

October 8, 2003

Joint Working Group
Board/Service Race Relations
40 College Street
Toronto, Ontario M5G 2J3

Dear Sirs/Madams:

RE: Race Relations Draft Report

- We are in receipt of the Joint Working Group's Draft Report on Race Relations and have reviewed same. Please accept the following as Aboriginal Legal Services of Toronto's (ALST) written submissions, to be read with our oral presentation, with respect to the proposed draft recommendations.

- **Introduction**

Aboriginal Legal Services of Toronto is a multi-service, legal agency serving Canada's largest urban Aboriginal population. The vision of ALST is to support and advocate for the Aboriginal community to gain control over justice issues that affect them. Policing has been, and continues to be, an important issue that affects our community.

There are two main areas of concern with the Draft Report that we would like to address:

- 1) The police complaint process; and
- 2) The gathering of statistics.

Wampum Belt

- Before addressing these two main areas, we would like to point out that a Wampum Belt was provided to Chief McCormack in 1993 by the Aboriginal community at the opening ceremonies of the Aboriginal Peacekeeping Unit. The Wampum Belt symbolizes the Toronto Police and the Aboriginal community's commitment and agreement to work together as equal partners. It is interesting to note that the Aboriginal Peacekeeping Unit (APU) no longer exists within the Toronto Police, as it was dismantled, without notice, or consultation with the Aboriginal Community. Given that the Unit no longer exists, the report marked as Section F to the Policing A World Within a City report can be disregarded in its entirety. Any progress that the Toronto Police may have made in improving relations with the Aboriginal Community have been erased with the dismantling of the APU. ALST believes that the Toronto Police Service should no longer be in possession of the Wampum Belt as it has broken its agreement with our community.

The Aboriginal community has been, and continues to be, both over-policed and under-policed. Community members continue to be stopped, harassed and in some instances physically abused by Toronto Police Officers for no reason other than for being Aboriginal. In addition to the over-policing of our community, victims continue to

receive poor or no police service. Aboriginal victims continue to be regarded by the Toronto police as "less worthy victims". The Draft Report speaks to the importance of effective, respectful, two-way communication between police authorities and their communities. When 14 Toronto Aboriginal agencies signed and forwarded a letter to Chief Fantino in September 2002 to request a meeting to discuss our concerns relating to the over and under-policing of our community, Chief Fantino disrespectfully ignored us. It is no secret that the justice system has failed Aboriginal people in Canada, this has been well documented in several reports and studies. ALST submits that the Toronto Police have played, and continue to play, a major role in this failure. To resolve the issues with our community the Toronto Police must first acknowledge that there is a problem and that they have played a role in creating the problem. Only then, once there is such an acknowledgment, can we move forward to mend the relationship between the police and the Aboriginal community.

Complaint Process

- ALST would like to address Recommendation # 4 which deals with access to the complaint process. ALST has, for the past 10 years, assisted community members with filing complaints against police officers. In the past 10 years, not one complaint has been found by the Toronto Police to be valid. The issue of accessibility to the complaint process is an important issue. However, it will not matter how accessible you make the process, as it will never be seen as legitimate as long as police continue to be the primary and initial investigators of complaints. There is sufficient, in fact substantial, empirical evidence, to show that communities do not have confidence in an oversight body that is not independent of the police. Without independence, the entire police complaint process lacks credibility in the community. ALST therefore respectfully recommends that Recommendation # 4 be more broad and mirror the recommendation made by the City Auditor; that the Board initiate discussions with the Attorney General on the issue of police policing themselves. Within those discussions, the issue of third party complaints can be addressed. ALST, as it has said to the Board in the past, supports the inclusion of third party complaints. With all due respect to the Joint Working group, the findings at page 30 of the Draft Report that 1)"in practice all allegations of misconduct are thoroughly investigated, regardless of how they come to the attention of the Service" and 2) that the Chief of Police, has a duty to investigate, even if a complaint is made by a third party, are in practice, false. A third party complaining to the Chief of Police is either ignored completely, or told that the *Police Services Act* does not allow for the complaint to be investigated. If ALST is wrong on this, we recommend that information be included in the report as to the number of third party complaints that the Chief of Police has thoroughly investigated. Without this supporting data, the community will not place any credibility in the assertion that all complaints are in fact investigated thoroughly.

