

ISSUES IN HUMAN RIGHTS

In a year that witnessed the 40th anniversary of the *Universal Declaration of Human Rights* the contrast between that ringing affirmation of human solidarity and our common practice seems particularly harsh. The raw facts of poverty, homelessness, under-nourishment, child abuse and battered women, not to mention more sophisticated issues like age and pay discrimination, attest to the need for Canada to recommit itself on a daily basis to the essential principles of the Declaration. The power of the Commission to intervene directly in these issues may vary, but we believe it would be remiss on the part of a national human rights agency not to comment on the more striking problems or to fail to indicate our support for the communities concerned.

THE NATIVE PEOPLES: A MATTER OF SURVIVAL

The situation faced by Canada's native peoples is in many ways a national tragedy. The grand promise of equality of opportunity that forms the central purpose of the *Canadian Human Rights Act* stands in stark contrast to the conditions in which many native people live.

Indian and Inuit leaders often argue that real progress for their people depends upon satisfactory settlement of land claims and the attainment of self-government. Recent years have seen a growing political consensus that some degree of self-determination is essential. The Special Committee of Parliament on Indian Self-Government (the Penner Committee) recommended as long ago as 1983 "that the federal government establish a new relationship with Indian First Nations and that an essential element of this relationship be recognition of Indian self-government". The Penner report was accepted by the Government in March 1984 and, later that year, a new Government agreed that aspects of self-government could and should be dealt with in the context of land claims negotiations. The issue today is not whether the aboriginal peoples should have greater control over their own affairs, but the nature and extent of that control.

Self-determination and land claims may be the most important question facing the native peoples today, but they are far from being the only ones. There are obvious problems in the areas of employment and services, as there are with the justice system, and with the *Indian Act* itself. These are all matters which are of concern to this Commission.

THE JUSTICE SYSTEM

The evidence that native Canadians are over-represented in our prisons is inescapable. A report prepared for the Canadian Bar Association in 1988 shows that 10 percent of the male and 13 percent of the female population in federal penitentiaries are Native, although Natives make up only about 2 percent of the general population. The situation in provincial institutions is worse. In fact, an Indian youngster in Canada has a better chance of being sent to prison than of completing university.

There is a widespread feeling that the system has failed the native peoples, as reflected in a number of provincial inquiries, either called for or already in progress. Some observers suggest that...

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ness. Some observers suggest that solutions will come only with self-government:
greater compatibility with native concepts of justice probably do presuppose a

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measure of autonomy, and there is no lack of models in Canada and abroad for such a solution. But there must evidently be a basic level of consistency with national norms, and in any case it does not seem likely that native peoples will have control over substantial parts of the justice system for some time to come, or that such control would extend beyond the territories recognized as native areas or affect non-treaty Indians. In short, it is likely that the general system will continue to apply to many native Canadians; and that system is heavily weighted against them. Ways must be found to remove bias and to dispel the view of some Natives that the justice system is "white law".

One necessary measure is to change the almost uniformly non-native face that our police forces present to the native public. It is true that police forces are striving to be more representative of the communities they serve, but that effort must intensify considerably. The RCMP, Canada's senior police force, has taken some encouraging steps. Its Special Constable Program, while not without drawbacks, has at least increased both the visibility and representation of Natives on the Force. More recently, the RCMP has also conducted a survey to determine just how many native people they employ, in order to develop more effective employment equity programs. The Commission will continue to look to the RCMP for leadership in these matters.

But more is required than equitable representation. Even with full native participation, non-native officers will continue to deal with native citizens. If they are to do so fairly and effectively they need to understand the context of native life and the beliefs and concerns of native peoples. This can best be assured by a firm commitment on the part of senior management and by thorough cross-cultural training programs at the policing level. The RCMP is offering recruits a multicultural training program with strong concentration on native issues, a modified version of which is also given at the Canadian Police College. This is a beginning, but police forces in this country have much more to do before they can command the confidence and trust of the native communities.

The same can be said of both the court system and correctional institutions. Over the last decade the Commission has had to deal with a number of complaints from native inmates. Sometimes they allege individual acts of discrimination, but often they refer to what are more properly described as system-wide problems: a prohibition against engaging in native spiritual practices, for example, or the absence of programs that are geared to native interests and concerns. The prison authorities have shown some flexibility in dealing with these complaints, but much more is called for. The Commission will deal promptly with any allegation that federal penitentiaries discriminate against Natives, but correctional officials must also expand the opportunity of native inmates to express their difference and ensure that appropriate cultural and educational programs are made available.

REPRESENTATION IN EMPLOYMENT

The problems that Natives experience with the justice system are symptomatic of the discrimination they face in broader society. The employment equity reports of federal departments and agencies and private employers in the federal sector

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underscore this fact and confirm what earlier statistics consistently suggested: native peoples are drastically under-represented in employment in virtually every industrial sector and every occupation, even in locations like Winnipeg or Regina where there is a high concentration of Natives. Within federal government departments themselves, where programs to promote native hiring have been in place for some time now, the representation of native peoples is abysmal in all but the Department of Indian Affairs and Northern Development. Clearly, there is much work to be done by all departments to turn this situation around.

THE INDIAN ACT

The *Indian Act* was amended in 1985 to remove a section that discriminated against Indian women by stripping them of Indian status if they married non-natives. Despite this amendment the effects of that discrimination linger on: the revised Act allows native women to be reinstated as status Indians but does not ensure that they will be reinstated as band members or that effective loss of band status will not recur. Moreover, many women returning to the reserves have found that they have no house to live in and no immediate prospects of obtaining one. Their children cannot easily be fitted into an already overburdened school system and they are competing with long-standing band members for scarce resources. These pressures have resulted in a number of complaints to the Commission.

Some of these problems stem from a substantial underestimation of the numbers of those who had been thought likely to seek reinstatement, and a consequent inability of some already underfunded bands to meet new demand for housing, education and other services on the reserves. Whatever else may be necessary, it is evident that sufficient funding must first be made available. Bands must be able to provide a reasonable level of service and to enable individuals who are returning to assume a legitimate place within the band. Lack of financial support from government cannot excuse a failure to correct a discriminatory arrangement that was caused, in the first instance, by government.

The over-riding problem in all this is our notorious difficulty in coming to grips with native issues in a comprehensive way. *The Globe and Mail* has argued editorially, and persuasively, that the extent of the crisis warrants a Royal Commission, not to add to the long list of existing but ineffectual studies but to provide the sort of groundwork, the pulling together of facts, opinion and expertise, that would significantly increase the chances of a meeting of minds. Others favour more gradualist efforts to build self-government from the grassroots level through the kind of local and practical decisions that are now being made in some land claims cases. The important point from the human rights perspective, is to recognize clearly that the time has come to raise this issue to the very highest level of the national agenda.

