

TRAUMATIZATION IN REMOTE FIRST NATIONS: AN EXPRESSION OF CONCERN

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A. INTRODUCTION

I offer this Memorandum to convey my growing concern, after 21 years doing courts in the remote First Nations of Northwestern Ontario, that individual, family and community traumatization in a number of those First Nations is now so pronounced that in many respects the criminal justice system has been rendered powerless to effect significant change. In fact, I believe that in some respects its normal application may operate as an **obstacle** to necessary community healing.

B. THE EXTENT OF SOCIAL TRAUMATIZATION

Eight recent cases from 7 different communities illustrate how dire the situation has become:

- (1) A 50-year-old grandmother, blind from having drunk ethyl alcohol some years ago, was required for court on three matters:
 - She was the victim of her son's having held a knife to her throat demanding money;
 - She was an (auditory) witness to the rape of her passed-out niece on a mattress beside her own bed; and
 - She was herself the victim of a rape by a 30-year-old man who was drinking with her at her house. The laboratory reported that the DNA found in the vaginal swab had 2 donors. She named a second man as a consensual partner, and his DNA was submitted. The laboratory then reported that it wasn't him, but a third male instead. She has no idea how many men had sex with her, or who they were.

She could not testify at her son's trial nor at the sexual assault on her niece; when police went to get her, she was grossly intoxicated, screaming profanities at the police officer.

- (2) A thirteen-year-old girl was sniffing gasoline with a large group of her friends when some of them pulled down her pants and raped her anally. Everyone told different, hallucinating versions. Inadequately-trained Band Constables collected evidence in inadmissible ways. The girl was taken to a special group home in Northeastern Ontario and put under psychiatric care, where she has started to “thrive”. The agency refused to let her come into court to testify. At the time of her rape, her mother was charged with slicing open her father’s arm with a knife, and her father was in custody for two separate, vicious assaults on her mother. Neither parent will testify against the other. Police have no other witnesses.
- (3) A group of teenage boys assaulted and kidnapped another boy, threw him in a truck and drove towards a gravel pit to finish the beating. On the way, he jumped out, hit his head and fell unconscious. The truck may then have backed over him. Now either dead or dying, he was thrown back into the truck and taken to a church where he was pulled out of the truck-bed by his ankles, his head once again slamming the ground. He was dragged into the bushes and left. He died there.
- (4) A 27 year old woman recently died of alcohol poisoning. Her blood-alcohol reading was **650!** Two men are charged with raping her on the night of her death.
- (5) A semi-intoxicated man met a group of intoxicated youth late at night. He told them to go home. They asked him who the hell he thought he was. One of them pulled a gun and a struggle ensued. Another youth, 17, pulled a knife and stabbed him twice, deep into his back, killing him.
- (6) A thirty-year-old man with an IQ of 54 was found pulling down the pants of his sleeping sister. The pre-sentence report pointed out that he is FAS and that five of his siblings are dead, four by suicide and one from AIDS.
- (7) two young men, age 28 and 20, got into a drunken argument with an older man at that man’s home. They beat him nearly to death, caving in his skull with wrenches and tire irons. They tied him up with electrical cords, drove him into the woods and dragged him into the bush. As he was still gurgling, they stuck a meter-long stick down his throat and “stirred” it, breaking his teeth and lacerating his tongue. The bottom 8” of the stick was recovered at autopsy, deeply embedded. There was no prior relationship or reason for animosity.
- (8) A 68-year-old grandmother made her way into a drinking party in search of more alcohol. She died from a combination of alcohol consumption (with a blood-alcohol concentration of **477**) and a lacerated liver, caused by one of the men inserting a broomstick deep into her anus. When arrested a day later, police found that under his clothes the entire front of his body and his underwear were still caked with her blood.

If further evidence is required to make the point, the 8 crown attorneys in our Kenora-Dryden office had 14 active homicide cases before the courts in 2003.

To be certain, there are many communities that do **not** demonstrate this degree of traumatization or criminal activity. Some exhibit comparative health instead. Muskrat Dam, for instance, has an intensive, 5-week residential program for whole-family healing that has proven so successful that the waiting list is often impossibly long.

