

VIII. Justice

Overview

Aboriginal peoples are over-represented in the criminal justice system, both as victims and offenders. According to Statistics Canada, in 2007/2008, Aboriginal people represented only three percent of the Canadian population, but made up 22 percent of individuals sentenced to custody in the provincial or federal correctional system.⁴⁴ This disparity is largest in the Prairie provinces: Aboriginal people accounted for 81 percent of admissions to sentenced custody in Saskatchewan and 69 percent in Manitoba, but represented only 11 percent and 12 percent of the provincial populations, respectively. In 2004 (the latest year for which data is available), Aboriginal people were also three times more likely than non-Aboriginal people to be the victim of sexual assault, robbery or physical assault (319 versus 101 incidents per 1,000 populations).⁴⁵

In this context, the *UAPS* explored urban Aboriginal peoples' perceptions of and experience with the justice system, in terms of their confidence in the system, their support for an alternate Aboriginal justice system, and whether or not they believe alternate approaches to justice for Aboriginal people within the current system can make a difference. Also in this chapter, research conducted by Public Safety Canada and the Department of Justice Canada is used to draw comparisons between urban Aboriginal and non-Aboriginal peoples' confidence in the criminal justice system in Canada.

The following points summarize the main findings:

- **Half of urban Aboriginal peoples in the study have been in contact with the criminal justice system either as a witness to or as a victim of a crime, or by being arrested or charged with a crime.** Among those who have had serious involvement in the criminal justice system, almost six in ten feel they were treated fairly. Those who feel they were treated unfairly tend to believe it is because they are an Aboriginal person.
- **Urban Aboriginal peoples do not have great confidence in the criminal justice system in Canada, and consequently endorse the concept of creating a separate Aboriginal system.**
- **Majorities of urban Aboriginal peoples support the idea of a criminal justice system that incorporates alternate approaches to justice.** This is equally true of those that support a separate Aboriginal justice system and those who do not. Urban Aboriginal peoples believe alternate approaches (such as incorporating Aboriginal concepts of justice) would help reduce Aboriginal crime rates, improve community safety and increase their confidence in the criminal justice system in Canada.

The following paragraphs elaborate upon the perceptions of the Canadian criminal justice system among First Nations peoples, Métis and Inuit.

First Nations

First Nations peoples are most likely among urban Aboriginal peoples to report some type of serious involvement in the criminal justice system (i.e., they have been a witness to or a victim of a crime, have been arrested or have been charged with a crime). More than half lack confidence in the system, yet this proportion is no higher than among Métis (who are less likely to have had serious involvement).

44 Statistics Canada. 2009. Incarceration of Aboriginal people in adult correctional services. *The Daily*. July 21. Statistics Canada Catalogue no. 11-001-XIE.

45 Brzozowski, Jodi-Anne, Andrea Taylor-Butts and Sara Johnson. 2006. "Victimization and offending among the Aboriginal population in Canada." *Juristat*. Vol. 26, no.3. Statistics Canada Catalogue no. 85-002-XIE.

Most First Nations people express support for a separate Aboriginal justice system, and believe that alternate approaches to justice would help reduce Aboriginal crime rates, improve community safety and improve their confidence in the justice system.

Métis

Métis are less likely than other urban Aboriginal peoples to report serious involvement in the criminal justice system due to being arrested, charged with a crime or as a victim of a crime (excluding Inuit), but as likely as others to report being a witness to a crime. Among those who have had serious involvement where they feel they were treated unfairly, fewer Métis than Inuit and First Nations peoples attribute this to their Aboriginal identity. Despite this, more than half of Métis lack confidence in the justice system (similar to the proportion among First Nations peoples). Yet Métis are moderately more skeptical than First Nations peoples and Inuit of the prospect of a separate Aboriginal justice system and, albeit less so, of the impact of alternate approaches to justice on Aboriginal crime rates, community safety and their own confidence in the justice system.

