

Aboriginal Justice Implementation Commission Recommendation An Aboriginal Employment Strategy

The Aboriginal Justice Inquiry position

The Aboriginal Justice Inquiry placed a heavy emphasis on the need to employ more Aboriginal people in every part of the existing justice system. The AJI argued that “because of their almost complete absence other than as accused, the system is now considered to be a foreign and uncaring one by Aboriginal people.” (AJI, page 663). The AJI further stated that:

We are satisfied that if there were Aboriginal people working in the legal system, there would be a greater understanding of the problems faced by Aboriginal accused, victims, witnesses and their families, and higher levels of assistance and advice. Aboriginal communities would benefit economically and socially from having people within their community who hold positions of importance within the justice system. (AJI, page 663)

The AJI suggested that job descriptions for positions that required or that will inevitably result in high contact with Aboriginal people should place greater emphasis on the applicant’s knowledge and skills in the area of Aboriginal skills and languages. It suggested that such positions should be designated as “Aboriginal Bilingual Positions” within Government, much as the Government now designates some positions as “Bilingual” for purposes of its French language policy.

The AJI indicated that it was not impressed with the results that been achieved under voluntary affirmative action programs, noting that there were few consequences for managers who failed to achieve progress in hiring members of target groups under these programs. For this reason the AJI stated that the government needed to:

Formally adopt legally enforceable, target driven, equity employment programs. We include all levels of the system in that conclusion, from police officers and prison guards to members of the judiciary and bureaucracy. We believe that the progress of those programs should be reported annually to an appropriate entity with powers to enforce compliance. Such an entity should have access to specific and appropriate powers. (AJI, page 664)

The AJI recommended the creation of an Employment Equity Commission to serve as an enforcement agency. While it placed no limit on the authority of the EEC, it recommended that its initial efforts be directed towards increasing Aboriginal employment in the justice system.

The AJI also addressed the issues of targets. It concluded that the minimum target in the justice system ought to be the percentage of Aboriginal people in the Manitoba population, while the optimum target would be the percentage of Aboriginal people

served by the justice system. Since the AJI estimated that Aboriginal people constituted 12 per cent of the Manitoba population it recommended a minimum of 12 per cent and an optimum that would vary with the number of Aboriginal people being served by a specific branch of government.

The AJI made the following specific recommendations dealing with Employment Equity.

- The Province of Manitoba legislate the establishment of an Employment Equity Commission with appropriate Aboriginal representation on its governing body.
- The Employment Equity Commission have two arms: an investigative arm responsible for examining any matter covered by the legislation, and an adjudicative arm responsible for hearing any complaint made under the legislation. Those on the adjudicative side who sit as hearing panels to determine a complaint should include an Aboriginal person if the complaint involves an Aboriginal issue or complainant.
- The mandate of the commission be:
 - To develop employment equity targets for employers within the legislative jurisdiction of the Province of Manitoba, including any department of the government of Manitoba and any municipality, town or city within the province.
 - To ensure that employers set policies and programs for the advancement and promotion of Aboriginal people.
 - To monitor compliance with established employment equity targets.
 - To require employers in receipt of government grants or contracts to establish an acceptable employment equity plan with appropriate time frames, within which Aboriginal people will be hired.
 - To hear and determine complaints against any person or employer who fails to comply with an established employment equity plan.
- Hearing panels called upon to determine complaints be entitled to make orders requiring compliance with an employment equity plan acceptable to the commission, or make such other order as may appear appropriate to it, such as financial compensation either to an individual or to a group of individuals.

In addition, the AJI made the following recommendations that address the issue of Aboriginal employment in various branches of the justice system.

Manitoba Justice Department

- The provincial Justice department establish minimum and optimum targets for the employment of Aboriginal people at all levels. The minimum target must be no less than the percentage of Aboriginal people in Manitoba; the optimum target is to be equal to the percentage of Aboriginal people served by the department and its agencies.

Legal Aid

- Legal Aid Manitoba establish minimum and optimum targets for the employment of Aboriginal people at all levels. The minimum target must be no less than the percentage of Aboriginal people in Manitoba; the optimum target is to be equal to the percentage of Aboriginal people served by Legal Aid Manitoba.

