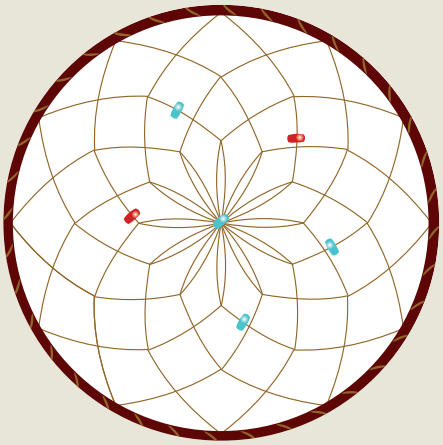

Justice in Aboriginal Communities: Working to Increase Synergy

REPORT OF THE TASKFORCE
CONSISTING OF REPRESENTATIVES FROM
THE **COURT OF QUÉBEC**,
THE **MINISTÈRE DE LA JUSTICE**,
THE OFFICE OF THE **DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS**,
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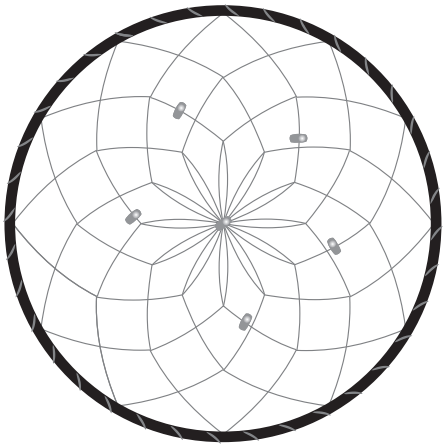
Submitted to the Chief Judge of the Court of Québec,
the Honourable Guy Gagnon

January 2008



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January 2008

Montréal, January 14, 2008

The Honourable Guy Gagnon
Chief Judge
Court of Québec

Your Honour,

In 2005 the Court of Québec adopted its three-year plan (2005-2008) with the objective of improving practices to render justice more effectively.

One of the measures in the plan concerned improvements to services in remote Aboriginal communities.

The Court of Québec has been present in these regions for several years through a system known as "itinerant courts." The Court has noted various shortcomings in the administration of justice, mainly in connection with the difficulty of coordinating the actions of the various stakeholders. This has reduced the effectiveness of the judicial process, despite the good faith and hard work of all stakeholders.

The Court, within the limits of its jurisdiction, has set itself the objective of helping to improve the administration of justice in these regions.

For this purpose, I was asked to chair a working group bringing together members of the Court and, at my request, representatives from the Ministère de la Justice, the Secrétariat aux affaires autochtones and the office of the Director of Criminal and Penal Prosecutions.

It is with pleasure that I submit the working group's report.

As you will see from the report, the members of the committee worked together in a spirit of collaboration. I would like to thank all the members for their active involvement.

Yours truly,

MAURICE GALARNEAU
Associate Chief Judge

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For more than 30 years, Québec's courts of first instance have offered "front-line" services in criminal and youth cases to Aboriginal communities, in particular those in Northern Québec and on the Lower North Shore. Many different judicial participants, including judges, lawyers and personnel from the Ministère de la Justice and the Ministère de la Sécurité publique, have contributed to the development of what has become known as the *itinerant court*.

Despite Québec's dynamic approach in the past, it is clear that, as in other provinces and territories, the administration of justice in Aboriginal communities has several shortcomings and poses several major challenges. We must recognize that citizens living in Aboriginal communities are entitled to receive justice services that are more responsive to their needs. We must also renew our commitment to meet those needs through specific measures adapted to realities in Aboriginal communities.

In concrete terms, the Court of Québec, as well as the staff of the Ministère de la Justice and the Ministère de la Sécurité publique, must devote an increasing amount of energy to the administration of justice in Aboriginal communities. In several communities, crime is increasing constantly and the social fabric is unravelling, which obviously has an impact on the level of services required and the costs involved.

This is why, in early 2004, the Chief Judge of the Court of Québec set up a working group of judges working in Aboriginal communities to review the situation there concerning the administration of justice. The Court of Québec is obviously aware that it must remain at arm's length from the drafting of social and judicial policy, which is the responsibility of the executive and legislative arms of government, and it fully intends to respect their respective prerogatives. Nevertheless, as a close observer of the situation, like the Ministère de la Justice and the Director of Criminal and Penal Prosecutions, and because it hears most cases involving Aboriginal peoples in remote regions, the Court of Québec wishes

to contribute to the concerted actions that will help to adapt the justice system to Aboriginal realities in order to provide Aboriginal peoples with services comparable to those offered to Québec's other citizens.

In the fall of 2004, the Minister of Justice and the Minister responsible for Aboriginal Affairs responded favourably to a suggestion by the Chief Judge to set up a joint working group. Representatives of the Ministère de la Justice and the Secrétariat aux affaires autochtones were designated to work with representatives of the Court of Québec on an examination of the issues.[1]

The main concern of the members of the working group was to propose measures that would make the activities of various stakeholders more effective, as soon as possible, and improve the coordination of their respective actvities.

The working group set itself the objectives of:

- producing a description of the current situation that clearly identifies the main problems and needs;
- proposing a forward-looking vision for the Court and for other participants in the judicial and administrative process;
- proposing concrete measures to promote change over the short term.

Obviously, it was recognized from the start that no significant development policy could be achieved without active Aboriginal participation. For this reason, it is important to realize that these objectives reflect our firm intention to commit ourselves to improvement of the administration of justice in Aboriginal communities, to go beyond statements of principle and to establish mechanisms that will enhance timely decision-making. This document does not propose a

[1] Following his appointment on March 15, 2007, the new Director of Criminal and Penal Prosecutions named a representative to the working group.

blueprint for an overall reform of the Aboriginal justice system, but rather the establishment of a more effective decision-making process.

The working group was chaired by Maurice Galarneau, Associate Chief Judge. It and included representatives from the Court of Québec, the Ministère de la Justice and the office of the Director of Criminal and Penal Prosecutions, namely: Guy Lambert, Rosaire Larouche, Normand Bonin, Richard Côté and Denis Lavergne, judges, Sabin Ouellet, John Tymchyk and Jacques Prégent, lawyers, and Albert Thibault.[2] Jean-Daniel Thériault represented the Secrétariat aux affaires autochtones.

[2] Albert Thibault, director of the Direction générale des services de justice de l'Est, retired in November 2006 and was replaced in the working group by Kevin Walsh.

PART I

Historical background

The historical and anthropological literature clearly shows that organized Aboriginal societies with a degree of social order existed before any contact between colonists and Aboriginal peoples. Repeated contact between European societies and Aboriginal societies, however, gradually broke down this social order and led to a major transformation of Aboriginal society.

In the administration of justice, the actions of the Royal Canadian Mounted Police (RCMP) in the late 19th century were instrumental in bringing about these changes. These were undertaken without regard for systems of social control that existed within Aboriginal societies, and by the imposition of the values of the "dominant" society by means of civilizing and humanitarian missions that were, sometimes, genuinely benevolent.

René Dussault, a judge of the Québec Court of Appeal and co-chair of the Royal Commission on Aboriginal Peoples, described the situation as follows in a speech given in February 2007:

> "The state of peace brought about by the end of the 1812 war and the Napoleonic conflict led to a radical change in the relationship between Aboriginals and non-Aboriginals. As immigrants arrived in massive numbers and the British government dropped the Aboriginal allies it no longer needed in its military campaigns, the number of settlers in eastern and central Canada grew quickly and soon exceeded the population of the aboriginal peoples, often decimated by European illnesses."[3]

[3] Dussault, René. *Les "Stolen Generation" – Le cas du Canada*, speech at the symposium *La réparation des préjudices de l'histoire*, Paris, February 2007, page 2. [translation]

The goal of the State was to assimilate the Aboriginal populations rather than to recognize their specific characteristics and right of prior occupation. The Canadian justice system in the late 19th and early 20th centuries was administered solely by representatives of the federal government.

1) <u>1900 to 1960</u>

During the period from 1900 to 1945, interventions by the State in Québec were relatively limited. Apart from the presence of missionary priests who continued their former activities, RCMP officers not only policed the territory but also took on quasi-judicial functions and acted as coroners, magistrates and sometimes jurors; they were also responsible for administrative tasks such as recording births and deaths. Relation between the State and Aboriginal society reflected a policy of imposing the social standards of the time on Aboriginal peoples.

The period from 1945 to 1960 saw a drive by the federal government to gradually increase its presence in Northern Québec, mainly to continue the assimilation of the Aboriginal population, as elsewhere in Canada as part of the dominant society. During World War II, the protection of Canadian sovereignty in northern regions took on a new importance, and RCMP detachments were gradually established in the main villages.

State intervention became even more direct and sustained in economic terms and in other spheres of Aboriginal life. For example, in the Northwest Territories, the administration of justice went through a series of changes, including the construction of prisons and the introduction of itinerant courts. In Northern Québec, fewer changes occurred.

