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Ministère de la Justice
Canada

Proceedings of the

National Forum on Youth and the Law

Ottawa, January 13 - 17, 1986



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REPORT OF PROCEEDINGS

OF

NATIONAL FORUM ON YOUTH AND THE LAW

OTTAWA

JANUARY 13-17, 1986

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CONTENTS

Introduction	1
Addresses	
Frank Iacobucci, Q.C.	3
Chris Speyer, M.P.	7
Honourable Andr��e Champagne, M.P.	11
Honourable Perrin Beatty, M.P.	15
Honourable Mr. Justice Allen Linden	19
Panel Discussions	
Panel 1. Why should Canadian youth be concerned with the equality rights provisions of the <u>Canadian Charter of Rights and Freedoms</u> ?	
Marc Gold	23
David Lepofsky	24
H��l��ne LeBel, Q.C.	25
Questions and Comments	26
Panel 2. Are young people treated in an appropriate manner by the criminal justice system?	
Michel Proulx	29
Earl Levy, Q.C.	29
Randell Earle	30
Questions and Comments	31
Panel 3. What does family breakdown mean for young Canadians?	
Jennifer Lynch	33
Laura Sabia	34
Gerald Lecovin	35
Questions and Comments	37
Workshop Reports	
<u>Charter of Rights workshops</u>	
Moderator: Lynn Bevan	39
Youth and crime workshops	
Moderator: Yves Fricot	45
Family law workshops	
Moderator: Maria De Andrade	51

Access to justice workshops Moderator: Robert Tétrault	55
Minority issues workshops Moderator: Arnold Fox	61
Public Legal Education and Information Presentations	63
Banquet Address The Honourable John Crosbie, P.C., Q.C.	67
Closing Remarks Daniel C. Préfontaine, Q.C.	73

INTRODUCTION

The National Forum on Youth and the Law was held in Ottawa from January 13 to 17, 1986. One hundred and fifty youth delegates, ranging in age from 17 to 22, attended the event, sponsored by the federal Department of Justice as one of the last, and perhaps most significant, federal government initiatives in support of International Youth Year.

The Forum provided an opportunity for the Department of Justice to consult young Canadians about legal and social issues affecting them. Department of Justice lawyers and federal Cabinet Ministers spoke with delegates. Panel discussions were held on a variety of topics.

Delegates attended five workshops dealing with diverse topics - minority issues, the Canadian Charter of Rights and Freedoms, family law, youth and crime and access to justice. Coming from every region of the country, and representing many cultural and social groups, they used this unique event to exchange views on the system of justice in Canada to talk about what they thought and felt, and to express their ideas to government.

This report summarizes the main proceedings of the Forum. It is intended to remind delegates, and those with whom they share their ideas and aspirations, of the broad range of issues that must be addressed in designing laws and legal institutions to serve all Canadians, including Canada's greatest resource - its youth.

ADDRESSES

Remarks by Frank Iacobucci, Q.C., Deputy Minister of Justice and Deputy Attorney General of Canada

I have the privilege to be among the first to speak to this assembly of young Canadians. You have come to Ottawa from every corner of the country. You represent Canada's cultures, its regions and its youth. On behalf of my colleagues in the federal Department of Justice, I welcome you to the National Forum on Youth and the Law. I wish you every opportunity over the next few days to enjoy our capital city, to share your ideas about Canada's legal system, and to develop new acquaintances among your 150 fellow delegates.

I would like as well to welcome those who, like our youth delegates, have travelled from the far-flung corners of this country to participate in this Forum, whether as panel members or as workshop leaders. I appreciate your willingness, along with that of the members of the National Advisory Committee, to ignore your often pressing personal schedules in order to devote your energies to the success of this Forum. Your participation in this Forum is evidence of the value you place on a dialogue with Canada's young people about our legal system.

In addition to welcoming you to Ottawa, I would like to introduce our youth delegates to the "host" of the legal side of this Forum - the Department of Justice. Most of you were probably aware before this meeting of the existence of the Department, but I suspect that many of you do not know precisely what we do and why we and the Department of Secretary of State are sponsoring this Forum.

The Department of Justice, under the direction of the Minister of Justice, the Hon. John Crosbie, is colloquially known as the largest law firm in Canada. It is also known as the federal government's law firm. Over seven hundred lawyers are employed by the Department, both here in Ottawa and in regional offices in every province and territory in the country. Like you, the lawyers in the Department come from every region of the country and represent many of the cultures that constitute Canada.

Department of Justice lawyers perform many functions. They act as Crown prosecutors in certain criminal matters; they act as legal counsel in civil matters

involving the federal government; they provide legal advice to federal government departments; they write legislation that is to be enacted by Parliament; they promote understanding of the law through public legal education; they participate in constitutional negotiations and in the development of international law; they coordinate with the provinces the carrying out of our mutual responsibilities relating to our laws and our legal system.

The Department does much more, but perhaps the activity that is most significant for your purposes is that directed at revising and updating our laws. We devote considerable resources to what is simply known as "law reform" - whether that law reform involves the criminal law, family law, or a broad spectrum of other legal issues.

One of the Department's major functions is to see that those federal laws which are the responsibility of the Minister of Justice are sufficiently up to date to meet the needs of the Canadian public and that they reflect what the public wants from our legal system. To do so, we consult widely with groups of Canadians. Those groups may be other federal government organizations such as the Law Reform Commission of Canada; they may be lawyers wishing to see a deficiency in the legal process corrected, or they may be citizen groups anxious for the law to address an issue that concerns them.

It is important that you appreciate the value of consultation in this law reform process. Changes in our laws have historically lagged somewhat behind changes in society, and society often needs to press its elected representatives and government organizations to have necessary amendments made to our laws. The Forum you are about to participate in is a vital part of that process. Your views will allow legislators and law reformers to become sensitive to the views of young Canadians, and to react to those views.

In many ways, your role is an exciting one. You are not lawyers, whose attitudes towards our laws and our legal system may have become fixed or heavily influenced by their training. You are, however, young Canadians with the vigour and the open-mindedness that youth brings with it. You can look from a fresh perspective at the issues that arise in our legal system. We in the Department of Justice stand to learn a great deal at this Forum about your attitudes towards Canada's laws.

This gathering is unique. I know of no other

where young people have been brought together to address the laws that affect them. I look forward to the intellectual challenge you will bring to this Forum, examining laws as they stand, perhaps suggesting how they might be improved, but always speaking from the viewpoint of Canada's youth.

I do not want these welcoming remarks to become a lecture on the law reform operations of the Department of Justice, but I do want you to appreciate why your views are important, who your host is, and how you and the Department of Justice share a common interest in matters of law reform. Young people represent our future. As 19th century British statesman Benjamin Disraeli aptly noted, "Youth is the trustee of posterity".

You will be pleased to know that you have much more to do this week than bury yourselves in the law. We are anxious to introduce you to Ottawa. We have planned a number of social events for you, and we will be taking you on tours of Parliament Hill and the Supreme Court of Canada. The truly energetic among you may even wish to go for an 8 kilometer skate on Ottawa's world-famous Rideau Canal.

We hope that on the completion of this Forum you will leave Ottawa not only with the satisfaction that you participated in this unique gathering of young Canadians, but with memories of an enjoyable stay in your country's capital.

Again, on behalf of the Department of Justice, I welcome you to Ottawa, and I wish you an exciting and productive week.

Welcoming Remarks by Chris Speyer, M.P., Parliamentary
Secretary to the Minister of Justice and Attorney General of
Canada

I am pleased to see the faces of young Canada here tonight. They are faces that represent Canadian youth from sea to sea. They are the faces of the multitude of cultures that bring strength of character to this country. They reflect the diversity of experiences that young Canadians have encountered in this vast and varied land. On behalf of the federal government, I welcome you to Ottawa.

I am also pleased to acknowledge the cooperation of my Parliamentary colleague, Madame Champagne, Minister of State for Youth, in organizing this gathering. It is one of the last - and also, I hope, one of the most significant - events in support of International Youth Year.

As a Parliamentarian, I recognize that it is the young of Canada who must direct their minds, their energies and their ambitions to shape the future of Canadian society - perhaps in the political arena, perhaps through business, education or the professions, or through the cultural enrichment of this country.

