National Symposium on Women, Law and the Administration of Justice

Colloque national sur la femme, le droit et la justice

Department of Justice Response to the Recommendations from the Symposium

Vancouver, British Columbia
June 10-12, 1991

Volume III

Department of Justice Canada
Ministère de la Justice Canada

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CANADA

PRIME MINISTER · PREMIÈRE MINISTRE

Much has happened since I hosted the National Symposium in Vancouver over two years ago as the first woman Attorney General and Minister of Justice of Canada. Since that time, in the relationship between women and our legal system, as in other areas, some important progress has been made. Yet change happens slowly and much remains to be done.

The release of this document fulfils a commitment I made to Symposium participants to study the recommendations they developed there, to act on them where possible, to bring them to the attention of my Cabinet colleagues and to report back to the participants and to all Canadians regarding actions taken and planned.

I am pleased to see this part of the commitment fulfilled. Volume III makes a number of significant statements. While the progress made so far fills me with hope, the work yet to be completed represents a challenge to all of us.

I wish to take this opportunity to reaffirm my own commitment to our shared goal: a system of justice and of government which takes into account the diverse realities of all our lives, which treats all of us with respect and which allows all of us to create and enjoy a Canada we can call our own.

OTTAWA
1993

Minister of Justice
and Attorney General of Canada

CANADA

Ministre de la Justice
et Procureur général du Canada

I am pleased to present Volume III of the National Symposium on Women, Law and the Administration of Justice document series. This final report of the National Symposium, which was hosted in Vancouver from June 10 to 12, 1991, by the Right Honourable Kim Campbell, contains responses to the many recommendations made at the Symposium, as well as the Department of Justice's Action Plan on Gender Equality.

As you read through the responses to the recommendations, you will note that, in the time since the Symposium occurred, many steps have already been taken to ensure women's equality in law and in the administration of justice. The Department's Action Plan on Gender Equality expresses my commitment that improvements will continue to be made. The Action Plan describes measures which the Department will undertake, either alone or in collaboration with others, to achieve the goal of gender equality in the Canadian justice system.

I would also like to take this opportunity to express my support for the recent report of the Canadian Panel on Violence Against Women. The report is the result of consultations with women across this country, and it provides recommendations on how to end violence against women. I am personally committed to achieving that objective and will work with my colleagues at all levels towards that end.

Finally, I wish to thank all those who attended the Symposium for their participation. It is through the efforts of each of us working together that we can make a difference.

Pierre Blais

Pierre Blais

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NATIONAL SYMPOSIUM ON WOMEN, LAW AND THE ADMINISTRATION OF JUSTICE

INTRODUCTION TO VOLUME III: DEPARTMENTAL RESPONSE AND ACTION PLAN

The National Symposium on Women, Law and the Administration of Justice was held in Vancouver, British Columbia, on June 10-12, 1991. The Proceedings of the National Symposium are presented in Volume I. Volume II of the series contains the summary of discussions and recommendations as produced and approved by the participants in each sub-track. These two volumes were released in August 1992. Volume III provides the federal Department of Justice's response to the 215 recommendations generated by the participants as well as the Department's Action Plan on Gender Equality.

In the two years following the Symposium, numerous improvements have already been made to promote women's equality in law and the administration of justice. Some of these changes include:

* the development of a departmental public consultation policy which includes consultation with women's organizations, thereby providing women with greater opportunities to participate in the development of legislation and justice policy. Post-Symposium consultations in which this program figured prominently included the new Rape Shield Legislation, **Bill C-49** - *An Act to amend the Criminal Code (Sexual Assault)* (proclaimed into force on August 15, 1992), intermediate sentencing (**Bill C-90**), proposed amendments to the *Canadian Human Rights Act*;

* a departmental review of federal constitutional litigation affecting women's equality issues and the release of a preliminary report of this review to representatives of equality-seeking groups that attended the Symposium;

* significant legislative amendments which will provide women with better protection against violence, including new gun control legislation and regulations, and legislation addressing criminal harassment (**Bill C-126**) and child pornography (**Bill C-128**);

* the undertaking of important research by the Department, including research on child support guidelines, custody and access and family violence;

* the continued involvement of the Department, in consultation with the judiciary, in facilitating new and progressive initiatives on judicial education on gender equality issues;

* sensitization of Department of Justice employees including federal Crown prosecutors on gender equality, cross-cultural and disability-related issues; and

* enhanced collaboration and liaison with all levels of government on gender equality initiatives in a concerted effort to maximize the results of such initiatives and to minimize duplication of efforts.

While much work remains to be done to ensure that all women in Canada receive fair and equitable protection of and treatment by the justice system, it is important to recognize the achievements made to date. One such milestone for Canadian society in general is that gender equality is no longer just a "women's issue"; it is everyone's issue, everyone's goal.

The reality of achieving this goal is, however, that no one branch or level of government or organization can single-handedly achieve gender equality in Canada's justice system. Instead, what is required are collaborative, forward-looking and progressive efforts by all levels of government, the judiciary and all justice professionals, non-governmental organizations and individuals.

This departmental response reflects the federal Department of Justice's commitment to serve in a leadership role, in full cooperation with and respect for our federal, provincial, territorial and non-governmental partners, in striving to achieve the goal of gender equality in Canadian law and the administration of justice.

Format of the Department's Response

Volume II contains the ten sets of recommendations as formulated and approved by the participants in the sub-track or delegates' group that generated the set of recommendations. It was not surprising to find duplication of some of these recommendations given the interconnectedness of many of the issues discussed in the various sub-tracks. Accordingly, in an effort to avoid duplication and to facilitate the response process, similar recommendations were combined in the production of Volume III. Wherever possible, the text of the original recommendations was maintained and is included in Volume III. The departmental response, contained in Part One, is based upon this revised list of recommendations.

Further, the revised recommendations are bold-faced and have been reorganized into four chapters as follows:

Chapter One - Legislative Reform:

* includes all recommendations that relate to substantive law, policies and practices, namely constitutional/human rights law, family law, criminal law, tax law, compensatory damages, labour law, poverty law, alternative dispute resolution and judicial accountability and discipline.

Chapter Two - Services and Programs:

* includes all recommendations that involve services and programs designed for women as victims, witnesses, and offenders and as members of a historically disadvantaged group.

Chapter Three - Education and Prevention:

* includes all recommendations relating to education for all justice professionals, public legal education and information and teaching methodologies.

Chapter 4 - Equality of Opportunity:

* includes all recommendations that refer to equal opportunities for women to fully participate in the justice system and to be equally consulted in the legislative and policy-making process.

Appendix A provides a cross-reference to the original recommendations included in Volume II and to the revised list and numbering of recommendations set out in Volume III. Where Volume II recommendations were not numbered or displayed duplicate numbering in a sub-track, new numbers were assigned to these recommendations based upon the order in which they appeared in Volume II.

The text of the departmental response follows each recommendation in Part One. Where a recommendation has been brought to the attention of other departments or levels of government or non-governmental organizations, this is noted at the end of the entry.

Referral of some recommendations to other departments, levels of government or organizations for their review and action was necessary because the duties of the Minister of Justice and Attorney General are circumscribed by the *Department of Justice Act* and because the provincial and territorial governments have responsibility for the administration and delivery of most legal and educational services.

Under the *Department of Justice Act*, the Minister of Justice and Attorney General of Canada:

* provides legal services to the Government of Canada, federal departments and agencies including conducting litigation, drafting legislation and preparing legal documents;

* plans, develops and implements all government policies relating to the administration of justice;

* ensures that government business is administered in accordance with the law; and

* has policy responsibility for more than 30 statutes including the *Criminal Code*, the *Canadian Human Rights Act*, the *Divorce Act* and the *Canada Evidence Act*.

Therefore, in accordance with the Minister of Justice's commitment at the Symposium, those recommendations that do not fall directly within the mandate of the federal Department of Justice have been brought to the attention of the appropriate branch or level of government or organization for their consideration. Where a recommendation has been referred elsewhere, the response indicates the name of the department, government or organization to which it has been referred. A summary of these recommendations is provided in **Appendix B**.

Department of Justice Legal Services counsel will continue to perform an advisory role on gender issues in other federal departments and agencies. Legal Services Units are located at the headquarters of each federal department and are staffed by Justice lawyers who participate in client department policy development, often as members of client department management or policy committees, and provide legal and policy advice on an ongoing basis. Legal Services counsel also advise client departments of Department of Justice gender initiatives and draw gender issues to the client departments' attention when they arise in the course of other legal advice or policy development. They will assist client departments in the development of their own gender equality initiatives in response to the Symposium recommendations that have been forwarded to them.

Many of the issues addressed by the Symposium recommendations are also raised in the Final Report of The Canadian Panel on Violence Against Women. The federal government's response to the Panel's report will be coordinated by Status of Women Canada.

Lastly, the Department's gender equality initiative is continuously evolving and developing and, as with any other government effort, is always subject to the constraints of existing fiscal realities. Part Two of this volume sets out the Department's Action Plan on Gender Equality and includes both procedural and substantive proposals for action.

At the procedural level, Part Two offers an overview of the mechanisms by which the Department will serve in a leadership role, in full cooperation with our federal, provincial, territorial and non-governmental partners, in striving to achieve the goal of gender equality.

At the substantive level, Part Two offers a list of proposed initiatives to be undertaken by the Department, whether alone or in collaboration with any other branch or level of government or non-governmental organization and as reflected in the text of Part One responses.

PART ONE

RESPONSE TO THE RECOMMENDATIONS

CHAPTER ONE: LEGISLATIVE REFORM

CONSTITUTIONAL LITIGATION AND EQUALITY RIGHTS

Recommendation 1

Whereas equality-seeking groups have observed that:

a) the federal government is responding to constitutional challenges by defending the status quo on a systematic basis without examination of the impact of its position on the equality of women particularly in light of evolving jurisprudence, government policy statements on equality of disadvantaged groups, and Canada's international human rights obligations;

b) the federal government has failed to advance equality arguments in support of legislation designed to promote and enhance the equality of disadvantaged groups;

c) the federal government has advanced arguments which are not conducive to the development of a consistent and cohesive jurisprudence which will promote the equality of women and other disadvantaged groups;

It is resolved that the Minister of Justice should:

i) be accountable for all positions taken by the federal government in constitutional litigation;

ii) conduct a personal audit of all cases currently in litigation to ensure that the positions taken by the federal government are consistent with her expressed commitment to overcoming the inequality of women;

iii) ensure that in future, positions taken by the federal government in all constitutional litigation are consistent with her expressed commitment to overcoming the inequality of women;

iv) ensure that in all cases where appropriate to advance equality arguments in litigation, the arguments are advanced;

v) ensure that arguments are not advanced by the federal government which could lead to constitutional jurisprudence that will have a detrimental impact on disadvantaged groups in Canadian society;

vi) **create a central repository for pleadings and facta (of all participants) for all constitutional litigation in which federal and provincial and territorial governments are involved, which repository will be open to the public;**

vii) **report annually to the standing committee on human rights on all litigation concluded (i.e. appeals finished), which report will summarize all cases in the preceding year and indicate:**

- **the position taken by the federal government**
- **the arguments advanced in support**
- **the result**

viii) **through the federal-provincial-territorial working group, encourage counterparts in provinces and territories to undertake paragraphs i) to vii) above.**

The *Department of Justice Act* states that in the Minister of Justice's capacity as the Attorney General of Canada, the Attorney General is responsible for the regulation and conduct of all litigation for or against the Crown. Accordingly, the Attorney General is accountable for all positions taken by the federal government in constitutional litigation including equality rights litigation.

In each case where a Charter challenge is brought, the decision as to whether or not to oppose the challenge is carefully considered. This decision involves a thorough review of the facts of the case, the applicable law, consistency with the rights and freedoms guaranteed under the Charter, the potential impact of a judgment for or against the federal government and the views of the client federal department where the challenge is to laws, policies or programs for which another minister is responsible. The Attorney General's ultimate decision therefore reflects a balancing of wide-ranging and sometimes competing policy, fiscal and legal considerations.

The Department of Justice currently follows a number of procedures to monitor the government's position on equality issues. For example, the Department's Charter Committee considers all significant legal or policy issues relating to the Charter. In addition, the Department's Legal Services Units, which provide legal services to client federal departments, routinely review client departments' policies for compliance with the Charter, the *Canadian Human Rights Act* and other relevant federal anti-discrimination legislation.

As well, pursuant to a commitment undertaken by the Minister of Justice at the Symposium, the Department has conducted a review of its role and the positions it has taken in litigation affecting equality issues. This review examines the various roles which the Minister of Justice and Attorney General of Canada is obliged to perform, measures currently undertaken

by the Department to incorporate equality considerations and possible future initiatives. A preliminary report on this review has been submitted to women's equality-seeking groups for information and comments.

All pleadings and facta of all parties to any constitutional case are already available to all members of the public through the courts in which they are filed. The creation of a central repository would therefore be an expensive duplication of existing services.

Recommendation 2

> **All levels of government in Canada should establish a framework about their equality stance. This framework should be based upon zero tolerance of discriminatory behaviour of any kind and should address systemic discrimination as well as ensure just remedies. All laws and government policies should be audited for conformity with this framework.**

The Department agrees that discrimination of any sort must not be tolerated.

The *Canadian Human Rights Act* clearly prohibits systemic as well as intentional discrimination. The Minister of Justice is seeking to strengthen the Act through proposed amendments currently before the House of Commons. The Act is enforced by an independent Canadian Human Rights Commission which is empowered to investigate complaints of discrimination. The Commission may refer complaints to an adjudicative body known as the Human Rights Tribunal.

The Department has also established a framework for the promotion and protection of equality rights. This framework currently includes the Charter Committee and the Litigation Committee which considers and approves all facta involving significant legal or policy issues. The Department's Legal Services Units also advise client departments on policy development as to compliance with the Charter, the *Canadian Human Rights Act* and other relevant federal anti-discrimination legislation.

Other initiatives undertaken by the Department which ensure that equality considerations are taken into account in the formulation of policy and legislation include:

- The *Statute Law Amendment Act*, adopted in 1985, amended 189 provisions in 60 statutes to ensure compliance with the Charter. Statutes continue to be reviewed for Charter compliance.

- Departmental counsel review all new policy initiatives for Charter consistency before they are submitted to Cabinet for consideration.

The Public Law Research and Education Fund (formerly the Human Rights Law Fund) provides, in part, financial assistance to a number of individuals and groups to carry out research and otherwise advance the law in relation to the Charter.

The Department has established a working group on gender equality which ensure that gender equality issues are addressed at all levels and in all aspects of the work of the Department.

The Minister of Justice also advises other ministers on their legislative and policy initiatives to ensure compliance with the Charter and the *Canadian Human Rights Act*.

In addition to the initiatives that fall directly within the responsibility of the Minister of Justice, the Minister has collaborated with provincial and territorial counterparts through the establishment of the Federal-Provincial-Territorial Working Group of Attorneys General Officials on Gender Equality in the Canadian Justice System in 1990. The Working Group, which was co-chaired by New Brunswick and the federal government, submitted its final report including proposals for immediate action to ministers at their meeting held on May 28, 1993. All Attorneys General and Ministers of Justice supported the report in principle. It was also agreed that collaborative work in the area of gender equality would continue and that gender equality would remain on the agenda for future meetings. The final report was publicly released on July 5, 1993.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 3

That the federal government make discrimination based on grounds such as race, age, sexual orientation and disability an offence.

Currently, the federal government prohibits discrimination under the *Canadian Human Rights Act* and the Charter, neither of which make such discrimination a criminal offence.

The *Canadian Human Rights Act* prohibits discrimination in employment and in the provision of goods, services, facilities and accommodation on the basis of race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability and conviction for which a pardon has been granted. Amendments to the Act, introduced into Parliament on December 10, 1992, seek to add sexual orientation as a prohibited ground of discrimination.

The Charter protects against discrimination, including discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The Department is presently reviewing existing legislation and proposed policy and legislative options relating to multicultural and race relations in the Canadian justice system. The purpose of this review is to identify better ways to prevent and respond to behaviours motivated by hate and/or bias within the context of criminal and human rights legislation. This review is being undertaken in close collaboration with other federal departments as well as with provincial and territorial counterparts and will include consultation with concerned community groups.

Recommendation 4

> **In order to bring federal and provincial human rights legislation into compliance with the *Charter of Rights and Freedoms*, amendments should immediately be made to expressly prohibit discrimination on the basis of sexual orientation and to strengthen protection for people with disabilities.**

The *Canadian Human Rights Act* currently prohibits discrimination on the basis of physical or mental disability. Amendments to the Act, introduced on December 10, 1992, would add a duty of accommodation of the needs of individuals and groups protected by the Act, including people with disabilities. These amendments would also expressly add sexual orientation as a prohibited ground of discrimination.

As well, the right to equality and protection from discrimination guaranteed by section 15 of the Charter has been interpreted by some courts as including sexual orientation as an analogous prohibited ground of discrimination.

The Department is currently assisting the Department of Human Resources and Labour with a review of federal legislation. This comprehensive review is an important part of the National Strategy for the Integration of Persons with Disabilities. The National Strategy is a five-year, $158 million initiative coordinated by Human Resources and Labour and involves ten federal departments and agencies. The wide range of initiatives under the National Strategy are designed to achieve the goals of equal access, economic integration and effective participation.

Bill C-78, *An Act to amend certain Acts with respect to persons with disabilities* received Royal Assent on June 18, 1992. This bill amended six laws at one time to improve the lives of persons with disabilities in a number of priority areas:

full access to the electoral process;

- better access to Canada's national transportation system;
- acquiring citizenship;
- testifying in criminal courts;
- improved access to the broadcasting system; and
- access in alternative formats to government publications, records and personal information under the control of the government.

Bill C-78 and associated regulatory and policy initiatives represent one step in a long-term process of legislative reform.

This recommendation has also been brought to the attention of the Department of Human Resources and Labour and the provincial and territorial governments.

Recommendation 5

> **Heterosexist bias and homophobia must be eliminated from the justice system and laws entrenching heterosexual privileges must be amended (tax law, family law and so on) including expanding the definition of "spouse" and "family" to include common law and same-sex partners and family units.**

Existing definitions of "spouse" and "family" and differences in treatment based on those definitions and related ones, are currently being studied as part of the Department's Marital and Family Status Initiative.

This Initiative is part of an interdepartmental study of all federal legislation, regulations and policies which make distinctions on the basis of marital and/or family status, including the issue of common law spouses and same-sex partners.

This recommendation has also been brought to the attention of the Departments of Finance and Human Resources and Labour and the provincial and territorial governments.

ABORIGINAL JUSTICE SYSTEM

Recommendation 6

Be it resolved that a separate aboriginal justice system be established and run by Aboriginal people to meet the needs of Aboriginal women and all Aboriginal peoples. This must be seen in the context of self-government and the constitutional process. The jurisdiction for such a separate system is already recognised and affirmed under section 35. Direct action to implement as determined by Aboriginal people must be commenced. The federal government should assist with setting up the institutions required for a separate Aboriginal justice system.

The Department is committed to improving the delivery of justice to Aboriginal peoples. In pursuit of this goal, the Department has established a discretionary contribution fund called the "Aboriginal Justice Fund". This fund provides money for the development of programs and services, public legal education, cross-cultural training, research studies related to Aboriginal justice issues and consultations undertaken by national Aboriginal organizations.

To date, approximately 60 projects have been funded and a further 80 projects are under review. Two of the approved projects were submitted by the Native Women's Association of Canada and Pauktuutit (Inuit Women's Association) and will enable these associations to consult with their membership and undertake research on Aboriginal women's concerns and needs with respect to justice-related issues.

As well, together with Public Security Canada and Indian and Northern Affairs, the Department funded the Cree Justice Initiative. The Initiative will examine all facets of the administration of justice in the northern Quebec Cree communities and will propose new policies and programs that are designed to meet the particular needs of the James Bay Cree. The project consists of three phases:

i) research undertaken by the Department in nine James Bay communities that examines the nature of justice problems and responses to these problems, policing and dispute resolution as well as the role of traditional Cree beliefs and practices of social control (completed 1991);

ii) focusing the research findings and recommendations at the community level; and

iii) development of pilot projects in the nine James Bay Cree communities.

As well, **Bill C-90**, *An Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof*, proposes that all available and reasonable alternatives to imprisonment are to be considered in sentencing, particularly in relation to Aboriginal offenders. This provision recognizes the unique cultures of Aboriginal peoples while remaining consistent with the overall lines of the criminal law. This provision is also viewed as a significant step towards encouraging interested Aboriginal communities to become more actively involved in administering criminal justice in their communities.

This recommendation has also been brought to the attention of the Department of Public Security and Indian and Northern Affairs Canada.

Recommendation 7

Cases involving Aboriginal offenders should be heard by an Aboriginal tribunal.

The Department has recently approved funding applications to the Aboriginal Justice Fund by several Aboriginal groups. These projects will design alternative justice models that adopt a holistic approach and reflect Aboriginal values and traditions.

The Aboriginal Justice Fund has also been used to support diversion projects which seek to divert some Aboriginal offenders away from the criminal court system and into community-based alternatives. Most of these diversion projects involve the use of a Panel composed of members of the community and Elders. The Panel determines the appropriate response to each offence. The Department continues to explore the extent to which these alternative community approaches can serve the needs of all members of the Aboriginal community, particularly Aboriginal women.

This recommendation has also been brought to the attention of Indian and Northern Affairs Canada, the Department of Public Security and to the provincial and territorial governments.

CRIMINAL LAW

VIOLENCE AGAINST WOMEN, SPOUSAL/PARTNER ABUSE

Recommendation 8

> **The federal government must accept the concept of zero tolerance of violence and enact legislation to see that zero tolerance is reflected in the justice system. This legislation must provide guidelines that will assist with achieving the goal of zero tolerance.**

The Government is committed to the principle of zero tolerance of violence against women. In order to find effective solutions to this problem, we must prevent violence and not just punish after the fact. Avoiding repeated violence is also important and requires a case-by-case response with graduated measures.

To this end, the Department is working with several federal departments, including the Department of Health on the Family Violence Initiative and Status of Women on the federal response to the final report of the Canadian Panel on Violence Against Women. The Panel's final report was released on July 29, 1993. The Department will be reviewing the report's recommendations relating to the justice system.

