



Indigenous Youth Roundtables

March 2019

Overrepresentation of
Indigenous Youth in Canada's
Criminal Justice System



Department of Justice
Canada

Ministère de la Justice
Canada

Canada 

Thanks To:

Indigenous youth voices across Canada who demonstrate continued strength and resilience in bringing their truths forward. A particular thanks goes to the Indigenous youth who shared with us their thoughts and stories regarding the experience of Indigenous youth in the criminal justice system. We have tried to ensure that your voices are clearly and truthfully represented in this report. It is the ones you speak on behalf of we keep in mind.

To the Reader:

The key to responding effectively to the overrepresentation of Indigenous youth in the criminal justice system (CJS) is the willingness to be informed by the views and experiences of Indigenous youth. The Government of Canada is committed to addressing the systemic barriers faced by Indigenous youth, and to continuing to walk the path of reconciliation with Indigenous peoples.

TABLE OF CONTENTS

- Background4**
- Engagement method.....5**
- Roundtable objectives6**
- Pre-CJS contact7**
- CJS contact 10**
 - Lack of culturally appropriate programming 10
 - Gladue Reports..... 11
 - Restorative justice 11
- Post-CJS contact..... 13**
 - Lack of community supports 13
 - Ongoing effects of intergenerational trauma 13
 - Social determinants of health..... 14
- Recommendations..... 15**

BACKGROUND

Indigenous youth are overrepresented in all stages of the criminal justice system (CJS). The realities of life for Indigenous youth make them vulnerable to come into contact with the criminal justice system both as offenders and victims. Once Indigenous youth come into contact with the system, the treatment they receive further aggravates their pre-existing vulnerability. Indigenous youth who have experienced incarceration report viewing the CJS as a non-rehabilitative and counterproductive structure. The loss of power, hopelessness, cycles of violence and desperation increases the likelihood of further contact with the criminal justice system.

As reported in the Truth and Reconciliation Commission Report, the extent of Indigenous youth overrepresentation in Canada's criminal justice system is at crisis levels. Indigenous youth are even more disproportionately represented in the correctional population than their adult counterparts. In 2017/2018, while representing 8% of the Canadian population, Indigenous youth accounted for 48% of admissions to custody in the nine reporting jurisdictions (excluding Nova Scotia, Québec, Alberta and Yukon). Male Indigenous youth accounted for 47% of male youth admissions to custody, and female Indigenous youth accounted for 60% of admissions.¹ Alarming, the scale of overrepresentation continues to increase. In 2014/2015, Indigenous youth accounted for 37% of provincial/territorial custody admissions.

The Government of Canada has prioritized the renewal of its relationship with First Nations, Inuit and Métis peoples and is advancing reconciliation with Indigenous peoples based on recognition of rights, respect, and partnership. The imperative of responding to Indigenous overrepresentation in the CJS is in the Truth and Reconciliation Commission's Report in Call to Action (CTA) 38. CTA 38 calls upon federal, provincial, territorial and Aboriginal governments to eliminate the overrepresentation of Indigenous youth in custody.

CTA 38. We call upon the federal, provincial and territorial and Aboriginal governments to commit to eliminating the over-representation of Aboriginal youth in custody over the next decade.

¹ Aboriginal youth are overrepresented in both custody and community supervision, making up 50% of custody admissions and 42% of community admissions.

ENGAGEMENT METHOD

In March of 2019, a series of three distinction-based roundtable discussions were held beginning with a First Nations roundtable on March 19th, followed by a Métis roundtable on March 20th and an Inuit roundtable on March 21st.

Each of the three roundtables provided participants with an opportunity to speak to the particulars of their lived experiences as determined by culture and geography, in a safe space with their peers. A distinction-based approach was advanced with the understanding that pan-Indigenous solutions to overrepresentation cannot address the different experiences, needs and challenges among Indigenous peoples.

