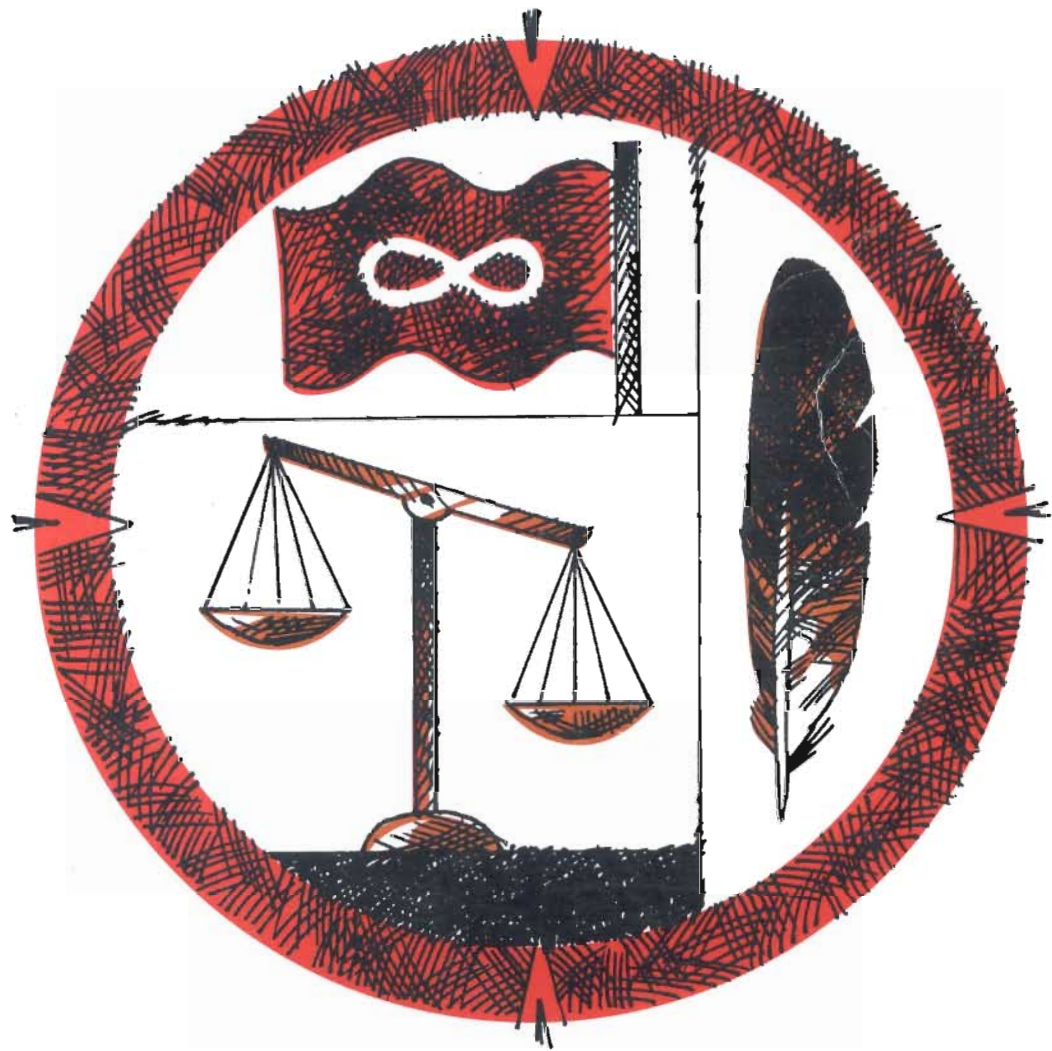




Justice on Trial

Report of the Task Force
on the Criminal Justice System and its Impact
on the Indian and Metis People of Alberta

