6.0 Corrections

"People have strong feelings of guilt and shame and are hurting tremendously. Feelings are deep and unexpressed. People just try to forget what happened. Grieving people hide their deep-seated feelings and are judged by others as being cold-blooded. They don't know we are bleeding inside" [1]

Preamble

The general purpose of the criminal justice system is to protect society. Certain measures have been designed to accomplish that purpose. They include punishment, deterrence of the individual, deterrence of the public, rehabilitation, and restitution. Together, these measures are aimed at reducing crime in general and reducing an individual's criminal activities specifically. However, they do not appear to have the desired effect on Aboriginal persons:

> *No correctional system in Canada, including the Alberta Correctional System, is presently structured or equipped to deal with those underlying or causative factors which result in a disproportionate number of Natives entering the system. Nevertheless, society must find some means of coping with the end product of this complex social phenomenon.*[2]

Statistics of recidivism lead us to the inescapable conclusion that current sentencing practices and the manner in which sentences are implemented have very little impact on reducing the level of crime in Aboriginal communities or in communities where Aboriginals reside. We have also observed that the imposition and enforcement of sentences have very little impact on Aboriginal persons. Almost none of the young and adult Aboriginal offenders with whom we spoke in correctional facilities were first time offenders, and almost all of them had been incarcerated previously. In many cases, incarceration was not an imposition and, more often than not, it was little deterrence to further criminal activity. We also observed that rehabilitation and restitution are seldom achieved goals. Over and over again, we were told that the present sanctions imposed by the criminal justice system do very little to achieve these goals where Aboriginal people are concerned. The Alexander Tribal government observes:

> *After the courts have passed sentencing and forms of retribution upon the Offender, he must deal with this problem within the correctional institution. Society feels this system is a technique of rehabilitation, or a time for the Offender to think about what he has done. Often we find that the Offenders come back from jail unchanged, the court system accomplishing nothing, but delaying the chance for real rehabilitation. It has often been the case that Offenders come back from jail more self-centred, more isolated from the community, and more defiant to others around them. The court process*

has then added to the already existing social disharmony as it has made it harder to effectively reintegrate offenders into the indian community.[3]

It is our view that easy responses to the problems, such as "fast-tracking" an Aboriginal person through the sentence process, or simply making the sentence less burdensome, are not the answer. We agree with the John Howard Society of Alberta when it says:

Consequently, new approaches are required with respect to the treatment of Natives within the criminal justice system, some of which will require enabling legislation. These approaches should include Aboriginal participation in, and some control over, correctional issues affecting Natives. It will be necessary to involve Native organizations in all phases of the development of these new approaches.[4]

New approaches are also implied in the comments of Rupert Ross:

The point I wish to make is that refusals of Native people to do what we assume all truly repentant people would do if they were genuinely motivated towards rehabilitation should not automatically lead us to the conclusion that they are remorseless individuals with no desire for rehabilitation. Native refusals can just as easily be strong indicators that they maintain a determined allegiance to ethical considerations, amongst which may well be a heart-felt desire to see to it that they never repeat their anti-social act.[5]

In this Report, we have made reference from time to time to individuals who have not yet received a final sentence and are still on remand status. These individuals are, of course, innocent until the courts find them guilty. They are, nevertheless, being detained in correctional facilities because a court has determined that they are a potential danger to the public or that they are not likely to be present at their trial. In this Report, we use the phrase "inmate" as meaning both sentenced and remanded prisoners.

The term "corrections" generally refers to the after-sentence part of the criminal justice system. It should be noted that sentences imposed by the court are the maximum term that can be served. Terms of imprisonment, for example, for five years, are subject to statutory provisions which require that inmates may be released on parole or on temporary absences at the 1/6 point of their sentence. All components of the criminal justice system, including corrections, employ a form of "diversion" in its broadest sense. The Solicitor General's Department of Alberta and the federal Solicitor General's Department have considerable latitude and discretion in determining to what extent and under what conditions a sentence will be implemented. For example, the court may sentence an individual to a fine. The sentenced person may pay none or only a part of the fine, or may elect instead to participate in the fine options program, if eligible. The sentence of a fine may be effective or completely ineffective. A second example concerns the imposition of probation. Standard conditions for probation are: keeping the peace, being of good behaviour, and reporting as required to a probation officer, coupled with a common provision to take such alcohol and drug abuse counselling as may be required. Such conditions are only as effective as the degree and quality of supervision provided by the probation officer.

Crown Prosecutors, Judges, defence lawyers, and many service providers are not sufficiently informed about the available sentencing options. There is even less knowledge about how and under what circumstances the various sentencing

options are implemented. In many Aboriginal communities, inter-agency meetings are held to discuss day-to-day problems and matters of policy. However, these meetings seldom include representatives of correctional services, the National Parole Board, Temporary Absence Committees, or probation officers. Clearly, it would be useful for individuals involved in the sentencing process to be knowledgeable about the manner in which the sentence will be served in order to weigh and make knowledgeable decisions about appropriate sentencing alternatives. It is equally clear that corrections staff and community supervision staff involved in the process after sentencing have considerable information, knowledge, and expertise in identifying sentences "that work." These people should be consulted.

The Task Force is aware that certain forums exist in which police, federal and provincial corrections staff, lawyers and the judiciary can learn from each other and explore the effects of interactions which occur between the components of the criminal justice system. We are also aware that such opportunities are not always used. It seems that members of the judiciary, with a few exceptions, prefer to remain aloof from the system in which they play such a central role. It is the opinion of the Task Force that a full understanding of the criminal justice system is a necessary and desirable objective for each of the components of this system, and that the lack of participation by members of the judiciary is detrimental to themselves and to the criminal justice system. This situation must change and a spirit of collective ownership of problems and solutions must prevail if the criminal justice system is to properly serve the community and community needs. Rupert Ross observes:

> *Despite the inevitable value conflicts, however, it remains my view that a great deal can be accomplished if we make conscious and sustained efforts to invite Native involvement in the course of sentencing deliberations. That involvement should, in my view, consist of fulsome representation of the background factors which gave rise to the offence as well as detailed presentations of community and individual views on sentencing alternatives. Finally, bands should be encouraged to establish and administer community rehabilitation and deterrence programs which they anticipate can be productive for their own people. While we share the same goals in most respects, it is my sense that achieving those goals in Native communities frequently requires such Band involvement, and that it is the lack of such involvement which has given rise to a significant portion of the dissatisfaction now being voiced from so many quarters.*[6]

We note that, by the provisions of Section 732 of The Criminal Code, sentences in excess of two years are to be served in a federal penitentiary administered by the federal government, whereas sentences of less than two years are administered by the provincial government. Between these two governments, corrections are administered in different ways. There are different service providers, and different policies, procedures, and priorities, some of which are in conflict with each other. By agreements struck between the Province of Alberta and the Government of Canada, good cooperation exists generally in accommodating Aboriginal inmates closer to their homes. However, the very existence of two separate delivery agencies sometimes creates confusion and inefficiencies. For example, the National Parole Board's process and the Temporary Absence Committee's process administered by the provincial government operate very differently, have different priorities, and yet perform virtually the same task.

The Task Force Recommends:

6.1 That the number of meetings be increased between agents of the criminal justice system (defence counsel, Crown Prosecutor, Judges) and those agents of the criminal justice system who are involved in implementing a sentence (for example, federal and provincial Solicitor General Departments), and that participation in these meetings be broadened.

6.2 That there be regular meetings between service providers (for example, Native Counselling Service of Alberta, Poundmaker's Lodge, the Elizabeth Fry Society) involved in the criminal justice system before sentence, and corrections and community corrections/supervision personnel to discuss problems and other matters related to the person in conflict with the law.

6.3 That ways be found to provide information and feedback to Prosecutors, Judges, and defence lawyers regarding viable and effective sentencing options for Aboriginals. Possible resources could be sentencing "experts", sentencing panels, and community groups.

6.4 That there be regular meetings between the National Parole Board, the Correctional Service of Canada and the provincial Solicitor General's Department specifically with respect to Aboriginal issues, to ensure uniformity and consistency in the application of programs and standards.

Term of Reference:

Corrections 6 (a)

to examine the current admission rates/numbers, incarceration rates/numbers, average sentence and average length of time served in prison by Indian and Metis people in comparison to non-indian and non-metis people.

It is a well known and historically persistent fact that the Aboriginal peoples of Alberta have been dramatically and proportionately over-represented in jails and penitentiaries. Task Force research has determined that, over the past five years, the percentage of Aboriginals in jail has ranged from 29.7% to 31.5% of the total Aboriginal population. For 1989, the most recent year, the percentage is 31.1%[7] compared to a 4% to 5% representation of the general population of Alberta. This information alone is sufficient to cause serious concern. However, even the most superficial reading of the remaining statistical data reveals an abundance of similarly disturbing inequities that suggest discriminatory practices throughout the criminal justice system.

We do not intend to present an exhaustive picture of the Aboriginal experience. Rather, we offer an overview to set the stage for the discussion on corrections. The statistical data which accompany this Report contain extensive and detailed descriptions from a variety of sources and may be consulted for further information.

The statistics compiled by the Task Force indicate that the criminal justice system, as it operates in Alberta, utilizes a punitive approach. There is a noticeable decline in the number of adults charged by police in Alberta between the years 1985 and 1989[8].

Yet, the same period of time shows exactly the opposite trend in sentenced admissions to provincial adult correctional facilities[9]. The Task Force reached the conclusion that

> *the data tend to suggest that it is the increasing activity of the courts rather than the activity of the police that is contributing to the increased demands being placed upon the provincial and federal correctional systems.*[10]

This conclusion is affirmed, with a slightly different emphasis:

> *Alberta has high police charging activity and a very high sentencing activity for adult offenders compared to the rest of Canada with, as stated before, a definite bias toward the use of custodial dispositions compared to probation.*[11]

Statistical data on police and courts do not allow for a detailed analysis of systemic bias and the subsequent differential representation as issues which affect the Aboriginal people involved. There are, however, indications which would lead to the cautious conclusion that these issues affect Aboriginals. Our data comes solely from the Calgary and Edmonton police services, and reliability is not guaranteed. Yet, we estimate that of all persons charged, 13.7% are Aboriginal.[12] With Aboriginal representation in the general population of Alberta commonly accepted as 4%, and taking into account the difficulties in obtaining statistical data, it seems reasonable to conclude that Aboriginal people are over-represented at the police level of involvement in the criminal justice system.

For the sake of argument, let 13.7% of charged persons be deemed to represent a reasonable average of Aboriginals in this group, and to reflect the policing activity. If we consider the courts as neutral in their effect on Aboriginals, this percentage should not vary significantly for Aboriginals going from courts to prisons. However, even at the crudest level of comparison, we find a significant increase in the proportionate representation of Aboriginal adults admitted to correctional centres: "Of the 31,316 total admissions to adult correctional centres, 29.5% (8,972) involved Aboriginal offenders."[13] The courts appear to contribute to the over-representation of Aboriginal people in prison in a direct and significant manner.

The statistics provide us with some clues as to what might be happening. We found that:

> *Data from the five-year period indicate that sentenced admissions to Alberta adult correctional centres have increased and that the rate of increase for Native offenders was higher than for non-Native offenders.*[14]

A further observation refers to liquor offences:

> *Clearly, Native offenders are greatly over-represented with respect to Liquor Control Act convictions. The 1,380 Native offenders with a Liquor Control Act conviction made up 20.9% of all sentenced Native admissions (6,595) whereas the 801 non-Native offenders with such convictions only represented 5.5% of the 14,604 non-Native sentenced admissions.*[15]

In addition,

> *the two most striking differences between the ethnic groups were the low proportion of Native new cases accounted for by probation compared to the non-Native population and the very high involvement of Natives in the fine option program.*[16]

Generally, Aboriginals are less likely to receive a probation release than they are to be admitted to a correctional centre.[17] Much has been said about the incidence of alcohol problems in Aboriginal communities. It appears that such problems are dealt with by the criminal justice system without being viewed as symptomatic of other, underlying, problems. The courts do not appear to make use of opportunities to refer Aboriginals convicted of alcohol-related offences to treatment in the community.

When Aboriginal people proceed through the courts, they are also much more likely to receive sentences leading to admission to a federal institution. The total of admissions of federal offenders in Alberta increased by 25% between 1985 and 1989. Of these, non-Aboriginal admissions increased by 19.0%, while Aboriginal admissions increased by 37.3%. The year 1988 showed the most dramatic increase in Aboriginal admissions from the year 1985 with a 44.5% increase of Aboriginals, compared to 5.7% for non-Aboriginals.[18] These differences can be explained, in part, by variances in offence type between the two groups:

> *Generally, male Native offenders recorded higher involvement with offences against the person and violent offences (except murder) and non-Native offenders recorded higher involvement with property related offences during the five-year period (1985-1989).*[19]

The Task Force has been told frequently that, with respect to cultural differences, cultural sensitivity and understanding, the community's view of accused persons and their conduct should be taken into account at different points of the criminal justice system.

