

10.0 Ongoing Process

Preamble

It is impossible for the Task Force to know which programs and initiatives will be implemented pursuant to its recommendations. The wording of this Term of Reference is unfortunate because it permits Government to select favoured recommendations, with the result that only those recommendations will be monitored by the ongoing process. Many of the recommendations made in this Report depend upon other recommendations being implemented. We assume that the ongoing mechanisms we recommend will monitor all of the Task Force's recommendations.

Some of the recommendations will require a response and reaction from the Government of Canada, for example from Correctional Services Canada, the R.C.M.P. and the National Parole Board. The remainder will require a response from relevant ministries in the Province of Alberta.

Findings and Recommendations

Term of Reference:

Ongoing Process 9.0

to formulate a process for the ongoing monitoring and upgrading of programs and initiatives implemented pursuant to the recommendations of the Task Force.

Complaints Procedure

The Task Force met with Aboriginal people who expressed concerns about the conduct of individuals within the justice system. Complaints of abuse or rude and unprofessional conduct by police, administrators, lawyers, judges, corrections staff and even service providers were brought to our attention. When we asked if the appropriate disciplinary bodies had been made aware of the concerns, more often than not the answer was no. The reasons given for this lack of action were varied. People told us that they believed nothing would be done or that retaliation against the complainant would occur. The complaint procedure was not known; or if it was known, it was viewed as too complicated and too much of a burden with respect to the complainant's time and energy. In some

cases, the procedure itself was intimidating and not considered "user friendly." We have been told that Aboriginal complainants, because of their culture, are often non-interventionist, quiet and unlikely to confront people in authority with complaints. In some Aboriginal cultures, it is considered to be extremely rude to make such criticisms.

Often, Aboriginal complainants are not familiar with or used to the "process." Even if they are inclined to make a complaint, they have a difficult time understanding the necessary forms and procedures to do so.

At the same time, the lack of complaints by Aboriginal people is often noted. This lack creates a false impression that Aboriginals are content with the system. Authorities are led to believe that there are no or very few instances in which complaints by Aboriginals are warranted.

Complaints are not just a measure of dissatisfaction - they also serve to allow the appropriate authorities to review attitudes and action, and they provide a framework in which it is possible to alert people to offensive conduct, unintentional or not, and to guard against that conduct. Most certainly, complaints allow intentional inappropriate conduct to be addressed, and facilitate positive change.

A mechanism which works properly and effectively can be a positive vehicle for improvement. Such a mechanism would generate confidence not only in the system, but also among Aboriginals. Such a mechanism would be openly available as a tool to publicly test and question the system. It would serve to dispel criticism of the complaint procedure, including suggestions that the system is protective, secretive and oriented to the status quo.

Every component of the criminal justice system has a well-established and potentially effective mechanism in place for dealing with complaints. The public service has internal reviews and disciplinary procedures which are subject to review by Arbitrators in keeping with Collective Agreements in place between the unions and the government. Lawyers are subject to disciplinary proceedings through the Law Society. Judges are accountable for their actions to Chief Justices and Judicial Committees. The police are subject to complaints to public complaint bodies and to disciplinary action. While all of these procedures are potentially effective, there is a perception that they are under-used and perhaps even inaccessible to Aboriginal complainants.

It is the view of the Task Force that for these complaint procedures to be effective they must be used by Aboriginal people. In addition, reasons given for lack of access by Aboriginals must be addressed. We believe that one way to address these issues is to provide assistance to Aboriginal complainants and a liaison between the Aboriginal complainant and the various disciplinary bodies. We suggest that the Aboriginal Justice Commission proposed elsewhere in this Report be given the mandate to act in this role. We consider it imperative that this Commission be authorized to receive complaints directly from Aboriginals about any employee of the criminal justice system and be given the authority to advance that complaint to the appropriate complaint mechanism. We see it as equally important that the various complaint mechanisms acknowledge the Aboriginal Justice Commission's role and report back to the Commission with respect to the status and outcome of every complaint advanced by the Commission. Feedback

and discussion regarding complaints is second in importance only to the resolution of the complaint itself. The Commission may collect statistical information and monitor the overall level and nature of complaints to identify appropriate policy and procedural changes for dealing with the general concerns of Aboriginal communities. The Task Force is of the opinion that this approach will contribute to making the criminal justice system generally more accountable, approachable and receptive to Aboriginal people.

Monitoring

We are of the opinion that the monitoring bodies must be composed of Aboriginal representatives and spokespersons from both levels of Government. These bodies must be free of the influence of the departments responsible for implementation of specific recommendations. Conflict of interest must be avoided.