Inuit

Fewer Inuit than Métis and First Nations peoples report serious involvement in the criminal justice system as a witness to or a victim of a crime, although proportions similar to that of other urban Aboriginal peoples report they have been arrested or charged with a crime. At the same time, Inuit are most likely among urban Aboriginal peoples to express at least some confidence in the justice system, by a majority of almost six in ten. Nonetheless, most Inuit say a separate Aboriginal justice system is a good idea, and are optimistic about the improvements that could be made to the current system by incorporating alternate approaches to justice.

1. Contact with the criminal justice system

Personal contact

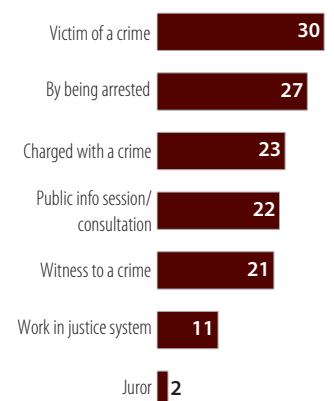
Half of urban Aboriginal peoples have been in contact with the criminal justice system either as a witness to or as a victim of a crime, or by being arrested or charged with a crime.

In the past decade, a majority (62%) of urban Aboriginal peoples have had some type of contact with the Canadian criminal justice system. Three in ten (30%) have been the victim of a crime in the past 10 years, and one-quarter (27%) say they have been arrested. About two in ten each have been charged with a crime (23%), involved in a public information session or public consultations (22%), or been a witness to a crime (21%). Small proportions say they have worked in the justice system themselves (11%) or served as a juror (2%).

Overall, one in two (52%) urban Aboriginal people have had serious involvement with the justice system – that is, they have been a witness to or a victim of a crime, have been arrested or have been charged with a crime. Moreover, most (62%) of this group with serious involvement have experienced the justice system from more than one of these four viewpoints (e.g., as both a victim *and* a witness), while four in ten (38%) have only had one type of experience.⁴⁶

Contact with the criminal justice system

In the last 10 years, have you personally been involved in the Canadian criminal justice system in any of the following ways...?



⁴⁶ This does not refer to the number of separate occasions in which there was contact between an individual and the justice system (which was not asked).

First Nations peoples (55%) are more likely than Métis (48%) and Inuit (43%) to report some type of serious involvement in the criminal justice system (i.e., witness, victim, arrested or charged). Inuit are less likely than others to report being a witness to or a victim of a crime, while Métis are less likely to report being arrested or charged.

Serious involvement in the criminal justice system is more common in Toronto (67%) and Saskatoon (65%) than in other cities. It is also more often the case among men and those aged 25 to 44. Serious involvement, and particularly that involving an arrest or a criminal charge, is also strongly associated with socio-economic status. Seven in ten (68%) of those with household incomes under \$10,000 have had some type of serious involvement with the justice system (versus 39% with household incomes of \$60,000 or more), as do six in ten (58%) of those without a high school diploma (versus 37% with a university degree). Specific experience with an arrest or a criminal charge is almost four times higher among those in the lowest income bracket (51%), compared to those with household incomes of \$60,000 or more (13%), and among those without a high school diploma (43%), compared to those with a university degree (11%).

Fairness of treatment

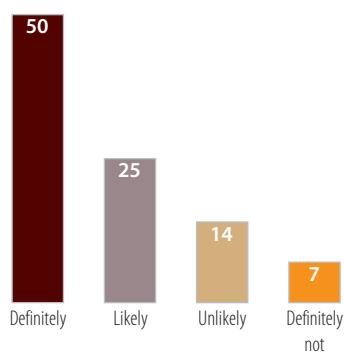
Among those who have had serious involvement in the criminal justice system, more than one-half feel they were treated fairly. Those who feel they were treated unfairly tend to think it is because they are an Aboriginal person.