Young offenders fare just as poorly as adult offenders. Their over-representation in the criminal justice system is even more dramatic than it is for adult Aboriginal offenders. Our data showed that:

> *The number of youths charged by Police from 1986 to 1989 showed a 6.1% increase.*[20]

In addition:

> *Since 1986/87 to 1988/89 over 84% of young persons appearing before Youth Courts have been found guilty of at least one charge.*[21]

The overall statistics for young offenders show that in 1989, 34.9% of the 4,160 admissions concerned Aboriginal youth. This compares to 28.6% Aboriginal adult admissions to correctional facilities in Alberta in the same year.[22]

In 1989, in Alberta, Aboriginal young offenders were "more likely to be admitted to a young offender facility than their non-Native counterpart."[23] More specifically,

> *38.5% of Native young offenders were admitted to young offender centre facilities compared to 21.4% for non-Native young offenders.*[24]

Our statistics showed that:

> *For those convicted young offenders, however, it would appear that youth courts are slowly decreasing their use of custody dispositions whilst increasing their use of fines, probation orders and community service order dispositions.*[25]

Yet, while

> *"the non-Native young offender sentenced admissions experienced an 8.0% drop between 1986 and 1989 from 827 to 761, with a*

maximum decrease in 1988 of 11.6% from 1986, Native young offender sentenced admissions recorded a consistent increase from 1986 to 1989 with an overall 18.2% increase from 347 in 1986 to 410 in 1989."[26]

It appears that the decreasing use of custody dispositions applies solely to non-Aboriginals. The rate of decrease is apparently slowed down by a simultaneous increase for Aboriginal young offenders.

Generally, young offenders are sentenced, on average, more severely and spend a longer time in custody than adult offenders - this is particularly true for Native young offenders.[27]

Aboriginal young offenders do not fare any better in other aspects of Youth Court dispositions. Indeed,

of particular concern is the decline of use of probation for Native young offenders and the persistent lack of involvement of native young offenders in the Alternative Measures Program.[28]

Our research shows that:

Native young offenders are under-represented in pre-conviction community programs such as Alternative Measures, and over-represented in post-conviction programs such as community service orders, probation orders and pre-institutional fine option program.[29]

The statistics indicate that the Alternative Measures Program accounted for 33.5% of non-Native young offender new cases and only for 11.1% of Aboriginal young offender new cases.[30]

Regardless of what explanations might be offered for these statistics and observations, Aboriginal young offenders appear to be under-represented in the more favourable dispositions and over-represented in the more disfavourable dispositions. The result is a significant over-representation in the incarcerated young offender population.

Female offenders, in addition to having to go through the same processes and procedures as male offenders, also suffer the inequities of being a minority group within the criminal justice system. Because of their small numbers, they tend to be overlooked in terms of their needs. Program resources specifically directed at those needs are also overlooked. The inequities and over-representation related to the Aboriginal subgroup are magnified for Aboriginal women. Where

Native offenders represented 28.6% of the total admissions to Alberta adult correctional centres for 1989, female Native offenders represented an even higher proportion (44.6%) of female admissions.[31]

The inequities imposed on Aboriginal offenders continue during the course of their incarceration, with the result that their over-representation increases at this stage. Although it has been stated

that correctional services have no direct control over the number of offenders who are placed in their custody,[32]

the impact on Aboriginal offenders is not neutral.

Although seemingly minor considering the length of time to which it refers, the length of time spent in jail by fine defaulters is substantially different for non-Aboriginals and Aboriginals:

Non-Native fine default offenders spent only 7.3% of their aggregate sentence length in custody compared to 14.3% for Native fine default offenders.[33]

The difference amounts to 1.2 days, or 1.9 days compared to 3.3 days. Similarly, the overall statistics for time spent in custody indicate that non-Aboriginals spend less time in jail than do Aboriginal offenders:

> *for Native offenders the average length of time in custody was 34.2 days and for non-Native Offenders it was 31.3 days.*[34]

These differences are quite consistent and appear in remand periods as well. The end result is that Aboriginal people generally spend more time in custody than non-Aboriginals.

Young offenders statistics show similar differences:

- Aboriginal males spend a longer time in custody (94.4 vs. 92.8 days)
- Aboriginal males get longer aggregate sentences (167 days vs. 143 days)
- Aboriginal males spend proportionately less time in custody (56.6% vs. 64.8%)
- Aboriginal females spend a longer time in custody (60.7 vs. 57.1 days)
- Aboriginal females get shorter aggregate sentences (90 vs. 94.5 days)
- Aboriginal females spend proportionately more time in custody (75.9% vs. 60.4%)[35]

Even when the statistics favour Aboriginal young offenders, other factors help to produce the same end result: Aboriginal young offenders spend a longer time in custody than non-Aboriginals.

It has been difficult to consider federal inmates and early release opportunities because the National Parole Board is unable to provide specific statistics for Alberta. However, when data provided for the Prairie Region are applied to Alberta, we must still arrive at the conclusion that a systemic bias operates to the disadvantage of Aboriginal offenders. Data show that

> *Natives under Federal jurisdiction in the Prairie Region have had a lower grant rate for both day and full parole:*

	Day Parole	*Full Parole*
Aboriginal	*46%*	*19%*
Non-Native	*52%*	*28%*[36]

The effect of this difference can be seen in supervision statistics in Alberta:

> *At the end of June 1990 a total of 657 Federal offenders were under supervision on Alberta Community Corrections caseloads. Of those 657 offenders, 17.4% (114) were Native and 82.6 (543) were non-Native.*[37]

When these figures are further analyzed by type of release, we see additional significant differences emerge;

	Day Parole	Full Parole	Mandatory Supervision
Aboriginal	21 %	31.6%	47.4%
Non-Native	17.1%	54 %	28.9%

Clearly, the most desirable release type (full parole) favours non-Aboriginals while Aboriginals are over-represented in the least favourable release type (mandatory supervision).[38]

The issue of referral for detention hearings is one which was brought to the Task Force's attention during our visits to penitentiaries. Statistics provided to us by the National Parole Board indicate that while 5% of non-Aboriginal potential releases on mandatory supervision are referred for detention hearings, 10% of

Aboriginals at the same point are referred for such hearings. There is no difference in the detention rate once referred

> *but because of the higher incidence of referral 2.2% of all non-Native referrals are detained and 4.5% of all potential releases of Native offenders result in a detention order.*[39]

Even after release, there are indications that Aboriginals do not fare as well as non-Aboriginals:

> *When a post-release decision is required of the Parole Board - Natives receive negative decisions more often than non-Natives. When they are under mandatory supervision there is no difference.*[40]

This means that when Aboriginal inmates receive a day or full parole, they are more likely to be returned to incarceration when their behaviour requires a referral to the National Parole Board. The statistics do not indicate whether or not the recommended decision from the supervisors varies between Aboriginal and non-Aboriginal parolees.

Setting the stage for the discussion of corrections, this overview shows clearly that Aboriginals in conflict with the law are at a disadvantage when they proceed through the Courts and into the Correctional Services.

Term of Reference:

Corrections 6 (b)

To examine existing policies and practices to determine whether there are any discrepancies between Indian and Metis and non-Indian and non-Metis people respecting

(i) prisoner classification, case management techniques, release criteria and the availability of programs to Indian and Metis people while in custody, and

(ii) the criteria for entry to community release programs and the rate of early release of Indian and Metis people.

Remands

The task force has been told that accused persons who are held in custody on remand are generally detained in maximum security facilities.

Individuals on remand are housed in various facilities throughout the province. Aboriginal people are housed in remand facilities where minimal programming is available. We have observed that they often stay on remand for extended periods of up to six months while awaiting trial, and up to a year and a half awaiting appeals to the Court of Appeal and the Supreme Court of Canada. This situation prompts Aboriginal people in particular to prefer to enter a guilty plea rather than to wait for the outcome of a trial. For example, the Edmonton Remand Centre has an overall maximum security designation. Inmates are strictly monitored and have very little opportunity to participate in programs that offer education or productive activities. Visiting privileges are severely limited. In particular, we note that the

Edmonton remand centre has a limited number of phone lines for booking visits. Aboriginal people are often deprived of visits because their visitors cannot get through on the telephone to make an appointment. Women are housed in the Edmonton remand centre in two units. Within these units women, whose charges range from shoplifting to murder, mix and mingle. The exercise facility in the Edmonton remand centre is limited.

It is our view that remand facilities should be reserved for medium and maximum security individuals. Incarceration of individuals who require minimum security to ensure attendance at their trial should be a very last resort. Attendance centres in urban areas and community supervision in rural areas should be considered as viable alternatives. These provisions must, of course, have community support to be effective.

We have been told that accused persons are detained in medium to maximum security facilities because the provincial Solicitor General's Department responsible for the housing of remanded prisoners takes an Order from the court to remand in custody to mean that the individual should be detained in medium to maximum security, and because a minimum security designation is not available. It is our view that, when the court remands an Aboriginal person into custody, the court should consider making some determination for security requirements. In addition, the courts, the provincial Department of the Attorney General, and the Department of the Solicitor General should meet to discuss the appropriateness of current remand practices within the Solicitor General's Department with a view to determining whether some individuals who are remanded into custody may be better housed in minimum security facilities. We acknowledge that the decision to determine security level has always rested with the provincial Solicitor General's Department. However, it is our view that a review, with participation by Judges and the Attorney General's Department, of the Solicitor General's Department's criteria for remanding Aboriginal inmates, would reveal that while Aboriginals require strict monitoring and an in-custody designation, they may only require minimum security designation within the correctional facility.

The Task Force Recommends:

6.5 That all Aboriginal accused persons who are subject to lengthy remands (in excess of three months) be given access, at their request, to the same programming as sentenced offenders in the same security level.

6.6 That short term remanded accused persons be given access to urban life-skills programming.

6.7 That remand facilities such as the Edmonton Remand Centre not be used for individuals who require less than medium security control.

6.8 That the Solicitor General's Department review innovative remand procedures, for example, electronic monitoring and other restraint procedures that would allow an Aboriginal person to remain at home or in the home community.

6.9 That reporting centres throughout the province be used in lieu of "in custody remands" for minimum

security offenders or that more extensive use be made of existing reporting centres.

6.10 That Aboriginal persons on remand in correctional facilities be given adequate access to their community support system of family and friends while awaiting trial.

6.11 That Aboriginal communities be involved in bail release programs (see recommendation 6.91).

6.12 That a maximum time be established within which trials must be held during which people may be detained in custody pending final disposition of their charges.

Prisoner Classification

Many Aboriginal offenders complain that they are assessed or classified as a greater security risk than they need to be. The Task Force on Federally Sentenced Women, "Creating Choices," recognized this difficulty and further held that assessment criteria for Aboriginal women need to be identified, distinct from those applied to Aboriginal men. The Task Force wrote:

> *Initially, Task Force members supported the concept of woman-based criteria for classification as suggested by previous studies but ultimately came to the conclusion that assessment to gain better understanding of a woman's needs and experiences is more appropriate than classification. This conclusion is based on the Task Force perception that classification maintains the focus on security and on assigning a security rating for the women. Assessment, on the other hand, looks at the whole spectrum of women's needs from a holistic perspective, including needs relating to programming, spirituality, mental and physical health, family, culture, and release plans. Through this assessment, staff can then respond to the constellation of needs by appropriate support and intervention strategies which also consider the protection of society and the reduction of risk.*[41]

These comments are equally applicable to male Aboriginal offenders. Employees of correctional facilities often told us that Aboriginal inmates are generally quieter, more passive, and pose less difficulty from a management point of view than non-Aboriginal inmates. Yet it has been pointed out that current methods of determining the likelihood of persistent dangerous behaviour of Aboriginal inmates are not culturally sensitive and do not take into consideration information from appropriate sources, such as Elders. The final report of the Task Force on Aboriginal People in Federal Corrections pointed out:

> *The current review by the Secretariat, C.S.C. and N.P.B. of the detention provisions could include an Aboriginal offender component, with specific recommendations on the application of the provisions to Aboriginal offenders and, where necessary, suggest other, more appropriate methods to determine the likelihood of persistent dangerous behaviour among Aboriginal inmates.*[42]

The assessment criteria used by the federal and provincial corrections services, which are used in part by the National Parole Board, seem to be based on:

A. circumstances surrounding the offence;
B. the individual's criminal record;
C. special needs including educational or program direction, for example, alcohol treatment;
D. motivation and success in changing behaviour effectively ;
E. community and family circumstances.

The many submissions from Native Brotherhoods received by the Task Force indicate that Aboriginal inmates perceive the "system" to be almost exclusively concerned with the offence and the individual's record. Little or no weight seems to be attached to personal factors. There appears to be no provision of time or method for examining the likelihood of someone being a danger to self or others aside from the specific record and offence. This perception forms the basis for the view of many Aboriginals that a long record, particularly one involving violence or failures to appear, will almost automatically prejudice that individual's position in the correctional system, be it before the National Parole Board or in applications for temporary release. When this matter was reviewed with officials from the federal and provincial corrections facilities we visited, it became clear that although units and cells are designated specifically for inmates entering the institution, which are used primarily to familiarize the offender with the correctional facility, its physical lay-out, staff and program content, insufficient time and effort are spent on assessing the Aboriginal inmate upon arrival. Input provided by individuals who are not part of the correctional system and information received by the correctional facility about the Aboriginal inmate's home, community, or personality is, in some cases, culturally insensitive. The process is rushed. Information gained may be misleading.

The Task Force acknowledges the different historical, legal, and cultural differences between Metis and Indian peoples. It is important that the corrections part of the system also acknowledge these differences. While in this Report, the term "Aboriginal people" generally applies to both groups, it is important to acknowledge that programs and institutions should provide for both Metis and Indian spirituality and culture by, for example, involving Elders. Institutions should provide cross-cultural training for staff. Staff and programs should reflect tolerance and acceptance of both cultures. While both Metis and Indian programs should be available to inmates, inmates should not be forced to participate in these programs.