As early as 1892, a system of Aboriginal boarding or residential schools was officially established in Canada. In Québec, the first schools were set up before World War II and two of them, one Catholic and one Protestant, were built at Fort

George in James Bay. After the war, four new residential schools were built: St-Marc-de-Figuery, near Amos, Pointe-Bleue, in the Lac Saint-Jean region, Maliotenam, near Sept-Îles, and La Tuque, in the Haute-Mauricie region. As pointed out by the Royal Commission on Aboriginal Peoples, the schools constituted a tragic episode in both Aboriginal history and the history of Québec and Canada. For several decades entire generations of children were taken away from their parents and their villages. For many their time at school was marked by neglect, abuse and physical and sexual violence.

Mr. Justice Dussault, during the same speech in February 2007, also addressed the question of residential schools:

> "Between 1831 and 1998, a total of 130 residential schools operated as boarding schools. At the height of the system in the early 1930s, the boarding schools were part of a network of 80 institutions attended by over 17,000 students, funded by the federal government and managed by various churches.
>
> Thousands of Aboriginal children were taken away from their homes and villages and placed, often for several years, in the care of strangers whose mission was to detach them from their traditional culture, subject them to civilizing influences, and encourage them to adopt the values of the dominant Christian society."[4]

Finally, it is important to remember that in the 1950s there was a tragic outbreak of tuberculosis in Inuit villages; in 1956, one Inuk out of seven was treated in a hospital in southern Québec, and several Amerindian families were also affected.

2) <u>1960 to 1970</u>

During the 1960s the Québec government began to play a growing role in the administration of justice in remote regions. The Québec provincial police force gradually replaced the RCMP, although at the time the two levels of government

[4] See note 3, page 10. [translation]

often trespassed on the authority of each other concerning interventions to be taken in Aboriginal communities. Obviously, the government policies of the time, based on compulsory education and the ongoing implementation of income security programs, had a similar impact to previous actions: they led Aboriginal populations to become sedentary and disrupted their lifestyles.

Social transformations and a more active police presence gradually introduced Québec justice to the North, but Aboriginal peoples had to attend their trials in cities in the south - Montréal, Québec City or Sept-Îles. Obviously, there were many obstacles to their understanding and acceptance of the judicial system: a different approach to dispute resolution, unknown or different legal concepts, major language barriers, etc.

3) 1970 to 1990

This period was marked by the establishment of itinerant courts in the Northern Québec and Lower North Shore regions, and in Schefferville. This reflected a movement that began elsewhere in Canada in the 1950s but followed more specifically the publication of the first study made by the Ministère de la Justice of Québec in 1972, entitled *The Administration of Justice beyond the 50th Parallel*,[5] which examined the changes required in the judicial system to adapt it to the particularities of the North. It also became the foundation for the sections of the James Bay and Northern Québec Agreement[6] and the Northeastern Québec Agreement[7] that dealt with justice and policing.

It is important to recall here that the working group that produced the study was set up following a court decision denouncing the fact that a trial was held in

[5] Québec, Ministère de la Justice, Comité d'Étude sur l'administration de la justice dans le Nord québécois. *The Administration of Justice beyond the 50th Parallel* (Québec: Ministère de la Justice, 1972).
[6] Québec, Ministère du Conseil exécutif, Secrétariat aux affaires autochtones. *Convention de la Baie James et du Nord québécois et conventions complémentaires* (Éditeur officiel du Québec, 2006).
[7] Canada, Indian and Northern Affairs Canada. *Northeastern Québec Agreement* (Ottawa: Indian and Northern Affairs Canada, 1984).

the south, whereas the Aboriginal peoples involved lived in the north of Québec.[8] The establishment of the group also reflected the desire of the Québec government to increase its presence throughout its territory while making the administration of justice fairer and more effective in the regions targeted.

In essence, the report recommended:

- the establishment of an itinerant court in the judicial district of Abitibi, which would be extended to include the whole of the James Bay and New Québec territories;

- respect for and the taking into consideration of the social and cultural realities of the Cree, Inuit and Naskapi populations living in those territories;

- the establishment of various structures for the administration of justice in which Aboriginal peoples could participate as justice auxiliaries, and the construction of a detention centre.

As a result, in October 1974, in accordance with the recommendations made in the report and with the intention of offering more suitable services to citizens living in remote regions, the Ministère de la Justice gradually set up an itinerant court in the judicial district of Abitibi, to travel to certain Cree and Inuit villages. At the same time, similar measures were taken to create an itinerant court for the Lower North Shore, and in the area around Schefferville. In the latter case, the creation of the court was justified, in particular, by mining development in the area.

In 1980, under the agreements cited above, the judicial district of Abitibi was extended to include a large part of Northern Québec, which also allowed the provincial court to begin to sit in sessions of the peace in the district in all the

[8] *R.* c. *Ittoshat* (1970) 10 C.R.N.S. 385.

villages concerned. In the mid 1980s, the Ministère de la Justice and the judicial authorities of the itinerant court for the judicial district of Abitibi, taking into account Aboriginal reactions to the service, presented a mixed report on the activities of itinerant court since its inception.

Several actions were taken to improve services connected with the operation of the court, and a review of the situation was undertaken to identify measures to increase Aboriginal participation in the administration of justice. Other actions were planned to promote the establishment of local structures presided over by Aboriginal justices of the peace or made up of citizens willing to help resolve conflicts within the community. Because, in particular, of the government's financial situation in the late 1980s, none of the measures planned to promote the development of Aboriginal justice structures were implemented.

4) <u>Since 1990</u>

In addition to the activities of the itinerant courts, this period in Québec was marked by numerous examinations of the question of justice in Aboriginal communities. A working group on access to justice, the Groupe de travail sur l'accessibilité à la justice,[9] considered various aspects of the modernization of the justice system in Québec and concluded its report with a series of recommendations for Aboriginal communities. Similarly, in the early 1990s, important Inuit and Cree reports were published on justice-related issues in their respective communities.[10]

The Justice Summit[11] was held in 1992 under the aegis of the Ministère de la Justice. Following debate about various issues connected with the

[9] Québec, Ministère de la Justice. *Groupe de travail sur l'accessibilité à la justice – Jalons pour une plus grande accessibilité à la justice* (Québec: Ministère de la Justice, 1991), 453 to 467.
[10] Inuit Task Force on Justice. *Blazing the Trail to a Better Future,* Final report of the Inuit Task Force on Justice (Makivik Corporation, 1993).
Grand Council of the Crees (of Québec). *Justice for the Cree: Final Report* (Nemaska: Grand Council of the Crees (of Québec), August 1991.
[11] Québec, Ministère de la Justice. *Les Actes du Sommet de la Justice – La justice : une responsabilité à partager* (Québec: Ministère de la Justice, 1993).

administration of justice in Aboriginal communities, the department announced the creation of the Advisory Committee on the Administration of Justice in Aboriginal Communities. The mandate of this committee was to consult Aboriginal communities and organizations in Québec, as well as various other organizations with an interest in the administration of justice in an Aboriginal setting.

The consultation process led to a report entitled *Justice for and by the Aboriginals*[12] (Coutu Report), released on November 30, 1995, which included around fifty recommendations grouped under four main themes.

The first theme restated the importance of adopting an overall strategy for the administration of justice in Aboriginal communities, adapted to the needs of each community and targeting a gradual transfer of responsibilities to the communities.

The second theme focused on the interest in Aboriginal communities for certain approaches to justice that would receive more support from their members, especially mediation, alternative measures, justice committees and community consultation on sentencing.

The third theme proposed improvements linked to the Québec justice system, such as access to judicial services, legal aid, relations between communities and participants in the justice system, court-worker services, and correctional services.

The last theme stressed the importance of conducting regular consultations with the communities concerning their needs, establishing a body responsible for implementing the recommendations, and ensuring sufficient funding for the adoption of the measures set out in the report.

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[12] Québec, Ministère de la Justice, Advisory Committee on the Administration of Justice in Aboriginal Communities. *Justice for and by the Aboriginals* (Ministère de la Justice, 1995). (See Appendix 1.)

In 1997, the Ministère de la Justice began to implement some of the recommendations, including those designed to improve various judicial services in remote regions and those concerning funding for various community projects in the field of justice.[13]

It is important to emphasise that a few months after the tabling of the Coutu Report, in February 1996, the Royal Commission on Aboriginal Peoples released its own report, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada*, which analyzed the overall situation of Aboriginal peoples with respect to the administration of justice in Canada.

One of its main conclusions concerned all players in the judicial system:

> "The current Canadian justice system, especially the criminal justice system, has failed the Aboriginal people of Canada - Indian, Inuit and Métis, on-reserve and off-reserve, urban and rural, in all territorial and governmental jurisdictions. The principal reason for this crushing failure is the fundamentally different world view between European Canadians and Aboriginal peoples with respect to such elemental issues as the substantive content of justice and the process for achieving justice."[14]

In *Gladue*,[15] the Supreme Court reached similar conclusions concerning the difficulties faced by Aboriginal peoples in the field of justice.

