

1993 BILL 237

First Session, 23rd Legislature, 42 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 237

ABORIGINAL JUSTICE ACT

MR. N. TAYLOR

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 237
Mr. N. Taylor

BILL 237

1993

ABORIGINAL JUSTICE ACT

(Assented to , 1993)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1. In this Act,

- (a) "Aboriginal" means a person
 - (i) entitled to be registered as an Indian pursuant to the Indian Act (Canada),
 - (ii) of the race of North American aborigines commonly referred to as the Inuit,
 - (iii) who is of aboriginal ancestry and who identifies with Metis history and culture, or
 - (iv) belonging to any group designated by regulation under this Act as an aboriginal group;
- (b) "Council" means the Aboriginal Justice Advisory Council;
- (c) "Metis Settlement" and "Metis General Council" have the same meaning as in the Metis Settlements Act;
- (d) "Minister" means Attorney General;

Aboriginal Justice
Advisory Council

2(1) The Aboriginal Justice Advisory Council is hereby established.

(2) The Council shall consist of not less than 9 persons, of whom

(a) 3 shall be appointed by the Minister from a list of nominees provided by each of the bands signatories to Treaties 6, 7 and 8 as defined under the Indian Act (Canada);

(b) 1 shall be appointed by the Minister from a list of nominees provided by the Metis Settlements General Council;

(c) 1 shall be appointed by the Metis Association of Alberta;

(d) 4 persons shall be appointed by the Minister.

Council to make
recommendations

3(1) The Council shall make recommendations to the Minister on matters related to the improvement of the justice system as it affects aboriginals and shall report annually to the Minister on the relationship between aboriginals and the judicial system, including;

(a) ways in which the relationship may be improved;

(b) the establishment and functioning of an aboriginal magistrate system;

(c) services and assistance which might be made available to aboriginals for the purposes of reducing the number of aboriginal people who are sentenced to prison;

(d) increasing the number of aboriginals training as lawyers, judges; magistrates and other officers of the courts;

(e) training of aboriginal police officers with a view to creating self-policing Metis Settlements and Indian lands under provincial jurisdiction;

(f) the recommendation of aboriginals for judicial and quasi-judicial appointment, and

(g) provision of improved facilities available to released aboriginal offenders, including half-way houses, substance abuse counselling and native support centres.

(2) The Minister shall table the report of the Council in the Legislative Assembly within fifteen days after it is presented, or, if the Assembly is not then sitting, within fifteen days of the commencement of the next ensuing session.

(3) The Minister shall report on his response to the recommendations of the Council within 1 year of the Council's report, giving full reasons for any recommendations not implemented or for which implementation is not planned, such report to be tabled in the Legislative Assembly within fifteen days of it being prepared, or, if the Assembly is not then sitting, within fifteen days of the next sitting.

Regulations

4 The Lieutenant Governor in Council may make regulations

(a) designating any group or individual aboriginal for the purposes of this Act;

(b) appointing or delegating officials charged with the administration of the Act;

(c) appointing members of the Aboriginal Justice Advisory Council;

(d) implementing procedures, forms, administrative systems and any other thing connected with the enforcement and administration of Native Justice in Alberta.

Amendments to
Provincial Court
Act

5(1) *This section amends the Provincial Court Act.*

(2) *Section 1 is amended by renumbering clause (a) as (a.1) and adding the following before clause (a.1):*

(a) "Aboriginal" means a person

(i) entitled to be registered as an Indian pursuant to the Indian Act (Canada),

(ii) of the race of North American aborigines commonly referred to as the Inuit,

(iii) who is of aboriginal ancestry and who identifies with Metis history and culture, or

(iv) belonging to any group designated by regulation under this Act as an aboriginal group;

(3) *The following is added after section 2(2)(d):*

(d.1) the Native Justice Division to be styled "The Native Justice Division of the Provincial Court of Alberta";

(4) *The following is added after section 76:*

PART 5

NATIVE JUSTICE MATTERS

77 Any criminal matter over which the Court exercises jurisdiction shall be transferred to the Native Justice Division on application of either the Crown or an accused aboriginal.

78 In matters where there are more than one accused, and one or more, but not all, co-accused are aboriginal, application may be made to the court to have the aboriginal accused transferred to the Native Justice Division, and the court may refuse the application or make any order or place any restrictions or conditions on such order as the court sees fit.

79 In the case of an aboriginal accused being heard in the Native Justice Division, the judge, or judge and jury, if applicable, will be drawn as much as is practicable, from an aboriginal population, and cultural, historical, and traditional circumstances of the accused will be considered with regard to any evidence the court deems relevant, or with regard to any provisions of sentencing the court may allow.

80 The Lieutenant Governor in Council may appoint aboriginal justices of the peace and hearing officers for those matters which may lawfully be carried out by those individuals;

81 The Minister may make regulations

(a) governing the custody and care of those accused before trial within the jurisdiction of the Native Justice Division;

(b) providing for the representation of an aboriginal accused by counsel;

(c) providing for the appointment of counsel for the Crown where an accused is an aboriginal, and;

(d) governing any other matter with which the administration of justice within the Native Justice Division may accommodate or reflect the special cultural, historical and traditional circumstances of aboriginals.

Amendments to
Provincial Court
Judges Act.

6(1) *This section amends the Provincial Court Judges Act.*

(2) *The following is added after section 11:*

11.1 A provincial court judge appointed or removed from the Native Justice Division of the Provincial Court shall not be so appointed or removed without consultation with the Aboriginal Justice Advisory Council.

Amendments to
Corrections Act

7(1) *This section amends the Corrections Act.*

(2) *The following is added before section 1(e):*

(e.1) "native correctional institution" has the same meaning as "correction institution" in clause (b), but designates those institutions constructed for, or designated by the Minister as, correctional facilities primarily for native inmates, and either located on Indian land or operated by originals or in accordance with aboriginal culture, traditions and history.

(e.2) "native inmate" has the same meaning as the word "inmate" in clause (d), but designates those inmates who are aboriginals, as defined in the *Aboriginal Justice Act*.

(3) *The following is added after section 30:*

PART 3.1

NATIVE INMATES AND ABORIGINALS ON PAROLE

30.1 Wherever possible the Minister shall ensure native inmates are placed within the care of a native correctional

institution.

30.2 The Lieutenant Governor in Council may make regulations

- (a) respecting the training and recruitment of aboriginals as parole officers, corrections officers, corrections officers, executive officers or other officials charged with the custody, care or supervision of aboriginals in the court or corrections systems.
- (b) respecting the transfer of native inmates in other corrections institutions to native correctional institutions;
- (c) respecting the transfer of aboriginals to the supervision or custody of specific parole officers; and
- (d) respecting any other thing relevant to aboriginals in the corrections system, to ensure proper consideration of, and respect for, aboriginal culture, history and traditions.