As young adults, you have the opportunity to press for a society that reflects a sense of fairness towards all - one that provides the liberty to live one's life unhindered by arbitrary and unnecessary restrictions.

Our laws are not static. They are not cast in stone. While legislation cannot be changed overnight, over time our laws do adapt to reflect the needs of a changing society. The last year, for example, has seen major changes to Canada's Criminal Code; legislation has been passed to ensure that federal laws do not violate the Charter of Rights. And I expect to see the passage of new divorce laws within the next several weeks.

But governments, including that which I serve, cannot operate in a vacuum. We feel it essential to consult Canadians about appropriate changes to our laws. We consult Canadians who are particularly affected by certain legislation - for example, the appropriate thrust of the equality rights provisions of the Charter of Rights, or the structure of our new divorce laws.

Throughout this week, we will be seeking the views of young Canadians about the legislative and social issues that affect you. I am particularly interested in your views

on the law and the mechanisms for administering our legal system.

Many of the laws you will be discussing at this Forum affect you directly as young people. Others are of more general application. You will discuss the appropriate legislative treatment of the family unit. You will examine changing attitudes about the appropriate scope of the criminal law and you will see the need to deal with problems that our present criminal law does not adequately treat. You will see the movement towards a more rational set of criminal laws that will reflect late twentieth century Canadian standards, not the criminal law concepts of the late 19th century.

Perhaps most important, you will be able to address the impact of the Canadian Charter of Rights and Freedoms.

Those here today are particularly fortunate, for you will see the Charter of Rights take shape beyond its simple words. You will watch the federal government and provincial governments act to ensure that their legislation does not violate the guarantees of the Charter - guarantees such as equality before and under the law, freedom of association and freedom of thought, belief, opinion and expression.

You will watch Canadian courts grapple with the complex issues involved in providing rights to individual Canadians while at the same time preserving the collective rights of Canadians as a whole. To date, you have witnessed only the beginnings of the Charter - its enactment. You will have the opportunity over the next several decades to observe and to participate in the shaping of the Charter.

Over the next four days, you will gain some insight into what makes our legal system tick, and you will have the chance to speak out on youth justice issues. You will attend panel discussions led by distinguished and accomplished Canadians.

You will be invited to participate in workshops on several topics - the Charter of Rights, access to justice, the treatment of minorities in Canadian law, youth and the criminal law and youth and family law. These topics are of immediate concern to those of us who work with the justice system. They reach far beyond abstract discussions about the theoretical foundations of the legal process in this country. They highlight complex issues that are not

easily resolved.

I would like to acknowledge at the outset of this conference that our panellists and workshop chairpersons have contributed generously of their time to participate. For this I offer my sincere thanks. As this conference proceeds, you will appreciate the extent of their contribution to its success.

I hope that these panels and workshops will provide an unparalleled learning experience for you. I know that this will be a learning experience for me. We did not suggest holding this conference simply to promote the views of my government about certain legislative issues. Instead, we came to listen to you - young Canadians - and to learn what you see as the strengths and deficiencies of our legal system, and the appropriate future directions for that system.

I ask you to bear this in mind as you head off to the workshops and panel discussions during the following days. And I invite you not to be timid in entering the dialogue simply because you may not feel well acquainted with the intricacies of some Canadian laws. We will be listening for fresh ideas and for frank appraisals of what Canada's laws should be. We want to hear your views on how the law can respond to the changing nature of the family unit, on how we can cope with crime, on how we can provide equality to our minorities, on how we can promote access to justice.

I am confident that we will all benefit from this exchange of ideas. I look forward as well to meeting many of you personally.

Remarks by the Honourable Andr  e Champagne, P.C.,
M.P., Minister of State (Youth)

Although International Youth Year has ended, our government's commitment to young Canadians remains as strong as ever.

During the year, we have amassed a great deal of information about Canadian young people - what they are doing - what they think and care about - what they fear for the future - what they would like to change.

Our job now is to analyze systematically what we have learned and to ensure that the ideas and concerns of young Canadians are reflected in government programs, policies and initiatives.

We must maintain the momentum generated by International Youth Year. I will be working at it, and I trust that you will too.

One of the most frequent messages I receive as I talk to young Canadians is their desire to make their voices heard more clearly and to have a greater opportunity to participate in the decisions that affect their lives.

This is not at all surprising. After all, your generation will have to live with the decisions that are being made today. And you are not always happy with those decisions.

It is understandable that young people want more opportunity to influence events and to contribute to the changing face of Canada and the world.

For young people who want to be in on the action, I can offer no better advice than to learn all you can about the law and the legal system.

By this, I don't mean that all of you should become lawyers, although it is an honourable profession and I am sure many of you are either studying for it or planning to do so. But any young Canadian who wants to be involved should learn all he or she can about our laws, about our justice system and about the processes through which laws are reformed. We are, after all, a nation of laws.

We respect the law. It is largely through our laws that we protect the rights of our individual citizens and those of the institutions that give strength to our

society.

Our laws define what we as a people cherish, and equally define what we feel is unacceptable.

The law can be an instrument for the benefit of society or, as we see in far too many instances around the world, it can be used as an instrument to suppress and subjugate.

If law is one of the principal ways through which we define our values, it follows logically that it is also one of the prime instruments for changing our values and reforming our society.

This is why you and other young Canadians should learn all you can about our legal and justice systems, if you hope to have an impact on the Canada of the future.

There is exciting and dynamic movement in the law in Canada today. The movement reflects our evolving social and economic values. It will have a profound effect on the shape and priorities of our society in future years.

Human rights and individual liberties are being examined and re-examined in the courts across the country in light of the Canadian Charter of Rights and Freedoms.

The battle for equality for women - arguably the most profound social issue of this century - continues to be fought largely through the law and through legislative change.

Our whole approach to youth crime and the treatment of young criminals has been significantly altered by the Young Offenders Act.

Native Canadians are increasingly using the law and the courts to address their grievances and to determine their rights within society.

Ultimately, the law expresses how we as a society feel about a whole range of issues.

Our attitudes to drinking and driving, divorce, prostitution, pornography, the use of firearms and many, many other matters are determined by the laws that we pass and enforce.

The message is clear. Canadians who want to get

involved - who want to have a say in the kind of society in which they live - would do well to learn all they can about our laws and our legal system.

This Forum presents an opportunity for you as representatives of Canadian youth to present to the government of Canada your views on a broad cross-section of legal issues.

I hope that you will come away with a better understanding of how the justice system works and how individual citizens can participate in and influence legislative reform.

Address by the Honourable Perrin Beatty, P.C., M.P,
Solicitor General of Canada

When my colleague John Crosbie invited me to speak to you today I agreed immediately. I thought that this forum would provide an excellent opportunity to outline improvements I want to make to the Young Offenders Act. An added incentive to accept the invitation is having seen what happens to those who get on the wrong side of Mr. Crosbie. If you have watched him in the Commons Question Period, you'll know what I am talking about.

Let me first make a declaration. I remain steadfast in my support for the basic principles and philosophy of the Young Offenders Act. My belief in these principles has been confirmed in my discussions across Canada with concerned citizens, police, correctional workers, the legal profession, provincial authorities and others. Not only did we need to reform the old juvenile justice system, but we needed a law to ensure that young people have the same rights and obligations as adults.

The following represents the basic philosophy of the Young Offenders Act:

1. Young people are personally responsible for their acts and should be held accountable before the law.
2. Young people, like all Canadian citizens, enjoy the rights that are protected by the Bill of Rights and the Charter of Rights and Freedoms.
3. Society has a right to be protected from criminal behaviour, and
4. Juvenile justice laws and procedures must recognize and deal with the fact that young people have "special needs" because they are at various stages of development and maturity.

The last two principles - protection of society and special needs - are critically important. The fundamental purpose of criminal law is to protect society from crime. At the same time, we need to recognize that adolescence is a process of rapid personal growth and sometimes turbulent change. In its own best interests,

society cannot afford to condemn for all time most young people who come into conflict with the law or deny them the opportunities for change and growth. I am not prepared to risk the security of the community, but I believe a firm and fair response to juvenile crime must include good sense and compassion.