As well, the Minister of Justice introduced **Bill C-126**, *An Act to amend the Criminal Code and the Young Offenders Act*, into Parliament on April 27, 1993. It received Royal Assent on June 23, 1993. **Bill C-126** contains changes to the *Criminal Code* that promote more effective responses by the justice system to child abuse, violence against women and violence within the family.

This recommendation has also been brought to the attention of the Departments of Public Security, Health, and Status of Women Canada.

Recommendation 9

> **Urgent recognition must be given to the serious problem of women who die at the hands of their abusers, and in particular, the pattern of violence and harassment which often precedes the homicidal act. The Minister of Justice should table this at the forthcoming meeting of federal-provincial-territorial Ministers responsible for justice as an item for priority action. Officials should be directed forthwith to search for alternative, creative and effective solutions for the protection of women in such situations including education in schools, more effective**

restraining orders, the use of dangerous offender legislation and the use of innovative treatment programs.

As indicated in the response to the previous recommendation, on June 23, 1993, **Bill C-126** received Royal Assent. **Bill C-126** creates a new offence of criminal harassment that will prohibit anyone, who knowingly harasses a person or is reckless as to whether harassment ensues, from repeatedly communicating with or following another person or anyone known to that person, or engaging in other conduct, if any of these conducts causes the other person reasonably to fear for their safety or the safety of anyone known to them. The penalty under this new provision will be up to a maximum of five years imprisonment. This represents an increase in the penalty from the current *Criminal Code* provision, section 423, which prohibits intimidation and is a summary conviction offence.

Bill C-126 also amends section 515 of the *Criminal Code* regarding bail conditions that may be imposed upon the release of a person who has been taken into custody. The amendments enable a judge to impose the condition that the accused not go near a particular place and, in cases that involve physical violence, including criminal harassment, that the accused not communicate with any witness, including the victim.

In addition, as part of its continuing research in this area, the Department has reviewed the literature on dangerous offenders. The results of this review are currently available as a technical report. Research is also planned on the use and effectiveness of restraining orders and peace bonds.

The Department recently completed, in collaboration with the Departments of Public Security and Health, an evaluation of an innovative treatment program in Prince Edward Island entitled "Turning Point". Turning Point is an interagency program for men who have been assaultive toward their partners and also provides support to the partners of these men.

The Department has also initiated a program of research in the area of "Charter Literacy" which addresses as part of its study, attitudes and behaviour of youth towards women and educational factors likely to influence those attitudes and behaviour.

This recommendation has also been brought to the attention of the Departments of Public Security, Health, and Status of Women Canada.

Recommendation 10

Gun control legislation should be made stronger. Women who are murdered in their homes are shot with hunting rifles. Gun storage should be required away from homes and cities.

Significant statutory, regulatory and administrative changes have been introduced during recent years which do strengthen gun control legislation.

It is not feasible to require the storage of all firearms in public or non-residential locations for reasons of utility, public safety and costs. Nonetheless, several recent changes have been made to help prevent the misuse of firearms in the home. These changes include the introduction of comprehensive regulations dealing with the secure storage, display, handling and transportation of firearms as well as statutory changes which are intended to both authorize and encourage more effective "community checks" before an individual is allowed access to firearms of any kind.

Amendments to the *Criminal Code* require all applicants for a Firearms Acquisition Certificate (FAC) to provide the names of two personal references who have known the applicant for at least three years. They specifically authorize police to interview family members, social workers, neighbours or others who, in their opinion, may be able to furnish information about violent behaviour including violence in the home. The effectiveness of these changes, which are just now being implemented, will be monitored over the coming years.

In addition to providing for screening of those who would wish to acquire firearms, the *Criminal Code* contains provisions which can be used to remove firearms from persons who present a risk to themselves or others and to prevent them from acquiring other firearms in the future. Efforts are presently underway to inform the police of their powers of search and seizure in respect of firearms and the way to seek prohibition orders from the courts even where charges are not contemplated.

This recommendation has also been brought to the attention of the Departments of Public Security and Status of Women Canada and the provincial and territorial governments.

Recommendation 11

The federal government should make spousal abuse a distinct criminal offence and distinguish it from the offence of assault.

The *Criminal Code* currently makes spousal abuse an offence under several provisions including assault, intimidation, uttering threats and sexual assault. The creation of a separate spousal abuse offence has been considered by the Department but is not recommended as it would likely "ghettoize" domestic violence and could possibly result in lesser penalties than those that are currently available under the *Criminal Code*.

Recommendation 12

National data is needed regarding the sentences given to men who batter their wives as compared to men who are sentenced for other assaults. Research should be conducted and should include an examination of those factors considered by judges when sentencing batterers as opposed to men involved in other assaults.

Together with the Manitoba Law Foundation, the Department is involved in examining the operations and effectiveness of the Winnipeg Family Violence Court. This is a large court monitoring and tracking study that will provide some of the recommended sentencing data.

In addition, the Department is involved in a joint venture with the Department of Public Security and the Manitoba Department of Justice in the Manitoba Spouse Abuse Research Project. This project examines the manner in which reports of spousal abuse are handled in the criminal justice and social service systems in selected sites in Manitoba. A special emphasis has been placed on the effectiveness of the charging policy in the processing of spousal assault cases. Sentencing data will also be collected.

Although the Adult Criminal Court Survey database at the Canadian Centre for Justice Statistics provides recent sentencing data for Nova Scotia, Quebec and the Yukon Territory, a complete national sentencing database does not presently exist. As well, it is statistically difficult to distinguish between common assault and domestic assault in existing offender-based databases since domestic violence is not a separate offence under the *Criminal Code*.

The current homicide survey conducted by the Canadian Centre for Justice Statistics would allow for tracking of spousal homicides from the initial report to the police to the final disposition. The Revised Uniform Crime Reporting (UCR) Survey could be used to identify the relationship between the victim and accused but is currently not national in scope.

The Department supports the development of a national sentencing database through the Canadian Centre for Justice Statistics.

This recommendation has also been brought to the attention of the Canadian Centre for Justice Statistics and the Department of Public Security.

Recommendation 13

> **In family violence cases, where an offender represents himself, the offender should not be allowed to cross-examine the victim.**

Child victims of sexual assault often express an overwhelming fear of seeing the accused in the courtroom. This fear is heightened in the case where the accused is self-represented and cross-examines the child complainant. **Bill C-126**, *An Act to amend the Criminal Code and Young Offenders Act*, adds a provision to the *Criminal Code* to permit a judge to appoint counsel for such an accused for the sole purpose of conducting the cross-examination of any child witness, including the victim.

Recommendation 14

> **The Department of Justice must investigate the current potential under our present laws to remove from their homes, men who assault their partners. However, the safety of women and children must remain the highest priority and women should retain the option of going to a transition house if they wish.**

As indicated in the response to recommendation 9, **Bill C-126** amends section 515 of the *Criminal Code* regarding bail conditions that may be imposed upon the release of a person who has been taken into custody. The amendments enable a judge to impose the condition that the accused not go near a particular place and, in family violence cases, this could include prohibiting the accused from going near the family residence.

Also as previously noted, research is planned on the use and effectiveness of restraining orders and peace bonds. In addition, these issues will be part of a larger research project on domestic violence in the Yukon and Northwest Territories.

This recommendation has also been brought to the attention of the Department of Health, Status of Women Canada, and the provincial and territorial governments.

Recommendation 15

> **When immigrant women who are on visas are battered, they are unlikely to protest because their marriage sponsorship can be withdrawn. While landed immigrant status can be granted on compassionate grounds, this does not always happen. Research should be done which will reveal the pattern of decision-making of immigration officers when battery or some other physical or psychological abuse is occurring to particularly vulnerable immigrant women.**

The Department is conducting preliminary research on justice issues affecting immigrant women and their needs for legal information and assistance.

This recommendation has also been brought to the attention of the Departments of Human Resources and Labour, Canadian Heritage, Public Security and Status of Women Canada.

Recommendation 16

> **Sexual mutilation of children is taking place in Canada. A review should be undertaken to determine whether current laws adequately address this problem, and to ascertain whether there are other steps which should be taken to prevent this abuse.**

The Department has examined the issue of female genital mutilation and has concluded that several provisions in the *Criminal Code*, including assault, adequately prohibit this practice in Canada. As well, **Bill C-126** contains amendments to the *Criminal Code* that would prohibit anyone from removing a child from Canada with the intention of committing an act of violence or sexual abuse against a child.

The Department also participates in a committee led by the Department of Health which is examining other possible preventative measures including public education and information materials on this issue.

This recommendation has also been brought to the attention of the Departments of Health, Canadian Heritage and the provincial and territorial governments.

Recommendation 17

Recognizing that people with disabilities are substantially more vulnerable to abuse than non-disabled members of our population and that the majority of the victims of abuse are women with disabilities:

It is resolved that:

i) **changes should be made to the *Canada Evidence Act* so that people with disabilities who have difficulty communicating, being understood, or who have a mental disability, be given greater opportunity to give evidence and be provided with support services of their own choice such as interpreters and attendants; and**

ii) **people with disabilities should be given the opportunity to testify behind a screen, and to give evidence on videotape for cross-examination later in the courtroom setting.**

The Department acknowledges the need to make the justice system more accessible for persons with disabilities.

The Department is committed to reviewing various provisions in the *Canada Evidence Act* to ensure the accommodation and full integration of persons with disabilities in the criminal justice system. If appropriate, legislative amendments will be proposed after full consultation with provincial Attorneys General and all interested community organizations.

The recommendation that persons with disabilities be given the opportunity to testify behind a screen has in fact already been realized. The amendment to subsection 486(2.1) of the *Criminal Code* allows, in cases involving certain sexual offences, evidence to be given behind a screen or outside the courtroom by a person whose mental or physical disability, coupled with the trauma of testifying, renders her communication of evidence difficult.

As for the recommendation concerning videotaped evidence, the constitutionality of the use of videotape for evidentiary purposes, as provided for in section 715.1 of the *Criminal Code* (with respect to child witnesses), was recently before the Supreme Court of Canada. The Court upheld the constitutional validity of section 715.1.

SEXUAL ASSAULT

Recommendation 18

If the Supreme Court of Canada strikes down the rape shield provisions in the *Criminal Code*, the federal government should be prepared to introduce new legislation immediately to protect women survivors of sexual assault from past sexual history examinations and that the recommendations proposed by the Manitoba Association of Women and the Law (MAWL) expanding the rape shield laws be adopted.

RECOMMENDATIONS ON EVIDENTIARY RULES AND PUBLICITY BANS

Concerning victim sexual history examination restrictions, MAWL recommends:

1. **Maintain mandatory shield laws, as they are the only way to prevent anti-victim bias and ensure a fair courtroom experience at the time the decision is made to report an assault.**

2. **Extend shield protection in s.276 to prevent examination of the victim's sexual history with the accused. This will minimize anti-victim bias and encourage reporting in cases of "date rape".**

3. **Amend shield law s.276(1) so as to clarify that "sexual activity" of the victim does not include her sexual assault. This can be done by uniformly using the term "sexual contact" when referring to the alleged sexual assault. Such an amendment should fairly confine injury rebuttal evidence to that which is necessary to identify the assailant, and prevent the assumption implied by subs.276(1)(c) that witnessing a sexual assault of the victim is grounds for assuming consent.**

4. **Amend shield law exception subs.276(1)(c) so as to only apply to similar fact sexual activity between the victim and the accused. This is the only situation in which a bias-free, reasonable inference of consent can be made.**

MAWL recommends: that the Minister of Justice issue a directive to all Crown attorneys to request a publicity ban of the victim's name in sexual assault cases as soon as possible.

On August 22, 1991, the Supreme Court of Canada struck down the "rape shield" provisions (sections 276 and 277) in the *Criminal Code* on the basis that they infringed an accused's

Charter rights under sections 7 (the right to life, liberty and security of the person and the right not to be deprived of this right except in accordance with the principles of fundamental justice) and 11(d) (the right to be presumed innocent until proven guilty). On December 12, 1991, the Minister of Justice introduced into Parliament **Bill C-49**, *An Act to Amend the Criminal Code (sexual assault)*. **Bill C-49** received Royal Assent on June 23, 1992, and was proclaimed into force on August 15, 1992.

These amendments provide strict guidelines for determining the admissibility of evidence of a sexual assault victim's sexual activity. For example, they provide that evidence that the complainant engaged in past sexual activity, with any person, is not admissible to support an inference that the complainant is more likely to have consented to the sexual activity at issue or is less worthy of belief. As well, the amendments state that evidence of the complainant's past sexual activity, with any person, is not admissible unless it possesses probative value which is not substantially outweighed by the danger of unfair prejudice to the trial process.

Bill C-49 also sets out the procedure that must be followed before any evidence of this type may be admissible.

The amendments also define "consent" as the voluntary agreement of the complainant to engage in the sexual activity in question. For greater certainty, subsection 273.1(2) sets out specific situations where there is no consent in law and expressly provides that there is no consent where the accused abuses a position of trust, power or authority.

Recommendation 19

> **The honest belief in the defence of consent should be amended to require a reasonable belief. Consent should be determined according to an objective standard and, in particular, drunkenness should not be taken into account in determining consent. There should be some type of onus on the accused to inquire as to the woman's consent.**

Bill C-49 restricts the defence of honest but mistaken belief in consent for sexual assault provisions to those situations where the complainant did not, in fact, consent. Section 273.2 provides that an honest but mistaken belief in consent is not a defence where the accused's belief is based upon self-induced intoxication, recklessness or wilful blindness. In addition, this defence is not available when the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting.

Recommendation 20

The *Criminal Code* should be amended to increase the maximum sentences for sexual assault to reflect the seriousness of the crime.

The *Criminal Code* currently provides for three categories of sexual assault: sexual assault (section 271); sexual assault with a weapon or with threats to a third party or that causes bodily harm (section 272); and aggravated sexual assault (section 273).

The first level of sexual assault can be tried as either a summary or an indictable offence (a "hybrid" offence) and carries a maximum sentence of 10 years imprisonment if prosecuted as an indictable offence. The second level is an indictable offence and carries a maximum sentence of 14 years imprisonment. The third level of sexual assault is also an indictable offence and carries a maximum sentence of imprisonment for life.

An examination of the proportion of charges in each of the three categories reveals an increasing trend towards classification under the first category, section 271. In 1983, following the introduction of the new classification of sexual assault offences, 88% of reported sexual assaults were classified under section 271; in 1991, 96% of all reported sexual offences were classified under section 271.

The existing provisions and progressive maximum sentences for the three levels of sexual assault do reflect the seriousness of the crime.

Recommendation 21

As an interim measure, the Minister of Justice should immediately introduce an amendment to the *Criminal Code* to include as aggravated sexual assault cases where the assault is committed by a person in a position of trust or authority.

Aggravated sexual assault is a specific category of sexual assault that involves the wounding, maiming, disfigurement or endangerment of the life of the complainant (subsection 273(1)). Accordingly, the distinguishing characteristic of an "aggravated" sexual assault is the physical harm to the complainant and not the relationship between the accused and the complainant.

However, by virtue of **Bill C-49**, the relationship of the accused to the complainant is relevant with respect to the availability of the defence of consent. **Bill C-49** amendments provide (at paragraph 273.1(2)(c)) that there is no defence of consent to sexual activity for the purposes of sections 271 (first level of sexual assault), 272 (second level - sexual assault

with a weapon) or 273 (aggravated assault), where the sexual activity results from an abuse of a position of trust, authority or power by the accused.

PROSTITUTION

Recommendation 22

> **The *Criminal Code* provisions regarding prostitution should be repealed. Their effect is to criminalize women because they are poor and live in a sexist society.**

Prostitution itself is not illegal in Canada. However, the *Criminal Code* creates three categories of offences of prostitution-related activities : offences relating to bawdy-houses; offences referred to collectively as "procuring" or "living on the avails of prostitution"; and the offence of communicating for the purpose of prostitution.

A federal-provincial-territorial working group on prostitution was established in the fall of 1992 to develop options for addressing prostitution under existing or new legislation. The working group will also undertake appropriate consultations in order to determine the appropriate role for legislation and the justice system in addressing prostitution.

CHILD PORNOGRAPHY

Recommendation 23

> **Canada should have laws against child pornography. The U.S. is tightening restrictions on child pornography; steps should be taken to ensure that the industry does not move across the border.**

On June 23, 1993, **Bill C-128**, *An Act to amend the Criminal Code and the Customs Tariff (child pornography and corrupting morals)*, received Royal Assent. In order to better protect children from the harmful effects of child sexual abuse and exploitation, **Bill C-128** amends the *Criminal Code* to specifically prohibit child pornography. The definition of child pornography covers visual materials that involve or promote the sexual use and exploitation of persons under 18 years old, as well as written materials that advocate sexual activity with children under the age of 18 years that would be an offence under the existing provisions of the *Criminal Code*.

In addition, new offences have been created to prohibit the possession and importation of child pornography. Maximum sentences have been increased with respect to production, sale, and distribution of child pornography from two to ten years.

RACISM

Recommendation 24

Any feminist analysis must be informed by the recognition that gender identity is predetermined by many factors and cannot be determined exclusive of race, culture, ethnicity, class, sexual orientation, ability, age or language. The legal process denies and fails to recognise the existence of racism and racial discrimination as pervasive material realities in women's daily lives.

Therefore we recommend:

(i) That the *Criminal Code* be amended to provide:

a) that acts of racism be deemed to be aggravating factors in the commission of any crime;

b) that the commission of a criminal act in response to an act of racism be mitigated by the experience of that act of racism;

(ii) That any governmental initiatives taken in the area of racism be undertaken only after meaningful participation of the affected communities.

The Department of Justice acknowledges that race, culture, ethnicity, socio-economic status, ability, sexual orientation, age or language may interact to compound the disadvantages experienced by many women in their dealings with the justice system.

In recognition of the existence of racism and its effects on the lives of members of ethno-cultural and racial minorities in Canada and all Canadians, the Department of Justice is working with federal and provincial/territorial colleagues to review existing legislation, policies, programs, and procedures. This working group will make recommendations as to specific ways to ensure that the justice system provides equal access and fair treatment to members of all ethno-cultural and visible minority groups in Canada. This work is to be undertaken in full cooperation with concerned non-governmental organizations.

This recommendation has also been brought to the attention of the Departments of Public Security and Canadian Heritage and the provincial and territorial governments.

Recommendation 25

> **Racism and sexism are linked in their aspects of dominance, power and cruelty, and therefore it ought to be a principle of sentencing, statutorily enacted, that crimes which are race or gender motivated are deserving of greater punishment.**

Although racism is currently considered as an aggravating factor by the courts with respect to sentencing, the Department will take this recommendation into consideration as part of the federal-provincial-territorial review of the impact of racism and sexism on the justice system to ensure equal access and fair treatment to members of all ethno-cultural and visible minority groups in Canada.

This recommendation has also been brought to the attention of the provincial and territorial governments.

CRIMINAL PROCEDURE AND PRACTICE

Recommendation 26

> **Improving the treatment of witnesses should be considered a priority. The case of Kitty Nowdluk Reynolds highlights the negligent treatment given to witnesses in the justice system. Witnesses should be treated with respect, informed of events which affect them, and protected effectively when they are vulnerable to repeated violence, abuse, or psychological harm.**

The Department supports initiatives that will improve the treatment of victim witnesses. The Department has recently developed a Spousal Assault Prosecution policy and is in the process of formulating a policy regarding victims of violent crime for use by federal Crown prosecutors. These policies will ensure that victim witnesses are informed not only of support services but also of the court process, the role of the witness in the proceedings and of any bail conditions imposed on the accused.

With respect to reluctant witnesses, the Spousal Assault Prosecution policy directs federal Crown counsel to first encourage the attendance of the witness without resort to a bench warrant or material witness warrant. In smaller northern communities, this can often be

facilitated by having police officers or social services workers speak with the victim and advise her of the consequences of her action.

If an arrest is required, the policy directs Crown counsel to consult with police to determine whether there are exceptional and compelling circumstances requiring detention of the victim; if so, counsel must advise the Assistant Deputy Attorney General of the detention as soon as possible thereby ensuring a review at a senior level.

Similar provisions will be included in the policy on victims of violent crime. In addition, special emphasis will be placed on keeping witnesses informed of developments as the criminal proceedings progress, including final disposition.

This recommendation has also been brought to the attention of the Department of Public Security and the provincial and territorial governments.

Recommendation 27

> **Victims of sexual abuse and assault should be protected throughout the court process. Testimony from these victims should be obtained in the least obtrusive manner exercising sensitivity to the very real secondary victimization imposed by the court process. Presentation of evidence through innovative and alternative technology, such as videotape and screens, should be encouraged through pilot projects in selected sites with appropriate program evaluation.**

The Department supports this recommendation. The Department is actively involved in examining these options through family violence demonstration projects and has provided financial assistance for the use of screens, videotapes and closed circuit television. The Department plans to support demonstration and research projects regarding the new rape shield law, **Bill C-49**.

The Department is also developing a prosecution policy relating to victims of violent crime that will encourage the use of alternative technology and other ways to assist the witness in giving evidence. To date, the use of screens and closed circuit television under subsection 486(2.1) of the *Criminal Code* and videotape under section 715.1 are limited to sexual offences and complainants under the age of 18 years. As indicated in the response to recommendation 17, the Supreme Court of Canada recently upheld the constitutionality of section 715.1.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 28

Uniform enforcement and prosecution policies should be developed in all federal-provincial-territorial jurisdictions to recognize that women victims who refuse to testify do so for a variety of complex reasons, which may have nothing to do with contempt for judicial proceedings, and to ensure that the victimized woman is not doubly penalized.

The Department agrees that victims of violence should not be doubly victimized by prosecuting them for refusing to testify. The Department's new policy on Spousal Assault Prosecutions recognizes that spousal assault victims may be reluctant to testify for a number of complex reasons. The policy provides that Crown counsel should not resort to contempt of court proceedings absent rare and compelling reasons and only with the prior approval of the Regional Director who is to consult with the Assistant Deputy Attorney General (Criminal Law) before charges are laid.

Similar guidelines will be included in the policy on victims of violent crime that is currently being developed by the Department for use by federal Crown prosecutors.

This recommendation has also been brought to the attention of the provincial and territorial governments, judicial councils and judicial education organizations.