It is my fear, however, that the historical traumatization of aboriginal individuals, families and communities in the north plays out, to varying degrees, in virtually all communities, putting both family violence and sexual abuse in a unique context that must be fully appreciated before effective justice and healing strategies are contemplated.

C. CAUSAL FACTORS PRECIPITATING SOCIAL BREAKDOWN

While all of the colonization forces since contact, whether intentional or not, have contributed to this traumatization of aboriginal individuals, families and communities in northern Ontario, it is clear that the most significant contributor was the residential school system.

For two or three generations, most northern children between 6 and 16 were removed to residential schools, often year-round, where girls and boys were segregated. No one gained any experience of being a parent, a child or a grandchild. No one learned how to be a brother to a sister, a girl to a boy, or a husband to a wife. All were made ashamed of their culture, their history, their language and their spirituality. In schools where there was also physical and sexual abuse, that only compounded the denigration and pain.

This breakdown accelerated when people went home to find the end of the trapping economy, wholesale reliance on welfare, desperate poverty, increasing resort to intoxication of **any** kind to escape reality, and an entirely predictable escalation of family violence.

The result is irrefutable: in many communities, it is likely that two generations of children have grown up amid levels of alcohol abuse, family violence and sexual abuse that are unparalleled elsewhere in Canada. Reliable aboriginal sources indicate that in many remote communities 60-80% of the population has been victimized by serious sexual abuse (primarily at the hands of extended family members) and up to 50% have been “victimizers”. Virtually none of it is ever reported, just sublimated. The Executive Director of an aboriginal alcohol treatment center advised that 100% of her clients disclosed childhood sexual abuse as a primary force behind their alcoholism.

Equally frightening is the alarming increase in children being born with Fetal Alcohol Syndrome and Fetal Alcohol Effect, as their alcoholic mothers continue their escapist addictions through pregnancy. These children are born with **organic** incapacities to relate in empathic ways and to contemplate that their actions have consequences, making them

the very least amenable to the ‘normal’ responses of the criminal justice system. The issue of young people suffering organic brain damage through the inhalation of gasoline fumes and other solvents only adds to the desperate situation that is now commonplace in some communities.

As a measure of the impact of that cycle of abuse and sublimation on youth, we need only look at suicide: the youth suicide rate in northwestern Ontario is 398 young people out of every 100,000, while the national average is 12.9.

In January of this year, I went into one community to do 4 trials, only to find that police had never interviewed essential witnesses, despite written requests. When I asked why, the female officer stared at me silently, tears filling her eyes. In the prior 16 days, she and her 4 brother officers had cut down 5 teenagers who had hanged themselves; four had died and the fifth was on life-support.

The histories of personal violence within many families are so lengthy – and so hidden - that fear and hopelessness now rule the day in some villages. In one community, an energetic mental health worker arranged for 16 young men (each facing charges for offences involving significant violence) to go into an Alberta treatment center. The court was asked to adjourn their cases to permit that healing to begin, and we publicly celebrated that approach in court. When the Chief and Council learned, however, that the treatment was to focus primarily on the sexual abuse they’d endured as youngsters, they withdrew the funding: too many skeletons would be revealed in too many closets. Sadly, until safe and sophisticated processes are in place to handle the emotional explosions such disclosures inevitably prompt, that response cannot be faulted. In the meantime, entire communities live in perpetual denial of hidden pain, and perpetual fear of its ever being disclosed.

Given all of the above, it is not surprising that substance abuse is rampant, but it is taking on alarming dimensions: in one tiny community police estimate over 50% of the population use crack cocaine. There are no police there, because people burned down the police residence first, then the police office and cells. A 71-year-old man presently stands charged with trying to bring 50 foil-wrapped packages of what he **admitted** was crack cocaine into that community! He speaks very little English.

While the precise role of residential schools in precipitating individual, family and community breakdown may be the subject of debate in some quarters, what cannot be debated is the simple fact that the courts are now dealing with alarming levels of domestic violence, sexual abuse, deep addiction and, most alarming of all, an escalating number of young people whose exposure to violence at home and in the community has rendered them almost incapable of feeling either empathy for others or remorse for their own actions. We are witnessing acts of extreme violence committed after the most insignificant provocation, as some of the cases mentioned at the outset illustrate. Unless all of the causative factors are identified and dealt with effectively, it is even less likely that future generations will be **able** to escape this downward spiral.

