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ALLOW FOR GREATER CONTROL OF JUSTICE SYSTEM BY ABORIGINAL PEOPLES

The Law Reform Commission of Canada today tabled Report 34, entitled *Aboriginal Peoples and Criminal Justice - Equality, Respect and the Search for Justice*, in response to a special request from the Minister of Justice to study this subject. The Commission proposes numerous changes to our criminal justice system which would help ensure its equality of access to and fair treatment of Aboriginal peoples. Report 34 advocates a two-track proposal for reform. The first track involves short-term solutions geared to improving the present system. The second track stakes out a course for fundamental changes to the present system.

Upon release of the Report, the President of the Commission, Dr. Gilles Létourneau, stated: "Our criminal justice system is in crying need of fundamental reform. Such reform is long overdue and it ought to recognize, respect and, where appropriate, incorporate Aboriginal peoples' cultural distinctiveness."

The Report canvasses the *Criminal Code* and related statutes. It appears in the wake of five provincial inquiries, which revealed serious inequities and evidence of racism in the present criminal justice system and found that the system had become discredited in the eyes of Aboriginal peoples.

The Commission calls for **more representation of Aboriginal people in all aspects and at all levels of the criminal justice system as a first step to fostering understanding and building bridges between the communities.** Aboriginal persons should be recruited, trained and promoted on an affirmative action basis to occupy positions as judges, prosecutors, defence counsel and police.

The Report also emphasizes the need for **cross-cultural training for the actors in the criminal justice system.** Law school programs should contain information about Aboriginal culture. Defence counsel, police officers and Crown attorneys should be sensitized to Aboriginal issues.

A more equitable system **must ensure that qualified interpreters are provided to all Aboriginal people who need assistance in court proceedings or during the pretrial stage of a police investigation.**

The Report contains a series of specific recommendations dealing with the changed roles of those involved in the criminal justice process, such as police, prosecutors, defence counsel and judges. As well, the Commission: **outlines changes to the process regarding bail hearings; recommends the recognition of the religious beliefs of Aboriginal peoples for the purpose of giving evidence in court; proposes the use of Peacemakers as dispute mediators; and advocates greater use of alternatives to imprisonment wherever possible when sentencing is considered for Aboriginal people.**

The Commission recommends that fly-in courts be phased out where possible. Enclosed is a series of backgrounders highlighting some of the Commission's recommendations

in these areas.

The Commission believes that these proposals provide short-term solutions that will effect some of the changes needed to make the system more accessible to Aboriginal people and more respectful of their rights and needs.

More fundamentally, the Commission also recommends that federal and provincial governments enter into negotiations to transfer to willing and capable Aboriginal communities the authority to establish Aboriginal justice systems. The Commission believes that the scope and format can only be determined through negotiations. Research into customary law is needed to help in these negotiations. The Commission therefore recommends that the federal government provide funds for such research.

A major difficulty in solving Aboriginal criminal justice problems lies not in finding the solutions, but in instituting them. The Commission therefore recommends the creation of an Aboriginal Justice Institute which could have as a mandate to: (a) help implement the recommendations of this Report as well as proposals advanced by commissions of inquiry; (b) conduct or commission research into customary law; (c) help in training Aboriginal justices of the peace; (d) help establish cross-cultural training programs for legal interpreters; (e) develop criteria for granting bail or parole that take the special situation of Aboriginal persons into account; and (f) provide expert assistance to Aboriginal communities.

This is a Report to Parliament and thus expresses the settled views of the Commission at this time. The Commission would, however, welcome comments. All comments and opinions should be addressed to: Secretary, Law Reform Commission of Canada.

The Law Reform Commission of Canada was established in 1971 for the purposes of modernizing Canada's federal laws and making them more meaningful, relevant and effective.

Copies of Report 34 are available by mail, free of charge, from: The Law Reform Commission of Canada, 130 Albert Street, 7th Floor, Ottawa, Ontario, K1A 0L6, (613)995-5451, Fax: (613) 996-8599, or Place du Canada, Suite 310, Montreal, Quebec, H3B 2N2, (514) 283-4283, Fax: (514) 496-2572.

- 30 -

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