Recommendation 29

Cases of sexual and physical assault should be fast-tracked through the courts with no tolerance for unnecessary delays.

The victims of violent crime policy, which the Department is currently developing, will encourage federal Crown counsel to keep delays in court proceedings to a minimum, particularly where the accused is a member of the victim's family or where the victim is a child.

As well, the Department has provided financial support for a demonstration project for fast tracking family violence cases in Manitoba.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 30

Sexual assault teams should be established in all jurisdictions. The teams should include: Crown prosecutor, physician, police/RCMP, community support worker/advocate, and should be sensitive to the impact of the assault on the victim. The teams would provide support during the court process and the ongoing healing process.

The Department is currently supporting this recommendation under the Family Violence Initiative. Pilot projects currently being funded under this Initiative include the formation of multi-discipline teams, joint training and evaluation of teams.

A sexual assault team approach has been established in the Northwest Territories where a Child Abuse Protocol governs the relationship between the Department of Justice, the RCMP, Social Services and other departments vis-a-vis these cases. A good informal working relationship exists between these agencies in the Yukon.

With respect to the appropriate role of Crown counsel in providing support during the court process and the ongoing healing process, it is important for Crown counsel to explain the role of the Crown to the victim, and in the course of so doing, to make it clear that Crown counsel is not the victim's lawyer in the proceedings. It is appropriate for Crown counsel to speak to the victim to see if she is aware of available community services.

In individual cases, on the basis of the facts and the background of the victim, Crown counsel may think it appropriate to refer the victim to an available general community services group, where available, for their assessment of whether special assistance would be helpful to the victim. In general, however, Crown counsel are necessarily cautious in referring a victim to a community service which provides a specific type of support service as that presupposes both the existence of and an understanding by Crown counsel of the precise nature of any problem.

This recommendation has also been brought to the attention of the Department of Public Security, the provincial and territorial governments and non-governmental organizations that provide services for victims of sexual assault.

Recommendation 31

Prosecutors should be required to obtain victim impact statements and community impact statements in all cases and should bring the victims' concerns to the attention of the judge during both, the trial and sentencing hearing.

The *Criminal Code* currently permits the court to consider a victim impact statement for the purpose of determining the appropriate sentence to impose on an offender. Victims are not required to prepare or submit a victim impact statement. As well, victim impact statement programs vary from jurisdiction to jurisdiction.

The Department has conducted significant research on victim impact statements to identify implementation issues and to assess different modes of delivery. However, actual implementation of victim impact statement models generally falls within the responsibility of provincial governments.

As officers of the court, federal Crown counsel often bring the concerns of the victim to the attention of the judge when speaking to sentence. As well, where they are available, Crown counsel use victim impact statements at the sentencing stage. **Bill C-90** proposes to amend the *Criminal Code* to provide that where a victim impact statement has been prepared, the court must consider it.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 32

> **The *Criminal Code* should be amended to abolish preliminary hearings provided that there is mandatory full disclosure by the crown and police with sanctions for lack of disclosure. Pending the amendment of the *Criminal Code*, provincial and territorial Justice ministers should proceed by direct indictment in cases of violence against the person.**

The Department recognizes that the preliminary inquiry is an expensive and time-consuming procedure. It can needlessly inconvenience and sometimes traumatize victims and witnesses. The Federal-Provincial-Territorial Working Group on Criminal Procedure is currently studying the possibility of reforming the preliminary inquiry. Recent developments requiring mandatory and timely disclosure suggest that significant reform is possible. The Department has prepared a comprehensive discussion document and proposes to use it as a basis for public discussions in the near future.

As well, following the Supreme Court of Canada's decision in *Stinchcombe*, the Attorney General of Canada recently released guidelines to ensure that federal Crown prosecutors make disclosure in a fair, principled and timely manner.

With respect to proceeding by direct indictment pending any legislative amendments, the Attorney General of Canada has recently approved a policy providing for direct indictments

to be used only in exceptional circumstances involving serious violations of the law. The use of a direct indictment is therefore an extraordinary measure. It would not be in the public interest to use direct indictments automatically for certain kinds of offences to force an amendment of the *Criminal Code*.

This recommendation has also been brought to the attention of the provincial and territorial governments.

SENTENCING

Recommendation 33

Believing that incarceration is overused in Canada, the sentencing of offenders should be based on the principles of prevention, education, and community involvement and should reflect appropriateness to the specific situation with due regard to the needs of the offender and of the victim. Government funding for enhanced community resources should be made available.

Bill C-90, *An Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof*, was introduced into Parliament on June 23, 1992. It includes a statement of the purposes and principles of sentencing. It states that the fundamental purpose of sentencing is to maintain a "just, peaceful and safe society" by imposing sanctions that will achieve certain specified objectives including repairing the harm done to victims or to the community and the rehabilitation of the offender. It also directs judges, in all cases, to consider alternatives to imprisonment.

The Department is currently consulting with the provinces, territories and community groups on "intermediate" sanctions. It is hoped that these consultations will suggest viable options on how to best allocate available resources on the use of intermediate sanctions.

This recommendation has also been brought to the attention of the Department of Public Security and the provincial and territorial governments.

Recommendation 34

> **Certain kinds of offenses and/or offenders require innovative approaches to sentencing. For example, the sentence imposed could be made by a court having the benefit of a community-based panel whose input could be requested by counsel or ordered by the court. This panel would provide access to the community and would make the judicial system more responsive. "Community involvement" should include participation by social workers, RCMP, health workers and band members.**

As indicated, **Bill C-90** proposes the use of intermediate sanctions in accordance with stated purposes and principles of sentencing. Preliminary consultations on **Bill C-90** indicate that not all communities are adequately organized to deliver the type of community-participation suggested by this recommendation.

Community involvement in sentencing is also of particular interest in Aboriginal communities where pilot projects are being tested involving the use of panels consisting of community members and Elders. The Attorney General of Canada is currently supporting such initiatives in the Northwest and Yukon Territories. For example, in the Yukon, the use of "circle" sentencing hearings provides the community with an opportunity to participate in the sentencing process. The circle approach to sentencing allows the participation of social workers, police, health workers, band members as well as elders, the Crown, defence counsel and the judge.

As well, the Aboriginal Justice Fund is funding diversion projects which seek to divert some Aboriginal offenders away from the criminal court system to be dealt with by community alternatives.

This recommendation has also been brought to the attention of the Department of Public Security and the provincial and territorial governments.

Recommendation 35

> **Sentencing should be sensitive to the needs and realities of visible minorities and these groups should be included in the decision-making process regarding sentencing.**

The needs and realities of visible minorities and other disadvantaged groups are currently being addressed by the Department through such projects as the Departmental Initiative on

Multiculturalism and Justice, the Bill C-90 consultations, and the Yukon and Northwest Territories initiatives and through cross-cultural training of Crown prosecutors and judges.

The Department has, for example, funded cross-cultural education for judges and Crown prosecutors. One project submitted by the Ontario Family Law Judges Association received funding to undertake a two-day cross-cultural training conference to sensitize judges to Aboriginal issues, particularly regarding First Nations' Cultures and traditional values. The Department also contributes to similar judicial education projects undertaken by the National Judicial Institute and by the Western Judicial Education Centre.

This recommendation has also been brought to the attention of the Department of Public Security and the provincial and territorial governments.

Recommendation 36

> **The feasibility of more public disclosure should be explored as an example of a non-adversarial approach to sentencing. For example, the victim could be present during discussions between the Crown and defence wherein information is being disclosed. Victim impact statements could be considered. The victim could be present during "plea bargaining" discussions.**

The Department supports exploring the feasibility of greater victim involvement at two stages: in the presence of a judge in court and at pre-trial. The principle of openness during plea negotiations is addressed in the new Crown Counsel Policy Manual and provides that, with respect to plea and sentence negotiations:

> Crown counsel should, where reasonably possible, solicit and weigh the views of those involved in the Crown's case - in particular, the victim (where there is one) and the investigating agency. However, after consultation, the final responsibility for assessing the appropriateness of the plea agreement rests with Crown counsel. If a plea agreement is reached, counsel should try to ensure that victims and investigating agencies understand the substance of the agreement and the reasoning behind it. The scope of the discussion may, in unusual circumstances, have to be limited by privacy or secrecy considerations in the accused's interest or in the general public interest.

This recommendation has also been brought to the attention of the Department of Public Security and the provincial and territorial governments.

Recommendation 37

Victim-offender reconciliation programs should be examined as an alternative to the adversarial system.

The Department supports this recommendation. **Bill C-90** proposes a regime of alternate measures for adult offenders. Provincial experience with alternative measures under the *Young Offenders Act* has shown that diversion, in the proper case, has the potential to provide greater benefit to the offender and to society. Similarly, the experience of British Columbia confirms that adult diversion programs can make the justice system more effective.

As well, most of the diversion projects funded by the Aboriginal Justice Fund involve victim-offender reconciliation. Additional project funding to examine and develop the use of alternatives to the justice system is proposed for alternative dispute resolution.

The Department is examining victim-offender reconciliation programs as an alternative to the adversarial process.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 38

The use of sentencing options which already exist within the *Criminal Code* must be actively encouraged across Canada as viable alternatives to incarceration and innovations to the Court process (e.g. fine options, community service orders, court mediation, adult diversion). Government funding should be made available to support the community organizations which deliver these options.

Bill C-90 proposes the introduction of alternative sentencing options or alternative measures for adults. One of the objectives of the Bill is to encourage creative sentencing by directing judges to consider all available alternatives that are reasonable in the circumstances, particularly with respect to Aboriginal offenders.

The Department also provides financial assistance to provinces/territories and community-based organizations for demonstration and research projects that promote alternative sentencing options including non-custodial dispositions and alternative measures for young offenders.

Additional project funding is proposed to examine the implementation of existing legislative provisions such as the victim fine surcharge and use of victim impact statements.

This recommendation has also been brought to the attention of the Department of Public Security and the provincial and territorial governments.

Recommendation 39

Sentencing alternatives must consider the social and cultural realities of rural and remote communities so that creative options can be ordered by the court, in order to ensure reasonable consistency between urban and non-urban centres.

Bill C-90 proposes to permit more formal involvement by appropriate community groups in sentencing. This will serve to ensure that the social and cultural realities of the community in question are taken into consideration with respect to sentencing. The Bill, if passed, would also require the court to consider aggravating and mitigating circumstances, the principle of similarity and the fact that sentences should not be unduly long or harsh.

This recommendation has also been brought to the attention of the Department of Public Security and the provincial and territorial governments.

Recommendation 40

Treatment should not be a substitute for other principles of sentencing, especially those relating to the safety of the victim(s) and the public.

Bill C-90 provides a statement of the purpose and principles of sentencing, including the promotion of a "just, peaceful and safe society" and reparation of harm to the victim and community as well as rehabilitation of the offender. Accordingly, the court would be directed to consider all of these principles in sentencing and not just rehabilitation of the offender.

This recommendation has also been brought to the attention of the Department of Public Security and the provincial and territorial governments.

Recommendation 41

The safety and security of women should be statutorily recognized as a fundamental principle in matters of sentencing and bail.

The Department agrees that the protection of individual members of society should be a fundamental concern in matters of sentencing and bail. The *Criminal Code* currently provides, at paragraph 515(10)(b), that where detention of an accused is not necessary to ensure his attendance at court, the accused may be detained if it is necessary in the public interest or for the protection or safety of the public. The Supreme Court of Canada recently upheld the "public safety" component of paragraph 515(10)(b) as constitutionally valid.

As well, **Bill C-90** states that the fundamental purpose of sentencing is to promote the maintenance of a just, peaceful and safe society.

As indicated in the response to recommendation 9, **Bill C-126** also amends section 515 of the *Criminal Code* regarding bail conditions that may be imposed upon the release of a person who has been taken into custody. The amendments enable a judge to impose the condition that the accused not go near a particular place and, in family violence cases, this could include prohibiting the accused from going near the family residence. Where the case involves physical violence, the condition can also prohibit the accused from communicating with any witness, including the victim.

This recommendation has also been brought to the attention of the Department of Public Security and the provincial and territorial governments.

Recommendation 42

In cases of violence against women and children, an offender should receive, prior to sentencing, a mandatory assessment which includes interdisciplinary community input and, if the offender is amenable to treatment, an appropriate treatment program should be mandated as part of the sentence disposition to be monitored on a periodic basis.

Bill C-90's statement of purpose and principles in sentencing includes the rehabilitation of the offender. **Bill C-90** proposes that a court may require the production of any evidence that would assist with the determination of an appropriate sentence, including compelling the appearance of any person who may be able to assist with determining the appropriate sentence.

Bill C-90 therefore supports the recommendation in the sense that, if passed, it will ensure that the sentencing judge will have the fullest possible information concerning the background of the accused so that the judge can make the sentence fit the offender.

The Department will be addressing the issue of pre-sentence reports in its public consultations on intermediate sanctions. As well, a federal-provincial-territorial working group is expected to examine the possibility of amending the *Criminal Code* to confer jurisdiction upon a justice presiding at a bail hearing to remand an accused into custody for psychiatric assessment specifically related to the danger to the public posed by the accused.

This recommendation has also been brought to the attention of the Department of Public Security and the provincial and territorial governments.

Recommendation 43

> **Sexual offenders and wife assaulters should receive lengthy treatment and therefore, provision should be made for indeterminate probation orders under the *Criminal Code* as well as probation orders in conjunction with federal sentences.**

The Department is currently studying, in consultation with the provinces and territories, the possibility of increasing the *Criminal Code*'s existing three-year limit on probation. Other options are also being examined in the context of dangerous offenders including the effectiveness of treatment programs.

As well, **Bill C-126** amends the *Criminal Code* to include a provision that provides for up to a lifetime ban on convicted sex offenders from frequenting specified places including daycare centres, schoolgrounds, playgrounds where children are likely to be found and from seeking or obtaining employment that involves a position of trust or authority over children.

This recommendation has also been brought to the attention of the Department of Public Security and the provincial and territorial governments.

Recommendation 44

> **The federal Department of Justice should seriously investigate the viability and potential of widespread use of delays/adjournments to sentences in child sexual abuse and wife assault cases in order to:**
>
> **a) protect the victim(s) and reduce the potential for re-offending through separation of victim(s) and offender;**

b) **provide appropriate long-term support, advocacy and treatment for the offender and victim(s);**

c) **ensure that community support for victim(s) as well as education concerning reality of violence between family members be maximized.**

As indicated in the response to the previous recommendation, **Bill C-126** amends the *Criminal Code* to include a provision that would provide for up to a lifetime ban on convicted sex offenders from frequenting specified places including daycare centres, schoolgrounds, playgrounds where children are likely to be found and from seeking or obtaining employment that involves a position of trust or authority over children.

Bill C-126 also creates a new offence of criminal harassment which would provide increased protection to victims of what is often referred to as "stalking".

Bill C-126 also includes an amendment to section 515 of the *Criminal Code* regarding bail conditions that may be imposed upon the release of a person who has been taken into custody. The amendments enable a judge to impose the condition that the accused not go near a particular place and, in cases that involve physical violence, that the accused not communicate with any witness, including the victim.

The Department is continuing to examine these and other family violence issues. For example, the Department is currently reviewing these issues in the context of child sexual abuse with its project on the evaluation of **Bill C-15**. With respect to wife assault, some of these issues are currently being examined in the evaluation of the Manitoba Family Violence Court Evaluation which is expected to be completed by the end of 1993.

As well, further family violence research is being planned for the Yukon and Northwest Territories.

This recommendation has also been brought to the attention of the provincial and territorial governments.

<u>Recommendation 45</u>

A factor to be considered in the length of sentence imposed should be the degree of breach of trust or authority involved.

Federal Crown counsel routinely address aggravating factors such as breach of trust or authority when speaking to sentence. Similarly, the courts do take such factors into account in determining an appropriate sentence.

This recommendation has also been brought to the attention of the Department of Public Security and the provincial and territorial governments.

Recommendation 46

> **The "reasonable man" standard needs to be expanded to include the realities of women.**

The Department agrees that the "reasonable person" test must reflect the realities of all Canadians. The Department has actively supported, in consultation with the judiciary, judicial education initiatives on gender equality issues including, for example, increasing the judiciary's understanding of women's realities and experiences.

A recent example of how the reasonable person standard has been redefined by the courts can be found in the Supreme Court of Canada's decision in *Lavallee* (May 1990). In this case, the Court held that the reasonable person test referred to what the *accused*, a woman who suffered from battered wife syndrome, reasonably perceived, given her situation and her experience and not what the "reasonable man" would have expected in that situation.

Recommendation 47

> **An ongoing review process should be established to examine disparities in the sentencing of people of colour (e.g., Beverly Johnston case vs. Carley Nerland case - both in Saskatchewan - Aboriginal female vs. white male).**

The *Criminal Code*'s existing appeal procedures serve, in effect, as an ongoing review process thereby permitting a review by a higher court of any sentencing disparities. As well, **Bill C-90**, if passed, would require a sentence to "be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances".

The Department is currently co-sponsoring with the Government of British Columbia, a census of British Columbia's correctional institutions which will serve to provide, among other things, data on sentencing disparity.

This recommendation has also been brought to the attention of the provincial and territorial governments and judicial education organizations.

Recommendation 48

> **There should be a clear recognition that women who are convicted of criminal offences often have long histories of victimization, poverty and gender discrimination. The justice system must therefore consider the realities of these issues for women and include appropriate treatment/rehabilitation in sentencing.**

The Department agrees that the sentencing process must take into consideration the realities of social context for women. As was noted by the Supreme Court of Canada in *Lavallee*, while the objective facts surrounding the commission of an offence are certainly important, in some situations it is both relevant and necessary to look behind those facts to gain a better understanding of the context of the family relationship.

As already indicated, **Bill C-90** would require a court, in determining the appropriate sentence, to consider the stated purpose and principles of sentencing as well as any mitigating factors, to ensure that the sentence is proportionate to the gravity of the offence and the degree of responsibility of the offender and to impose the least restrictive alternative measure that is appropriate in the circumstances. The history of the particular offender is therefore expressly recognized in the Bill which seeks to make the sentence fit the offender.

The Department also expects to receive recommendations from the Native Women's Association of Canada on ways to better address this issue.

This recommendation has also been brought to the attention of the Departments of Public Security, Status of Women Canada and the provincial and territorial governments.

Recommendation 49

> **The majority of women incarcerated are in prisons as a result of minor property crimes or prostitution. Women should not be imprisoned for stealing to survive or for non-payment of fines. The offender should be sentenced to perform volunteer work in community, to receive skills for survival, and options for help (i.e., financial counselling, coping skills). The fine option program should be applicable in all jurisdictions.**

The Department is currently studying options which would include requiring a court to be satisfied that an offender is able to pay a fine before imposing one. Once the review has been completed, the Department proposes to consult with the provinces and territories on this issue.

As well, **Bill C-46**, the *Contraventions Act*, which received Royal Assent on October 15, 1992, imposes fines for non-payment of tickets issued for minor infractions. Under this Act, incarceration for non-payment of fines is imposed only as a last resort and only after notices have been sent and unsuccessful collection efforts have been made or the offender is "unwilling though able" to pay. Collection efforts under the Act include licence revocation and suspension, civil enforcement and extension of time to pay a reduced fine.

This recommendation has also been brought to the attention of the Departments of Public Security, Status of Women Canada and the provincial and territorial governments.

FAMILY LAW

CUSTODY AND ACCESS

Recommendation 50

> **Suitability for custody or access should not be based on socio-economic criteria which favour men. Courts should order and pay for experts' reports on custody and access.**

This recommendation regarding appropriate criteria for determining custody and access issues will be taken into consideration in developing future reform proposals under the *Divorce Act*. With respect to the issue of costs of experts' reports, this issue falls outside the jurisdiction of the Department.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 51

> **No federal, provincial or territorial legislation should include provisions with a presumption of or preference for joint custody.**

The current *Divorce Act* does not contain any presumption of or preference for joint custody. In developing future reform recommendations, this proposal will be taken into consideration.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 52

Further research should be conducted to determine what constitutes the "best interests of the child".

The Department agrees that social science research can provide some useful guides and indicators. Notwithstanding the need for judicial discretion with regard to the "best interests of the child," the Department will endeavour to conduct research in this area.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 53

The *Divorce Act* and all provincial and territorial legislation dealing with custody and access should be amended so that violence by one spouse against another is explicitly deemed to be relevant to the determination of custody and access issues. (See Ontario's Bill 124 for draft legislation). Any background of violence should be an essential part of assessments regarding custody or access to children.

The Department is currently reviewing the existing legal regime governing custody and access. The need for statutory clarification respecting violent conduct is one of many issues that has been identified in a public consultation paper entitled *Custody and Access: A Public Discussion Paper* that was released on March 9, 1993. This consultation forms part of a broader review of family law which was commenced in June 1991.

Specific recommendations for reform will be developed following the public consultations.

As well, **Bill C-126**, *An Act to amend the Criminal Code and Young Offenders Act*, amends section 285 of the *Criminal Code*. This amendment provides a battered woman with a defence to a charge of child abduction where she escapes from a situation of violence directed solely at her (and not at her children) and takes her children with her.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 54

Research is needed regarding the incidence of women who are losing custody of children to men who are batterers.

The need for further research on this issue has been identified and is discussed in the consultation paper on custody and access.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 55

Treatment of past psychiatric history as a factor in custody cases should be reviewed.

The Department is currently reviewing the existing regime governing custody and access. This issue is identified in the consultation paper.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 56

Section 16 of the *Divorce Act*, the "friendly parent rule" should be repealed immediately.

Concerns about both the direct and indirect impact of the "friendly parent" provision have been identified and are included in the public consultation paper on custody and access.

Recommendation 57

When women do not report child sexual abuse but are found to be uncooperative regarding a father's access to children they are often penalized by courts, sometimes by having custody changed. Research should be undertaken to determine why women do not report child sexual abuse, what happens if they do, and what happens if they do not.

The Department has conducted research on the processing of child sexual abuse cases through the child welfare and criminal justice systems as part of its research on the effectiveness of **Bill C-15**, *An Act to amend the Criminal Code and Canada Evidence Act* with respect to sexual offences against children.

In the context of custody and access, the Department is reviewing the existing regime in the public consultation paper. The Department will continue to monitor the processing of child sexual abuse cases through the criminal justice system in cooperation with the Canadian Centre for Justice Statistics.