D. CHALLENGES TO THE ‘NORMAL’ OPERATION OF THE CRIMINAL JUSTICE SYSTEM

At present, the first line of social response to these symptoms of community, family and individual traumatization is, unfortunately, the criminal justice system, and it is my growing conviction that it is substantially incapable of responding productively in this context of unique and deep-seated traumatization, for a wide variety of reasons.

(1) Vanishing Victims And Witnesses

There are a number of powerful forces routinely causing victims and witnesses to disappear at trial time.

Firstly, these are tiny, remote communities composed of extended families that will continue to live side-by-side long into the future. If people comply with our demand that they give evidence against others, they know there will be repercussions for having joined the ‘outsiders’ in punishing one of their own. None of those repercussions need be expressly threatened, for everyone knows that such things as getting a job, getting a better house or getting your kids sent out to school depend upon maintaining community solidarity and not “rocking the boat”.

Secondly, traditional aboriginal ethics also disapproved of “face to face” confrontation as a means of dealing with disputes, precisely what our rule against hearsay demands. Where that in-court confrontation is aimed at imposing punishment instead of exploring relational rehabilitation, the cultural reluctance to testify becomes even more pronounced. In some communities, saying accusatory things about someone face-to-face in a public courtroom, while sober and thoughtful, is more reprehensible than the unthinking, drunken violence used by the accused.

Thirdly, abuse of all kinds has become so common in some communities that anyone who stands up to it by reporting it to the ‘outside’ system is seen as putting themselves ‘above’ everyone else. We have watched siblings of sexual abuse victims gang up on the child who has disclosed, saying “We put up with it; what makes you think you are so special?” We have seen women throwing rocks at police cars, trying to stop them from taking abused women and children out to shelters and thereby ‘deserting’ their husbands. We have seen teenage girls who **did** testify against adult rapists banned from their home community and forced to live on the streets of neighboring urban centers.

Fourthly, domestic violence has reached frightening levels in some communities, but prosecution is almost impossible. For one thing, poverty, derelict housing and large families impose hardships on abused women that they can seldom endure on their own. The majority of abused women who see their husbands taken out to jail find themselves incapable of hauling wood and water on their own, as well as feeding and clothing children – and keeping the drunks at a safe distance at night. On a routine basis they are forced to conclude that *his abuse is preferable to his absence*, and they refuse to support

a prosecution that will result in his further removal. There are no shelters in First Nations in the north, and in some communities they would likely be unsafe places at any rate.

Fifthly, some of the communities operate under the rigid direction of what have become known as “Old Testament Elders” who decree that a man has a right to beat a woman to “keep her in line”. We have watched some Chiefs and their Councils oppose our efforts to get abused women into places of safety by citing biblical injunctions against “casting usunder what God has joined together”. In the most striking illustration in my experience, two families had arranged the marriage of their children, but when the husband discovered that his new wife had been sexually abused by an uncle, he took her to a gravel pit, stripped her, and for three days whipped her black and blue with tree branches; at sentencing, **both** families insisted that she go back to him as soon as his jail sentence was completed, to preserve the ‘sanctity’ of their marriage.

(2) The Limits of Specific & General Deterrence

Twenty-one years conducting prosecutions in small northern communities has made it abundantly clear that the threat of jail is of limited utility when dealing with addicted, impoverished, unemployed and chronically depressed people for whom having a criminal record is meaningless.

In fact, the hardship of custody is primarily felt by those left behind. We have had abused women ask the court to take **them** out to jail, so their abusive husbands would have to shoulder the burden of chopping wood, hauling water, doing laundry, feeding children and fending off the drunks and gas-sniffers all night long. One youth was so distraught when we did **not** take him into custody with his friends that he went on a rampage as soon as the court plane left; he too wanted to go where there were good meals, no drunks, a television, canoes, ATV’s and excursions into the wilderness, none of which he got at home.

To repeat, general and specific deterrence have almost no impact on people who feel they have nothing to lose.

Besides, few offenders are “thinking ahead” as they engage in the kinds of criminal activities common in remote communities, for the simple reason that, almost without exception, they were in such extreme states of intoxication that forethought is a nonsensical consideration. Most are only aware that they are once again in the grip of an undefined rage that has been smouldering within them since childhood.

