

8.0 Additional Considerations

Preamble

While the majority of considerations regarding the criminal justice system and its impact on the Indian and Metis people of Alberta can be captured under the main headings represented by Chapters 1-7, it is inevitable that there are some additional considerations that defy categorization. These topics include: socio-economic factors; jurisdictional interaction between the federal and provincial governments; government departments; cross cultural training; Aboriginals employed in the criminal justice system; women's issues; and youth issues.

Each of these topics has been considered individually by the Task Force, but for the sake of convenience have been collected under the general title "Chapter 8: Additional Considerations."

8.1 Socio-Economic Factors

Term of Reference:

Additional Considerations 8(a)

to identify and describe other areas of concern that contribute to Indian and Metis people becoming involved in the criminal justice system in the first instance, and to recommend other steps that can be taken to more effectively address those areas of concern.

The over-criminalization of aboriginal people in Canada defies conventional criminological assumptions. For instance, although there is a well known correlation between poverty and crime, as well as urbanization and crime, these arguments do not adequately explain why aboriginal people are over-represented in Canadian prisons. Furthermore, aboriginal crime is simply not an extension of their alcohol problem, as some authors seem to suggest. It is the Blood Tribes position that the key to ascertaining the antecedent causes of aboriginal incarceration lies in their history of oppression,

Report of the Task Force on the Criminal Justice System and its Impact
on the Indian and Metis People of Alberta, March 1991

colonization, exploitation of their lands and resources, and the detrimental policy basis of the past Indian Acts. Coupled with the fact that the criminal justice system is primarily a white middle classed male institution with no concept or understanding of Indianness.¹

Without a socio-economic study of Aboriginal people, it would have been impossible for the Task Force to examine the impact of the justice system on Aboriginal communities. We must look at the issues underlying the socio-economic conditions because they are major and direct contributors to first time Aboriginal involvement in the criminal justice system.

The conditions identified in the report from the Osnaburgh - Windigo Tribal Council Justice Review Committee have been examined by the Task Force. Most of these conditions apply to Aboriginal people in rural Alberta.

It is the opinion of the Task Force that the cultural differences between Aboriginals and the dominant society are deep-rooted. The perception of these cultural differences by the dominant society, together with other factors which will be mentioned later, contribute to low self-esteem among Aboriginals. Clearly, Aboriginals are victims of racism and discrimination.

Every Indian or Metis community visited by the Task Force had its own character. There are eight different groups in Alberta. Some reserves have a strong spiritual and cultural base. In others, this was lacking. We observed a renewed interest among Aboriginals in learning more of their history, culture, traditions and language. The Task Force recognizes the depth of spirituality of the Aboriginal people and the pride they have in their culture and tradition. These are among

their greatest strengths and greatest hopes for the future.

Examining areas of concern which contribute to Aboriginal first time involvement in the criminal justice system led us to identify factors which are symptoms of Aboriginal powerlessness. They are not the cause. Government inaction in settling issues of sovereignty, treaty rights and land claims was one of the major causes of the Aboriginal unrest in the summer of 1990. Indians have demonstrated forcefully that the problems of sovereignty, Treaty, land and aboriginal rights must be given priority by government.

Not all factors identified in our examination contribute to Aboriginal people becoming involved in the Criminal Justice System in the first instance. However, poverty, loss of culture and tradition, unemployment, inadequate health services, inadequate education and training, family break-down and racism must be recognized as factors which do contribute to criminal activity by Aboriginals.

Most Aboriginals are located at the low or bottom end of the economic scale. They have long memories and are unforgiving with respect to past injustices, most of which are real rather than perceived. Indians are wards of a paternalistic government which has changed its policies to meet different situations. The plight of the Indians is proof that the policies adopted have either been ineffective or have utterly failed.

Indians on reserves generally live in sub-standard housing and lack many conveniences considered essential by the poorest Canadians. Indians tend to have

large families, that include extended families. As a consequence, many Indian homes are severely over-crowded.

In Alberta, approximately 5,000 Metis live in eight Settlements. In the one Settlement we visited, the conditions were similar to those we found on Indian reserves.

Moreover, many Aboriginals are unable to follow their traditional life-style of fishing, hunting and gathering. The resource base which sustained the Indians for over 20,000 years has been or is in the process of being lost to encroaching resource industries such as oil exploration and production, lumbering and paper mills.

The unemployment rate on some of the reserves we visited was 90%. The only employment available was Band administration and work on the reserve directed by the Band. Welfare has replaced meaningful work. Traditionally, men were providers while women looked after the children and the home. The advent of welfare has changed these traditional roles. The acceptance of welfare meant that men lost their role as providers. Carol LaPrairie makes the following observation:

One such explanation lies with the loss of traditional values and roles. The breakdown of traditional values resulting from social and economic erosion of the Indian way of life has created for many Indian people, a loss of power and status not only in relation to the dominant society but within Indian society as well. This loss produces both social disorganization and interpersonal tension.²

Commenting on the demise of male roles in Indian society, LaPrairie states:

Within the traditional economy the household was the basic unit of production and consumption (i.e., the domestic mode of

production), families co-resided at times around certain activities such as hunting and fishing, and extended family life was of great importance. Men and women maintained distinct roles and skills essential to the survival of the family unit and to the domestic mode of production. For men, strength, agility and skill in the bush were the essentials of life, and for women, the making of clothing and the preparation of food. The division of labour was primarily sexual.³

LaPrairie refers to an unpublished paper by Marilyn Van Bibber. Van Bibber comments on the demise of traditional economies as follows:

In 1949 they (the Indians) were independent producers but now they must compete for jobs within the context of the broader economic system or otherwise look to the broader society for social assistance. Roughly speaking, men earn the former while women obtain the latter. A man's work outside the village may be for lengthy periods, but almost invariably ties to his household and village prompt him to terminate his employment. For this reason, men's work is not year-round and his contribution to the household economy is sporadic. A woman's contribution, composed mainly of social assistance, is smaller but much more stable as it can be counted on to continue year-round. One apparent result is that, to a large extent, women control the household economy. With the assurance of social assistance women are fairly independent and do not require the support of a man.⁴

Because Indians on reserves do not own their land or their houses, they are unable to mortgage their homes to raise money for business ventures. For the same reason they are unable to obtain capital loans from the conventional lending institutions to purchase capital equipment. As a result, much of the farm land on reserves is leased to non-Indians.

Most of the reserves suffer from severe over-crowding. The crowding is aggravated by the high Indian birthrate

and the passage of Bill C-31. When the reserves were established, the allotment of land was 128 acres to each family member. Assuming the land base was adequate to begin with, the Indian population has now increased to such an extent that reserves can no longer provide an economic land base.

In general, we observed that many communities have some recreational facilities. We also noted that often, there was a lack of leadership to initiate and conduct meaningful programs. Recreational programs can be combined with crime prevention initiatives. Three important examples of recreational programs were noted. On the Assumption Reserve, the 'Talking Drum' program provides Indian youth with a meeting place where they participated in various sports and cultural activities. Youth also participates in wilderness camps. We were impressed by the facilities and leadership of the boxing club on the Samson Reserve. The Band and Council of the Paul Reserve encourage an active hockey program.

Education

Most reserves and settlements have excellent, good or adequate schools funded by Indian and Northern Affairs (Canada) Alberta Education. Indians have a large measure of control over the operation of these schools.

Many of the reserves, settlements and communities in Northern Alberta are isolated. Their populations are small. It is neither economical nor possible to have a school which offers grades beyond grade six or nine on the reserve or settlement. Aboriginal children who want to continue their education must leave their homes and go to a larger centre. Being removed from their homes, their roots and their

families causes separation trauma for many children. Many are unable to overcome this trauma. Their performance in school is not equal to their potential, or alternatively, they leave school and return to their homes or go to an urban area. During our visit to the Paddle Prairie Metis Settlement, we learned that if children want to attend school beyond grade nine they either have to put up with the two-hour-plus per day bus trip to High Level or leave their homes to reside in High Level, Peace River or Manning. We have been told that when Aboriginal children attend school in urban centres they face discrimination and racial taunts. These conditions aggravate the separation trauma from which they already suffer.

There are alternatives to busing and living away from home. Correspondence courses are available and are used in some communities. Remote communities may be able to arrange for a computer link-up to serve children in their home community.

Aboriginal children become involved with the criminal justice system at a very early age. Many of the Briefs we received stressed the need for education about the criminal justice system in the elementary grades. Such education should be intensified at the Junior High and Senior High School level.

Adults also seek education about the criminal justice system. G. B. Minore of Lakehead University adopts the following statement of Jolly in which he argues for a systematic and co-ordinated approach to community legal education for Aboriginal people in Canada:

While it is true that the public in general is often woefully ignorant of the law and the Justice System, in the context of Native people, this lack

of awareness is frequently compounded and exacerbated by isolation, of regular Court sittings, lower levels of formal education, significant language and cultural differences from the predominantly non-Native Court personnel, and a historic distrust of Government and White society. The result is often a profound, deep-seated alienation from the Euro-Canadian Justice structures, a visceral feeling that Native needs and concerns do not matter, and a bitter sense of helplessness.⁵

Minore points out that lack of comprehension applies not only to the law and judicial procedures, but also to Court decisions. Aboriginal people do not understand that both the police and the courts work within legal limits.

Aboriginal education should also include instruction on the customs, traditions and life-style of the non-Aboriginal community. All school curricula should be expanded to recognize the significant contributions made by Aboriginals to Canada. Non-Aboriginals should receive appropriate instruction to create a better understanding of Indian and Metis identity, culture, history and tradition.

Aboriginals coming to urban centres from reserves and settlements have little or no knowledge of urban survival. Examples given to the Task Force included lack of knowledge of how to use the urban bus system or light-rail transit, where to go for assistance, and the availability of Aboriginal and non-Aboriginal service agencies in the urban area.

Indian and Metis children should receive a bi-cultural education so that they can relate the Indian and Metis cultures to the dominant society.

The Task Force Recommends:

- 8.1 That the Department of Education and the Indian and Metis communities develop curricula to include instruction on Indian and Metis history, culture and traditions. Such instruction should begin in the lowest possible grade in all schools in Alberta.**
- 8.2 That Aboriginal children be educated about the history, culture, and religions of the dominant society.**
- 8.3 That Aboriginal children be instructed in urban life-skills.**
- 8.4 That community legal education programs be developed for Aboriginal communities, and that Judges, Prosecutors and defence counsel be encouraged to instruct these programs.**

Alcohol and Substance Abuse

A high percentage of Aboriginals who come into contact with the justice system abuse alcohol, drugs or other substances. Poundmaker's Lodge stated:

There is a need for substantive changes to the way in which the Criminal Justice System addresses Native people; there is a need for police, lawyers, prosecutors, and justices to see the 'illness in the human being' rather than 'the drunken Indian.' In most Native communities across Canada 80 percent of the people have a problem with alcohol. Sending our people to gaol or placing them on probation rather than sending them for treatment only enables Natives to continue to hurt themselves and their families.⁶

The Brief from the Poundmaker's Lodge offered the following observations:

- Hobbema, one of the wealthiest Reserves in Alberta where poverty and poor housing are not the major problems facing the community, alcoholism and teenage suicides are the primary issues facing that Reserve. Eighty percent of the community is having problems with alcohol and drugs.
- alcoholism runs in families, even when the children are separated at birth from the alcoholic parents and raised by adopted parents.
- environmental factors in the family situation where the mother, father, aunts and uncles drink; children learn that this is an acceptable pattern of behaviour. When the child becomes a teenager, the drinking pattern continues.
- punishing an alcoholic by sending him or her to gaol without also providing treatment, will not aid recovery.
- most Aboriginal people coming into contact with the Police and the Criminal Justice System do so because of alcohol.
- when an alcoholic offender is sentenced to probation, community service work, parole, or even incarceration without first addressing the need for treatment, then the justice system is enabling the addiction to continue.
- the disease of alcoholism is a chronic disease. It is permanent. It cannot be cured, only put into remission.
- Aboriginal people have a greater propensity for using alcohol and/or drugs at the time of the offence. Compared to 93% of adult Aboriginal offenders, 83% of non-Native offenders reported the use of alcohol and/or drugs prior to the offence.
- Aboriginal young offenders have a greater propensity to have been using

alcohol and/or drugs prior to the offence. Between January 1, 1989 and December 31, 1989, 86% of the Aboriginal young offenders compare with 76% of the non-Aboriginal young offenders reported their use of alcohol and/or drugs at the time of the offence. Drugs and alcohol, in combination, and not alcohol alone, is the choice for young offenders (57% of Aboriginal offenders, vs. 49% of non-Aboriginal offenders).

- sentencing an offender with an alcoholic problem to either community service work, probation or incarceration, will not help the individual to address his or her alcoholism.⁷

There is no statistical information about the use of inhalants such as glue and gasoline. However, Briefs received by the Task Force indicate that the problem is of epidemic proportions, particularly on the more isolated reserves and settlements.

The cycle of social and economic problems that lead first to alcoholism, then to involvement with the criminal justice system, then to subsequent release to the community only to engage in the same activities is often repeated. If left untreated, the disease of alcoholism is fatal.

Alcoholism must be treated as a disease and not as a crime. The criminal justice system has proven conclusively that incarceration, fines and community service do not cure the disease. In its Brief, Poundmaker's Lodge referred to a window of opportunity for treatment. This window of opportunity must be identified by police, Prosecutors and Judges. When it is apparent that accused persons suffer from alcoholism, they should be directed to treatment. We encourage the police to continue their practice of taking

intoxicated people home or to a safe place. However, this practice does not go far enough. While the police have very few options for dealing with an intoxicated person, the court has many. Several Judges have adopted the practice of accepting a plea in cases involving alcohol, and delaying sentence to give the accused person an opportunity to seek and take treatment. This may mean many adjournments and delays, but the objective is to capture the "window of opportunity" to encourage treatment. If an accused person does not seek treatment, the court may impose the appropriate sentence. This procedure has been attempted by several Provincial Court Judges with some measure of success.

The Task Force Recommends:

- 8.5 That there be adequate treatment centres and sufficient beds in treatment centres to accommodate Aboriginals who require treatment or are recommended for treatment.**

- 8.6 That Correctional Services Canada and the Correctional Services Division in Alberta enter into contract with Aboriginal treatment centres, and pay for more beds for inmates of the federal penitentiaries and provincial correction centres.**

- 8.7 That the Government establish regional alcohol treatment centres for young offenders, similar to Poundmaker's Lodge and St. Paul.**

- 8.8 That the Government recognize and be prepared to fund the treatment and counselling of families of alcoholics.**

Family Break-Down

During our visits to young offender centres, provincial correctional institutions and penitentiaries, we met with Native Brotherhoods and Sisterhoods. On each occasion, we conducted an informal survey by show of hand, to determine the number of inmates who came from foster homes. The majority of inmates were raised in one, several, or multiple foster homes. Many came from single parent families or families which were dysfunctional because of alcohol, unemployment or poverty. It was clear that many families lacked the cohesiveness required to hold them together.

The Task Force is persuaded that the high incidence of children raised in foster homes is one of the factors which contributes to Aboriginals coming into contact with the criminal justice system for the first time. Not all foster homes are detrimental. Indeed there are a few success stories. However, the failures do out-number the successes. Some children who come into contact with the criminal justice system and are raised in non-Aboriginal foster homes lose their identity as Indian or Metis. They lose their identity as a member of a family or of an extended family unit. Frequently, they are separated from their own community. Any knowledge of spirituality or culture they may have had is usually lost when they go to a non-Aboriginal foster home. With no sense of family, community or culture, they frequently end up "on the street" at a very early age.

The Task Force has been told repeatedly of the effect of residential schools on several generations of Aboriginals:

*The belief that all the Indians' problems would vanish if only they could be made to adopt white values and beliefs was at the root of assimilation and justified the creation of the residential schools. Residential schools were seen as a way of accelerating the assimilation process by taking Indian youth away from their homes and communities in order to re-socialize them more quickly. Thus, contact with parents was minimized and youth were enrolled in the schools, 'the teachers acknowledged neither Indian language nor culture... Whatever the issue, the placement of a school, the amount of school holidays, the needs of the children, the opinions of Indian parents were discounted.'*⁸

*The failure of the residential schools to assimilate Indians into the dominant culture did not mean that children remained untouched by the resocialization process. In fact, Cardinal claims that residential schools were actually destructive because they: alienated the child from his own family, they alienated him from his own way of life without in any way preparing him for a different society; they alienated the child from his own religion and turned his head resolutely against the conforming substitute the missionaries offered.*⁹

*The instructional programs offered in residential schools were designed to teach European knowledge, skills and behaviours. For female students, the effects of these programs were probably less destructive than they were for males as the disparity in male roles between the traditional and the European lifestyles was greater than that for females. Boys not only lost their male role models by being removed from their families at an early age, but were also taught skills that were not particularly useful, for example, farming skills with limited farming potential on reserves, while the girls were taught skills of homemaking, which were acceptable in both societies. Thus, in the communal society women retained while men lost their traditional roles and were subjected to induced dependency and welfare. The ultimate effect of these attempts at assimilation was to create unequal power relations between Indian men and women.*¹⁰

Alberta has not had residential schools since the 1960s. However, the legacy of the residential experience has influenced the children and grandchildren of those Aboriginals who were removed from their homes for ten months every year to be placed in residential schools operated by strict religious orders.

The Task Force has been told repeatedly of the effect of residential schools on the present generation of Aboriginals. Children were not allowed to wear their own clothing, speak their own language or practice their own customs and traditions. Breaches of the strict codes of discipline resulted in harsh punishments. The boys were not permitted to follow traditional Aboriginal pursuits such as hunting and trapping. All residents of the schools were given a "4-R" education without Aboriginal content (the fourth "R" is Religion). When children returned to their homes from residential schools, they found it difficult or impossible to re-adjust to the Aboriginal life-style. One of the consequences of residential schooling is that whole generations of Aboriginal children lost their sense of identity as Indian or Metis, including culture, spirituality, and the hunting, trapping and gathering skills that would have been passed on to them by their parents.