There was wide consensus on the need for the Act and its basic philosophy when it was adopted unanimously by Parliament. But, with any piece of legislation, its only test is its performance as law.

Certain provisions of the law present serious problems and it is up to me as Solicitor General of Canada to deal with these problems. Concerns about the handling of youth court records, the ban on publication of offenders' names, the difficulty of enforcing sentences and other problems moved me to initiate consultations across the country. I wanted to hear from those who work with the Act every day - judges, police, concerned citizens, youth court workers, Crown and defence counsel - to identify the nature of these concerns and to get a good idea of what improvements are needed.

The government recognizes that the provinces and territories must be consulted on such important national matters. Parliament legislates criminal law but it is the provinces which must administer it, and that means they have to do their part. In two areas in particular, providing the court with alternatives to sentencing a young offender to prison and providing adequate legislation to deal with children under the age of twelve, the provinces have an especially heavy responsibility.

I want to outline in a general way what changes I would like to see, but I should first stress that my consultations are not quite finished. My Deputy Minister will be meeting with his provincial and territorial counterparts next week, and I will be meeting with my provincial and territorial colleagues early next month for a final discussion of proposed improvements. As soon as possible after that, I will present to Parliament a package of amendments that will make the Young Offenders Act much more responsive to the concerns of those who have worked with it. I will ask for the opposition parties' cooperation in passing the bill before Parliament rises for the summer.

Let me review the most important issues and the kind of action I intend to take.

First, the procedures and language of the Act sometimes make it difficult for authorities to deal quickly and effectively with young offenders who have, for example, violated probation conditions or failed to keep the peace. Such limits are clearly unacceptable. I intend to ensure that young offenders who violate the conditions of their sentences, no matter what the disposition is, can be dealt with properly and quickly.

Second, the rules that govern detention after arrest are inflexible and can cause hardship for both police and the affected young people. These rules must be modified to allow police officers to perform their duties effectively without eliminating the protection afforded the young people involved.

Third, there appear to be circumstances in which the inability of police to make names or other identifying information publicly known has been an impediment to effective law enforcement or has created an unreasonable risk to the public. I will propose mechanisms to allow publication of names in cases where a young offender who might be a danger to the public has escaped custody or where public assistance is needed to apprehend the offender quickly.

Fourth, there were no comprehensive records systems under the old law, but the Young Offenders Act has introduced such systems, clearly authorizing the use of fingerprints, youth court records in adult court and so on. Unfortunately, the records provisions have created a wide range of technical and administrative problems. For example, in my own riding a problem was identified when a youth charged with murder was found not guilty by reason of insanity. The Act appears to require that all records associated with such a case be destroyed. Because this individual has been committed to an institution, these documents should be available to assist provincial authorities in providing appropriate treatment and in reviewing the case, as is required under the Criminal Code. These problems will be addressed and evident omissions resolved. In addition, we will clarify the law to ensure that records are kept where there is an "acquittal by reason of insanity".

Fifth, I will propose to my colleague, the Minister of Justice, that modifications be made to the Criminal Code provisions dealing with counselling criminal behaviour. I want to ensure that no one who abuses children by involving them in criminal acts will be immune to

criminal prosecution.

Sixth, the current provision requiring that the evidence of a child witness be corroborated by other evidence is clearly unacceptable. I believe that the court should assess the testimony on its own merits. Similarly, I will propose that the oral statement made by an accused who refuses to sign a written waiver be admissible on its merits.

Seventh, the language of the Act is now unclear about the maximum length of sentence that may be applied for subsequent convictions. I feel that the courts should be capable of imposing appropriate sentences for new crimes, with the result that the total sentence for different offences could be longer than 3 years.

Finally, I will propose a number of important but more narrow and technical amendments. All of the changes will be consistent with the Act's aim of public protection while meeting the special needs of young offenders, and emphasizing their responsibilities.

The policies and programs that provincial authorities institute are sometimes more important than the federal law in ensuring the effectiveness of juvenile justice. The provinces administer the Young Offenders Act. Its success requires their wholehearted participation. This is particularly true in responding to the concerns expressed about children under twelve. I am convinced that the best way to deal with these children is through good provincial child welfare legislation and services as well as clear guidelines for police officers in handling these cases. The Conference of Ministers that I will chair in February will provide an opportunity for my provincial colleagues and I to share views about the nature and scope of the changes that are required.

As a Cabinet Minister, I have two overriding responsibilities - to listen to Canadians, and then to act on their behalf. I have listened, and I intend now to act. When I became Solicitor General, I made a commitment to review the Young Offenders Act and make necessary improvements. I intend to fulfil that commitment.

Address by the Honourable Mr. Justice Allen Linden,
President, Law Reform Commission of Canada

Among the nations of the Western world, our legal system is one of the best. We have, in general, sensible laws, we have an independent judiciary, we have a legal profession that is by and large honest and competent and we now have a Charter of Rights and Freedoms.

Nevertheless, our basically good system of justice has some cracks in it. Some of those cracks have always been there; others are the product of a changing society. New social trends have raised a plethora of legal issues; the widespread use of drugs, the abuse of alcohol by drivers of motor vehicles and the changed structure of the family unit are all phenomena that have not yet been fully dealt with by the law. Laws based on ideas of morality from the Victorian age remain with us today, ill-suited to a society moving towards sexual equality.

The law is trying to cope with technology, but is doing so inadequately. Laws which were enacted to regulate a simple agricultural economy are still being used to control an extraordinary complex industrial civilization. We try to apply legal doctrines devised centuries ago to handle interference with computer systems, environmental damage, artificial insemination, hospital life support systems and test tube babies. Many of our present laws are archaic; they are horse and buggy laws in a nuclear age.

Our legal system is costly both to governments who must fund the administration of justice and to individual Canadians who may find themselves involved in the civil or criminal process. The process of justice is slow; and because it is slow, it is sometimes unfair.

We have an increasingly complicated set of laws. As our society becomes more complex, so do the laws that govern it. Not only does this bind us to an ever tightening network of rules, but as the volume of law increases, the likelihood diminishes that those who are subject to the law can even know or understand it.

I have painted only in a most preliminary fashion the nature of some of the deficiencies of our present legal system. In fairness, however, I must record that significant advances have been made. We have had provincial legal aid programs in Canada as far back as 1966. Indigent Canadians now have access to justice. We have provincial ombudsmen to assist Canadians in dealing with government.

Some provinces have implemented no-fault insurance schemes.

Family law reform legislation has been passed in provinces across the country. Some changes to our divorce laws were made in 1968 and more improvements (based in part on our work) are in the offing this year [Note: The Divorce Act and the Family Orders and Agreements Enforcement Assistance Act have since been passed by Parliament].

We have seen a number of changes to our criminal laws, including the abolition of capital punishment, the introduction of protection of privacy provisions and bail reform. Canadians now have freedom of information and privacy legislation. Victims of crime are now compensated across Canada. Drunk drivers will be treated more severely as a result of some significant reforms enacted last year. No, the law has not stood still in the last two decades. It has just not moved as quickly forward as it should have.

The Law Reform Commission of Canada came into existence in 1971 with the support of all political parties - a rare moment in Canadian politics. The Law Reform Commission of Canada was seen as the practical means of preventing Canadian law and the Canadian legal system from standing still. Since its inception, the Commission has received the support of all governments, no matter what their political stripe, even though not all our suggestions have been universally acclaimed.

For the past fourteen years the Commission has sought to fulfil its mandate of keeping our laws up to date. The mandate is simple enough; the task is enormous. Federal laws number in the tens of thousands. Even if society were to stand still, the task of reviewing our laws in order to remove anachronisms and anomalies would challenge even the most avid intellectuals. And society is not standing still. We may think that we have successfully achieved one law reform goal only to find out that still more laws need repair.

We really have only begun to bring the Canadian legal system into harmony with the wishes of our people and the demands of our age. If anything, we must accelerate our efforts in the next decade to make the law more responsive to the needs and aspirations of Canadians.

There are a multitude of areas of law that are ripe for reform in Canada. We have only taken a small bite from a big pie. There is much more to be done. Fortunately, we at the Law Reform Commission are serious

about law reform, about bringing the law into the twentieth century, about making it more humane, more efficient, more rational and more suited to a society that can no longer afford to live with an arthritic legal system.