This recommendation has also been brought to the attention of the provincial and territorial governments and the Canadian Centre for Justice Statistics.

Recommendation 58

The *Divorce Act* and relevant provincial legislation should be amended to provide that the sexual orientation of either parent is not a relevant consideration in the determination of custody and access issues and that all family legislation be amended to specifically include same-sex couples.

Subsection 16(9) of the *Divorce Act* deems the past conduct of any person irrelevant unless the conduct relates directly to the ability of that person to act as a parent of a child. The need for more specific legislative clarification will be determined following public consultation on the custody and access consultation paper.

This recommendation has also been brought to the attention of the provincial and territorial governments.

CHILD AND SPOUSAL SUPPORT AND ENFORCEMENT

Recommendation 59

National data should be collected regarding the economic consequences for women and children of divorce or separation.

As part of its monitoring of the implementation of the *Divorce Act*, the Department collected national data concerning the economic consequences for women and children of divorce or separation in 1986 and 1988. This data was recently cited by the Supreme Court of Canada in its decision in *Moge* v. *Moge* (December 1992).

Statistics Canada also has a comprehensive database on this issue which was used in the Economic Council of Canada's last report, *The New Face of Poverty: Income Security Needs of Canadian Families*, to explore changes in family income experienced by those who separated and/or divorced over the period 1982-86. The Department supports the updating of this database.

The economic consequences of divorce/separation for women and children are also being addressed in the Department's current work on child support guidelines. In June 1990, the Federal-Provincial-Territorial Family Law Committee began to study the issue of child support upon family breakdown by looking at the actual costs of raising children in Canada. The Committee released a discussion paper in June 1991 which reviewed current problems with child support and reform alternatives including child support guidelines.

A second discussion paper was released in May 1992 which reported the results of economic studies conducted to determine average expenditures on children in Canada. The data obtained from these studies was then applied to various child support guidelines and the results analyzed. Public consultations on this second paper concluded in December 1992. The Committee is currently considering the results of the consultations and conducting additional necessary research.

This recommendation has also been brought to the attention of the Department of Industry and Science and the provincial and territorial governments.

Recommendation 60

Research should be conducted and data collected on the costs of raising children which should reflect direct (e.g., food and clothing costs, cost of living of the region) and indirect (loss of opportunity and employment costs to the mother) costs of raising children. The results should be made available to the courts to ensure realistic assessments of the costs of raising children without requiring supporting, expensive, expert evidence.

The Department is currently conducting research on the costs of raising children as part of the Child Support Guidelines Project. Public consultations on this issue concluded in December 1992. The Federal-Provincial-Territorial Family Law Committee is reviewing the results of the consultation and is conducting additional research before making recommendations to deputy ministers and deputy attorneys general in the Fall of 1993.

The Department also funds short-term, discrete projects that yield knowledge and support initiatives regarding the application of custody, support and access provisions, the impact of divorce on children, children's rights and the costs of rearing children.

This recommendation has also been brought to the attention of the Department of Industry and Science and the provincial and territorial governments.

Recommendation 61

A federal task force is developing guidelines for child support orders. The purpose of these guidelines is to set standards amounts which reflect the costs of raising children for use by courts making awards. American and some Canadian research sets the amounts at unrealistically low levels. New feminist research is needed to set adequate standards for the Canadian system. Women need to be formally consulted regarding the adequacy of any guidelines before they are distributed or implemented.

The Department has conducted research in this area and is continuing its work with additional research on the costs of raising children in Canada. The Department agreed that women and the public in general had to be consulted on these issues and accordingly, consultations, primarily by way of written submissions, were held over a seven-month period that concluded in December 1992.

The Child Support Project has included major economic research on Canadian child-rearing costs. It has also produced two discussion papers seeking written responses from the public,

including women's groups. The seven month consultation period on the second paper, released May 1992, included two full-day discussion sessions sponsored by the Ontario Women's Directorate and the Canadian Advisory Council on the Status of Women.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 62

A working group, including members of non-governmental organizations and other experts, should be established to study the reform of maintenance payments.

The Department had planned to review spousal support under the *Divorce Act*. However, the Supreme Court of Canada's December 1992 decision in *Moge* v. *Moge* has provided a philosophy of spousal support and interpretation of the federal legislation which is sensitive to women's realities. The Department will therefore monitor the impact of this decision and will re-assess the need to study the reform of maintenance payments once *Moge* has had an opportunity to be applied by lower courts.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 63

Maintenance enforcement programs must not require women receiving social assistance to agree to mediation or to cede their legal rights to the state as does, for example, the B.C. system.

Any such requirement, where it exists, falls within provincial responsibility. Accordingly, this recommendation has been brought to the attention of the provincial and territorial governments.

Recommendation 64

The federal-provincial-territorial working group should research the effectiveness of existing government-funded support enforcement programs, including their impact on poor women, and make recommendations to women's groups regarding improvements to existing systems.

Federal and provincial directors of enforcement programs meet annually to discuss common problems and to learn about other jurisdictions' experiences in an effort to improve their respective Maintenance Enforcement Programs. In addition, the Department recently established the Family Support Enforcement Fund. This $5.5 million initiative covers the period 1992/93 - 1995/96. Within the overall objective of reducing default rates by promoting better enforcement of child and spousal support orders, the fund will provide financial assistance to the provinces and territories for the following types of activities:

(i) improving communication and protocols between provinces and territories to assist in inter-provincial/territorial enforcement;

(ii) developing new legislative remedies and support projects;

(iii) training;

(iv) testing of innovative enforcement projects with programs;

(v) developing or improving computer systems;

(vi) evaluating enforcement projects; and

(vii) improving public awareness and attitudes regarding family support orders.

As well, a federal-provincial-territorial group has recently been appointed to study a major difficulty with the enforcement programs namely, enforcement of out of province orders.

This recommendation has also been brought to the attention of the provincial and territorial governments.

PENSION AND CPP CREDITS

Recommendation 65

> **The Canada Pension Plan (not including the Disability Pension nor the Quebec Pension Plan) should be amended so that credits are split automatically upon separation, without the necessity of application, and, further, the Canada Pension Plan should be amended to prohibit provinces or territories from passing legislation which enables parties to contract out of the division of credits. Division of pension credits should be based upon a recognition that the pension is an asset of the marriage and should therefore be considered in a legal division of family assets.**

Canada Pension Plan (CPP) legislation falls under the jurisdiction of the Department of Human Resources and Labour. However, the legislation does provide for the automatic division of CPP credits upon marriage breakdown upon application. As of January 1993, the Central Divorce Registry Application Form will provide addresses of divorcing spouses so that CPP can write to the parties and request the number of years during which the parties resided together and their social insurance numbers. Once CPP is provided with this information, they will be able to perform the necessary calculations.

This recommendation has been brought to the attention of the Department of Human Resources and Labour.

With respect to the contracting out of an automatic division, this is a matter which falls within provincial/territorial matrimonial property law. However, to date, only one province has enacted legislation that would permit opting out.

This recommendation has also been brought to the attention of the provinces and territories.

Recommendation 66

> **The federal-provincial-territorial working group is urged to coordinate the introduction of legislative measures in all jurisdictions which will provide for the division of all pension credits at source on breakdown of the relationship and will ensure that pension survivors benefits survive divorce.**

With respect to employment-related pension plans in the federal public service, these plans fall within the jurisdiction of Treasury Board and CPP survivor benefits fall under the responsibility of the Department of Human Resources and Labour. This recommendation

will be forwarded to Treasury Board and the Department of Human Resources and Labour for their consideration. However, the new *Pension Benefits Division Act* (Schedule II to S.C. 1992, c. 46) was enacted in the Fall of 1992 and, in certain circumstances, permits the division of public service pensions upon divorce and separation.

With respect to private pension plans, the division of assets on family breakdown is a matter within the jurisdiction of the provinces.

This recommendation has also been brought to the attention of the provincial and territorial governments.

TAX LAW

The income tax system is beyond the jurisdiction of the Minister of Justice. The Department of Finance is responsible for the development and preparation of income tax legislation. Income tax legislation is introduced into Parliament by the Minister of Finance. Revenue Canada, Taxation is responsible for the administration of the *Income Tax Act* and determines how the provisions of the Act apply to a particular taxpayer.

Department of Justice Legal Services lawyers assist the Department of Finance with the development of tax policy to ensure that proposed tax measures are not discriminatory under the Charter, the *Canadian Human Rights Act* or other federal legislation. Although these recommendations fall outside the mandate of the Department, Legal Services counsel can and do nevertheless perform an advisory role with respect to gender equality issues within client departments. Legal Services counsel are working with client departments with respect to these recommendations and are assisting client departments with the development of their own gender equality initiatives.

An example of another collaborative effort is the Department's Child Support Project. In this project's second report, *The Financial Implications of Child Support Guidelines* (May 1992), a chapter is devoted to the income tax implications of child support and presents a description of the present tax implications and some of the problems. A large proportion of the written responses to the second report addressed the issue of tax implications. These responses were forwarded to the Minister of Finance. As well, a federal interdepartmental committee which advises the Child Support Project includes a member from the Department of Finance.

The Department will also endeavour to advance research on existing tax law and the impact of the Charter and the *Canadian Human Rights Act* as well as comparative research on gender neutral tax law provisions in other jurisdictions within Canada and internationally.

All tax law recommendations have been brought to the attention of the Department of Finance and Revenue Canada, Taxation. As well, recommendation 86 has been brought to the attention of the Department of Industry and Science, which is responsible for the *Tax Rebate Discounting Act* which regulates tax discounting.

Recommendation 67

There should be a continuous and systematic review of the income tax system in Canada to identify and eliminate the systemic biases that currently exist against women as well as to propose new, integrated provisions that will ensure rather than diminish, substantive equality in Canadian society for all women.

Recommendation 68

All new tax policy formulations should specifically address how new tax measures would affect women and disadvantaged women.

Recommendation 69

The Finance Minister should consult genuinely with groups, particularly of disadvantaged women, on existing and proposed tax policy.

Recommendation 70

The Department of Finance should be working with other groups that work on women's issues, such as the family law group, to ensure greater coordination and gender equality.

Recommendation 71

Investigate the concept of a negative income tax system, such as Manitoba's model, for possible introduction to help ease the burden of the movement from welfare to an outside working job when the salary one can obtain is low, which is the usual case for most women.

Recommendation 72

The tax system should be more broadly based to allow for a more progressive taxation system that may include inheritance and wealth taxes and increased tax bands to allow for a better shifting of the tax burden onto the more wealthy in society.

Recommendation 73

Discontinue the movement towards the de-indexation of both tax rates and credits which disproportionately affect women at poverty levels in the workplace.

Recommendation 74

The income tax system should use the same poverty thresholds that Statistics Canada uses and should categorize poverty more carefully by including realistic assessments of the financial obligations of family responsibilities, child care and the real costs to women of entering the outside work force.

Recommendation 75

All tax credits should be universal and should be made refundable in all cases, not simply in the case of GST and child dependency. Tax credits should, however, be diminishing so that those in greatest need of them (i.e., people with more children and less income) receive the greatest proportion.

Recommendation 76

The income tax system must be re-examined to ensure that there are no disincentives for women who decide to work outside the home including reviewing tax credits for spousal "dependents", child care costs, costs of re-entering the work force after a period of absence, deduction of interest on student loans, elimination of taxation of scholarships and removal of the GST on books. This would include reinstating the employment and standard medical deductions as their abolition disproportionately affected women who are most in need of these smaller deductions and incur greater expense when moving into the work force.

Recommendation 77

When source deductions are taken from outside working women's paycheques, child care expenses etc., should be factored into the calculations so that women do not have to wait until year end to recover these expenses.

Recommendation 78

There should be increased tax credits in recognition of the caregiving performed by family members, most of whom are women.

Recommendation 79

There should be greater allowance for the medical and associated costs which are often considerable for disabled persons.

Recommendation 80

Research should be conducted to determine the best ways that the *Income Tax Act* can take into account the valuable work performed by women within the home. One way would be to impute a dollar amount tax credit to such work however this would have to be factored in with other measures to enable the imputed income to be both taxed and paid for by society.

Recommendation 81

There must be recognition of pension benefits for women who have worked in the home and their rights to contribute to RRSPs by deductions from investments or other unearned income, if they so choose.

Recommendation 82

Women who work outside of the home in a volunteer capacity should be entitled to claim the expenses that they incur in the process.

Recommendation 83

The *Income Tax Act* should include provisions for single women or widows and for survivor benefits from pensions.

Recommendation 84

The tax treatment of pensions should be reviewed to ensure that the tax benefits are directed more clearly and specifically towards the people who need the most help in retirement - women.

Recommendation 85

The definition of "spouse" should be expanded to allow pension credit transfers between senior spouses.

Recommendation 86

Prohibit tax discounters and substitute alternatives for earliest receipts of refunds in the full amount.

Recommendation 87

There should be better training facilities for the mentally and physically disabled. Improved employment and training facilities could be encouraged through corporate incentives such as accelerated capital cost allowances.

Recommendation 88

The *Income Tax Act* should be rewritten to make it comprehensible. Similarly, income tax information must be made available as soon as possible and in an understandable fashion. Women should be informed of any incentives or initiatives that might help reduce their tax burden.

Recommendation 89

Income tax forms and information should be designed and disseminated in ways that address language difficulties for immigrant women.

Recommendation 90

Alimony and child maintenance payments should not be included in the recipient's income nor deductible to the payer of the payments.

Recommendation 91

Child care costs should be treated as refundable tax credits and not deductions which favour higher-paid taxpayers.

Recommendation 92

If the Supreme Court of Canada overrules the *Symes* case, then the income tax system should be adjusted to ensure that all women are treated equally with respect to deductions of child care costs regardless of whether they are employees or self-employed.

Recommendation 93

Research should be conducted to determine the best ways of delivering subsidies to the child care system including, for example, whether the *Income Tax Act* should reflect more realistically the true cost of child care or whether it would be better to offer state-subsidized or state-run day care centres.

Recommendation 94

The *Income Tax Act* should be clarified and amended to overcome the problems that arise in the year of separation when the ex-husband's income must be taken into account when calculating the single parent's tax credits.

Recommendation 95

The income tax system should carefully consider and more broadly recognize the difficulties and financial hardships which usually accompany single parenting.

Recommendation 96

Child support payments should have priority over income tax debts.

Recommendation 97

The income tax system should be revised so that individual taxation is the only criteria and that the family unit should only be considered in exceptional circumstances when, for example, attempting to eliminate poverty.

Recommendation 98

The Department of Finance should research all of the needs identified in these recommendations. Such research should be funded, in full, both initially and on a continuous basis, by the Department of Finance and other departments. Research results should be made available as soon as possible upon completion.

POVERTY

Recommendation 99

Since justice for women requires an end to women's poverty, governments should immediately cease introducing measures which deepen women's poverty and repeal all recently introduced measures which contribute to it, including the cap on transfer payments and amendments to the *Unemployment Insurance Act*.

This recommendation has been brought to the attention of the Departments of Human Resources and Labour, Finance, and Status of Women Canada.

Recommendation 100

Federal and provincial/territorial social assistance legislation should be amended to ensure that persons in Canada who are in receipt of social assistance (including assistance under the *Canada Assistance Plan* and the *Unemployment Insurance Act*) are not required to live on incomes below the poverty line for their region.

This recommendation has been brought to the attention of the Departments of Human Resources and Labour and Status of Women Canada and the provincial and territorial governments.

PERSONAL INJURY

Recommendation 101

Research should be undertaken regarding damage awards in personal injury cases. Awards to injured housewives and girls reflect their social devaluation because of their sex. Similar research should be undertaken regarding damage awards in medical malpractice cases which are made to women as compared to men.

The issue of civil personal injury awards generally falls within provincial responsibility. This recommendation has been brought to the attention of provincial and territorial governments, law schools and Status of Women Canada.

LABOUR AND EMPLOYMENT

Recommendation 102

Poverty for women will not be alleviated or eliminated until women achieve equal access to employment, equal pay for work of equal value and equal opportunity to voice their concerns in the workplace and require that these issues be addressed, including:

* **a complete review of labour legislation as it affects working women specifically. Of particular concern are employment standards issues for women (such as increased minimum wage, comprehensive fully paid parental and family responsibility leaves), workplace health and safety**

issues affecting women (including pregnancy-related job modification or reassignment, adequate tracking of reproductive hazards in the workplace) and harassment in the workplace (including but not limited to: gender, race, disability, aboriginal origin, sexual orientation).

* **employment equity issues, including equity issues affecting aboriginal women, disabled women, immigrant women, women of colour and lesbians.**

* **strong, enforceable pay equity legislation for both the public and private sectors, in large and small workplaces.**

* **language and skills training which specifically takes into account women's needs, including the need for child care during training programs.**

* **legislative frameworks for promoting free collective bargaining, including ways of making unionization more accessible to unorganized women.**

* **a complete review of unemployment insurance legislation, particularly recent amendments to identify adverse impact on women and lost opportunities to promote the equality of women.**

With respect to these issues as they relate to Department of Justice employees, the Department is fully committed to support the principal objectives of employment equity for all Canadians, and to undertake special measures, where necessary, to eliminate any disadvantages that may be experienced, directly or indirectly, by women, Aboriginal people, persons with disabilities and visible minorities.

The Department has an Employment Equity Section which is responsible for planning, implementation and evaluation of the Department's Employment Equity Program. The Department's most recent Employment Equity Action Plan was released in Spring 1991 and covers the period up to March 1994.

The Department's Steering Committee on Employment Equity serves as an umbrella committee to exchange information and to comment on proposals of the Advisory Committees on Equal Opportunities for Women, Aboriginal People, Persons with Disabilities, and Visible Minorities. The Advisory Committee on Equal Opportunities for Women, in particular, advises on the development of departmental policies or changes to existing policies and procedures and monitors the implementation of the measures that have been approved as promoting equal treatment of women.

This recommendation has been brought to the attention of the Departments of Human Resources and Labour, Treasury Board, and Status of Women Canada.

ALTERNATIVE DISPUTE RESOLUTION

Recommendation 103

> **The current adversarial model of justice should be replaced by a more holistic view of justice, emphasizing protection, responsibility and reparation of harm caused to people. The inclusive justice model should include different approaches based upon the type of case (i.e., criminal or civil), the kind of crime (i.e., property or person), the setting of the case (i.e., urban or rural) and the needs of the people involved (i.e., Aboriginal, visible minorities, disabled etc.,).**

The Department fully supports the objectives outlined in this recommendation.

The Department, through the establishment of its dispute resolution project, is examining the use of alternative dispute resolution (ADR) techniques and mechanisms in the justice system. In particular, the project is reviewing ADR in the context of the quality of justice, integrity of the justice system, access to justice and the efficiency and effectiveness of the justice system. An inventory of dispute resolution mechanisms in federal government departments will also be prepared as part of this project.

Current research is, in addition to examining ADR processes and the appropriateness of specific processes for particular disputes, exploring the linkages between ADR and Aboriginal justice as well as alternative dispute resolution for multicultural groups. As well, the Aboriginal Justice Fund has approved several projects that will seek to design alternative models of justice. These models adopt a holistic approach that reflects Aboriginal values and traditions.

Recommendation 104

> **Funding should be made available for research, whether through existing facilities or an institute for inclusive justice, to monitor and recommend alternatives to the adversarial court process and to assess the success of existing treatment models for violent conduct. Such research should be more "proactive" in focus rather than "reactive" in order to better address underlying societal problems.**

The Department undertook an alternative dispute resolution initiative in April 1992 with the goal of improving the efficiency and effectiveness of the justice system and improving access to justice. A major component of this initiative includes research which explores the nature and applicability of a variety of ADR processes with a view to finding out what processes work best and for which kind of disputes.

As well, the Department is supporting demonstration projects under its Family Violence Initiative. These projects are intended to test the effectiveness of treatment models for batterers.

Recommendation 105

> **There should be a mediation model of dispute resolution for family law cases (custody, access).**

This issue, along with other issues respecting custody and access determinations has been identified in the *Custody and Access: Public Discussion Paper*. The Department proposes to develop specific recommendations for reform following public consultations on the paper.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 106

> **Mediation is never an appropriate choice where one of the parties is disabled or where family violence is involved because of the inherent imbalance of power. Mediation should not be made mandatory in family law cases.**

The Department accepts the basic philosophy that mediation can be most effective when it is entered into voluntarily. The Department is not proposing to make mediation mandatory in family law cases.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 107

Persons providing mediation or custody and access assessment services should be regulated and the terms of their regulation should be developed in consultation with feminist service providers.

The issue of regulation of mediators and access assessors falls within provincial/territorial responsibility. This recommendation has been brought to the attention of the provincial and territorial governments.

Recommendation 108

Research should be conducted on the development of tribal dispute resolution mechanisms and tribal courts for family law disputes.

As indicated in the response to recommendation 103, the Department agrees that research on this issue is needed. Current research is, in addition to examining ADR processes and the appropriateness of specific processes for particular disputes, exploring the linkages between ADR mechanisms and select areas of law including family law.

Recommendation 109

The legal system should adopt a more holistic approach including offering more unified family courts and unified court services such as the Unified Family Court of Hamilton-Wentworth.

The Department is studying the use of alternative dispute resolution mechanisms as a holistic approach to dispute settlement.

At the federal level, the court services provided by the Federal Court and the Tax Court are available at judicial centres throughout the country. Both courts sit regularly outside Ottawa to permit better access to court users.

The Department also supports moves by the provinces to integrate family court services within their jurisdictions. For example, Ontario and Nova Scotia are moving to establish province-wide unified family courts.

This recommendation has also been brought to the attention of the provincial and territorial governments.

JUDICIAL ACCOUNTABILITY AND DISCIPLINE

Recommendation 110

The powers of the judicial council should be reviewed to consider:

a) more public nature of hearings;

b) wider range of dispositional alternatives regarding disciplinary action;

c) continuation and disposition of hearing regardless of whether the judge resigns prior to its conclusion; and

d) routine evaluation of competence and conduct.

Subsection 63(6) of the *Judges Act* provides that a Canadian Judicial Council inquiry or investigation may be held in public or in private unless the Minister requires that it be held in public. The routine investigation of complaints is conducted in private. Formal inquiries have the potential to result in a recommendation for the institution of removal proceedings and will normally be conducted in public, as in the case of the 1990 Inquiry requested by the Attorney General of Nova Scotia.