Residential schools also denied children the opportunity to acquire parenting skills. The short vacations spent at home did not allow for the learning of these skills from their family or extended family.

The effect of residential schooling will remain with Aboriginals for many generations because of their practice of child-rearing by the extended family, which often involves the grandparents. Aboriginals have a strong oral tradition of recording and transferring their history.

Stories of the abuse, segregation, isolation, humiliation and discrimination experienced in residential schools will continue to be passed on from generation to generation.

We have met numerous Aboriginals who come from dysfunctional homes. Some of the characteristics are: parental alcohol problems, inadequate accommodation, lack of discipline or role model and lack of parental control. Many of these families are on welfare, which if used extremely carefully, provides for subsistence without any luxuries. However, the money is often used for other purposes such as alcohol and bingo. Lack of money for extended periods every month causes severe hardship for the whole family, particularly on those between the age of 15 and 19. These youth are the family members who are most likely to come in contact with the criminal justice system for the first time.

The Child Welfare Act of Alberta¹¹ discourages the placement of Indian children in non-Indian foster homes. This legislation does not apply to Metis. As a consequence, Metis children are still being placed in non-Metis and non-Indian homes.

This discussion of factors is not exhaustive. It is related to other sections of this Report, including the discussion of "The Aboriginal Perspective." The above profile does not apply to all Indian and Metis families, but it does indicate a disturbing pattern that contributes to Indian and Metis people coming into contact with the criminal justice system.

Demographics and Consequences of Population Growth

Demographics

The Constitution Act of 1982 describes the term "Aboriginal people" as including Indian, Metis, and Inuit people. The Task Force has used the term "Aboriginal" to mean Indian and Metis. We also recognize the distinction between registered or status Indians and non-status Indians: a registered Indian is defined as any person who is considered an Indian under the 1951 Indian Act and whose name is recorded in the register maintained by Indian and Northern Affairs Canada. Amendments to the Indian Act 1985 (Bill C-31) restored Indian status and band membership rights to individuals and their children who had lost status and rights because of discriminatory clauses in the Indian Act. The data used in this section of the Report which relate to registered Indians include both "regular" and "Bill C-31" populations.

At the beginning of 1991, forty-three Alberta Indian Bands were registered with the Department of Indian and Northern Affairs Canada. There were ninety-two recognized Indian reserves. In addition, there were eight Metis Settlements and approximately forty other Aboriginal communities. A map of the geographical location of Reserves and Settlements is provided at the end of this section.

Apart from the information on registered Indians held by Indian and Northern Affairs Canada, reliable and up-to-date information is not available for the Aboriginal population of either Alberta or

Canada, particularly for non-status Indian and Metis people. The most comprehensive data on the Aboriginal population of Alberta came from the 1986 census. However, it is recognized that these data are not comparable to those collected by Indian and Northern Affairs Canada; there were problems in enumerating certain Indian reserves and difficulties in defining Aboriginal ancestry.

The 1986 census data indicate that the Aboriginal population of Alberta for that year was estimated to be 113,383, representing about 4.8% of the total population of Alberta. Although the census data record that 43% of that population were "Indian", the census definitions of Aboriginal ancestry were not consistent with the definitions used by the Department of Indian and Northern Affairs Canada (previously called DIAND - Department of Indian and Northern Development). Therefore, the actual composition of the Aboriginal population remains uncertain.

The 1986 census data reconfirmed the drastic socio-economic deprivation suffered by Aboriginal people compared to the general population of the province - especially in areas of education, labour force activity, income and housing. The census data also indicated differences between the Aboriginal population and the total population of Alberta with respect to age structure. The 1986 Alberta Aboriginal population recorded 50% of its population in the 19 years and under category compared to 31% for the Alberta population as a whole, and 10% of its population in the 45 years and over category compared to 25% for the province. More recent data (1990) on registered Indians from Indian and

Northern Affairs Canada support this census picture of a Aboriginal population with half the population under the age of 20.

The census data also indicate that a considerable proportion (44.3%) of the total Aboriginal population live in an urban area, and 31.1% of that total Aboriginal population was recorded as living in Edmonton and Calgary. With respect to registered Indians, current information from September 1990 indicates that 37% of the registered Indian population lives off-reserve.

As stated previously, current reliable information is not available for the total Aboriginal population of Alberta. As of September 3, 1990, the registered Indian population for Alberta was 59,455. A breakdown by Band is provided on the following page. The Metis Settlements population was 3,796 at the end of November 1990. In the absence of data, projections of the Aboriginal population for Alberta have been made by using the medium growth projections for the regular registered Indian population of Alberta as generated by Indian and Northern Affairs Canada, and by applying such growth projections to the 1986 census Aboriginal population. Although questionable, the resulting projections do give an indication of the likely magnitude of the Aboriginal population in the province. The projected total Aboriginal population for Alberta for 1990 is 123,746 or 5.1% of the estimated total Alberta population. Because of the expected higher growth rate of the Aboriginal population compared to the total provincial population, it is projected that by the year 2011, the Aboriginal population of the province will be 203,333 or 6.5% of the total population. In some age categories, for example, the 0 - 19

**Report of the Task Force on the Criminal Justice System and its Impact
on the Indian and Metis People of Alberta, March 1991**

ALBERTA BAND POPULATION
September 3, 1990
(INDIAN REGISTER POPULATION)

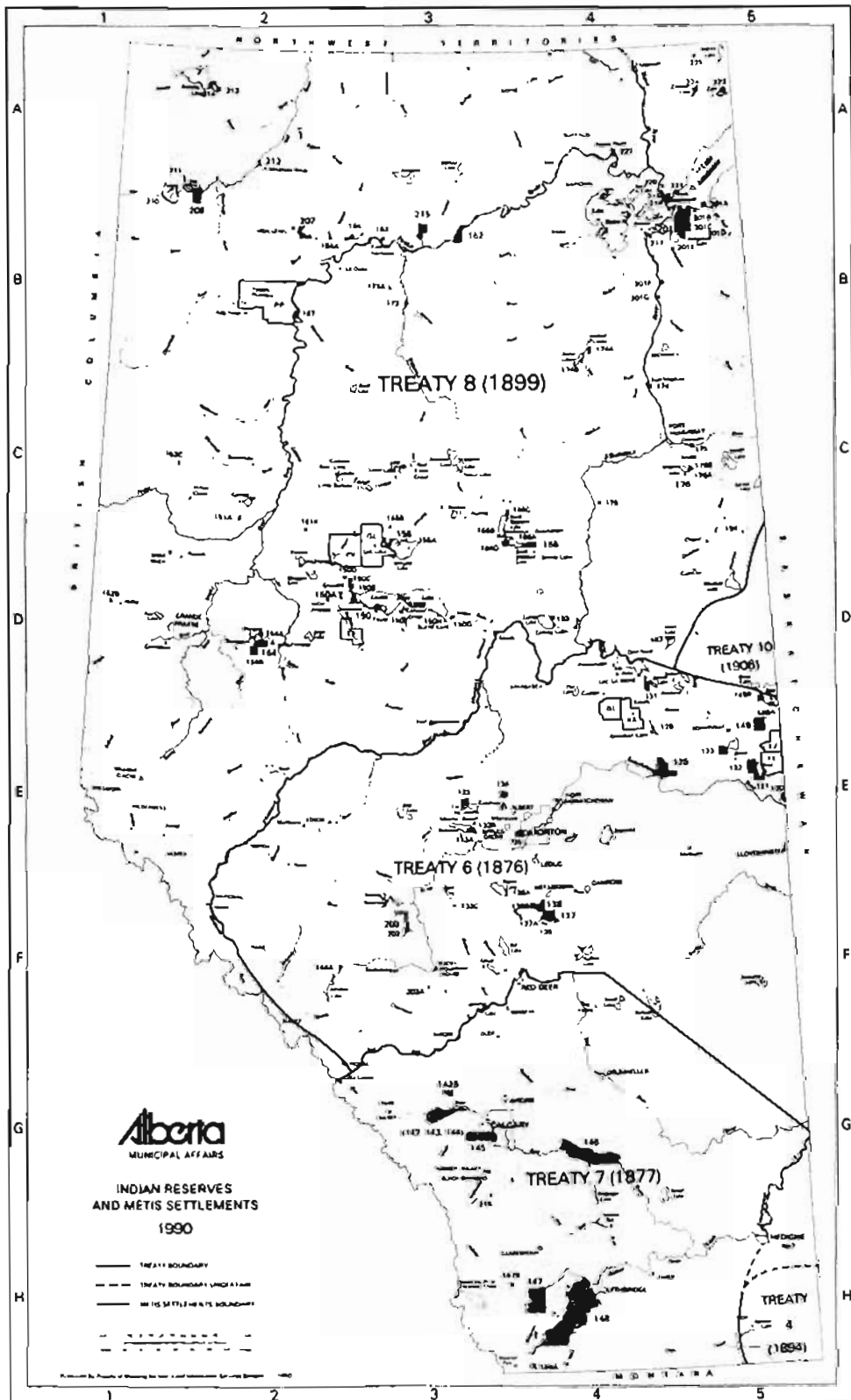
Fort McMurray		Lesser Slave Lake	
Cree Band	1 517	Horse Lake Band	381
Fort Chipewyan Band	477	Driftpile Band	1 304
Fort McKay Band	356	Duncan's Band	97
Fort McMurray Band	320	Grouard Band	162
Janvier Band	<u>395</u>	Lubicon Lake Band	240
	3 065	Sawridge Band	180
		Sturgeon Lake Band	1 312
Southern Alberta		Sucker Creek Band	1 365
Siksika Nation Band	3 851	Swan River Band	610
O'Chiese Band	499	Bigstone Cree Band	3 259
Sarcee Band	976	Whitefish Lake Band	1 182
Stoney (Chiniki) Band	952	Woodland Cree Band	<u>405</u>
Sunchild Cree Band	579		10 497
Stoney (Bears paw) Band	923		
Stoney (Goodstoney) Band	1 024	St. Paul	
Blood Band	7 155	Beaver Lake Band	472
Peigan Band	<u>2 425</u>	Saddle Lake Band	5 705
	18 384	Cold Lake First Nations	1 528
		Frog Lake Band	1 228
Edmonton/Hobbema		Kehewin Band	1 144
Alexis Band	868	Heart Lake Band	<u>172</u>
Alexander Band	981		10 249
Louis Bull Band	1 003	Fort Vermilion	
Enoch Band	1 179	Boyer River Band	512
Paul Band	1 129	Tallcree Band	584
Montana Band	545	Little Red River Band	2 099
Ermineskin Band	2 114	Dene Tha' Band	<u>1 768</u>
Samson Band	3 966		4 963
General List	<u>512</u>		
	12 297		

TOTAL ALBERTA INDIAN REGISTER = 59 455

METIS SETTLEMENTS (1989)

Buffalo Lake	497
East Prairie	348
Elizabeth	413
Fishing Lake	415
Gift Lake	442
Kikino	750
Paddle Prairie	583
Peavine	<u>348</u>
	3 796

**Report of the Task Force on the Criminal Justice System and its Impact
on the Indian and Metis People of Alberta, March 1991**



**Report of the Task Force on the Criminal Justice System and its Impact
on the Indian and Metis People of Alberta, March 1991**

**INDIAN RESERVES OF ALBERTA
Alphabetical Listing**

Alexander	134	E-3	Ermineskin	138	F-4	Pigeon Lake	138A	F-3
Alexis	133	E-3	Fort McKay	174	C-4	Puskiakiwenin	122	E-5
Allison Bay	219	A-5	Fox Lake	162	B-3	Sand Point	221	A-5
Amber River	211	A-1, A-2	Freeman	150B	D-3	Saddle Lake	125	E-4, E-5
Assineau River	150F	D-3	Gregoire Lake	176	C-5	Samson	137	F-4
Beaver Lake	131	D-4	Gregoire Lake	176A-B	C-5	Samson	137A	F-4
Beaver Ranch	163	B-3	Halcro	150C	D-2, D-3	Sarcee	145	G-3
Big Horn	144A	F-2	Hay Lake	209	A-2, B-2	Sawridge	150G-H	D-3
Bischo Lake	213	A-2	Heart Lake	167	D-4	Siksika	146	G-4
Blood	148	H-4	Horse Lakes	152B	D-1	Stoney	142, 143, 144	G-3
Blood	148A	H-4	House River Indian			Stoney	142B	G-3
Boyer	164	B-2, B-3	Cemetery	178	C-4	Stony Plain	135	E-4
Buck Lake	133C	F-3	Jackfish Point	214	A-2	Sturgeon Lake	154	D-2
Bishe River	207	B-2	Janvier	194	C-5	Sturgeon Lake	154A-B	D-2
Carcajou Settlement	187	B-2	Jean Baptiste			Sucker Creek	150A	D-2, D-3
Charles Lake	225	A-5	Gambler	183	D-4	Sunchild	202	F-3
Child Lake	164A	B-2	John D'or Prairie	215	B-3	Swan River	150E	D-3
Chipewyan	201	B-5	Kehewin	123	E-5	Tall Cree	173	B-3
Chipewyan	201A-E	B-5	Louis Bull	138B	F-4	Tall Cree	173A	B-3
Chipewyan	201F-G	B-4	Makao	120	E-5	Unipouheos	121	E-5
Clear Hills	152C	C-1	Montana	139	F-4	Upper Hay River	212	A-2
Clearwater	175	C-5	Namur Lake	174B	B-4	Utikoomak Lake	155	D-3
Cold Lake	149	E-5	Namur River	174A	B-4	Utikoomak Lake	155A	D-3
Cold Lake	149A-B	D-5	O'Chiese	203	F-3	Utikoomak Lake	155B	C-3
Colin Lake	223	A-5	O'Chiese Cemetery	203A	F-3	Wabamun	133A-B	E-3
Cornwall Lake	224	A-5	Old Fort	217	B-4	Wabasca	166	D-4
Devil's Gate	220	A-5	Pakashan	150D	D-2	Wabasca	166A	D-4
Dog Head	218	A-4	Peace Point	222	A-4	Wabasca	166B	C-3, D-3
Drift Pile River	150	D-3	Peigan	147	H-4	Wabasca	166C	C-3
Duncans	151A	C-2	Peigan	147B	H-3	Wabasca	166D	D-3
Eden Valley	216	G-3	(timber limit)			White Fish Lake	128	E-4
						William McKenzie	151K	C-2
						Zama Lake	210	A-1, B-1

**INDIAN RESERVES OF ALBERTA
Numerical Listing**

120	Makao	E-5	150E	Swan River	D-3	201A-E	Chipewyan	B-5
121	Unipouheos	E-5	150F	Assineau River	D-3	201F-G	Chipewyan	B-4
122	Puskiakiwenin	E-5	150G-H	Sawridge	D-3	202	Sunchild	F-3
123	Kehewin	E-5	151A	Duncans	C-2	203	O'Chiese	F-3
125	Saddle Lake	E-4, E-5	151K	Wm. McKenzie	C-2	203A	O'Chiese	
128	Whitefish Lake	E-4	152B	Horse Lakes	D-1		Cemetery	F-3
131	Beaver Lake	D-4	152C	Clear Hills	C-1	207	Bushe River	B-2
133	Alexis	E-3	154	Sturgeon Lake	D-2	209	Hay Lake	A-2, B-2
133A-B	Wabamun	E-3	155A	Utikoomak Lake	D-3	210	Zama Lake	A-1, B-1
133C	Buck Lake	F-3	155B	Utikoomak Lake	C-3	211	Amber River	A-1, A-2
134	Alexander	E-3	162	Fox Lake	B-3	212	Upper Hay River	A-2
135	Stony Plain	E-4	163	Beaver Ranch	B-3	213	Bischo Lake	A-2
137	Samson	F-4	164	Boyer	B-2, B-3	214	Jackfish Point	A-2
137A	Samson	F-4	164B	Child Lake	B-2	215	John D'or Prairie	B-3
138	Ermineskin	F-4	166	Wabasca	D-4	216	Eden Valley	G-3
138A	Pigeon Lake	F-3	166A	Wabasca	D-4	217	Old Fort	B-4
138B	Louis Bull	F-4	166B	Wabasca	C-3, D-3	218	Dog Head	A-4
139	Montana	F-4	166C	Wabasca	C-3	219	Allison Bay	A-5
142	Stoney	G-3	166D	Wabasca	D-3	220	Devil's Gate	A-5
	(142, 143, 144)		167	Heart Lake	D-4	221	Sand Point	A-5
142B	Stoney	G-3	172	Tall Cree	B-3	222	Peace Point	A-5
144A	Big Horn	F-2	173A	Tall Cree	B-3	223	Colin Lake	A-5
145	Sarcee	G-3	174	Fort McKay	C-4	224	Cornwall Lake	A-5
146	Siksika	G-4	174A	Namur River	B-4	225	Charles Lake	A-5
147	Peigan	H-4	174B	Namur Lake	B-4			
147B	Peigan	H-3	175	Clearwater	C-5			
	(timber limit)		176	Gregoire Lake	C-5			
148	Blood	H-4	176A-B	Gregoire Lake	C-5			
148B	Blood	H-4	178	House River Indian				
149	Cold Lake	E-5		Cemetery	C-4			
149A-B	Cold Lake	D-5	183	John Baptiste				
150	Drift Pile River	D-3		Gambler	D-4			
150A	Sucker Creek	D-2, D-3	187	Carcajou Settlement	B-2			
150B	Freeman	D-3	194	Janvier	C-5			
150C	Halcro	D-2, D-3	201	Chipewyan	B-5			
150D	Pakashan	D-2						

METIS SETTLEMENTS

BL	Buffalo Lake
EP	East Prairie
EZ	Elizabeth
FL	Fishing Lake
GL	Gift Lake
KK	Kikino
PP	Paddle Prairie
PV	Peavine

years age group, the Aboriginal population will represent nearly 11% of the total provincial population in that age group.