It should be clear that you have a very real concern with law reform. Law reform deals with issues that affect you as Canadians - Canadians who marry and procreate, who drink water from polluted rivers, who suffer from crime, who are surrounded by technology and who face a mass of unintelligible legislation buried in books squirrelled away in law libraries and known only to lawyers.

Many different actors play a role in our justice system. In the field of criminal justice, police officers are charged with the duty of preventing crime and bringing to trial those believed to have committed offences. Prosecutors attempt to protect society by prosecuting those charged by police. Defence counsel protect their clients' rights. Judges then must try cases in accordance with the law. Those working in correctional institutions must supervise prisoners effectively, but humanely. Academics must study the system and make suggestions for improvement. Politicians must listen, watch, think and consult in order to do what they can to improve things.

But we cannot rely on the lawyers and politicians alone; every player in the system has to cooperate if reform is to result. And you too, standing outside the administration of the justice system perhaps, but subject to it nonetheless, can press for change.

We at the Law Reform Commission and the Department of Justice are interested in your concerns. We actively seek the views of all Canadians on law reform issues. It is your legal system, not that of the lawyers, the politicians and the judges. It is designed to serve you. Please help us to rejuvenate our legal order to better reflect your dreams.

PANEL DISCUSSIONS

Three panel discussions were held during the Forum. The following summarizes the principal points raised at these discussions.

PANEL 1 - "WHY SHOULD CANADIAN YOUTH BE CONCERNED WITH THE EQUALITY RIGHTS PROVISIONS OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS?"

Sections 15, 27 and 28 of the Canadian Charter of Rights and Freedoms state:

15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

Marc Gold, Associate Dean, Osgoode Hall Faculty of Law, York University

The equality rights provisions of the Charter are potentially revolutionary. The Charter has altered the powers of legislatures and Parliament. Formerly, courts were duty-bound to enforce laws, no matter how unfair those

laws might have been. The Canadian Bill of Rights contained language promoting equality, but the Bill of Rights never realized its potential.

The equality rights provisions of the Charter - Sections 15, 27 and 28 - have a clear purpose. Judges and lawyers now can rely on these provisions to oppose discriminatory laws, whether those laws are enacted by Parliament or by provincial legislatures.

Nonetheless, not everyone can be treated equally. The issue is whether a given distinction is justified. A blind person should not drive a car, and maternity benefits may properly be directed to women alone. Do maternity benefits infringe a male's right to equality?

Whatever the ultimate decision about equality issues, "equality rights do not come free". Clashes of views are inevitable. These clashes have politicized the law and the judiciary. The pursuit of equality through law will be a central political issue for generations to come.

Why should Canadian youth be concerned with equality? Just as other citizens, they have a duty to participate in the public life of Canada.

Canadians cannot escape equality issues. At the same time, these issues cannot be resolved overnight. It will take a lifetime to approach equality.

In asserting individual rights under the Charter, a danger exists. Canadians may begin to see themselves as individual rights holders, and lose their sense of community. The Charter could in the long run lead to instability in that sense of community.

David Lepofsky, Lawyer, Toronto

Section 15 of the Charter generates issues which society has not yet considered or considered enough.

Charter equality rights guarantees will force courts, Parliament and provincial legislatures to reorder their priorities. They now must take seriously issues that they ignored before. The Charter in general will change what Canadians expect from government.

Examples of how the Charter will change Canadian society abound. Historically, handicapped children were

placed in institutions, away from other children. This resulted in the creation of a largely parallel school system for those with handicaps. Education in this parallel system may be of lower calibre. Handicapped children may need to be removed from their parents and from the mainstream of society to attend these schools. This creates adverse perceptions of handicapped people.

The equality rights provisions now imply that people will be able to demand governments to reorder their priorities. Handicapped children may thus be able to avoid inferior educational facilities and isolation from the rest of society.

Equality rights may apply in other situations. For example, parents may seek to have a problem child committed to an institution for disruptive or mentally handicapped children. But the interests of the parents and children may differ in this situation.

Can parents "lock up" the child without his or her consent? The Charter may come to the aid of young people in situations of coerced confinement. In the United States, some form of independent medical consultation must be undertaken before a child is restricted in this way. The Charter may ensure similar protection of children in Canada.

Another example of how the Charter will change society lies with the Ontario Human Rights Code. The Code generally prevents discrimination on the basis of sex. It does not, however, prevent such discrimination in athletics. The Code provision exempting athletics from sex discrimination may violate the Charter. If so, the Code provision will have no effect in law.

The Charter of Rights provides a "soapbox" for people to speak out on issues that have not been the preoccupation of the courts before the Charter came into effect in 1982. It will be fascinating to see what Canada will be like when future generations grow up with the Charter. Present generations have only been introduced to the Charter and its concepts within the past four years.

Hélène LeBel, Q.C., Lawyer, Montreal

The Charter will have a profound effect on Canadian society. Young people have a chance to make their lives radically different from those of their predecessors. Historical injustices towards certain groups - women and the

handicapped, for example - can now be corrected.

Affirmative action provisions permitted by Subsection 15(2) have already led to the establishment of beneficial programs. These programs will change the nature of the workplace.

Mandatory retirement will probably disappear. It will be considered discrimination on the basis of age. While people performing heavy labour will probably be content to retire at a traditional retirement age, professionals, office workers and researchers will likely want to extend their employed lives. In the long term this will affect the way the labour market operates. Employers will no longer be able to rely on regulations to impose retirement. But will pension entitlements continue to apply only to those 65 and over? If so, will this be considered discriminatory? Will it violate the Charter?

Many Canadians can benefit from Section 15. Pressure groups are now ready to rely on Section 15 as they press for the protection of specific interests. These groups are active both in our courts and at the political level. Youth, however, may be disadvantaged before the courts. Youth is a temporary state; there are few interest groups for young people. Who will speak for youth in the compulsory retirement debate?

Young people should be aware that adoption of the Charter and Section 15 will alter society fundamentally. These Charter provisions state the ideal. The battle in the political arena and before the courts will determine the outcome. We do not yet know where the process will lead, as "equality", like "justice", is not a simple concept. This lack of understanding of the long term impact of the Charter may be the price society must pay as it strives for an end to inequality.

Questions and Comments from the Delegates

"Is the list of prohibited grounds of discrimination in Section 15 open-ended?"

Marc Gold: The list of grounds is open-ended. One can argue that discrimination that is not specifically prohibited by Section 15 nonetheless violates the Charter equality guarantees. One example is discrimination because of sexual orientation. Initially, courts will probably

want to hear arguments that a non-listed ground of discrimination should be prohibited by Section 15. Courts should nonetheless quickly begin to accept that non-listed grounds of discrimination fall within the scope of Section 15.

"It is wrong to discriminate through affirmative action quota programs to redress inequality."

Hélène LeBel: This approach may view affirmative action programs too simplistically. If we do not take into account the past lack of opportunities for certain people when, for example, determining law school admissions, we may simply perpetuate injustice. Many affirmative action programs attempt to recreate equality. Others seek to break the pattern of inequality to avoid perpetuating an unjust system.

David Lepofsky: One cannot assess all affirmative action programs as "quota programs". Others, for example, may provide subsidies for job training. Such programs do not undercut the merit principle. They simply ensure that disadvantaged people have the opportunity to acquire necessary experience. There are few "quota programs" in Canada. Their possible discriminatory effects are accordingly not of great concern.

Some merit systems may actually favour certain ethnic groups. A quota might wipe out the inequality that may be inherent in a selection system and make it truly a merit system.

Marc Gold: This delegate's comment illustrates that the equality concept will give rise to clashes between those who accept different concepts of equality.

"We have many rights, but they are difficult to assert. Those asserting rights need money. They may wait years before their case is resolved. Is there not a better way to promote equality?"

David Lepofsky: Lawyers tend to emphasize the court process, but it is open to everyone to speak to government. Advocacy is increasing. Furthermore, teams of lawyers in government are tracking down laws that violate the Charter. These laws can then be changed by an elected government, before they need to be challenged in the courts.