The UAPS survey also asked those who say they have been seriously involved in the criminal justice system in the past 10 years (as a witness or victim to a crime, or by being arrested and/or charged) whether they think they were treated fairly by the justice system. Although opinions are divided, urban Aboriginal peoples in this group are more likely than not to feel they received fair treatment. Almost six in ten (57%) believe they were treated fairly by the justice system in Canada, compared to four in ten (39%) who feel they were treated unfairly (4% are unable to offer an opinion). It is not possible to determine how perceptions of treatment vary by the type of involvement (e.g., upon being arrested compared to when a victim of a crime) since many people have had more than one such experience, but were only asked about their overall treatment.

Among those urban Aboriginal peoples who feel they were treated unfairly by the justice system, half (50%) think it is definitely because they are an Aboriginal person, and another one in four (25%) think this is likely the reason. Inuit (67%) and First Nations peoples (58%) are more likely than Métis (41%) to definitely think they were treated unfairly because they are an Aboriginal person.

Was unfair treatment due to Aboriginal identity?*

To what extent do you think you were treated unfairly because you are an Aboriginal person?



* Subsample: Those who have been involved with the justice system as a witness/victim to a crime, or by being charged/arrested and felt they were treated unfairly.

Note: Percentages do not add to 100% due to those who said they don't know, or chose not to answer the question.

2. Confidence in the criminal justice system

More than half of urban Aboriginal peoples have little or no confidence in the criminal justice system in Canada. Comparisons with other research suggest they are more than twice as likely as Canadians generally to have low confidence.

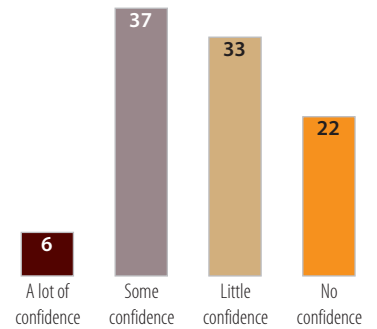
Urban Aboriginal peoples tend to lack confidence in Canada's criminal justice system. More than one in two urban Aboriginal peoples have little (33%) to no (22%) confidence in the criminal justice system. Almost four in ten (37%) have some confidence in this system, but only a very few (6%) have a lot of confidence.

First Nations peoples (57% little or no confidence) and Métis (55%) express less confidence in the justice system than do Inuit (39%). Lack of confidence is also more evident among urban Aboriginal peoples in Vancouver (64%), Saskatoon (63%), Winnipeg (60%), Toronto (59%) and Edmonton (55%).

Notably, those aged 25 and older express less confidence than younger urban Aboriginal peoples in Canada's criminal justice system (58% little or no confidence, versus 46% for those aged 18 to 24), as do those urban Aboriginal peoples who have had some type of serious involvement with the justice system in Canada (i.e., they have been a victim of a crime, a witness to a crime, or arrested or charged with a crime). Confidence is lowest among those with some type of serious involvement who believe they were unfairly treated (77% say they have little or no confidence).

Confidence in Canada's system of justice

In general, would you say you have a lot of confidence, some confidence, little confidence or no confidence in the criminal justice system in Canada?



How does urban Aboriginal peoples' confidence in the Canadian criminal justice system compare to Canadians overall?

Urban Aboriginal peoples appear to have less confidence in Canada's criminal justice compared to Canadians overall.

While the *UAPS* does not allow for a direct comparison of urban Aboriginal and non-Aboriginal peoples' confidence in Canada's criminal justice system, findings from other studies provide some insight. In a 2004 Public Safety Canada review of public opinion research conducted in Canada between 1980 and 2004, 46 percent of Canadians expressed confidence in their criminal justice system and 32 percent did not. In another study, the 2007 National Justice Survey, the Department of Justice Canada found 25 percent of Canadians expressed low confidence in their criminal justice system, while 75 percent had either moderate or high confidence in the criminal justice system.

The 2004 Public Safety Canada and 2007 Department of Justice findings suggest Canadians overall have more confidence in their criminal justice system compared to urban Aboriginal peoples. As *UAPS* data show, less than half of urban Aboriginal peoples express confidence in the criminal justice system in Canada. Compared to the 2007 Department of Justice findings, urban Aboriginal peoples appear more than twice as likely as Canadians generally to have low confidence in the criminal justice system in Canada.