Justice on Trial Volume I Main Report



Volume I Main Report

E
98
C87
T27
1991
v1

**Report of the Task Force
on the Criminal Justice System and its Impact
on the Indian and Metis People of Alberta**

**Volume I
MAIN REPORT**

March, 1991

~~_____~~
~~_____~~
~~_____~~
~~_____~~

ALBERTA GOVERNMENT LIBRARY
LABOUR BUILDING SITE
3rd FLOOR, 10808 - 99 AVENUE
EDMONTON AB T5K 0G5

TABLE OF CONTENTS
VOLUME I - MAIN REPORT

	Page
Letter of Transmittal	
Chairman's Acknowledgements	
1.0 Introduction	1-1
2.0 Policing	2-1
3.0 Legal Aid	3-1
4.0 Courts	4-1
5.0 Judges, Prosecutors and Lawyers	5-1
6.0 Corrections	6-1
7.0 Native Counselling Services of Alberta	7-1
8.0 Other Considerations	8-1
8.1 Socio-Economic Factors	8-1
8.2 Jurisdictional Interaction and Overlap (Corrections)	8-23
8.3 Government Departments - Services	8-25
8.4 Cross-Cultural Training	8-30
8.5 Aboriginal People Employed in the Criminal Justice System in Alberta	8-41
8.6 Women and Youth	8-50
9.0 An Aboriginal Perspective on Justice	9-1
10.0 Ongoing Process	10-1
11.0 Alternative Methods of Dealing with Aboriginal People	11-1
12.0 Review of the Report: "The Public Inquiry into Policing in Relation to the Blood Tribe"	12-1
13.0 Appendices	
Appendix One	Order-In-Council
Appendix Two	Terms of Reference
Appendix Three	Task Force Members
Appendix Four	Acknowledgements
Appendix Five	Process
Appendix Six	Task Force Activities
Appendix Seven	List of Submissions
Appendix Eight	Bibliography

TASK FORCE ON THE CRIMINAL JUSTICE SYSTEM AND ITS IMPACT ON THE INDIAN AND METIS PEOPLE OF ALBERTA

Chairman: Mr. Justice R.A. Cawsey

Members: Leroy Little Bear Cynthia Bertolin
 Supt. Cleve Cooper Janet Franklin
 Arnold Galet Michael Gallagher

Administrator: Patrick Delaney

14th Floor, Park Square
10001 Bellamy Hill
Edmonton, Alberta
T5J 3B6

Telephone: (403) 427-9703
Facsimile: (403) 427-4702

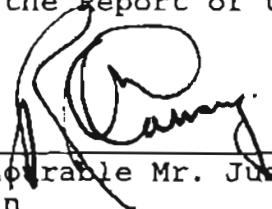
March 1991

The Honourable Pierre H. Cadieux
Solicitor General of Canada

The Honourable Ken Rostad
Attorney General of Alberta

The Honourable R. S. (Dick) Fowler
Solicitor General of Alberta

We, the members of the Task Force appointed to review, report and make recommendations respecting "The Criminal Justice System and its Impact on the Indian and Metis People of Alberta" hereby submit the Report of the Task Force.

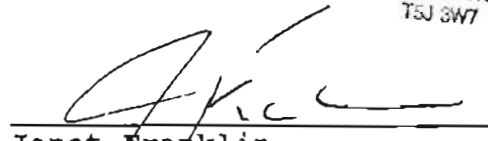


The Honourable Mr. Justice Robert Allan Cawsey
Chairman

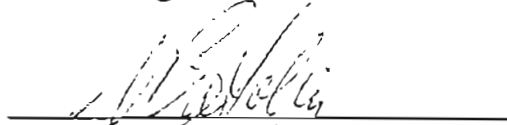
RECEIVED
SOLICITOR GENERAL
811 PL. JOHN E. BROWNLEE BLDG.
10005-97 STREET
EDMONTON, ALBERTA
T5J 3W7



Leroy Little Bear



Janet Franklin



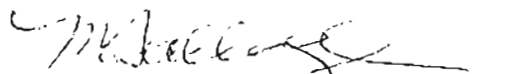
Cynthia Bertolin



Arnold Galet



Cleve Cooper



Michael Gallagher



Chairman's Acknowledgements

As Chairman of the Task Force, I acknowledge the dedication and efforts of the Task Force members, each of whom has drafted a portion of this report.