The growth of the Aboriginal population, its relative youth compared to the total provincial population, the socio-economic disadvantaged nature of that population, and the current level of involvement of that population in the social welfare and criminal justice systems combine to present a very pessimistic picture for Aboriginal people in the future. This scenario can only improve if significant changes occur.

Aboriginal Population Growth and its Consequences for the Criminal Justice System

The potential size of the Aboriginal population in the future and its rate of growth compared to that of non-Aboriginals must be considered in the review of the involvement of Aboriginal people with the criminal justice system and in the projection of their future involvement.

Table 1 shows that the Aboriginal population in Alberta is expected to increase by 64.3% during the period 1990 - 2011, compared to a 25.1% increase for the non-Aboriginal population. Such growth would mean that by the year 2011, Aboriginal people would account for 6.5% of the Alberta population, compared to 5.1% in 1990. The Aboriginal population is expected to grow at a faster rate than the non-Aboriginal population in all age categories. The growth rate in the older age categories is high for both populations. However, more significant

differences occur in the younger age groups. For example, in the under-19 group, the Aboriginal population is expected to grow from 60,310 in 1990 to 81,213 in 2011 an increase of 34.7%. The non-Aboriginal population is projected to decline from 693,890 in 1990 to 667,587 in 2011 - a decrease of 3.8%. This means that the proportion of Aboriginals in the under 19 years age group will increase from 8.0% in 1990 to 10.8% in 2011.

This high projected growth rate for the Aboriginal population has important consequences for any social welfare or criminal justice system that has a large Aboriginal client group, particularly when young Aboriginals are concerned.

Table 2 shows an example of the projected demands on the criminal justice system. If the actual number of admissions to provincial and federal correctional facilities in Alberta for adult and young offenders for 1989 is compared with the projected Aboriginal and non-Aboriginal populations for that year, a rate of admissions per 1,000 of the population for Aboriginal and non-Aboriginal offenders can be calculated from the Table. It is evident that the rates of admission per 1,000 population for the various age groups for Aboriginal offenders are extremely high compared to the rates for non-Aboriginal offenders.

Aboriginal offenders had a rate of admission of 91.2 admissions per 1,000 total population. This rate was eight times higher than the admission rate for the non-Aboriginal population (11.4 admissions per 1,000 total population). For the 12 - 18 years age category, the Aboriginal rate of admission was 5.9 times higher than the non-Aboriginal rate; for the 19 - 24 year age category, the rate was 5.4 times higher; for the 25 - 34 year age

TABLE 1

POPULATION PROJECTIONS FOR ABORIGINAL AND
NON-ABORIGINAL PEOPLE IN ALBERTA 1990 AND 2011

Age Categories	1990		2011		% Change 1990 to 2011	
	Native ^a	Non-Native ^b	Native	Non-Native	Native	Non-Native
0 - 14 (% of total population)	47 709 (8.2)	534 791 (91.8)	62 458 (11.3)	488 242 (88.7)	+30.9	-8.7
15 - 19 (% of total population)	12 601 (7.3)	159 099 (92.7)	18 755 (9.5)	179 345 (90.5)	+48.8	+12.7
20 - 24 (% of total population)	12 523 (7.1)	164 377 (92.9)	18 033 (7.8)	213 967 (92.2)	+44.0	+30.2
25 - 34 (% of total population)	24 277 (5.1)	452 623 (94.9)	35 745 (7.6)	433 355 (92.4)	+47.2	-4.3
35 - 44 (% of total population)	13 556 (3.4)	381 044 (96.6)	30 742 (7.5)	377 358 (92.5)	+126.8	-1.0
45 - 64 (% of total population)	10 286 (2.4)	416 214 (97.6)	32 022 (3.7)	840 178 (96.3)	+211.3	+101.9
65+ (% of total population)	2 794 (1.3)	213 006 (98.7)	5 578 (1.5)	371 922 (98.5)	+99.6	+74.6
TOTAL (% of total population)	123 746 (5.1)	2 321 254 (94.9)	203 333 (6.5)	2 904 367 (93.4)	+64.3	+25.1

^a Projections for the Aboriginal population are based on the 1986 Census figures for the Aboriginal population of Alberta and on the application of the medium population growth scenario for regular registered Indians published by Indian and Northern Affairs Canada in January, 1990. (*The regular registered Indian projections were used to exclude unusual growth patterns caused by the registering of 'Bill C31' Indians.*)

^b The population data for the non-Aboriginal population were obtained from the population projections for Alberta published by the Alberta Bureau of Statistics in May 1988. Aboriginal population projections were subtracted from these total populations.

TABLE 2
RATE OF OFFENDER ADMISSIONS PER 1,000 OF THE POPULATION FOR ALBERTA, 1989 AND 2011

Age Structure (Years)	1989						2011					
	NATIVE			NON-NATIVE			NATIVE			NON-NATIVE		
	No. of Offend.	Pop.	Rate /1000 Pop.	No. of Offend.	Pop.	Rate /1000 Pop.	No. of Offend.	Pop.	Rate /1000 Pop.	No. of Offend.	Pop.	Rate /1000 Pop.
12 - 18 ^a	1 893	26 680	71.0	3 899	322 520	12.1	2 766	38 988	71.0	4 137	342 212	12.1
19 - 24 ^b	3 273	12 450	262.9	8 159	168 850	48.3	4 741	18 033	262.9	10 339	213 967	48.3
25 - 34	3 724	23 148	160.9	9 188	461 152	19.9	5 751	35 745	160.9	8 634	433 355	19.9
35 - 44	1 527	12 873	118.6	3 411	362 927	9.4	3 647	30 742	118.6	3 547	377 358	9.4
45+	551	12 577	43.8	1 579	613 923	2.5	1 647	37 600	43.8	3 019	1 212 100	2.5
Total Population (0 - 45+ Years)	10 968	120 239	91.2	26 186	2 298 061	11.4	18 552	203 333	91.2	29 676	2 904 367	10.2

^a For this age category the admission data are for the 12 - 18 year age group and the population data are for the 10 - 19 year age group.

^b For this age category the admission data are for the 19 - 24 year age group and the population data are for the 20 - 24 year age group.

category, the rate was 8.1 times higher; for the 35 - 44 year age category, the rate was 12.6 times higher, and for the 45 years and over category, the rate was 17.5 times higher.

The difference in the rates of admissions between the Aboriginal and non-Aboriginal populations is enormous. Even though there may be some question about the accuracy of the projections for the Aboriginal population, the difference in the admission rates is so significant that it is almost possible to discount any inaccuracies. For example, for the 1989 Aboriginal rate of admission to be only twice the rate for non-Aboriginal offenders, the 1989 Aboriginal population would have to be increased from 120,239 to 481,053. Inaccuracies of this extent are unlikely to occur.

If, for the sake of projection, the assumption is made that there is no change in the rate of admissions between the Aboriginal and non-Aboriginal populations between 1989 and 2011, then the projected number of Aboriginal and non-Aboriginal admissions to Provincial and Federal Correctional facilities can be calculated by using the 1989 admission rates. Tables 2 and 3 illustrate these projections.

Projections indicate that by the year 2011, Aboriginal offenders will account for 18,552 (38.5%) of all admissions to federal and provincial correctional centres in Alberta, compared to 29.5% of all such offenders in 1989. The Aboriginal offender admission population is expected to increase by 69.1% from 10,968 in 1989 to 18,552 in 2011, compared to a 13.3% increase for the non-Aboriginal population. In some age categories, for example the 12 - 18 years age group, Aboriginal offenders are projected to

account for 40.0% of the admission population to correctional facilities by the year 2011. In other age categories such as the 35 - 44 age group, Aboriginal offenders are projected to account for nearly 51% of the admission population.

These demographics do not only have an impact on the criminal justice system. The Provincial Child Welfare System will also be affected significantly. The Alberta Department of Family and Social Services indicated, for example, that at the end of November, 1990 34% of the children receiving services were Aboriginal; 43% of children in care were Aboriginal; and 47% of permanent guardianship orders concerned Aboriginal children. Obviously, growth in the Aboriginal population under 18 years of age will also have a significant impact on this system.

The examples show clearly that, if no substantive actions are taken to change the involvement of Aboriginal people with the criminal justice or social welfare systems, those systems can expect increased involvement with Aboriginal people at an ever-increasing cost. With respect to the criminal justice system, the projected increase in the number of Aboriginal admissions to correctional facilities from 1989 to 2011 is expected to be 7,584. A rough estimate, using an average length of time in custody of 30 days and an average cost per day of \$100.00, indicates that the increase in Aboriginal offender admissions alone would cost an extra \$22,752,000. This figure does not include inflation.

These costs - the financial costs to society as a whole and the human cost to the Aboriginal community in particular - are extremely high. Such non-productive costs must be weighed against the increasing needs of the aging society as a whole. This need is characterized in particular by the

TABLE 3

PROJECTIONS OF THE NUMBER OF ADMISSIONS TO ALBERTA PROVINCIAL
AND FEDERAL CORRECTIONAL FACILITIES IN 2011

Age Structure (Years)	Number of Admissions to Provincial/Federal Correctional Facilities					
	1989 (Actual)			2011 (Projected)		
	Native	Non-Native	Total	Native	Non-Native	Total
12 - 18 (% row)	1 893 (32.7)	3 899 (67.3)	5 792 (100.0)	2 766 (40.1)	4 137 (59.9)	6 903 (100.0)
19 - 24 (% row)	3 273 (28.6)	8 159 (71.4)	11 432 (100.0)	4 741 (31.4)	10 339 (68.6)	15 080 (100.0)
25 - 34 (% row)	3 724 (28.8)	9 188 (71.2)	12 912 (100.0)	5 751 (40.0)	8 634 (60.0)	14 385 (100.0)
35 - 44 (% row)	1 527 (30.9)	3 411 (69.1)	4 938 (100.0)	3 647 (50.7)	3 547 (49.3)	7 194 (100.0)
45+ (% row)	551 (26.5)	1 529 (73.5)	2 080 (100.0)	1 647 (35.3)	3 019 (64.7)	4 666 (100.0)
Total Offender Population (% row)	10 968 (29.5)	26 186 (70.5)	37 154 (100.0)	18 552 (38.5)	29 676 (61.5)	48 228 (100.0)

non-Aboriginal population which is aging into the dependent age groups without a corresponding increase in the age group available for work.

It would appear that, on the one hand, the rapid growth of the Aboriginal population can cost the government through increased demands on social welfare and criminal justice systems. In this case, there would be no apparent benefit to any part of society. On the other hand, funds can be channelled into educational and employment opportunities for Aboriginal people. Such measures would have a potential future benefit for society as a whole.

The Urbanization of Indian and Metis People

When the Indian Reserves were established in Alberta, the province had no large urban centres. Several urban centres have developed near reserves. Examples are: Lethbridge (Blood Reserve), Calgary (Sarcee), Wetaskiwin (Hobbema), Edmonton (Enoch), and Fort McMurray (Fort McKay). There are several reasons which explain why Aboriginals do not necessarily stay in their own communities. Some of the most compelling responses are the living conditions in some communities, including the levels of education, health care and unemployment. These factors have resulted in a steady and increasing migration from Aboriginal communities to urban areas.

One startling example is the City of Wetaskiwin. The 1986 census showed 150 Indian and Metis living in Wetaskiwin. The current estimate is 1,800. This exodus away from Reserves has many causes. There is little, if anything on the Reserves to encourage an Indian to remain. The

houses on the reserves and the reserves themselves are over-crowded. Housing allocation on a reserve is controlled by the Band Council. We have heard of instances of housing, land and work being given¹² to friends and relatives of Band Council members.

Aboriginal migration from reserves and settlements to urban areas frequently results in Aboriginals becoming involved in the "inner-city lifestyle" which is characterized by poor housing and high crime rates. Most of those who move to the cities are the younger Aboriginals looking for a better way of life, including better health care, educational opportunities, and employment.

The flow to urban centres has implications for municipal government. Urban municipalities must recognize the trend, and be prepared for an influx of Indian and Metis people. The trend toward urbanization of Aboriginals will have an impact on health care, schools, social services, and business.

The Task Force Recommends:

- 8.9 That Aboriginal communities be assisted in establishing a viable economic base to provide employment and that incentives be provided to Aboriginals for remaining in the community.
- 8.10 That, because many Aboriginal communities have an inadequate resource and economic base, the resources available be allocated equitably and without favour.
- 8.11 That urban centres recognize and be prepared for a continuing influx of Aboriginals.

Indian and Metis Leadership

Indian Reserves are governed by a Chief and Councillors. The number of councillors is determined by the number of residents on the Reserve. Metis Settlements are governed by Settlement Councils which operate much like a Municipal Council. Indian and Metis councils have committees to provide for services such as health, welfare, police, roads and utilities. There is only a small pool of leaders on the Reserves and Settlements. A small but increasing number of students attend University and Community Colleges. When they graduate, they often do not return to the Reserves and Settlements as they obtain employment in the non-Aboriginal community. Government departments such as Health and Welfare or Wildlife, and organizations such as the R.C.M.P., municipal police, provincial and federal correctional services and parole recruit promising Aboriginals. The frequent result is that they are removed from their communities.

As a Task Force, we have been impressed with the high calibre of the Chiefs and Councillors we met. They are well-informed with respect to their responsibilities and duties. Our meetings with Chiefs and Councillors have been very productive.

The siphoning-off of potential leaders limits the role models available to Aboriginal youth. Lacking role models, young Aboriginals can easily become subject to peer pressure which may lead to involvement with the criminal justice system.

The Indian and Metis communities have developed strong national, provincial and local associations which provide political

leadership in dealings with governments at all levels. These organizations are particularly active with respect to Aboriginal and Treaty rights. Many of the leaders of these organizations are, of necessity, removed from their reserves or settlements. Although they make substantial contributions on the national and provincial scene, their leadership qualities are not readily available to their home communities.

Aboriginal youth require positive role models. They can identify with those Aboriginals who have succeeded. However, when success or advancement causes those who provide role models to leave the community, the community suffers.

Racism

The Task Force views racism as consisting of racial prejudice – the attitudinal pre-disposition to respond in a certain way; and racial discrimination – the acting out or application of this prejudice. Racism becomes evident when racial prejudice leads to individual or systemic discrimination. The Marshall Inquiry noted that racism has traditionally been a particular problem for the legal system. The Marshall Inquiry observed that:

Discrimination is a paradoxical phenomenon; it may be obvious, but it can be very difficult to prove.¹³

Discrimination, as a practice, usually takes two forms. The first is direct or overt discrimination, which is usually intended. The second is indirect or systemic discrimination, which is usually unconscious or unintended. Although the two types of discrimination are distinct, victims of racism usually do not distinguish between them. The Dene Tha'

Band of Assumption made the following comments:

How many of the people serving the Criminal Justice System at all levels are Native? The answer to that question will indicate the degree of racism in the Criminal Justice System. Lawyers, crown prosecutors and police are not discreet. People's past criminal records are discussed with other people in front of community members. It's like they're just a bunch of stupid Indians. (21) They mimic the broken English of the Natives or tell jokes with a racial slur. A joke going around town this winter: 'What did the Creator tell his Indian children? Answer: Don't do anything until I get back.' If we are looking at the whole system, we need to look at this.¹⁴

The Brief from the Oblates of Mary Immaculate Justice and Peace Committee also addresses discrimination:

Through our relationships with Native people we are very aware of the extent to which racism is alive in our society. The roots of this racism extend back to the first encounters between Europeans and Native people. It continues in the assumption of the superiority of a criminal justice system based on British common law; in the resistance to the acceptance of Native traditions and spirituality; in the attitude that, 'it is their problem' when addressing alcoholism, suicide, unemployment on reserves or among urban Natives. It is our position that until racism among us is recognized and diminished then the statistics of over representation in the criminal justice system will not be changed appreciably. A focus on having Native peoples becoming part of the system as police, correctional officers, lawyers, etc. can be a form of racism. For one expression of racism is to make the traditions and systems of the dominant society determinant for all.¹⁵

Associate Chief Judge Murray Sinclair, of the Provincial Court of Manitoba and co-chairman of the Manitoba Aboriginal Justice Inquiry, addressed the topic of systemic discrimination:

Systemic discrimination is not a particularly well understood phenomenon - its utility and application has so far been confined to the field of employment law and practices. But even drawing upon the various legal analogies which arise from the field of employment law, one can come to some small understanding of what is meant by systemic discrimination. Simply put, systemic discrimination is discrimination which arises from the adverse impact upon an identifiable group within society by the systematic application of supposedly neutral criteria. Discrimination is by definition, adverse selection.¹⁶

As observed by the Marshall Inquiry, discrimination is difficult to prove. Often, aggregate statistical analysis must be conducted to make it visible. Judge Sinclair states:

Within the administration of justice the statistical evidence of over-representation by aboriginal people in our institutions is a fair indication that the system's use of its criteria for client selection and method of treatment warrant review. Simply put, evidence of adverse impact, in the absence of any reasonable and proven alternative explanation is proof of systemic discrimination.¹⁷

Discrimination is often subtle and non-visible. Nevertheless, statistical analysis allows conclusions to be drawn about systemic discrimination. The Task Force concludes that racism, however indirect or subtle, is prevalent in our society. We are also of the opinion that the criminal justice system is a microcosm of the larger society. Thus, any racial prejudice that exists in society at large also exists in the criminal justice system.

Racial prejudice is also reflected in the area of employment. While Aboriginal offenders in the criminal justice system are over-represented, Aboriginals as employees are under-represented. The Canadian Human Rights Commission observed in its Brief:

The need for public service institutions adequately to reflect the composition of the community they serve is an elementary proposition for a society that values human rights. Since 1986, it has become federal law under Canada's Employment Equity Act. Statistics show that aboriginal peoples remain the single most under-represented group in the federal workforce at large, and the justice system is no exception.¹⁸

During visits to communities and correctional centres' the Task Force heard many anecdotal accounts of racism experienced by Aboriginal people. It is clear to us most Aboriginals perceive of the existence of racism.