Hélène LeBel: Groups have been organized to fund or assist with Section 15 challenges, but more people are needed to contribute their time and money to such efforts.

"What permits the provinces to opt out of Section 15?"

Marc Gold: Section 33, the non obstante provision of the Charter, permits governments to refuse to apply some Charter rights, including those in Section 15.

Panel 2 - ARE YOUNG PEOPLE TREATED IN AN APPROPRIATE MANNER
BY THE CRIMINAL JUSTICE SYSTEM?

Michel Proulx, Lawyer, Montreal

It is important to understand the relationship between the court process and young people between the ages of 18 and 25. The majority of defendants who appear in adult court fall within this age group.

Adult court is much more impersonal than courts dealing with young people. It makes people into "numbers". It is much more removed from young people than are youth courts. There are fewer disposition options available in adult court. A defendant realizes that when he appears before an adult court, he is in a punitive environment, as opposed to the "protective" and "educational" environment of courts dealing with young offenders.

Those working within the justice system almost unanimously wish to avoid sending to prison a young person - 18 to 22 - for whom there is still "hope". The majority of people who appear before the courts will benefit from a demonstration of clemency. Those who are sent to penitentiary are assimilated into the criminal community. The experience is disastrous. There is little chance that a young person will emerge unharmed.

Fines can represent a disproportionately large burden for a young person who has little money or who may be unemployed. Reparation is not always possible. Suspended sentences and probation may also be inadequate options.

Earl Levy, Q.C., Lawyer, Toronto

The Young Offenders Act establishes distinct rights and freedoms for young people, but also makes them responsible for their actions. The Act is enlightened and progressive, but it has deficiencies. In Ontario, for example, the Act has not achieved its stated purpose of reducing custodial sentences. It is estimated that custodial sentences of young people in Ontario have increased by 200% since the Act came into force. Over time, however, decisions of the Ontario Court of Appeal on the sentencing of young offenders may lead trial courts to reduce their reliance on custodial sentences.

Police officers are frustrated by the 12 year minimum age limit under the Young Offenders Act. Under the

former legislation, the Juvenile Delinquents Act, the minimum age was seven. There is also concern about provisions protecting the identity of a young offender. Records must be destroyed, for example, if a young offender is found "not guilty by reason of insanity". The problematic conduct may recur, but there is no record of the court's previous disposition relating to that person.

The real problem lies in the lack of treatment facilities for aggressive children aged between 12 and 17.

Furthermore, under the Act, there is no provision for conditional discharge, and an absolute discharge leaves the young person with a criminal record. There is no time off for good behaviour in youth sentences, although a review of sentence is compulsory after one year.

The Act, however, does have appropriate procedural provisions. A court trying a young offender may order medical or psychiatric reports. Before sentencing, a court must order a pre-disposition report.

Most important are provisions relating to incriminating statements. Before an incriminating statement is permitted to be used as evidence, the court must be satisfied that the young person was advised of his right to a lawyer, and a parent must have been present. These rights may only be waived in writing.

Under the Juvenile Delinquents Act, it was necessary to obtain permission before undertaking an appeal. Now, a young person has the same rights of appeal as an adult.

Randell Earle, Lawyer, St. John's, Newfoundland

Other panellists have dealt with criminal procedures involving young people. This part of the discussion examines certain areas of criminal law that have a particular impact on youth.

Much of the conduct that is at present prohibited by criminal law could be effectively controlled by civil law. We have too many criminal laws.

Simple possession of a narcotic is still a criminal offence. Abortion laws most frequently affect young females. There is a great diversity in the actual application of the law across Canada. Most rural parts of

Canada, for example, are subject to conservative interpretations of the law governing abortion. It is therefore difficult in these areas to obtain a legal abortion, whereas it might be relatively easy to do so in urban areas.

Prostitution most significantly affects young females. Most street prostitutes are between 16 and 22 years of age.

The right to obtain the assistance of a lawyer is applied unevenly in practice. Young people often appear in court for their first criminal offence without a lawyer. This leads to unnecessary convictions. In addition, inadequacies in the legal aid system means that young people are often represented by younger, less experienced lawyers.

There are still far too many young people in prison. All other possible dispositions should be exhausted before sending a young person to prison.

We can also look at youth as victims of crime. Young people are victims of violence and abuse at home. Yet, the police do not always believe young people who make complaints to them.

Comments and Questions from Delegates

"Is it more important for society to compensate victims, or is it more important to concentrate on dealing with the youthful criminal?"

Randell Earle: Young offenders have the best chances of all offenders of being rehabilitated. Society can save by helping a young offender stay away from criminal activity. We need more support for alternative measures to assist in the rehabilitation of young people.

Michel Proulx: Only Ontario does not have an alternative measures program. This is unfair, because all other provinces have alternative measures programs.

PANEL 3 - WHAT DOES FAMILY BREAKDOWN MEAN FOR YOUNG CANADIANS?

Jennifer Lynch, Lawyer, Ottawa

This discussion covers three topics: the split between the provincial and federal jurisdiction in family law; custody and the right of children to have independent legal representation and to determine their own custody; and, maintenance for children.

Two kinds of laws affect marriage breakdown - statute law and common law. Statute law can be provincial or federal. The division of property is dealt with under provincial legislation; divorce falls under federal jurisdiction. This can lead to an overlap, as one can apply to a court for custody or support under the Divorce Act, and under provincial legislation one can apply for a division of property and custody and support.

Judicial decisions have also fostered the development of the common law relating to families. In custody matters, for example, court decisions have led to the development of the principle that custody will be determined according to what is in the best interests of the child. That principle has now been embodied in certain statute law, including the new Divorce Act.

Parents have lawyers to represent their interests in divorce. At times, the child's point of view is distinct from that of his or her parents. Methods have accordingly been developed to get the child's point of view before the courts. This is where providing independent legal counsel for a child may be useful. Yet separate legal representation for children affected by family disputes is the exception.

The manner in which counsel are appointed to represent children varies across Canada. In some provinces, the right to representation is stated in statutes, while in others it has arisen through the common law. In addition, the court has almost a parental role over children and may step in whenever the interests of children are involved.

Lawyers representing children may sometimes have difficulty following the wishes of their child-client when those wishes may not be in the child's best interests. Case law varies about whether in such a situation the lawyer should merely speak up for the child or try to act in the child's best interests.

At what age will a court listen to the wishes and preferences of a child for custody? Generally, textbooks and cases draw a dividing line at 10 years, but there is no fixed rule.

Two major principles guide courts when providing for the maintenance of children: Parents are obliged to support their children in proportion to their gross incomes; and, in determining the amount of support, the court should attempt to maintain the standard of living that the children had before the parents separated. Generally, however, there is not enough money to go around to maintain that standard of living. In addition, supporting parents often refuse to provide financial assistance, and sometimes disappear. New federal legislation should help to locate these defaulters. It should also assist in enforcing support orders and support provisions through garnishment of certain funds (such as income tax refunds) owed to the defaulters by government.

Laura Sabia, Columnist, Toronto

Through the sixties and seventies, easier divorce, the women's movement, inflation, an increasing number of women in the marketplace, the pill, interest rates, contributed to massive changes in family life. In one generation we have gone from "bustle to spacesuit", from kitchen to boardroom, from bed, board and babies to Parliament Hill. Yet we still hear in the marketplace that the mother's place is in the home.

The stifling institution of marriage is changing drastically. Marriage was first consecrated by the church to pass on property from father to son. If marriage were so wonderful, we would not see one out of ten women battered; we would not have one out of four female children having experienced incest by a father, a grandfather or a brother.

Two-career families are a wave of the future. More than one-third of the couples married in the seventies will divorce; one third of the children born of those married couples will spend part of their childhood living with a single parent. Ontario has over 200,000 single parent families. One in four households in Ontario is a single parent household. The traditional "nuclear" family, with the woman subordinating her interests to those of her husband and children, is dead. The nuclear family structure now applies to only 10% of the population.

Two-career couples with no children, previously married couples with children, serial marriages, marriage by voluntary association, unmarried couples and group living are the way of the future. The basic family unit is shifting from the family to the individual. Acceptance of divorce and the women's movement has facilitated many of these changes.