The roundtables were held in the Iskotew Lodge, which stands on unceded Algonquin territory. It provided participants with a culturally safe environment. The facilitator advanced the engagement through a Sharing Circle. While the Sharing Circle is not a Métis or Inuit practice, it encourages a respectful approach to sharing and hearing. The act of sitting in a circle supports all participants in coming to the discussion as equals and provides each participant with an opportunity to speak in turns. This approach included opportunities for participants to jump in and speak to the issues they wanted to highlight most and respond to. The resulting dialogue developed organically and was characterized by sincere and supportive speaking and listening.



The **Sharing Circle** allows for the facilitator to lead the discussion in a circular direction, which provided the participants with the opportunity to share freely and either express themselves or simply listen.

Within this framework, discussion began with an opening round of introductions during which participants presented themselves to the group in the manner in which they were most comfortable. Some participants chose to provide only their names and place of residence. Other spoke to their stories, and others chose to represent themselves through verse, hip hop and the spoken word. This opening provided the facilitator with an understanding of the knowledge and experience each participant brought to the group, their comfort level in sharing their experiences with the criminal justice system, and the

manner in which each individual could be supported best while engaging meaningfully in the forthcoming discussion.

As well, as participants presented statements about their experiences and views, the facilitator asked questions designed to encourage further discussion. In this way, the day's dialogue was not guided by an agenda and allowed to develop organically. Instead, open discussions were held under three broad themes:

1. Pre-CJS contact
2. CJS contact
3. Post-CJS contact

This allowed the discussion to flow naturally and be led by the contributions participants chose to make.

To further support the participants, an Elder was present for each of the three days. Three Elders were hired: First Nations, Métis, and Inuit, and each was present at a roundtable based on their cultural affiliation. Participants were also encouraged to smudge if, and when, they felt the need.

ROUNDTABLE OBJECTIVES

The objective of the roundtables was to allow Indigenous youth to speak to the issues, challenges and examples of resilience they considered were most important regarding their experiences with the CJS.

Their voices and stories are critical to the identification and development of policies, programs and legislative tools to address overrepresentation of Indigenous youth in Canada's criminal justice system.

Within this context, the day was divided roughly into three themes:

1. Pre-CJS contact
2. CJS contact
3. Post-CJS contact

PRE-CJS CONTACT

The combined effect of the experiences of Indigenous peoples under colonialism has led to intergenerational trauma. Intergenerational trauma is the transmission of historical oppression and its negative consequences across generations.

As settlement occurred, the newly formed Canadian government implemented legislation and measures to remove Indigenous peoples from land they occupied for settlement. This resulted in the creation of harmful programs such as the Residential Schools system that was created with the intent to assimilate Indigenous children and destroy Indigenous cultures, identities and traditions.

Colonial traditions also led to what is known as the Sixties Scoop, during which youth were removed from their homes and placed in non-Indigenous homes.

Indian Day Schools, like residential schools, aimed to assimilate Indigenous children while eradicating Indigenous languages and cultures, and often had religious affiliations. This serves as another example of colonial practices which contributed to the intergenerational trauma lived by Indigenous peoples in Canada.

For the Inuit and Innu, this form of trauma also occurred through relocation policies and the disc system, under which Inuit people were required to wear an identification number, initiated in the early 1900s.

For the Metis, intergenerational trauma was also brought by being taught to hide their Indigenous side and to learn about the effect of Catholicism in their lives, both of which create confusion among Métis youth regarding their culture.

The history of these policies and laws caused the collapse of Indigenous social, economic and governance orders on both macro and micro levels. For instance, the breakdown of family and community structures has left generations of Indigenous peoples addressing severe mental health issues as well as issues relating to violence and addiction.

Passed down from parents and grandparents, these experiences led to the inheritance of heightened levels of anxiety and stress by Indigenous youth. These pressures are compounded by contemporary racism, a loss of cultural identity, and the continued systematization of colonial paradigms.

Youth informed us that many of them began modelling high-risk behaviours, including drinking and experimenting with drugs, which ultimately led to contact with the CJS at an early age.