The goal of this historical account has been to review the social transformations that Aboriginal communities have experienced over the last century and the evolution of the judicial system in those communities. It highlights the fact that the introduction of a system to promote the administration of justice

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[13] The most important measures were the establishment of itinerant court services in various communities on the Lower North Shore, including Natashquan and La Romaine, the creation of permanent offices for some participants in the judicial system in Inuit communities, the organization of workshops on judicial terminology in Aboriginal languages and training sessions for Aboriginal court-workers, the development of an alternative measures program for adults in Aboriginal communities, the development of legal capsules, and amendments to the Highway Safety Code to allow Aboriginal communities to act as prosecutors within the meaning of the Code. Similarly, initiatives were taken to promote the involvement of Aboriginal communities in social control at the local level.

[14] Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Ottawa: Canada Communication Group), 30.

[15] *R. v. Gladue* [1999] 1 S.C.R. 688.

in Aboriginal communities is relatively recent. Finally, it shows that since the late 1980s, several research reports and studies prepared by Aboriginal groups and by government have shown that much remains to be done to increase the effectiveness of the administration of justice, and to strengthen its legitimacy, in remote Aboriginal communities.

PART II

The organization of the judicial system in Aboriginal communities in Québec: the current situation

The courts operate in Aboriginal communities in much the same way as in the rest of Québec. However, as indicated in Part I, two itinerant courts of the Court of Québec offer services to a significant number of Aboriginal communities located in remote regions. One is part of the judicial district of Abitibi and provides services to the Cree and Inuit communities in James Bay and Northern Québec, covering a total of 23 communities with a population of 12 909 Cree and 9 357 Inuit in 2005. The other provides services for various Aboriginal and non-Aboriginal communities on the North Shore, the Lower North Shore, and the region around Schefferville in the judicial district of Mingan, covering 6 communities with a population of 3 269 Innu and 834 Naskapi. In the latter case, the court sits in three Aboriginal communities: Kawawachikamach, La Romaine and Natashquan. The other Innu communities, Mingan, Pakuashipi and Matimekosh, have access to the courts in neighbouring, non-Aboriginal villages.

In general, the itinerant courts fly in to the communities where they provide services; in some cases, they travel by road. Except in some villages where permanent facilities have been built – Kuujjuaq, Puvirnituq, Kuujjuarapik – Whapmagoostui and Chisasibi – the court generally sits in public buildings such as schools and community or administrative centres where, obviously, the working conditions are nothing like those normally found in a courthouse.

The operation of the court is relatively uniform. As soon as they arrive, the lawyers meet with their clients and witnesses, unless this has already been done during a previous trip. When the lawyers are ready to proceed, the court sits and the hearing is held using the procedure in force in Québec. An interpreter translates the proceedings into the Aboriginal language, either systematically or at

the request of a party. The parties are generally represented by a lawyer, unless they waive their right to be represented. Each court session normally lasts one week; one day is devoted to each leg of the trip and for the rest of the week the court travels to the different communities according to the judicial schedule previously established by the coordinating judge. In Cree and Inuit communities, the Superior Court is authorized to sit only in the communities with permanent facilities.

It is also important to mention that measures have been introduced in recent years to improve some of the services provided in Aboriginal communities. These include Aboriginal court-worker services, the objective of which is to act as an interface between the judicial system and offenders by giving the latter information on the criminal court process. It is also the case with services provided by community reintegration officers who, in Inuit communities, work with the probation service to supervise the sentences imposed by the court.

Places visited by the itinerant courts

Judicial district of Abitibi				**Judicial district of Mingan**
Hudson Bay	Kuujjuarapik	Inland Cree	Waswanipi	Havre Saint-Pierre
	Whapmagoostui		Oujé-Bougoumou	Port-Cartier
	Umiujaq		Mistissini	Natashquan
	Inukjuak		Nemaska	La Romaine
	Puvirnituq	Ungava Bay	Kuujjuaq	Blanc-Sablon
	Akulivik		Kangiqsualujjuaq	Saint-Augustin (Pakuashipi)
	Ivujivik		Tasiujaq	Fermont
	Salluit		Aupaluk	Kawawachikamach
James Bay	Waskaganish		Kangirsuk	Schefferville (Matimekosh)
	Eastmain		Quaqtaq	
	Wemindji		Kangiqsujuaq	
	Chisasibi			

1) <u>Current activities of the itinerant courts</u>

In remote Aboriginal communities, the organization of the court's work and the conditions in which it is done bear no relation to itinerant court services in other judicial districts. The geographical context, the social setting and the physical set-up all have a direct impact on the operation of the court. Many challenges and many problems must be faced.

Since 2000, particularly in Cree and Inuit communities, the number of trips (most of which are made by air) and the number of days of hearings have increased continuously, leading to an increase in costs. For example, from 2000 to 2006, the number of weeks during which the court travelled to Cree and Inuit communities increased from 36 to 44 per year. During the same period, the number of days of hearings each year increased from 114 to 176.

Number of trips/number of days

		2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007
District of Abitibi	James Bay	5/20	5/20	5/20	5/20	5/20	6/24	6/24
	Inland Cree communities	4/16	4/16	4/16	4/16	6/24	8/32	8/32
	Hudson Bay	14/39	13/38	14/43	14/42	14/54	14/56	15/60
	Ungava Bay	13/39	14/42	14/42	14/42	14/56	15/58	15/60
TOTAL (average: 39 / 139)		36/114	36/116	37/121	37/120	38/154	43/170	44/176
District of Mingan	Lower North Shore	9/25.5	9/35	9/34.5	9/32.5	9/34.5	9/32.5	9/32
	Schefferville and Kawawachikamach	5/22.5	5/21.5	5/22.5	5/22.5	5/20.5	6/25.5	5/21.5
TOTAL (average: 14 / 55)		14/48	14/56.5	14/57	14/55	14/55	14/58	14/53.5

The number of days of hearings excludes the 62.5 days of travel: 6 days for the region around James Bay, 8 days for the inland Cree communities, 15 days for the region around Hudson Bay, 15 days for the region around Ungava Bay, 16 days for the Lower North Shore and 2.5 days for Schefferville and Kawawachikamach.

In general, as shown in the tables in Appendix 2, there is a steady increase in the volume of court activity concerning criminal and penal cases (adults and youths) and youth protection cases.

The increase coincides with an increase in the number of charges laid and, unfortunately, with a clear deterioration in the social fabric of certain communities.

In addition, the activities of the itinerant courts in Cree and Inuit communities are proportionally more extensive than in other regions of Québec. The number of files opened in criminal matters increased from 1,016 in 1996 to 1,959 in 2006 - almost double. The annual hours of hearings increased over the same period from 495.5 to 968.

Over half of the population concerned, roughly 22,300 individuals in 2006, is made up of young people. This means that, based on the current ratio between the number of criminal files opened and the adult population, almost 17% of the adult population, or one person in six, theoretically has a criminal record. Elsewhere in Québec, this proportion is one person in fifty (see table in Appendix 2).

In addition, Aboriginal peoples make up around 4.5% of all inmates in Québec detention facilities, but only 1% of the Québec population.[16]

In short, social problems lead to an increase in the volume of court activities, which in turn generates more trips and more hearing days. Court rolls are overloaded, leading to a significant number of adjournments for various reasons, including the fact that the lawyers do not have enough time to meet with witnesses and victims, or that witnesses or accused persons are absent on the day of the hearing. The increased number of cases on the roll may also result from the cancellation of a previous trip due to bad weather. The overall consequence is that

[16] Québec, Ministère de la Sécurité publique, Infocentre correctionnel des Services correctionnels du ministère de la Sécurité publique, 2006.

the system becomes less efficient, attracting often justified criticism concerning unacceptable delays.

2) <u>Observations concerning Aboriginal communities that do not receive services from an itinerant court</u>

Access to some Aboriginal communities is difficult because of their geographic location, but their population still receives judicial services on a regular basis.

Representatives of some communities have expressed a wish to receive services through an itinerant court. These include the Atikamekw communities of Wemotaci and Obedjiwan, which presented a formal application for this purpose to the Court of Québec in 2004.

The establishment of an itinerant court in various communities that do not currently receive itinerant court services deserves analysis.

However, as explained above, the establishment of itinerant court services in a new community is complex undertaking and presents various challenges in terms of human resources – judges, lawyers, court staff – and challenges regarding transportation, buildings, accommodation and security.

We believe that these difficulties should not impede a joint examination of the question by all the stakeholders.

Among other things, the examination should take into account the large and growing percentage of judicial files opened in respect of individuals living in remote communities whose trials are held in a courthouse (see table in Appendix 2).

We believe that this situation illustrates the problems that must be overcome by all participants in the judicial system. As a result, a dialogue is necessary, even if only with regard to this aspect of the question.

3) <u>Participatory justice</u>

Since 1998, various measures have been introduced by the Ministère de la Justice to promote initiatives in the area of community justice, and to help the members of Aboriginal communities establish restorative justice. The strategy adopted so far to encourage the establishment of community justice committees has two components.

First, it provides support for the hiring of a full-time or part-time coordinator from within an Aboriginal group or community to coordinate the project and act as an interface between the community concerned and the Ministère.