With respect to the recommendation for a wider range of dispositional alternatives, the Canadian Judicial Council's investigative power is limited to recommending to the Minister of Justice whether a judge should be removed from office. The Council has no general authority over the members of the judiciary nor does it have any independent disciplinary power. If a judge resigns, the Council loses jurisdiction over that judge.

It is unclear whether any other disciplinary sanction is available under the Constitution. The Department could, at a future date and in consultation with the Canadian Judicial Council, undertake a review of the relevant provisions of the *Judges Act*.

This recommendation has also been brought to the attention of the Canadian Judicial Council.

Recommendation 111

> **Have the Canadian Judicial Council adopt a responsive attitude towards complaints of discrimination made with respect to judges, and find a process to deal with these complaints that will not interfere with the independence of the judiciary. This process could take the form of a special, independent committee to vet complaints of sexism and sexual harassment.**

The Canadian Judicial Council has established a position on gender equality issues, as set out in its *Commentaries on Judicial Conduct* and the video and related materials on gender equality that it commissioned from the National Judicial Institute.

Complaints of sexism and sexual harassment against federally appointed judges are rare. The Department has no authority to suggest the establishment of special procedures or the modification of existing procedures to the Canadian Judicial Council, except by invitation of the Council itself.

This recommendation has also been brought to the attention of the Canadian Judicial Council.

Recommendation 112

> **Institute a code of ethics for the judiciary (if one does not already exist) that expressly prohibits all forms of sexism and sexual harassment and any other form of discrimination.**

In 1991, the Canadian Judicial Council published a book entitled *Commentaries on Judicial Conduct*. It serves as a guide for judges on various ethical issues including gender neutrality. This publication also includes a bibliography of books and articles which may be consulted by judges for a better understanding of gender issues. This book replaced earlier publications which also included a discussion of similar practical and ethical issues but which had become dated.

The Department considers that it is within the statutory mandate of the Canadian Judicial Council to establish the parameters of judicial conduct.

This recommendation has also been brought to the attention of the Canadian Judicial Council.

CHAPTER TWO: SERVICES AND PROGRAMS

VICTIMS SERVICES AND PROGRAMS

Recommendation 1

Adequate funding must be made available for support services for women including women's shelters, sexual assault centres, transition houses and services for battered women and rape survivors. Services must be available to and physical facilities must be accessible to all women with disabilities and the staff of transition houses must be sensitized to disability issues. One source of funding could be victim's surcharge.

Primary responsibility for these types of services rests with the provinces and territories. However, the Department is exploring funding options for groups providing programs, services and materials that are tailored to the specific needs of victims of crime including women, visible minority groups, Aboriginal people and other designated groups.

The Department also provides funding for short-term projects under its Family Violence Initiative relating to, for example, special family violence courts, court preparation services for victims and witnesses and special services designed to address the concerns of disabled women who are victims of violence.

The Department continues to encourage and promote, through legislative amendments and research, provincial and territorial collection of potential revenue under the fine surcharge legislation to increase this source of funding for the provision of victim services.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 2

Advocacy and assistance programs must be established and adequately funded to assist victims of sexual assault and battering through the court process with special supports for women of colour, Aboriginal women and women with disabilities.

Although the provision of these types of services falls primarily within the responsibility of the provinces, the Department supports the establishment of advocacy or assistance programs to assist all victims of sexual assault and battering.

Under the Family Violence Initiative, the Department contributes funding to the provinces and territories and community-based organizations for research and projects intended to assist women involved in the courts.

The Department is also exploring funding options for programs, services and materials that are tailored to the specific needs of groups of victims of crime such as women, children, visible minorities, Aboriginal people and other designated groups as well as for the creation of a Victim Information Network based on information in our updated National Victims Resource Centre. This Network would provide legal information materials on federal legislation and the legal process including special information packages for women, particularly those who are victims of family violence.

Aboriginal workers are now employed by the Department to act as intermediaries between the justice system and victims of crime in Yellowknife. The Department is examining options for expansion of this service to include Inuvik and Whitehorse.

The Department has also developed a policy manual designed to guide federal Crown prosecutors. For example, in spousal assault prosecutions, counsel are directed to meet with the victim, where possible, and :

* explain the spousal assault prosecution policy;
* explain the role of the Crown in such proceedings;
* explain what is expected of a witness in court;
* assess the victim's reliability as a witness;
* encourage the victim to testify;
* tell the victim about any bail conditions imposed on the accused; and
* confirm that the victim has been made aware of available community services.

The Department recognizes the need to foster the development of attitudes and use of practices which take into consideration the needs of victim witnesses by recognizing that many victims suffer emotional trauma that can sometimes be exacerbated by the demands placed upon them by the criminal justice system. The Department is therefore developing a policy on victims of violent crime. It will place special emphasis on keeping witnesses informed of developments as the criminal proceedings progress, including final disposition.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 3

As exists in Brazil, police stations specifically designed to provide services to women must be established in urban areas.

This recommendation has been brought to the attention of the Department of Public Security and provincial and territorial governments.

Recommendation 4

Courthouses should be "multi-door" and should offer all services required by victims and other users including counselling and mediation so that these persons do not have to shop around until they find the needed services. Outside agencies or counsellors should be physically located in courthouses but should remain separate from the "court system". They should serve to acquaint victims with the court system, including:

* **providing a general explanation of the system and the persons who work within it;**
* **explaining victims' rights;**
* **coordinating any translation services required by victims;**
* **escorting victims to court if requested; and**
* **advising all victims and offenders on how to dress and speak in court.**

Victim support services fall within provincial/territorial jurisdiction. The Department nonetheless supports the increased availability of victim support services.

With respect to federal Crown prosecutorial practice in the Yukon and Northwest Territories, Crown counsel often do not live in the community in which an offence is prosecuted and therefore travel with the circuit court. As a result, federal Crown counsel usually meet witnesses for the first time on the date of the preliminary inquiry or trial. Crown counsel are encouraged, wherever possible, to conduct witness interviews at the earliest opportunity. Where Crown counsel are aware, in advance, of a witness' desire to be escorted to court, they are directed to encourage the victim to seek the assistance of the police or social services worker.

As well, the Aboriginal Justice Fund has provided financial support for the development of two Crown-based victim/witness assistance programs for Inuit communities on Baffin Island and for Dene, Slavey and Dogrib communities around Great Slave Lake. Under these programs, victims of crime are given support as their cases proceed through the courts and, if required, this support includes escorting the victim to court.

The Department is currently examining the concept of the "multi-door" courthouse in the context of alternative dispute resolution (ADR) with a view to determining whether these ADR processes could be made available through such courts.

The Department is also exploring funding options to evaluate selected provincial programs and services for victims of crime to assess their effectiveness. Particular emphasis would be placed on the experience and needs of women and other designated groups in the criminal justice system to assist the provinces and territories in developing and implementing effective victims programs.

In addition, the Department is exploring funding options for programs, services and materials that are tailored to the specific needs of groups of victims of crime such as women, visible minorities, Aboriginal people and other designated groups.

The Department supports Public Legal Education and Information organizations which provide community-based legal information and free legal information lines, as well as the "PLEI Net" electronic communications network.

Support through project funding could be provided to encourage the use of victim impact statements with a special focus on projects which address the concerns of women and other designated groups.

This recommendation has also been brought to the attention of the provincial and territorial governments.

<u>Recommendation 5</u>

> **Judges should not be allowed to punish women who refuse to testify. If there were adequate backup services and women were assured of a safe house and protection from the batterer against whom they are required to testify, such decisions might be acceptable. In the absence of such guarantees, it is unacceptable to penalize women; they have no adequate way to protect themselves from the batterer.**

The power to commit for contempt for refusal to testify is used only as a last resort. Greater sensitivity to the needs of women in all stages of proceedings up to and including trial will minimize the possibility of a refusal to testify. Training provided to judges on domestic violence and sexual assault emphasizes that the contempt power should be invoked only in exceptional circumstances. It is not, however, within the power of the Department to prohibit absolutely the exercise of a judge's discretion to cite for contempt.

This recommendation has also been brought to the attention of the judicial councils and judicial education centres.

SENTENCING SERVICES AND PROGRAMS

Recommendation 6

Funds should be provided to treat the offender's family and community.

The Department is currently considering proposals for funding under the Aboriginal Justice Fund by Aboriginal communities which will address the treatment and rehabilitation of offenders regarding various criminal offences. Many of these proposals also address treatment of the community including the offender's family.

Recommendation 7

Resources should be made available to the provinces so that uniform assessments of sexual offenders and other offenders of family violence are completed in all cases. These assessments need to be done by an interdisciplinary team which is trained and knowledgeable in the area of risk assessment as it relates to recidivism, victim impact, concepts of relapse prevention and amenability to treatment.

Research on the effectiveness of treatment for young sex offenders was identified during recent consultations with criminal justice and social service officials regarding the 1988 amendments to the *Criminal Code* on sexual offences against children. The Department will therefore be conducting research in this area in the near future.

This recommendation has been brought to the attention of the Department of Public Security and the provinces and territories.

Recommendation 8

Incarceration is not working. As an alternative, and in appropriate cases (not life threatening), funding should be provided to establish healing programs and training programs for the offender.

As indicated in the response to recommendation 34 in Chapter 1, **Bill C-90**, *An Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof*, proposes the use of intermediate sanctions in accordance with stated purposes and principles of sentencing. These sentencing principles include repairing the harm done to victims or to the community and the rehabilitation of the offender. **Bill C-90** would also direct judges in all cases to consider alternatives to imprisonment.

Community involvement in sentencing is also of particular interest in Aboriginal communities where pilot projects are being tested involving the use of panels consisting of community members and Elders. The Attorney General of Canada is currently supporting such initiatives in the Northwest and Yukon Territories. For example, in the Yukon, the use of "circle" sentencing hearings provides the community with an opportunity to participate in the sentencing process. The circle approach to sentencing allows the participation of social workers, police, health workers, band members and elders, the Crown, defence counsel and the judge.

These types of alternative measures allow for the consideration of different options for sentencing and often begin the healing process for an offender and his or her community.

Recommendation 9

The victim surcharge legislation should be implemented consistently and universally by providing the appropriate level of transitional funding to get this program started provincially and territorially. The revenue from this surcharge should be used to fund victim services.

In July 1988, the *Criminal Code* was amended to include section 727.9 which provides that the court shall, in addition to any other sentence imposed on an offender, order the offender to pay a victim fine surcharge. The amendment was proclaimed in July 1989 to permit federal-provincial-territorial consultations on the implementation of the surcharge.

The federal government also established, at the same time, a Victim Assistance Fund. Its purpose was to provide a contribution to provinces and territories of a minimum of $.05 per capita or $50,000 annually to assist in the provision of victim services.

The maximum victim surcharge that may be imposed is 15% of any fine, or where no fine is imposed, $35. The enforcement and collection procedures in relation to the surcharge are similar to those for fines and fall within the responsibility of the provinces and territories.

The revenue raised by the surcharge remains in the province or territory for the purpose of providing assistance to victims of crime. The Lieutenant Governor in Council of the province/territory determines how surcharge revenue will be spent.

Research conducted by the Department estimated that in 1990-91, the revenue raising potential of the surcharge was $11,277,945 (based on an average surcharge of $35). The actual revenue raised by the federal surcharge in the provinces and territories in 1990-91 was $3,180,786.

The Department is currently exploring project funding options to support implementation of legislative provisions including the victim fine surcharge and victim impact statements.

This recommendation has also been brought to the attention of the provincial and territorial governments.

WOMEN OFFENDERS' SERVICES AND PROGRAMS

Recommendation 10

> **The prison system for women in Canada is unacceptable. If a person is to be incarcerated, the place of incarceration should be chosen on the basis of factors such as proximity to home and family, the appropriateness of the facility and the availability of programs. It is inappropriate to house women in custodial institutions designed for men. Women prisoners currently held in this manner should be removed immediately to more appropriate facilities. If no such appropriate facilities exist, they should be developed.**

This recommendation has been brought to the attention of the Department of Public Security, Status of Women Canada and the provincial and territorial governments.

Recommendation 11

> **The recommendations of the Task Force on Federally Sentenced Women should be supported fully and the Solicitor General should be urged to make an announcement regarding the locations of the four regional centres and the Healing Lodge before Parliament adjourns for the summer.**

This recommendation has been brought to the attention of the Department of Public Security, Status of Women Canada and the provincial and territorial governments.

However, it should be noted that the federal government announced in July 1991 that it would build five new facilities including a healing lodge facility at Maple Creek, Saskatchewan. All five facilities are to be completed by 1994 or early 1995.

The sites selected were evaluated against the established correctional location selection criteria which included proximity to the home communities of the majority of federally sentenced women, availability of women-centred programs and services such as physical and sexual abuse counselling and treatment, substance abuse treatment, physical and mental health care, educational and vocational opportunities, a strong volunteer base and transportation systems to facilitate family visitation programs.

Recommendation 12

Healing lodges should be investigated as an alternative place of incarceration.

This recommendation has been brought to the attention of the Department of Public Security and the provincial and territorial governments. As indicated in the response to the previous recommendation, a healing lodge for women will be built at Maple Creek, Saskatchewan.

Recommendation 13

A presentation from Correctional Services Canada must be given to the advisory committee on the task force of federally sentenced women on the proposed healing lodges for aboriginal women. All decisions regarding the physical plan and programming must be endorsed by the aboriginal representatives on the advisory committee. This programming must also respect sacred objects and rituals (e.g., sweat lodges).

This recommendation has been brought to the attention of the Department of Public Security, Status of Women Canada and Indian and Northern Affairs Canada.

Recommendation 14

The Department of Justice should explain its decision to challenge the Wedge ruling that allows an aboriginal woman to serve a federal sentence in her home province (Saskatchewan).

The Saskatchewan Court of Appeal overturned the decision of Madame Justice Wedge in *R.* v. *Daniels*. The basis for this ruling was that Ms. Daniels' application to the court had been premature as no order had yet been made directing that Ms. Daniels serve her sentence at the Kingston Prison for Women and because the issue was one that could only be decided by the Federal Court. Leave to appeal to the Supreme Court of Canada was refused.

The issues involved in deciding whether to defend against a constitutional challenge are reviewed in the Department's preliminary report entitled "Review of Equality Litigation" which was released by the Minister of Justice on March 17, 1993, for comments to representatives of equality-seeking groups that attended the Symposium.

Recommendation 15

Incarcerated women must be provided with more appropriate education to enable them to continue their studies or learn a trade that will be useful when they are released.

This recommendation has been brought to the attention of the Department of Public Security, Status of Women Canada and the provincial and territorial governments.

LEGAL SERVICES

Recommendation 16

Women must have access to the use of their Charter equality rights. At the present time, women cannot challenge Charter violations which result from provincial laws, programs or practices because there is no funding to support such challenges. All governments should establish and fund a Court Challenges Program to which individuals and groups can apply for funds to support test cases in their jurisdiction.

It was announced on August 30, 1993, that the government is reinstating and improving the Court Challenges Program. It will be called the Charter Law Development Program. Its funding will be at the same level as the previous program and it will be run by a non-profit agency at arm's length from government. The Program will fund test cases of federal laws involving not only language and equality rights but cases based upon fundamental freedoms in the Charter.

This recommendation has been brought to the attention of the provincial and territorial governments.

Recommendation 17

> **Increase federal involvement in legal aid, with an emphasis on civil and family law issues and provide for federal contributions when the provinces' and territories' resources are insufficient.**

Civil legal aid legislation and program delivery fall within provincial and territorial jurisdiction.

The federal government, through the Department of Human Resources and Labour's Canada Assistance Plan, reimburses 50% of all costs associated with providing civil legal aid services provided to social services recipients. The Department of Justice cost-shares civil legal aid expenditures in both territories. It also contributes to the costs of criminal and young offender legal aid. Federal contributions to the provinces and territories for criminal and young offender legal aid were increased by 1% for fiscal years 1992-93 and 1993-94.

During the 1991-92 fiscal year, $514 million was spent on legal aid services in Canada, 86% of which was paid for by the provincial, territorial and federal governments.

The federal government, through transfer payments from the Department of Finance, takes into account the provinces' ability to finance national programs.

Presently, the Department is participating in a provincial-territorial working group which is undertaking a national review of the legal aid program in Canada. Funding issues are being discussed within the existing fiscal restraint climate. A subcommittee of this working group, chaired by the Saskatchewan representative, is reviewing civil and family legal aid issues, including legislation, tariffs, eligibility requirements and service delivery options as they relate to the provision of family/civil legal aid across the country.

This recommendation has been brought to the attention of this working group.

As well, the Department's Legal Aid Special Projects Fund encourages experimental and research work in legal aid and supports projects that focus on improving the delivery of legal aid service by provinces/territories. For instance, the Department provided financial assistance to Legal Aid Manitoba (LAM) for the following two projects:

1. The Expanded Eligibility Project involved the expansion of LAM's eligibility requirements to include a sizeable group of the working poor whose income level is above the income level of clients who are generally eligible for legal aid services. Many of these clients consisted of working poor women. New clients paid for legal services at cost. The project was funded by the Department for three years for a total contribution of $330,500.

2. The Portage Legal Services Initiative involves the development of an alternate model for the delivery of legal aid services. This alternate model entails entering into a service delivery contract with a private lawyer to deliver a specific service or general legal aid services in the Portage area. One of the responsibilities of this lawyer will be to provide legal aid services to women victims of domestic violence. The period of the contribution is from June 2, 1992, to September 30, 1993, for a total amount of $40,000.

Recommendation 18

All provinces and territories should immediately increase their legal aid tariffs for civil (family law) matters. Poor women are the victims when legal aid funding for family law cases is inadequate. Legal aid fees should be increased to levels that are closer to the rates generally in force in the private sector, to give clients better quality service and to provide a wider pool of interested lawyers.

The administration of Legal Aid programs, including the determination of tariff rates, falls within provincial and territorial responsibility. This recommendation has been brought to the attention of the provincial and territorial governments.

Recommendation 19

Encourage the federal government to urge law foundations, especially the law societies, to supplement the civil legal aid budget of the provinces and territories.

A provincial/territorial working group, in which the federal government is participating, has undertaken a national review of Legal Aid programs in Canada. This review includes an examination of all possible sources of revenue including potential revenue-generating opportunities accessible through law foundations and law societies.

This recommendation has been referred to the working group, law foundations and law societies.

Recommendation 20

There should be national minimum standards for family law legal aid (which standards should at least be equal to the existing Ontario standards) with realistic and flexible financial eligibility criteria.

The administration of Legal Aid Programs, including the determination of tariff rates and financial eligibility criteria, falls within provincial and territorial responsibility. This recommendation has been brought to the attention of the provincial/territorial working group on legal aid (in which the federal government is participating) and to the provinces and territories.

Recommendation 21

No province or territory should require participation in mediation as a condition for obtaining or maintaining legal aid.

The administration of the Legal Aid Program is a provincial/territorial responsibility.

The Criminal Law and Young Offenders matters agreement provides that legal aid must be provided to eligible persons charged with serious criminal offences and participation in mediation is not a prerequisite for eligibility.

This recommendation has been brought to the attention of the provincial/territorial working group on legal aid (in which the federal government is participating) and the provinces and territories.

Recommendation 22

Governments should encourage law firms to set guidelines with respect to "pro bono" work which should require that a mandatory number of "pro bono" hours are devoted to legal aid cases.

This recommendation has been brought to the attention of the provincial/territorial working group on legal aid (in which the federal government is participating), the provinces and territories, and law societies.

WOMEN'S ORGANIZATIONS

Recommendation 23

Funding for women's organizations dedicated to equality for women should not be cut. Transformation of the justice system cannot take place without interaction between government, justice officials and organizations knowledgeable in the field. If funding is cut, there will be no organizations able to speak for women on these issues. Nor can equality for women be achieved unless women, who do not enjoy equal political power and access to resources, have the capacity to work together and to make their voices heard. Full funding to women's organizations should be immediately restored on a permanent basis including core funding and research funding to the Canadian Research Institute for the Advancement of Women (CRIAW) and other like-minded groups.

Core funding of women's organizations falls within the responsibility of the Department of Human Resources and Labour. The Department does, however, provide financial assistance to women's organizations for the development of short-term discrete programs, services, training, research and public education projects that assist in the implementation of selected justice system reforms.

The Department has also provided financial assistance to women's groups by funding their participation in public consultations, including participation in the National Symposium on Women, Law and the Administration of Justice and consultations on **Bill C-49** and proposed amendments to the *Canadian Human Rights Act*.

This recommendation has been brought to the attention of the Department of Human Resources and Labour and Status of Women Canada.

Recommendation 24

The federal government should withhold funding from those provinces that do not have programs to help women until those provinces provide aid to women.

This recommendation has been brought to the attention of the Department of Human Resources and Labour, Status of Women Canada and the provincial and territorial governments.

Recommendation 25

Given that access to the justice system and justice involves creating an informed legally literate citizenry capable of understanding and interacting with the justice system to have their legal problems and needs resolved justly, and able to participate in the process of changing the system to meet their individual and group needs, and

Given that programs of public legal education vary greatly between different provinces and territories,

Be it resolved that governments ensure that funding is available to community groups to design programs to meet their legal needs.

The Department has, since 1984, provided access to legal information and education for Canadians. Public Legal Education and Information (PLEI) materials and information for women in particular have been provided through a network of sole-purpose community PLEI organizations. These organizations are jointly funded by the Department and each province or territory.

The Department also provides funding to provincial/territorial governments, community-based organizations and to individuals for experimental PLEI projects and research, national coordination and planning of PLEI services, and the development of law information materials. Many of these materials are often targeted to women and deal with such topics as divorce, mediation and family violence.

This recommendation has also been brought to the attention of provincial and territorial governments.

SERVICES

Recommendation 26

> **Provincial ministries of the Attorney General, and the federal Department of Justice should conduct an audit of the needs of immigrant women with respect to the justice system (in its broadest definition) paying particular attention to the needs of women who are especially disadvantaged by reason of poverty, race, disabilities, language, cultural origin or being victims of abuse and place high priority on meeting those needs.**

The Department, in conjunction with Human Resources and Labour, Canadian Heritage and other departments, is presently developing a legal information program and materials on wife assault for immigrant women to increase their awareness of and access to the justice system. The program will also include intermediate training in PLEI for immigrant-serving organizations and a module on the justice system.