As they embark on this path, Indigenous youth are left without the resources necessary to address high-risk behaviours. This often results in being separated from loved ones who could effectively intervene to steer their children away from high-risk behaviours.

Within this broad context, in discussing factors that make Indigenous youth particularly vulnerable to the CJS, participants at all three roundtables spoke repeatedly of the impact of growing up in the cultural void created by colonization. The resulting absence of identity leads to a lack of “purpose”, “identity”, and “self” as an individual, as well as in the larger sense of family and community.

According to participants, “growing up not knowing who you are creates isolation”. This isolation makes Indigenous youth more vulnerable to high-risk behaviours, including resorting to drug and alcohol use and engaging in illegal activity. Isolation can also lead to mental health issues and victimization.

Youth also underscored that the identity loss resulting from a lack of cultural connection cannot be addressed within families or communities where the basic structure has been broken. Many participants spoke to the desire to escape their families because of family violence, abuse, and addiction issues in the home.

A number of participants added that the structure and the sense of “safety” provided while being in custody is often more attractive than being at home. The combination of these elements illustrates the intergenerational factors of involvement with the CJS.

Participants at each roundtable highlighted that the sense of isolation and lack of individual purpose and belonging makes the community and acceptance offered by gang association attractive. Gang life provides a sense of belonging and meaning, as well as human connection and familial relations that are otherwise not available. Participants reported that gang affiliation can become intergenerational while parents, relatives, and role models are also gang members. Acceptance in a gang may even become a “right of passage” from childhood to adulthood.

While the devastating impact of loss of cultural identity was emphasised at each roundtable, Métis and Inuit participants were quick to note that their identity and cultures are distinct from those of First Nations. As such, where pan-Indigenous services and



“You try to survive in the way that you see other people surviving. [...] When everyone is in survivor mode, you can’t move forward as a collective.”

- Roundtable participant

programs are available to youth in custody, they generally do not speak to the specific needs of Métis and Inuit youth.

This lack of distinction-based supports for Indigenous peoples is not restricted to culture. Given the varied history, geography and differential treatment of First Nations, Métis, and Inuit by successive colonial governments, the challenges realized in relation to the social determinants of health are also distinct.

The distinct history, geography and relationship with governing institutions of Indigenous peoples impacts how they experience, for instance, mental health challenges, the availability of adequate housing, food, education, as well as health and social services.

The social determinants of health cover a broad range of personal, social, economic and environmental factors that determine individual and population health. They include:

- Income and social status
- Employment and working conditions
- Education and literacy
- Childhood experiences
- Physical environments
- Social supports and coping skills
- Healthy behaviours
- Access to health services
- Biology and genetic endowment
- Gender
- Culture

The additional deprivation and stresses caused by a lack of access to adequate supports further exacerbate the vulnerability resulting from cultural loss. For example, Inuit participants repeatedly highlighted the connection between a lack of facilities and activities for youth in their communities and criminal behaviours.

They also spoke to the detrimental effects of having to leave their communities to attend high school. These factors intensified the disconnection from their home, culture, and community, increasing feelings of loss and vulnerability.

A number of Inuit participants stressed the importance of community-based youth-centred activities in diverting youth from high-risk behaviours. The lack of appropriate activities for youth and boredom that results from not having access to community-based activities were identified as the main factors contributing to several of the more minor offences committed by Inuit youth in their communities. Participants characterized youth-related sporting activities as having a central role in supporting youth and bringing the community together.

CJS CONTACT

Lack of culturally appropriate programming

In speaking to the central importance of culture in establishing their sense of identity and inner strength, participants from each of the roundtables addressed the structural failings of the CJS in responding to Indigenous youth with a culturally appropriate approach. Providing culturally appropriate support for Indigenous youth is an important factor for building the resilience needed in order to prevent recidivism.