Correctional Facilities

- The number of Aboriginal people employed in correctional facilities and correctional programs be at least proportionate to the population of Aboriginal people in the province of Manitoba.
- At least one-half of the Aboriginal staff of each institution be able to speak an Aboriginal language.

Police

- Cross-cultural education components of all police training courses be reviewed and strengthened, and this process actively involve members of the Aboriginal community, resource persons and recognized experts.
- The RCMP employ Aboriginal police and civilian staff in their detachments in proportion to at least the Aboriginal population of the province and preferably in proportion to the Aboriginal population being served.
- The Winnipeg Police Department prepare and table with the city council and the Minister of Justice, no later than December 31, 1991, an employment equity plan which has clear targets, target dates and remedies should targets not be achieved.
- The City of Winnipeg Police Department set an initial target of 133 Aboriginal police officers. The first step in reaching that goal should be to designate the next recruiting class as entirely Aboriginal. Thereafter, 50% of each recruit class be dedicated to Aboriginal recruits until the target has been met.
- The Winnipeg Police Department be required to report publicly the progress of its employment equity program to the Minister of Justice.
- A portion of the funding provided by the Province to the City of Winnipeg for police salaries be conditional on the Winnipeg Police Department's using that funding only for the hiring of Aboriginal police officers.
- The Brandon Police Department set an initial target of nine Aboriginal police officers and that the City of Brandon Police Department dedicate that number of positions for Aboriginal recruits in its next recruit class.
- The City of Brandon Police Department, in co-operation with the Brandon Friendship Centre, develop a program to reach out to and inform Aboriginal people living in Brandon about policing issues.

Legal training

- The University of Manitoba Faculty of Law establish a recruitment program whereby Aboriginal students (including those in high schools) throughout Manitoba and Northwestern Ontario are encouraged to attend law school.
- The Faculty of Law and the Aboriginal Justice College establish a pre-law program for Aboriginal students wishing to enter law school.

Aboriginal employment in the justice system

Government of Manitoba

In 1983 the Manitoba Government adopted an employment equity policy. This policy identified four target groups that had, in the opinion of the government of the day, been the victims of systemic discrimination in employment and were, therefore under-represented in the Manitoba government workforce. The target groups were women,

Aboriginal people, visible minorities and persons with disabilities. Under this policy the government committed itself to continuing to hire the most capable job applicants, but when applicants were of equal capability, the government would hire the applicant from the target group. The policy's goal was to create a civil service that was more reflective of the broader society: that goal would be achieved when the percentage of women, Aboriginal people, members of visible minorities and persons with disabilities employed by the government was equal to their presence in the Manitoba population. When the program was established in 1983 its goal for the year 2003 was 50 per cent for women, 10 per cent for Aboriginal people, 7 per cent for persons with disabilities, and 6 per cent for visible minorities.

This policy has remained in place since 1983. The AJI's proposed Employment Equity legislation was never adopted and the Employment Equity Commission was not created. Progress towards the government's goals has been different for different target groups. In 1987 women accounted for 45.6 per cent of the civil service; in 2000, they accounted for 49.58 per cent. In 1987 Aboriginal people accounted for 2.01 per cent of the civil service, in 2000, they accounted for 7.3 per cent of the civil service. However, when one subtracts seasonal and part-time Aboriginal employees of the Conservation Department, this figure drops to 6 per cent. Persons with disabilities accounted for 2.01 per cent of the civil service in 1987 and 2.5 per cent in 2000. Visible minorities accounted for 2.26 per cent of the civil service in 1987 and 2.84 per cent in 2000.

While there has been an increase of over 100 per cent of Aboriginal people within the Manitoba civil service over the past 13 years, it is apparent that the government will not reach its 10 per cent goal in 2003. Furthermore the rapid growth in the Aboriginal population over the past decade suggests that a 10 per cent target may be too low in light of the government's original goals for the program.

The hiring of Aboriginal people has progressed at different rates in different departments. For example, 30 per cent of Northern Affairs employees were Aboriginal in 2000, while 4.70 per cent of the Civil Service Commission (the body ultimately charged with overseeing the Employment Equity policy) was Aboriginal. In 2000 Aboriginal people account for 8.53 per cent of the people working for Justice, 8.80 per cent of the people working for Health, and 8 per cent of the people working for Family Services. Information provided by the Manitoba Government in February 2001 indicated that Aboriginal people accounted for 10.4 per cent of the employees in the Department of Justice. From this it would appear that Justice has achieved the employment equity targets established in 1983 and is close to achieving the AJI's minimum goal.