I thank the Chiefs and Councils, the Chairman of the Metis Settlement we visited and the members of the Bands and Settlements for the hospitality they extended to us during our visits and for the frank discussions at our meetings.

All Government departments and agencies, both federal and provincial, have responded promptly and fully to all of our requests for information.

I am grateful to the Executives and members of the Native Brotherhoods and Sisterhoods in our gaols and penitentiaries. They gave us an insight into the Criminal Justice System that could have come from no other source.

I would like to thank the Wardens of the Penitentiaries and the Directors of the Provincial Correctional Institutions and Young Offender Centres for permitting us unsupervised access to inmates.

A special word of thanks must go to Assistant Commissioner (retired) Gordon

Greig, the former officer commanding "K" Division, R.C.M.P. and to Chief Superintendent W.R. Spring, the officer in charge of the R.C.M.P. Training Academy. Assistant Commissioner Greig arranged for the Task Force to fly to Regina in an R.C.M.P. airplane, and Chief Superintendent Spring arranged for our accommodation and permitted us to attend a one-day cross-cultural training session with Constables under instruction.

I would like to thank Chief Justice Moore of the Court of Queen's Bench of Alberta for relieving me of my judicial duties to permit me to devote all of my time to the Task Force. Chief Superintendent Cleve Cooper, Michael Gallagher, and Arnold Galet were also assigned on a full-time basis respectively by the R.C.M.P., Correction Services of Canada and the Alberta Department of the Solicitor General.

Janet Franklin, who was appointed by the Alberta Attorney General, gave priority to the needs of the Task Force when they conflicted with her responsibilities as a private practitioner.

Cindy Bertolin interrupted her articles with a law firm at considerable inconvenience to herself.

Leroy Little Bear, a Professor at the University of Lethbridge, contributed his vast knowledge of Indian culture and tradition. His sense of humor enlivened many of our lengthy meetings. In addition, he faced the inconvenience of commuting to Edmonton from Lethbridge for our meetings.

Patrick Delaney, our Administrator, organized our offices, arranged our meetings with various Aboriginal groups, made all travel and accommodation arrangements. Above all, he kept us within our budget.

I would also like to thank Richard Butler, our Researcher and Statistician, who has compiled, analyzed and produced the mass of statistics which form an appendix to this report.

A special word must be said with respect to our secretary, Grace Schuster, whose cheerful nature, skill, ability and patience have made the production of this report possible.

1.0 Introduction

The final lesson ... is the lesson of balance, for wisdom teaches how all things fit together. And balance, when applied to the interconnectedness of all human beings, becomes justice. With its aid, the traveller can see all things as they really are. Without it, there can be no peace or security in the affairs of the world.

The Sacred Tree

The Aboriginal people and all levels of Government have concerns about the level of justice provided by the current criminal justice system to Aboriginal people. Unless more balance can be created, justice will remain elusive and discontent will continue. The impact of the criminal justice system on Aboriginal people can be measured by the disproportionate number of Aboriginals in our correctional institutions. Aboriginals are often at the receiving end of what appears to them to be a foreign system of justice delivered to a large extent by non-Aboriginals.

The Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta was created in response to these conditions.

Objective

The overall objective of the Task Force has been defined clearly in the Terms of Reference:

to complete a review of the criminal justice system in Alberta as it relates to Indian and Metis people and to provide a report for the Solicitor General of Canada, the Attorney

General of Alberta and the Solicitor General of Alberta, which identifies any problems and proposes solutions to ensure the Indian and Metis people receive fair, just and equitable treatment at all stages of the criminal justice process in Alberta.

Philosophy

To achieve the overall objective, the Task Force has adopted a number of guiding principles. We believe that law deals with human conduct and that conduct cannot be separated from its cultural base. Justice deals with fundamental fairness, equity, and equality. This means that when a minority group is culturally different from the larger society, its perception of law and justice will be different.

