



## Racism in the Justice System

One aspect of access to justice is the requirement for cultural sensitivity in the administration of justice and the provision of justice-related services. Treatment with fairness, dignity and respect by a powerful institution is the *sine qua non* of justice. It is the symbolic core of the concept of justice." (Currie & Kiefl, 1994)

Although racism impacts upon people's lives in a variety of ways, and through many different institutions and structures in society, racism in the justice system continues to be one of the most readily apparent examples of institutional racism. A cursory overview of racism in the justice system clearly reveals that the process of racism is in full operation in every aspect of the justice system in Canada.

There have been extensive studies on racism in the justice system in Canada, usually utilizing statistical research to prove racism exists in the justice system. These studies often begin with a consideration of whether racialized peoples are over-represented in the criminal justice system. Looking into these statistics, it becomes apparent that First Nations Peoples in Canada are the most over-represented group in the criminal justice system. Studies show that provincially, First Nations peoples are incarcerated at rates that are 6-7 times the overall provincial rate. For example, in Manitoba, 60% of prisoners in provincial jails are First Nations Peoples, while 70% of women in provincial jails, and 75% of juveniles in Winnipeg's detention centres are First Nations Peoples (York, 1990). Taken alone, these statistics tend to perpetuate stereotypes and misconceptions about First Nations Peoples. This is why it is essential to consider not only the results of racism, but also the processes that lead to the current realities.

To reach a full understanding of this particular issue, overrepresentation of First Nations Peoples in the criminal justice system, it is necessary to look at racism in three main ways: **personal** (or individual) racism, **systemic** racism and **ideological** (or cultural) racism. It is also necessary to see how these three main categories operate in the main processes of the criminal justice system: **policing, judiciary, and the penal system**. Personal, systemic, and ideological racism influences each of the three main processes of the justice system. For example, in regards to **policing**, personal racism is seen in statistics such as First Nations peoples are 3 times as likely to be charged and sent to court after arrest than non-natives. This statistic may be influenced by the fact that First Nations Peoples are under-represented in the police force - in Ontario only 19 of 12,093 police officers are First Nations Peoples (York, 1990). This systemic barrier interacts with cultural racism, which informs police officers' beliefs and misconceptions about First Nations Peoples.

These problems are echoed in the **judicial system**, where almost all judges are white, and less than 1% of lawyers are First Nations Peoples (Satzewich, 1998). These **systemic problems**, together with personal and cultural racism, results in problems such as lawyers advising innocent clients to plead guilty, resulting in over-representation of First Nations Peoples in jails. For example, 75% of surveyed First Nations Peoples who are inmates pleaded guilty (York, 1990). There is also a fundamental problem at the **ideological level**, in that First Nations Peoples are often alienated from the justice system, an adversarial system whose concepts of retribution and blame are not part of most First Nations traditional justice systems. As a result of language barriers, cultural differences and socio-economic problems, First Nations Peoples are less likely to receive a fair hearing. One study indicates that almost one third of First Nations inmates did not understand their sentence or the sentencing process, as a result of inadequate representation and differing cultural values (Satzewich, 1998).

"Many institutions operated by the Correctional Ministries in Ontario fail to recognize the "inherent dignity and worth" of prisoners. Nor do they "treat prisoners as individuals." Commission on Systemic Racism in the Ontario Criminal Justice System (1994).

These problems of **personal, systemic and ideological racism** do not end once First Nations Peoples enter the **penal system**. Studies indicate that First Nations Peoples continue to face **individual racist behaviour** in jail, for example, one study indicates that First Nations Peoples are harassed, punished and sometimes prevented from speaking their language with other inmates (Commission on systemic racism in the criminal justice system in Ontario, 1995). At the **systemic level**, it is found that only 18% of First Nations inmates are released on full parole, compared with 42% of the general inmate population (York, 1990). There is also **ideological racism**, as evidenced by the problems that First Nations Peoples encounter when attempting to continue their ceremonial and spiritual practices while incarcerated. Although prison officials are obligated to give inmates the opportunities to practice their faith, it has been found that rules, based on European ideological norms, prevent inmates from possessing items that are essential to

their spiritual practices (Commission on systemic racism in the criminal justice system in Ontario, 1995).

*"Legal objections to discrimination are shared by most people, but unfortunately, there is a gap between our legal and personal standards. Racism, sexism and other "isms" that deny people their full humanity and dignity continue to plague this world."* (Vink, 1994).

The experiences of First Nations peoples in the Canadian criminal justice system are not the only examples of racism in the justice system. Rather, the examples of racism against First Nations Peoples are indicative of the wider problems of racism which occur in the justice system against all racialized and marginalized groups. The case study of racism against First Nations Peoples is presented as an example of the issues that must be considered in understanding the more general issue of racism in the justice system.

In order to comprehensively understand the issue of racism in the criminal justice system it is necessary to move beyond statistics and look at the personal, systemic, and ideological racism that makes these statistics a reality. Remedies to the problems in the justice system cannot be limited to individual attempts to effect change, but must consist of comprehensive social action which acknowledges and addresses institutional and systemic racism.

## **WHERE TO GO FOR MORE INFORMATION**

### **Selected Print Resources**

Commission on Systemic Racism in the Ontario Criminal Justice System.

**Report of the Commission on Systemic Racism in the Ontario Criminal Justice System.** Toronto: Queen's Printer for Ontario.

Coutu, Jean Charles. (1995). **La Justice pour et par les autochtones.** Québec: Ministre de la Justice du Québec.

Currie, A. & Kiefl, George. (1994). **Ethnocultural Groups and the Justice System in Canada: A Review of the Issues.** Ottawa: Department of Justice Canada.

Interim Report of the Commission on Systemic Racism in the Ontario Criminal Justice System. (1994). **Racism Behind Bars: The Treatment of Black and Other Racial Minority Prisoners in Ontario Prisons.** Toronto: Queen's Printer for Ontario.

Commission sur le racisme systémique dans le système de justice pénale en Ontario. (1995). **Rapport de la Commission sur le racisme systémique dans le système de justice pénale en Ontario.** Toronto.

Satzewich, Vic. (ed). (1998). **Racism & Social Inequality in Canada: Concepts, Controversies & Strategies of Resistance.** Toronto: Thompson Educational Publishing Inc.

Urban Alliance on Race Relations. (1995). . **Race and the Canadian Justice System: An Annotated Bibliography.** Toronto: Urban Alliance on Race Relations.

Vink, Jerry. (1994). **Freedom and Responsibility: A Human Rights Reader.** St. John's: Newfoundland-Labrador Human Rights Association.

York, Geoffery. (1990). **The Dispossessed: Life and Death in Native Canada.** Toronto: Little, Brown and Company (Canada) Limited.

### **Selected Websites**

[Bill Henderson's Aboriginal Law Page](#)

[Canadian Criminal Justice System](#)

[Canadian Race Relations Foundation](#)

[Ensemble contre le racisme](#)

[Fondation canadienne des relations raciales](#)

[Justice Institute of British Columbia](#)

[Native Law Centre of Canada,](#)

[Urban Alliance on Race Relations](#)

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