The Task Force Recommends:

6.13 That the Correctional Service of Canada reassess the concept of reception programs in Alberta to allow for a more informal and personal evaluation and assessment of new Aboriginal inmates. Security designation should be based not only on written documentation but also on information obtained from staff-inmate interaction. Staff members should be oriented towards obtaining first-hand information based on their observations when they confirm the appropriate security designation. The time during which this is done can also be used to provide inmates with factual information about the Correctional Service of Canada and the institution. It is not possible to achieve this goal if inmates are not housed in a specifically designated reception area.

6.14 That Aboriginal inmates be classified as minimum to medium security unless it has been demonstrated that a higher security level is warranted.

6.15 That assessment criteria be reviewed to eliminate gender bias and bias against Aboriginals.

Release Criteria

Statistics clearly indicate that at the earliest opportunity, fewer temporary absences* or paroles† are granted to Aboriginal inmates than to non-Aboriginal inmates. It is acknowledged that these differences often reflect a higher incident of violence in the criminal record or failure to appear. We are not satisfied, however, that a criminal record which reflects violence or failure to appear provides sufficient ground for making such a determination. With respect to Aboriginals, records of failure to appear may not reflect accurately the individual's likelihood of adhering to temporary absence or parole conditions nor necessarily dictate an appropriate security level. We have heard that many Aboriginals fail to appear because of distance, lack of transportation, confusion about the requirement to attend, and a general difference in attitude towards time. Non-Aboriginals who fail to attend are viewed by the court as intentionally avoiding their obligations to the criminal justice system. It may not be appropriate to make the same assumption when dealing with an Aboriginal person.

The Task Force has been told on several occasions that all inmates who require psychiatric assessment in order to be considered for early release are required to undergo the same assessment process as non-Aboriginals. Aboriginal inmates complain that the assessments are fundamentally discriminatory because they are based on Euro-Canadian tradition. The psychometric tools used have no Aboriginal cultural content even when they are said to be culture-free or culture-fair. The assessors are invariably non-Aboriginal and the standards of comparison against which judgements and assessments are made are virtually always non-Aboriginal in source and content. Inmates have expressed the opinion that these circumstances work to their detriment and operate as a source of systemic discrimination leading to fewer Aboriginal inmates obtaining early release than non-Aboriginals. Statistics support their view. The Task Force is of the view that psychiatric assessment procedures could be a contributing factor to differential release treatment. The Native Brotherhood of the Edmonton Institution made the following reference to the experience of Aboriginal people within the federal corrections system:

> *The overall deficiencies and invalidity of the 'professional assessment' made at the Regional Psychiatric Centre (R.P.C.) is the cultural and racial clash of non-Native professionals 'assessing' the mental processes of a Native person with non-Native means. The cultural beliefs and values of a Native differ sharply in contrast to a non-Native and an inevitable*

*30.5% Aboriginal vs. 69.5% non-Aboriginal - see Statistical Data Report, page 112)

†(46.6% for Aboriginals vs. 52% for non-Aboriginals - see Statistics reported on page 2 of the National Parole Board's letter to the Task Force, August 28th, 1990)

outcome is that the non-Native professional will diagnose a certain behaviour as 'abnormal' while the behaviour itself is perfectly normal in Native culture. The culture and racial contradiction can reflect negatively upon the Native person when appearing before the National Parole Board.[43]

The Task Force Recommends:

6.16 That the provincial Solicitor General's Department and the Correctional Service of Canada make a concerted effort to ensure that assessment opportunities with Aboriginal cultural content or reflecting an Aboriginal world view (both Indian and Metis) are available to Aboriginal inmates who wish to undergo Aboriginal culturally appropriate assessments, and that these assessments be conducted by Aboriginal assessors.

6.17 That the National Parole Board and Temporary Absence Committees review criteria for release and discuss the practical implications of these criteria with respect to Aboriginal lifestyles and culture.

Case Management Techniques

Native Counselling Services of Alberta have stated that:

at the time of admittance to any correctional institution, the offender is incapable of developing any type of case plan. Yet this is normally when the inmate is required to make choices about his future in the institution. The concept of working towards a long-range plan may also be foreign to the Native inmate, since much of his life experiences may have been based on day to day living. Another barrier experienced by Native inmates is their limited academic skills, and as a result often have a poor understanding of the intricacies of release programs such as day or full parole...Native offenders require a better orientation to institutional expectations that are placed on the offender while incarcerated.[44]

We have noted that, for example at the Grierson Centre in Edmonton which is an Aboriginal-focused corrections facility, inmates are encouraged to participate in the case management process over a long period of time. The process itself appears to be very flexible. Native Brotherhoods have expressed the concern that the case management process is but a game wherein the rules are set by the institution. The Aboriginal inmate merely plays along. Aboriginal inmates who do not feel a part of the plan or who are executing a plan merely to satisfy the administration are not likely to be affected in a constructive manner. This observation was well described in the Brief from the Residents of Grierson Centre:

Consistently, institutional programs are the means used to assess or discredit individual participation. The inability to articulate feelings does not mean they are not learning. A.A. is being used as a carrot rather than remaining anonymous. Positive programs are being run on a point system, again advancing the realization and need to manipulate the system. Not a good quality or attitude to hit the street with. The development of negative attitudes increases with these types of programs that institutions see as desirable in rehabilitation and integration into society. Thus undermining the spiritual and cultural efforts of Native participation.[43]

Similar comments were received from the Native Brotherhood at the Bowden Institution:

Time and again there is two sets of policies, for Native and Non-Native programs, for example, Native programs have no recognition with the Case Management Process. Presently there are three positive programs, they are, the Elders

program, Family Life Improvement Program, and the Bow Nations A.A. Group.[45]

It is apparent from these comments that Aboriginal inmates perceive on the one hand a need to participate in programs which have "recognition with the case management process" and on the other hand, a need to appreciate the value of Aboriginal programming which has not received such recognition. Effective programming without both recognition by the institution and participation by inmates is useless. Programming that is recognized by the institution and receives participation only because an inmate "has to" participate is also useless.

The case management process is documented on specific forms which are completed according to instructions found in manuals and directives. Generally, it is the view of Aboriginal people that forms and instructions are generated from the non-Aboriginal point of view. It would appear that some sources of information, such as Elders and facts of major importance to Aboriginal inmates, have not been recognized in the instructions. As a result, bias could enter into the process because of failure to include these important sources and facts. The consequence to inmates would be that decisions are made based on incomplete information. All documentation procedures must be reviewed to ensure that this potential bias does not occur. Where it is found, it must be eliminated.

The Task Force Recommends:

6.18 That documents used in the case management process be examined for cultural sensitivity and amended where necessary.

6.19 That the case management procedure be reviewed to give Aboriginal inmates more time and more effective participation in the process.

Community Release Programs

In some communities we visited, Aboriginal groups with an interest in community justice expressed a desire to become involved in the parole or temporary absence process. They wish to be advised of releases made to their communities and they wish to become involved in assisting their community members in becoming reintegrated into the community. In many cases these community groups had little or no information regarding the parole or temporary absence procedures or constraints.

The following views on these issues were expressed to the Task Force:

The general consensus among the Native prison population at Edmonton Institution is that the non-Native decision makers of the National Parole Board do not understand our distinct way of life and therefore lack the objectivity required for equitable, quality decisions that have such a substantial impact on our lives.[47]

Parole and early release programming is largely and readily available to urban rather than rural areas. The reason being availability of employment, lack of facilities and programs to accommodate native parolees and sadly, a lack of supportive interest by native communities at large. Native participation on National Parole Boards would bond a greater line of communication with parole applicants and the board.[48]

We had the opportunity to meet with representatives of the National Parole Board and to observe National Parole Board hearings. The hearing process includes the provision of written materials to National Parole Board members in advance of hearings, followed by an opportunity at the hearing for Aboriginal inmates and their caseworkers to make representations to the National Parole Board.

Aboriginal inmates frequently expressed the concern that the police had a very large part to play in the decision made by the National Parole Board or Temporary Absence Committees. Aboriginal inmates believed that police recommendations in these cases were almost always negative. In almost every community, police representatives said that they objected rarely to release and that police participation was minimal in any event. We have heard that the National Parole Board and Temporary Absence Committees view the role of the police to be very minimal and often pay little or no heed to the representations made by the police, on the assumption that these representatives would be negative in any event.

We also noticed that Aboriginal inmates expressed concern about receiving insufficient notice of the date and time of their National Parole Board hearing. Based on information received during visits with the National Parole Board and institutions, we determined that Aboriginal inmates are generally advised of the week during which the hearing will take place. There is no guarantee that they will be advised of the time of the hearing. It is of assistance to the National Parole Board to have representations made to it in writing or in person by individuals speaking at the request of the inmate. For example, Elders, parents, employers, friends, or relatives may have information of value to the National Parole Board. The Aboriginal community in general or the band council may also wish to make representations from the Aboriginal community's point of view. This process should be encouraged and opportunities for participation should be made available.

We note that the hearings held by the National Parole Board are not considered to be public hearings. We have been advised that the federal government is reviewing this process. It is our view that it is in the interest of the National Parole Board and the Aboriginal inmate whose release is under review that hearings be public. Representatives of the Aboriginal community or the community in general, as well as friends, relatives, potential employers, or other individuals who may have an interest in the determination, should be given access to National Parole Board hearings. A free exchange of information can only benefit the community and facilitate the acceptance and support that the inmate requires from the community upon release.

Aboriginal inmates have expressed concern that Elders and Aboriginal psychologists are not granted the same status as non-Aboriginal professionals. While the results partially support this contention, it cannot be said that the individuals themselves are discredited by the National Parole Board. Rather, it appears that the Board's judgement of appropriate Aboriginal community support may not take into account the Aboriginal lifestyle. It also appears that the Board's requirement that the inmate have participated in certain programs, with acceptable results, is inconsistent with the Aboriginal holistic way of dealing with personal problems.

We feel strongly that, if the National Parole Board had a permanent office in Alberta and sat regularly in the correctional facilities that house Aboriginal inmates, the public's knowledge of and access to the Board would increase considerably. Aboriginal inmates from Alberta are more likely to be understood by Aboriginal members of the National Parole Board resident in Alberta. It is our view that it would assist both the Board's work and the inmates if applications for release were reviewed by Board members from Alberta.

We have been told that the temporary absence process used by the provincial government does not allow the Aboriginal inmate any access to the decision-maker either at the first instance or at an appeal. Again, it is our view that the individual making the decision as well as the inmate would benefit from a procedure allowing the inmate to make representation directly to the person making the decision, bringing to the attention of the person or panel any and all information the inmate feels may be pertinent or relevant to the decision. The current temporary absence program is cold and impersonal, and not conducive to the application of cultural sensitivity required of decision-makers in this process. It often affects the Aboriginal offender by causing helplessness combined with a sense of lack of control in the system.

Where possible, the National Parole Board and Temporary Absence Committees should employ Aboriginal individuals to review applications brought by Aboriginal inmates whose intention is to return to a reserve or Metis settlement or predominantly Aboriginal community.

We have been told that the National Parole Board will make translators available to applicants who do not speak one of the two official languages. However, it is apparent that Aboriginal inmates are not made aware of this fact in advance of the date set for the hearing. This omission often results in confusion at the time of the hearing or in the applicant's proceeding in the absence of an interpreter only to "get the matter over with." It is our view that the National Parole Board and Temporary Absence Committees should advise inmates in advance of their hearing that a translator is available even if only as a form of insurance or additional assistance to the inmate.

It is important that Aboriginal family life be recognized as a significant source of support. The Aboriginal "family" must be recognized as a much broader concept than the western European family. The Aboriginal extended family includes aunts, uncles, cousins, and other relatives who are often as close as or closer than brothers and sisters and parents in the western culture. This fact must be recognized and the programs and privileges available to Aboriginal inmates must take this factor into account.

The differing concepts of "family" were addressed by many presentations to the Task Force including the presentation from the Oblates of Mary Immaculate Justice and Peace Committee (Grandin Province) when they recommended:

> *That the Task Force recommend that in policies which include a criteria re family relationship that the extended family relationships rather than the nuclear family relationships be determinant.*[49]

An issue which has been brought to the attention of the Task Force on a number of occasions is the apparent bias of correctional institutions when Aboriginals make requests for temporary absences to attend family funerals. The Social Justice Commission of the Roman Catholic Archdiocese of Edmonton noted in their brief that:

> *The funeral traditions of the native communities need to be known and respected so the decisions which most assist the native prisoner's grieving process are made.*[50]

In Aboriginal extended families, relationships do not correspond to Euro-Canadian nuclear family relationships. Yet, they are interpreted in Euro-Canadian context. English words to describe relatives in the Aboriginal community are often inaccurate. The issue, as described by Aboriginal inmates, is that too often they are denied an opportunity to attend the funeral of a close family member. They state that if the nature of the relationship were viewed from the Aboriginal perspective, quite a different interpretation and/or different decision would be warranted. Additional considerations which lead to negative decisions are, for example, the grieving process, which is different and longer than that of the dominant Euro-Canadian culture, and the location of a funeral, which is sometimes distant from institutions and facilities such as holding cells which may be required. Expenses to the correctional organization such as travel and escort costs are also considered in the decision-making process. The Elizabeth Fry Society of Edmonton observed in their Brief that:

> *Women in prison need to have the opportunity to attend funerals and receive support from 'family' while in prison. Prison officials should accommodate the wishes of native women to attend funerals as much as possible and to provide surveillance in a manner that is as unobtrusive as possible.*[51]

These comments are equally applicable to men.