Second, the strategy provides the funding needed for the development and operation of justice committees, which are composed of citizens representing the community who are willing to help resolve conflicts. The committees may, for example, participate in a program of alternative measures for young people or adults, identify measures that the court may order when sentencing an offender, or act as mediators in some disputes between members of the community. The strategy may also involve working with a supervisor or probation officer to supervise the measures ordered by the court. To date, sixteen justice committees have received joint funding from the Ministère de la Justice of Québec and the Department of Justice of Canada.

However, it is important to note that not all Aboriginal communities have the same ability or willingness to set up community justice committees and take charge of some of the social problems existing in their territory. The degree of awareness and the social difficulties vary from community to community. Understandably, discussions on the possible establishment of a justice committee, the solutions proposed and the speed with which the models are developed also vary from one community to another.

While recognizing the fundamental importance of promoting the participation of Aboriginal communities in the resolution of certain social problems, in particular by supporting justice committee projects, much work remains to be done to ensure the ongoing development of justice committees within interested communities.

PART III

Difficulties in the administration of justice in Aboriginal communities

1) The need to increase synergy between the main participants

The overview presented in Part II reflects the results of several Canadian research projects and demonstrates serious difficulties facing the justice system in Aboriginal communities. Some of the reasons underlying these difficulties are the following: social problems, a lack of resources or inadequate resources to assist Aboriginal peoples, a lack of concerted action and collaboration by stakeholders in the judicial system, the difficulty for the judicial system to meet Aboriginal needs, a lack of mechanisms for consultation and exchange with local and regional populations, and different perceptions of the administration of justice held by Aboriginal peoples.

Despite various actions taken in recent years by the Ministère de la Justice and other judicial stakeholders, it is clear that measures taken so far must be reviewed in order to better adapt them to this specific context.

In addition, for reasons of cohesion, it is necessary that individuals with a certain degree of authority be designated within the various institutions concerned with the development of justice in Aboriginal communities.

The lack of a network or space for concerted action by stakeholders has, in organizational terms, reduced the efficiency of the judicial system and diluted accountability for actions taken to improve the administration of justice in Aboriginal communities. Currently, all the stakeholders are involved in various actions concerning the Aboriginal communities, but in their respective sectors and only to the extent of their means. They sometimes act in a disconnected way, without a coordinated strategy with respect to the communities themselves or with respect to the various participants in the justice system.

It is clear now that necessary steps include better coordination and the definition of a shared vision by the main stakeholders acting in the judicial field in Aboriginal communities. This will increase the accountability of the individuals involved directly, through their work, in the actions taken by Aboriginal communities and the government.

In short, more synergy is needed.

Too often the weakness of a single link in the chain discredits the whole judicial process. For example, if the police are lax in their investigation, preparation of witnesses, compliance with deadlines, service of judicial documents, execution of warrants, or in the community aspects of their work, the whole judicial apparatus suffers. The same applies if the prosecuting attorney fails to prepare the file in time, does not have ongoing contact with the police officers in the community, does not have sufficient professional training, or if the community is served by a different prosecuting attorney at each visit of the itinerant court.

This is the kind of situation that damages the necessary, but fragile, links of trust within the community. In addition, the fact that defence advocates do not always have the time required to prepare their files leads to significant delays that are harmful not only for the offender but for the victim and the community. Finally, if judges are unable to take the time to inquire about and understand local realities, and if they are given no guidance, they are more likely to hand down sentences that are less meaningful for the community.

Despite the recommendations in the Coutu Report, the judicial system has so far clearly failed to provide sufficient support for the adoption of the restorative justice mechanisms that would allow communities to become more involved. As mentioned previously, this can be explained in part by the fact that some communities do not wish to take on responsibilities connected with the justice system. Other communities, however, have established justice committees with

responsibility for consulting and "involving" the population and for explaining their point of view to the court to ensure that sentences are better understood and more restorative, and therefore more effective. Similarly, some communities have made an effort to establish constructive links with probation officers.

Obviously, it is important that the primacy of judicial independence be respected to ensure a balance between the political and judicial systems. However, to ensure recognition of and compliance with this principle, an ongoing effort must be made by the judicial stakeholders to adapt to the realities of individual communities. In addition, recognition will only emerge if the stakeholders are genuinely interested in adopting specific initiatives, partly defined by the Aboriginal peoples themselves.

2) <u>Specific problems connected with the itinerant court system</u>

The itinerant court system raises a number of challenges that merit specific attention.

a) Travel by air and land

One question concerns the fact that the judge, prosecuting and defence attorneys, clerks and sometimes offenders and police officers travel together in the same plane. The situation is unacceptable, if only in terms of the image of justice and the essential independence of the various participants. Also, there is no need to elaborate on the problem of security when offenders, police officers and judges must share such a small space. The same applies to land transportation.

b) Courtroom set up

In some communities, there are no adequate facilities to allow judges to hear cases and deliberate in peace. In addition, the judge must often move among

accused persons and witnesses, which raises questions of judicial independence and security.

Similarly, attorneys are often unable to consult their clients in confidence. In several villages the court sits in buildings where there is no space to separate victims from other witnesses or the accused; they all wait before the hearing in the same, often restricted, space.

The courtroom sometimes has to be set up on the morning of the hearing by the various participants. It is not unusual for the hearing to be held in a gymnasium or community centre, and sometimes even in the basement of a public building where lighting, heating, amplification and cleanliness leave much to be desired.

c) Interpretation services

In general, two interpreters take turns translating what is said in court, if needed. The interpreters are hired by regional offices responsible for judicial services. It appears that it is sometimes difficult to recruit qualified interpreters, and that turnover is high. Insufficient training and the difficulties raised by different dialects are also factors that explain the difficulty of this situation.

d) Courtroom security

In several communities, no-one is officially responsible for security in the courtroom. This is an unacceptable situation for all participants and for citizens. Recently, and to the satisfaction of the participants, special constables employed by the Ministère de la Sécurité publique have begun to provide security in the Lower North Shore region.

e) Correctional services and victim support services

In addition to the difficulty of hiring probation officers in remote regions, there is a shortage of personnel in correctional services, meaning that it is hard for judges to impose intermittent sentences or sentences to be served in the community. Frequently, supervisors and probation officers cannot provide adequate probational supervision. Victim support services are also clearly insufficient. In several villages, the *Declaration concerning the rights of witnesses* is not observed in many respects.

f) Civil and family law cases

In Aboriginal communities, the judicial system deals with few civil and family law cases. The level of need should be examined, and possible solutions should be proposed to increase access to services. The solutions should focus on access to the services of an attorney, access to the courts and the introduction of support services such as family mediation.

g) Stability of court staff and training

To provide ongoing service, there is an urgent need to ensure that court staff are people with a strong understanding of the realities of Aboriginal communities. Stability should be ensured and staff should be given specialized training, adapted to the Aboriginal context. Measures are needed in this area.

h) Other elements

Several other elements must be considered if the quality and accessibility of services is to be improved and extended in Aboriginal communities. The following elements deserve attention:

- the lack of tools for explaining the judicial process to the population;

- the fact that attorneys cannot meet their clients or witnesses in appropriate circumstances, and that this situation prevents them from preparing their cases adequately;
- depending on the region, unequal support provided by Aboriginal court-workers to the public;
- the lack of translated forms, especially those used in sentencing and setting bail conditions;
- the lack of any plan of action for the training of future Aboriginal court-workers and community reintegration officers;
- the transportation to southern Québec of offenders, children and parents in youth protection cases, which must be urgently reviewed;
- the accommodation of staff members working with the itinerant courts in certain villages.

PART IV

Proposed solutions

While recognizing principles relating to judicial independence, the working group proposes that reform be undertaken with actions in three main areas:

- the implementation of decision-making and consultation mechanisms to introduce gradually an overall, forward-looking approach adapted to the needs of Aboriginal communities;

- an increase in synergy between stakeholders involved, and a new commitment by all stakeholders to improve justice services for Aboriginal peoples;

- closer collaboration among communities, in particular by integrating and developing community resources and by introducing mechanisms to promote discussions with the representatives of various Aboriginal organizations and communities on future actions in the field of justice.

The Coutu Report proposed the creation of a permanent body responsible for adopting and implementing measures, and clearly demonstrated the need for firm political support and adequate funding.

There is an urgent and imperative need to increase synergy and establish genuine cooperation among decision-makers in order to

- maximize the financial resources available;
- increase operational efficiency;

- develop collaboration with the Aboriginal communities and work with them to increase their degree of responsibility for the justice system.