There are a number of potential explanations for the failure of the program to reach its overall goals. One of these is the fact that during the past decade there has been no growth in the size of the civil service. A period of protracted restraint and devolution has created a situation where the Manitoba civil service is smaller than it was in 1987.

The continued social issues that Aboriginal communities face has also played an unfortunate role in reducing the number of potential job applicants from the Aboriginal

community. Poor housing, poor infant health, and diminished educational opportunities all combine to limit the number of Aboriginal people who possess the qualifications required to compete for certain government positions. This issue is discussed at length elsewhere in this report, but it worth emphasizing that policies that focus on supporting families, young people and communities, are the needed foundation for the success in meeting other goals, such as an increase in Aboriginal employment. Increase in the availability of child care also need to allow Aboriginal people participate in the labour force in greater numbers.

Once these comments have been taken into account, the fact remains that the minimum goal set by the Aboriginal Justice Inquiry ten years ago has not been attained in the Department of Justice, nor has it been attained across the civil service. Finally, it must be noted that the major AJI initiative that had been recommended for this area has not been implemented. One is drawn back to the AJI observation on the lack of consequences for failing to meet Employment Equity goals, and how this reflected a lack of government commitment.

Police

Manitoba police forces have experienced more success than the Manitoba government in increasing the number of Aboriginal people it has recruited and retained.

For example:

- The RCMP has 108 Aboriginal members in the province (about 11 per cent of the total number of officers and nearly 20 per cent of those assigned to contract policing)
- Twenty-one of the RCMP's detachment clerks are Aboriginal (about 20 per cent of the total)
- The Winnipeg Police Service has 100 Aboriginal officers (compared with the 18 it had in 1990.) As a result, approximately 8.5 per cent of the WPS officers are Aboriginal.
- 2.3 per cent of the Winnipeg Police Services civilian staff are Aboriginal

The progress made by police departments, during a time when they were experiencing the same economic pressures as the Manitoba government, suggests that political will, manifested by aggressive recruiting, training and retention programs, can lead to improved results when it comes to Aboriginal employment.

The approach of the Aboriginal Justice Implementation Commission

The Commission is in agreement with the Aboriginal Justice Inquiry's emphasis on the need for greater Aboriginal employment in the justice system. Increased numbers of Aboriginal people employed in a system that deals with large numbers of Aboriginal people will improve the system's credibility and legitimacy among Aboriginal people. Secondly, an increase in Aboriginal people working in the justice system is the best way to ensure that justice services are being provided in a manner that is culturally appropriate. This will improve communication and understanding between those who are

administering justice and those Aboriginal people who find their lives being administered by the justice system. This will render the system more efficient and more effective. It would also create role models for young Aboriginal people and, more immediately, create economic opportunities for Aboriginal persons.

The Commission recognizes that while there has been an improvement in Aboriginal employment in the Justice system, the minimal goals set by the Manitoba Government in 1983 and the Aboriginal Justice Inquiry in 1991 have not been met.

The question that remains is how to achieve those goals. The AJIC has reviewed literature on efforts to increase Aboriginal employment and has commissioned its own research on the topic. It is clear that a process that simply posts job notices in the traditional fashion and waits for Aboriginal candidates to apply will not make considerable progress on this issue.

Trends in public-sector employment

As noted above, the last decade has been a period of public-sector contraction. The Commission notes that the downsizing of the Manitoba civil service over the past decade has had a number of detrimental effects on Aboriginal people that go beyond the government's difficulties in meeting employment goals. The impacts of downsizing and restraint policies have fallen heavily on services and programs that address the needs of Aboriginal people, whether or not they are involved in the justice system. Child and family service workers, Legal Aid lawyers, public school teachers, and probation officers – to name only a few of the workers who provide crucial services to Aboriginal people – carry larger case loads than they did a decade ago and often find themselves working with fewer resources. To the degree that they have placed more young Aboriginal people at risk of coming into conflict with the law, reduced the system's ability to aid Aboriginal people who are in trouble, and limited employment opportunities, such policies of public-sector contraction have frustrated the spirit and intent of the AJI report.