The Task Force is of the opinion that Aboriginal inmates often experience discrimination when their request for temporary absence for a funeral is denied. The Task Force concludes that the criteria applied are inappropriate and must be corrected.

Community Facilities And Supervision

Several submissions to the Task Force addressed the issues of community facilities and supervision. For example:

> *The Community Corrections Program could become a viable alternative to incarceration for many Native offenders. However, the program currently offered has limited value to the Native communities, especially for rural or isolated communities.*[52]

> *There must be more of an active interest displayed by M.A.A./I.A.A. leaders and organizations in the community to openly activate the delivery of community based programs in assimilation with institutional programming for the continuance of the unique needs of Metis and Indian people of Alberta. The process of rehabilitation and crime prevention is ongoing.*[53]

In their Brief, Native Counselling Services of Alberta noted that:

> *Offenders are neither monitored adequately, nor provided with appropriate guidance to change their behaviour.*[54]

They further noted that, if the needs of young people are to be met adequately, there must be provision for the treatment of the entire family. Currently, and notably, there are only a few programs in operation that take a holistic approach to the family. Many organizations told the Task Force that there were not enough appropriate community-based half-way houses, closed custody homes, open custody homes, or community facilities in general for Aboriginal offenders. Aboriginal communities have come to view Aboriginal offenders as the community's responsibility. Their objective is to involve the Aboriginal community in creating an atmosphere conducive to the reintegration of offenders into the community.

The lack of half-way houses for women within the correction services was identified on numerous occasions. Indeed, there seem to be no facilities with programming exclusively for Aboriginal women. We encourage the development of half-way houses which offer improved access to the children of the inmate, and which encourage the development and improvement of parenting skills.

In every institution we visited, we were told by Aboriginal inmates that they do not wish a separate institution or to be segregated within the institution from non-Aboriginals. Nevertheless, it is clear that community-based facilities with programming oriented to Aboriginals would have a positive effect on Aboriginal inmates.

We have observed that, particularly in the remote Northern areas of Alberta, interim release options and sentencing options are restricted by the absence in communities of appropriate and trained supervisors and facilities. Denial of bail, release to urban centres rather than to an inmate's own community, and breach of conditions because of a lack of support are but a few of the difficulties experienced by the Aboriginal offender.

The Task Force Recommends:

6.20 That the the Correctional Service of Canada and provincial Solicitor General's Department establish liaison with Aboriginal community groups who have indicated an interest and are willing to become involved in the parole or temporary absence program, to facilitate the involvement of Aboriginal communities in, for example, supervision or sponsorship of release.

6.21 That the Correctional Service of Canada and the provincial Solicitor General's Department establish liaison with Aboriginal community-based agencies to provide information about the parole or temporary absence program and to facilitate the Aboriginal community's involvement with Aboriginal correction facilities and with community correction facilities.

6.22 That more Aboriginal individuals be appointed to the National Parole Board.

6.23 That hearings of the National Parole Board be held in public.

6.24 That the National Parole Board advise Aboriginal inmates at least seven days in advance of the date and time of their hearing.

6.25 That the National Parole Board advise Aboriginal inmates that a translator will be made available at their request.

6.26 That National Parole Board members receive initial and regularly recurring cross-cultural training relating to Aboriginal culture and society.

6.27 That the National Parole Board sitting in Alberta have Alberta members and sit in all facilities that house Aboriginal inmates.

6.28 That the National Parole Board adopt the goal of ensuring that Aboriginal residents of Alberta be heard by Alberta members of the Board.

6.29 That Aboriginal spirituality be formally recognized as one of the criteria in the release policies of the National Parole Board.

6.30 That National Parole Board hearings involving Aboriginal individuals be informal, and apply Aboriginal spiritual practices, both Indian and Metis, where appropriate. A sweet grass ceremony, Aboriginal art on the walls, seating in a circle, and allowance for informal dress may assist the information-gathering process.

6.31 That the National Parole Board, Temporary Absence Committees, and the provincial and federal Solicitor General's Departments, recognize in policy that the Aboriginal concept of family is not the same as that of non-Aboriginals, and that the concept of extended family be included in all programming and decision making.

6.32 That the recommendations regarding the urgent need for half-way houses in Alberta for Aboriginal women, made by the Task Force on Federally Sentenced Women (page 149), be adopted.

6.33 That assistance be given to local communities to develop and involve local residents in the provision of appropriate supervision of parole and temporary absence, and that supervisors be paid reasonably for their services.

6.34 That training be provided to members of the National Parole Board and Temporary Absence Committees to sensitize them to the nature of Aboriginal communities, norms, and Aboriginal spiritual healing practices.

6.35 That the National Parole Board and Temporary Absence Committees view an Aboriginal's participation in Aboriginal cultural and spiritual activities as an important contributor to change.

6.36 That, when applications are reviewed, made by Aboriginal inmates from Alberta whose intention it is to return to a reserve or Metis Settlement or predominantly Aboriginal community, the National Parole Board and Temporary Absence Committees be composed of Aboriginal members from Alberta where possible.

6.37 That the temporary absence process be reviewed by the Government of Alberta to ensure that an applicant receives due process.

Term of Reference: Corrections 6(c)

To review existing correctional programs for both men and women to determine:

i. the nature and content of programs for both young offenders and adult offenders,

ii. whether there is sufficient attention being given to the general needs and concerns of Indian and Metis People, including educational, personal development, drug and alcohol abuse and other programs of importance to the Indian and Metis people who are seeking to become more productive on release from prison, and

iii. whether there is sufficient attention being given to the special needs and concerns of Indian and Metis people in view of their cultural and spiritual heritage.

Nature And Content Of Programs

Presently there is over emphasis on behavioral change through the use of negative reinforcement rather than a positive appraisal of human values and the promotion of self-esteem.[55]

Many groups who made submissions to the Task Force commented on the role of programming within correctional facilities. The Elizabeth Fry Society of Calgary stated simply that:

The focus of all housing, programs and services provided shall be to rehabilitate the individuals involved - not merely to incarcerate.[56]

The Task Force has been impressed by the variety and quality of programs offered in the many correctional facilities in the province, with programs ranging from academic education to personal development. Moreover, we have been impressed by the obvious dedication of most staff, and with their commitment to meet the needs of Aboriginal offenders. We are concerned, nevertheless, with the apparent lack of coordination. Many programs designed to teach inmates a trade or vocation seemed to be out of touch with the needs of an Aboriginal in an Aboriginal community. Inmates at the Grierson Centre advised us that basic training and skills development should remain a priority. In our view, programs teaching cottage industries such as small engine repair and handicrafts, for example, silk screening, are appreciated by Aboriginal inmates and provide skills usable in Aboriginal communities. We encourage corrections staff members to investigate the types of training programs best suited to the individual Aboriginal inmate and the community to which he or she will likely return.

Urban life-skills seem to be lacking among many Aboriginal inmates. While there appear to be networks of Indian and Metis people within urban areas, there does not seem to be a structured program for identifying and addressing the particular support an Aboriginal will require in a large urban setting in order to cope with the larger society. Examples of information needed would be: how to obtain a driver's license, what Aboriginal organizations exist within the city to which the Aboriginal may turn for assistance, public transit, unemployment insurance procedures, and support systems that may be available in the urban community. The programs that do exist seem to be tacked onto the end of a sentence. They appear to be somewhat rushed, and lack real emphasis on particular difficulties faced by Aboriginal people.

We cannot ignore that in provincial institutions the average stay of an Aboriginal inmate is a mere thirty days. We acknowledge that it is extremely difficult to provide programming that will make a significant difference within thirty days. It is our view that extensive programming within provincial institutions should focus on long-term offenders and that offenders who are expected to stay for short periods of time within provincial institutions should be engaged in programs which orient them to assistance within the community upon release. Perhaps a basic urban life-skills course should be developed by Aboriginals for delivery within correctional facilities.

In Northern Ontario, some Ontario Provincial Police detachments have what is commonly called the "10/11 program." If an Indian or Metis person is found to be intoxicated in a public place, he or she is not charged for the first ten offences. The offences are recorded by the police. If an eleventh offence is committed, the accused person is arrested. The sentencing court is advised of the circumstances, and an appropriate sentence involving either treatment or incarceration is imposed. We have been advised by the Ontario Provincial Police that this program is successful. Frequently, the eleventh offence is either not committed, or if committed, is not detected, because the community accepts responsibility for the offender in some way.

It is with the Ontario example in mind that we are of the opinion that legislation should be considered which would allow an Aboriginal to accumulate sentences of less than six months until they are, in total,

in excess of six months. Incarceration would only be imposed when a total of six months had been exceeded. Legislation could be accompanied by a direction that no Warrant of Committal be issued until sentences of incarceration in excess of six months have been accumulated. An Aboriginal person would only be arrested and incarcerated when the Warrant of Committal is issued. This set of procedures would allow for correctional authorities to be less lenient in granting temporary absence or early release. The offender would be able to participate in institutional programs, which, because of their longer duration, might be more effective. The "revolving door" might be avoided, which at present and at best, appears to be merely an inconvenience to Aboriginal people and has no real positive and lasting effect. It is recognized that this proposal may lead to a "widening of the net" and could result in six months becoming a minimum sentence. It would, however, remove the so-called, short, sharp sentence, which is usually more short than it is sharp and which is of questionable deterrent or rehabilitative value to the offender.

We note that in some provincial institutions, women have little or no live-in access to their infant children. The family is a very important influence in the life of an Aboriginal. Access to infant children by new mothers, particularly Aboriginal mothers, has been noted to be a stabilizing influence and rehabilitative factor. The Task Force had an opportunity to speak with a new Aboriginal mother who had her child while incarcerated near Edmonton. Shortly after the birth of her child, she absented herself without leave to visit the infant. As a consequence, she was immediately transferred to an institution in southern Alberta. The Task Force on Federally Sentenced Women identified the same issue as a concern, as did the Elizabeth Fry Society of Calgary:

> *There is a lack of provision for incarcerated mothers to have any access to their newborn infants, while in prison in Alberta. Alberta is now one of the few western provinces that does not have provision and/or facilities ready to accommodate such access. Saskatchewan, at Pine Grove, developed living accommodations for such access, after government-funded research pointed to the positive outcomes for mother and child to be gained by consistent interaction.*[57]

A serious concern for this Task Force is the obvious lack of effective alcohol and drug abuse counselling. The Poundmaker's Lodge observed in its Brief that:

> *In most Native communities across Canada, 80 percent of the people have a problem with alcohol. Sending our people to jail, or placing them on probation, rather than sending them for treatment, only enables Natives to continue to hurt themselves and their families.*[58]

For a long time now, it has been generally accepted that the single greatest contributing factor to criminality among Aboriginals is alcohol and substance abuse. Statistics presented in the submission for the Poundmaker's Lodge show a disproportionately high number of Aboriginals in jail because of offences related to alcohol and substance abuse:

> *With respect to the conviction of Native people who have committed alcohol related offences, little has changed since the release of the Kirby Report - alcohol and the law is still a major problem for Native people. For example, between January 1, 1989 and December 31, 1989, 1,417 Native people were sentenced due to offences under The Liquor Control Act compared with 764 non-Natives (65% Native versus 35% non-Native). Moreover, 21% of all Native offenders versus only 5% of all non-Native offenders were sentenced due to offences under The Liquor Control Act, (between January 1, 1989, and December 31, 1989).*[59]

The question must be raised of whether alcohol and substance abuse programs should be the primary focus for programming in the case of Aboriginal inmates. Anecdotal reports and the position expressed by Poundmaker's Lodge suggest that if alcohol-addiction can be overcome, all other difficulties facing an individual or a community will be manageable and can be overcome. There does not appear to be a concerted effort to ensure that alcohol treatment in federal and provincial correctional facilities is effective. It has been suggested to the Task Force that all Aboriginal inmates be provided with the opportunity to attend a residential treatment program of six months' duration. Clearly, such a program would be more appropriate in the case of federally sentenced inmates. Recently, Poundmaker's Lodge has initiated a program at the federally-operated Edmonton Institution. The success of the program has yet to be determined. However, there are high hopes that an alcohol treatment program within the institution, residential in nature and based on Aboriginal culture, will be more acceptable to Aboriginal inmates than conventional programs, and thus be more successful. In provincial institutions where the average stay is thirty days, a somewhat different approach is required. We have been advised that in some provincial institutions, inmates have no access to alcohol and substance abuse programs because programs are not offered continuously or because of the limited length of their sentences. The Solicitor General contracts for beds in treatment facilities, but too few beds to meet the need. Currently, there is no recognized method for assessing the effectiveness of alcohol and substance abuse treatment programs in correctional facilities or even of those offered by facilities such as Poundmaker's Lodge. Research and evaluation must be conducted to ensure that programs are effective.