Term "Racially Biased Policing" v "Racial Profiling"

ALST supports the use of the proposed broader term of "racially biased policing" as opposed to "racial profiling". The term "racial profiling" has been interpreted by many members of our community to apply only to the black community, even though racial profiling, by definition, is an issue for our community. Although ALST supports the use of the proposed broader term, we note that the term does not encompass other areas of biased policing that exist. For example, the term excludes inappropriate policing based on other social dimensions such as poverty, homelessness, and gender.

Raced-based Statistics

The Aboriginal community in Canada has been counted, recounted, studied and restudied since prior to the passing of the first *Indian Act* in 1876. The practice of counting Indians was primarily done so the government could assess how to adequately deal with the Indian problem and accelerate the process of assimilation. Given this history, Aboriginal people do not always welcome the concept of being counted. Notwithstanding this fact, ALST supports the collection of race-based statistics in policing. However, the manner in which the information is collected, used, and interpreted MUST be in the control of the community. The Draft Report was alarming to read, as it completely ignores community perspectives and portrays the issue of collecting raced-based statistics as a police issue only. All of the rationalizations set out against collecting race-based data, are police focussed and dismiss community views and treat communities as outsiders to the process rather than as partners to the process.

The Draft Report further fails to acknowledge the diversity of communities and the diversity of the issues affecting communities. For example, the Report is heavily focussed on traffic stops. Traffic stops are not the issue in our community. It is the frequent and unwarranted contact that police have with our community members when they are walking in public spaces that is our issue. All too often Aboriginal people are stopped, asked to show identification, forced to explain where they are going and where they have been. Such stops, in our submission, are racially motivated. The Royal Commission on Aboriginal People quoting Professor Tim Quigley identified over-policing as one of the sources of systemic discrimination and noted that "Police use race as an indicator for patrols, for arrests, detentions... For instance, police in cities tend to patrol bars and streets where Aboriginal people congregate, rather than the private clubs frequented by white business people..." The Royal Commission also noted that "police tend to view the world in terms of "respectable" people and "criminal types". Criminal types are thought to exhibit certain characteristics which provide cues to the officer to initiate action. Thus, the police may tend to stop a higher proportion of people who are visibly different from the dominant society, including Aboriginal people..."

ALST supports the collection of race-based statistics if the community maintains ownership over the process. Race-based statistics have proven to be extremely useful to our community. For example, they have been used to identify gaps in services, to improve access to institutions, to educate the dominant society on Aboriginal people and to assist with improving resources available to our community. We see further benefit arising from the gathering of statistics. For example, there is very little data on the issue

of Aboriginal victimization. The limited data that does exist indicates that Aboriginal people are more likely to be victims of crime than non-Aboriginal people. Statistics on the victimization of Aboriginal people will assist our community with finding a solution to the problem. Each community has their own issues relating to crime and victimization and police stops. The Draft Report must acknowledge this and ensure that the debate is not simply presented as a police debate, and a police issue.

ALST recommends that the Draft Report include a recommendation that the issue of gathering race based statistics be reviewed by the Toronto Police, in partnership with the communities that it serves.

Recruitment

The Draft Report contains some discussion on recruiting police officers from diverse communities. With all due respect to the Task Force, the Toronto Police will continue to have difficulty recruiting Aboriginal people to its force if it continues to police the Aboriginal community as it has. Targeting Aboriginal people at younger ages, producing recruitment videos that target Aboriginal people and sending Aboriginal officers to do the recruitment will not solve the problem. Aboriginal people continue to grow up mistrusting the police. This mistrust will not, and cannot be overcome until the Toronto Police change the manner in which they do business with our community. The issue of over-policing and under-policing must be addressed and can be addressed with the assistance of race-based statistics and an independent, accountable, police complaint oversight body.

Yours truly,

ABORIGINAL LEGAL SERVICES OF TORONTO-LEGAL CLINIC

Kimberly R. Murray
Director