Most jobs held by women will disappear in ten years, but we are doing little about it. Young girls must realize that they will work for 35 years of their lives. If one in two marriages will end in divorce, women must prepare themselves with a good education. Men are more interested in education. They have been brought up thinking that they have an obligation to support someone. Men are work-oriented. Girls are not work-oriented. Nonetheless, there have been changes. Women are entering the professions.

Our lifespan has contributed to changes in family life. Women live longer than men. This may be because men have all the responsibilities. It is time for women to assume some of those responsibilities.

Alimony will soon be outmoded. Women will be expected to earn their own living after a marriage breakdown. A former husband should not be forced to spend his life providing financial support for his former spouse and children.

We continue to be bound by tradition when everything else around us is changing. Changing times require changed attitudes. We must look at divorce in a different way. Do not denigrate serial marriages. We are living longer, and we are not as monogamous as we think we are. Look at divorce, not as a failure or a calamity, but as a progression, a learning experience.

Couples should negotiate marriage contracts before marriage. Marriage is a business. Marriage contracts are not new. They originated centuries ago. Only in the past several decades have they fallen into disuse in Western society.

Gerald Lecovin, Lawyer, Vancouver

One of three marriages ends in divorce. What causes divorces? People change, their desires change, they

mature at different rates. Spouses have no preparation for marriage; lifetime contracts are unnatural; the decision to marry is an emotional one, not a logical one, and the decision to have children seldom involves full consideration of the consequences. Few people think about the effect of having a child on their own aspirations, on the relationship between spouses, and on the cost of living.

Parents do not spend any time learning how to produce better children. Yet, surprisingly, traditional marriages provide an effective mechanism for raising children. It is difficult for one adult to provide all the things necessary to bring up a child - food, shelter, physical and emotional care. To perform these duties well requires more time than is available to one person. By sharing the upbringing of a child, parents are able to have a life of their own.

Marriage breakdown can be financially disastrous. Limited money must support two separate households. The children live with one parent, usually the mother. The father usually contributes less to the parenting role than before.

American studies have concluded that in short term, medium term and long term marriages, the husband's financial position substantially improves after divorce. The financial position of the former wife and the children tends to deteriorate substantially. Within one year after divorce in a short term marriage, the husband may have between two and four times as much disposable income as the wife and children. In divorce after a long term marriage, the husband has between two and three times the disposable income. Women who divorce after long term marriages are the most disadvantaged of all.

Divorce also means downward social mobility for women. The quality of housing deteriorates and they lose their social networks. As single parents, they spend more time bringing up their families.

Divorced women in general are much less likely to remarry than are divorced men. Older women tend to become embittered by divorce. Yet 83% of both men and women feel that divorce has been beneficial for them. They feel that they function better, they feel more confident about themselves, they feel themselves better parents and they perceive of themselves as being more physically attractive.

Divorce may affect one's health. It is one of the

most stressful events in life. Following divorce there is a increased rate of admission to psychiatric facilities, a higher suicide rate than among married or single people, more illness generally, and a higher mortality rate.

Divorce affects the structure of society. The probability is that the divorced man will become single; the woman will become a single parent. For many women, poverty begins with single parenthood. More than one-half of poor families in the United States are headed by single mothers.

Questions and Comments from the Delegates

"The view of marriage set forth by one panellist leaves out spirituality. It is too materialistic. The individual will grow up too self-centred. Is it really best for children to grow up so "itemized and impersonal"? We risk losing the concept of a group of people living together with a common commitment. We should not promote "singleness", as society now appears to do. We must return to reliance on the strength of the family."

Laura Sabia: We must get away from myths in the age of divorce. The reality is that more and more people are looking at divorce and alternative couplings. These are the hard facts of life.

Jennifer Lynch: Today's young people may have an advantage. They have seen the fallout of divorce and may as a result be more careful in entering marriage. But we should realize that we will change as we grow. We also need to understand that our partners may change.

"Not every divorce gives rise to a "broken home". I grew up happily in a single parent home. I am better off, and my parents are better off, with divorce."

Laura Sabia: Divorce is not a tragedy; it is a learning experience.

"How do you feel about "living together" and raising children?"

Gerald Lecovin: People might well consider living together before marriage. But a commitment exists whether the couple is married or not. When the commitment breaks, both sides get hurt.

"Sociologists suggest that the breakdown of the family is responsible for the growth of certain problems, notably crime. An unstable environment may preclude receiving parental love. Society will decay as a result."

Laura Sabia: It is unfair to say that social conditions are the fault of marriage breakdown. Would one rather have drunkenness, battering and incest, or is divorce preferable?

"Today's youth have suffered more from divorce than any other generation. They will find ways to survive."

"I never thought of marriage in contractual terms. It is a partnership. Even though I come from a divorced family, my parents did not pit me against each other. Marriage is a matter of trying to understand. People cannot simply get married, then "cop out"."

WORKSHOP REPORTS

Five workshops were held during the Forum. Delegates participated in discussions on a range of topics, including the Charter of Rights, youth and crime, family law, access to justice and minority issues. The following section reviews the reports of workshop moderators on the discussions that took place.

CHARTER OF RIGHTS WORKSHOPS REPORT

Moderator: Lynn Bevan

A) Understanding Rights

The Charter in General

Despite daily references in the media to Charter developments, most Canadians do not have a solid understanding of the Constitution and the Charter of Rights and Freedoms.

Delegates showed an inherent sense of fairness and recognized the importance of protecting rights, particularly the rights of those least able to protect themselves. They did not, however, see how the Charter could protect their rights. The following are comments made by delegates:

(1) "How is a Charter different from human rights acts?"

(2) "How does the Charter protect your rights?"

(3) "Will the Charter be available only to the rich and powerful because minorities don't have the means or the knowledge to use it?"

(4) "How do we ensure that the Charter isn't just another piece of paper that looks good, since who really knows what it means?"

(5) "The media can't be relied on to raise awareness of rights."

(6) "Maybe we're emphasizing our individual rights too much. We must give and take a little to make the Charter work."

Recognizing the varying levels of understanding among delegates concerning rights, I started each workshop with an introduction to the Charter. I discussed the Constitution (both unwritten and written rules that regulate the exercise of power by government), how the Charter is part of the Constitution, its significance (a statement of principles to be applied to specific issues, an expression of societal values), and the difference between ordinary laws and the Constitution. The delegates appeared to appreciate that the Charter could protect them against unwarranted government action.

Recommendations from Delegates

- 1) That there be better distribution of information concerning rights. Suggestions included distribution through the mail of descriptions of the contents and consequences of new laws. Videos and other media might also be used.
- 2) That laws that cannot be enforced effectively, such as human rights laws, not be viewed as the answer to discrimination.
- 3) That clear reasons be given whenever rights are limited by government action.

B) Affirmative Action

In each workshop, I asked whether affirmative action was justifiable. In four of five workshops, a few delegates initially opposed special programs that considered any characteristic other than "merit".

After discussing the rationale for affirmative action (that without it, people who are already disadvantaged and excluded from benefits may be relegated to that position for their entire working careers), most of those who had originally opposed the concept changed their views. What invariably convinced the others was the following question:

"Do you believe that programs that give incentives to employers to hire people because they are young are justified?"

All delegates accepted these as valid programs

(although some disputed the format) because they believed youth to be at a disadvantage. Since the major selection criterion was age, even the original doubters agreed that programs intended to benefit groups for reasons other than merit could be justified.

Nonetheless, none of the delegates considered quotas to be justified. This approach was perceived to depart totally from merit. The following characteristics were considered necessary to ensure fairness in any special program:

- (1) clear and ongoing communication of the reason for the decision to benefit a particular group
- (2) the intended beneficiaries must be qualified for the job, and
- (3) the affirmative action program must be temporary.

Recommendation from the Delegates

That better information about programs directed at youth be available and that improved means of distributing information about such programs be developed.

C) Mandatory Retirement

This topic generated considerable discussion, largely because delegates were concerned about employment prospects for youth. Some delegates expressed a sense of frustration because they feared they were training for roles they might never perform.

Two opposing sides of the issue were discussed. On the one hand, if there is no mandatory retirement, there will be fewer opportunities to enter the job market. On the other hand, qualified individuals should be allowed to continue to work, regardless of age.