It is evident that a different approach must be taken with respect to alcohol and drug abuse counselling for Aboriginal people, and that concepts of Aboriginal spirituality and Aboriginal lifestyle must be incorporated. Poundmaker's Lodge stated:

> *For many years, the tragic consequences of Native people's encounters with alcohol and drugs received little attention - treated as if it was an unconquerable result of a people unable to adjust to a dominant alien society. Treatment and rehabilitation based mainstream programs had little impact on the problems.... There also came the realization that the extent and intensity of the alcohol and drug problem for Native people was the result of critical differences between Native and non-Native people, both individually and as a group, and that effective treatment and rehabilitation would require recognition of those differences.*[60]

In our view, it is imperative that alcohol and drug abuse programs for Aboriginal people bear this principle in mind.

The Task Force Recommends:

6.38 That the government consider enacting legislation which provides for actual incarceration of Aboriginals only when incarceration sentences total six months or more.

6.39 That every major correctional institution in Alberta have an alcohol and substance abuse treatment program aimed at Aboriginal inmates and designed to attract participation by Aboriginal inmates. These programs should be of sufficient

duration and be offered regularly so that they are available to all inmates serving substantial sentences within the correctional institution.

6.40 That correctional facilities provide culturally sensitive programming including programs such as alcohol and substance abuse treatment, employment readiness, physical and sexual abuse survival, life-skills and other relevant training.

6.41 That the provincial Solicitor General's Department and the Correctional Service of Canada identify programming required specifically for Aboriginal women and that such programming be implemented in all Alberta facilities housing Aboriginal women.

6.42 That the federal and provincial governments establish funding for programming as a priority, and direct its attention to community release programs and prevention programs.

6.43 That the feasibility of evaluating the effectiveness of current alcohol and treatment methods be reviewed.

6.44 That correctional facilities provide live-in arrangements for infant children of new mothers incarcerated in provincial correctional institutions.

Aboriginal Liaison Workers / Program Coordinators

In their Brief to the Task Force, the Native Brotherhood of Edmonton Institution said about native liaison workers:

> *The input of the Liaisons into the case management process is unnecessarily limited to, for the most part, aiding Native prisoners at parole hearings. Insofar as providing case management assessments, both the Liaison and the Elders are limited to the position of ex-officio of the Case Management Team (C.M.T.). The reality is that the Elders and the Liaisons should constitute the assessors of the C.M.T., for these individuals know and understand the Native prisoners in a manner that the non-Native C.M.O.'s could only in the rarest instance.*[61]

The Brief submitted to the Task Force by Native Counselling Services of Alberta (N.C.S.A.) provided insight into the role of liaison workers:

> *It was our experience, that although these positions provided unique services, they were never allowed to reach their fullest potential. The liaison officers had no designated role within the center, apart from supervising the Native Brotherhood Program and the Elders Services contract. Without a clear mandate the staff were subject to limitations placed on them by the Administration, Security and Programs staff. The success of the services was always hinged upon how receptive and flexible those institutional administrators were. This often led to frustration and conflict between the liaison officer and the center staff. Apart from the operational problems, it was important for inmates to access a worker not identified as a staff member of the institution. Native inmates would enlist the help of the liaison officers to assist in mediating disputes with case workers or to utilize the network of services N.C.S.A. provided. This was particularly important for the offenders attempting to maintain contact with their families or communities. The liaison officers also assisted the Native Brotherhood by acting as*

a resource, for completing community contacts, and mediating between the administration and inmates. The Liaison Officer was also an important contact for the institution and the native Elders. As the program expanded, these officers became responsible for contacting the elders, arranging their visits to the institution, and paying for their services.[62]

The Task Force is of the opinion that the need for an Aboriginal Liaison/Program Coordinator has been established, and that such a position, or such positions, will be of value to both the institution and the Aboriginal inmate.

The provincial and federal governments have initiated programs for the hiring of persons to assist Aboriginal inmates within the correctional facility. The federal position title is Native Liaison Officer. The Alberta title is Native Program Coordinator. The positions are contracted out by the federal government to an outside agency such as Native Counselling Services of Alberta or Poundmaker's Lodge, whereas the provincial government employs Aboriginal program coordinators within the staff complement of the provincial Solicitor General's Department. There are advantages and disadvantages to both approaches. On the one hand, individuals who provide the service on a contract basis are viewed as having more independence, and as more able to speak and advocate on behalf of Aboriginal inmates. Public service staff members are seen as having been conscripted by "the system" and are viewed as being less independent. On the other hand, we have heard that workers who are in the institution on a contract basis are not taken seriously or are not given the status they require to effect change within the institution, whereas public service staff members can be provided with that status. Public service staff members tend to be more easily accepted by the administration and more effective in their role as advocates. Regardless of the approach taken, it is crucial in our view that the individual hired for the position be a person who has the ability to advocate on behalf of the inmate, can establish and maintain liaison with the staff in the institution, and have status among and the confidence of staff in the institution. In part, it is the obligation of the correctional facility to give this person regular and routine access to the highest levels of administration. We have been told that the success of these positions is often dependent on the person who occupies the position. That is a simplification of the situation. The institution, its administration and staff, must make a concerted effort to create working conditions which allow the workers to carry out their responsibilities properly and effectively.

The Task Force Recommends:

6.45 **That the provincial and federal Solicitor General Departments ensure that the position of Native Liaison Worker or Program Coordinator allows the individual in that role both sufficient access to policy makers, and an opportunity to advocate on behalf on individual Aboriginal inmates in an effective manner.**

Elders Programs

In their Brief to the Task Force, the Residents of Grierson Centre presented a view shared by administrators and other inmates:

> *A resident elders program is viewed as having a desirable and positive effect on prison populations in general.*[63]

There are no institutions in Alberta which employ a full-time Elder. Most of the Elders are Indian. We met very few Metis Elders. As we noted, there is a distinct difference in culture, history, and spirituality between Indian and Metis persons. There was noticeably less opportunity for inmates in young offender centres and remand centres to have access to Elders at all.

A general comment, frequently heard from Native Brotherhood/Sisterhood groups, centred around three concerns which relate to Aboriginal inmates' feelings of identity. These concerns could be related to feelings of self-worth, so important in the change process and healing prospects of individuals.

The first of these concerns is the degree of recognition and status given to Elders by the institution. While it is acknowledged that respect and understanding for Elders by institutional staff and administrators have improved substantially in recent years, the Aboriginal inmates believe that Christian Chaplains and Elders are treated differently. The most frequently cited examples of different treatment relate to less freedom of movement for Elders within the institution, and a lower level of trust with which Elders are treated. The examples refer to details such as Elders having to be escorted in the institutions, not being able to draw a set of keys even to their own offices, being required to have their ceremonies and activities supervised either directly or indirectly, and having to submit to searches of their medicine bundles when they enter the institution. These restrictions or demands are rarely placed on Christian Chaplains who also provide services on a contract basis.

The second concern relates to the inability of the non-Aboriginal institutional administration and staff to understand that there is no essential difference between Aboriginal spirituality and culture. Aboriginal inmates have achieved certain gains in freedom of access and expression in the context of clearly spiritual concerns. There appears to be an institutional effort to distinguish between spiritual activities and expressions of culture associated with an Aboriginal way of life. When a specific request or item is not seen as clearly required for spiritual expression, it is subject to a far broader range of restrictions related to security of the institution. Examples might be restrictions on when Aboriginal inmates may wear a ribbon shirt and on what symbolic articles an Aboriginal inmate may possess besides medicine bundle contents.

The third concern is the general absence of a focal point for Aboriginal activities in institutions. Only in a very few instances was the Task Force shown a space in the institution which could be referred to as a "cultural centre" for Aboriginal inmates. In most cases, Aboriginal inmates shared space with non-Aboriginals, which made it extremely difficult if not impossible to prepare a space reflecting Aboriginal culture and offering Aboriginal inmates a high degree of comfort and familiarity in their spiritual and cultural activities.

The Task Force visited most of the provincial institutions in the province. We were struck by the large centralized facilities of more than two-hundred inmates with sophisticated and costly security hardware, and elaborate and well-equipped training facilities. For many inmates, the standards of accommodation and recreational facilities in the institutions are much higher than those in their home communities.

We have learned that Aboriginal communities and Aboriginal inmates would prefer inmates to be housed in their home communities. It is true that 60% of incarcerated Aboriginals give urban centres as their home address, in particular Edmonton and Calgary, while 40% name rural communities. However, instead of housing inmates from rural areas in large institutions, a more sensible approach to incarceration of this group would be to establish small minimum security facilities of twenty to thirty inmates, oriented towards alcohol and substance abuse intervention and community service in the Aboriginal inmate's home community. In their presentations to the Task Force, many Aboriginal communities indicated an interest and desire to become more involved with incarcerated Aboriginals. Placing correctional facilities within communities would provide for community involvement and an opportunity to become involved with and increase understanding of this component of the criminal justice system. In addition, inmates could stay close to home, and the cost of incarceration would be reduced. Excellent examples of such facilities are Footner Lake, the Kainai Facility on the Blood Reserve, the Westcastle Facility on the Peigan reserve, the Medicine Lodge Facility near Fort McMurray and the treatment facility for youths near St. Paul.

Throughout the research and visits, the Task Force received a clear and consistent message about Aboriginal spirituality. We were told repeatedly that drug and alcohol abuse and criminality are inconsistent with the Aboriginal way. Anecdotal accounts abound of dramatic shifts in behaviour, motivation and taking charge of one's life following a commitment to Aboriginal spirituality. We heard the same message from incarcerated inmates, released inmates, program managers, supervisors, and Elders. We also heard from individuals who have lived through the experiences. On the strength of these personal testimonials, the Task Force fully accepts the effectiveness of commitment to Aboriginal spirituality. We also accept that Aboriginal spirituality is an integral part of those intervention programs which are deemed successful.

The Task Force Recommends:

6.46 That every institution in the province which houses Aboriginal people, including remand and young offender facilities, should have the services of at least one full-time equivalent Elder. Where numbers warrant, there should be two Elders with pay.

6.47 That Aboriginal Elders within correctional institutions be provided the same status, freedom and independence that is granted Christian and other religious service providers.

6.48 That institutional administrators be open to a broader concept of Aboriginal spirituality and culture and be more receptive to the expression of Aboriginal heritage

by Aboriginal inmates in terms of religion, dress and cultural activities.

6.49 **That Aboriginal community-based release facilities involve in their program development and delivery male and female Elders who are community members.**

6.50 **That a space within institutions be designated as a cultural centre for exclusive use by Aboriginal inmates.**

Budgeting

The issue of budgeting for Aboriginal programs was brought to the attention of the Task Force by several presenters throughout the province. We were told that under current federal and provincial government contracting practices, programs and guidelines for program delivery are established mostly on an annual basis. Under such conditions, the provider of a program or the length or scope of a program can vary from year to year. This can destroy the continuity of a program and can cause inefficiencies in program delivery. For example, if one source provides a program in an institution in year one, and in year two the contract is let to a second supplier who must take time from the contract period to get to know the inmates and the institutional environment, a certain amount of the value of program delivery is lost. It was suggested by both agencies and public servants that the practice should change to allow for longer-term contracts to ensure continuity of program delivery and stability in the source agency.

From the Aboriginal inmates' point of view, budgeting at the institution level is problematic in that there is no readily identifiable budget set aside specifically for Aboriginal cultural pursuits. The consequence is that there is no opportunity to plan for the longer term. For example, program proposals from Native Brotherhoods are assessed on a case by case basis and in the context of demands from the larger inmate population and a limited budget base. Although the argument can be made that Aboriginal inmates benefit from expenditures on behalf of all inmates, the Task Force believes that there are real and specific program needs for Aboriginal inmates which should be funded separately, with the Native Brotherhood organizations having a major role in determining content and delivery.

The Task Force Recommends:

6.51 **That funding for contracts for the specific provision of services for Aboriginals be reviewed. Many programs currently provided on an annual basis do not allow for sufficient time for the service providers to become familiar enough with the clientele and the institution to provide a consistent and effective service.**

6.52 **That a budget be allocated within the corrections budget, specifically for Aboriginal activities and programs. It is desirable that Native Brotherhoods be actively involved in the process of developing institutional priorities for Aboriginal programming and that they have input into the expenditure of resources allocated for these programs.**

Community Initiatives

Native leaders can and should speak up for their own people.[64]

The Native Brotherhood from the Bowden Institution viewed community involvement as important and made this suggestion:

Direct involvement with Native Organizations will only happen when a Native Advisory Committee is established. This would be similar in nature to a Citizens Advisory Committee. This committee would consist of members of the Indian Association of Alberta (I.A.A.), Metis Association of Alberta (M.A.A.), Native Counselling Services of Alberta (N.C.S.A.), respected Native Elders, John Howard Society, and other various Native resource agencies and peoples.[65]

The Metis Association from the Bowden Institution said:

There are many areas of concern that have yet to be clearly identified and addressed. This must begin with involvement of the Metis/Indian inmates, C.S.C. staff, Metis/Indian community groups, and Solicitor and Attorney General Departments. In order to develop effective programs/services, both sides must begin to listen to each other ideas and concerns.[66]

The Residents of Grierson Centre addressed the importance of community involvement:

A community support system should be available in all levels of applied justice.[67]

The Yellowhead Tribal Council expressed the philosophy of participation most eloquently:

We all know what is behind us, Native Populations are increasing, the death ratios are higher in our communities, there are enormous alcohol related problems, and insurmountable incarcerations toward native people across Canada. There are so many problems that it makes our hearts weep, while enduring great amounts of pain thinking of them. But this has not stopped us from getting up each morning and greeting the sun, for each new day we see the sun there is hope. In order to move forward we must know and understand the past. We don't believe we have all the answers, but together we can correct many of the problems.[68]

Daniel Beatty (Pawis) spoke about community responsibility:

Some of the problems which resulted in incarceration in the first place could very well be considered the community's fault. It is for this reason alone that Band Councils, Native political groups, Native media, and Native brotherhoods work in conjunction and face the fact that the community has an obligation in the process of an offender re-entering from prison. While the parolee/prisoner shoulders a great deal of the responsibility, the community must not be allowed to discard valuable opportunities out of ignorance.[69]

In almost all of the Briefs we received from Aboriginal groups, we were told that the Aboriginal community is willing to shoulder at least part of the responsibility for protecting their community by means of the corrections process. As we have said, some communities are more able than others to become involved and all communities will require resources and training.