We believe that to achieve harmony between the justice system and the Aboriginal people, they must be fully involved in any policy development, program planning and implementation and service delivery with respect to the criminal justice system. The criminal justice system in society exists to perform the function of social control. Social control is exercised by treating those who go through the system in a firm but

humane manner. The criminal justice system is not equipped to be the ultimate repository of all social problems. Yet, this is currently one of the roles it fills.

◁ The social problems experienced by Aboriginal people are a result of the socio-economic conditions of impoverishment they face. Alcoholism, poor health, poor education, dangerous and unsanitary housing and unemployment are symptoms of powerlessness. They are not the causes of it. ▷

◁ The criminal justice system can be made more sensitive to the needs of Aboriginal people. However, no meaningful and lasting change can be made to the involvement of Aboriginal people with the criminal justice system without an integrated and comprehensive approach to improve the socio-economic factors which contribute to the problems. ▷

We believe that the imposition of the majority's justice system on the Aboriginal minority results frequently in unfairness and inequity. The reality or possibility of injustice is a legitimate reason for the improvement of the justice system by increasing its flexibility and examining and implementing alternatives.

The criminal justice system is not only penal in nature. Its stated aims and objectives are: prevention, restitution, rehabilitation, deterrence and protection of the public.

We believe that Aboriginal people, both by virtue of their Aboriginal and Treaty rights and by virtue of their cultural and spiritual values and worldview, hold a unique position in the ethnic mosaic of Canadian society. Indians and Metis do not wish to be absorbed by the larger

society. They wish to retain their individual history, rights, and spiritual and cultural values.

The Task Force reiterates the principle that all Canadians are entitled to the protection of the rule of law and to the protections provided by the Charter of Rights and Freedoms. We also recognize that society as a whole, and the criminal justice system in particular, must acknowledge Indian and Metis people as the Aboriginal people of Canada, whose cultural and spiritual views and expectations differ from mainstream society.

Issues of fundamental concern to Aboriginal people remain unresolved. Of these, the most important are land claim settlements, Treaty and Aboriginal rights, and sovereignty. Such issues can only be resolved by dialogue between the Government of Canada and Aboriginals. Resolution of the issues will affect the level of involvement of Aboriginal people in the social welfare and criminal justice systems.

Aboriginal communities are at varying stages of social change. As a consequence, they are in varying states of readiness for assuming control of social welfare and criminal justice systems. There is considerable diversity among Aboriginal communities and these communities have different goals and aspirations.

◁ We believe that the members of the larger society and the Aboriginal people can live in harmony. We repeat that, to achieve such harmony, Aboriginal people must be fully involved in any policy development, program planning, and implementation and service delivery with respect to the criminal justice system. ▷

Process

We do not perceive our role to be one of engaging in yet another study or survey of Aboriginal people. It is our responsibility to assess the impact of the criminal justice system on Aboriginal people.

We discovered that some Indian and Metis people were reluctant to co-operate with us or to assist us in our activities. Several Bands did not respond to our request for briefs or presentations nor were they interested in having us visit their reserves or settlements. On the other hand, we received excellent co-operation from the Indian Association of Alberta and the Metis Association of Alberta, certain Indian Bands and Metis Settlements, government agencies, Aboriginal agencies and agencies oriented to the criminal justice system. The media gave extensive coverage to the presence of the Task Force in Aboriginal communities. Some of the coverage was not favourable to the community or the criminal justice system.

Several Indian and Metis groups felt that the Terms of Reference of the Task Force were too restrictive and did not cover the areas they considered to be essential. Socio-economic factors were an example. In addition, the Aboriginal community felt that there should have been more Indian and Metis representation on the Task Force.

The consultative process set out by the Terms of Reference, the extent and complexity of the areas to be examined, and the time limit of one year shaped the format and content of the Task Force's final Report. The Task Force was not established as a judicial inquiry, public inquiry or royal commission. It did not retain counsel, record proceedings or commission external research studies. The

statistical information and summary documents in this Report were compiled by one full-time researcher on staff and two contracted consultants.