The failure of the criminal justice system to deal effectively with Aboriginal people has led to the call for an Aboriginal Justice System. In addressing this issue, the Canadian Human Rights Commission stated:

In the face of substantial evidence that the mainstream justice system has failed Canada's Aboriginal peoples in matters of judicial fairness, correctional and rehabilitation treatment, decent policing standards, and so on, many legal experts, human rights advocates and native spokespeople have called for a degree of autonomy for native justice. This is also consistent with growing demands for Aboriginal self-government, including the devolution of powers through the government's 'community self-government' policy.¹⁹

The Task Force believes that Aboriginal people are exposed daily to racism in our society. This racism exists in the criminal justice system as it does in the larger society. Ignorance of Aboriginal people and the issues and problems faced by Aboriginal people appear to be a large part of the problem of racism.

The Task Force Recommends:

- 8.12 That Aboriginal awareness seminars and programs be provided to sensitize all criminal justice personnel to Aboriginal culture and the issues and problems faced by Aboriginal people. Public education of society at large about these matters is also needed.**

- 8.13 That the criminal justice system employ Aboriginals to ensure fair and equitable representation of Aboriginal people.**

- 8.14 That criminal justice agencies in Alberta establish a firm position to discourage and penalize discriminatory or racist actions or expressions at any level of the criminal justice system.**

8.2 Jurisdictional Interaction and Overlap

Term of Reference

Additional Considerations 8(b)

to identify areas of jurisdictional interaction or overlap between the federal and provincial governments that tend to impede actions and decisions within the corrections system to the detriment of Indian and Metis offenders.

The Task Force received Briefs from the Solicitor General of Alberta and Correctional Services of Canada. Neither Brief identified any areas of jurisdictional interaction or overlap detrimental to Indian and Metis offenders.

Section 730 of the Criminal Code of Canada provides that a person who is sentenced to imprisonment for:

- a. life
- b. a term of two years or more, or
- c. two or more terms of less than two years each that are to be served one after the other and that, in the aggregate, amount to two years or more, they shall be sentenced to imprisonment in a penitentiary.

All other sentences are to be served in a provincial institution.

The division of jurisdiction between Canada and the Provinces is not understood by Aborigines. Indeed, it is

not understood by many of those responsible for the operation of the criminal justice system. Divided jurisdiction is difficult to rationalize in 1990.

The Fauteux Report points out the difficulty of divided jurisdiction in a federal state.

The British North America Act gives to parliament exclusive legislative jurisdiction over the establishment, maintenance and management of penitentiaries. To the provincial legislature it gives exclusive legislative authority for the establishment, maintenance and management of public and reformatory prisons in and for the province. Parliament has provided, by means of its legislation, that a sentence of imprisonment for two years or more shall be served in a federal penitentiary and that a sentence of less than two years shall be served in a provincial prison or reformatory... The inmates of provincial penal institutions are, of course, confined in institutions in ten separate provinces under the management of ten separate provincial governments.²⁰

This artificial distinction may have been valid in 1867, but to contemporary Aborigines it is problematic.

Judges decide whether a prisoner goes to a penitentiary or a provincial institution. The decentralized penitentiary placement process merely determines to which institution a federally sentenced inmate is sent. Decisions about institutional placement are made based on the program and security requirements of each case. Inmates are matched with the institution that most closely approximates their needs with respect to these general criteria.

The Task Force recognizes the need for various degrees of security within institutions. However, like most of the people we interviewed in the Criminal Justice System, we consider the two year

requirement to be an historical anomaly. We would suggest that the following factors be considered when placement is determined for offenders:

- A. [The degree of security required.] Prison administrators have told us that they have high risk offenders in the provincial correctional institutions. Administrators in the penitentiary system have told us that they have minimum risk prisoners in their institution. We have also been told that under the Exchange of Services Agreement, the Province is reluctant to accept low-risk long-term prisoners.
- B. [Appropriate programming.] If the goal of rehabilitating prisoners is to be taken seriously, correctional systems should respond by placing a prisoner in the institution which can provide the most appropriate programming. Aboriginals require programming which is culturally sensitive and which prepares them for release into their home community.
- C. [Proximity to the prisoner's home community, whether this is a Reserve, Settlement or urban area.] This is particularly important for Aboriginal people because of the culture shock they experience when they enter the correctional centre.

One of the major themes of the recommendations the Task Force made with respect to corrections is that they should be community-oriented. It is possible to locate correctional facilities on or close to reserves and settlements. However, the small numbers involved make it impractical to establish medium or maximum penitentiaries close to or on reserves or settlements.

The Correctional Service of Canada and the Solicitor General's Department of Alberta have an Exchange of Service Agreement which covers federal offenders who are transferred to provincial facilities for humanitarian or program reasons. Offenders selected for placement with the Province must be referred by the penitentiary placement officer and accepted by Alberta before an exchange can take place. This agreement is believed to have been of assistance to a number of Aboriginal people, particularly to those from more isolated regions who can be held, for example, at Peace River or Grande Cache.

Correction Services Canada and the Alberta Solicitor General also have a Community Services Agreement. It is through this agreement that Alberta Correctional Service assumes responsibility for direct parole supervision throughout the province of Alberta. Alberta is required to sub-contract to the non-profit sector a minimum of ten percent of the supervision cases available. One of the agencies with whom such a contract exists is Native Counselling Services of Alberta which now provides such services in Edmonton and High Level. The agreement is based on the principle that Aboriginal supervising agencies be used to the greatest extent possible. Responses to our inquiries suggest that the Community Services Agreement functions relatively well. It has created bureaucratic and administrative problems, but these problems do not hinder actions and decisions, and no detriment to Aboriginal offenders results.

Grierson Centre, a forty-bed minimum security institution for Aboriginal offenders' was established under the Community Service Agreement. There are three parties to this agreement:

Correctional Service of Canada, the Alberta Correctional Service, and Native Counselling Services of Alberta. Twenty-eight of the forty beds are guaranteed by the Correctional Service of Canada and twelve are guaranteed by Alberta Correctional Service. Of the twenty-eight Correctional Service of Canada beds, ten are reserved for Aboriginal offenders who have inmate status, and eighteen are reserved for Aboriginal offenders who have been granted day parole by the National Parole Board.

The Task Force visited Grierson Centre and was impressed with the old, but adequate physical facilities, the attitude of the staff, and the apparent good relationship between the staff and the inmates. The Aboriginals in the institution appear to be very comfortable with the facility; the Task Force was advised that the unlawfully-at-large and parole suspension rates have been reduced. We were impressed by the fact that Grierson Centre is staffed by Aboriginals. In addition, programs of Grierson Centre address the underlying factors related to the causes of Aboriginal criminal behaviour. Whenever possible, these programs are designed, developed, and delivered by Aboriginal people for Aboriginal people. Grierson Centre reflects most of the concepts held by this Task Force with respect to corrections and Aboriginal people.

Some of the service agencies told the Task Force that the division of jurisdiction between the Correctional Service of Canada and the Solicitor General's Department presents a problem with respect to obtaining funds. Possible consequences are a lack of long-range planning and a lack of consistency in the delivery of programs.

The Task Force notes a high degree of co-operation between the Correctional Service of Canada and the Solicitor General of Alberta with respect to corrections. The existence of two separate correctional systems has the potential to create or magnify jurisdictional interaction or overlap. It creates two bureaucracies responsible to different levels of government and it requires different institutions. The potential for inefficiencies exist. However, if there are inefficiencies, they do not appear to impede actions and decisions detrimental to Aboriginal offenders.

8.3 Government Departments - Services

Term of Reference:

Additional Considerations 8(c)

to determine how the various departments of the Government of Alberta that provide services to Indian and Metis people can more effectively coordinate various services and programs to the benefit of the Indian and Metis people in such a manner as to reduce the number of Indian and Metis people coming into contact with the criminal justice system.

We approach the question of the role of government under the assumption that any government service or program which is not delivered effectively to Aboriginal people can contribute to their coming into contact with the criminal justice system. The Department of the Attorney General

and the Department of the Solicitor General are the primary government departments involved with Aboriginals in conflict with the criminal justice system. There appears to be effective liaison between these departments, as well as effective co-ordination of the services and programs they provide.

The Task Force has met with representatives of the provincial Departments of the Attorney General, Solicitor General, Advanced Education, Health, Education, Consumer and Corporate Affairs, Family and Social Services, Forestry, Lands and Wildlife, Northern Alberta Development Council, Municipal Affairs, Career Development and Employment, and with the federal Department of Indian Affairs and Northern Development. We also had an opportunity to meet with the Government Caucus Committee on Native Affairs.

We observed that many government departments work in similar areas with a marked lack of cohesiveness in meeting common objectives. Apparently, one of the problems is that several departments are funding similar programs. Some of the departments have a philosophy and policy for dealing with Aboriginals, while other departments seem to do so on an ad hoc basis.

The Department of the Solicitor General has a policy statement on correctional programs for Aboriginal offenders which when implemented will meet many of the concerns expressed by the Task Force. The policy statement of the Department of Education's Native Education Project, provides

a vision of pride in heritage, development of self-reliance and an Aboriginal people that walk tall and take their rightful place in the life of this province.²¹

The policy statements of these two Departments reflect departmental policy, which undoubtedly reflects government policy. Other departments have not provided the Task Force with statements of departmental policy. However, the briefs we received left us with the impression that most government departments have not developed policy with respect to Aboriginals.

In December of 1987, the Government of Alberta and the Metis Association of Alberta entered into a framework agreement. The agreement signalled the Government of Alberta's commitment to work with the Metis Association of Alberta and to assist the Association in its determination to break new ground, particularly toward achieving the primary goals of self-sufficiency and self-determination. Originally, the framework agreement covered a period of one year. In December of 1988, it was renewed for an additional year. One year later, in December of 1989, renewal covered another three years. The framework agreement enables the Metis people to participate meaningfully in the Government's decision making process. Furthermore, the agreement includes funding to provide the necessary resources. Because of the agreement, the Metis Association of Alberta can play a much more active role in joint planning and initiation of its own policies, priorities, programs and services. A joint committee composed of the Deputy Minister of the Executive Council and the President of the Metis Association was created to ensure the effective pursuit of the agreement's full potential.

On July 1st, 1989 the Province of Alberta and the Metis Settlements entered into the Alberta Metis Settlements Accord which has resulted in the enactment of the Constitution of Alberta Amendment Act

1990, the Metis Settlement Act, the Metis Settlements Accord Implementation Act and the Metis Settlements Land Protection Act. Eight Metis Settlements have been established in Alberta on land dedicated by the Province. The Settlements are governed by Settlement Councils with powers similar to those of municipal governments. Long-term funding has been guaranteed to the Settlements to enable them to become completely self-governing and self-sufficient within seven years.

The Government of Canada acknowledges Constitutional responsibility for Indians on reserves, but it does not acknowledge any responsibility for Metis. Off-reserve Indians are therefore, by default, the responsibility of provincial or municipal governments. These responsibilities are not clearly defined whereas the Government of Canada and the Indians recognize that a trust and fiduciary relationship exists between them, based on the Constitution Acts, the Treaties, and the interpretations of their relationship as defined by the Supreme Court of Canada.

Representatives of the Government of Alberta have advised the Task Force that the Metis, through the Metis Association of Alberta, the Federation of Metis Settlements and the framework agreement, are very skilled in dealing with the provincial government, and know how to obtain government services and funding. On the other hand, the Government of Alberta finds it difficult to deal with the Indians who represent three different Treaty areas, several Tribal Councils, and forty-five individual Bands. The difficulty arises mainly because the Indians have traditionally been the responsibility of the federal government.

Difficulties could arise because of the organizational framework used by the Government of Alberta for dealing with

Indians. The Minister responsible for Native Affairs in the province is the Attorney General, who is also responsible for prosecuting all cases coming to Court. In addition, the Attorney General plays a major role with respect to land claims.

The Deputy Minister reporting to the Attorney General in his capacity of Minister responsible for Native Affairs is a Deputy Minister of the Department of Municipal Affairs. The main contact between Government and Indians is the Executive Director of the Native Services Unit, who is located in the Native Services Division of the Department of Municipal Affairs. It would appear that the Executive Director of this Unit does not have direct access to the Minister responsible for Native Affairs. As a consequence, any initiatives must go from the Executive Director to the Deputy Minister of Municipal Affairs, and then to the Attorney General in his capacity of Minister responsible for Native Affairs.

The Task Force met with the Government Caucus Committee on Native Affairs. This is a relatively new committee. Their suggested terms of reference are:

- A. Meet with delegations representing native people to hear their concerns and recommendations relative to provincial government policy, programs and legislation.
- B. Assist and advise the Ministers responsible for native issues on matters pertaining to legislation, programs and policy.
- C. Endeavour to assist in identifying opportunities for increased coordination, efficiency, and effectiveness in the delivery of services to native people by provincial government departments.

- D. Assist the Ministers responsible for native issues in attending conferences, seminars, and events, and in communicating with the native community.

At our meeting with the Government Caucus Committee on Native Affairs, we were told that the Government has made no move to establish a separate department for Aboriginal Affairs. The rationale was that the department would become isolated, and Aboriginals would be removed from mainstream government initiatives. The Caucus Committee had the impression that the Government of Canada was anxious to see the province accept greater responsibility for Indians. However, there does not seem to be any stated federal policy on this matter.

The Government Caucus Committee advised us that the provincial government had not taken a comprehensive position with respect to Indian and Metis and in particular there is no broad government policy regarding Indian and Metis employment or affirmative action programs.

The Task Force has not been able to detect any branch of the government charged with the responsibility for developing and implementing a provincial Aboriginal policy. There appears to be a lack of commitment to addressing Aboriginal issues at the correct level of government. The Caucus Committee on Native Affairs was unable to give us a clear definition of the province's responsibility for Indians.

British Columbia gives Native Affairs a much higher profile than Alberta. The Premier has a cabinet committee on Native Affairs. The cabinet ministers involved have a role in developing and implementing government policy for Aboriginals. In Alberta, however, the Task Force has seen the problems Indian Bands

have in dealing with the various departments. We have also been told of the difficulty government has in dealing with the large number of Bands.

The Task Force sees a need to address policy issues which affect Indians and Metis in a co-ordinated manner with the involvement of the most senior Cabinet Ministers. Government representatives with whom we have met have shown a keen interest in and understanding of the problems involving Aboriginal people. However, in the absence of a co-ordinated, comprehensive government policy statement their positive intentions are often frustrated.

The *Edmonton Journal* has reported that:

*Attorney General Ken Rostad, the Minister responsible for Native Affairs, said Thursday he will approach Premier Don Getty about forming a full-time ministry to deal with Native issues. I think the time is right to work with the broad Native community ... they need a Minister who can devote full-time ... to advocate for them and spend the time to work with them.*²²

The *Journal* further reported that Aboriginal leaders welcomed the Attorney General's comments. Chief Roy Whitney of the Sarcee Band, near Calgary, is reported to have said:

*I think it is a positive step. There are many issues that face us provincially and we need a department we can deal with rather than running throughout provincial departments. I think streamlining it will be that much more efficient.*²³

The Task Force is of the opinion that the Attorney General has correctly identified the problem, and that the creation of such a ministry would be welcomed by Aboriginals.

On March 5, 1991, the Premier of Alberta announced that Native Affairs will become the responsibility of the

Department of the Solicitor General, which is now administering Corrections, The Liquor Control Board, the Motor Vehicles Branch, Law Enforcement and the Alberta Racing Commission.

Many of the recommendations of this report must be implemented by the Department of the Solicitor General. Although this reallocation of duties from one busy Department to another busy Department has some merit, it does not meet the need identified by the Attorney General and embraced by Indian leaders.

The Task Force is reluctant to recommend the creation of another government department. However, the problems we have identified in this Report, and the conditions we have observed, point to the necessity for the appointment of a Minister of Indian and Metis Affairs. This Minister should not hold any other major portfolio, and should be able to focus primarily on Indian and Metis affairs. The role of the ministry should be the development of policy and evaluation and co-ordination of programs administered by other departments. The department would not be responsible for the delivery of services. The Task Force is of the opinion that such a department would give Indian and Metis affairs a high profile.

The Task Force Recommends:

- 8.15 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 various components of the system to achieve the stated goal.
- 8.16 That a Minister of Indian and Metis Affairs be appointed.

In the event that this recommendation is not implemented, we suggest two alternatives.

The first alternative is the creation of a Cabinet Committee on Aboriginal Affairs, similar to the Premier's Cabinet Committee in British Columbia. This Committee would then develop and implement policies. The existing Native Services Unit should have ready and easy access to the Committee as a whole or to the Chairman of the Cabinet Committee.

The second alternative is to establish a Commission, Board, or Committee, composed of a senior representative from each government department which deals with Aboriginals, together with representatives from Aboriginal communities. This forum would initiate and monitor programs and services for the Aboriginal communities. It would consult regularly with Indian and Metis leaders and communities. Aboriginal communities would thus have access to Government through the Commission, Board, or Committee.

We see several advantages to these three approaches. The first advantage is that Aboriginal communities would receive the message that the provincial government is genuinely concerned with Aboriginal affairs, and that it is prepared to deal with these affairs in a co-ordinated, efficient manner. Indian and Metis Bands, Settlements, and organizations could contact the department or committee to obtain information and direction with respect to government programs and funding. There would be advantages to government, such as the avoidance of duplicate financing and programs. Government would also be able to deliver co-ordinated services which reflect the established government policy for Aboriginals.

In written briefs and oral presentations, the Task Force received the consistent message that Aboriginals wish to participate and co-operate with government in establishing policies and making decisions affecting them. The Aboriginals do not want merely to be the recipients of the product of the process. They want to be part of the process.

The Task Force Recommends as Alternatives:

8.17 (a1) That a Cabinet Committee on Indian and Metis Affairs be established.

8.18 (a2) That, as a last alternative, a Commission, Board, or Committee of senior representatives of Government, Indians, and Metis be established to address the concerns of Indian and Metis.

8.4 Cross-Cultural Training

Term of Reference

Additional Considerations 8(d)

to review the cross-cultural training provided to the Judiciary, Crown Prosecutors, Legal Aid personnel and Correctional personnel to determine if existing training is adequate and to make any recommendations necessary to ensure the development of comprehensive and effective programs.