In rural areas, the Aboriginal community is well defined by settlement and band organizations. In urban areas, we had difficulty identifying specific Aboriginal communities or Aboriginal community groups. Very few representations were received. We appreciate the work of the Friendship Centres, particularly those in Edmonton and Lethbridge, who provided this Task Force with insight into the urban Aboriginal community. In urban areas, facilities and programs specifically

designed for Aboriginals and run by Aboriginal groups appeared to be virtually non-existent. At the same time, there seemed to be a number of organizations in the inner-city areas of Edmonton, Calgary and Lethbridge which give assistance to Aboriginal people in specific areas of concern. However, there seemed to be some lack of coordination, information and general networking between these organizations. The police chief in Lethbridge expressed frustration that many of these organizations keep 9 - 5, Monday to Friday hours and are not available when problems develop. The criminal justice system as well as social service agencies might benefit from a multi-purpose facility in urban centres aimed at providing space and support for programs for Aboriginals. These programs could offer everything from recreational activities to housing, parenting courses, urban life-skills, and alcohol and substance abuse treatment, and could be used as reporting facilities for remanded Aboriginals and community crime prevention programs. The concept of a multi-purpose facility is in keeping with the Aboriginal holistic view of problem-solving. The Task Force views such a facility as having considerable potential for enhancing a feeling of community among urban Aboriginal citizens, and for assistance in program coordination.

The Task Force Recommends:

6.53 **That the number of half-way houses, community minimum security facilities, open custody facilities and secure custody facilities be increased throughout the province.**

6.54 **That these facilities be designed for use as multi-purpose community-based facilities with, for example, a program to allow accused persons on remand to report to a designated facility.**

6.55 **That the goal be adopted of placing all minimum security serving prisoners in facilities in their home community for their entire sentence.**

6.56 **That representatives of the federal and provincial corrections services work with Aboriginal communities to explain the role of release-oriented correctional facilities and invite input from the communities with respect to program development and delivery.**

6.57 **That an urban cultural program centre for multi-purpose community programs be established in urban centres, which would encourage Aboriginals in conflict with the law and Aboriginals in general to become involved in their spiritual and cultural heritage. We suggest that this be a community initiative supported by the Correctional Service of Canada and the provincial Department of the Solicitor General.**

6.58 **That the provincial government strengthen the existence and advocate the use of home placement custody and mixed group housing custody as alternatives to traditional correctional facilities.**

Complaints and Discipline Procedures

We have been told that many Aboriginal inmates view the current procedures for making complaints about staff or programming in correctional facilities as limited and ineffective. We note that there are procedures in place for the lodging of complaints by Aboriginal inmates. We have been told that institutional administrations consider the procedures very effective. We have, however, noted that for a variety of reasons, Aboriginal inmates often do not make use of the complaint procedure. They are reluctant to assert themselves in the system and generally behave passively in institutions. They are easily confused about the procedure, fear retribution if they complain, and frequently state that there is no feedback or effective investigation of their complaints in any event. The matter of complaint procedures within the criminal justice system is discussed extensively elsewhere in this report.

The Task Force had the opportunity to review the internal disciplinary procedures used by the federal and provincial correctional systems. In the provincial system, internal discipline is handled internally by staff members. In the federal system, internal discipline is handled internally by an independent chairperson. It is our view that internal discipline in the jail has a considerable effect on the length of time spent in jail, security level, and access to programs. In many cases, access to family visits and other benefits or "privileges" may be withdrawn for a time. In extreme circumstances, transfers between institutions are common.

We have reviewed Michael Jackson's report "Behind the Walls"[70] as well as writings by other authors who comment on the lack of natural justice in institutions. It is our view that the provincial Correctional Service Division should review its discipline procedure and provide for impartiality in the process. The common perception held by Aboriginal inmates that the process is nothing more than a "kangaroo court" instills no respect or trust in the system and breeds hostility and resentment. This perception colours the Aboriginal inmate's view of programming in the institution and is counterproductive to rehabilitation. There are, of course, many instances when discipline is required to keep order in the institution. The legitimate need for such measures should not be minimized.

We have been told by Native Brotherhoods that they do not know what the inmate's rights are within the disciplinary process. The same cultural traits that contribute to the misunderstanding of an Aboriginal person in court apply in the correctional institution. Aboriginal inmates are often shy or quiet. They do not maintain eye contact, and are not aggressive or assertive in defending themselves in the face of authority. We have been told that there is a reluctance on the part of Aboriginal inmates to become assertive during the disciplinary process out of fear of reprisal.

Due process is a term which is widely accepted by the criminal justice system and administrative agencies. Jones and deVillars in their book, *Principles of Administrative Law*, state that:

> *At the very least, the rule requires that the parties affected be given adequate notice of the case to be met, the right to bring evidence and to make argument.*[71]

The same authors comment:

> *(a) the tribunal is not required to conform to any particular procedure, nor to abide by rules of evidence generally applicable to judicial proceedings, except where the empowering statute requires otherwise;*
>
> *(b) there is an overall duty to act fairly in administrative matters, that is, the inquiry must be carried out in a fair manner and with due regard for natural justice;*
>
> *(c) the duty to act fairly requires that the person who is being examined and who may be subject to some penalty:*
>
> *(i) be aware of what the allegations are;*
>
> *(ii) be aware of the evidence and the nature of the evidence against him;*
>
> *(iii) be afforded a reasonable opportunity to respond to the evidence and to give his version of the matter;*
>
> *(iv) be afforded the opportunity of cross-examining witnesses or questioning any witness where evidence is being given orally in order to achieve points (i), (ii), and (iii). However, there may be exceptional circumstances which would render such a hearing practically impossible or very difficult to conduct, such as deliberately obstructive conduct on the part of the party concerned;*
>
> *(d) the hearing is to be conducted in an inquisitorial, not adversarial, fashion but there is no duty on the tribunal to explore every conceivable defence or to suggest possible defences;*
>
> *(e) nevertheless, the tribunal must conduct a full and fair inquiry which may oblige it to ask questions of the person concerned or of the witnesses, the answers to which may prove exculpatory insofar as the person is concerned. This is the way in which the tribunal examines both sides of the question;*
>
> *(f) there is no general right to counsel. Whether council may represent the person is in the discretion of the tribunal, although matters may be so complicated legally that to act fairly may require the presence of counsel;*
>
> *(g) the person must be mentally and physically capable of understanding the proceedings and the nature of the accusations and generally of presenting his case and replying to the evidence against him. The tribunal must satisfy itself on this point before embarking on the hearing.*[72]

It is essential for the proper working of a disciplinary process that the individuals, who are both the subject of it and who may be complainants, have free and easy access. It is clear that this is an area in which Aboriginal inmates require assistance from third parties.

The Task Force Recommends:

6.59 That the provincial Correctional Services Division review the internal disciplinary procedure governing institutions, and provide for an independent chairperson to determine disciplinary conduct. We suggest that the independent chairperson be a person who is familiar with the concept of due process.

6.60 That the internal disciplinary procedure in federal and provincial correctional institutions be explained clearly to inmates in terms of offences and procedure.

6.61 That disciplinary hearings be conducted in accordance with the principles of due process.

6.62 That Aboriginal inmates be allowed the assistance of advisors whenever they are a complainant or accused person in disciplinary procedures.

Term of Reference:

Corrections 6(d)

To determine the extent to which Indian and Metis Elders and other respected Indian and Metis leaders, organizations, and associations are presently involved in program development and delivery and in providing advice to senior correctional officials, and to determine how Indian and Metis people can become more involved in the correctional system in a productive and positive manner.

Employment of Aboriginals

In the course of our interactions with Indian and Metis communities, organizations, and persons, we were frequently faced with a call for an increase in the number of Aboriginal employees in all components of the criminal justice system. The following arguments were given:

A. a greater number of Aboriginal employees would enhance the system's understanding and responsiveness to Aboriginal offenders;
B. it is a relatively attainable goal in the short term and some people believe it would lead to the creation of Aboriginal agencies in the longer term;
C. as an employment equity initiative it has merit.

The Task Force views it as desirable and necessary that more Indian and Metis people be employed in the field of corrections.

We observed a noticeable lack of Aboriginal people employed in any capacity in correctional institutions. It is our view that Aboriginal employees bring to their place of employment varying degrees of knowledge about Aboriginal culture, lifestyles, attitudes and values which are shared in a variety of ways, formally and informally. Aboriginal people as a group suffer from high rates of unemployment and in some cases, underemployment. The criminal justice system has a responsibility to offer employment opportunities to Aboriginals. A number of Aboriginal employees expressed the view that they only wanted to have a job, seeing no extra or inherent obligation to promote their Aboriginal culture. These people were not interested in becoming involved in policy-making or program development. Rather, they wanted to perform well under the same conditions as their peers. Other Aboriginal employees observed that there is no encouragement for Aboriginal employees who want to express their Aboriginal culture in the workplace as an expression of their individuality and to provide a role model for other Aboriginal people. In some cases, Aboriginals have experienced actual discouragement. There were also Aboriginal employees who had the qualifications for and interest in developing programs and becoming involved as advocates or influencing policy relating to Aboriginal peoples.

Employers in the correctional system tended to have a divided view of the purpose for engaging Aboriginal employees. Some seemed to see it as simply meeting an affirmative action target imposed on them. Others viewed all Aboriginal employees to be role models. Others again felt that as long as the work

was done it did not matter whether the employee was Aboriginal or not. Yet, some administrators found that Aboriginal employees related to Aboriginal inmates more easily and were an asset to have on staff. We cannot ignore that we heard of some instances in which Aboriginal employees had difficulty in adjusting to the environment. On some occasions, non-Aboriginal employees viewed initiatives to hire Aboriginals with scepticism. It is apparent to us that, while there is a growing sensitivity to Aboriginals as a group, employers, supervisors and administrators in general are not ready for working with Aboriginal employees. They do not understand the various roles that can be played by Aboriginal employees. They tend to "pigeonhole" Aboriginals into inappropriate roles. It is apparent to us that discrimination exists in many areas of the correctional system, and that in other cases, a perception of discrimination exists because certain hiring initiatives call for different treatment of Aboriginal employees.

While there is general acknowledgement of a need for more Aboriginal employees, hiring techniques have yet to be developed that target and tap Aboriginal communities effectively as a potential source of Aboriginal employees.

We note that various initiatives must be taken to recruit Aboriginal employees but still more are needed to ensure that Aboriginal employees remain in and are promoted in the work force. We have been advised that group hiring has been tried in the Alberta Solicitor General's Department. Group hiring, as we understand it, means the hiring of a group of Aboriginals at one time in one location and providing training to those individuals as a group. Other initiatives that can be and have been tried in various locations are providing support groups for Aboriginal employees at work, providing resource people to Aboriginal employees, and providing training and trial periods when Aboriginals are promoted. The federal Solicitor General's Task Force on Aboriginal Peoples in Federal Corrections (1989) has identified the same problems and proposes similar solutions to increase the number of Aboriginal employees. We endorse all of these initiatives and encourage the various employers in the criminal justice system to try all, some, or various combinations of these initiatives to ensure that once Aboriginal individuals are in the work force, they continue to be active and valuable contributors.

The Task Force Recommends:

6.63 That more Aboriginal employees be hired in all aspects of corrections including management and administration.

6.64 That the provincial government initiate the development of innovative and effective recruitment programs and policies to target Aboriginal individuals specifically, and that agencies enlist the assistance of Indian and Metis organizations in the development and implementation of such programs.

6.65 That programs be developed to provide upgrading and orientation programs to potential Aboriginal employees.

6.66 That managers educate themselves about the many roles an Aboriginal employee can play, and enter into

discussions with Aboriginal staff members.

6.67 **That management establish liaison with the Union and with employees to educate them about Aboriginal employment programs, so that objectives are understood.**

6.68 **That correctional administrators ensure that the work environment is receptive to Aboriginal employees from a non-Aboriginal perspective as well as from the Aboriginal employee's perspective, and encourage appropriate support groups or support mechanisms, including making Elders available to staff.**

Elders/Leaders/ Organizations

There is a generally held perception that Indian and Metis leaders, organizations, and associations have abandoned Aboriginals in the criminal justice system. There seems to be very little contact with chiefs, band councils, Metis locals or Metis Settlement councils. Some Indian chiefs have told us that, because of increased band membership and the lack of adequate housing on the reserves, many band members do not live on reserves and are not known by their chief or band councils. Many individuals who have left the reserve to reside in urban areas have no continuing contact with the reserve. Public concern about the high number of Aboriginal persons incarcerated has at least identified the problem. It is the responsibility of government and of Aboriginal leaders, organizations, and associations to propose initiatives that will improve program development and delivery and make corrections more effective in protecting society.