1) <u>Measures concerning judges</u>

To help meet these objectives, the coordination of Court of Québec actions in Aboriginal communities must be enhanced to achieve a more uniform approach. It is recommended that a judge be designated with specific responsibility for Aboriginal cases. The judge's duties would be to:

- organize ongoing training for judges sitting in Aboriginal communities, and ensure that the training is adequate;

- assign judges to Aboriginal cases, working with the coordinating judges in the various judicial districts;

- consult judges with expertise in the field of Aboriginal justice to coordinate actions that could be taken with regional judicial services offices to improve court activities;

- help establish links with the different Aboriginal communities to develop resources such as justice committees, community reintegration officers and court-workers;

- raise awareness among the judges assigned to Aboriginal cases of the need for a specific approach to cases involving Aboriginal persons, and help draft court policies to meet the specific needs of Aboriginal communities;

- cooperate in the setting up justice committees;

- organize training in English for judges working in Aboriginal communities where the second language is English, and ensure that the training is adequate;

- ensure that judges sitting in remote Aboriginal communities are versatile and able to judge criminal, civil and youth cases;

- take part in initiatives to adapt the mechanisms used to administer justice in Aboriginal communities;

- ensure that, as far as possible, only specially designated judges with suitable training and adequate knowledge of English are admitted to the team of judges sitting in remote Aboriginal communities.

2) <u>Measures concerning the Ministère de la Justice</u>

The elements and factors outlined in the preceding section should encourage the Ministère de la Justice to take action to improve the coordination of the administration of justice in Aboriginal communities, working with the main judicial stakeholders involved.

Given the extent of the challenges, the Ministère must show leadership with respect to the policies and measures it adopts for the administration of justice in Aboriginal communities. Overall or ministerial management is too often overlooked and must be strengthened. This is why, with regard to the overall management of Aboriginal affairs, influential and decisive leadership must be shown. In short, there is an essential and urgent need to set up an entity to improve the planning, organization and coordination of activities, to monitor the situation regularly and to assess the results achieved.

This mandate, which would involve planning and coordinating the development of ministerial policies and taking concrete steps to improve the administration of justice throughout Québec, leads us to propose that the Ministère should establish an entity responsible for matters relating to the administration of justice in Aboriginal communities.

The possibility of setting up the entity as part of a regional office was examined but rejected. The day-to-day management of regional court operations, which would continue to be carried out by the existing clerk's offices within the current regional offices, is already a heavy duty. In addition, the scattered locations of the communities and the multitude of problems existing throughout Québec point to the need for a more centralized approach that would be able to take into account the range of problems affecting communities in different regions.

The entity could therefore be set up within the higher levels of the Ministère. This would favour ongoing responsibility for developing "ministerial policies", which is a function that a regional office could not assume. Further, this approach would facilitate representations to the federal government and would improve the consistency of the direction taken by the various regional offices. Finally, in terms of operations and communications, this type of organization would be able to establish harmonious, continuous relations with other ministerial and institutional partners.

The new entity would ensure long-term, uniform and stable ministerial interventions, and its duties could include:

- working with partners to assess the needs of participants and Aboriginal communities in connection with the administration of justice;
- identifying ways to meet needs, and establishing budget and resource availability while seeking to optimize partnerships;
- planning Québec-wide the interventions and practices relating to the judicial system; for that purpose, establishing a multi-year plan and an annual priorities plan integrated with the ministerial strategic plan, and producing periodic reports and a final accounting of results;
- defining the relationships to be developed with Aboriginal communities concerning its taking of responsibility and participation in the justice

system and social control, in particular through justice committees, in a manner consistent with ministerial policies;

- ensuring better monitoring of the work accomplished to meet the various challenges identified by judicial partners in various regions;

- enhancing partnerships with other government departments in Québec and with the federal government where relevant.

In concrete terms, in light of the various observations made in this report, the activities would come under three headings: improving and adapting the judicial system, promoting and developing participatory justice projects, and establishing discussion and strategy mechanisms with various partners, including the federal government, government departments and agencies, and Aboriginal communities and organizations.

The following is a non-exhaustive list of possible activities:

- evaluate the service needs of Aboriginal communities and participants in the administration of justice. This would involve:

  - listing the challenges involved in the activities of the itinerant courts and proposing, where necessary, long-term strategies to deal with those challenges. Subjects that could be explored include: grouping court files involving Aboriginal peoples in order to promote the establishment of a unified, virtual clerk's office; improvement of the spaces used by the courts; interpretation services; transportation of participants and offenders; education, training and specialization of participants; and court security;

  - identifying measures to improve services to the communities not covered by an itinerant court;

- maintaining and promoting, in general, access to the justice services offered in Aboriginal communities by supporting the development of legal information tools, victim support services, videoconferencing for court appearances, legal aid services and programs to promote the hiring of Aboriginal peoples.

- maintain information on the activities of the activities of the courts and on the issue of crime in Aboriginal communities;

- promote and monitor restorative and participatory justice initiatives leading to projects in this field, and/or to discussions towards the development of Aboriginal judicial structures;

- promote discussions between Québec government departments and agencies working in the social or judicial field in Aboriginal communities, and seek joint intervention strategies, taking into account the responsibilities of the federal government;

- analyze the impacts of legislative bills on Aboriginal communities;

- monitor activities in collaboration with the federal government;

- establish, with the Aboriginal groups and organizations concerned, mechanisms for discussions about directions and key actions in the field of justice.

3) <u>Measures concerning the Director of Criminal and Penal Prosecutions</u>

The office of the Director of Criminal and Penal Prosecutions has long been sensitive to the fact of the importance of its role as the representative of Aboriginal communities in prosecutions, whether it be in the context of the itinerant court or not. Prosecuting attorneys, through their training, their knowledge of social and

cultural particularities, and their discussions with community members, have developed practices adapted to the needs of Aboriginal communities. However, despite the wealth of past experience, it is now time to improve those practices to deal with the social problems that are increasingly prevalent in Aboriginal communities.

In order to complete a modern, focused reorganization of the service, it is recommended that, while maintaining the current operating structure for the prosecuting attorney teams attached to the itinerant courts, a coordinator be appointed with decision-making powers to supervise and direct the prosecuting attorneys working with Aboriginal peoples. The coordinator, who might be the chief prosecuting attorney of the Abitibi judicial district, would have responsibility for the teams in the judicial districts of Abitibi and Mingan, which cover over half of all Aboriginal communities in Québec. The coordinator's mandate would be to ensure the proper management of the itinerant courts in Aboriginal communities throughout Québec. The coordinator would have responsibility for managing the courts: for assigning prosecuting attorneys, training, and the development of uniform practices adapted to Aboriginal communities with regard to services and operations. While preserving its independence, the service should be organized in a way that maintains a specialized, trained team, adapted to the needs of the itinerant courts in order to promote stability, continuity in the ways cases are dealt with, and a more global approach.

As far as possible, the goal must be to implement "vertical" prosecutions throughout the area covered by the itinerant courts, and to identify the circumstances justifying the presence of supporting attorneys to increase the efficiency of the court sessions. Similarly, action must be taken to promote participation by the justice committees in Aboriginal communities.

Another advantage of the existence of a coordinator would be to channel discussions and questions, innovative ideas and complaints. This would improve debates about issues and allow the necessary decisions to respond adequately to

the needs of Aboriginal peoples. In addition, as the person responsible, the coordinator would establish more effective ties with various judicial participants, whether police officers, social workers or others.

Activities that take place outside the itinerant courts, but nevertheless target Aboriginal communities, should also be placed under the responsibility of the same coordinator.

PART V

Strategy to promote coordination among participants, Aboriginal communities and other partners