Delegates thought the issue revolved around whether people should be treated as individuals, or as part of a group that must retire for the sake of society.

Comments included the following:

- (1) "Requiring mandatory retirement views people as a commodity."
- (2) "People who are now 65 were once our age. I might want to continue to work when I am that age."
- (3) "It's easier to exploit younger people."
- (4) "I can't think of starting a family because a full-employment policy doesn't exist in this society and I don't know if I'll be able to get a job."
- (5) "It's easier to be on a pension than on welfare."

Delegates suggested numerous alternatives that might encourage older persons to retire "with dignity". Retirement could be phased in, with part-time work for young people used to fill the gap. Older workers could train younger workers. Retirement could be made more financially attractive.

Recommendations from the Delegates

- 1) That studies be conducted to determine if the abolition of mandatory retirement will increase unemployment among the young.
- 2) That information be provided on any decision to abolish mandatory retirement to reduce the fear that employment opportunities will diminish.
- 3) That abolishing mandatory retirement is the only fair treatment for individuals who continue to be qualified for their jobs.

D) Smoking

Smoking was discussed in two workshops in the context of individual rights. It engendered the most discussion of all topics.

This topic led to a discussion of how competing interests can be balanced even without laws.

Various compromises were proposed - separate rooms for smokers, common courtesy and banning smoking in public buildings but not outdoor public spaces. Some delegates were uncompromising, stating that their health was at risk and that they had a right to a clean environment. It was commonly accepted that the police lack adequate resources to enforce anti-smoking by-laws.

Recommendations from the Delegates

- 1) That the right to a clean environment be entrenched in the Charter.
- 2) That consideration be given to abolishing smoking in public places.

E) Youth Programs

There was a wide variation in awareness of the existence of programs directed at youth. Those who were aware had strong views on which programs were most useful. Generally, delegates stated that an increase in cooperative and work experience programs would be most helpful. They felt that there are not enough such programs available.

Recommendations from Delegates

- 1) That more cooperative programs be developed in all fields, possibly in lieu of grants.
- 2) That funding for summer student programs be maintained.
- 3) That better information about these programs be provided through mailings, videos, etc.
- 4) That the potential beneficiaries of such programs be consulted.

YOUTH AND CRIME WORKSHOPS REPORT

Moderator: Yves Fricot

Delegates were almost unanimous that laws should recognize young people as individuals capable of making decisions. The law must also recognize that young people may be at different stages of development. This "fairness" towards youth was evident throughout the workshops.

"Individuality" was often a focal point of discussions. This was reflected in the consensus that "freedom of choice" should be restricted only where absolutely necessary. Delegates expressed a general aversion to imposing "social morality" on individuals in situations that do not clearly require it.

Throughout the workshops there was a desire that government become more involved in preventing youth crime. An "on the streets" approach was generally thought to be the most effective way to deal with the problems faced by youth.

Prostitution and Soliciting

The subject of morality formed the starting point of this discussion. A minority thought that prostitution was morally wrong. There was, however, no clear majority that felt it morally right. There was a general consensus that society does not favour prostitution. A majority of delegates, however, appeared to believe that prostitution and soliciting should not be subject to the imposition of morality. This was particularly so given the consensual nature of prostitution and the lack of definable harm to society.

Delegates accepted that prostitution will always exist. The more it is made difficult for prostitution to occur, the more the problem will be driven underground. This compounds serious problems associated with prostitution - pimps, drugs, physical abuse and lack of access by those who can "help". A majority of the delegates (about 80%) felt the best approach lay in repealing criminal laws on soliciting and in recognizing that prostitution is a business. It should be treated and controlled as a business.

Barriers should nonetheless be established to prohibit some types of prostitution and to control others.

Foremost should be age. The age unanimously agreed upon was eighteen. Second, health regulation should be more widespread. Local business restrictions, such as zoning by-laws, could also apply. Those not carrying on their activities in accordance with business regulations would stand out. This approach would also make it easier to identify those who were too young to engage in prostitution.

Prostitutes would feel safer. There might be tax advantages to the government. Those who were considering becoming prostitutes would better understand the consequences.

Such an approach alone would not solve the problem of juvenile prostitution. The demand for juvenile prostitutes would continue. They might be driven farther underground by the "legalization" of prostitution by older prostitutes. It was felt, however, that if prostitution was treated as a business, clients would tend to go to "legal establishments" - particularly if severe penalties were applied to those employing the services of a young prostitute. Those who were involved with minors should be subject to severe punishment.

A greater effort should be made to "reach" the young who are involved in the business. Other young people and those who have previously been associated with prostitution would offer the greatest help.

Victims of Crime

Delegates felt almost unanimously that victims should not be actively involved in the sentencing process. It was important to keep the process of sentencing objective. Emotions should not influence the result.

Delegates also expressed concern that not enough information was made available to victims. Victims needed to be told what was happening throughout the investigation and the trial process. The existing system is inadequate. Finally, the victim should know why a particular sentence is pronounced.

Capital Punishment and Abortion

a) Capital Punishment

About 70% of the delegates favoured capital

punishment. Only two would have been willing themselves to put a convicted person to death.

Those who spoke against capital punishment raised several arguments:

- (i) there was no right to take a human life
- (ii) capital punishment does not reflect the suffering of victims of non-capital offences
- (iii) capital punishment eliminates a problem with one individual, but generally does not solve it for those who follow
- (iv) the danger of error.

Those supporting capital punishment generally felt that in some serious cases (a mass-murderer, for example) the criminal forfeits the right to life. Although deterrence was one justification for capital punishment, the consensus was that capital punishment would result in a better society. Money that is now spent on maintaining some criminals could be better spent elsewhere.

Although no clear lines were drawn, there was a general consensus that capital punishment should be available in all cases of premeditated murder, and certainly for repeat murderers. If capital punishment were introduced, it should be limited to cases where there is no chance of rehabilitation.

b) Abortion

Delegates unanimously thought that better education would reduce unwanted pregnancies. Contraceptives and instructions on their use should be more readily available.

The majority felt that the father should be given some input in deciding whether the mother should have an abortion. The father would not be given a veto, but his decision to raise and support the child, and possibly to support the mother during pregnancy, should influence the decision made by the abortion committee.

Greater government support should be provided for

those who choose not to have an abortion. This might reduce the incentive to undergo an abortion.

The Young Offenders Act

a) The Role of the Lawyer

Most delegates felt that the accused should have the final say in deciding what legal course is to be taken when the young person is subjected to the Act. Even the youngest offender should be treated as an adult. If the accused is "younger" (twelve, thirteen or fourteen), family or friends should, where possible, be involved in the decision-making process. Younger people involved with the young offenders system should not get the wrong message (that they can "get off" and avoid responsibility for their actions). This is particularly so where factual guilt is admitted to counsel. The offender should at all costs not be permitted to think he can "beat" the system.

The availability of "alternative measures" was felt to be important. Such measures offer the young offender the adult alternative of admitting wrong and repaying the system (or victim) without traditional legal consequences. They also permit the young person's lawyer to encourage a "socially desirable response" from the client. Alternative measures permit lawyers to assume different roles. Rather than simply acting as legal advisers, lawyers could also be counsellors.

b) Age Limits

There appeared to be a general consensus that the age limit of 12 years could be lowered. Ten and eleven year olds are able to recognize the distinction between right and wrong. Even very young people would benefit from being exposed to the consequences of their conduct. "Immunity" for those under twelve was strongly opposed.

Although the age limit should be lowered to include those under twelve, pre-trial alternative measures should be the norm for this group. These young offenders should only rarely be brought into court - for example, where they are deemed more mature than the others in their age group, where the crime is serious, or where they are repeat offenders.

There was a consensus that age limits should be

abolished. The youngest offenders, however, should only rarely be transferred to adult court. Such transfers reduce the possibility of rehabilitating the offender. Where rehabilitation is a real possibility, offenders should be able to rely on the more varied disposition options of the young offenders system.

c) Sentencing

(i) The 3-year Maximum

It was generally felt that the three year maximum permitted under the Act is arbitrary, and sometimes not enough. Some delegates recommended a power to extend the sentence beyond three years to enable the person to stay in the youth court system. This would permit relying on the flexibility of the Young Offenders Act and its greater possibilities for rehabilitating the offender. A review of the sentence should be conducted after three years imprisonment.