Aboriginal awareness training and cross-cultural training have been addressed throughout the Task Force Report and other sections provide additional discussion of these subjects. For example, an in-depth discussion of cross-cultural training provided by police services is contained in the section on Police.

Prosecutors

The Alberta Department of the Attorney General was asked to provide data on the cross-cultural training of Crown Prosecutors. The Department's response indicates that formal education in Native culture does not form part of a trial lawyer's training:

The prosecution of criminal cases will, of course, bring people from many ethnic and cultural backgrounds before the Court as witnesses and accused persons. It has never been suggested that in order for the process to be fair, the Prosecutor (or the Judge or the defence lawyer for that matter) should receive general formal training in any particular ethnic culture. The criminal justice system is not ethnocentric in its operation. Rather, it focuses its decisions on the material evidence and only on the evidence brought forward and admitted by the Judge. If a matter concerning the cultural background of a witness or accused person is material to an issue in the case, it may well form part of the evidence in the case. It will then be learned and taken into account by all involved in and for that case. If it is not so material, it should not impact upon any result. Accordingly, formal education in the cultural background of peoples be they Native or members of any other cultural group, does not specifically form part of a trial lawyer's training.

With respect to Aboriginal awareness training, the Alberta Crown Attorneys Association emphasizes the relatively limited contact of the Prosecutor with the accused person, but recognized the

importance of sensitivity to Aboriginal culture in the sentencing process. The Alberta Crown Attorneys Association does not provide regular Aboriginal awareness training to its members. However, such training has been addressed as an area of concern at the Association's Annual Conferences. The theme of the September 1990 Annual Conference was "Native Justice." The Crown Attorneys Association has met with other service providers in the criminal justice system, such as courtworkers to explain how these service providers can assist their clients best by providing the information required by the courts. It is understood that this activity is more one of facilitating the activities of the courts than one of providing Aboriginal awareness training for the Prosecutors.

Justices of the Peace

The Alberta Department of the Attorney General was also asked to provide information on the cross-cultural training offered to Justices of the Peace:

A Native cross-cultural awareness seminar was provided to Court Administrators, some of whom are Justices of the Peace, in 1982. No other or subsequent cross-cultural programs, or Native awareness training has been provided to Justices of the Peace.

Legal Aid Personnel

In response to our request, the Legal Aid Society provided the following information on cross-cultural and Aboriginal awareness training for Legal Aid personnel:

A speaker is coming in October of 1990 to provide a seminar to all employees of the Legal Aid Society with respect to cross-cultural problems. This individual spoke previously at a

seminar provided by Native Counselling Services where one of our Legal Aid administrators attended. The same Legal Aid administrator and her Secretary are attending class to learn Cree. They find they are also learning a great deal of Native culture at the same time. Many of the other staff have also taken courses through Native Counselling Services.

Legal Aid Funded Lawyers

The Legal Aid Society lists 2,647 lawyers who provide legal aid services. Because of the significance of the Society, the information on cross-cultural and Aboriginal awareness training provided to lawyers has been addressed in the section on Legal Aid.

Faculties Of Law

The Law faculties of the University of Alberta and the University of Calgary provided the following responses to our request for information on Aboriginal awareness training for student lawyers:

A. University of Alberta

- *Native Studies (Professor Richard Bauman)*

In the second term of the 1989-90 academic year, Professor Bauman was jointly responsible for preparing and conducting a two-credit course entitled "Native Rights" together with Professor Michael Asch, a member of the Department of Anthropology at the University of Alberta.

... the focus of the course was specifically on aboriginal land claims and the continuing quest by the First Nations in Canada for some measure of self-government.

In studying these topics, the instructors did not confine the students simply to a survey of traditional legal materials, such as case

reports. They also looked at and discussed some of the vast literature on the historical, anthropological, and political aspects of the aboriginal claims for recognition of their existing rights under Federal and Provincial laws. They took into consideration past and current statements of government policy, as well as the particular perspectives that have been advanced by status Indians, non-status Indians, the Metis, the Inuit, and the Dene.

- **Real Property (Professor Catherine Bell)**

In this course, Professor Bell briefly addresses the concept of aboriginal title, as well as the aboriginal perspective on property ownership. Issues of Native land rights are referred to throughout the course to illustrate various points associated with Canadian real property law.

- **Legal History (Professor Catherine Bell)**

In this course, a segment is devoted to concepts of Canadian property law. This is contrasted with aboriginal systems of land holding. During the past academic year, Professor Pat McCormack, an anthropologist, presented a lecture on the role of kinship and possession in land holding patterns of Cree peoples living in the Fort Chipewyan area.

- **Native Rights (Professor Catherine Bell)**

Professor Bell is preparing to teach a course in Native law in the Fall. Professor Bell's Native Rights course will deal with several aspects of Native law, including aboriginal and Treaty Rights. In particular, she will examine concepts of Native self-government, and (in all probability) Tribal Court systems. She will also be looking at the application of Provincial and Federal laws to Native peoples, covering such matters as charges under gaming legislation. Although the course does not devote a specific section to Native offenders, it will be taking a critical look at the appropriateness of the Courts as a mechanism to decide issues that affect Native peoples. The question of racial bias will also be raised.

- **Criminology (Professor Charalee Graydon)**

Professor Graydon teaches a general course on the law and policy of sentencing. One portion of this course deals specifically with the sentencing of Native offenders.

Matters relating to aboriginal offenders are also discussed throughout the course in relation to principles of sentencing, the practice of sentencing, the sentencing framework, sentencing problems and avenues for sentencing reform.

- **Research Projects**

... Professors Bell and Graydon have been involved in research in the Native law field. Professor Bell has recently presented a paper on Metis Land Claims, and some of her work in that area will be included in a collection of readings on Native law to be published soon. Professor Graydon has also recently prepared and presented research work on female Native offenders.

Moreover, the Centre for Constitutional Studies, which is housed at the University of Alberta Law School, is in the process of establishing a special research project on police powers. This project will be rather comprehensive, and will involve a number of researchers from a variety of different areas. Among the topics to be considered will be minority representation on police forces. Some attention will also be paid to Native issues. This includes an inquiry into Tribal police forces, police-Native relations, aboriginal justice systems, and related matters.

- **Project Description: Native Law Student Program**

The project proposed is designed to increase Native enrolment at the University of Alberta Law School and to help ensure the success of Native law students through the creation and operation of internal and external support systems. The overall objective of the program is to increase the number of aboriginal members of the Alberta

Bar. We believe this objective can be achieved through the following activities:

- (a) recruitment of successful Native university graduates from Canadian universities;
- (b) promotion of the University of Alberta Law School through Native Studies Departments of Canadian Universities, Native university student associations, and existing programs for pre-law training for aboriginal students;
- (c) academic support through modification of first year courses to account for special needs and a peer tutorial program designed to provide assistance in substantive courses and to develop legal analytical skills;
- (d) assistance in obtaining financial support;
- (e) development of career support programs;
- (f) expanded course offerings and guest lectures on aboriginal legal issues;
- (g) the recruitment of a program director from the aboriginal community.

The proposed project will operate in conjunction with existing programs of pre-law training for aboriginal applicants and the University of Alberta Native orientation program rather than duplicating these services. Members of Alberta's aboriginal community have been consulted in the development of the project and we are confident that its implementation will be received favourably.

8. University of Calgary

In response to your inquiry about the extent of cross-cultural training about Native cultures that is provided in our Law School:

We have no specific program that would meet that description. Issues of aboriginal law are encountered in various parts of our curriculum

(including in a number of our natural resources law courses) and, while we do not offer an aboriginal law course on a regular basis, we have done so on an occasional basis (including during the past academic year).

A number of our faculty members have done research in related areas, and, over the past year, our Chair of Natural Resources Law was held by Professor Richard Bartlett of the University of Saskatchewan, who gave a number of seminars and talks on aboriginal issues to the downtown bar and others. As part of one of the natural resources law courses, Prof. Bartlett taught the class in aboriginal law. It began with an examination of pre-European settlement aboriginal law, and the entire class was founded on the premise that an understanding of real law is essential to understanding the nature of Canadian law relating to aboriginal people.

All of this is to say that while we have had a considerable interest and involvement in legal issues that pertain to Native peoples, we have not attempted to mount any cross-cultural training as such.

Although both law faculties provide courses on Aboriginal Law, there is clearly no direct and comprehensive Aboriginal awareness training program which addresses Aboriginal cultural and spiritual values.

We note that the University of Lethbridge and the University of Alberta offer courses in Native Studies. These courses are available to law students in their undergraduate program and they may form the basis of an adequate cross-cultural education.

Organizations

The Canadian Bar Association has shown considerable interest in Aboriginal issues. The Association has published a number of reports such as "Locking up Natives," "Justice Behind the Walls," and

"Aboriginal Rights in Canada: An Agenda for Action, 1988." The Association's interest has recently evolved into the development of an Aboriginal cross-cultural training seminar. On November 2, 1990, the Native Law Subsection of the Canadian Bar Association (Alberta Branch) held the first cross-cultural training seminar for lawyers serving Aboriginal clients in Alberta. The session was held at Poundmaker's Lodge, in St. Albert, Alberta.

The program was advertised as follows:

Experienced panels of native elders, cultural trainers, professors and practitioners have been gathered together for a one day seminar at Poundmaker's Lodge to discuss the following practical aspects of serving native clients: - Legal and political structures of Native communities in Alberta - Socio-economic structures of Native communities in Alberta - Practical aspects of serving Native clients in criminal, family and corporate/commercial law. This seminar will be of interest to lawyers who serve Native clients in any area of practice. The emphasis will be on clarifying the often unspoken rules of conduct and realities of a Native law practice.

The Legal Education Society of Alberta is another organization involved in the continuing education of practising lawyers. To date, the Society has not provided Aboriginal awareness training. Rather, the mandate of the Society is to provide educational up-dating on areas of interest identified by the general practising population and related to legislative and other changes.

The Indigenous Bar Association is a relatively new organization which has the potential for having an impact on Aboriginal awareness training for lawyers. Formed in 1989 for Aboriginal lawyers and Aboriginal student lawyers, it is a national Association with provincial

branches. Although the Association has not sponsored Aboriginal awareness training seminars or workshops to date, it has the obvious potential to be involved in such areas.

Provincial Court

Generally, Provincial Court Judges receive no training on appointment and no formal regular in-service training in the area of Aboriginal awareness.

However, annual workshops are provided to Provincial Court Judges through the Western Judicial Education Centre - a project of the Canadian Association of Provincial Court Judges. The Centre has organized a series of three annual workshops (1989-1991) with a strong Aboriginal awareness component. The second workshop, "The Western Workshop, Alberta" was held in May 1990. The eight-day workshop devoted more than two days to "Aboriginal People and the Court". It included sessions on:

- Sentencing of Aboriginal People

Objective:

The charge of systemic discrimination against aboriginal people by the justice system will be discussed. Small group discussion will be used in a concerted effort to seek practical solutions to specific problems. Substantive cross-cultural education on Native beliefs and values will be offered.

- Cross-Cultural Education: The Process

Objective:

Aboriginal people and Judges can benefit by direct informal discussion on mutual problems experienced in the application of the law. An inhibiting factor in understanding between the individuals

involved is often a lack of awareness of cultural issues between the groups involved. This section will concentrate on describing how communication can be fostered and understanding improved through the aid of specially prepared video tapes. The results of a pilot project on Vancouver Island will be presented to demonstrate what is possible in any community.

- Sentencing Programs as Alternatives to Incarceration

Objective:

This section will present practical steps that the existing justice system and aboriginal communities can take, together, to improve the justice response in dealing with Native offenders.

Court of Queen's Bench

The following information was received from the Honourable W.K. Moore, Chief Justice, Court of Queen's Bench of Alberta. He responded to a request for data including the cross-cultural and Aboriginal awareness training available to Judges of the Court of Queen's Bench:

Generally, from the replies I received, few Judges are aware of any on-going cross-cultural and Native awareness training programs available to Judges of the Court of Queen's Bench.

Appeal Court

Similarly to Judges at other levels of the courts, Judges from the Appeal Court of Alberta receive no Aboriginal awareness or cross-cultural training on appointment nor on a regular basis.

The Canadian Judicial Centre

Responding to our inquiry, the Executive Director of the Canadian Judicial Centre provided the following information about cross-cultural and Aboriginal awareness training:

In regards to cross-cultural training we have a number of programmes under development. We also co-ordinated a programme for Provincial Court Judges last year. We are now preparing with the Department of Justice Canada a video presentation for new Judges and to be available to all Judges. We have as well a Committee on cross-cultural issue more generally, dealing with racial and other differences. I might say though that we would like to provide much more than we are but are limited by our infrastructure and our resources in expanding further into a number of areas such as the one with which you are concerned. The report of Justice Stevenson documents the problems. Nearly 40% of Judges in Canada have not had on-going training in the recent past and nearly the same number no training on appointment. It is our view that Governments be encouraged to allocate more resources to funding judicial education in Canada. I might add that we, in Canada, in the past have not kept up with other Common Law countries in allocating judicial time and financial resources to on-going training of our Judges. I would be pleased to speak further to you. The views I express are my own and should not be construed as those of our Board.

Alberta Correctional Services

In response to a request for information from the Task Force, the Alberta Department of the Solicitor General made available the following information:

Content and Frequency

The Native Spiritual and Cross-Cultural Training Workshops were designed specifically to raise the awareness of staff in Correctional Services Division and the Justice System.

The content of the workshop is "Human Awareness". It is the unique Native perspective and interpretation of the importance of respect placed on all life-giving forces of the creation. Respect for life, yourself, environment, animals, plants, and for His creation is explained during the workshop. The information in each workshop is the same but the focus is different for each group. An example would be for the Young Offender Worker, the focus would be on child rearing and discipline practise whereas for the Correction Officer staff, the focus would be on different values, behaviour and lifestyle.

To date programs have been offered from four to five times per month and vary from one day seminars to two-and-one-half-day workshops. Workshops are available at both the induction and in-service levels of training depending on where it is most efficient and most appropriate.

Target Audiences

The workshops are available to Correctional Services Division and Law Enforcement Division personnel in the following jobs:

- Correction Officers
- Living Unit Officers
- Youth Workers
- Unit Officers
- Probation Officers/Parole Officers
- Court and Prisoner Security Constables
- Police Officers
- Special Constables

Native Input into the Design and Delivery of Such Programs

The Native input to the design and delivery of the program came from:

- Elders
- Presenter (background, work experience with Native Counselling Services as researcher, training officer)
- Discussions with Native staff as to need.

History of Programs and Implementation Dates

In June 1989, a training study on Departmental Native Culture Initiatives was completed and forwarded to the Deputy Solicitor General outlining the need, goals, objectives, program

descriptions, services, etc. ... The proposal outlined a delivery plan over the next two year period ending March 30, 1991. Program delivery commenced June 1989.

Effectiveness of Existing Programs and Proposals for Future Developments

To date, the Solicitor General Staff College has received very positive participant feedback on each course evaluation. Comments such as "very interesting and informative", "well prepared", "educational", etc., have been received.

The instructor continually incorporates recommendations into the presentations. Courses are scheduled to March 1991.

The Correctional Service of Canada

Upon request, the Correctional Service of Canada, Prairie Region, provided detailed program information on cross-cultural training. A selection of the data provided follows:

Cross-Cultural Training Programs - Overview

Although a number of initiatives were in place prior to 1984/85, it was in this fiscal year that Native-specific cross-cultural awareness programs became a standardized scheduled training event available to all staff.

Programs utilized by CSC has been developed and delivered by Native Counselling Services of Alberta, Native Clan of Manitoba, and CSC Staff.

In 1987/88 CSC assumed major responsibility for program delivery and redesign. A Native employee was seconded to the training division and a needs analysis was conducted to review the program and determine its level of effectiveness. The analysis found that although the program satisfied basic entry level requirements a program specific to CSC was required for those staff members who had continuing contact with Native offenders. The program entitled

**Report of the Task Force on the Criminal Justice System and its Impact
on the Indian and Metis People of Alberta, March 1991**

"Planning in Four Directions" was developed and the first course offered in 1989/90.

The Prairie Region is considered a leader in Native awareness training programs and has been selected to develop programs for delivery on a National basis.

Frequency of Program and Financial Expenditures

1987/88 FY Program Title - "Native Awareness" - Duration 3 days

- 15 courses delivered - 241 participants
- Program Delivery (contract) \$12,950.00
- Staff Inter-Change Salary (Native Counselling Services of Alberta) \$30,179.00

Total \$43,129.00

1988/89 FY Program Title - "Native Awareness" - Duration 3 days

- 14 courses delivered - 197 participants
- Program Delivery (contract) \$12,950.00

1989/90 FY Program Title - "Native Awareness" - Duration 3 days

- 10 courses delivered - 105 participants
- Program Delivery (contract) \$ 5,200.00

Program Title - Planning in Four Directions"

- Duration 3 days
- 1 course delivered (pilot) - 13 participants
- Programs delivered 1984/85 - 1989/90 = 65
- Participants trained
- Program delivery cost including interchange = TOTAL \$114,279.00

Induction Training = Recruits receive 0.5 days of introductory

Native awareness training: commencing April, 1986 = 319 trained.

Program Content and Target Audiences

Program: NATIVE AWARENESS

Purpose: The purpose of this course is to introduce and ensure that all staff who are in contact with Native inmates receive Native Awareness training to assist them in the care and treatment of Native inmates.

Course Outline: Module I

- A. General History Canadian Indians
- B. Attitudes

Module II

- A. Values of the Indians of Canada
- B. Native Spirituality

Module III

- A. Traditional Native Ethics Rule of Behaviour "Native Family"
- B. Political and Social Status of Native People in Canada

Target Group: All CSC employees

Course Duration: 3 days, this course is designed for presentation in 3 one-day sessions if necessary, however, it is necessary that participants receive the modules in sequence.