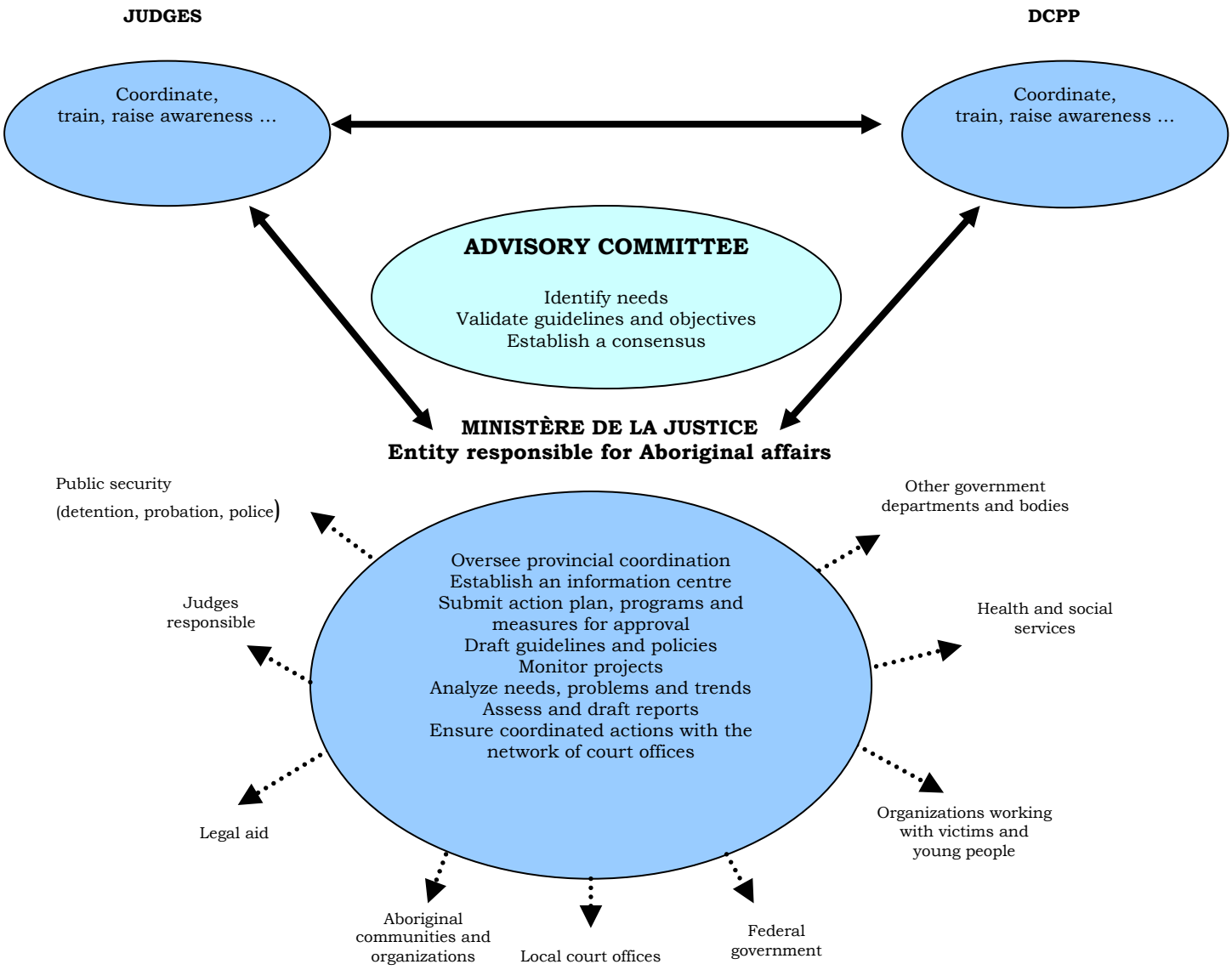
Promoting better coordination of the activities of various judicial participants, and increasing collaboration between partners to identify measures over the short or medium term to maintain, improve and develop activities connected with the administration of justice in Aboriginal communities, are two objectives that will require change. It is proposed that an advisory committee be established, consisting of a representative of the Ministère de la Justice, a representative of the Director of Criminal and Penal Prosecutions, and a representative of the Court of Québec. The committee would be responsible for discussing the various problems to be solved, reaching a consensus and proposing actions to improve government actions, thereby facilitating access to justice and the efficiency of the justice system.

In addition, we recommend an examination of the possibility of setting up a process to consult other organizations and partners associated with the mission of the Ministère, in particular the Commission des services juridiques and various Québec government departments and bodies whose activities are linked to the administration of justice, such as the Ministère de la Sécurité publique. The involvement of the federal government in this process could also be considered.

Finally, because of recent changes in the relations between government authorities and Aboriginal peoples, a discussion mechanism will have to be seriously considered to bring Aboriginal communities into discussions concerning certain aspects of the administration of justice.

In this way, the Aboriginal communities could help identify measures that would increase their involvement in the organization and adaptation of the services rendered to their members.

A consultation of the Aboriginal peoples concerned could help define the type of mechanism needed.



PART VI

Recommendations

In light of the factors reviewed above, the working group recommends that:

- changes be made to the administrative structure of the Court of Québec, the Ministère de la Justice and the office of the Director of Criminal and Penal Prosecutions to improve the administration of justice in Aboriginal communities by:

    - creating a position as judge responsible for Aboriginal affairs to manage the relevant activities of the Court of Québec;

    - creating, as part of the high-level administration of the Ministère de la Justice, an entity responsible for matters connected with the administration of justice in Aboriginal communities;

    - appointing a chief prosecuting attorney responsible for supervising and directing the operations of the criminal and penal prosecuting attorneys who work with Aboriginal peoples.

- an advisory committee be set up as soon as possible, comprising a representative of the Court of Québec, a representative of the Ministère de la Justice and a representative of the Director of Criminal and Penal Prosecutions to improve and increase justice services in Aboriginal communities;

- mechanisms be established for discussions with various partners associated with the mission of the Ministère and with Aboriginal

communities, following consultations with the Aboriginal peoples concerned;

- the Ministère de la Sécurité publique be made aware of the proposed new guidelines, and that the need to include the Ministère in the work of the advisory committee be assessed, in light of its close ties with judicial activities.

APPENDIX 1

Justice for and by the Aboriginals

Global strategy

Recommendation 1

The Minister of Justice should adopt this global strategy for the administration of justice in Aboriginal communities and should adapt it to the specific needs of each of the communities in accordance with their social and cultural values, the goal being the gradual taking over by Aboriginals of responsibility for justice in their own communities on the basis of the orientations discussed during our consultations, namely: mediation, diversion, appointment of justices of the peace, creation of justice committees and consultation with the community in the choice of sentences.

Recommendation 2

The Minister of Justice should clearly indicate to the authorities of his Department his intent to intent to implement the recommendations of this report.

Recommendation 3

In implementing this report, the Minister of Justice should make sure to obtain the active participation of the Ministère de la Sécurité publique, the Ministère de la Santé et des Services sociaux and the Secrétariat aux affaires autochtones.

Justice committee

Recommendation 4

In those communities interested in pursuing such a course of action, the Ministère de la Justice should encourage and support the creation of a group of persons (a justice committee or other type of organization) with responsibility for organizing and maintaining judicial and conflict resolution services and an individual should be hired on a remunerated basis to act as secretary for such a group.

Recommendation 5

Resource persons should be hired in order to assist the communities interested in establishing such "justice committees", in particular, by training the persons called upon to serve as committee coordinators or members.

Recommendation 6

The Ministère de la Justice should study the advisability of providing financial support to these “justice committees" and should determine the form such financing might take.

Recommendation 7

A dialogue should immediately be established with the communities that have shown themselves to be the most interested in setting up such “justice committees", and the Ministère de la Justice should be ready to assist any other community expressing an interest in pursuing such a course of action.

Justice of the peace

Recommendation 8

The Ministère de la Justice should immediately adopt a program for the appointment of justices of the peace in Aboriginal communities based on the contents of our committee's working document relative to their appointment, number, qualifications and supervision, this latter function being the responsibility of the Chief Judge of the Court of Québec.

Recommendation 9

Steps should be taken immediately, in concert with the communities that have indicated their interest for the establishment of a local court either by the appointment of a justice of the peace or otherwise, and the Ministère de la Justice should be ready to assist any other community expressing an interest in pursuing such a course of action.

Recommendation 10

In all communities where the justice of the peace system is to be adopted, an agreement should be reached concerning record keeping, appointment of court clerks, use or non-use of existing clerk services and the location where court sessions presided by local justices of the peace are to be held.

Diversion

Recommendation 11

The Ministère de la Justice should develop a diversion or alternative measures program for adults, which in certain cases might be affiliated with the alternative measures program provided for in the Young Offenders Act, for the benefit of Aboriginal communities interested in immediately instituting such a program.

Recommendation 12

The Ministère de la Justice should immediately initiate an alternative measures program as provided for in the reform of the Criminal Code with respect to the determination of sentences, either under that Act if it soon comes into force or, if it does not, under the discretionary power conferred upon the Attorney General to prosecute or not prosecute.

Mediation

Recommendation 13

The Ministère de la Justice should encourage and promote the implementation of a mediation system in Québec Aboriginal communities and should provide training for mediators in association with the Barreau du Québec and other agencies with expertise in this area.

Recommendation 14

The Ministère de la Justice, in collaboration with the Ministère de la Santé et des Services sociaux, should make use of mediation in the application of the Youth Protection Act.

Consultation in the choice of sentences

Recommendation 15

The Ministère de la Justice, in collaboration with all other authorities concerned, should, by granting the necessary human and financial resources, encourage judges to consult the communities in the choice of sentences according to the consultation procedures presented in our working document or any other method which may be developed in concert with the communities and those involved in the justice system.

Participation by Aboriginal women

Recommendation 16

Those who will be responsible for the implementation of the aforementioned recommendations should take into consideration the concerns expressed by Aboriginal women's associations and should ensure that Aboriginal women and men participate, on as equal a footing as possible, in the operation of the proposed models.

Legal aid

Recommendation 17

In all the regions where the Aboriginal communities must be served by the Commission des services juridiques, the directors general of the regional community legal centres should establish ongoing communication with the authorities of the communities to be served in order to increase their own awareness of the communities' needs and, most importantly of all, to create a relationship of trust. To reach this goal, Aboriginals should be encouraged to become involved in the regional corporations.

Recommendation 18

The lawyers called upon to serve the Aboriginal communities should, insofar as possible, be assigned specifically to these communities and should receive special training concerning Aboriginal habits and customs.

Recommendation 19

Especially in remote regions, legal aid lawyers should have the necessary time to visit the communities on a regular basis outside of court terms and according to a predetermined schedule.

Recommendation 20

In the Nunavik region, a legal aid office should be immediately opened in Kuujjuaq and eventually in Kuujjuarapik or Puvirnituq. A regional or local legal aid corporation should also be established to administer the entire legal aid network in this territory.