According to the 2007 National Justice survey, individuals who had more confidence in Canada's public institutions reported a greater sense of belonging to Canada.

Sources: *The 2007 National Justice Survey: Tackling Crime and Public Confidence, Department of Justice Canada*; "Public confidence in the criminal justice system," *Public Safety Canada, Research summary, Vol. 9, No. 6, November 2004.*

3. Support for an Aboriginal justice system

Good idea or bad idea

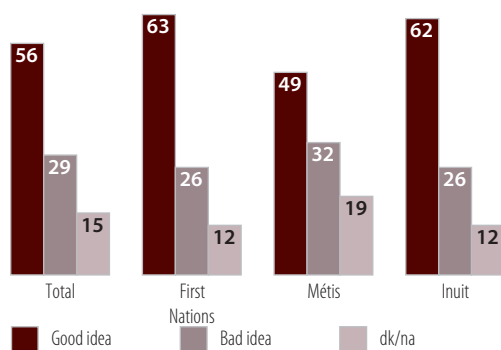
There is strong support for an Aboriginal justice system among urban Aboriginal peoples, especially among those with little or confidence in the justice system in Canada.

In light of the low confidence in the criminal justice system, it is not surprising that most urban Aboriginal peoples think creating an Aboriginal justice system separate from the mainstream system is a good idea. However, Métis are slightly more skeptical about the value of this idea than are Inuit or First Nations peoples.

More than one in two (56%) urban Aboriginal peoples think creating an Aboriginal justice system separate from the mainstream system is a good idea. Three in ten (29%) believe it is a bad idea, while 15 percent are unable to offer an opinion.

Aboriginal justice system: good or bad idea?

Do you think creating an Aboriginal justice system separate from the mainstream system is a good idea or a bad idea?



Support for a separate system is highest among First Nations peoples (63%) and Inuit (62%), although Métis are also more likely to support (49%) than oppose (32%) this idea (19% are undecided).

Across cities, urban Aboriginal peoples in Toronto (79%) and Halifax (72%) are most likely to support the idea of a separate Aboriginal justice system. Opposition to this idea is highest among urban Aboriginal peoples in Edmonton (41%) and Winnipeg (39%) – which is due to higher than average opposition among both First Nations peoples and Métis in these cities.

Not surprisingly, support for a separate system is greatest among those less confident in the justice system (such as those aged 45 or older). However, even one in two (51%) who have a lot of confidence in the justice system favour the idea of a separate system.

Finally, engagement in the Aboriginal community influences these opinions. Urban Aboriginal peoples who belong to a community that is mostly or exclusively Aboriginal (63%), or who pay a great deal of attention to Aboriginal politics (69%) are more likely than others to support the creation of an Aboriginal justice system.

WHY A GOOD IDEA. When asked why they think creating an Aboriginal justice system separate from the mainstream system is a *good* idea (unprompted, without response options offered), supporters say it is because they believe Aboriginal people would be better served by a system that allows them to be judged within their own value system and by their own peers, and that respects Aboriginal history and culture (25%). Some urban Aboriginal peoples also think a separate system would offset a current justice system that they perceive to be biased and that treats Aboriginal people unjustly (21%). Smaller groups suggest an Aboriginal justice system separate from the mainstream system would provide greater rehabilitation, healing and reduce recidivism (18%), offer a setting that is more comfortable culturally for Aboriginal people (17%) and, finally, provide a worthy alternative to an existing system perceived to be ineffective for Aboriginal people (10%).

WHY A BAD IDEA? Urban Aboriginal peoples who think creating a separate system is a *bad* idea were also asked the reason for their opinion (unprompted, without response options offered). Those opposed to this idea are most likely to say it is because they feel Aboriginal and non-Aboriginal people should be treated equally to avoid discrimination (48%). Some urban Aboriginal peoples believe that a separate system would unnecessarily segregate and isolate Aboriginal people (18%). Other reasons for opposing a separate system include the view that healing circles are not an effective punishment or deterrent (9%), and that a separate system would cause resentment or create conflict with the broader Canadian population (8%).