Resource: Contract

Class Complement: 20 participants

Program: PLANNING IN FOUR DIRECTIONS

Purpose: The purpose of this course is to assist staff to effectively interact with aboriginal offenders. Throughout the course, case files are utilized to familiarize participants with aboriginal offenders, their life styles, positive and negative influences, appropriate resources and programs, communication alternatives.

Course Outlines:

- *Aboriginal People*
- *Tribes in the Prairie Region*
- *Aboriginal Identity*
- *Negative Impact of Alcoholism*
- *Significance of Ceremonies/Practices of Native Spirituality*
- *Appropriate Planning and Programming*
- *Communication with Aboriginal Offenders*

Native Human Justice

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Planning in Four Directions

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Course Themes:

- *If you don't know where you're going, any path will do.*
- *(Lack of a sense of identity)*
- *Embrace your culture.*
- *Developing freedom through appropriate planning and programming.*

Target Group: All employees who interact with aboriginal offenders on an on-going basis.

Resource: Regional Correctional Staff College

Duration: 3 days

Class Complement: 10 - 16 participants

Number of Programs and Participants

	Programs	Participants
1984/85 Cross-Cultural Awareness	6	72
1985/86 Native Awareness	7	114
1986/87 Native Awareness	12	192
1987/88 Native Awareness	15	241
1988/89 Native Awareness	14	197
1989/90 Native Awareness	10	105

Summary of Cross-Cultural Training

It should be noted that the Task Force has not had an opportunity to participate in and evaluate the majority of the cross-cultural and Aboriginal awareness training programs offered by the different components of the criminal justice system. As a consequence, our analysis in this section of the Report is based on written and verbal information provided to the Task Force.

Based on the information detailed above and on the summary information in Table 4, we conclude that both the federal and the provincial correctional services have made considerable progress in establishing Aboriginal-specific cross-cultural training. Correctional Services Canada seems most advanced in this respect. The Alberta initiative, started in June 1989 and scheduled for completion in March 1991, is much more recent.

The almost complete lack of cross-cultural training initiatives, specifically Aboriginal awareness training initiatives, stands out as a noticeable and alarming characteristic of the criminal justice system, and holds true for all service providers working in the courts area of the criminal justice system. Perhaps the reason for this situation can be stated most simply by quoting from the response provided by the Alberta Department of the Attorney General:

TABLE 4
SUMMARY OF CROSS-CULTURAL TRAINING

Element of the Criminal Justice System	Native Cross-Cultural Training		
	Induction	Regular In-Service	Ad-Hoc
Prosecutors	None	None	Yes
Justices of the Peace	None	None	Yes
Legal Aid Personnel	None	None	Yes
Lawyers (Students)	Exposure to Native Law, History and issues throughout various courses, but no specific cross-cultural training as such.		
(Practising)	None	None	Yes
Judiciary (Provincial)	None	None	Yes
(Queen's)	None	None	Yes
(Appeal)	None	None	Yes
Corrections (Alberta)	Yes (1 to 2 1/2 day workshops) 4 - 5 times per month	Yes (1 to 2 1/2 day workshops) 4 - 5 times per month	Yes
	[Program delivery scheduled to end March 30, 1991.]		
(Canada)	Yes (1/2 day)	Yes - Native Awareness (3 day course, offered 10 times in 1989/90) Native Human Justice (offered once in 1989/90) Planning in Four Directions (3 day program offered once in 1989/90)	Yes

It has never been suggested that in order for the process to be fair, the Prosecutor (or the Judge or the defence lawyer for that matter) should receive formal training in any particular ethnic culture. The Criminal Justice System is not ethnocentric in its operation. Rather, it focuses its decisions on the material evidence and only on the evidence brought forward and admitted by the Judge.

The Position of the Task Force on the Need for Cross-Cultural Training

The Task Force takes several positions:

- A. Any system that has a significant Aboriginal client group must be culturally sensitive to the needs of that group and be capable of monitoring its response to that group. This includes the criminal justice system.
- B. The current Criminal Justice System is an ethnocentric system which has been developed from the English common law system. It is generally not sensitive to the different world view and cultural practices of Aboriginal people.
- C. Aboriginal awareness training is an on-going requirement for all components of the criminal justice system. Such training should be extensive and interactional. It should be provided by Aboriginal people. Generalized cross(multi)-cultural training is not adequate to address the needs of Aboriginal people.
- D. Aboriginal awareness training programs and the increased recruitment of Aboriginal staff are complementary measures and essential components of an integrated

approach needed to sensitize the criminal justice system to Aboriginal cultural and spiritual needs. These measures reduce the likelihood of systemic discrimination occurring in that system.

The Task Force Recommends:

- 8.19 That the Attorney General's Department prepare a policy statement on Aboriginal awareness training specifically recognizing the need for extensive Aboriginal awareness training for all personnel including: Crown Prosecutors, Justices of the Peace and the Judiciary.
- 8.20 That induction and regular Aboriginal awareness training be provided to all Alberta Government personnel working in the criminal justice system.
- 8.21 That the Government of Alberta investigate the feasibility of establishing a comprehensive and effective Aboriginal awareness training program for provincial government employees. The development of any centralized training program should include extensive consultation between the Aboriginal community, educational facilities, and service agencies.
- 8.22 That all Aboriginal awareness training programs be comprehensive and interactional in format, be delivered by Aboriginal people, and contain a component which is offered on an Indian Reserve or Metis Settlement.

8.23 That Judges at all levels of Court receive Aboriginal awareness training on appointment, and that all Judges who deal with Aboriginal people receive additional Aboriginal awareness training.

8.24 That all Aboriginal awareness training programs recognize and address the distinctiveness of Indian people and Metis people.

8.5 Aboriginal People Employed in the Criminal Justice System in Alberta

Term of Reference:

Additional Considerations 8(e)

to determine to what extent Indian and Metis people are presently employed in the various components of the Criminal Justice System in Alberta and to propose policy changes that would result in a higher level of employment.

The Number of Aboriginal People Currently Employed in the Criminal Justice System in Alberta

Table 5 shows that between 0 - 4.5% of employees in the different components of the criminal justice system are of Aboriginal ancestry. The total for the whole criminal justice system is about 2%. It should be noted that the data are based on self-reported ethnic status and that the figures represent the Aboriginal employment situation at November 1990. Nevertheless, the statistics are indicative of the current level of employment of Aboriginal people in the criminal justice system.

While Aboriginal people account for approximately 2% of employees in the criminal justice system, they represent 4 - 5% of the total population in Alberta.²⁴ In total, they represent between 20 - 35%²⁵ of the client base served by the various components of the criminal justice system. In some areas of the system, Aboriginal representation is much higher than is indicated by the overall range. For example, 48.6% of sentenced female admissions concerned Aboriginal women.

Based on these statistics alone, it is clear that Aboriginal people are under-represented as employees of the criminal justice system.

A closer look at Table 5 reveals some interesting points:

- The provincial and federal correctional services employed a higher proportion of Aboriginal people than did the other components of the criminal justice system.

TABLE FIVE

THE EMPLOYMENT OF ABORIGINAL PEOPLE IN THE CRIMINAL
JUSTICE SYSTEM IN ALBERTA, 1990

Criminal Justice System Comp.	Ethnic Status of Employees	Total Number of Employees	Number of Aboriginal Employees	Aboriginal Employees as a % of Total Employees
Police ^a				
•R.C.M.P.		2,052	50 - 55	2.4 - 2.7%
•Municipal Police		2,583	27	1.0%
•All Police		4,635	77 - 82	1.7 - 1.8%
Alberta Solicitor General ^b				
•Corrections		2,000	54 ^c	2.7%
Correctional Service of Canada				
•Prairie Region		2,071 ^d	93	4.5%
•Alberta		894	31	3.5%
National Parole Board			6	
Alberta Attorney General				
•Crown Prosecutors		125	Not Known	
•Justices of the Peace		398	4	1.0%
Provincial Court Judges		111 ^e	0	0%
Court of Queens's Bench Judges		64	0	0%
Appeal Judges		8 ^f	0	0%
Legal Aid Lawyers Roster		2,647 ^g	28 ^h	0.9%

^a See Section on Police for details of data concerning police.

^b Includes salaried staff in Corrections and Law Enforcement.

^c Does not include thirty-seven non-salaried Aboriginal staff wage positions, for example, in the Summer Temporary Employment Program.

^d Number of employees.

^e Excludes two supernumerary and one vacant position.

^f Excludes one vacant position.

^g From an alphabetical listing of lawyers willing to accept Legal Aid cases, provided by Legal Aid Society. Ethnic status was not defined.

^h The number of members of the Indigenous Bar Association has been used as an indicator of the potential number of Aboriginal lawyers. However, not all members of the Indigenous Bar Association provide Legal Aid services. Therefore, the percentage of Legal Aid lawyers of Aboriginal ancestry is very likely to be lower than 0.9%.

- The R.C.M.P. employed a higher proportion of Aboriginal people than did municipal police forces.
- The court system, including Prosecutors, Justices of Peace, Judges, and Legal Aid lawyers recorded the lowest proportion of Aboriginal employees.
- There are no Aboriginal Judges in Alberta.
- Two services with affirmative action programs - the R.C.M.P. and Correctional Service of Canada - recorded a higher proportion of Aboriginal employees than did their provincial and municipal counterparts which do not have affirmative action programs.

Government Policies on the Hiring of Aboriginal People

As has been stated elsewhere in this Report, the hiring practices of the federal components of the criminal justice system in Alberta and in Canada in general are controlled by written affirmative action policies. An example of such a policy is the Directive on Affirmative Action, issued by the Commissioner of the Correctional Services of Canada:

POLICY OBJECTIVE

1. *To increase the representation and participation of women, disabled persons, Indigenous people and visible minority persons in the Service to a level comparable to their availability in the Canadian labour force in general.*

REQUIREMENT

2. *Treasury Board policy requires that the Service ensure that systemic discrimination is eliminated by all means available. Systemic discrimination is discrimination which is built into personnel processes with the result that certain groups of people are adversely affected by practices and systems which have been applied equally with no conscious intent to discriminate (e.g., height standards).*

RESPONSIBILITIES

3. *All managers shall ensure that the objectives of the Affirmative Action Program are considered in planning organizational change.*
4. *Deputy Commissioners of regions and National Headquarters Branch Heads are responsible for ensuring that the objectives of the action plans established for their organizations are met.*
5. *All Responsibility Centre Heads are accountable for the achievement of the agreed targets.*

REPORTS

6. *Deputy Commissioners of regions and National Headquarters Branch Heads shall provide quarterly progress reports to the National Headquarters Unit responsible for Affirmative Action.*

COMMUNICATION

7. *National Headquarters and Regional Headquarters shall ensure that all relevant information regarding the Affirmative Action Program is available to all staff members.*

The data in Table 5 indicate that affirmative action policies, together with stated targets, can and do have the effect of increasing Aboriginal employment. For example, at the time of writing, the

R.C.M.P. in Alberta had just announced the implementation of a policy that would see only the hiring of minority groups until their representation in the workforce had increased to acceptable levels. The R.C.M.P. had also distributed a new policy outlining their "Aboriginal Hiring Program."

These affirmative action practices are contrasted with the policies of the provincial government with respect to the hiring of Aboriginal people. The Government of Alberta does not have an explicit affirmative action program. Its policy is contained in Section X of the Alberta Government Recruitment and Selection Manual. This Section addresses "Related Recruitment and Selection Issues:"

Career Development for Women and Natives

The Personnel Planning and Career Development Branch of the Staff Development and Occupational Health Division, P.A.O. was established to ensure that all women and Natives have equal employment and career opportunities within the Alberta Public Service.

The Women's Program reflects the Government of Alberta's priority commitment to providing measures to assist female employees in achieving their career potential in the Public Service. The program is designed to advance women's awareness of and access to development opportunities. In addition to helping managers meet their responsibility for utilizing all human resources, there is also the objective of helping both men and women understand and adapt to changing roles in the workplace.

The objectives for Native employment are similar, with greater emphasis upon assisting Native people in applying for employment in the Public Service.

In both programs the emphasis is upon helping the target groups to achieve their potential, rather than on forced or affirmative action. An awareness of and sensitivity to the special problems of these groups is an important part of the professional development of all staffing officers.

The Task Force is not aware of any targets or deadlines established by the provincial government for Aboriginals in accordance with this policy. The data available would indicate that the provincial government's more permissive approach to Aboriginal employment has not been effective in recruiting Aboriginal employees.

Underlying Issues

Before we can develop recommendations, certain questions must be answered:

- Is there a need for employment of more Aboriginal people in the criminal justice system?
- Is this a long-standing need?
- If there is a need for increased Aboriginal employment, why have government departments not reacted in a manner which would achieve greater success?
- What are the problems involved in the recruitment of Aboriginal people? In Canada and Alberta, new attitudes are slowly developing.

These "new attitudes" include:

- a gradual recognition of the cultural and spiritual differences between Aboriginal and non-Aboriginal people
- acceptance of the need to ensure equality of treatment

- awareness of the need for prevention of systemic discrimination against Aboriginal people in the social, educational and criminal justice service delivery systems.

Cross-cultural training leads (and indeed has led) the non-Aboriginal workforce to increased awareness and understanding of Aboriginal values. However, such training must be complemented by the increased involvement of Aboriginal people and their employment in the systems.

Aboriginal communities, organizations and service delivery agencies have repeatedly stressed the need for a more culturally and spiritually sensitive criminal justice system. Such exhortations, together with the alarming but readily accepted fact that between 20 - 30% of the activity of the criminal justice system concerns Aboriginal people, demands that the criminal justice system be more responsive to the needs of Aboriginal people.

The 1975 National Conference on Aboriginal Peoples and the Criminal Justice System addressed Aboriginal culture, value system, philosophy, religion and perspective on life. The conference recognized that

priority should be given to having Native persons take part in the administration, control and direction of such things as policing, probation parole, the Courts, Native Counselling, Child Welfare and Juvenile Family Courts. It called for official recognition of fully qualified professional Native persons and call for a Native Recruitment program to serve the Criminal Justice System.

In his introduction to his 1978 Report on "Native People in the Administration of Justice in the Provincial Courts of

Alberta," The Honourable Mr. Kirby stated that:

The recommendations are intended to bring about more sensitive recognition in the Provincial Justice System of the culture, customs and language of Native people.

The Indian Association of Alberta and the Metis Association of Alberta both state the Aboriginal people's goal of re-establishing an Aboriginal justice system in their briefs to the Task Force. However, these organizations recognized that while work toward this goal was in progress, certain immediate improvements could be made in the existing system.

The Indian Association of Alberta proposed a flexible policy for the criminal justice system and outlined a framework with a range of alternative structures. The Association believed this framework could be responsive to the needs of all First Nations while progressing toward an Aboriginal justice system. Alternative "B" in that framework referred to:

Adjustments to the Criminal Justice System by the involvement of Indian elements in the system without any fundamental change in control.

The report continued by stating:

Even though the Criminal Justice System is controlled by the Federal and Provincial Governments, adaptations and changes can be made to be more responsive to the particular needs and circumstances of First Nations and their members....These adjustments do not involve any change in the essential control of the Criminal Justice System but rather in the sensitizing of the Criminal Justice System to the differing needs of First Nation members

The 1990 report of the Metis Association of Alberta contained numerous recommendations. Two of these serve to illustrate the

position of the Metis people on the suitability of the existing system, bearing in mind one of the goals of the Association, that of an Aboriginal Justice System:

Recommendation No. 6:

That the Government of Canada and the Province of Alberta develop long-term policies for indigenization of the Criminal Justice System and a consultative framework policy be developed to ensure equitable participation by the Metis Nation.

Recommendation No. 15:

That the Province of Alberta establish an Affirmative Action Program to specifically recruit Metis for service within the Criminal Justice System. The Province of Alberta should set a 10% minimum participation within guidelines for Government Services.

Clearly, the concerns identified in the reports of the mid- 1970's are echoed in the reports of the 1990's. This would indicate that the policies of the 1970's and 1980's have not been capable of dealing with these problems successfully.

The above arguments show that there is still an obvious need for the increased participation and employment of Aboriginal people in the criminal justice system. Certain observations must be made about the apparent lack of success in responding to such needs.

It would be unfair to treat all components of the criminal justice system in the same manner as it is apparent that some sections have recognized the need to employ more Aboriginal people and have made attempts to meet that need. The R.C.M.P. and the Correctional Services of Canada, most noticeably, fall in this category. Much more recently, at the provincial and municipal levels of government, the Alberta departments such as the Solicitor

General and larger municipal police forces have also begun to respond to the need to recruit Aboriginals. The Alberta Department of the Attorney General and the Judiciary are the most obvious examples of components which have not made an effort. Nevertheless – though we recognize the efforts made to date, the current situation is still not acceptable.

The benefits of hiring Aboriginal people out-weigh the financial or bureaucratic difficulties that arise. For example, spiritual and cultural sensitivity and equality of treatment cannot fail to produce positive results.

The Task Force contends that the current situation demands a more positive and imaginative approach. Such an approach to the recruitment and employment of Aboriginal people in the criminal justice system is needed to ensure the equality of treatment of Aboriginal people in that system.

There are several significant problems associated with the recruitment of Aboriginal people for employment in the Criminal Justice System. The most serious problem concerns the participation of Aboriginal people in the recruitment initiative. If Aboriginal people are not involved in the development of recruitment initiatives and are not fully informed of such initiatives, they may simply choose not to participate. As a result, the whole purpose of those initiatives would be undermined. It is imperative that the Aboriginal community be closely involved in the development and implementation of Aboriginal recruitment initiatives.

Another problem affecting the hiring of Aboriginal people is the absence of effective and appropriate hiring techniques. Due to the low numbers of

Aboriginal people employed in the criminal justice system, many components of the system are inexperienced in and ill-equipped to undertake the recruitment of Aboriginal people. Effective and appropriate hiring techniques must be developed if meaningful recruitment of Aboriginal employees is to be achieved. This is particularly true at the provincial and municipal levels.