Most of the information on which our recommendations are based is anecdotal. Some of the recommendations arise from the 130 years of collective experience of the seven Task Force members in the criminal justice system. Our backgrounds include the police, prosecution, superior courts, private law practice and corrections. The appointees of the Indian Association of Alberta and the Metis Association of Alberta, both graduates of law schools, have brought to the Task Force their knowledge of Indian and Metis culture and traditions.

We used several other sources of information. In total, we received fifty-six written submissions. We heard public oral presentations from Bands, Settlements, Indian and Metis organizations, social agencies and government departments. In addition, we visited the Native Brotherhoods in all federal and provincial correctional institutions in Alberta, and visited Indian Reserves, a Metis Settlement, and Aboriginal communities which expressed a desire to meet with the Task Force. Reviews of the findings of other major inquiries and the massive amount of literature on the subject of Indian and Metis people and the criminal justice system also provided extensive information for Task Force members.

In order to increase their personal exposure to the issue of Aboriginal people in the criminal justice system, Task Force members attended a variety of training programs and seminars. These included: the Western Workshop, a project of the Canadian Association of Provincial Court Judges, organized together with the

Canadian Judicial Centre; the Royal Canadian Mounted Police Workshop "Sharing Common Ground"; the Native Law subsection of the Canadian Bar Association (Alberta Branch) training seminar on Aboriginal awareness; and the R.C.M.P. Training Academy cross-cultural training program in Regina. Members of the Task Force also attended several provincial court sittings, and hearings involving Aboriginals before the National Parole Board. Several members of the Task Force went on a "ride-a-long" with the Edmonton Police Service.

The Chairman accompanied the Deputy Solicitor General of Alberta and Assistant Chief Judge Rolf, the Chairman of the Blood Inquiry, to visit the Chairman of the Indian Commission of Ontario, the Deputy Solicitor General of Ontario, Professor Allan Grant who was the Chairman of the Osnaburgh-Windigo Tribal Council Justice Review Committee, the Ontario Provincial Police, and the Six Nations Police Force and Police Commission. One of the Task Force members accompanied the Chiefs of the Lesser Slave Lake Regional Indian Council and the Dean of Law, University of Alberta, to Tucson, Arizona to observe the training of Tribal Court Judges and the operation of Tribal Courts.

As we considered the issues, we kept in mind international, national, and Alberta developments related to the involvement of Aboriginal people in the criminal justice system.

It is our opinion that, within the last five to ten years there has been a marked increase in the devolution of control of many aspects of the criminal justice and social welfare systems from the government to the aboriginal people.

Without a doubt, the relationship between the Aboriginal people of Canada, the Government of Canada, and the people of Canada has changed significantly during our work as a Task Force. It was a mixed blessing that our term of office coincided with "the summer of Indian discontent", as the confrontation in Oka, Quebec, has been called. The Canadian public was awakened to the determination of Indian people to assert their Aboriginal and Treaty rights. Dr. Joe Couture, a Metis Elder and psychologist, described the events at Oka, the Old Man Riverdam in Alberta, the blocking of the Canadian National lines in northern Ontario, and the various blockades elsewhere in Canada, as indicating that the Indian people have reached a point of no return and that Indians and Metis will not tolerate further delay in settling their Aboriginal and Treaty claims. The events of the summer of 1990 consumed the time and attention of many of the Indian and Metis communities to such an extent that they were unwilling or unable to discuss with us the issue of the involvement of Aboriginals in the criminal justice system.

Main Findings

We have made a consistent effort to make our observations and recommendations Aboriginal-specific. It has not always been possible to achieve this. However, it is our position that any recommendation for improvement of the criminal justice system as a whole, can also make it more responsive to Aboriginals, if for no other reason than that Aboriginals are over-represented in that system.

Several of our Terms of Reference overlap with each other. In these instances, we have chosen to make overlapping

recommendations. Many of the recommendations made by this Task Force have been made by other Task Forces, Commissions, Inquiries or Studies. We have made these recommendations again, because in our opinion, they have not been implemented fully or appropriately and are still applicable.