For a variety of reasons it appears that the opportunity exists to reverse these trends. Demographics are creating the opportunity for a renewal of the public sector. It is anticipated that over the next five years approximately 2,000 positions will come open with the Manitoba Government as the result of retirements. (Anokiiwin Employment Solution, page 20.) Coupled with the types investments in prevention that are described elsewhere in this report, there will be significant opportunities to hire Aboriginal people in the public sector. There is also a growing number of Aboriginal people entering the labour market each year: currently Aboriginal persons account for one in four new members of the labour force.

Conclusion

The Aboriginal Justice Implementation Committee endorses the goals of the Aboriginal Justice Inquiry for increased hiring of Aboriginal persons. We applaud those agencies that have achieved significant increases in employment. It would appear that those improvements are the result of management commit to improve recruiting, enhance training opportunities, remove barriers to employment, and enhance retention. We

believe these measures offer the most effective tools to increase Aboriginal employment. While there may well be merit to an enforcement mechanism, such as an Employment Equity Commission, we are mindful of the need to invest resources in as effective a manner as possible. For that reason, we are not recommending that such a commission be established at this time.

Therefore the Commission is not prepared to recommend a legislated employment equity act or employment equity commission. However, it does endorse the employment goals set out in the Aboriginal Justice Inquiry. These goals should guide the planning, monitoring and evaluation of an Aboriginal Employment Strategy. The Commission also notes that Manitoba Conservation has recently adopted an Aboriginal Employment Strategy. This strategy stresses the importance of:

- Creating an Aboriginal Employment Coordinator
- Providing managers with training about the strategy
- Using targeted programs to ensure that Aboriginal people are hired into management positions
- Pro-active recruiting
- Clear targets, timelines and accountability
- The need for adequate resources and clear communication

Anokiiwin Employment Solutions prepared a paper for the Aboriginal Justice Implementation Commission, entitled Aboriginal Employment Strategy, that makes many of these points as well. The rationale for implementing such a strategy in the Justice Department are as clear as they were in 1991:

- The government has committed itself to Employment Equity across the civil service
- Increasing the number of Aboriginal persons employed in the Justice Department (and the justice system in general) will increase the Department's legitimacy, credibility and efficiency.

There are, as noted above, two additional reasons why the government should act on this measure immediately.

- The pending wave of retirements in the civil service creates the opportunity to increase Aboriginal representation.
- The growing presence of Aboriginal persons in the labour market increases the opportunity to recruit and train Aboriginal employees.

Recommendations

The Commission recommends that the Manitoba Government adopt, in consultation with the Assembly of Manitoba Chiefs and the Manitoba Métis Federation, a five-year Aboriginal employment strategy. The Government must make annual reports to the public on its progress in implementing this program.

The Commission believes the employment strategy should incorporate the following elements:

- **A commitment from both the political and administrative leadership to increasing the number of Aboriginal employees in accordance with the recommendations of the AJI. This commitment must spell out political and administrative accountability and identify and detail the appropriate financial resources. There must be goals, a timeline, and responsibility for meeting the goals within the designated time frame.**
- **A review of current employment systems to identify barriers.**
- **An increase in Aboriginal human resource capacity within government departments. This should include the hiring of Aboriginal Human Resource Officers.**
- **Formal initiatives to improve Aboriginal recruitment, retention and advancement. This would include, but not be limited to, outreach and preparatory training restating occupational qualifications to provide recognition of those positions for which knowledge of Aboriginal languages and culture is a qualification; culturally sensitive marketing mechanisms to recruit applicants; monitoring of program effectiveness. (The Commission will deal with the establishment of an Aboriginal Justice College, which would be an important step in providing Aboriginal people with skills needed for work in the Justice Department, in a separate recommendation.)**
- **A review, improvement and expansion of the Aboriginal Management Development Program.**
- **Development mechanisms to ensure Aboriginal access to career advancement and employee support services.**
- **Establishment of a union-management partnership to identify, address and eliminate employment barriers within government.**