The various levels of government must be more innovative and flexible in their approaches to the development of recruitment initiatives. In addition to being culturally responsive, recruitment initiatives should include elements such as initiation or induction programs for Aboriginal employees. Where necessary, pre-application training programs and cluster or group hiring should be included.

Aboriginal recruitment initiatives should not be focused on entry level positions only. They should include management, supervisory, professional and administrative positions. To develop recruitment initiatives for a variety of positions within the criminal justice system, government departments should recognize that educational requirements are often a serious barrier to increasing Aboriginal employment. Most educational requirements reflect "white society" standards. Many Aboriginal people are unable to meet such culturally insensitive standards. Departments must pay close attention to the reasons for hiring Aboriginal people and to what they wish to achieve through such hiring practices. Accordingly, they should be willing to accept skills, experience and abilities equivalent to formal educational qualifications.

Recruitment initiatives are an important element in any strategy for increasing the

number of Aboriginal employees in the criminal justice system. The retention of Aboriginal employees within the system once they have been recruited is equally important. The rate of turn-over for Aboriginal employees is high. It is necessary to develop initiatives to counter this trend.

Aboriginal people are often discouraged from trying to bring their Aboriginal culture into the workplace. Employers and managers have a divided view of the purpose of employing Aboriginal employees. Some managers simply view the employment of Aboriginal people as meeting an affirmative action requirement. Others hold a more positive view. They see Aboriginal employment as a means of ensuring that the system is sensitive to Aboriginal spiritual and cultural values. They also recognize Aboriginal employment as a means of providing positive role models for the Aboriginal community and improving the relationship between the system and Aboriginal offenders or clients. Some managers view the hiring of Aboriginal people with outright scepticism. Management must educate itself on the potential roles of Aboriginal employees and transmit the benefits of Aboriginal recruitment to both non-Aboriginal staff and union bodies. Such education is necessary to provide an environment that is conducive to retaining the services of Aboriginal employees.

Discrimination constitutes another barrier to the retention of Aboriginal employees. Sometimes, this involves direct discrimination against Aboriginal people. In other cases, a perception of discrimination exists as a reaction to different hiring techniques used to recruit Aboriginal people. Regardless of the reason, management has the responsibility to ensure actively that discriminatory

behaviour does not persist and that discriminatory attitudes do not have a negative impact on the environment in which Aboriginal people work.

In addition to establishing an overall working environment that is receptive to Aboriginal employees, other support mechanisms should be developed to contribute to the retention of Aboriginal employees. Such mechanisms include:

- support groups for Aboriginal employees;
- resource individuals for Aboriginal employees;
- mechanisms for dialogue with management; and,
- a process for dealing with complaints.

One final barrier to successful recruitment and retention of Aboriginal employees is the lack of professional advancement opportunities for these employees. Management must ensure that meaningful opportunities exist for the career advancement of Aboriginal employees. To achieve this, organizations must address the need for training programs to enhance advancement opportunities. Opportunities must be made available for Aboriginal employees to occupy more senior positions on a trial or acting basis.

Clearly, any initiative with respect to Aboriginal recruitment demands the adoption of a comprehensive approach, including the development of integrated support structures. If more Aboriginal people are to be employed in the criminal justice system in order for that system to be sensitive to the spiritual and cultural needs of Aboriginal offenders, then the same sensitivity must be shown to Aboriginal people employed in that system.

Basis for Recommendations

The Canadian Human Rights Commission in its 1989 Annual Report commented on the employment of Aboriginal people in its 1989 Annual Report:

Improvements in the representation of Native people in the workforce covered by the Employment Equity Act is excruciatingly slow. Between 1987 and 1988 reported representation increased only 0.07 percent, from 0.66 percent to 0.73 percent. At this rate of increase, it will take another 20 years before Aboriginal employment reaches even 2.1 percent, the current level of their availability in the workforce.

"Affirmative Action" has been defined as:

Steps and programs that are designed to eliminate existing and continuing discrimination, to remedy the lingering effects of past discrimination, and to create systems and procedures to prevent future discrimination.²⁶

Our recommendations are based on this definition and are intended to increase the number of Aboriginal people employed in the criminal justice system.

The Task Force Recommends:

- 8.25 That Section X of the Alberta Government Recruitment and Selection Manual be amended to create an affirmative action or preferential hiring policy for Aboriginal people. In addition, the "Personnel Policies and Procedures Manual" should be updated to reflect the substance of the affirmative action policy.
- 8.26 That Aboriginal people be consulted in the process of the development of an affirmative action policy. Such consultation

serves to ensure that the policy is developed in partnership, that Aboriginal people understand and support the policy, and, most importantly, that they will participate in any resulting program.

8.27 That affirmative action policy include defined targets for Aboriginal employment and established deadlines to reach these targets.

8.28 That the Personnel Administration Office of the Government of Alberta, in conjunction with the office recommended under this report, be responsible for developing affirmative action policy and for monitoring the compliance of government departments with that.

8.29 That departments which develop Aboriginal recruitment initiatives include in these initiatives:

- (i) more culturally sensitive and appropriate recruitment techniques;
- (ii) cluster or group hiring strategies, where appropriate;
- (iii) recognition and use of existing Aboriginal organizations to assist in recruitment;
- (iv) pre-application training programs, where appropriate;

- (v) a more imaginative and flexible approach in assessing the qualities, experience, and skills of Aboriginal people as alternatives to formal educational qualifications.

8.30 That recruitment initiatives be developed to hire Aboriginal people into management, supervisory, professional, and administrative positions as well as entry level positions.

8.31 That when Aboriginal staff have been recruited, government departments ensure that substantial support mechanisms are in place. Support mechanisms should include:

- (i) support groups for Aboriginal employees;
- (ii) resource individual(s) for Aboriginal employees;
- (iii) Aboriginal-specific induction training;
- (iv) a specific formal process for dealing with complaints from Aboriginal employees;
- (v) making Aboriginal Elders available for support to Aboriginal staff.

8.32 That executive managers of government departments create a receptive work environment for Aboriginal employees. Activities

which can contribute to a positive work environment for Aboriginal people include:

- (i) ensuring that all levels of management are educated and informed about the objectives of affirmative action initiatives and about the potential roles for Aboriginal employees;
- (ii) ensuring that management maintain liaison with unions and non-Aboriginal employees to educate them about the objectives of Aboriginal employment programs;
- (iii) ensuring that a mechanism exists for management and supervisory staff to enter into a dialogue with Aboriginal staff;
- (iv) encouraging Aboriginal people to express their culture;
- (v) establishing a firm position on discouraging and penalizing, at any level in the organization, actions or expressions of a discriminatory or racist nature.

8.33 That promotional opportunities for Aboriginal employees be addressed, including:

- (i) the development of training programs for promotional opportunities;
- (ii) the placement of Aboriginal employees for trial periods in promotional situations;

8.34 That none of the foregoing recommendations be used in any way to impede initiatives undertaken by Aboriginal communities and government departments aimed at giving Aboriginal people greater involvement in and control of the various components of the criminal justice system.

8.6 Women and Youth

Term of Reference:

Additional Considerations 8(f)

to identify areas of concern as they relate to the special needs of Indian and Metis youth and women as they are affected by the areas under review.

Although Aboriginal youth and Aboriginal Women have several needs in common, they also have different needs. Therefore, women and youth will be discussed separately.

Women

The strength of the Indian Nation is in the women. No matter how straight your arrows, no matter how brave your warriors, no Nation is defeated until the hearts of the women are on the ground.

- Dr. Connie Ur²⁷

The Task Force contacted most Indian and Metis women's organization in Alberta to request submissions. Although the only Indian or Metis submission we received came from the Dene Tha' Women's Society of Assumption, the Metis Association of Alberta commented on women, and the Elizabeth Fry Societies in Calgary and Edmonton made several excellent suggestions with respect to women. We obtained most of our information from the extensive report "Creating Choices".²⁸ The merit of "Creating Choices" has been recognized and accepted by the Government of Canada. There are indications that many of the recommendations are being implemented, and that others will be implemented. We met Aboriginal women when we visited provincial correction centres. Several Aboriginal women were present in our meetings with the Native Brotherhoods.

The Task Force invited eight Aboriginal women to attend a one-day meeting in Edmonton. They came from various reserves, settlements, and Indian and Metis organizations.

General

The incarceration rate for female Aboriginal offenders is considerably higher than it is for men. During 1989, 46.6% of the 3,469 female offenders admitted to adult provincial correctional centres were Aboriginal women.

With respect to the average daily population in adult provincial correctional centres, 37% of the female sentenced offenders were Aboriginal, compared to 30% of male sentenced offenders. Aboriginal women represented 50% of the female remand population, compared to 29.9% for men. Aboriginal female young offenders admitted in 1989 composed 41.6% of admissions. During 1989/90, the daily average of female young offenders incarcerated in Alberta Young Offender facilities was 34, of whom 44.1% were Aboriginal female young offenders.

To identify areas of concern related to the special needs of Aboriginal women, we must consider a comparison of types of incidents involving Aboriginal female and male offenders.

- women were the victims of female assailants in 78% of the cases, while men victimized women in 35% of the cases;
- the age distribution of offenders was similar for both sexes;
- female assailants were more likely to be an acquaintance (50%) or relative (15%) of their victim than were men (25% and 5% respectively);
- weapons were used by 23% of female assailants and 34% of male assailants; 64% of the victims of women were injured in the incident, compared to 48% of victims of men, and 59% of victims of both sexes together;
- an incident was most likely to be reported to the police if it involved men and women acting in a group (58%), or if it involved one or more men (35%), or one or more women (31%). If the attacker was a woman acting alone, only 29% of the incidents were reported;
- respondents were more likely to describe the incident as a threat or attempt rather than as a completed crime if the perpetrator was a man (49%) rather than a woman (32%).²⁹

Women commit about 10% of all serious crimes in Canada.³⁰

The special needs of women in contact with the criminal justice system may originate from the social and economic conditions faced by Aboriginals. Poverty, remoteness, unemployment, inadequate housing, inadequate health care facilities, inadequate education, different cultural and traditional values, the male-dominated criminal justice system, and a general lack of opportunity to advance in life are all factors leading to women's special needs with respect to the criminal justice system.

In its oral presentation, the Elizabeth Fry Society of Calgary graphically described Aboriginal women as suffering from a "triple whammy": they are Indian or Metis, they are women, and they are prisoners.

The Elizabeth Fry Society of Edmonton stated in its Brief:

It is a shocking fact that over 90% of Native women in prison have been physically and/or sexually abused. We cannot help but feel such women will continue to be in conflict with society until these problems are resolved....Although most of our clients have experienced abuse in their lives, the extent of the abuse is greater with our Native clients. Ninety percent have been physically abused compared to 61% non-Native and 61% have been sexually abused compared to 50% non-Native.³¹

A footnote in the Brief stated:

Our experience would indicate that the 90% estimate may be low. Every single one of their clients that their counsellors assessed, is a victim of incest.³²

A study, conducted by the Ontario Native Women's Association, of Aboriginal

women from reserves, or urban, or rural areas, found that 80% of the women had experienced family violence.³³ The incidence of family violence in society as a whole has been placed at 10%.

A study of Metis families conducted in the Edmonton Area³⁴ found that 70% of the respondents had been physically abused during their lives, 87% had been emotionally abused, and 39% had been sexually abused.

In an article entitled "Breaking Chains," First Nations women describe how violence against women results in contact with the Criminal Justice System:

The violence of which we are the victims, and of which our stories tell, is not occasional or temporary. Most of us have experienced sustained abuse extending through much of our lives. Indeed, our stories have much in common with what the criminal statistics on violence say. The violence we have experienced has typically been violence at the hands of men.

There is no accidental relationship between our convictions for violent offences and our histories as victims. As victims, we carry the burden of memories: of pain inflicted on us, of violence done before our eyes to those we love, of rape, of sexual assault, of beatings, of death. For us, violence has begotten violence: our contained hatred and rage has been concentrated in a explosion that has left us with more memories to scar and mark us.³⁵

At the insistence of certain community groups, the criminal justice system has responded to family violence by fettering the discretion of police and prosecutors, in the laying and prosecution of charges.

We have been told by Aboriginals that, if a criminal charge were to be laid for every incident of family violence, the traditional Aboriginal conciliation and healing methods would be frustrated. We have

been given examples of one of the participants, usually the man, requiring psychological or alcohol treatment. The facing of a criminal charge does not encourage the seeking of such treatment. A culturally more appropriate response could be more effective.

LaPrairie identifies women as being among the most severely disadvantaged of all groups in Canadian society. She states:

This disadvantaged position is explained in part by the fact that Native women were discriminated against in legislation until 1985, namely The Indian Act, section 12(1)(b), which determined their rights and legal status according to standards which discriminated on the basis of sex.³⁶

We have described the role of women in traditional Aboriginal society and the demise of traditional economies and male roles in Section 8(a) of this Report.

Indian and Metis women are subject to the same biases and discrimination which are suffered by Indian and Metis men.

Police

Aboriginal women are reluctant complainants. They will suffer a great deal of abuse before they complain. The Dene Tha' Women's Society stated in their Brief that a woman will probably be abused 38 times and leave her male partner 35 times before complaining to the police.

Aboriginal women are generally shy, soft-spoken, non-confrontational and non-aggressive. They do not assert their rights when dealing with the police in the first instance. Most police are male, and Aboriginal women are reluctant to give details of a sexual nature to anyone, particularly to a man.

Legal Aid

Most Aboriginals appearing in Court receive Legal Aid. The usual eligibility requirements include factors such as financial need, prior record and seriousness of the offence. Faced with the allocation of diminishing resources, those at risk of being imprisoned are most likely to be considered eligible. Statistics seem to show that female offenders are less likely to be incarcerated - whether because they commit less serious offences, because of the fact that there are fewer prisons for women in Canada, or because of chivalry. Therefore, they are less likely to be considered eligible for Legal Aid.³⁷ We have made no observations and have no data from Alberta to support this statement.

Aboriginal women have a special need for culturally sensitive and preferably Aboriginal female legal assistance. This is especially so in cases involving sexual matters, because Aboriginal women refuse, or at the best are reluctant, to discuss matters of a sexual nature. In fact, they are reluctant to discuss matters in general and the sexual nature of some cases further compounds the problem.

Courts

During interviews, Aboriginal women provided anecdotal information which suggests that they are more uncomfortable in a formal Court setting than Aboriginal men. If they are the accused, they are usually represented by a non-Aboriginal male lawyer. We have been told by Aboriginal women that they have difficulty giving instructions to male non-Aboriginals. As a result, defence counsel is not able to prepare and present a full answer in defence to the charges.

Aboriginal women are frequently ineffective witnesses. They are overly deferential to authority and when giving evidence, they frequently say whatever the Court, Crown or defence counsel wants them to say.

Aboriginal women who live in rural areas have difficulty attending Court. If they are mothers, child care presents a problem. If Court attendance is required because of family violence, the man and woman are usually separated which means that the woman has no means of transportation. Aside from these problems, Aboriginal women face the same problems with respect to attending Court as experienced by Aboriginal men.

Corrections

In April of 1990, "Creating Choices," the report of the Task Force on Federally Sentenced Women, was released by Correctional Services Canada. Our information about women comes mainly from this source, from briefs from the Elizabeth Fry Societies of Calgary and Edmonton, and from our literature review. Areas of concern relating to the special needs of Aboriginal women identified by the Task Force on Federally Sentenced Women included the following:

- correctional institutions are frequently located a considerable distance away from Aboriginal communities and the prisoner's family. This causes the removal of prisoners from their Aboriginal culture and community and a disruption of family life.
- women are usually over-classified as security risks. There is a lack of significant opportunity for movement within the range of institutional and

community facilities and programs available.

- there is a lack of sufficient programs and services that respond to the unique needs of Aboriginal women.
- the needs of female long-term offenders may not be met due to programming inequities caused by placement in provincial institutions.
- there is ineffective pre-release planning. The women lose contact with their community, traditions and culture. Two-thirds of those interviewed by the Task Force have children. Fifty-nine percent engage or have engaged in self-injurious behaviour. Aboriginal women are uncomfortable with non-Aboriginal staff, particularly with respect to mental health, sexual abuse, and substance abuse.
- Aboriginal women need more culturally appropriate programs in institutions.
- community options for women released from federal or provincial custody are scarce.
- there is a need for more community residences which are sensitive to Aboriginal women.
- Aboriginal women do not receive respect and support. They do not have an opportunity to take responsibility for their own lives.
- there is a need for successful program directions which focus on self-awareness, self-esteem, promotion of community involvement, and inter-agency co-ordination. Services should be delivered holistically; tools

which work for women should be used and supportive environments should be provided with less emphasis on traditional security measures.

- there is a need to introduce Aboriginal women to their own culture and spirituality, and to make Indian and Metis spirituality, customs, and traditions part of the jail experience. There should be a program of Aboriginal studies. The involvement of Elders should be increased, particularly of women Elders who should have the same status in a correctional centre as the other chaplains.
- it is essential for women to have family visits and visits with children, especially small children.
- there is a need for a better community release strategy.
- programs for Aboriginal women should concentrate on issues associated with health, and on recovery from sexual, physical, and emotional abuse.
- provision must be made for Aboriginal women for the development of a personal plan for their release.
- arrangements must be made for community support for Aboriginal women when they are released.
- community release centres, half-way houses, and Aboriginal centres must be established to ease the re-entry of Aboriginal women into society.

The Elizabeth Fry Society of Calgary suggested that Indian and Metis women in correctional institutions be permitted to wear their own clothing. They also suggested that Aboriginal art and artifacts

be displayed in each institution to increase the comfort level of Aboriginal women.

Parole

Aboriginal women who require psychiatric or psychological assessment to be granted parole are usually assessed by white men. They find it difficult to relate to white professionals.

The Task Force adopts all recommendations made by the Task Force on Federally Sentenced Women.