The Task Force has drafted recommendations with a full awareness of Government deficits. It is our opinion that many of the recommendations can be implemented by emphasizing prevention instead of incarceration and that funds can be reallocated accordingly.

One of the findings of the Task Force is that the criminal justice system in Alberta does not appear to have a philosophy which applies to all of its components. Consequently, there is no integrated approach to addressing the problems or to proposing solutions to the difficulties experienced by Aboriginals involved with in the criminal justice system. We do not perceive the criminal justice system as attaining its objectives of deterrence, rehabilitation, restitution, and protection of the public. If a philosophy does exist, its effect in Alberta is that more people are charged and that a higher rate of incarceration occurs than in nearly any other province or territory in Canada. The over-representation of Aboriginal people in the system and the over-incarceration of Aboriginal people in the federal and provincial correctional institutions in Alberta is proof that the criminal justice system is failing Aboriginal people.

In our report we recommend that a clear policy statement be developed by government on the purpose of the criminal justice system in Alberta and that such a statement be accompanied by co-ordinated action from the various

components of the system to achieve the stated goal.

The Task Force also recommends that the criminal justice system be brought back to the communities it serves. One of our findings is that the criminal justice system has become too centralized and legalistic and generally too removed from the community. As a result, communities are unable to identify with the system. At the same time, the system has failed in achieving its desired goals. This situation holds particularly true for rural and remote communities. The involvement of the community in all aspects of that system is an integral requirement for the successful return of the criminal justice system to the community. Communities must be encouraged to participate in the criminal justice system and take responsibility for that system. Without involvement and responsibility, the community will never identify with the system and without such identification, the system becomes a meaningless oppressor of the community.

The lack of communication between all levels of service providers and Aboriginal people is one of the most serious deficiencies in the existing system. The Task Force was told on numerous occasions that the various components of the criminal justice system do not know the community they serve; that Aboriginal people are never asked their opinion about issues or problems; that Aboriginal people are never asked to participate in the planning and implementation of initiatives; and that Aboriginal people are expected to do as they are told. Although communication is improving, we have found that many of these criticisms are still true. Aboriginal people must be perceived as having a legitimate interest in the administration of the criminal justice

system rather than as merely the source of work for that system. We recommend that Aboriginal people be involved in decision-making at all levels of the criminal justice system, including in a service delivery role.

With respect to Aboriginal representation in the criminal justice system, the Task Force recommends that a much greater involvement of Aboriginal Elders be encouraged. Elders hold a unique position of respect and trust in the Aboriginal community. They possess qualities that would be of immense benefit in attempting to develop a criminal justice system capable of being responsive to both Aboriginal and non-Aboriginal needs.

The Task Force also recommends a shift in the focus of government services for Aboriginal people. That shift must be away from incarceration and toward prevention. Prevention should be widely defined as including not only crime prevention, recreation, and treatment for problems such as alcohol and drug abuse, but also education and employment. While such an overall change in the focus of government departments would be of particular benefit to Aboriginal people, it would also benefit non-Aboriginal offenders.

The Task Force recognizes that an emphasis on prevention would require a shifting of program priorities between government departments. However, we also recognize that, compared to its minimum benefit, incarceration occurs at a very high cost to society.

The demographics of the Aboriginal population became very important with respect to preventative programs. Fifty percent of the Aboriginal population is under twenty years of age, and the

Aboriginal population grows at a faster rate than the non-Aboriginal population. This implies that, unless more emphasis is placed on prevention, education and employment, particularly for young Aboriginal people, Aboriginal people who could participate in society and be employed will be incarcerated instead, in increasing numbers and at a rapidly increasing cost to society. If allowed to develop this situation would be most detrimental and costly to both to society at large and the Aboriginal community.

Two areas of Aboriginal peoples' involvement with the criminal justice system have received little attention. They are: youth and Aboriginal people in urban centres. The Task Force recommends that these areas be given much higher priority.