3.The Impact of Complex PTSD On Testimonial Capacities

It is my present view that there may be a significant proportion of the population in some remote communities that suffers from **Complex** Post Traumatic Syndrome. If that is the

case, then they will, like battered women suffering the same condition, present special challenges to the normal operation of the criminal justice system.

In a presentation to Crowns Attorneys and Victim/Witness Assistance Program personnel, Dr. Lori Haskell, an Assistant Professor of Psychiatry at the University of Toronto specializing in battered women, recited the **causes** of PTSD in battered women, and it was impossible not to see how strikingly applicable they were to the historical situation of many aboriginal populations, male and female alike:

- growing up in an environment of neglect and deprivation;
- experiences of sexism and racism;
- histories of social, psychological and legal subordination;
- homelessness/extreme poverty;
- a sense of repeated interpersonal victimization, including childhood abuse and other physical violence; and
- a conviction of powerlessness and helplessness.

Dr. Haskell then went on to list the symptoms most commonly apparent in battered women and, once again, I found the parallels with many aboriginal victims, witnesses **and accused** to be strikingly similar:

- Uncontrolled vacillation between pronounced dissociation and extreme fear;
- Significantly greater insomnia, sexual dysfunction, suicidality, self-harm and what is often termed a “smouldering anger”;
- Chronic, low-grade depression which is considered a “normal” way to feel;
- Reduced ability to trust one’s own judgment, assert needs or cope with others;
- Disruptions in consciousness, memory, sense of self, attachment to others and the establishment of sound and durable boundaries within relationships; and
- Substance abuse in a vain attempt to ‘regulate’ emotional states.

Dr. Haskell then indicated that people suffering from Complex PTSD face special challenges when asked to participate in the criminal justice system, in that:

- at times of emotional distress (like giving evidence in court), they may be unable to speak or articulate their thoughts;
- their account of recent stressful events may be unclear, vague and self-critical;
- they may appear unconcerned in court, will use dissociation and will appear to have “checked out”; and
- they will have difficulty mustering and maintaining the energy, focus and enthusiasm necessary for the court process.

As she further explained, the experience of re-living trauma routinely **recreates** the experience of that trauma, with all its attendant fear, avoidance and dissociative responses, as well as a coincident inability to provide a sustained, coherent and convincing narrative. She quoted the observation of Judith Herman, the leading figure in identifying and defining Complex PTSD:

“If one set out by design to devise a system for **provoking** intrusive post-traumatic symptoms, one could not do better than a court of law.”

When those psychological impediments to effective participation in trials are added to the cultural and situational impediments faced by aboriginal people, especially those whose first language is not English, it is not surprising that participation rates in the trial portion of the criminal process are so low as to be statistically meaningless. As a result, of the small percentage of crimes that are ever disclosed to police, only a very small percentage of those ever result in a conviction *unless a guilty plea is entered* – and that only happens on “facts” that an accused is prepared to admit, and for a sentence that he or she is prepared to accept. As a crown attorney, I am routinely unable to bring the full reality before the court – and more secrets are added to the load everyone carries.

E. SYSTEMIC DEFICIENCIES IN DELIVERING CRIMINAL JUSTICE TO REMOTE COMMUNITIES

Delivering effective justice services to remote First Nations is hampered by more than the concerns listed above. There are other systemic factors that significantly reduce our capacity to make a meaningful contribution to community peace or recovery.

(1) The Infrequency Of Courts

In some communities, court is held only two or three times a year. In the busiest, largest communities, there may be as many as 10 sittings – but each of them will have very large dockets. The April, 2006, docket in one community listed 183 charges against 86 people, including:

- 6 sexual assaults
- 9 aggravated assaults
- 20 assault with a weapon
- 6 assault cause bodily harm
- 14 assault police/resist arrest
- 41 common assaults
- 6 firearm charges
- 8 impaired/dangerous driving.

The infrequency of courts not only presents prosecutorial challenges in terms of the **volume** of cases on the day of court, but other significant challenges as well:

- Victims and witnesses must continue living side-by-side with the family of the offender for long periods of time, frequently resulting in either escalation of the conflict or in their finding their own accommodation wholly outside the court, in either case vanishing by the time the court finally appears;
- Youth prosecutions are almost meaningless after many months have gone by (and youth are often out at school in an urban center by the time the court arrives); and

- The turmoil and uncertainty surrounding domestic violence prosecutions often lasts so long that victims, their children and the community itself feel abused by the system, especially if the accused is either barred from the community or under strict release conditions.

