cooperate.

In Winnipeg, the Provincial Court has taken a different approach. A special Family Violence Court has been established. Crown attorneys have been encouraged to recognize the legitimacy of the views and needs of the complainant.

The most common disposition in the Family Violence Court currently is a supervised probation and court-mandated treatment, while the second most common disposition is incarceration (Ursel, page 32).

Disposition

The impact of the Family Violence Court on Aboriginal people from 1992 to 1997 was complex. First of all, Aboriginal accused are less likely to receive stays than non-Aboriginal accused. However, when one looks at charges that involve weapons, and charges that are described as serious domestic offences, Aboriginal and non-Aboriginal offenders receive stays at approximately the same rate. Aboriginal accused are more likely to plead guilty than non-Aboriginal accused, although this difference all but disappears when one looks solely at accused with weapons-related charges and more serious domestic violence charges. At trial, Aboriginal accused are less likely to be found guilty and much more likely to have the charge dismissed (usually because the complainant chose not to testify).

Aboriginal people had a much higher rate of incarceration than non-Aboriginal people and a much lower rate of conditional discharge. Unlike the dispositions described in the previous paragraph, this differential did not disappear when the results were controlled for weapons-related and serious domestic charges variables. This is a serious matter. Most of the study dealt with the period prior to the amendments to the Criminal Code dealing with the sentencing of Aboriginal offenders and the Supreme Court of Canada decisions dealing with this issue. For that reason, it is not possible to determine whether the courts are or are not applying these criteria when sentencing Aboriginal offenders. Furthermore, there are other

variables, such as previous sentences of incarceration, for which the study could not provide controls. This is clearly a matter that requires continued observation.

The study conducted for the AJIC also looked at the ethnicity of victims. It showed that Aboriginal and non-Aboriginal offenders who assaulted non-Aboriginal victims were less likely to be incarcerated than those offenders who assaulted Aboriginal victims. This differential remained even after a number of controls were introduced. The length of sentences did not appear to vary by ethnicity, with 86 percent of Aboriginal and 88 percent of non-Aboriginal accused receiving sentences of less than six months, and only 2 percent of Aboriginal and non-Aboriginal accused receiving sentences of over two years. Similarly, the court treated both Aboriginal and non-Aboriginal accused in the same manner in ordering treatment, with 62 percent of the Aboriginal offenders being ordered to undergo batterers' treatment or counselling, and 37 percent ordered to undergo alcohol treatment. For non-Aboriginal accused, the percentages were 67 percent for batterers' treatment or counselling, and 30 percent for alcohol treatment. (Ursel, pages 33-44)

Corrections

The Family Violence Court has led to a dramatic increase in the number of probation sentences with court-ordered treatment. In response, treatment programs have been put in place. According to some evaluations, the most successful programs have been those that were community based. (These community programs would be dealing with the offenders who did not have record of violent assaults.)

Milner Ridge is currently set aside for individuals who have been convicted of domestic assaults, and a special unit for domestic offenders also exists at Headingley Jail.

Comments on These Changes

These initiatives have the potential of coming into conflict with a community justice model that seeks to reduce the number of people who are incarcerated in general, and, more specifically, the number of Aboriginal people who are incarcerated. They involve extending the use of criminal sanctions. It would appear that they have led to an increase in incarceration and an increase in the incarceration of Aboriginal people.

This Commission has previously argued for overall approaches in the justice system that:

- reduce the use of incarceration and encourage correctional program service delivery in communities

- use alternative or conditional sentences for as many offenders as possible

- encourage support and confidence in the system, through more Aboriginal-controlled service delivery such as police and probation services, more employment of Aboriginal people at all levels, and greater understanding of the impact of the system on Aboriginal people through cross-cultural and other training

- provide adequately resourced treatment programs for offenders and others

- provide community policing rooted in genuine partnership among police officers, police departments, governments and the community

- assist more community involvement, where communities want and have the capacity to assume and maintain justice roles, and provide adequate resources for these communities to discharge their duties

All these approaches must be implemented in a way that recognizes the overriding need to preserve personal safety. While there are points of tension and trends that come into conflict, it is imperative for the justice system to develop in a way that acknowledges that domestic violence is a serious problem, at the same time that it moves towards policies that deepen community justice approaches and foster restorative justice. It is also important to note there are a number of areas where the AJI recommendations and approaches can be seen to be in keeping with those approaches that have been developed in Manitoba.

At the outset, many supporters of mandatory charging argued it would have the impact of deterring future acts of domestic violence. Subsequent research indicates that this conclusion has not been borne out in reality. Individuals who were socially integrated (i.e., married and employed) were much more likely to be deterred by arrest. However, those who were poorly integrated and had records of criminal violence, were far less likely to be deterred from reoffending as a result of their involvement with the criminal justice system.