Involvement with the CJS was described as an experience that “robs you of what little identity or cultural connection you might have.” In this way, participants described the CJS as lacking the ability to heal or rehabilitate young Indigenous offenders.

Participants pointed to a lack of cultural programming as a barrier to rehabilitation. Importantly, Métis and Inuit participants noted that even where programming does exist, it is not distinction-based and as a result does not speak to their cultural deficit. Ultimately, the failure of institutions to provide culturally appropriate responses to the particular needs of Indigenous offenders was characterized as the continuation of colonialism.

Further aggravating this inability of the CJS to address the cultural needs of Indigenous youth is the lack of cultural awareness and sensitivity among CJS workers. Indigenous youth across all three roundtables spoke to the additional challenges experienced as a result of CJS workers who are not aware of, or sensitive to, Indigenous history and culture. This lack of cultural awareness resulted in poor communications and failure to provide appropriate support, both of which created further barriers to rehabilitation and healing.



“Youth who don’t understand their culture or values lose their sense of belonging and meaning.”

- Roundtable participant

Gladue Reports

Participants across roundtables spoke to various challenges and unintended consequences of Gladue Reports. These reports were described as a “barrier” to rehabilitation, a “strike against you”, and were considered as being “counterproductive”.

The reports were described as a means by which youth become labelled by the problems detailed in the reports. It was observed that in this way the problems become their identifiers, determining the way they are treated and who they are perceived to be, making it difficult to escape the labels despite their efforts. They “follow you no matter who you are or who you want to become”. The reports were described as a tool which further entrenches the challenges they face, rather than a tool which should provide tailored supports in order to resolve the underlying issues that caused their involvement with the CJS thus avoiding recidivism.

Some youth further characterized Gladue Reports as subjecting Indigenous youth to increased racism and vulnerability within the CJS. They described feeling that the reports, as well as the process of having to share their stories, were another means by which they are “devalued”.

The experience of being interviewed for a Gladue Report was seen as an additional source of trauma, further aggravating the difficulties of adjusting while being in custody. Having to share one’s story re-traumatized youth, leaving them additionally vulnerable in a custody setting. More often than not, following their interview, youth were required to go back into their cells without any health, cultural or psychological supports to help them deal with the pain of articulating their biographical history.

Restorative justice

Participants from each of the roundtables underscored the potential of restorative justice (RJ), particularly RJ efforts that are grounded in Indigenous cultures, and that lead Indigenous youth away from criminal activity and restore a sense of individual, cultural and community strength.

Participants emphasized that in order to be effective, RJ needs to be distinctions-based such that it speaks to the particulars of First Nations, Métis and Inuit cultures and daily realities. Also discussed was the importance of ensuring that RJ is community and family-based.

The fundamental role of community in finding a solution provides strength to the individual offender and to the community in supporting both offenders and victims. It also addresses the importance of the Indigenous view that the community is also a victim of an offence and helps to address an offender’s or victim’s fears about the willingness of the community to welcome their return.

Various participants identified examples of RJ measures they believed were successful. In particular, two Inuit participants talked to their experience with Inuit Justice Committees. These committees are composed of community members, including an Elder. It includes participation of victims, offenders and communities to provide an opportunity for healing and reparation for individuals and communities. It gives priority to offender accountability, needs of the victims, community wellness and healing, while supporting the offender in their rehabilitation and reconciles the offender with the community and victim. Both Inuit participants spoke positively about their experience with the Inuit Justice Committee in their territory.

POST-CJS CONTACT

Lack of community supports

Participants identified a lack of supports, resources and services in Indigenous communities as adding to the challenges Indigenous youth experienced upon release from custody and reintegration into the community.

Providing Indigenous youth with sufficient supports, such as setting up a bank account, identifying available services, and addressing commuting needs related to access to services and appointments, were identified as key elements to assist with reintegration in the community.

Participants also identified the need for longer-term assistance, such as providing youth with individual and community supports needed to comfortably reestablish their place in the community, and supporting their long-term efforts to build a life away from the forces that made them vulnerable to come into contact with the CJS. Participants also spoke to their lack of awareness regarding existing services and difficulties in accessing related information.