Currently, there are a number of Elders in the province who are involved in program development and delivery in correctional institutions. Usually, Elders are hired on a "fee for service basis," or other contractual arrangements exist. At the federal level, each institution maintains a service contract for liaison, counselling, and Elder services with an agency or organization selected through a bidding process. Provincial institutions have moved to coordination of Indian and Metis programs on site by an Aboriginal employee. Both approaches have advantages and disadvantages. The Task Force sees no reason to state a preference. A recently formed Council of Elders for the Prairies Region of Correctional Services of Canada is expected to provide program and policy advice to regional administrators. At its first meeting in November, 1990, this Council recommended that a support mechanism be developed for Elders who work in correctional facilities.

Until very recently, there has been little evidence of significant involvement of Indian and Metis leaders and organizations in corrections. There are now indications that involvement by associations, councils and leaders is desirable. The correctional system and communities have expressed a willingness to become involved in expanding the service to and opportunities for inmates. The Task Force strongly supports this movement and urges Indian and Metis leaders and correctional officers to open or continue discussion aimed at increasing such activities. Provincial corrections already have a number of joint projects.

While the number of current projects is somewhat limited, proposed correctional legislation would allow for many more. The importance of involvement by Elders was described by the Native Brotherhood of Edmonton Institution:

> *We believe the solutions center around our Elders, and therefore, their continued support throughout the justice process must be expanded, especially in regard to the recognition of their proper status and capabilities.*[73]

A number of Aboriginal organizations exist which are concerned about and committed to alleviating the problem. These organizations include Native Counselling Services of Alberta, Poundmaker's Lodge, Nechi Institute, and the Kainai Corrections Centre initiative on the Blood Reserve. However, these organizations often suffer from inconsistent short-term program funding arrangements which cause instability of programming and affect the ability of these organizations to be involved.

The bureaucractic organization of government departments tends to discourage and confuse rather than encourage and assist Aboriginal community involvement. Nevertheless, there seems to be an increased interest among Aboriginal communities in becoming involved in the correctional process. For example, communities such as Fort Chipewyan are interested in having closed custody facilities operating in the community to keep juvenile offenders close to home. Many communities have expressed interest in having minimum security facilities for adult offenders in their communities. Every community contacted by the Task Force wanted to become involved in pro-active, preventive programs designed to reduce the number of young offenders. A wide range of social services were identified as being needed urgently in Aboriginal communities. They include alcohol and drug abuse treatment centres, detoxification centres, safe-houses, sexual abuse centres, and courses on family violence and parenting. All of these social services were seen as useful, urgently required preventive measures, as were education and Aboriginal awareness programs. While many of these programs are beyond the scope of this Task Force, we applaud the communities' efforts and encourage the government to participate. This will, however, require that the various departments responsible for providing or funding the services overcome concerns about intergovernmental and interdepartmental jurisdiction. They must cooperate to ensure that programs are delivered effectively, efficiently, in a cost-effective manner, and in an appropriate location.

We cannot ignore that the large number of Aboriginal people in conflict with the law has resulted in a large number of Aboriginal Albertans having criminal records. The "Report on the Survey of the First Nations of Alberta"[74] shows that 78% of men and 35% of women have an arrest record. Often it is a stated criterion for employment that an applicant may not have a criminal record. When the criterion is not stated, it is often understood to operate anyhow. The existence of a criminal record also prohibits people from having access to roles such as volunteers, visitors, or recognized resource persons. The existence of a criminal record has been identified by inmates as one of the major barriers to gainful employment upon release from a correctional institution. We are aware that under the Criminal Records Act, a pardon may be obtained two years after a summary conviction or five years after an indictable offence conviction. However, we have also been told that it sometimes takes years to have a pardon

processed and approved. If pardon legislation is to be effective at all, there must be a meaningful review of the application within a reasonable period of time. Application for pardon is often made in relation to an employment opportunity, which disappears when the pardon process takes too long. We urge the criminal justice system to view individuals who have been "through the system" and who have a criminal record as valuable resource persons in appropriate circumstances. The existence of a criminal record alone should not immediately disqualify a person from employment, volunteering, visiting, or acting as a resource person.

The Task Force Recommends:

6.69 **That regular meetings be held between representatives of the Indian Association of Alberta and Metis Association of Alberta, Chiefs, Band Councils, Metis Settlement Councils and Metis locals, and representatives of the Solicitor General's department and the Correctional Service of Canada. Meetings should be held in various geographic areas of Alberta, to discuss correctional facilities, to exchange information, and to establish and maintain liaison between community and institution.**

6.70 **That federal and provincial Corrections make a concerted and sustained effort to encourage Aboriginal community involvement in correctional institutions. This may require a re-evaluation of screening criteria for security clearance.**

6.71 **That federal and provincial Corrections Services encourage community involvement in the delivery of correctional programs and services including closed and open custody facilities for young offenders, minimum security facilities for adults, and treatment and diversion programs. Different groups may be interested in or capable of assuming responsibilities for different programs or services. Community efforts in this aspect of corrections must be reviewed in a supportive manner. Diversion and after-release programs, particularly directed at young offenders, should be encouraged.**

6.72 **That the federal government review the pardon procedure for Aboriginal persons for the purpose of speeding up the process.**

6.73 **That federal and provincial corrections develop clear policy on the impact of a criminal record on the limiting of visitor access to inmates and inmate access to prison programs. This policy must be culturally sensitive and not limit access because of minor offences or system-related offences such as "failure to appear."**

Cross Cultural Training

A recommendation, made by many groups, was expressed by the Oblates of Mary Immaculate Justice and Peace Committee (Grandin Province) as follows:

That the task force urge the government to work with all segments of the criminal justice system to develop knowledge and respect for Native traditions and spirituality.[75]

Task Force members had the opportunity to attend Sweet Grass and Pipe Ceremonies. We received invitations to pow-wows and shared traditional foods with various Aboriginal groups. We listened individually and as a group to Aboriginal Elders.

Aboriginal awareness and cross-cultural training can be included in virtually all components of the criminal justice system. Some training is offered in institutions, in the federal and provincial Solicitor General Departments, and on the staff's own time. However, we have been told that, in general, courses provide only a very basic and sometimes inadequate understanding of Aboriginal history, culture, heritage, and the current political situation. Sometimes, the trainers are non-Aboriginals who, although academically qualified, are perceived to be the wrong people to teach such a course. Courses are provided in central locations in hotels and offices. They are provided generally at the beginning of employment or early in a person's employment, and lack in practical relevance to the work environment. We have also been told that Indian culture is often the focus of training, and that Metis culture is ignored. The Metis Association of Alberta made these observations:

Have to educate correctional services regarding Metis People

There is NO recognition of Metis in the correctional system. We must demand recognition of Metis people.[76]

It is also clear that courses which include participant interaction with the Aboriginal community, in the Aboriginal community, have a lasting and more effective impact.

The Task Force Recommends:

6.74 That correction staff members who work or have contact with or make decisions about Metis and Indian inmates receive Aboriginal awareness training when they begin employment, and on a regular basis thereafter. All staff members, from frontline staff to the most senior administrators, should be included.

6.75 That content of a training program be designed for providing an understanding of Indian and Metis culture, history, heritage, religion and current situations.

6.76 That the program be provided where possible by Aboriginal instructors in an Aboriginal context, and that, where appropriate, Indian and Metis inmates and staff members who are knowledgeable and willing to participate be involved in delivery.

6.77 That the cross-cultural training program address issues and concerns specific to the work of correctional staff members. For example, if the institution houses Cree people primarily, the program should emphasize Cree customs, language, culture, and values. If the institution houses primarily Metis

people, the emphasis should be on Metis culture and spirituality. Issues of relevance to the work place should be discussed, for example, the handling of sacred bundles, or appropriate behaviour when escorting an Aboriginal inmate to a funeral.

6.78 That the Aboriginal Awareness Training Program involve an Elder and members of the Aboriginal community at large to interact with participating staff members.

Term of Reference: Corrections 6(e)

To examine the level of interest in Indian and Metis Communities and among Indian and Metis Leaders and organizations in taking on a more active role in the delivery of community based correctional programs and crime prevention initiatives.

Fine Options/Community Service Orders

The Fine Options program has been described as one of the most successful programs for keeping Aboriginal offenders out of jail. Representatives from the Aboriginal community have told us otherwise, stating that the program has had very little success in deterring, rehabilitating or even punishing the offender.

The Fine Option program seems to generate much community interest. However, information from people who have been the subject of fine option orders and from those who administer the fine options program has shown a number of difficulties. The Alberta Association of Social Workers provided insight into a possible attitude towards or perception of fine option programs which may exist in small rural communities. The Association observed that, although the fine was imposed on an Aboriginal offender, often the community or the offender's extended family raised the money to pay the fine. When a fine option program was elected, it was mandatory for the individual to do the work and it was no longer possible for the community or family to participate in the retribution. The fine option seems to

undermine a sense of community responsibility for the illegal conduct of one of its members, and for community retribution. While this observation may be valid in small rural communities, we have observed that it is not likely to be as prevalent in urban communities as these are less defined as an equivalent collection of people or community.

We were told consistently that the Fine Option program must involve work which is meaningful to the community and should not be seen as simply taking jobs from the community, as being trivial or easy work, or as work done solely because of the Aboriginal offender's option. These concerns are related not only to the quality of the work but also to the quality of the supervision. Aboriginal offenders, however, have expressed a general reluctance to engage in fine option programs. This may be because the provision of services to the community identifies the person as an offender and some shame is attached. In Aboriginal communities, public shame is deemed to have an effective and powerful deterrent effect.

The Lesser Slave Lake Indian Regional Council stated that:

> *On the one hand there is considerable concern that reserve communities are not the beneficiaries of community hour or fine option dispositions. On the other hand, in cases where alternative dispositions in respect to Indian offenders are employed, Indian communities are often dissatisfied with the results.*
>
> *The Regional Council heard several comments to the effect that community hours were not being served, due to lack of supervision, or because supervisors felt pressured not to report a failure to serve those hours to the proper authority.*[77]

On the same subject, other Aboriginal groups observed that:

> *The Fine Option program is not an effective way to punish criminals for the crimes they have committed. Community Service means having something to do to a person who would otherwise have no job or other commitments to attend to. There is no sacrifice and thus, no punishment. Additionally, the supervision of Fine Option participants is a strain upon the resources of the community. The amount of work it takes to find things for the participant to do and then to supervise them simply makes more work for the staff of the Band and Settlement Councils. Additionally, as most community members rely on local labour projects as a source of income, Fine Option participants take away opportunities for law abiding citizens to supplement an already meagre income.*[78]

Aboriginal women are generally restricted in their access to the Fine Option program. Often they are not able to travel to attend the program or cannot get adequate child care in their community. As a result, they choose not to make use of the program. Aboriginal women tend to be more often unemployed and poor than Aboriginal men. The imposition of a fine is often completely unrealistic and the Fine Option program is practically inaccessible. This is particularly so when a woman has to travel from a remote area to a place where supervision for the program is offered.

The Task Force Recommends:

6.79 That the Fine Option program be reviewed to ensure that work is available in the Aboriginal community which has the approval of the community and is sensitive to the needs of the community.

6.80 That the work be done in the Aboriginal offender's community or if not possible, in another Aboriginal community. In urban centres, local native organizations should be consulted for appropriate assignments, beneficiaries, and supervision.

6.81 That the work be broadened to include some rehabilitative merit. Examples may be: working with an Elder or providing service to the band, band council or settlement council.

6.82 That the supervision of Fine Option programs be made more effective.

6.83 That Fine Option programs involve community members in the supervision of work. For example, local people could be designated as assistant probation officers.

6.84 That some provision be made for the participation of the community or the extended family in the discharge of work commitments if the community or family considers it appropriate to do so.

Community Supervision

Virtually every group which made submissions to the Task Force noted that people who are eligible for release from correctional facilities and for serving the remainder of their sentence in the community, and people who have been sentenced to probation in the community, experience considerable difficulty. This appears to be in large part due to "lack of supervision." Currently, probation orders granted by the court are certain in duration but uncertain in specifying the nature of the offender's obligation during probation. Similarly, correctional institutions, Temporary Absence Committees, and the National Parole Board issue general guidelines for the inmate to follow and rely heavily upon probation officers and parole offers in the field to provide guidance to the inmate. Frustration with this system has been expressed both by Aboriginal inmates and the public. It has been suggested that Judges take a firmer role in sentencing to treatment or providing conditions of probation that are more specific and detailed. There is no doubt that these concerns result, in part, from the heavy workloads carried by probation officers. There is also a lack of Aboriginal-oriented facilities to which probation officers can refer clients. For example, there are only a limited number of beds available at Poundmaker's Lodge and the waiting period is some six months. The Youth Treatment Facility in St. Paul has only recently opened and is the only Aboriginal-oriented youth treatment facility in the province. In addition, officers who are not resident in the community lose touch with the community and the persons supervised by them. Non-resident officers are considered to be ineffective by the community. These concerns are most acute in the northern part of the province.