Based on our review of the literature, discussions with Aboriginal people, and presentations from Aboriginal groups, we have found that one of the most important areas of concern for the Aboriginal community in general is the plight of its young people. Young Aboriginal people are faced with a range of almost insurmountable problems. These problems include a lack of educational opportunities; a lack of employment opportunities; extremely poor living and housing conditions; family breakdown; physical and sexual abuse, and alcohol and drug abuse; and a generally recognized cultural identity problem resulting from a host of historical conditions forced on the Aboriginal people.

While we recognize that many Aboriginal communities are addressing their problems, we also recognize that many Aboriginal youth live in extremely disadvantaged conditions with little chance of improvement unless concerted

action is taken by a concerned government. It is clear that a substantial portion of any prevention program, be it recreation, education, or employment, must target Aboriginal youth. For Aboriginal youth to maximize the opportunities provided, it is also essential that sufficient treatment facilities and post-treatment support programs be developed which focus specifically on the treatment of drug and alcohol problems experienced by youth and families.

Presentations made to the Task Force made it abundantly clear that existing treatment facilities for Aboriginal youth are inadequate and that they require a more comprehensive and co-ordinated approach in their development.

The second area which has been overlooked consistently, concerns Aboriginal people living in urban areas. While it is true that a large portion or 50 - 60% of incarcerated Aboriginal offenders comes from major urban areas, it is also true that no easily identifiable Aboriginal community structure exists in these areas. This fact has made it most difficult to study the problems of urban Aboriginal people. The large number of Aboriginal offenders who come from large urban areas, seen in combination with the continuing migration of Aboriginal people to urban areas, demands that provincial government departments, municipal governments, service delivery agencies, and Aboriginal people address this issue urgently.

One final area of study warrants special mention. It concerns the matter of Aboriginal justice systems. The issue of legal pluralism includes two opposing points of view. On the one hand, there is the trend toward Aboriginal people assuming greater control over criminal justice systems to achieve the stated aim of

establishing Aboriginal justice systems based on traditional value and practices. On the other hand, there are the proponents of "one rule of law" who forward the idea of one justice system for all that is capable of responding to the needs of all.

It is clear that the issue of Aboriginal sovereignty remains unresolved between the Government of Canada and Aboriginal First Nations. It is also clear that, while this issue remains unresolved, a comprehensive shift to Aboriginal justice systems is unlikely to occur soon. It is also evident that not all Aboriginal groups will have the capability or will want to assume such responsibilities. It is our position that numerous changes can be made relatively quickly to the existing criminal justice system to make it more sensitive to the needs of Aboriginal people. The first step in this process is the "indigenization" of the criminal justice system as discussed earlier. The Task Force recognizes that intensive indigenization of the criminal justice system, including flexible approaches to sentencing, can, in fact, go a long way toward meeting the wishes of some Aboriginal people.

The review of the criminal justice system in Alberta has convinced the Task Force of the need for a meaningful process to monitor the implementation of recommendations accepted by Government. Such a process should not only be objective and effective, it should also require strong Aboriginal participation.

With respect to implementation, the Task Force senses a political will at the federal and provincial level to address Indian and Metis concerns. The Marshall Inquiry and the early response by the Nova Scotia Government should encourage other inquiries and Task Forces. The appointment of the Aboriginal Justice

Committee in Manitoba and the Blood Inquiry in Alberta, together with the establishment of this Task Force as a joint venture of Canada and Alberta, indicates a determination to identify problems and seek solutions to the problems related to Aboriginals in the criminal justice system. The political will of government will be measured by policy, legislative changes, and the allocation of resources to implement the recommendations of the Commissions and the Task Force.

Our detailed recommendations will show that we, as a Task Force, have responded positively to many of the suggestions made by Aboriginal people. It could be argued that we have gone out of our way to accommodate the needs and hopes of Aboriginal people. If this is true, it has been done to meet the main objective of the Task Force, that of making the criminal justice system more fair, just, and equitable to Aboriginal people.

... the closer one gets towards the completion of a goal, the more difficult the journey becomes.

The Sacred Tree.