Education and information

Recommendation 21

The Ministère de la Justice, in collaboration with the Ministère de la Sécurité publique, should immediately prepare an information campaign concerning the justice system in general, which should be adapted for content and language to the various communities, and mechanisms should be set up to assess its impact.

Recommendation 22

The Ministère de la Justice, in collaboration with the Ministère de la Sécurité publique, the Ministère de la Santé et des Services sociaux and the Ministère de l'Éducation, as well as the school boards and schools involved, should

prepare civic training and education programs to be offered in schools attended by Québec Aboriginals.

Justice and youth

Recommendation 23

The Minister of Justice, in his capacity as Attorney General, should take the necessary measures with all those involved in the justice system, the police forces and the social services system in order to accelerate the processing of cases involving young Aboriginal offenders.

Recommendation 24

The Minister of Justice should approach the Minister of Public Security and ask him to see that the police videotape out-of-court statements by young Aboriginal crime victims who may be called to testify in court and to encourage the use of closed-circuit television and one-way screens for young Aboriginal crime victims called to testify in cases of violence or sexual assault.

Recommendation 25

The Ministère de la Justice should urge the Ministère de la Santé et des Services sociaux to create reeducation, rehabilitation and treatment centres that are reserved solely for Aboriginals or, at the very least, are better adapted to the real world of young Aboriginals requiring rehabilitation or protection.

Recommendation 26

In the regions where this appears to be necessary, the Ministère de la Justice should encourage the Ministère de la Santé et des Services sociaux to establish a program for the appointment of representatives of the director of youth protection, to be chosen in concert with the Aboriginal communities and to whom the powers of the director of youth protection would be delegated.

Recommendation 27

The Ministère de la Justice should grant the Commission de la protection des droits de la jeunesse the budget necessary to reopen the Commission's office located in Kuujjuarapik, and the Commission should, in any event, review its decision to close that office.

Language and interpreters

Recommendation 28

The Ministère de la Justice, in association with other departments, especially the Ministère de la Sécurité publique and the Ministère de l'Éducation, certain Aboriginal organizations and other qualified agencies, should establish a serious and permanent program for training legal interpreters in Québec Aboriginal communities.

Recommendation 29

For those Aboriginal populations whose second language is English, legal services and documents should be made easily accessible in that language.

Judges

Recommendation 30

A position of Advisor to the Chief Judge of the Court of Québec in Aboriginal Affairs should be established, and the possibility of creating such a position for the Superior Court should also be studied.

Recommendation 31

Training courses dealing specifically with the history of Québec Aboriginals, Aboriginal habits and customs and the state of the law with respect to Aboriginals ,should be instituted by the Conseil de la magistrature for the benefit of judges working in Aboriginal communities.

Recommendation 32

The Advisor to the Chief Judge in Aboriginal Affairs and the judges who sit in Aboriginal communities or frequently hear cases involving Aboriginals should maintain regular communications with Aboriginal communities, their associations and their agencies.

Attorney General's Prosecutors

Recommendation 33

The chief prosecutor for the various regions where Aboriginal communities are located should maintain ongoing relations with the political, law-enforcement and other authorities in those communities.

Recommendation 34

The Attorney General's prosecutors responsible for cases originating from Aboriginal communities should meet from time to time with the various authorities in those communities in order to adequately assess their needs and concerns so that they can transmit this information to the courts and in order to cooperate in other crime prevention measures.

Recommendation 35

The same Attorney General's prosecutors should be assigned, where appropriate and where possible, exclusively to processing cases originating from Aboriginal communities.

Recommendation 36

Like others involved in the justice system, the Attorney General's prosecutors, including the chief and the assistant chief prosecutors, should be given the opportunity to participate in training courses specifically about the history of Québec Aboriginals, their usages and customs and the state of the law with respect to Aboriginals.

Recommendation 37

The Minister of Justice should immediately assign an additional Attorney General's prosecutor for the work to be carried out with the itinerant courts of the Court of Québec and of the Superior Court in the Abitibi district.

Native para-judicial services of Québec

Recommendation 38

Negotiations should be undertaken immediately between the Ministère de la Justice and the Commission des services juridiques, Native Para-Judicial Services of Québec, the Barreau du Québec and the Government of Canada in order to review the courtworkers program and prepare the way to train paralegals who would work under the supervision of the legal aid offices involved or the Barreau du Québec.

Recommendation 39

In any event, adequate financial resources should be granted to Native Para-Judicial Services of Québec so that it can provide adequate training to its workers and also be in a position to fulfil its mission in each of the Aboriginal communities in Québec, even the most remote.

By-laws

Recommendation 40

The Ministère de la Justice, in collaboration with the various levels of governments working in the same field, should encourage and facilitate the adoption in all the Aboriginal communities in Québec, of by-laws adapted to their needs and should participate in financing the implementation of such by-laws.

Recommendation 41

The Ministère de la Justice should allow the communities to recover the fines generated through enforcement of local by-laws and to prosecute under the Highway Safety Code of Québec.

Courts

Recommendation 42

The Ministère de la Justice, working through its Service aux communautés autochtones and the directors of judicial services for the regions concerned, should, in consultation with the Chief Judge of the Court of Québec, organize itinerant court services for the communities of La Romaine, Natashquan, Obedjiwan, Weymontachie, Manawan and, on occasion, certain other communities that may request such services for special cases.

Recommendation 43

The regional directors of judicial services and the Attorney General's Chief prosecutors in regions where Aboriginal communities are situated should ensure that persons summoned before the courts are called to appear at the location closest to their residence within the jurisdictions provided for by the Territorial Division Act and the Courts of Justice Act.

Recommendation 44

The Ministère de la Justice should immediately create in Nunavik, the territory mainly occupied by the Québec Inuit, a new judicial district having concurrent jurisdiction with the Abitibi district.

Recommendation 45

As soon as possible, a regional court should be established in Nunavik, to be called the Court of Nunavik and to be presided over by a judge of the Court of Québec or by one or more judges appointed under the Act respecting

municipal courts, but having the same powers as a judge of the Court of Québec. The judge or judges should supervise and coordinate the work of the justices of the peace, preferably Inuit, who would be appointed in all Inuit communities in Québec.

Violence and sexual assault

Recommendation 46

In matters of violence and sexual assault in Aboriginal communities, the Ministère de la Justice, the Ministère de la Sécurité publique and the Ministère de la Santé et des Services sociaux should undertake to unite their efforts to participate in healing and reconciliation programs which, beyond the mere imposition of penal sanctions, are aimed at helping the victims, the aggressors and their communities.

Recommendation 47

The Ministère de la Justice, in collaboration with the Ministère de la Sécurité publique and the Ministère de la Santé et des Services sociaux, should establish a program to assist and accompany victims and witnesses to court in cases of family violence and sexual assault.

Need for a new attitude

Recommendation 48

Government, political and administrative authorities should meet regularly with Aboriginals in their own communities in order to arrive at a fuller understanding of their needs and to establish a relationship of trust that is vital for the harmonious development of our respective societies.

Recommendation 49

Adequate criteria should be established for the selection of individuals called upon to work in Aboriginal communities to guarantee that they are genuinely interested in this milieu.

Recognition of and respect for local authorities

Recommendation 50

The administrative agreements between the departments involved and Aboriginal communities should provide for a joint selection and appointment procedure for the persons called upon to work in the justice system, and the same should hold true for appointment and swearing-in ceremonies.

Ongoing training and information program

Recommendation 51

Professional and cross-cultural training and information programs should be organized and made available on a permanent, ongoing basis to everyone working in the field of Aboriginal justice.

Need for a coordinating body

Recommendation 52

The Gouvernement du Québec should create an agency responsible for implementing this report by following the orientations set forth herein as closely as possible.

Adequate financing

Recommendation 53

The Gouvernement du Québec should ensure adequate financing for the agency responsible for implementing this report and should grant new budget allocations to the departments involved to enable them to achieve the proposed objectives.

Participation by the Government of Canada

Recommendation 54

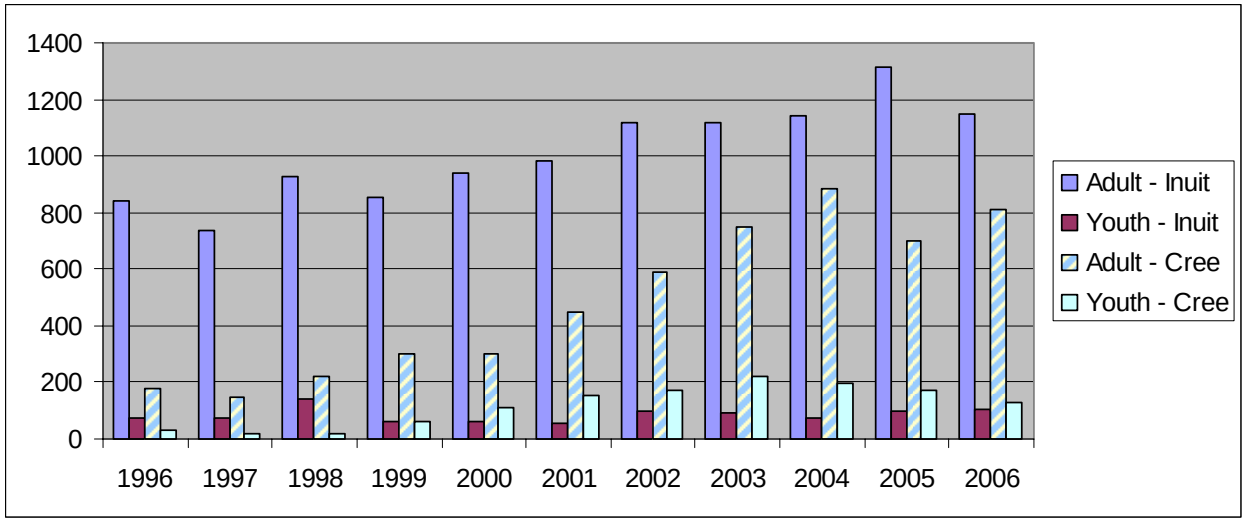
The Gouvernement du Québec, working primarily through the Ministère de la Justice and the Ministère de la Sécurité publique, should immediately undertake negotiations with the Government of Canada towards a federal-provincial agreement on the financing of the legal services provided for in chapters 18 and 20 of the James Bay and Northern Québec Agreement and for other legal services currently being provided or to be offered in the future in all Aboriginal communities in Québec, including the implementation of this report.