This conclusion is in keeping with the Aboriginal Justice Implementation Commission's contention that the criminal justice system is of limited utility in long-term crime prevention. The solutions lie the with community-development strategies that are addressed in the fourth section of this report. This does not mean, however, that the AJIC does not recognize a role for the criminal justice system, particularly in those instances where individuals are at immediate risk. Charging has the immediate impact of ending a dispute, thereby preventing its escalation to higher levels of violence. Through this policy, law enforcement protects individuals and, in general,

denounces the view that domestic violence is a less serious form of criminal behaviour. While the AJI did not endorse mandatory charging, it did state, "The local police, whether they be band constables or members of an Aboriginal police force, members of the City police forces or the RCMP, should be encouraged to remove offenders at the first sign of abuse." (AJI, Volume I, page 488) Such a removal requires arrest and charging of an individual.

Critics have also stated that mandatory charging has led to dual arrests (defined as cases where the original complainant is arrested as well as the person about whom the original complaint was made). Dual arrests appear to lead to a high number of stays. The stays arise for a number of reasons, including the unwillingness of the original complainant to testify. This testimony is often the only evidence in the case. For these reasons, some critics have recommended that police be given more discretion in determining whether to lay a charge in a domestic violence case.

The issue of double arrests is complex. It arises in approximately 6 to 7 percent of the cases studied by Ursel. While there are undoubtedly incidents where a double arrest is appropriate, the fact is that mandatory charging creates a situation in which a violent abuser can have the complainant arrested simply by making a countercharge. This can have a number of undesirable outcomes: a victimized person can be further victimized by the legal system and the complainant may unwillingly decide not to testify in an effort to have all the charges dropped. Three possible approaches have been identified to this issue:

- increasing police discretion
- laying charges only against the primary aggressor
- referring the matter to the Crown for guidance

While stays do respect the views of the complainant, they also do nothing to provide the accused with any counselling or treatment. An alternative raised by Ursel is to institute rehabilitative remands. These orders would be used in situations where the complainant has acknowledged that, despite the existence of violent behaviour, she does not intend to testify. The case could be remanded until the accused completed a treatment program. On completion, the charge would be stayed--if the program were not completed, the accused would have the option, at that time, of determining if she wished to give testimony. If she did not, the case would be stayed. This policy can be adopted only if there is an expansion of existing treatment services.

As phrased, the government's current zero-tolerance policy suggests a preference for the most intrusive and punitive measures, with an aggressive appeals policy when judges exercise discretion in

sentencing.

While the AJIC is recommending policing models that provide officers with discretion and flexibility, the Commission also recognizes that the mandatory charging model was introduced in response to deeply entrenched social attitudes that failed to recognize the criminal nature of assault within families. These attitudes remain--and are not just limited only to police officers.

The approach that the Family Violence Court has taken towards recognizing the legitimate needs of the victim can be expanded to incorporate community justice models discussed elsewhere in this report. Initiatives taken in this direction must take into account the safety and views of the victim, and the capacity of the community. The severe and difficult problems that underlie domestic abuse cannot be removed with one or two counselling sessions. The warnings raised elsewhere in this report, about the need not to move at a faster rate than communities wish and to ensure that community-based initiatives are well resourced, are of particular importance in this area. The need to proceed at a pace that the community is comfortable with is illustrated by striking differences in options available to those in larger urban centres, as opposed to those in remote communities.

Ursel notes that the majority of domestic violence calls to the Winnipeg police are in district one and district three, core-area communities that have a high ratio of low-income households and of Aboriginal households. She notes that "thousands of women at risk have no access to alternatives: they cannot afford lawyers or personal bodyguards. Nor do they have wealthy relatives who can finance 'a great escape'. Most women who use police services to stop violence are low-income women, although not only poor women call the police." (Ursel, pages 15-16)

This issue is exacerbated when we compare urban and isolated First Nation communities. In urban centres, police forces are present and are expected to respond in a timely way to separate the parties. There are shelters, safe houses, and second-stage housing. There is the availability of protection orders on a 24-hour basis. In a city, an abused woman may have a larger range of resources to turn to for assistance.

In a remote First Nation community, the police response time may be much longer if there is no local police detachment. Shelters or safe houses are few and far between. While protection orders are available on a 24-hour basis, the victim may have difficulty making an application over the phone. Due to the lack of housing and overcrowding in most First Nation communities, options of staying with friends and family are more limited. Social service agencies are often all but non-existent.

These issues are also exacerbated by jurisdictional issues over which

level of government is responsible for funding these services, and what efforts Aboriginal leaders have made and are prepared to make to deal with the issue of domestic violence.