The Task Force Further Recommends:

- 8.35 That the Government establish a sufficient number of half-way houses for Aboriginal women, and that these half-way houses be staffed by Aboriginal women.
- 8.36 That, when the police interview an Aboriginal woman, the examination be conducted preferably by a female officer, or if this is not possible, in the presence of an Aboriginal woman.
- 8.37 That when police find it necessary to arrest an Aboriginal for an incident involving family violence, the criminal justice system employ culturally sensitive diversion programs to attempt to resolve the family conflict.
- 8.38 That Canada, Alberta and Indian and Metis organizations develop holistic Aboriginal family-oriented counselling services and male-oriented counselling centres.

8.39 That the Aboriginal communities be encouraged and assisted in developing safe houses for Aboriginal women, especially in remote and rural communities.

8.40 That Indian and Metis organizations, together with reserves, settlements, and urban and rural communities, develop crises response teams.

Youth

Aboriginal youth coming into contact with the criminal justice system are the product of the social and economic conditions discussed in Section 8(a) and elsewhere in this Report. The briefs and presentations to the Task Force are virtually silent about the needs of Aboriginal youth. As a result, our observations are based on anecdotal information obtained during our visits to reserves, settlements, communities and young offender centres.

The following statistics refer to Indian youth. Similar statistics were not available for Metis, but we have reason to believe that there is little difference.

- the Indian birthrate is two to three times higher than the non-Indian birthrate. This means that, in the next eighteen years, the proportion of Indians coming into contact with the criminal justice system could increase considerably. From birth to age 14, the percentage growth in birthrate is projected to increase by 39% between 1987 and 2011. The increase for those between the ages of 15 - 19 is projected to increase by 50.4%;

- there is a 30% chance of an Indian being born in a single parent family, compared to 12% for non-Indians;
- the infant mortality rate among Indians is four times higher than it is for non-Indians;
- an Indian mother will have at least twice as many children as a non-Indian mother - an Indian child's life expectancy is ten years shorter than that of a non-Indian child;
- there is a 50% chance that the Indian child will not complete grade nine, compared to a 10% chance for a non-Indian child;
- the Indian youth has a 10% chance of graduating from high school, compared to 43% for a non-Indian youth. It has been suggested that an Indian youth is more likely to go to jail than to complete high school;
- there is one chance in three that Indians will be unemployed for most of their life. If they are employed, it will probably be in a manual capacity, and it will be seasonal or short-term work;
- it is thirteen times more likely that an Indian will live in a crowded home (which is defined as more than one person per room);
- an Indian is ten times more likely to die of tuberculosis than a non-Indian. Between the ages of 5 and 14, the rate of tuberculosis is 27 times that of non-Indians;
- an Indian is five times more likely to commit suicide than a non-Indian. In one area of Alberta, the rate is significantly higher;

- Indians are eight to ten times more likely to suffer from a sexually transmitted disease during their life-time than are non-Indians;
- there is a 35 - 40% chance that an Indian will suffer from alcohol abuse, and a 20 - 25% chance of suffering from drug abuse;
- an Indian is susceptible to hepatitis, gastro-intestinal and respiratory infections, diabetes, all forms of heart disease and cancer at a much higher rate than a non-Indian;
- an Indian is three times more likely to die as a result of an accident, violence or poisoning than is a non-Indian;
- an Indian is three times more likely to be committed to a young offender centre than is a non-Indian.

In the year ending December 1989, 1,451 Aboriginal youths were committed to Young Offender Centres. Thirty-six percent of the young offenders of the centres' populations were Indian or Metis. The average number of Aboriginal young offenders in Alberta is 173.

Statistics indicate a disturbing trend with respect to youth and crime. Between 1985 and 1989, there was a 48% increase in the number of youths charged in Alberta. Between 1986/87 and 1988/89, there was a 7.2% increase in the number of Indian and Metis youths appearing before Youth Courts. In the period from 1986/87 to 1988/89, the most significant dispositions of convicted young offenders showed a 1.6% increase in secure custody decisions, a 4.1% decrease in open custody decisions, a 2.1% increase in probation orders, a 13.7% increase in fines, and a 23.4% increase in community service orders.

While the sentenced admissions for non-Aboriginals between the period from 1986 to 1989 inclusive dropped by 8%, Indian and Metis young offenders sentenced admissions increased by 18.2%. As a consequence, the proportion of Aboriginal young offenders in the young offender admission population increased from 29.6% in 1986 to 35% in 1989.

More than 60% of the Aboriginal young offenders reported a home address in a major urban area. This figure corresponds with the percentage of adult offenders from urban areas.

Of the offences which resulted in young offenders spending time in custody during 1989/90, 53% were property related offences, 11% were offences against the administration of justice, and 4.8% were offences against the person. The other offences concerned violation of other statutes.

Only 7% of the youth taking advantage of the benefits of the Alternative Measures Program were Aboriginals. From 1986 to 1989, community Service orders cases increased by 153% for Aboriginal young offenders compared to a 100% increase for non-Aboriginal young offenders. There has been a 10% decrease in the number of probation orders for Aboriginal young offenders, compared to a 9% increase for non-Aboriginal young offenders.

The major area of concern identified by the Task Force on the basis of interviews and meetings with young offenders was the number of Aboriginal youth who came from dysfunctional families or broken homes. Most of the young Aboriginals in Young Offender Centres are the product of foster homes, Aboriginal as well as non-Aboriginal. Being raised in a foster home contributes to the lack of identity

and lack of culture which are so important to Aboriginal youth. We were told repeatedly of Aboriginal youths being beaten and abused in foster homes. Many of the Aboriginal youth had been in a series of foster homes. As products of foster homes, they frequently do not know who they are. They are rootless, and they are sometimes subjected to alcoholic or abusive foster parents. One case was brought to our attention of an Indian youth who had been in seventeen different foster homes. When we met him, he was in a young offender centre for the seventh time.

Aboriginal youth on reserves and in settlements and to some extent, in urban areas, are subject to intense negative peer pressure which leads to substance, alcohol and drug abuse. This peer pressure is stronger yet in isolated communities, as there is nothing constructive for the youth to do.

Aboriginal youth do not understand the criminal justice system. Many of them believe that when they commit a crime, they are committing a crime against the police or the non-Aboriginal society, and not against their own community.

Most reserves and settlements lack adequate recreational facilities. Where the facilities are present, there is a lack of leadership in taking advantage of those facilities. Aboriginal communities do not appear to be taking advantage of recreational programs and sources of funding. A positive and comprehensive approach to recreation development in Aboriginal communities does not exist.

To address the recreational needs of Aboriginal youth, and to ensure equal opportunity of access, the Alberta Department of Recreation and Parks must as a matter of priority develop a

comprehensive framework for action for the Aboriginal community. Such a comprehensive approach must address some of the barriers that prevent the establishment of recreation and leisure services for Aboriginal people. These barriers include: lack of trained Aboriginal staff and volunteers; lack of adequate facilities; lack of long-term funding; lack of a concrete developmental framework, and lack of an accepted umbrella group to facilitate action. The approach should also address the need for the positive targeting of Aboriginal communities with respect to recreation services and facilities needs; training of Aboriginal recreation technicians; and the need for a more flexible approach to funding which reflects community needs rather than re-defines community needs to fit the funding criteria.

To develop such a framework, extensive consultation with the Aboriginal people must take place. Aboriginal people must also be an integral part of implementing any plan of this nature.

The Aboriginal community must be viewed as a legitimate part of the recreational community. This should be reflected by Aboriginal membership on the various recreational bodies and funding bodies, for example, the Alberta Sports Council. In developing the framework, consideration must be given to the spiritual and cultural values of the Aboriginal people and their communities. This would require that non-Aboriginal staff and committee members receive a significant amount of Aboriginal cultural training.

The proper development and delivery of recreational programs has the potential of significantly decreasing the involvement of Aboriginal youth in the criminal justice system and with alcohol and drug abuse.

Recreation is a crime-preventive measure. Programs must have specific objectives such as providing youth with leisure management skills which can be transferred to achieving success in other areas and situations. High impact learning opportunities can be created in which youth learn the value of and the need for preventing and avoiding risk in managing their lives. Recreation programs can also develop leadership skills and provide positive role models. Studies on the impact of recreation in remote northern communities in Manitoba have indicated that recreational development can have very beneficial effects on the communities involved.

A Judge of the Youth Court and the Director of a Young Offender Centre told the Task Force that there was an apparent lack of co-operation and cohesiveness between the Youth Court, Young Offender Centre, and the Department of Social Services in dealing with youth with social service status. In January of 1991, we were advised of a protocol between the Solicitor General's Department and the Social Services Department, which should overcome the perceived problem. We have not had an opportunity to review the protocol, but we recommend that the situation be monitored.

Many Aboriginal youth, whether they are in Young Offender Centres or not, require alcohol, drug and substance abuse treatment to the same or a greater extent than adult Aboriginals. An alcohol treatment centre for youth has been established by Poundmaker's Lodge at St. Paul, Alberta; however, it is too early to evaluate its success. This is a step in the right direction, but more treatment centres staffed by Aboriginals are required. The Alcoholic Anonymous program operating in Young Offender Centres deserves

commendation, but it is inadequate to treat the disease of alcoholism. We have heard cries of "help" from many of the Aboriginal youths in the Young Offender Centres. They want treatment and they want to be cured. More treatment centres are required, which should be located throughout the province. It is essential that these centres be staffed by Indian and Metis people.

The Young Offender's Courts in Edmonton and Calgary have lengthy and unacceptable backlogs. A young offender who is not in custody and appears in Court in Edmonton in December of 1990 cannot be tried until August of 1991. We have commented on the delay in Court in our chapter on Corrections.

The Task Force is of the opinion that, although the young offender centres are world-class physical structures staffed by dedicated people, they are still jails, with a level of security that is not required for most Aboriginal youths. Although most youths in the Young Offender Centres come from the urban areas, several of them expressed a desire to be in a less secure institution such as a wilderness camp staffed by Aboriginals.

The Alternative Measures Program appears to be serving non-Aboriginals; however, it is not serving Aboriginal youth. Ninety-three percent of the young offenders who take advantage of the Alternative Measures Program are non-Aboriginal. We have discussed this subject in detail in the chapter on Corrections.

During our visits to Young Offender Centres and in our discussions with Aboriginal youth, we were struck by their sincerity, particularly with respect to their desire to learn more of their Indian or

Metis culture, languages and traditions. Indian and Metis youths are caught between two cultures. Many have never learned about their Indian or Metis culture, but they are still subject to conflicting sets of standards neither of which they seem to understand.

In writing about the Navaho Indians, Clyde Kluckhohn states:

The Navaho are torn between their own ancient standards and those which are urged upon them by teachers, missionaries, and other whites. An appreciable number of Navahos are so confused by the conflicting precepts of their elders and their white models that they tend, in effect, to reject the whole problem of morality (in the widest sense) as meaningless or insoluble. For longer or shorter periods in their lives their only guide is the expediency of the immediate situation. One cannot play a game according to rule if there are sharp disagreements as to what the rules are. The incipient breakdown of any culture brings a loss of predictability and hence of dependability in personal relations. The absence of generally accepted standards of behaviour among individuals constitutes, in fact, a definition of social disorganization.

A stable social structure prevails only so long as the majority of individuals in the society find enough satisfaction both in the goals socially approved and in the institutionalized means of attainment to compensate them for the constraints which ordered social life inevitably imposes upon uninhibited response to impulse. In any way of life there is much that to an outside observer appears haphazard, disorderly, more or less chaotic. But unless most participants feel that the ends and means of their culture make sense, in terms of a unifying philosophy, disorientation and amorality become rampant. Some major Navaho premises are incompatible with some major premises of our culture. A resolution must be sought in terms of wider assumptions.³⁸

Many Aboriginal youths have had limited exposure to, and only an inadequate grasp of, their history, tradition and culture.

They are not at ease in the Indian or Metis world, and they appear to be thoroughly disoriented. Kluckhohn states:

This will continue and increase until new coherent philosophical bases for life are created and widely accepted.³⁹

It is unfortunate but true that Aboriginal youths are not following the ways of their Elders, and that the only apparent opportunity they have to learn about their tradition, culture, and history is presented when they are in Young Offender Centres. This is a problem which cannot be solved by the criminal justice system. Like many other problems, it can only be solved by the Indian and Metis themselves. There is a need for Bands on reserves and Settlement Councils to facilitate formal and informal instruction of the young Indians and Metis in their history, tradition, and culture. The need for such instruction in urban areas was identified in the R.C.M.P. Gazette:

The trouble is, in most communities, there are not "Elders" as on a Reserve. This means that a most important traditional Native moral and ethical influence is absent. There are Native children who are "city bred" and have never heard of, or even seen, a Reserve and who know nothing of Native cultural traditions or moral values. These are the people most difficult to reach.⁴⁰

This traditional moral and ethical influence is essential. The Indian and Metis community should take steps to assure that Indian and Metis youth, and indeed all Indian and Metis, have access to Elders.

Aboriginal youths have special needs when they come into contact with the police and the courts. Many of the urban youth are rootless. They are the products of dysfunctional homes which they have

left, or of a series of foster homes in which there has been no bonding. There is a lack of family support. Frequently, the police or support workers in the Young Offenders Court cannot contact a responsible adult. The need for early contact with an Aboriginal service organization, duty counsel and Legal Aid is greater than it is for an adult.

One of the most pressing needs of Aboriginal youth is for the availability of more youth emergency shelters. We have heard repeatedly about Aboriginal youths being apprehended when the police or the young offender's court is unable to find suitable accommodation other than the young offender centre. We have been told by the Director of the Edmonton Young Offender Centre that young Aboriginals are frequently denied release pending trial because they lack family support. As a consequence, the Young Offender Centre is the only alternative available to the Justice of the Peace or Judge.

The situation in Edmonton is such that, if a young offender pleads guilty, a trial will not be held for a minimum of three months. If the youth is out of custody, the trial will not be held for six months. The young offender's courts engage in double and triple booking to accommodate an extremely high drop-off rate, caused by a combination of unavailability of counsel, the inability for the Court to comply with the strict pre-trial conditions of the Young Offender's Act, lack of witnesses, and, all too frequently, the failure of the young offender to appear in Court. Failure to appear in Court can be attributed in part to the fact that young offenders in remote areas frequently have to travel a considerable distance to get to Court. They also face the same problems as adults as described in the chapter on Corrections. Sometimes these problems are more

severe for youths. Aboriginal youths have a special need to be tried in their own community. The trial should follow the alleged offence as soon as possible. The Task Force has been told of several instances of young offenders committing further offences while on remand.

To serve time in Young Offender Centres, Aboriginal young offenders from remote or isolated reserves and settlements are removed far away from their home communities. It is difficult or impossible for the family, extended family or Elders to visit the youth. The Task Force favours the development of community-operated centres for young offenders, developed to accommodate the needs of the reserves and settlements. These centres should be staffed by Indians and Metis.

As stated elsewhere, the Task Force received virtually no information with respect to urban youth. However, we met with urban youth in Correction Centres, where 35% of the youth were Aboriginal.

Aboriginal youth have special needs when they are in Young Offender Centres. They need frequent contact with their families, extended families and communities. A high proportion of the youth have severe alcohol and drug problems, which points to a need for treatment in the Young Offender Centre. We were told often that programming in Young Offender Centres should be more oriented to Aboriginals. Emphasis was placed on the opportunity for youth to learn their Aboriginal language, and their history, culture and traditions. Youths need access to Elders and other positive Aboriginal role models. Programming at the Young Offender Centres should emphasize the re-establishment of self-worth, development of self-confidence, Indian and Metis history and traditions and culture.

Aboriginal youth have been forced to adapt to a society they do not understand. They suffer a high drop-out rate in school. Many are abandoned, and many leave abusive homes at an early age. They have often suffered a cycle of physical and sexual abuse. Many Aboriginal children engage in substance abuse - especially glue and gas sniffing at an early age. In its brief to the Task Force, the Elizabeth Fry Society emphasized the extremely high percentage of sexual abuse and incest. Aboriginal girls leave dysfunctional homes and come to urban areas where many of them resort to prostitution. There is a high frequency of teen-age pregnancies.

The most frequent offences committed by Aboriginal youth are property related, for example, breaking and entering, shop-lifting, and other theft-related offences. When we asked several groups of young offenders why they had committed these offences, we learned that most offences were committed under the influence of alcohol or drugs, and that the youths were lashing out against the system because of their anger. Most of the property offences were not for the purpose of accumulation but to satisfy immediate needs. Several of the Indian and Metis youth we met in Young Offender Centres were recidivists. Most appeared to be lacking in self-esteem. By committing the offences, they were crying for help.

The Task Force Recommends:

- 8.41 That alcohol and drug abuse treatment centres be de-centralized and be established where required.
- 8.42 That Aboriginal youths in a Correction Centre who require treatment for alcohol and drug abuse be given intensive drug and

alcohol treatment in a Young Offender Centre if they are unable to be placed in a treatment centre.

- 8.43 That additional youth emergency centres, preferably community-based, be established to give the Courts an alternative to remanding youths in custody.
- 8.44 That private homes be contracted to accept, for a limited time, homeless Aboriginal youth released from Young Offender Centres.
- 8.45 That programs offered to Indian and Metis youth be Indian and Metis-specific, that these programs be delivered by Indian and Metis persons, and that such programming recognize the difference between Indians and Metis as well as the difference in needs between urban youth and youth from isolated rural areas.
- 8.46 That Indian and Metis leaders and Elders respond to the need for Indian and Metis youth to learn their history, culture, and traditions and their need for the guidance of Elders.
- 8.47 That Aboriginal communities in conjunction with the Alberta Department of Recreation and Parks, develop a comprehensive framework to address the barriers which prevent the establishment of recreational and leisure services for Aboriginal people.

- 8.48 That as part of their elementary or junior high education, Aboriginals be given instruction on urban life skills.
- 8.49 That Indian and Metis organizations, Bands, and Settlements be actively involved in child welfare matters, and that this involvement be facilitated by Canada and Alberta.
- 8.50 That the Task Force Implementation Committee and the Aboriginal Justice Committee monitor the operation of the protocol between the Solicitor General and the Department of Social Services to ensure an integrated approach to dealing with youth having status with social service who are involved with Youth Court or the Young Offender Centre.

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