The Task Force frequently met with local service providers. We were generally impressed with the number of agencies and organizations represented at these meetings. However, having received

information on objectives, restraints, budget processes of service providers, and the frustrations of the rural and isolated communities, we came to the conclusion that a fundamental shift is required in the provision of services outside of urban centres. The narrow focus, specific objectives, restricted client groups, conflicting jurisdictional mandates and policies, and specialized delivery all lead to frequent inefficient and ineffective use of available resources. It is the Task Force's view that the various government levels and departments must, together, consider the Indian and Metis population as their collective client. Resources and styles of delivery should be pooled and coordinated to respond to the need for a holistic approach if Indian and Metis people on and off reserves and settlements are to be assisted effectively.

In its attempt to secure funding for the provision of community programs, Native Counselling Services of Alberta encountered similar difficulties:

> *Each funder has its own mandate and objectives under which they fund a program. This means that each funder only takes responsibility for limited areas.*[79]

The Task Force Recommends:

6.85 That local probation officers or assistant probation officers be employed.

6.86 That probation officers and assistant probation officers work closely with Elders and community groups who have shown interest in the criminal justice system.

6.87 That the court demand and receive adequate information to make a probation order that is general enough to allow latitude but specific enough to provide a firm structure within which the offender may operate.

6.88 That resources be pooled and coordinated to provide decentralized facilities and counselling particularly with respect to alcohol and drug abuse, parenting skills, job readiness programs, physical and sexual abuse survivor programs, anger management, and life-skills.

Judicial Interim Release

Justices of the Peace are the first judicial officers to whom an accused person applies for release pending trial. Often, Justices of the Peace have a conservative attitude towards release. This is due, in part, to the various appeal alternatives available. The study of Judicial Interim Release Hearings provided the Task Force with the following major findings:

> *Native accused arrested and processed for Judicial Interim Release hearings in Calgary face a greater detention rate than non-natives.*
>
> *The Crown objects to release of non-Natives more frequently than it does Natives (62% vs. 52.7%).*
>
> *For reasons undetermined, but very likely, native accused will often adjourn themselves in custody in order to obtain services of a native court worker. This adjournment leads to unnecessary periods of custody for natives.*
>
> *A greater percentage of non-natives have previous criminal records for failing to appear under provisions of criminal code than do natives present during the period of this study (36% vs. 23.6%).*[80]

The study advises cautious interpretation of statistics because of the small numbers of Aboriginals involved in the sample (55 of a total of 524 cases), but even so, it is clear that something is wrong. The Crown objects less to the release of Aboriginals and there are fewer instances of failure to appear by Aboriginals. Yet, 49% of Aboriginals are detained compared to only 31.7% of non-Aboriginals. Even a cautious interpretation would support the conclusion of systemic bias.

On an average day in the Edmonton remand centre, 44% of remanded prisoners are Aboriginal compared to an Edmonton police workload of which 18.6% involves Aboriginals. These numbers also seem to support the conclusion of bias. The situation is unacceptable and must be addressed.

The study showed that a number of adjournments are requested by the Aboriginals themselves. Often, this is done to obtain the advice or services of a courtworker or lawyer. Some members of the Task Force have observed that courtworker service is not available at Edmonton city cells on a 24-hour basis, and the Legal Aid lawyer list is printed in such small print as to be inconspicuous. A similar situation exists in Calgary.

Justices of the Peace have considerable training with respect to the Criminal Code's provisions for interim release, but they receive only a somewhat brief cross-cultural training course.

Unemployment rates range between 70 - 80% on most reserves and settlements. The extended family is not always seen by non-Aboriginals as being a stable environment; adult Aboriginal males have a high incidence of criminal convictions. Excessive alcohol and substance abuse is a serious problem for some members of a number of Aboriginal communities in the province.

Throughout the criminal justice system we note that having a job, having a fixed address, agreeing to refrain from associating with individuals with a criminal record, and abstaining from the use of alcohol or drugs are almost always conditions of release. It is our view that some of these conditions may simply be unrealistic. They may also be impossible for an Aboriginal person to meet. To require Aboriginals to do so only invites a breach of the conditions.

Similarly, posting a bond even for a modest $500 will, in the case of many unemployed Aboriginals, be the same as refusing release. This is a perfect example of how equal treatment can lead directly to an inequitable consequence. It is imperative that Justices of the Peace and Judges who review interim release decisions be more creative in imposing more appropriate conditions for Judicial Interim Release.

It is also imperative that Aboriginal communities take steps to assist persons charged who need help in assuring the court that they will attend on their court dates and will not be the source of more problems. The John Howard Society had implemented a successful bail program, but it has been discontinued. We recommend a review of the concept of this program and renewed delivery perhaps at the initiative of an Aboriginal service group. It has been suggested that Aboriginal councils and communities could become involved in enabling the person charged to be released and assuring court attendance. It is imperative that these options be reviewed and considered.

The Task Force Recommends:

6.89 That Justices of the Peace and Judges review with Aboriginal peoples the criteria currently used for release, and ensure that conditions imposed are culturally sensitive and realistic.

6.90 That Aboriginal communities become involved in assisting accused Aboriginals in satisfying the court that they will keep the peace, be of good behaviour, and return to the court for their appearance dates. This could be accomplished, for example, by providing minimum security custody homes or participating in bail option schemes such as the John Howard Society's program.

6.91 That conditions such as posting a bond, promising to refrain from associating with individuals with a criminal background, refraining absolutely from the use of alcohol, maintaining suitable employment, or maintaining a fixed address be recognized as being culturally insensitive and possibly unnecessary.

6.92 That a review be done of the concept of the bail program formerly operated by the John Howard Society, and that it be reinstituted at the initiative of an Aboriginal service provider.

6.93 That a program be developed with the assistance of the Aboriginal community to provide assistance and support to the police, the Justice of the Peace, and the Aboriginal accused person before a Judicial Interim Release hearing is held.

6.94 That Aboriginal-specific cross-cultural training be incorporated as an integral part of initial training for Justices of the Peace, and be repeated periodically during the course of their careers. Training should be developed and delivered by Aboriginal people.

Young Offenders

The Task Force has been struck by the plight of many young offenders who have been touched by the criminal justice system. In particular, we have grave concerns that young offenders are being charged with trivial offences and jailed for long periods of time before trial, solely because there is no other place for these young people. For example, we are advised that a young person was charged with failing to pay a C-train admission fare and was retained in a young offenders' centre for a number of months pending trial. There were no family members or friends who were willing to accept responsibility for the young person and no social service agencies to provide support. We have been told that social service agencies divorce themselves from responsibility when a young person comes into contact with the criminal justice system. In view of the general failure of foster home placements for Aboriginal youths and the lack of family support, the Task Force finds it profoundly unreasonable that social service agencies should allow corrections to assume responsibility for youths. We find this a deplorable situation, one which is in urgent need of change, and for which better alternatives must be developed.

While it is difficult to advocate the release of youths who have no place to go, it is more difficult to understand how remanding them in custody can be justified when the circumstances warrant no more than an open custody disposition. We are advised that a pilot project of the Alberta Solicitor General's Department in Edmonton city cells has resulted in the effective placement of young offenders who might otherwise have been remanded in custody. We encourage such projects and would suggest that similar emphasis be placed on northern remote communities where young offenders in custody face inadequate facilities, which are sometimes shared with adults, or removal to a distant facility and thus the loss of family and community contact. Some communities like Fort Chipewyan which have presented briefs to the Task Force hold very strong views about keeping their young people close to their homes, even to the point of wanting local open custody facilities. Most communities expressed a desire for activities in the community which would keep the youths from contact with the criminal justice system, specifically recreation, treatment interventions, education, and employment.

We note that in Edmonton and Calgary, young offenders are required to wait up to six months for their trial. Whether they are detained in custody or not, it is our view that a delayed trial becomes meaningless to the young offender. It is imperative that the courts examine meaningful and perhaps novel ways of reducing the period of time it takes to finally determine a matter in youth court. Similar delays are experienced in some rural areas and create community problems in addition to those of the individual involved:

> *The length of time it takes for the courts to hear a case can be manipulated too easily. In many cases the accused returns to the community only to commit more crimes while waiting. The attitude held by the offenders is that some jail time will probably be spent on the first charges, and that sentences for subsequent chargers will run concurrently or will only add a month or two to the first sentence. Additionally, charges for subsequent acts are usually withdrawn or bargained in order to get a guilty plea and quicker conviction. In the end, what this means is that the courts do not prevent crime. Rather, they increase crime by providing offenders with more opportunities and less punishment.*[81]

The Young Offender Alternative Measures Program aims at diverting first offenders into programs that include community work, victim satisfaction, and dispute resolution. We have been told that everyone, from police to Crown Prosecutors to the Solicitor General's Department, has acknowledged the current Diversion Program to be less effective for and under-used by Aboriginals in comparison with non-Aboriginal offenders. Perhaps the difficulty lies in the current diversion process. The very fact that it is restricted to first time offenders limits its application. It is apparent that the threat of being sent to a young offenders' centre has a deterrent quality. However, once an individual has been detained in a young offenders' centre for any length of time exceeding one week, the deterrent effect diminishes quickly, primarily because the centre is sometimes recognized as a better environment than the one known before entering the facility. For these reasons, it seems appropriate to make every effort to prevent young people from actually serving time in a correctional facility, and to ensure that, once young people have been in a correctional facility and have committed another offence, alternative dispositions still be available. A number of Indian and Metis communities have expressed interest in becoming more involved in such programs for youth. Section 69 of the

Young Offenders Act allows communities to become involved in youth justice committees. Concrete initiatives in this area are commended. Significant involvement of Elders in mechanisms of dispute resolution would provide the crucial traditional element.

Despite the fact that the young offender centre may present a better physical environment, the centres have also been subject to criticisms relating to insufficient Aboriginal-specific programming including spiritual programs, alcohol and drug abuse treatment programs, and training programs related to specific work skills. The Task Force has seen well-developed opportunities for academic education offered in young offender centres.

The criminal justice system as it relates to young Aboriginal offenders is in many respects unique and different from the system as it applies to adult offenders. One young offender told the Task Force that he knew more about what happens and what can be done than his lawyer. There is an obligation on the part of lawyers who practice in this area to provide appropriate advice to the court and to the young offender, and to work with family, social workers, and community groups to secure appropriate placement for young offenders. This obligation ought not to be forsaken in favour of a legalistic approach to youth court. Some recognition in the Legal Aid Tariff ought to be made for the informal, out-of-court role played by a lawyer in these circumstances.

Follow-up for young Aboriginal offenders in the community is subject to the same criticisms as follow-up for adult offenders in the community. However, there seems to be considerable support in the communities we visited for youth-oriented programs. We encourage communities to become involved in programming for young people generally and in providing assistance to young offenders specifically. Victim reconciliation programs, dispute resolution involving mediation and arbitration with the family of young offenders and their community, and restitution schemes are all crucial and necessary.

The Task Force Recommends:

6.95 That the length of time it takes to finally resolve a matter in youth court be corrected by the Province of Alberta. At present, the delays are intolerable and deplorable.

6.96 That young offenders be detained in detention centres only as a last resort.

6.97 That efforts be expanded to develop or locate appropriate facilities to house young offenders who have no place to go, and that these facilities not be correctional facilities.

6.98 That alternative measures programs be expanded to be more available to Aboriginal offenders.

6.99 That the Department of the Attorney General review alternative measures programs to expand them to include re-offenders and a broader range of offences.

6.100 That Aboriginal awareness programs and culturally appropriate programs be more widely available in young offenders' centres.

6.101 That formal alcohol and substance abuse treatment programs for Aboriginal youth such as the St. Paul facility be extended and expanded throughout the province.

6.102 That the number of Aboriginal staff members within the Young Offender centres be increased.

6.103 That alternative measures programs be instituted and administered by the community at the encouragement of the Department of the Attorney General.

Conclusions

> *The inability of this society to recognize Aboriginal languages, Aboriginal culture, and Aboriginal peoples as a part of itself, is one of the greatest problems facing Aboriginal and non-Aboriginal people today.*[82]

This observation was made by Mr. Ray Fox, President and Chief Executive Officer of the National Aboriginal Communications Society in his Brief to this Task Force. He concluded his submission by saying

> *you have to understand that these problems are a direct result of this society's failure to recognize and respect the fact that Aboriginal people and cultures are and will remain different and distinct from any other culture, not only in Alberta, not only in this country, but in this world.*[83]

It is the general view of the Task Force that corrections should initiate programs and policies which in the long term will result in correctional services being delivered by Aboriginal communities for Aboriginal peoples in the Province of Alberta. We are also of the opinion that programs and policy must be developed with the assistance and participation of Aboriginal communities. These programs and policies must allow for an amount of flexibility and take into consideration local and regional social and economic factors. Above all, they must respect and not interfere with the cultural and spiritual practices of the individual inmate, be they Aboriginal or non-Aboriginal in nature. That is, Aboriginal spirituality and culture must not be forced on an unwilling participant even though the inmate may be of Aboriginal origin, nor should it be denied the inmate.

Within the area of programming the Task Force holds that alcohol and substance abuse treatment must be given priority. A concerted and diligent effort to assess and develop effective programming is crucial. Program delivery, with the assistance of the Aboriginal community and its committed and unhindered support, must be provided if real gains in this area are to be made.

It is the view of this Task Force that, implicit in the right to determine policy and implement programs, is the responsibility to do so in a manner that will serve the interest of justice of all citizens of the Province of Alberta.

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