The sole-purpose PLEI organizations also provide informational materials in six languages other than French and English.

This recommendation has also been brought to the attention of the Department of Human Resources and Labour, Canadian Heritage, and Status of Women Canada and the provincial and territorial governments.

Recommendation 27

> **The justice system must also be accessible to women who do not speak either English or French. Aboriginal women and immigrant women, whether they are witnesses, victims, or accused persons, need to understand and be able to participate in judicial procedures on an equal footing. This means that adequate and free linguistic and cultural interpretive services must be available and that information materials are required in languages other than English and French. In addition, adequate interpreter services must be available to members of francophone and anglophone minorities who live in areas where services are not ordinarily available in their language.**

Section 14 of the Charter provides that a party or witness to any proceeding, who does not understand the language in which the proceedings are conducted or is deaf, has the right to the assistance of an interpreter. This right can be exercised in all federal courts.

PLEI organizations currently provide informational materials in six languages other than French and English and will be encouraged to continue to do so. PLEI organizations also train interpreters through intermediary training programs.

The Department's Native Courtworker Program funds native courtworkers who are responsible for offering services to Aboriginal people in their own language and for assisting the court in understanding the accused. The Department is reviewing the Native Courtworker Program. The review is expected to be completed within the next two years. This recommendation has been incorporated into the terms of this review.

The Aboriginal Justice Fund has approved five proposals from Aboriginal groups and one from the Attorney General of Manitoba which seek to improve existing courtworker services for Aboriginal people.

The Department also supports initiatives such as those in the Northwest Territories where unilingual Aboriginal language speakers may sit on juries.

Funds have also been allocated to support two Crown-based victim/witness assistance programs in the North. These programs are staffed by Aboriginal women who offer assistance to their clients in English or in their Aboriginal language and improve their clients' access to the courts and legal services.

The Department is supportive of undertaking evaluative research to identify problems in providing adequate interpretive services including how to best translate legal concepts from one language to another.

This recommendation has also been brought to the attention of the provincial and territorial governments.

<u>Recommendation 28</u>

> **The justice system must be accessible to women with disabilities. This means that courts and legal aid offices must be physically accessible to those with mobility, hearing or visual impairments; it also means that professional interpreters for deaf people must be available and that other interpreters or support persons for people with disabilities must be recognized (such as bliss symbol interpreters and support persons for persons with mental disabilities).**

All federal courts are physically accessible to the disabled. Improvements can be made as facilities are renovated or constructed.

Interpretation for the deaf is available in all federal courts as provided for in section 14 of the Charter. The *Federal Court Rules* also provide that "[a] person afflicted with an infirmity which renders him unable to speak, or to hear and speak, may take the oath or solemnly affirm and testify, either by writing under his hand, or by signs with the aid of an interpreter."

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 29

A parliamentary committee should be established to examine problems relating to discrimination against women with physical or mental disabilities who are thereby in a situation of double jeopardy, and a report of the committee's findings should be published.

This recommendation has been brought to the attention of the Department of Human Resources and Labour and Status of Women Canada.

Recommendation 30

Public funding must be made available for the creation and maintenance of facilities which provide supervised access visits and safe transfer facilities. Staff employed by such facilities must be appropriately trained.

Responsibility for such facilities rests with the provincial and territorial governments. This recommendation has been brought to the attention of them for their consideration.

However, the Department of Justice has provided financial assistance to the Attorney General of Manitoba for the Manitoba Access Assistance Program. The program addresses access difficulties experienced by parents and children after separation or divorce.

The objectives of the program are to:

(1) provide an opportunity for children to maintain or re-establish a positive, continuing relationship with the non-custodial parent;

(2) provide a safe, non-threatening environment for parental access to take place;

(3) provide a buffer against parental hostility and the resulting anxiety for the children;

(4) provide an opportunity or assistance for the non-custodial parent to maintain or re-establish a long-term relationship with the child;

(5) provide an opportunity or assistance to assure reliable and consistent visiting patterns between the access parent and the child;

(6) allay fear by ensuring safety of the child during access, where necessary; and

(7) reduce hostility and to develop a measure of trust and communication between the custodial and non-custodial parents.

The Department has also provided financial assistance to Prairie Research Associates Inc. to conduct an evaluation of this project.

CHAPTER THREE: EDUCATION AND PREVENTION

JUDICIAL EDUCATION

Recommendation 1

There should be mandatory judicial education and continuing training programs for judges at all levels on gender equality issues including race, culture, class, disability, sexual orientation and sexual reputation evidence.

The federal and provincial governments and the judiciary agreed in 1988 that there was a need for a coordinated national approach to judicial education. As a result, governments agreed to jointly fund the National Judicial Institute. The Institute is controlled by federally and provincially appointed judges. Its mandate includes coordinating the education of federal and provincial judges, acting as a clearinghouse for judicial education materials and developing and delivering judicial education programs and learning materials.

Because of constitutional guarantees of judicial independence, the issue of mandatory training for judges must be approached with caution. Consideration is being given to changes in new judges' training, to enable judges to receive a period of intensive orientation before they assume their judicial duties. A revised program could include programs on gender equality issues. All new judges, whether federally or provincially appointed, now receive a video and resource materials on gender equality produced by the Institute.

The Department has provided substantial funds for judicial education on gender equality issues through the National Judicial Institute, the Western Judicial Education Centre, the British Columbia Supreme Court project on gender bias and the Canadian Association of Provincial Court Judges. Many of these organizations' programs have also included cross-cultural training components. These programs have been highly acclaimed.

The Department has also funded research projects submitted by the Native Women's Association of Canada and Pauktuutit regarding the impact of culture as a mitigating factor in sentencing.

Gender equality and multicultural programs are now being integrated into substantive law sessions. This will enable judges to address these issues in the same context in which the courts may expect to encounter them. In addition, the National Judicial Institute has prepared courses on race relations and family violence, both of which include gender equality components.

The Department is committed to working with the National Judicial Institute and other judicial education organizations to ensure that course materials are sensitive to all equality issues.

This recommendation has also been brought to the attention of all judicial organizations, judicial councils and provincial and territorial governments.

Recommendation 2

> **A duty judge should be provided to replace judges away on training so that busy court schedules are not interrupted.**

This recommendation deals with court administration which is outside the jurisdiction of the Department of Justice. It has been brought to the attention of the Canadian Judicial Council and the provincial and territorial governments.

Recommendation 3

> **Promote research on people appointed to administrative tribunals and get feedback from people who access these tribunals. Provide education and training on gender equality to members of administrative tribunals.**

The Department is prepared to work with the federal government departments and agencies that are responsible for federal administrative tribunals in conducting research on people appointed to tribunals and in studying women's accessibility to and treatment by these tribunals.

This recommendation has been brought to the attention of Status of Women Canada and the provincial and territorial governments.

Recommendation 4

> **An "independent" legal/judicial education fund should be established to fund legal judicial education. This fund could be financed from a diversity of sources including lawyers' associations and Law Foundations.**

Federally appointed judges are prohibited by statute from accepting any payment or fee except as provided under the *Judges Act* or as specifically authorized by the Governor in

Council. The *Judges Act*, however, provides generous access to educational funds for the judiciary. The Department would be willing to support the establishment of a fund to permit wider access to educational opportunities for provincially appointed judges.

This recommendation has also been brought to the attention of provincial and territorial governments, law societies and law foundations.

JUSTICE PROFESSIONALS

Recommendation 5

There should be mandatory, continuing training for lawyers, Crown attorneys, police, probation officers, court workers, social workers, legislators, media, interpreters/translators, law students, parole board members and all other persons associated with the criminal justice system on gender equality issues.

The Department recognizes the need to increase the awareness of participants in the criminal justice system on gender equality issues and supports the training of federal Crown prosecutors and other Justice employees on these issues.

The Department has developed a Managing Diversity Training Program for Managers and Supervisors. This training program will be one of the mandatory training programs for departmental managers and will address issues such as gender and cultural bias. A pilot of this two-day training program was offered in March 1993 and attended by approximately 20 persons. As a result of the success of this pilot program, the Department is planning to offer this program two more times in the next fiscal year.

In addition, the Department is currently developing additional one-half day awareness sessions, open to all departmental employees, commencing 1994-95. These sessions will provide cross-cultural, gender and disability-related sensitization.

This recommendation has also been brought to the attention of the Department of Public Security, the provincial and territorial governments, law societies, bar associations and law schools.

Recommendation 6

There should be mandatory cross-cultural training for all justice professionals and such training should be facilitated by Aboriginal people.

The Department has funded judicial education programs on cross-cultural issues, many of which have been facilitated by Aboriginal people. With respect to training of Department of Justice employees, in July 1992, selected members of the Department attended a cross-cultural workshop sponsored by the Department's Aboriginal Justice Directorate. The Department is considering the sponsorship of similar cross-cultural workshops in the future.

As well, as was noted in the response to the previous recommendation, the Department has developed a Managing Diversity Training Program for Managers and Supervisors. This training program will be one of the mandatory training programs for departmental managers and will address issues such as gender and cultural bias.

The Department also sponsored a one week cross-cultural sensitization program for federal Crown prosecutors in the Northern regional offices during the winter of 1992-93. Dene families were central to the success of this program.

This recommendation has also been brought to the attention of the Department of Public Security and Indian and Northern Affairs, the provincial and territorial governments, judicial education organizations, law societies, bar associations and law schools.

Recommendation 7

Police and prosecutors should receive special training with respect to sexual abuse cases, pornography and sensitization to victims' feelings.

With respect to federal Crown prosecutors, the Department recognizes the need to increase the awareness of federal prosecutors to these issues. The need to be sensitive to victims' needs is emphasized in the Department's Spousal Assault Prosecution policy and will be emphasized in the victims of violent crime policy which is currently being developed. Federal Crown counsel also attend training seminars and other educational sessions on these issues.

With respect to the Department's work in its northern offices, spousal assault and sexual assault cases have special aspects to them which require specific training. In particular, sexual assault cases involving children raise even more complex issues requiring additional specialized training. The Department supports the designation of special resource prosecutors in the northern offices to assist and advise all prosecutors on the conduct and handling of these cases.

This recommendation has also been brought to the attention of the Department of Public Security and the provincial and territorial governments.

Recommendation 8

There should be appropriate initial and continuing education for officials on violence against women.

With respect to education of departmental employees on violence against women, the Department supports the training of federal Crown prosecutors on this issue. This support is also reinforced by the Department's Spousal Assault Prosecution policy and the policy on victims of violent crime that is now being developed.

One of the priorities of the Department's Family Violence Initiative is to improve the response of the Canadian justice system to family violence. Accordingly, the Department provides funding for short-term projects that are directed toward the same objective. Included in this type of funding have been judicial education programs on family violence produced by the National Judicial Institute and the Western Judicial Education Centre.

This recommendation has been brought to the attention of the Department of Public Security, Status of Women Canada and the provincial and territorial governments.

Recommendation 9

Legal students must receive training on family and domestic violence (legal aid training).

This recommendation has been brought to the attention of law schools, law societies and bar associations.

Recommendation 10

Applicants for positions within the justice system must demonstrate knowledge of and sensitivity to gender and cultural issues.

With respect to departmental employees, the Department's Employment Equity Program sets out specific objectives for the recruitment, promotion and retention of Aboriginal persons, members of visible minority groups, persons with disabilities and women. As of June 1993, the Department's training program for new lawyers will contain a compulsory workshop on interpersonal relations.

The Department has, over the past four years, offered awareness sessions to employees regarding persons with disabilities. These sessions are now being expanded to incorporate sensitization to gender and cultural issues and will be available to all employees commencing 1994-95.

As well, the Department continues to promote and offer awareness and sensitization training to departmental managers and supervisors in the area of Employment Equity. A two-day pilot workshop on Managing Diversity was held in March 1993 and focused on cultural awareness and behaviourial change. This program will be repeated two times over the next fiscal year and will be one of the mandatory training programs for departmental managers.

With respect to applicants for judicial appointments, the capacity to exercise the policy role conferred upon the judiciary by the Charter, including sensitivity to equality issues, is a major factor considered by the advisory committees recommending applicants for federal judicial appointment.

This recommendation has also been brought to the attention of the Department of Public Security and the provincial and territorial governments.

Recommendation 11

> **Information about systemic problems/issues/solutions should be diffused throughout the justice system to all agencies which have responsibility for sentencing (such as Correctional Service Canada, judiciary, legal staff, etc.).**

The Department recognizes the need to increase the awareness of participants in the criminal justice system on gender equality and sentencing and supports the training of federal Crown prosecutors and other Justice employees on these issues.

This recommendation has also been brought to the attention of the Department of Public Security, judicial education organizations and the provincial and territorial governments.

LEGAL PROFESSION

Recommendation 12

> **With the support of the federal Minister of Justice, law societies should undertake to set up standing committees, commissions or working groups to examine sexism and racism within the legal profession.**

The Canadian Bar Association Task Force on Gender Equality recently released its final report. The stated objectives of the Task Force were:

- to inquire into and to make recommendations for the improvements of the status of women within the legal profession;
- to inquire into and make recommendations with respect to gender bias in the Canadian Bar Association constitution, by-laws, rules and internal operating procedures;
- to identify and refer to the appropriate Canadian Bar Association Sections and Conferences for review and report, substantive issues of gender equality; and
- to take the lead in acting as a conduit for the collection and distribution of information regarding initiatives on gender equality and in particular, to undertake consultations.

The Minister of Justice will take all necessary action to deal with women's participation in the Department of Justice. He will also follow up quickly on other important recommendations directed to the federal government.

The Department is also monitoring the work and reports of the various committees established by law societies in British Columbia, Alberta, Ontario and Quebec on gender equality in the legal profession. Departmental funding is available to law societies for short-term initiatives intended to examine sexism and racism within the legal profession. As well, with respect to its own employees, the Department has established an internal working group on gender equality, a working group on multiculturalism, and Advisory Committees on Equal Opportunities for Women, Aboriginal People, Persons with Disabilities and on Visible Minorities. These Advisory Committees, under the direction of the Employment Equity Steering Committee, recommend the development of policies to the Deputy Minister and monitor their implementation.

This recommendation has also been brought to the attention of law societies and bar associations.

Recommendation 13

All decision-makers within the legal profession should adopt policies aimed at promoting education on sexual equality and discrimination, protecting the rights of women and persons from minority groups and imposing sanctions for any behaviour that discriminates on the basis of gender, race, physical or mental

disability and sexual orientation or that is contrary to the principles set forth in the *Canadian Charter of Rights and Freedoms* and other human rights legislation.

With respect to the Department of Justice's own policies, the Department has adopted policies relating to Harassment, Training and Development and Employment Equity. These policies have been widely communicated throughout the Department. Information sessions on harassment in the workplace have also been held within the Department.

This recommendation has also been brought to the attention of law societies and bar associations.

Recommendation 14

Law societies and professional organizations should sponsor legal education programs or sessions on gender equality and discrimination which should include consideration of the special problems of women with disabilities or women from visible minorities. Such programs should be instituted in firms, educational institutions and any other forum where such sensitization is needed.

This recommendation has been brought to the attention of law societies, bar associations, law schools, judicial councils and judicial education organizations.

Recommendation 15

It is recommended that acts of sexism and sexual harassment be expressly named as prohibited conduct in codes of ethics for lawyers and judges and, further, that all provincial and federal professional codes of ethics be revised to reflect these prohibitions.

The Department has had a Harassment Policy, including a harassment complaint process, in place for several years. Information Sessions on Harassment at the Workplace are offered on an on-going basis to departmental managers, supervisors and employees. The Department monitors all grievances in this regard and investigates and responds to these grievances in a timely fashion.

This recommendation has also been brought to the attention of law societies, bar associations, law schools, judicial councils and judicial education organizations.

LAW SCHOOLS

Recommendation 16

Law schools should provide adequate funding for legal education:

- **to hire faculty which represent the diversity of society in sex, race, class, etc.;**
- **to hire full-time academic support staff to make it possible for "non-traditional" students to succeed;**
- **to provide non-academic support for law students.**

This recommendation has been brought to the attention of law schools, the Council of Canadian Law Deans, the Canadian Association of Law Teachers, and law societies.

Recommendation 17

The Department of Justice should fund for six years (until the retirement of older male law professors), one appointment at each faculty of law of one young academic identifiable by gender, race (visible minority), disability, or sexual orientation whose research and teaching commitments would focus on the legal process and gender, race, disability or sexual orientation.

Funding of this type is outside the mandate of the Department of Justice. This recommendation has been brought to the attention of the Departments of Canadian Heritage and Human Resources and Labour, and the Council of Canadian Law Deans.

Recommendation 18

All universities and teaching faculties should adopt ethical standards that would prohibit all sexual harassment, sexism, and discrimination based on race, colour, gender or sexual orientation.

This recommendation has been brought to the attention of provincial and territorial Ministries of Education, law schools, Council of Canadian Law Deans, the Canadian Association of Law Teachers, and law societies.

Recommendation 19

That the Council of Canadian Law Deans consider the report entitled "Equality in Legal Education... Sharing a Vision...; Creating the Pathways" produced by a special advisory committee to the Canadian Association of Law Teachers.

This recommendation has been brought to the attention of law schools, the Council of Canadian Law Deans, the Canadian Association of Law Teachers, and law societies.

PUBLIC LEGAL EDUCATION AND INFORMATION

Recommendation 20

Education is needed at the community level to assist in changes, i.e. education of citizens, commitment of federal government to educate communities possibly through schools. This means that Aboriginal, minority and immigrant women need to be trained to provide information to their communities.

With respect to public education about departmental initiatives, the Department supports the goal of this recommendation by incorporating into departmental publications and exhibits, a focus on public education about access to justice, where relevant. The Department published an updated version of *Canada's System of Justice* in March 1993 in support of this recommendation. As well, the Department will continue to liaise with provincial and territorial Attorneys General offices on similar public legal education and information initiatives.

With respect to general public legal education and information, the Department has provided access to legal information and education for Canadians since 1984. The Department and provinces/territories jointly fund sole-purpose PLEI organizations which distribute PLEI materials, many of which are directed to women and immigrant women. The Department also funds other PLEI projects, research and services on a variety of substantive areas, including an electronic network for communications on PLEI called the "PLEI-Net".

Under the Access to Legal Information Fund (ALIF), the Department provides support for intermediary training programs on the law in partnership with the provinces of Saskatchewan, Manitoba and Nova Scotia.

Although the Department has not, to date, worked directly with provincial and territorial Ministries of Education, many of the PLEI organizations funded by the Department such as those in Newfoundland, New Brunswick, Manitoba, Saskatchewan and British Columbia, offer school programs on the law and work closely with their Ministries of Education. One of the objectives of the Public Legal Education Association of Canada is to develop stronger working relationships with national educational bodies and provincial and territorial Ministries of Education.

The Department supports the implementation of this recommendation, in consultation with the provinces, territories and PLEI organizations.

This recommendation has also been brought to the attention of the provincial and territorial governments and PLEI organizations.

Recommendation 21

> **Consumers' legal needs should be assessed to determine what is required in the way of legal education and information.**

The Department recognizes the need for this type of research.

This recommendation has also been brought to the attention of the provincial and territorial governments and PLEI organizations.

Recommendation 22

> **Women of colour who come to Canada as domestic servants or mail order brides are especially vulnerable. They do not know how to get access to the justice system, they do not know their rights, they are isolated, and they are afraid. Any woman who comes to Canada on this basis should be provided with an orientation which will explain rights, and how to use them. Each woman should be provided with contacts, and names of service providers. As well, upon arrival in Canada, immigrant families should attend a Welcome House and be provided with an information package on discipline of children, wife battering, local by-laws, citizenship rights, family law and pension splitting. Research should be**

undertaken to explore other ways of providing protection to these particularly vulnerable women.

The Department is currently working with the Departments of Human Resources and Labour and Canadian Heritage on the development of legal information materials on wife assault for immigrant women to increase their awareness of and access to the justice system. Also included in this program is an intermediate training program in PLEI for immigrant-serving organizations.

Many of the PLEI programs and projects funded by the Department are for the development of programs or production of materials on issues that are important to women in general and that are intended to support and inform women who are doubly and triply disadvantaged. Socio-legal research has been and is being undertaken to assess the needs of immigrant women including women of colour.

This recommendation has also been brought to the attention of the Departments of Human Resources and Labour and Canadian Heritage, the provincial and territorial governments, and PLEI organizations.

Recommendation 23

Given that access to the justice system and justice involves creating an informed legally literate citizenry capable of understanding and interacting with the justice system, to have their legal problems and needs resolved justly and able to participate in the process of changing the system to meet their individual and group needs, and

Given that programs of public legal education vary greatly between different provinces and territories,

Be it resolved that:

(a) governments strongly support the efforts of public legal education organizations across the country to ensure that similar levels of services are available in all parts of the country; and

(b) governments encourage ministries of education to meet and ensure that students in Canadian schools receive the necessary legal education required to be informed and active citizens.

The Department is committed to continue working with the provincial and territorial governments and community-based PLEI organizations to support the development of public legal education and information activities and materials.

This recommendation has also been brought to the attention of the provincial and territorial governments and PLEI organizations.

Recommendation 24

> **There should be a media campaign (based upon the "Participaction" model) to make the public aware of stereotypes and inappropriate attitudes.**

This recommendation has been brought to the attention of Status of Women Canada, the Department of Canadian Heritage and the provincial and territorial governments.

Recommendation 25

> **Public legal education on gender bias and discrimination based on race, class and disabilities should begin at primary school levels. This will require a multi-disciplinary approach involving people with educational expertise, commitment at the highest levels and the financial resources to do the job. Primary and secondary school programs must also give equal respect to all points of view, including the diverse views of all women.**

As noted earlier, the Department has initiated a "Charter Literacy" research program which addresses attitudes and behaviour of children and youth towards women and minorities, and educational and social factors likely to influence those attitudes and behaviour.

This recommendation has also been brought to the attention of the PLEI organizations and the provincial and territorial governments.

CONTENT AND TEACHING METHODOLOGY

Recommendation 26

Develop a set of guidelines/checklist to screen:

a) curriculum material and teaching methods; and

b) legal procedures and practices.