The Commission notes that the AJI recommended that:

- Aboriginal leaders establish a local government portfolio for women and children, with responsibility to develop educational and support programs in the area of spousal and child abuse.

There is no doubt that, as pointed out by the AJI and RCAP, the abuse of Aboriginal women is pervasive and serious. It requires urgent policy review and assessment. The criminal justice system must treat these issues as seriously as it does other assaults. It is important that this approach be maintained in the interests of personal safety. Once personal safety issues have been dealt with through mandatory charging and separation of the parties, the principles of justice may not be well served by a policy of vigorous prosecution in all cases.

The Aboriginal Justice Implementation Commission recommends that:

9.1

The Department of Justice, in conjunction with representatives of the Assembly of Manitoba Chiefs, the Manitoba Metis Federation, Aboriginal women's organizations, and other interested groups, review whether increased Crown discretion, in appropriate domestic violence cases, subject to appropriate guidelines, could be used to encourage counselling and other intervention programs. Any new approach should be carefully monitored and evaluated.

9.2

The Government of Manitoba support continued research and evaluation of domestic violence policies and programming, which includes analysis by ethnicity of accused and victims.

9.3

The Government of Manitoba expand availability of culturally appropriate Aboriginal treatment and support programs for family members involved in domestic violence cases.

The Commission has heard concerns from Aboriginal people about the special difficulties facing victims of domestic violence in remote Aboriginal communities. Victims in these communities need safe places to go to, or, alternatively, the accused must be dealt with in a

way that preserves the safety of the victim.

The Aboriginal Justice Implementation Commission recommends that:

9.4

Aboriginal leaders work with the Government of Canada and the Government of Manitoba to ensure that safe options for victims of domestic violence are available within communities.

Restrictive bail conditions may also mean that an accused in these remote areas must leave the community or face the prospect of inevitable breaches of a bail condition.

The Aboriginal Justice Implementation Commission recommends that:

9.5

The Department of Justice work with local authorities to seek options that, in domestic violence cases, would preserve the victim's safety but allow the accused to remain in the community while on bail.

One suggestion offered to the Commission to deal with this problem is to release the accused into the care of the community justice committee, with provisions allowing for supervised contact with the victim if the victim so wishes.

It is clear that there is a need to improve services to Aboriginal victims of domestic violence.

The Aboriginal Justice Implementation Commission recommends that:

9.6

The Government of Manitoba increase the number of Aboriginal persons employed by the Women's Advocacy Program so that advocacy services delivered to Aboriginal victims are delivered primarily by Aboriginal service providers.

The Commission did not believe it had the expertise or time to review in detail the issue of dual arrest. However, the Commission does believe the suggestion made by Dr. Jane Ursel warrants further examination.

The Aboriginal Justice Implementation Commission recommends that:

9.7

The Department of Justice review recommendations made by Dr. Jane Ursel in her paper prepared for the Aboriginal Justice Implementation Commission regarding dual charging to determine if they would assist in dealing with the question of dual arrests.

As the Commission has stated throughout this report, it favours early intervention strategies.

The Aboriginal Justice Implementation Commission recommends that:

9.8

The Government of Manitoba investigate whether there is an appropriate Aboriginal agency now providing a range of family violence programming, and, if so, whether the development of a 24-hour response capacity, available to men and women, in this agency would be effective in dealing with family violence issues.

9.9

The Government of Manitoba monitor the Winnipeg Police Services Early Intervention Pilot Project and consider the expansion of the program, should an evaluation so warrant.

Violence towards Aboriginal children

The Aboriginal Justice Inquiry labelled child abuse the most disturbing form of domestic violence. It spoke at length of its concern with the sexual abuse of Aboriginal children. A report presented to the AJI by the Winnipeg Children's Hospital Child Protection Centre stated: "The incidence of sniffing, alcohol abuse, eating disorders, suicide, depression, and sexual acting out among Indian children suggest that the problem of child sexual abuse has reached epidemic proportions." (Children's Hospital Child Protection Centre, *A New Justice for Indian Children,* 1987, page 27 cited in AJI, Volume I, page 489)

The AJI commissioners stated that

> The causes of sexual assault are complex and difficult to ascertain. Feelings of anger and frustration, and the need for a feeling of power or dominance over another, may partly explain this activity. Certainly, alcohol plays a major part, as many people do things under the influence of

alcohol they would not normally do.