(2) The Impact of Under-Resourced Policing

Prosecutions in many remote First Nations are routinely compromised by inadequate police investigations caused primarily by inadequate manpower, training and supervision, especially when contrasted with policing levels provided to non-aboriginal communities in the region.

The Pikangikum First Nation is a stark illustration. I am advised that in 2005, the 5 Band Constables and one Sergeant in that community recorded approximately the same number of occurrences as the neighboring non-aboriginal community of Sioux Lookout, which has approximately 20 full-time, regular-force members of the Ontario Provincial Police. Further, a large proportion of those occurrences involved serious cases of domestic violence, sexual abuse and violence between youth.

In many communities, there are only one or two police officers, on call 24 hours a day, 7 days a week. They burn out quickly from the isolation, the workload, the demands of Chief and Council that they do things that are illegal (like going into private homes without permission or warrant), and the fact that there is almost no on-the-job training to let them progress in their careers. The high turnover rate means that new officers, often drawn from the south, are continually disadvantaged in gaining community support for investigations, prosecutions or crime prevention. Often, there is overt hostility and violence instead.

Primarily because they are too busy, officers are routinely unable to take statements from persons other than the victim, to obtain medical reports or to respond to detailed crown requests for specific follow-up. As crowns, we frequently write such letters with little hope that they will be acted upon; in some cases, after months of unsuccessful requests for essential follow-up, we are left with little choice but to stay the prosecution.

It goes without saying that police officers themselves are embarrassed by the constant failures they are powerless to prevent. The rate of burn-out inevitably flowing from being effectively on duty 24/7 in remote locations is bad enough; feeling that your efforts produce few results makes it worse by far.

In some communities, there are no resident police at all, and outside officers only attend for more major occurrences; unfortunately, they are then unavailable for follow-up investigatory steps.

Some communities are so desperate for help that they have started to take matters into their own hands. In an effort to control heavily intoxicated persons before they harm

others, the Pikangikum First Nation employs a number of civilians as “Peacekeepers”. They patrol the community, with handcuffs, effecting “arrests” and putting intoxicated people into overnight detention in the police cells, with no police supervision. On the instructions of Chief and Council, they frequently go (unlawfully) into houses to break up drinking parties and (unlawfully) arrest intoxicated persons; some of those persons resist forcefully and are charged with assaulting the Peacekeepers, but those charges have to be withdrawn as long as the resistive force was not disproportionate. Gangs of gas-sniffing children are now starting to ambush Peacekeeper patrols with baseball bats and hockey sticks.

(3) The Impact of Imprisoning Members of Small Remote Communities

What is often neglected is the impact of young men returning from jail to tiny remote communities. All too frequently they return with a frightening criminal arrogance, their skills of intimidation and criminal activity significantly enlarged. Remote reserves now have growing populations of young people imitating the ‘gangsta’ persona seen on television, where even the slightest insult is seen as deserving of significant, occasionally lethal, retaliation.

These ‘returning heroes’ are also the ones responsible for developing the drug transportation networks that are flourishing across the north. Virtually all communities have bylaws banning alcohol, as well as airport-searches and winter-road-searches to detect its importation. None of those measures, however, are routinely capable of detecting the importation of easily-concealed drugs like cocaine, and its use is clearly spreading.

In short, some communities see the imposition of jail as **contributing** to community harm, while doing little to deter other “like-minded individuals”. To the contrary, where lack of identity, purpose and power are almost a given with youngsters in traumatized communities, gaining a criminal identity often has significant appeal.

F. THE NEED TO BREAK THE SILENCE

As I hope to have illustrated, the traumatization of individuals, families and communities, stemming originally from the impact of residential schools but perpetuated and intensified by intergenerational family violence and sexual abuse, has now reached alarming levels in many remote Ontario First Nations. In my view, it will continue to escalate as long as the **secrecy** surrounding histories of abuse, especially within families, is maintained.