The Department recognizes the need for research on appropriate teaching methodologies and materials for gender equality sensitization. Future research in this area will include the development of the recommended guidelines.

This recommendation has also been brought to the attention of the provincial and territorial governments and universities, law faculties and judicial education organizations.

Recommendation 27

Gender equality training programs should be based upon and use, current information and materials and should be conducted in plain language. These materials should be revised to ensure that they are more sensitive to reality (e.g., "Aboriginal" and "Black" currently appear in texts in lowercase whereas "French" and "British" appear in uppercase).

The Department is a supporter of the use of plain language and abides by Treasury Board's policy regarding the use of inclusive language. The Department is also fully committed to the federal Government's policies regarding the use of gender-neutral language in all manner of communications. This practice ensures the use of inclusive language irrespective of gender, ancestry or ethnic origin.

The Department therefore supports the development and use of the type of training programs contemplated by this recommendation with respect to federal Crown prosecutors and Justice employees.

With respect to judicial education, the course materials prepared by the National Judicial Institute and other judicial education organizations are designed to include the most recent information available. The Department is committed to work with the Institute and others to ensure that all course materials are fully sensitive to equality issues.

This recommendation has also been brought to the attention of Treasury Board and provincial and territorial governments and universities, law faculties and judicial education organizations.

Recommendation 28

> **Appropriate and effective teaching methodology used in gender equality education should be researched. Consideration should be given to adopting alternative pedagogies, experiential learning (i.e., consulting with and learning from individuals who have suffered from the effects of gender discrimination), team teaching, group discussions, tutorials, use of videos and vignettes, panel/lecture presentations and the use of a "building block" approach for continuing and on-the-job training that will reinforce attitudinal change.**

The Department recognizes the need for developmental and evaluative research on appropriate and effective teaching methodology that promotes attitudinal change on all equality issues including gender equality.

This research will include assessment of the effectiveness of current sensitization training on the basis of methodologies and concepts derived from adult education. Improved strategies for future educational initiatives will be developed based upon this knowledge.

The Department's research in this area commenced with the 1991 evaluative study prepared by Dr. Norma Wikler for the Department on the effectiveness of the Western Judicial Education Centre's Western Workshop Series. The Centre conducted a program in each of 1989, 1990 and 1991 on sentencing, gender equality and Aboriginal justice issues. The programs also included presentations by individuals who have experienced discrimination. The report noted the importance of many of the factors identified in the recommendation for promoting attitudinal change. This report will facilitate future research in this area.

This recommendation has also been brought to the attention of the provincial and territorial governments and universities, law faculties and judicial education organizations.

Recommendation 29

> **The Department of Justice should fund a pilot project in one jurisdiction that models experiential learning methods from law school through continuing legal education and judicial education. The Department should:**
>
> - **monitor and evaluate the project;**

- **use the Joint National Committee on Legal Education (joint body of the Council of Canadian Law Deans, the judiciary and the Federation of Law Societies) to monitor and promote the experience of a pilot project; and**

- **immediately approve and fund the pilot project.**

As indicated, the Department supports the undertaking of developmental and evaluative research on appropriate and effective teaching methodology for promoting gender equality/sensitization. Currently, all gender equality projects funded by the Department, including judicial education programs, are monitored and evaluated. This recommendation will be taken into consideration in developing the proposed research agenda on this issue.

This recommendation has also been brought to the attention of the provincial and territorial governments and universities, law faculties and judicial education organizations.

Recommendation 30

The content of gender equality training programs should focus on, but not be limited to, these issues:

- **gender bias;**
- **racism;**
- **the needs of "differently-abled" persons (e.g., space availability, the limitations of signing);**
- **homophobia;**
- **rape trauma syndrome; and**
- **long-term effects of victimization.**

With respect to gender equality training programs for federal Crown prosecutors, Crown counsel receive gender equality and cross-cultural awareness training and attend seminars specific to certain types of cases including, spousal and sexual assault.

As to judicial education programs, the National Judicial Institute and other judicial organizations including the Western Judicial Education Centre have developed and held numerous programs on equality issues including gender, racism, cross-cultural awareness, the needs of persons with disabilities and the effects of victimization. The Department is committed to continuing to work with the National Judicial Institute and other organizations to ensure that future course materials and programs are sensitive to all equality issues.

This recommendation has also been brought to the attention of the provincial and territorial governments and judicial education organizations.

Recommendation 31

An inventory of available sensitization training programs (not just university-based education programs) should be created and maintained so that an appropriate program mix can be put together as the training need or occasion demands.

The Department supports the development of an inventory of existing sensitization educational programs and materials.

With respect to judicial education, the National Judicial Institute currently maintains an inventory of all judicial education materials.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 32

Responsibility for coordinating education programs should be limited to a few organizations in order to reduce public expenditure, avoid duplication of efforts and to facilitate continuous exchange of information between these organizations.

This recommendation has been brought to the attention of judicial education organizations and provincial and territorial governments.

Recommendation 33

Provide a list of legal and judicial bodies/associations to major organizations representing the interests of women, racial minorities, Aboriginal people and persons with disabilities so these organizations can provide these bodies with relevant information on an ongoing basis.

This information is already available in legal directories which are widely accessible in public, university and law libraries across the country.

Recommendation 34

Law school curriculums should integrate equality issues of gender, race and class and should emphasize the use and advantages of non-adversarial models in the legal process.

This recommendation has been brought to the attention of law schools, law societies and bar associations.

Recommendation 35

Law faculties should offer part-time legal education which would allow women to attend law school and still raise their children. This would be especially practical for the many lone parents.

This recommendation has been brought to the attention of law schools, law societies and bar associations.

Recommendation 36

Law schools and law societies should discuss educational goals and the need to promote diversity of experience and opinion in both law schools and practice. Issues that should be addressed include flexible hours, maternity leave, job sharing, policies on discrimination and other information related to career decisions.

Departmental officials do participate at annual Career Fairs in law schools to discuss employment opportunities at the Department of Justice.

This recommendation has been brought to the attention of law schools, law societies and bar associations.

Recommendation 37

Gender equality education and dialogue should involve everyone including men (the issue is not a "women's issue" but a social issue) and representatives of the judiciary, ministries of Justice and departments of Attorneys General.

The Department agrees that gender equality issues are not just "women's issues" but rather are societal issues that must be addressed by all levels of governments, men and women and by all persons within the justice system. As an example of the Minister of Justice's commitment to encouraging an inclusive dialogue on gender equality, the 280 participants at the Symposium included representatives from the federal, provincial and territorial governments, judges, lawyers, academics and representatives from women's organizations.

This recommendation has also been brought to the attention of the provincial and territorial governments.

CHAPTER FOUR: EQUALITY OF OPPORTUNITY

REPRESENTATION ON JUDICIARY, TASK FORCES, ROYAL COMMISSIONS

Recommendation 1

> **The federal, provincial and territorial governments should, with the support of the Canadian Judicial Council, immediately implement an affirmative action program regarding the appointment of women, minorities, bicultural and bilingual people to all levels of the judiciary, administrative tribunals and boards, commissions, human rights adjudication panels and task forces. Such affirmative action could be based upon Ontario's recent pilot project for the Ontario Court of Justice (Provincial Division).**

One of the aims of the federal judicial appointments process is to increase the number of women and members of cultural and ethnic minorities on the bench in order to make the judiciary more representative of Canadian society. The Canadian Judicial Council has no responsibility in relation to the appointment of judges.

Lawyers who have completed ten years at the bar of any province are encouraged to apply for judicial office. Merit remains the major criterion for appointment, broadly defined to include both professional excellence and sensitivity to social issues.

Women are actively encouraged to apply for judicial appointments. From September 1984 to February 1993, the number of women holding federal judicial office increased from 37 out of 756 to 111 out of 928. Over the same period, 28 women were elevated to higher judicial office (out of a total of 120 elevations). As the number of women in the legal profession continues to increase and more attain the minimum requirement of ten years practice at the bar, there will be greater opportunities for the advancement of women in the judiciary.

The federal judicial appointments process recognizes the need to ensure that judges capable of conducting proceedings in both official languages should be available in all jurisdictions. Extensive language training is provided to all federally appointed judges.

This recommendation has also been brought to the attention of all federal ministers and the provincial and territorial governments.

Recommendation 2

> **Northern justice is being delivered by southerners. Judges and lawyers are southerners. Northern lawyers who have the requisite number of years at the bar to be appointed as judges are not being appointed. No judges speak aboriginal languages. Appointments to positions in the justice system in the North need to be carefully scrutinized: more northerners, more women, more aboriginal persons are needed.**

As already indicated, the federal judicial appointments process is seeking to increase the number of women and members of cultural and ethnic minorities, including Aboriginal judges, on the bench in order to make the judiciary more representative of Canadian society. In keeping with this goal, the last two appointments to the Supreme Court of Northwest Territories were both residents.

This recommendation has also been brought to the attention of the territorial governments.

Recommendation 3

> **A new procedure should be devised for appointments to the Supreme Court of Canada which will guarantee women's input to the appointment process.**

Appointments to the Supreme Court of Canada are made after extensive consultation with senior members of the bar and bench, with the Attorney General of the province from which the appointment is to be made and with community leaders. A potential candidate's sensitivity to equality issues is a major factor that is considered by the Minister of Justice and the Prime Minister when considering an appointment to the Court.

As well, in recent years, the identity of candidates who may be under consideration has been reported in the media, providing an informal opportunity for public discussion and representations.

The Department does not support the adoption of a confirmation procedure as currently exists in the United States. However, should a more formalized procedure for the appointment of judges to the Supreme Court of Canada be designed, consideration will be given to including a mechanism that will ensure a greater input by women.

Recommendation 4

An explanation is requested as to why there are only two women on the Supreme Court of Canada. Is it correct to assume that a well-qualified woman was not available to replace Bertha Wilson?

The appointment of women to the Supreme Court of Canada is a major consideration, as it is in appointments to other courts. The primary consideration remains, however, to select the best person who is also available to fill any vacancy on the country's highest court. As the number of women in the legal profession continues to increase and more attain the minimum requirement of ten years practice at the bar, there will be greater opportunities for the advancement of women in the judiciary.

Recommendation 5

The selection criteria for the appointment of judges should be reviewed. The selection criteria should:

- **recognize the importance of different combinations of experience and expertise (e.g., recognize the life experience that many women and minorities offer) by, for example, waiving or amending, when necessary, the requirement of ten years in practice. Such life experience should be considered as evidence of a woman's commitment to the community;**

- **ensure that prospective candidates' political affiliations are not relevant;**

- **be well publicized and known to potential candidates;**

- **provide that feminist beliefs are a positive factor in favour of a candidate's selection; and**

- **re-define the concepts of excellence, objectivity and neutrality to exclude from consideration any prejudices (including sexism, racism and the rejection of non-Western values) that serve to systematically exclude women, native people and other minorities from the judiciary.**

The objectives of the federal judicial appointments process are set out in the publication, *A New Judicial Appointments Process*. They include the appointment of judges on the basis of merit. "Merit" is defined to include the following considerations:

- proficiency in the law;
- a well-rounded legal experience;
- maturity and objectivity in judgement;
- evidence of human qualities indicating that the judge would be receptive to and appreciative of social issues arising in litigation;
- the capacity to exercise the larger policy role conferred upon the judiciary by the *Charter of Rights and Freedoms*; and
- motivation to enter public service.

These criteria are subject to periodic review and were last reviewed in 1991. Periodic updates will be issued in the course of future reviews.

The ten-year threshold for judicial appointment is the existing standard at both the federal and provincial levels. Ten years is widely recognized as the minimum at which a person's experience, judgement and professional abilities have developed in the practice of law to enable him or her to be considered for judicial office. While a reduction in this requirement in favour of women or members of minorities would permit earlier redressing of the representativeness of the judiciary, it could affect the quality of judicial service and the administration of justice. The Department therefore does not favour any reduction in the threshold requirement.

The 1988 federal judicial appointments process was designed to remove politics as a criterion for judicial appointment.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 6

The composition of judicial and administrative tribunal selection committees should be representative of the reality of the Canadian population and should include at least 50 percent women, including women from minority groups.

The five-member federal advisory committees on judicial appointments include two lawyers, a judge and two laypersons appointed to represent the wider community interest. The members of the selection committees are frequently women.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 7

The members of selection committees at all levels of the judicial system should receive adequate anti-racism and anti-sexism training which will enable them to recognize the biases in the values and perspectives that they bring to the decision-making process and develop appropriate strategies for a non-discriminatory selection procedure.

The members of the advisory committees are periodically convened to discuss the operation of the appointments process and its success at achieving its aims, both with respect to the selection of candidates of objective merit and the addition of women and members of ethnic and cultural minorities to the bench. The next such meeting will include an examination of equality factors.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 8

The composition of judicial councils should be reviewed to ensure that the community is well represented on them.

The Canadian Judicial Council is composed of the chief justices of all provincial superior trial and appellate courts, the Federal Court and the Tax Court of Canada. It is chaired by the Chief Justice of Canada. The statutory objects of the Council are "to promote efficiency and uniformity, and to improve the quality of judicial service."

The current structure and objects of the Council do not lend themselves to community representation.

This recommendation has also been brought to the attention of the provincial and territorial governments.

Recommendation 9

Flexible employment policies should be implemented for judges to accommodate the concrete reality of women who are juggling a career and family life (for example, flexible hours, job sharing, sabbaticals, standardization of maternity and paternity leave). Similarly, flexible benefits packages should be offered so that a candidate who is not interested in a ten-year appointment is not tied into a long-term pension plan.

The Report and Recommendations of the 1992 Commission on Judges' Salaries and Benefits, dated March 31, 1993, and tabled in the House of Commons on April 27, 1993, recommended that the *Judges Act* be amended to provide more flexible rules of retirement in recognition of the fact that male and female judges are now being appointed at a younger age.

Persons accepting appointment to the bench are expected to make a long-term commitment to their judicial office. Judicial office should be viewed as a final step in a legal career and not as a "stepping-stone". However, the Commission has recommended that a judge be permitted to retire at a full pension when the judge has reached at least 60 years of age and has served on the bench for a minimum of 15 years, provided that the sum of age and years of service equals at least 80. The *Judges Act* currently requires a judge to have served a minimum of 15 years and to have attained a minimum age of 65 years.

The Commission has also recommended that the *Judges Act* be amended to provide for maternity and parental leave. Such a statutory provision would replace the current requirement that a judge who is absent for more than 30 days must seek approval by order-in-council for a paid leave of absence. Although the existing practice has been used to authorize maternity/adoption leave for female judges, the Commission has recommended this amendment as a more flexible policy.

Part-time and work-sharing arrangements may not be feasible for federally appointed judges since there is no authority to pay a judge for less than the exercise of full-time judicial duties.

Separate provisions apply to judges who have served a minimum of 15 years and have attained the age of 65 years and have elected to become "supernumerary" or to perform special judicial duties. However, the Commission has recommended that the *Judges Act* be amended to permit judges to elect to become supernumerary after attaining the minimum age of 60 years and serving a minimum of 15 years, provided that the sum of age and years equals at least 80.

With the approval of the Minister of Justice, the Canadian Judicial Council and the Canadian Association of Law Deans jointly administer a National Judicial Study Leave Program. This program enables judges who have served at least ten years in office to undertake a year of study, research or teaching at a participating Canadian institution. The Department is prepared to consider, with the Canadian Judicial Council, whether a similar non-academic program should also be instituted. However, the numbers of judges involved in such programs must necessarily be limited to avoid disruptions in the operations of the courts.

This recommendation has also been brought to the attention of the Canadian Judicial Council, the Council of Canadian Law Deans and the provincial and territorial governments.

Recommendation 10

> **The Canadian Judicial Council should assume a leadership role by recommending the adoption of part-time (other than supernumerary) positions within the judiciary which could then serve as a model for law societies, law firms and universities.**

As noted in the response to the previous recommendation, part-time and work-sharing arrangements may not be feasible for federally appointed judges. The Department is prepared to consider, with the judiciary, whether some flexibility should be provided or whether such matters should remain with individual judges and their chief justices.

This recommendation has also been brought to the attention of the Canadian Judicial Council and the provincial and territorial governments.

REPRESENTATION OF ABORIGINAL PERSONS AS JUSTICE PROFESSIONALS

Recommendation 11

> **The justice system should recruit Aboriginal employees and provide them with on-the-job training where required.**

The Department actively promotes and utilizes a number of special programs for the recruitment of target group members, including the National Indigenous Development Program and the Northern Careers Program. Specific objectives for the recruitment, promotion and retention of Aboriginal persons have also been established under the Department's Employment Equity Program. As of March 31, 1993, and based on self-identification, the Department employed three Aboriginal women lawyers.

The Department has developed a number of communication vehicles over the past few years in an effort to encourage more native persons to pursue a career in law. For instance, the Department developed a native legal careers package which was distributed to all Bands, Friendship Centres, Native Associations and Universities across Canada.

As well, three of the Department's 30 articling positions are reserved for Aboriginal students each year. For the year 1993-94, one of the three articling students is a woman. For the year 1994-95, it is anticipated that two of the three positions will be held by women.

As part of the Department's Aboriginal Justice Initiative, the Department has allocated $90,000 per year, for the period 1992-93 to 1995-96, to hire Aboriginal law students and to provide them with career oriented employment training. In 1992-93, four of the eleven positions were held by Aboriginal women law students. The thirteen positions available for 1993-94 are currently being filled.

Through the Aboriginal Justice Fund, the Department is supporting five projects submitted by Aboriginal groups and another by the Attorney General of Manitoba that will operate or improve existing Aboriginal Courtworker programs. The Department has also created two victim/witness assistance programs in the North. Both programs are staffed by Aboriginal women.

This recommendation has also been brought to the attention of the Department of Public Security and the provincial and territorial governments.

Recommendation 12

> **All applicants for positions within the justice system should be questioned about their awareness of Aboriginal issues. Awareness of these issues should be a positive criterion for hiring.**

The Department promotes and offers awareness and sensitization training to departmental managers and supervisors as part of its Employment Equity Program. A two-day pilot workshop entitled "Managing Diversity" was held in March 1993 and attended by approximately 20 persons. This program focused on cultural awareness and behavioural change and was a tremendous success. As a result, the Department is planning to offer this program two more times in the next calendar year.

In addition, the Department is currently developing additional half-day awareness sessions, open to all departmental employees. These sessions will provide cross-cultural, gender and disability-related sensitization and will commence in 1994-95.

As well, in July 1992, selected members of the Department attended a cross-cultural workshop sponsored by the Department's Aboriginal Justice Directorate. The Department is considering the sponsorship of similar cross-cultural workshops in the future.

The Department also sponsored a one-week cross-cultural sensitization program for federal Crown prosecutors in the northern regional offices during the winter of 1992-93.

This recommendation has also been brought to the attention of the Department of Public Security and the provincial and territorial governments.

REPRESENTATION OF WOMEN WITHIN THE LEGAL PROFESSION

Recommendation 13

> **Law societies and law firms should encourage the analysis of women's career paths and the choice of practice area when presenting career day programs.**

With respect to departmental employees, the Department has established an Employment Equity Program. Under this program, the Department seeks to increase the representation of four groups including women. Areas requiring attention have been identified and specific recommendations in this regard have been developed and form part of the Departmental Action Plan on Employment Equity. The Action Plan covers the period April 1990 to March 1994 and is currently being implemented within the Department.

As well, the Program includes an Advisory Committee on Equal Opportunities for Women. The Department has implemented a Career Management System for all counsel/lawyer employees of the Senior Complement.

This recommendation has also been brought to the attention of law societies and bar associations.

Recommendation 14

> **Law societies should assist women with continuing legal education while they are on extended leave (for example, child care leave) so they do not to have to re-sit the bar admission exams after a three-year absence from practice.**

This recommendation has been brought to the attention of law societies and bar associations.

Recommendation 15

Law societies should reimburse bar fees, on a pro-rata basis, during child care or maternity leave.

This recommendation has been brought to the attention of law societies and bar associations.

Recommendation 16

Law societies must set mandatory, nation-wide minimum standards for workplace accommodation policies including maternity, paternal and parental leaves (as distinct types of leave, each providing for a mandatory minimum leave period), flexible hours, job sharing and sabbaticals. If and when necessary, the enabling legislation of law societies should be amended to allow the enactment of such standards and to require all law firm management committees to implement these policies.

With respect to departmental workplace policies for employees, the Department has maternity/paternity/adoption and care and nurturing leave policies. Other departmental policies such as the Performance Review and Employee Appraisal (PREA) address the issue of maternity leave in order to ensure that this period of leave does not have an adverse impact on the employee's pay and eligibility for promotion. The PREA process is currently being reviewed by the Department. As well, the departmental Advisory Committee on Equal Opportunity for Women reviews, on an ongoing basis, conformity between stated policies and actual departmental practices.

Several departmental policies are already in place for the benefit of employees who wish to take advantage of alternative work arrangements including, for example, part-time work, job-sharing and telework (work-at-home). The Department adopted a policy on self-funded leave in 1991. This policy applies to all employees and allows employees to defer a portion of their salary to fund a leave of absence of six to twelve months.

The Department has also had a Harassment Policy, including a harassment complaint process, in place for several years. Information sessions on harassment in the workplace are offered on an ongoing basis to departmental managers, supervisors and employees. The Department monitors all grievances in this regard and investigates and responds to these grievances in a timely fashion.

This recommendation has also been brought to the attention of law societies and bar associations.

Recommendation 17

Solutions must be found to respond to the inability of small law firms to financially support maternity and paternity leave, perhaps through negotiations with insurance companies to cover this leave of absence.

This recommendation has been brought to the attention of law societies and bar associations.

Recommendation 18

Law societies should address, in the bar admission or continuing education curriculum, the issue of working conditions.

This recommendation has been brought to the attention of law societies and bar associations.

Recommendation 19

Nationally acceptable standards regarding the portability of law degrees and the conversion of foreign law degrees should be established.

This recommendation has been brought to the attention of the provincial and territorial governments and law societies and bar associations.

Recommendation 20

Law societies should set up day care facilities. They already provide a number of services such as travel services, car insurance, life insurance, reductions on hotel rooms and so on. Day care services, which are just as essential if not more so, would be greatly appreciated.

This recommendation has been brought to the attention of law societies and bar associations.