We recommend the creation of a short-term committee which could be called the Task Force Monitoring Committee and of a long-term Commission which could be called the Aboriginal Justice Commission. The Task Force Monitoring Committee would be a temporary body to monitor those recommendations which could be implemented within about eighteen months. It would be replaced by the Aboriginal Justice Commission, which among its other duties would monitor those recommendations which are of a long-term or continuing nature. The Task Force Monitoring Committee could be merged with the Aboriginal Justice Commission.

The Task Force Recommends:

10.1 Short Term: This Task Force was created by an Alberta Order-In-Council. Consequently, we have been hesitant to place too heavy an onus on the Government of Canada for implementation of recommendations. We recommend that the Government of Alberta establish a committee which could be called the Task Force Monitoring Committee. One member would be appointed by Canada, one by Alberta, one member appointed by the Indians and one by the Metis. The Chairman should be chosen by the Committee and should not be one of the appointees. If the Committee cannot agree on the appointment of the Chairman, a Chairman could be appointed by the Government of Alberta. The Chairman would preferably be Aboriginal. The Task Force Monitoring Committee would meet as required. We do not see this Committee as requiring a full-time commitment from its members.

The main objective of the Task Force Monitoring Committee would be the monitoring and up-grading of programs and initiatives implemented pursuant to the recommendations of the Task Force. The Committee should have the power to make enquiries of Government and the criminal justice system, and to investigate components of the criminal justice system, to ensure that the recommendations are

implemented. The Committee must have ready access to Ministers, Deputy Ministers, and any other person, organization or institution responsible for the policy or the operation of the criminal justice system. The Committee would meet as required. It should send a quarterly report of its activities and findings to the federal Solicitor General, the federal Minister of Justice, the Solicitor General of Alberta, and the Attorney General of Alberta. Within a year after its establishment, the Committee would table a Report of its proceedings. Recommendations for implementation should be made at that time to the Speaker of the Legislative Assembly of Alberta, to be tabled before the Legislative Assembly. A copy of this Report would be forwarded to the federal Solicitor General, the federal Minister of Justice, the Indian Association of Alberta, and the Metis Association of Alberta.

10.2 Long Term: We recommend the establishment of an Aboriginal Justice Commission, which, within eighteen months of the filing of the Report of this Task Force with the Alberta Solicitor General, would assume all of the powers and duties of the Task Force Monitoring Committee. The broad mandate of the Aboriginal Justice Commission would be:

- i) To assume the duties and powers of the Task Force Monitoring Committee.
- ii) To facilitate communication between Indians, Metis, Government and components of the criminal justice system.
- iii) To negotiate a framework agreement between the Government of Canada, the Government of Alberta, the Indians, and the Metis which delineates the jurisdictional and financial responsibilities of the Government of Canada and the Government of Alberta toward Indians and Metis with respect to all components of the criminal justice system.
- iv) The Aboriginal Justice Commission would employ an Aboriginal Advocate who would accept all complaints against any person or component of the criminal justice system, and who would ensure that all complaints are processed by existing complaint mechanisms in the criminal justice systems. The Aboriginal Advocate would follow a complaint through the mechanisms until it is resolved and appeals, if necessary, are exhausted. The Aboriginal Advocate would keep the complainant informed of the progress of the complaint and advise the complainant the ultimate result. The Aboriginal Advocate would also compile

- statistical information and monitor the overall level and nature of complaints to identify required policy and procedural changes.
- v) The Aboriginal Justice Commission would act as an informed clearing house to assist Aboriginals in directing their concerns about the criminal justice system to the appropriate government department or agency. The Commission would also facilitate contact and communication between Government and Aboriginals. This process should reduce direct contact between Aboriginals and Ministers or Deputy Ministers. It should, however, not preclude Indians and Metis from dealing directly with Ministers and Deputy Ministers.
- vi) The Aboriginal Justice Commission would be an informed body which could assist governments and departments in developing policies related to Indians and Metis with respect to the Criminal Justice System.
- vii) The Aboriginal Justice Commission should have at least five members: one Metis, one Indian, one appointee of the Government of Canada and one appointee of the Government of Alberta. The Chairman (who should preferably be Aboriginal) should be independent of Government, and be chosen by the other four Commission members. In the event of a tie, the Government of Alberta should appoint the Chairman, who would preferably be an Aboriginal.
- viii) The Aboriginal Justice Commission would table a Report of its proceedings and recommendations for implementation to the Speaker of the Legislative Assembly of Alberta. This Report should be tabled before the Legislative Assembly within one year of the creation of the Commission and annually thereafter. Copies should be sent to the Solicitor General of Canada, the Indian Association of Alberta, and the Metis Association of Alberta.