APPENDIX 2

Statistics on judicial cases in Aboriginal communities

Table 1

Comparative table showing the total number of case files opened by the itinerant courts in Cree and Inuit communities
Criminal (01) and Youth Offender (03)



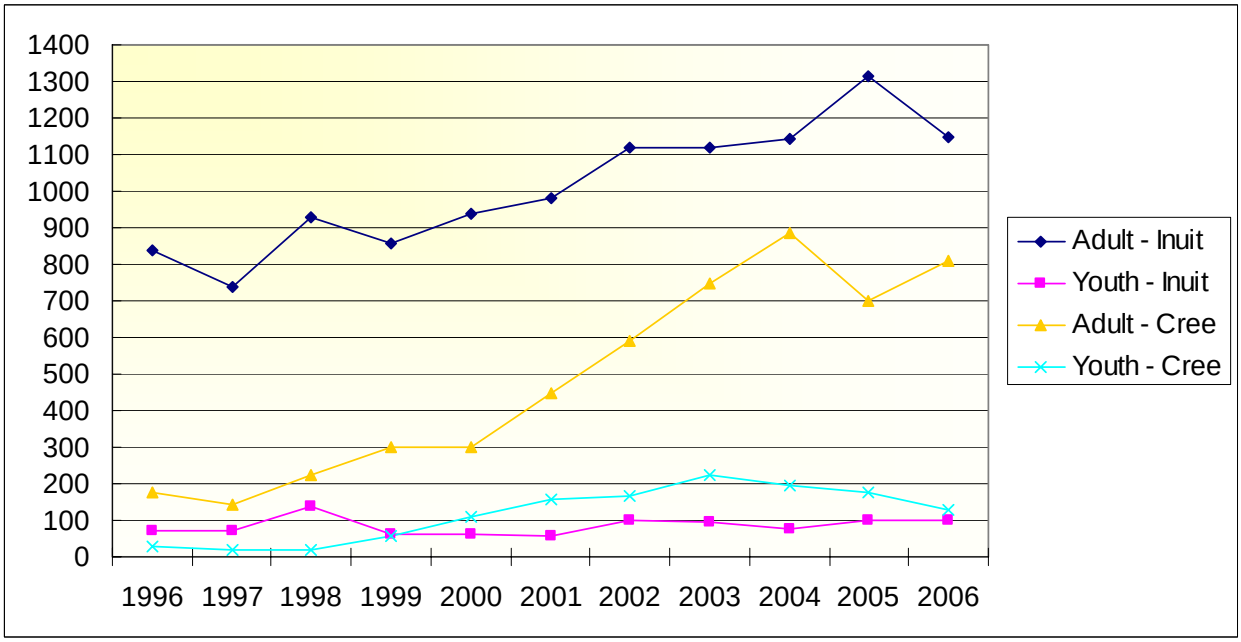


Table 2

Case files opened in 2006 – Comparison between Crees, Inuits and the total population of certain judicial districts

District	Population in 2006	Criminal (01)		Youth offender (03)	
		Total	Percentage	Total	Percentage
Saint-Maurice	90 018	1803	2.00 %	201	0.22 %
Bedford	163 117	2320	1.42 %	355	0.22 %
Bonaventure	33 547	979	2.92 %	219	0.65 %
Pontiac	26 440	316	1.20 %	73	0.28 %
Mégantic	22 080	429	1.94 %	59	0.27 %
Témiscamingue	13 331	359	2.69 %	101	0.76 %

Nation	Population in 2006	Criminal (01)		Youth offender (03)	
		Total	Percentage	Total	Percentage
Inuit	9 357	1 148	12.27 %	102	1.09 %
Cree	12 909	811	6.28 %	129	1.00 %
Inuit and Cree	*22 266*	*1 959*	*8.80 %*	*231*	*1.04 %*

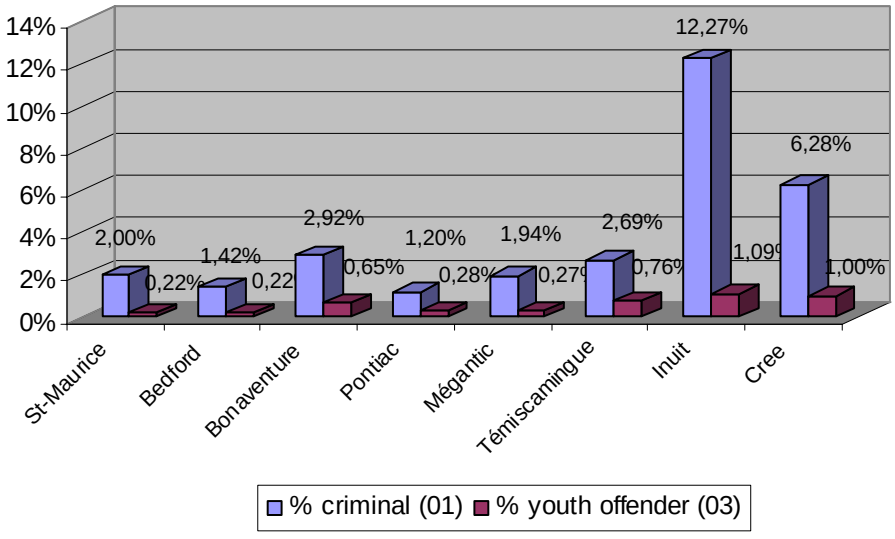
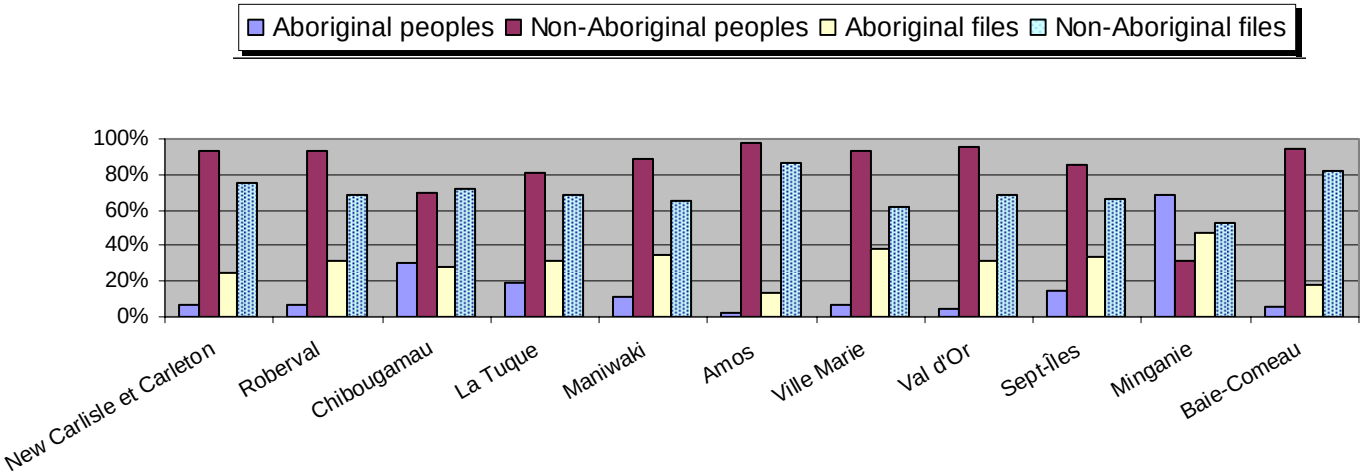


Table 3

Comparison of the number of case files opened in certain courthouses (2005)



The illustration on the cover page symbolizes the broad network formed by the Aboriginal peoples and the convergence of the actions taken by all stakeholders to create the synergy needed to improve the justice system.

The report *Justice in Aboriginal Communities: Working to Increase Synergy* is available on the following websites:
www.tribunaux.qc.ca
www.justice.gouv.qc.ca

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