Recommendation 21

Lawyers should have the right to refuse to represent an individual accused of sexual assault.

This recommendation has been brought to the attention of law societies and bar associations.

REPRESENTATION OF WOMEN IN LAW SCHOOLS

Recommendation 22

The academic staff of law faculties should reflect the diversity of the Canadian population. Law faculties should immediately adopt employment equity programs to promote the recruitment, hiring and promotion to tenure track positions of women, including women from minority groups, as professors. By the year 2000, women should constitute at least 50 percent of the academic tenured staff of law faculties.

The Department's Aboriginal Justice Fund has approved financing for programs run by the Universities of Alberta and Manitoba Faculties of Law. Their programs offer assistance to Aboriginal law students, including Aboriginal women, in developing their legal skills and providing tutorial seminars and examination preparation. Proposals from other universities are also under review. The fund has also contributed to the Aboriginal Law Student Admission Program so that a greater number of students can benefit from the Program. These programs will help to increase the numbers of Aboriginal persons, including Aboriginal women, eligible for academic staffing positions.

This recommendation has been brought to the attention of law schools, the Council of Canadian Law Deans, the Canadian Association of Law Teachers and law societies.

Recommendation 23

The Council of Canadian Law Deans should adopt a policy with regard to the eradication of sexism, racism, "able-ism" and other types of institutional and attitudinal barriers to the full and equal participation of women in law school education. The policy should be implemented through a program with established goals, target and time tables for implementation. The program should include the following:

- **a review of curriculum;**
- **policy guidelines on the elimination of discrimination in law school; and**
- **hiring of law teachers from disadvantaged groups.**

This recommendation has been brought to the attention of law schools, the Council of Canadian Law Deans, the Canadian Association of Law Teachers and law societies.

Recommendation 24

A commission of inquiry with the power to implement its recommendations should be given the responsibility of studying the selection criteria used by law faculties for the admission of students and the recruitment, hiring and promotion of professors. The policies, directives and practices of these institutions should also be examined, with particular emphasis on ensuring a non-discriminatory environment and curriculum. For example, admission should not be conditional upon high Law School Admission Test and grade point average scores but should also consider personal experience, academic training, community involvement and specific personal considerations.

This recommendation has been brought to the attention of law schools, the Council of Canadian Law Deans, the Canadian Association of Law Teachers, law societies and the provincial and territorial governments.

Recommendation 25

Student loan and bursary programs should be re-examined to ensure that :

a) **the criteria used to determine the amount of the loan or bursary reflect the special needs of refugees and immigrant women;**

b) **consideration is given to child care expenses, where applicable;**

c) **the amount of the loan or bursary is not deducted from family allowance or welfare payments;**

d) **women are not assessed on the basis of their husband's income, to which they often do not have access for their education;**

e) **repayment of the loan will not begin until after the first six months of practice.**

This recommendation has been brought to the attention of the Department of Human Resources and Labour and the provincial and territorial governments.

Recommendation 26

Law schools should offer special scholarships to fund the upgrading process of immigrant lawyers, as required. Special attention should be paid to women in this situation. Often they cannot afford the tuition fees for such training because they cannot work while taking courses because of child care responsibilities or because they have no access to their husband's earnings.

The Department offers four scholarship programs: the Duff-Rinfret Scholarship Program (for post-graduate studies in law); the Driedger-Pigeon Fellowships in Legislative Drafting (for post-graduate studies in legislative drafting); the Civil Law/Common Law Exchange Program (for law school students at Sherbrooke University and Dalhousie University); and the Legal Studies for Aboriginal People Program (for law school, bar admission and graduate studies in law by Aboriginal students). Under the Civil Law/Common Law Exchange Program and the Legal Studies for Aboriginal People Program, emphasis is placed on giving opportunities to female law students and prospective female law students.

This recommendation has also been brought to the attention of law schools and law societies.

REPRESENTATION OF WOMEN WITHIN THE PUBLIC SPHERE

Recommendation 27

Federal policies requiring that certain contracts be awarded on the basis of employment equity considerations should be extended to apply to contracts for legal services. Provincial and territorial governments should, if they have not already done so, adopt similar employment equity policies.

The Department is committed to and fully supports employment equity policies and programs as an employer. It should be noted, however, that the Government Contract Regulations, which apply to other contracts with the federal government, do not apply to Department of Justice contracts for legal services. As a result, any employment equity provisions which may be contained in those regulations do not apply to the Department when it retains legal agents.

Contracts for hiring legal agents involve unique circumstances. Firstly, "legal agents" or lawyers are independently governed by provincial/territorial law societies which are responsible for, amongst other things, establishing professional codes of ethical conduct by which all lawyers in a given jurisdiction are bound. Many law societies already promote or require adherence to employment equity considerations within the legal profession.

Secondly, the Department is often required to hire legal agents as prosecutors on very short notice. This process does not always present the same or any opportunity for employment equity considerations. This problem is further compounded by the fact that in smaller communities, there are fewer lawyers who are both qualified and available for contracts with the Department.

Accordingly, the Department does not currently have a formal policy requiring that employment equity be taken into consideration in the hiring of legal agents. However, the Department will take this issue into consideration as part of its ongoing review and supervision of the work of its legal agents.

This recommendation has also been brought to the attention of the provincial and territorial governments and law societies.

Recommendation 28

> **A federal program should be instituted that is aimed at increasing female representation in leadership roles in business and in the community. This would ensure that women would be in positions that enable them to be the agents of social change.**

This recommendation has been brought to the attention of Status of Women Canada.

PARTICIPATION BY WOMEN IN PUBLIC CONSULTATIONS

Recommendation 29

> **In order to have genuine consultation, women of all interests must be involved including lesbians, physically and mentally disabled women, immigrant, Aboriginal and financially disadvantaged women. They must be consulted in the same way that other groups are - for example, as business groups are consulted during budget preparations and consultations.**

The Department agrees that public consultations must be inclusive. To that end and in addition to the National Symposium on Women, Law and the Administration of Justice, public consultations undertaken with respect to recent initiatives including those on **Bill C-49**, *An Act to amend the Criminal Code (Sexual Assault)* (rape shield provisions) and on proposed amendments to the *Canadian Human Rights Act* did involve a broad cross-section of women's groups as referred to in the recommendation.

This recommendation has also been brought to the attention of all federal ministers and the provincial and territorial governments.

Recommendation 30

> **The Department of Justice should support a process, to be designed by women's equality-seeking organizations, which provides full access to the creation of a justice system that ensures justice and fairness to women, keeping in mind gender, race, class, sexual orientation, ability and age.**

As indicated, the Department supports inclusive consultation. As well, the Department has developed a consultation policy which reflects an inclusive approach. However, the format of future consultations undertaken by the Department will necessarily be determined by many factors, including fiscal restraints.

Recommendation 31

> **The federal government should provide funding for a constitutional conference of women's groups working toward equality to discuss and consult on possible constitutional amendments. Constitutional talks must involve disadvantaged native women and disabled groups.**

The Department is prepared to consider this recommendation at such time as constitutional reform is again contemplated.

This recommendation has also been brought to the attention of Status of Women Canada.

Recommendation 32

> **In the throne speech, the federal government announced that there would be a blue ribbon panel on family violence appointed. Women's organizations must have input into the designing of the appointment process and the selection of this panel.**

The Department is currently studying various legislative options with respect to family violence. As well, the Canadian Panel on Violence Against Women, appointed in 1991 by the Minister Responsible for the Status of Women, released its final report on July 29, 1993. This report includes recommendations on family violence which will be taken into consideration before any new legislative initiatives on family violence are undertaken.

Recommendation 33

> **The provincial-federal-territorial task force on child support guidelines should consult with women who need child support. A monitoring group should be set up.**

In June 1990, the Federal-Provincial-Territorial Family Law Committee began to study the issue of child support on family breakdown. The Committee released a discussion paper in June 1991 which reviewed problems with child support and reform alternatives including child support guidelines. This paper was released for public discussion and consultation.

The Committee released a second paper in May 1992 which reported the economic studies conducted to determine average expenditures on children in Canada. This paper was the subject of wide public consultations which concluded in December 1992. The Committee is currently reviewing the results of the consultations and conducting additional follow-up research.

Recommendation 34

The Department of Justice must accept the responsibility for covering any and all expenses relating to the participation of all women, including the additional cost of northern residents and women with disabilities, in all public consultations.

The Department has assumed responsibility for financial expenses incurred by participants for in-person public consultations including those related to the National Symposium on Women, Law and the Administration of Justice, **Bill C-49** and *Canadian Human Rights Act* amendments.

Recommendation 35

There must be an agreed process of accountability for the implementation of recommendations emerging from this Symposium. Women's organizations must have the opportunity to review and comment on the recommendations as well as to monitor their implementation. This process must include identifying who has responsibility for implementation and establishing time frames for implementation and a process for assessing progress in the implementation of these recommendations.

Volume II of the National Symposium on Women, Law and the Administration of Justice document series contains the sub-track summaries and recommendations as formulated, reviewed and approved by the participants and the track moderators. It also contains the list of recommendations as prepared and submitted by delegates from organizations dedicated to women's equality.

As indicated in the introduction to Volume II, it was not surprising to find duplication of some recommendations given the interconnectedness of many of these issues. For the purposes of this departmental response, all of the recommendations were reviewed with a view to eliminating any duplication. Accordingly, similar recommendations were combined and, wherever possible, the text of the original recommendations was maintained. Appendix A provides a cross-reference to the original recommendations as contained in Volume II.

The responses to each of the recommendations in this Volume indicate the Department of Justice's area of responsibility and also identify others who have some responsibility in that particular area. Appendix B provides a summary of those recommendations that have been referred to others for their consideration.

With respect to implementation of the recommendations, many of the responses in this Volume indicate that many recommendations have already been implemented or taken into consideration in the development of new initiatives. A more comprehensive review of implementation issues can be found in Part Two of this Volume, the Department of Justice Action Plan on Gender Equality.

Recommendation 36

> **The Minister of Justice should hold a meeting with all Attorneys General to announce a two- to three -year campaign on access to justice for women.**

The issue of gender equality in the Canadian justice system has been an agenda item since the Symposium and will be addressed at the next meeting of federal-provincial-territorial Ministers of Justice.

PART TWO

DEPARTMENT OF JUSTICE ACTION PLAN ON GENDER EQUALITY

DEPARTMENT OF JUSTICE ACTION PLAN ON GENDER EQUALITY

This action plan reflects the Minister of Justice's commitment to promoting women's equality in law and the administration of justice and will serve to direct the Department's future work on the gender equality and the administration of justice initiative.

With respect to those recommendations to which the Department has indicated agreement in principle and where the recommendation has already been implemented or is in the process of being implemented, the Department is committed to following through with existing initiatives and to conducting an internal review of actual practices to ensure that they conform to stated policies.

As to the proposed mechanism for conducting the internal review, the Department established two working groups on gender equality following the Symposium for the purpose of coordinating this departmental response. The two groups have now been consolidated into one department-wide working group that will look at legislative and policy reforms related to the gender equality initiative. This new departmental working group will be responsible for the review previously described, for developing and evaluating new gender equality initiatives and for recommending prioritization of proposed initiatives to senior departmental management. As well, this working group will prepare an annual report for the Minister on its work and that of the Department on the gender equality initiative.

The action plan for each category indicates the Department's commitment to future steps as well as a proposed time frame for implementing these steps. The time frames used in this action plan are defined as follows:

ongoing - the indicated action has already been undertaken and will continue as part of the Department's daily work;

short-term - implementation or completion of the indicated action will take up to one year;

medium-term - implementation or completion of the indicated action will take one to two years; and

long-term - implementation or completion of the indicated action will take three years or longer.

I. Department of Justice

Concerning those recommendations the Department has indicated a commitment to undertake, the Department's action plan is as follows:

Chapter One: Legislative Reform

* **Charter Litigation Review:**

  Upon the conclusion of the public consultations on the preliminary report "Review of Equality Litigation" (released March 17, 1993), the Department will consider all comments received with a view to determining any beneficial changes to the Department's policy and legislative framework regarding equality issues and litigation.

  Time frame: short-term

* **Marital and Family Status Initiative:**

  The Department will study all federal legislation, regulations and policies relating to marital and family status.

  Time frame: medium-term

* **Aboriginal Justice Initiative:**

  The Department will work on improving the delivery of justice to Aboriginal peoples, including identifying and addressing the particular justice-related concerns of Aboriginal women.

  Time frame: long-term

* **Violence Against Women, Spousal/Partner Abuse:**

  The Department will work with other federal departments, under the federal government's Family Violence Initiative, and with provincial and territorial governments in developing justice legislative and policy responses to the problem of violence against women. This work will include research as well as funding of pilot projects as identified in the responses in this volume, and criminal law reform.

  Time frame: medium- to long-term

* **Access To The Justice System By Persons With Disabilities:**

The Department will work with the Department of Human Resources and Labour with its review of federal legislation as part of the National Strategy for the Integration of Persons with Disabilities. This review will include appropriate reviews of the *Criminal Code* and the *Canada Evidence Act* to ensure the accommodation and full integration of persons with disabilities in the criminal justice system and consultations with provincial and territorial governments and interested community organizations.

Time frame: long-term

* **Prostitution:**

The Department will participate in the Federal-Provincial-Territorial Working Group on Prostitution and will review options for legislative reforms and undertake appropriate public consultations.

Time frame: medium-term

* **Racism:**

The Department will review all relevant law and the administration of justice, in collaboration with federal and provincial/territorial colleagues, to ensure that members of ethno-cultural and visible minority groups receive equal access to and fair treatment by the justice system. This work will be undertaken in collaboration with appropriate non-governmental organizations.

Time frame: long-term

* **Preliminary Hearings:**

The Department will review the preliminary inquiry, through the Federal-Provincial-Territorial Working Group on Criminal Procedure, and will hold appropriate public consultations on proposed reforms.

Time frame: long-term

* **Incarceration For Non-payment of Fines:**

The Department will study options regarding payment of fines and will hold appropriate consultations on this issue with provincial and territorial governments as well as community organizations.

Time frame: medium-term

* **Custody and Access Reforms:**

Upon the conclusion of public consultations on *Custody and Access: A Public Discussion Paper* (released March 9, 1993), the Department will conduct any necessary additional research and review legislative and policy reform options regarding custody and access under the *Divorce Act*.

Time frame: medium-term

* **Child Support and Enforcement:**

The Department will undertake research and participate in the Federal-Provincial-Territorial Family Law Committee's work on the issue of child support guidelines. The Committee is expected to submit its report to ministers in the Fall of 1993.

Time frame: short-term

* **Spousal Support and Enforcement:**

The Department will monitor the impact of the Supreme Court of Canada's December 1992 decision in *Moge* v. *Moge* to determine if further research is required regarding the reform of spousal support provisions under the *Divorce Act*.

Time frame: medium-term

* **Alternative Dispute Resolution:**

The Department will work on the dispute resolution project, including reviewing access to justice and the efficiency and effectiveness of the justice system, conducting related research and generally studying the use of alternative techniques and mechanisms in the resolution of disputes. The impact of alternative dispute resolution mechanisms, including mediation, on family law custody and access cases, will be reviewed as part of the Department's public consultations on custody and access.

Time frame: long-term

* **Judicial Accountability and Discipline:**

The Department will undertake, in consultation with the Canadian Judicial Council, a review of the *Judges Act* to identify any available options for legislative reform of existing disciplinary provisions.

Time frame: long-term

Chapter Two: Services and Programs

* **Victims Services and Programs:**

The Department will work with the provincial and territorial governments in the conducting of appropriate research and the development of legislative reforms in support of improved access to victims services and programs.

The Department will also develop and promote the use of policies and practices by federal Crown prosecutors that will ensure sensitivity to the needs and realities of victims of violent crime.

Time frame: long-term

* **Legal Services:**

The Department will participate in the federal-provincial-territorial working group which is undertaking a national review of the Legal Aid programs in Canada including the subcommittee which is reviewing civil and family legal aid issues, including tariffs and eligibility requirements.

Time frame: long-term

Chapter Three: Education and Prevention

* **Judicial Education:**

The Department will work with judicial education organizations to facilitate new and progressive judicial education programs and materials on gender equality and cross-cultural sensitization.

Time frame: ongoing

* **Education for Justice Employees**

The Department is committed to providing its employees with sensitization programs relating to equality issues experienced by women, including Aboriginal, visible minority and immigrant women and women with disabilities.

Time frame: ongoing

* **Public Legal Education and Information:**

The Department will work with federal, provincial and territorial colleagues and public legal education and information organizations to provide access to culturally appropriate legal information and education at the community level and for all women, including Aboriginal, immigrant, visible minority women and women with disabilities. These materials will be developed in collaboration with relevant community organizations.

Time frame: long-term

* **Gender Equality Education - Content and Methodology:**

The Department will undertake research into appropriate teaching methodologies for use in gender equality education. This research will include a review of appropriate and effective teaching materials, terminology and methodologies to assess attitudinal change. This research will be used to develop recommended guidelines for use in the development of future gender equality educational programs and materials.

Time frame: medium-term

Chapter Four: Equality of Opportunity

* **Women's Representation on Judiciary, Task Forces, Royal Commissions, Tribunals, and Selection Committees:**

The Department is committed to supporting processes that encourage appointments of qualified, available candidates that will serve to make these decision-making bodies more representative of the diversity of Canadian society. This support will include informing eligible candidates about the appointment process and encouraging women to apply for appointments.

Time frame: ongoing

* **Departmental Policy Regarding Contracts For Legal Services:**

  The Department will review its existing practices regarding employment equity considerations and the hiring of legal agents with a view to determining whether employment equity considerations can be incorporated into the contracting process.

  Time frame: short-term

* **Participation by Women in Public Consultations:**

  The Department will hold appropriate public consultations with women's groups with a view to providing women with increased opportunities to participate in the reform of justice policy and legislation.

  Time frame: ongoing

II. Other Departments, Governments or Organizations

With respect to those recommendations that have been brought to the attention of other federal departments and agencies, the provincial and territorial governments and other organizations, the Department is committed to assisting these other bodies in reviewing the recommendations and developing responsive gender equality initiatives.

Departmental support will be provided through two processes. First, the Department will work with other federal departments through established indepartmental mechanisms to ensure the coordination of federal efforts to respond to these recommendations and to emerging gender equality and justice-related issues.

Second, the Department will assist all federal departments and agencies through its Legal Services counsel who advise client departments in light of the Justice gender equality initiative. They will also provide legal advice on and assist client departments with the development of their own gender equality initiatives. Legal Services counsel have in fact been providing this type of assistance to client departments and agencies since the Symposium and this practice will be ongoing.

As to those recommendations which have been referred to the provincial and territorial governments, the Department will work with its provincial/territorial colleagues through established federal-provincial-territorial working groups of government officials. These working groups have been very active in coordinating efforts and initiatives on gender equality over the past three years.

Regarding those recommendations that have been brought to the attention of non-governmental organizations, the Department will offer any assistance possible to these organizations with their review of the recommendations. In most cases, the Department enjoys long-standing working relationships, with these organizations which will facilitate this process.

APPENDIXES

APPENDIX A

CROSS-REFERENCES TO VOLUME II RECOMMENDATIONS

The numbers listed on the left side of each track column refer to the original recommendation numbers found in Volume II. Where an original track does not number the recommendations, numbers have been assigned in the order in which they appear in Volume II.

The numbers listed on the right side of each track column refer to the revised recommendation numbers as found in Volume III. On this side, the first digit indicates the number of the chapter in Volume III while the following digits indicate the specific recommendation number. For example, "A1.II - 1.24" means that Track A.1 Recommendation II has been dealt with in Chapter 1 Recommendation 24 of Volume III.

Track A.1 - Criminal Law

A1.I - 1.1	A1.VII - 1.11	A1.XIII - 1.20
A1.II - 1.24	A1.VIII - 1.6	A1.XIV - 1.19
A1.III - 4.30	A1.IX - 2.2	A1.XV - 1.18, 3.1
A1.IV - 1.6	A1.X - 2.1, 2	A1.XVI - 3.1, 5
A1.V - 1.18	A1.XI - 1.32	A1.XVII - 1.21
A1.VI - 1.11	A1.XII - 1.3	

Track A.2 - Family Law

A2.1 - 1.60	A2.6 - 1.66	A2.11 - 1.58
A2.2 - 1.59	A2.7 - 1.53	A2.12 - 1.108
A2.3 - 1.60	A2.8 - 1.52	A2.13 - 1.106
A2.4 - 1.62	A2.9 - 1.56	A2.14 - 3.22
A2.5 - 1.65	A2.10 - 2.30	

Track A.3 - Tax Law

A3.1 - 1.67	A3.16 - 1.90	A3.31 - 1.83
A3.2 - 1.68	A3.17 - 1.94	A3.32 - 1.5
A3.3 - 1.69	A3.18 - 1.97	A3.33 - 1.87
A3.4 - 1.73	A3.19 - 1.96	A3.34 - 1.79
A3.5 - 1.76	A3.20 - 1.75	A3.35 - 1.78
A3.6 - 1.74	A3.21 - 1.92	A3.36 - 1.89
A3.7 - 1.86	A3.22 - 1.91	A3.37 - 1.89
A3.8 - 1.74	A3.23 - 1.93	A3.38 - 1.76
A3.9 - 1.72	A3.24 - 1.80	A3.39 - 1.98
A3.10 - 1.75	A3.25 - 1.76	A3.40 - 1.67
A3.11 - 1.77	A3.26 - 1.81	A3.41 - 1.88
A3.12 - 1.71	A3.27 - 1.82	A3.42 - 4.29
A3.13 - 1.5	A3.28 - 1.76	A3.43 - 1.88
A3.14 - 1.95	A3.29 - 1.84	A3.44 - 1.70
A2.15 - 1.5	A3.30 - 1.85	

Track B.1 - Access

B.1 - 1.4
B1.2 - 2.16
B1.3 - 2.24
B1.4 - 2.27
B1.5 - 1.2, 3.3
B1.6 - 3.21
B1.7 - 3.20
B1.8 - 3.1
B1.9 - 1.6
B1.10 - 1.2
B1.11 - 1.2
B1.12 - 2.12
B1.13 - 3.3
B1.14 - 4.1
B1.15 - 4.35
B1.16 - 1.2
B1.17 - 1.4
B1.18 - 4.35
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