Ongoing effects of intergenerational trauma

Youth also noted that supports must extend beyond the individual being released from custody and should include family and the community.

A number of participants noted that upon release from custody, they are returned to the same circumstances that made them vulnerable to coming into contact with the CJS in the first place.

The emotional, physical and societal health of the individual is largely impacted by the family and community in which they live. Consequently, the individual, family and community impacts of intergenerational trauma continue to victimize Indigenous youth and act as further impediments to building resilience and preventing recidivism.

Inuit participants spoke to the experience of intergenerational trauma as an exacerbating factor, predominantly in remote Inuit communities, where geographic isolation intensifies the challenges in initiating and maintaining consistent support services.

For instance, it was noted that while mental health services do exist, the lack of cultural awareness and high staff turnover make the resources ineffective. Individuals were reluctant to use the services because they felt they would not be understood and because they were weary of having to go through the same introductory processes every time a mental health worker is replaced.



“You get out, you go back into the same house you were in before being locked-up, and everything is the same. You go right back into the situation that got you locked-up. If you were lucky enough to get cultural activities and they helped, those are gone again, if you go back to the reservation it doesn’t have the resources you need.”

- Roundtable participant

Social determinants of health

Throughout the roundtables, participants stressed the importance of addressing the social determinants of health in Indigenous communities and among the urban Indigenous population. This was expressed as being paramount for Indigenous youth, both in the prevention of initial contact with the CJS and in supporting successful rehabilitation and reintegration.

Indigenous youth reported profound damaging emotional and physical consequences due to living in conditions of extreme poverty, with little meaningful access to education, health, nutritious food and consistently available social services.

Inuit participants in particular spoke to the impact of overcrowding resulting from housing shortages, food insecurity, and the impact of these shortages in exacerbating mental and physical health problems.

The majority of Indigenous youth pointed to the benefits of pre-contact, contact, and post-contact cultural programming. Nevertheless, Métis and Inuit participants were noted that Pan-Indigenous cultural programming offered at various stages of the CJS did not respond to their cultural needs and were not helpful. In order to be effective, cultural programming must be distinctions-based.

RECOMMENDATIONS

Many of the participants spoke to the challenges they faced as Indigenous youth during their period of contact with the CJS, including during time spent in custody. Participants expressed the negative impacts of systemic and institutional racism, and the lack of cultural awareness among CJS workers, and of their lived and historical realities. The impacts described by participants ranged from continuous failures in communication between CJS workers and Indigenous youth to incidents of blatant racism.

These roundtables provided an opportunity for Indigenous youth from across the country to share their views and opinions regarding the factors which contributed to their involvement in the CJS.

The participants elaborated the following recommendations as measures to reduce the overrepresentation of Indigenous youth in Canada's CJS:

1. Work to articulate and dismantle systemic and institutional biases in the CJS
2. Educate CJS workers regarding Indigenous culture, history and current social realities
3. Further support Indigenous-controlled court system based on Indigenous culture
4. Study how Gladue principles are applied in Youth Court by talking with judges, guards, probation officers and other points of contacts regarding Gladue Report usage
5. Study the perceived impact of Gladue Reports on Indigenous youth from the perspective of Indigenous youth
6. Examine best practices of the Inuit/Innu Justice Circle and work with First Nations and Métis partners to strengthen pre-incarceration alternative measures for first-time offenders
7. Improve assessment of mental and environmental wellness when determining appropriate rehabilitative measure for Indigenous youth who have come into contact with the CJS
8. Increase communications between CJS workers and policy makers at all levels of the CJS for input and feedback on how to address the challenges they face as CJS workers in client services and in the continuum of care and rehabilitation
9. Provide greater cooperation and information sharing among social services workers, criminal justice system workers, community leadership and Elders in assisting Indigenous youth at all stages of the CJS continuum