One of the reasons for maintaining that secrecy is obvious: the primary response of the criminal justice system to disclosure of such abuse involves trying to put offenders in jail. As long as that is all we offer, it seems clear that many victims will not only refuse to participate in prosecutions that have been initiated, but will also refuse to **disclose** into our system – and the intergenerational secrecy will be perpetuated.

Some First Nations in Canada have begun to respond to that dynamic by developing intensive healing programs for victims, offenders and families, and by encouraging Crown Attorneys to modify 'normal' sentencing practices if offenders acknowledge their crimes and successfully complete the programs. The Hollow Water First Nation in Manitoba has a healing program around sexual abuse, the Muskrat Dam First Nation in northern Ontario offers such a program around family violence, and the Mnjikaning (Rama) First Nation in southern Ontario offers such a program for youth and family violence cases. As we are learning, where offender participation in lengthy and demanding healing programs can earn a reduction or elimination of incarceration, offenders and victims are much more likely to support full disclosure and acknowledgement in the hope of achieving whole-family rehabilitation. Until such healing programs are in place, however, the threat of incarceration often acts as a brake on both victim disclosure and offender admissions, perpetuating the secrecy and the pain, anger and fear that surround it.

G. CONCLUSION

I am concerned that we are seeing growing levels of family violence, sexual abuse and violence by (and against) youth in many aboriginal communities in the remote portions of Ontario, all of them flowing out of longstanding individual, family and community traumatization. I am concerned that the communities themselves are often, understandably, in self-defeating denial about the extent of their difficulties, and frequently complicit in covering up the social reality. I am similarly concerned that those realities are not well-known to the outside world, and that too many of us continue to believe that the existing criminal justice system is presently able to effect positive change all by itself.

It's time, in my view, to acknowledge that there is indeed a significant 'justice' difference between Peterborough and Pikangikum, Burlington and Big Trout Lake, Gravenhurst and Grassy Narrows.

While we clearly need better policing to increase community (and suspect!) safety and ensure proper investigations, that will likely do little to increase either disclosure or support for jail-based prosecutions. Similarly, while we should continue to support processes of reconciliation like family group conferences, especially for youth, it is clear that they were never designed for the deep injury and dysfunction involved in sexual abuse or longstanding family violence. And, while appointing more aboriginal justices or providing cross-cultural training to those of non-aboriginal descent may have other benefits, such measures cannot be expected to play a significant role in responding to the traumatization behind pronounced criminal activity.

It is my hope that aboriginal and non-aboriginal governments will together acknowledge the extent of the problem, and together explore promising initiatives. If we truly wish to help communities help themselves, we must be willing to explore modifications of our

normal justice practices, perhaps taking inspiration from the success of programs like those offered in Hollow Water, Muskrat Dam and Mnjikaning, and encouraging further innovation as well.

If I sound alarmist in what I have put forward, that is my intent, for the situation in some communities is indeed alarming: there are too many people, especially young people, killing themselves and each other. Virtually every case we deal with involves human beings trapped in prisons of poverty, fear, addiction, helplessness, hopelessness and, all too frequently, a debilitating rage unknown - and likely incomprehensible - to most other Canadians. Their children truly are our children, and I fear that we are failing them.

POST SCRIPT: A HOPEFUL NOTE!

On a more hopeful note, the issue of facilitating recovery from “mass victimization” and “mass Complex PTSD” is being explored in other parts of the globe. For instance, an American conference in August of 2006 brought together the following people/issues:

- Yael Danieli, who has edited a book entitled “International Handbook of Multigenerational Legacies of Trauma”;
- Professor Charles Gigley, who has written a book entitled “Honouring Differences: Cultural Issues In The Treatment of Trauma & Loss”, focused on Complex PTSD;
- Emerging “mass justice” processes in Rwanda and Uganda involving non-prosecutorial systems for disclosure and healing that build upon the work of the Truth & Reconciliation Commission in South Africa
- Chris Sumner of Australia, who is exploring similar issues as head of the National Native Title Tribunal in that country;
- Professor Taylor, who has been doing similar work with aboriginal peoples in the Cook Islands.

As well, Canada’s Aboriginal Healing Foundation has been commissioning work on the impact and frequency of Post Traumatic Stress Disorder in aboriginal communities with residential school histories.
