

VII. FIRST NATIONS AND PEOPLES OF ABORIGINAL ANCESTRY

Introduction

In accordance with the Statement of Political Relationship between the Province of Ontario and the First Nations in Ontario, the Minister of Citizenship asked the Task Force to consult separately with First Nations in Ontario. The Task Force contacted the Chiefs of Ontario to jointly determine how the consultation would occur. It was determined that, in light of its expertise and its recent consideration of the Ontario Human Rights Commission, the Ontario Native Council on Justice was in the best position to coordinate a response. A meeting took place in May, where representatives of the First Nations and people of Aboriginal ancestry met both on their own and with the Task Force.²

The Chiefs of Ontario, through the Ontario Native Council on Justice and several Aboriginal organizations that appeared at public meetings, all made it clear that the present human rights enforcement system, which was not developed by the First Nations, has been woefully inadequate in preventing intentional and systemic violation of the human rights of Aboriginal people.³

The Ontario Native Council on Justice stressed that the meeting with the Task Force could not be regarded as a proper consultation, and they noted the impossibility of developing a position on a new enforcement system within the Task Force's very short time frame. The Council stated that they had reservations about providing advice to a task force that had been established by the Ontario government without the initial involvement of the First Nations.

The Present System

In the meeting organized by the Ontario Native Council on Justice, the First Nations and the people of Aboriginal ancestry present identified a number of concerns, including

- the disempowering effect of the current Commission, which forces Aboriginal people to participate in a process that is not their own;
- the lack of access to the human rights process, given its low visibility and the lack of confidence in the system;
- the inability of the Commission to carry out its education mandate, given the isolation of many First Nations communities;

- the failure of the process to rectify overt racism experienced by people of the First Nations, for example when its people exercising fishing rights are criminalized by the justice system;
- the circulation in Ontario of hate-promoting literature directed at people of the First Nations;
- The scant representation of Aboriginal people in the present human rights system;
- the need for better enforcement to ensure that the spiritual and other rights of Aboriginal people in correctional institutions are protected;
- the need for the coordination of government services like that of the Commission and the Ombudsman's Office in the interest of cost efficiency;
- the greater effectiveness associated with allowing community groups to file systemic human rights claims as opposed to having individuals file claims;
- the need to examine the Community Council method of dispute resolution; and
- the fact that they had not yet developed a position as to whether the Ontario *Human Rights Code* should apply to the First Nations and people of Aboriginal origins or whether there should be a separate system developed under the control of First Nations and Aboriginal people.

Several Aboriginal persons and organizations also appeared before the Task Force at the public meetings. All expressed their concern about how the system has failed Aboriginal peoples. Moreover, the Task Force heard that the First Nations should devise an alternative process that would be more appropriate to their culture of resolving disputes in a non-adversarial manner.

Research

The Task Force reviewed a number of research materials and briefs prepared by First Nations people and people of Aboriginal ancestry and identified a number of issues that arise in considering human rights enforcement.

In August 1991, the Ontario Native Council on Justice released a report by Fiona Sampson, *An Analysis of the Relationship between First Nations and the Ontario Human Rights Commission*. This detailed report was very critical of the Human Rights Commission in its failure to serve the people of the First Nations.⁴

Another article, *Native Rights as Collective Rights: A Question of Self-Preservation* by Darlene M. Johnston challenges rights-thinkers to come to terms with the fact that collective and individual interests are not necessarily antagonistic.⁵

One of the most notable current debates in the area of human rights is the position by the Native Women's Association of Canada that First Nations women must be covered by the *Charter* and human rights legislation. In a brief to the Canadian Human Rights Commission, which is considering amendments to the federal human rights legislation, the Association has asked for several changes to be made to the *Act* to ensure that Aboriginal women are guaranteed appropriate protections under it. Aboriginal people with disabilities have similar concerns.⁶

The Ontario Native Council on Justice also released a report, *Native Alternative Dispute Resolution System: The Canadian Future in Light of the American Past*, which extensively reviewed and considered the various non-adjudicative methods for resolving disputes used by the Aboriginal communities in North America, as well as in other parts of the world.⁷

These documents have been helpful to the Task Force in many ways and they should be given consideration in the development of solutions to address the concerns of the First Nation's and people of Aboriginal ancestry.

The Task Force believes First Nations and people of Aboriginal ancestry need both time and resources to develop solutions that would effectively prevent the intentional and systemic discrimination that is widespread in Ontario society. Aboriginal women and Aboriginal people with disabilities who face different forms of discrimination must be an integral part of the process.⁸

RECOMMENDATION (1):

- **First Nations and people of Aboriginal ancestry should be supported by the Ontario government with resources and a respectful time frame to develop solutions that would effectively prevent the intentional and systemic discrimination which is widespread in Ontario society. Aboriginal women and Aboriginal people with disabilities who face different forms of discrimination must be an integral part of the process.**

The Task Force would like to thank the Office of Chief Gordon B. Peters for its assistance. We would especially like to thank the Ontario Native Council on Justice and its staff for their support in the organization of the Task Force's meeting with representatives of the First Nations.