Children are easy targets for angry parents, and often verbal and then physical abuse are directed towards them. They are in a difficult position to resist physical attacks or sexual advances from a parent or an older relative. While some of the history we spoke of earlier may offer some explanations for such unacceptable conduct, and even if that conduct is part of the legacy of colonization, we wish to make it clear that we find none of the explanations an excuse for the manner in which Aboriginal women and children are treated. With eight out of 10 Aboriginal women reporting having been abused--many of them as young children--the question of child abuse must be addressed forcefully because, in our view, it represents the single greatest threat to the future of Aboriginal people and their societies. (AJI, Volume I, page 490)

Based on this assessment, the AJI made a single recommendation on the issue of child abuse. It recommended that:

- The provincial government implement the recommendations found in the report of the Child Advocacy Project entitled *A New Justice for Indian Children*. (AJI, Volume I, page 492)

Those recommendations read as follows:

- All rural detachments of the RCMP should receive additional training in child sexual abuse and the investigation of such cases. As well, RCMP training efforts in this area should be designed to include local tribal police for the dual purpose of maintaining a close relationship and providing these officers with proper information. Training should include the role of the peace officer in a multidisciplinary team....

- That the Attorney General's office give serious consideration to developing a program that would address the coordination problems inherent in reserve-based child sexual abuse cases. Such a program would address the issue of consistency, (i.e.: having the same Crown attorney throughout the case), as well as developing a working relationship with local Justice Committees. One possible option would be to hire legal assistants or paralegals to be based on the reserves for the purpose of facilitating a logical and orderly collaboration on each case. The possibility of developing Tribal Courts should, in our view, be explored by examining the relative success of such in other jurisdictions....

- That a program be initiated to promote the use of a multidisciplinary team approach on every reserve in Manitoba. The focus of such an approach would be tribal elders in conjunction with the local child-caring agency, the local Child Care Committee, and the local Justice and other pertinent

Committees. By using such mechanisms as a foundation for a community-based approach, non-native institutions and methods can be adapted to use in reserve communities. If such teams demonstrate leadership and a willingness to act, legal and medical professionals from the white system can play a supportive rather than controlling role....

- It is recommended that there be considerable new resources committed toward developing a treatment capacity in each reserve, for offenders and victims, such resources currently being negligible. The logical vehicle for providing treatment is the local child-care agency, with advice and support from community elders, or perhaps a larger council of elders. Much needed culturally based prevention (personal safety) programs could then be developed for use in reserve schools....

- It is recommended that child-caring agencies with the responsibility for the protection of Indian children place a big priority on developing greater numbers of safe placement options for children. This includes the careful scrutiny of current placement options, as well as possible extended family placements. The development of innovative new safe places for child victims is an undertaking that would optimally be conducted in conjunction with Child Care Committees and multidisciplinary teams as they become operative.

There have been numerous developments in this area during the 14 years since *A New Justice for Indian Children* was released. Most recently, the Manitoba government has announced a program that utilizes what it refers to as child-friendly courtrooms and waiting rooms, specialized prosecutors, a process for early trial dates, and enhanced child-victim support services to address the issues faced by children who are victims of crime.

The AJIC has not had the opportunity to fully examine this area. As can be seen from the recommendations cited above, *A New Justice for Indian Children* concentrated its attention on the situation of Aboriginal children on First Nation reserves. The AJIC has noted elsewhere in this report that court services in many remote Aboriginal communities are substandard and are often unlikely to meet anyone's definition of a "child-friendly court." The AJIC was informed, for example, that the Child Victim Support Service position in Thompson has been vacant for nearly a year. Much of the information provided to this Commission on this point was anecdotal and difficult to evaluate. It has also been suggested to the Commission that the recommendation that calls on local childcaring agencies to prepare witnesses in child abuse cases may not be the most appropriate policy. Manitoba Justice stated that many of the victims are wards of the childcaring agencies, and many local workers play the dual role of supervising the child and foster home providers. If the abuse occurred in a foster home, they would be in a difficult position. Justice

recommended that an "enhanced program within Justice may be more appropriate than the local child caring agency."

The AJIC has been told that, in general, the delivery of justice on reserves is marked by problems with training, staffing, turnover, and workload. The Commission has also been informed that these problems interfere with the proper treatment of children who are believed to be the victims of sexual assault. Given the AJI's assertion that child abuse "represents the single greatest threat to the future of Aboriginal people and their societies," the fact that there are so many gaps in service is distressing (AJI, Volume I, page 490).

Elsewhere in this report, recommendations are made about the future of Aboriginal child welfare. The establishment of Aboriginal child welfare agencies will be an important step in addressing this issue. However, the Manitoba government must ensure that such agencies have the resources they need. The recommendations of *A New Justice for Indian Children* emphasize the need to protect children and to involve the community in the provision of this protection.

The Aboriginal Justice Implementation Commission recommends that:

9.10

The departments of Justice, and Family Services and Housing, together with the appropriate child welfare agencies review, and report publicly on the status of implementation of the recommendations of the report, *A New Justice for Indian Children*.

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