Reasons why urban Aboriginal peoples think creating an Aboriginal justice system separate from the mainstream system is a good idea:

The concept of justice is different in an Aboriginal perspective. I think there would be less re-offending because their sentence would be culturally appropriate.

Because our values and belief systems alone would significantly prevent a lot of our youth from being in the present criminal justice system.

For punishment to be effective it has to be meaningful to the individual, which means it would have to be close to their cultural beliefs.

...or a bad idea:

There are no [good] reasons to create one. Some may use it as an excuse to get away with crime.

Everyone is equal. Why should one race have special treatment and special laws?

Even though Aboriginal people have had experiences such as residential schools, I feel at the end of the day people are all at risk for experiencing negative situations (like abuse). I don't feel segregating [the] Aboriginal population from all other people and cultures is necessarily the answer... I feel implementing programming and healing into correctional facilities for all would be more beneficial.

Perceived impact of alternate approaches

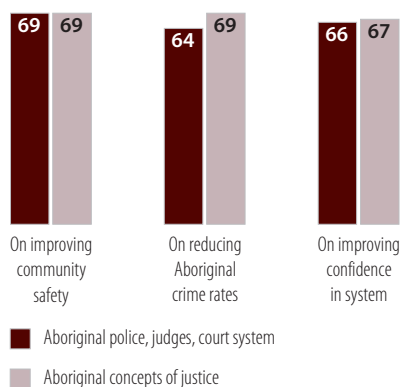
Urban Aboriginal peoples are convinced that alternate approaches to justice would help reduce Aboriginal crime rates, improve their confidence in the justice system and improve community safety.

Aside from their opinions about the value of an Aboriginal justice system, what do urban Aboriginal peoples think would make a difference in reducing Aboriginal crime rates, improving community safety, and improving their own confidence in the criminal justice system? Urban Aboriginal peoples were asked to evaluate the potential impact of two alternate approaches to justice:

- A system that incorporates Aboriginal police, Aboriginal judges and an Aboriginal court system to work with Aboriginal people who come in contact with the criminal justice system; and
- A system that incorporates Aboriginal concepts of justice, such as sentencing circles and healing circles, Aboriginal laws, and alternatives to punishment such as reconciliation and restoration.

Overall, majorities feel both approaches would have a beneficial impact. More than six in ten urban Aboriginal peoples say that each of these two approaches would have at least a moderate impact on reducing Aboriginal crime rates, improving community safety and improving their confidence in the justice system.

Impact of alternate approaches to justice Big or moderate impact



When it comes to community safety and improving confidence in the system, both approaches are considered equally likely to be beneficial. However, urban Aboriginal peoples are slightly more optimistic that a system that incorporates Aboriginal concepts of justice would help reduce crime rates (42% say it would have a big impact) than would a system that incorporates Aboriginal police, judges and court system (36%).

First Nations and Inuit are most optimistic about the impact of incorporating both Aboriginal concepts of justice and Aboriginal police, judges and courts into the justice system. Métis are slightly more skeptical, although majorities are nonetheless optimistic that there would be a positive impact on Aboriginal crime rates, community safety and their confidence in the justice system.

Across cities, urban Aboriginal peoples in Toronto, Saskatoon and Halifax are most optimistic about the potential impact of Aboriginal police, judges and courts. Inuit in Ottawa are similarly optimistic about the effect this approach would have on community safety. Urban Aboriginal peoples living in Toronto are also the most convinced of the impact that incorporating Aboriginal concepts of justice into the system would have on all three areas.

Optimism about both approaches is also consistently stronger among urban Aboriginal people aged 45 and older, and those who support a separate Aboriginal justice system. Interestingly, urban Aboriginal peoples are similarly convinced of the benefits of these alternate approaches no matter their level of confidence in the criminal justice system.