(ii) Sentencing and the Importance of Rehabilitation

Delegates strongly felt that youth can be rehabilitated. The overriding objective in sentencing youth should be rehabilitation. The offender should nonetheless be taught that there is a penalty for crime. Rehabilitation should have a strong educational component, and it should make offenders aware of the nature of the adult court system.

In serious cases, particularly those involving closed custody and longer sentences, offenders should not be released without first being gradually assimilated again into the outside world.

d) Publication of Offenders' Names

A slight majority of delegates favoured a ban on publishing a young offender's name. Publication, it was felt, undermines rehabilitation and stigmatizes youth. Others felt strongly that the public has a right to know who is implicated in crime. Otherwise, the public cannot protect itself.

FAMILY LAW WORKSHOPS REPORT

Moderator: Maria De Andrade

The industrialization of society and the emancipation of women have led to major changes in the family. Not long ago, the family consisted of the father, the mother, the children, the paternal and maternal grandparents and cousins.

The concept of a family has changed. It is now more restricted. When one thinks of a family, one thinks of the father, the mother and the children. There are more and more single parent families. Only recently has divorce come to be regarded as an "institution".

The family is trying to adapt to social upheavals. Because there are profound changes in the institutions of marriage and the family, laws must be amended to reflect those changes.

When we speak of amendments to family law, it is difficult to rally everyone around a single idea. People have strong beliefs about what marriage and the family should be. Young people also seem to be concerned about the family. They are the ones victimized by the breakdown of marriage.

Family law is a broad field. Delegates might have discussed the division of jurisdiction in family matters between the federal government and the provinces. In view of the limited amount of time available, delegates restricted their discussions.

The Family Law Workshops dealt with three themes. First, delegates discussed the capacity to enter a marriage. They discussed personal impediments - in particular those arising from filiation and relation by marriage.

Most delegates considered it unacceptable for a law to prohibit persons related only by marriage from marrying. If there were no blood ties, there was no reason to prevent such marriages.

There was much controversy about permitting marriage between adopted children who are not related by blood.

In all workshops, those delegates who had been adopted strongly opposed allowing such marriages.

The purpose of adoption was to provide adopted children with a family - brothers and sisters they must love, but not marry.

Permitting adopted children to marry brothers or sisters would discriminate among children within a family. It would amount to saying that an adopted child can never be part of a family in the same way as the other children. Parents might no longer wish to adopt children. One delegate suggested, "Imagine the consequences if a child of such a marriage learned that his parents were brother and sister."

Others felt that the personal prohibitions on marriage should be limited to serious impediments, primarily biological ones. Intervention for other reasons was improper.

Where parents have children from previous marriages, the situation should be treated differently. Each case becomes special. If two children were not raised together, why prohibit marriage between them?

Delegates also discussed divorce. The discussion centered on the objectives of the new Divorce Act (proclaimed in force on June 1, 1986), and included mention of the criteria governing support awards.

Almost all delegates felt that a one year separation period preceding the granting of a divorce is sufficiently long. When a couple applies to a court for a divorce there has already been a period of reflection. The possibility of reconciliation is minimal. A three or five year waiting period (where there have been no offences committed which justify an earlier divorce) is much too long. [Note: Under the new Divorce Act which has since been proclaimed in force, the maximum waiting period is one year].

Certain participants gave examples where the wife, because she is unable to prove that her husband committed a matrimonial offence, must wait several years before being able to obtain a divorce. This several year waiting period causes problems for spouses who wish to "get on" with life. In most cases this long wait also causes problems for the children. Is it not preferable for them to be with one happy parent than with two parents who are quarrelling?

Adultery and physical and mental cruelty were appropriate grounds for divorce, but not for moral or

religious reasons. Divorce should be seen as a remedy for spouses who are victims of serious offences. A one year waiting period might be too long in certain circumstances.

Several delegates pointed out that marriage is the basis for the family, and the family is the basis for our society. Family stability should therefore be encouraged. It would be wrong, however, to make divorce more difficult to obtain. Instead, getting married should be made more difficult. People cohabit, married or otherwise, without knowing the implications. Marriage preparation courses could complement sex education courses in schools.

The final topic discussed was support. Delegates agreed that forthcoming divorce reforms should help former spouses achieve financial independence. In general, support should be temporary. It should facilitate the period between separation and re-entry into the work force.

In certain circumstances, however, re-entering the workforce is difficult. It is therefore important to permit a court to assess each case. Where spouses in a brief marriage both worked during the marriage, it should not be possible for one spouse to seek support from the other. Some delegates thought that where the income of one spouse is much higher than that of the other, fault should be a factor to consider in awarding support. Those delegates, however, were unable to justify taking this position.

Where a marriage lasted several years, and the couple had decided that the wife would stay home to take care of the children or look after the house, the husband should continue to support the wife. The courts, in awarding support or redistributing assets, should not ignore this life-style decision of the spouses. Similarly, the court should consider that a woman re-entering the labour force after an absence of several years will have little seniority. She will therefore be economically disadvantaged. Where re-entry into the labour force is too difficult, support could be made permanent.

Delegates felt that, where the marriage lasted for many years, fault must never be a factor in awarding support.

Bill C-48 (the Family Orders and Agreements Enforcement Assistance Act) was greeted with a certain amount of relief. The Act (since passed by Parliament, but not yet proclaimed in force) will assist in enforcing support and custody arrangements. Delegates did not view

the legislation as interfering unduly with the private lives of individuals. Without provisions to assist in enforcing such arrangements, those ordered to pay support could too easily avoid their responsibilities. Usually the beneficiaries of such orders would be women who cannot afford to trace their former spouses. Furthermore, cases where children are abducted by one parent are psychologically traumatizing for the other parent and should be prevented if possible. This legislation should assist in preventing such abductions.

ACCESS TO JUSTICE WORKSHOPS REPORT

Moderator: Robert Tétrault

Four topics received special attention in the access to justice workshops: access to legal information, attitudes of young people about the legal system and the law, access to the services of a lawyer and the involvement of young people in law reform.

Access to legal information was the focus of most of the discussion. This does not mean that other topics were less important. Given the limited time available however, delegates discussed what seemed to be a priority.

Access to legal information refers not only to information about the law, but also to legal education. Besides promoting knowledge, we must work on attitudes and behaviour. All the delegate groups felt that they were not sufficiently aware of their rights and of the legal system. As one delegate stated, "These are our laws. Why are we not told more about them?" Delegates realized the importance of knowing their rights in daily life.

When they are in trouble, young people need legal information immediately. This information assists them to understand the choices they are called on to make, the resources available and the consequences to which they may be subject. They realize the advantage of being informed before they get into trouble. There are therefore two types of need for legal information: immediate, or ad hoc, needs and preventive needs. How can these needs be met? With ad hoc needs, a young person's reflex may be to turn to his or her parents. But not everyone has good relations with his or her parents. Furthermore, parents are not always able to provide relevant information.

There is also the role of those in authority. Who do young people meet when in trouble? A police officer. Does the latter not have a role to play in imparting legal information? He or she is someone with whom young people will have substantial contact. The police should therefore be made aware of the expanded role they might perform in legal education.

Where it is not possible to turn to parents, and rather than relying on the police, or before they intervene, it would be useful to be able to rely on someone else. A telephone "hotline" might help people who are in difficulty. Delegates praised the anonymous nature of such a service.

This service would only be readily available, however, in large cities. Less populated areas might not be able to provide such a service.

Besides ad hoc needs, there are preventive needs. How can young people be given information that will assist them to avoid problem situations? Schools and the school environment were identified as excellent sources. Delegates agreed that schools should provide basic information about the law and the legal system. Those delegates who had experienced legal information courses in schools were generally satisfied with the courses. Legal information in the schools should be an ongoing process, not merely a subject for eleventh or twelfth grade. This process should begin early. Some delegates suggested kindergarten. Certainly young people should begin to receive information about the legal system once they enter high school.

What should be the objectives of legal information programs in schools? Delegates suggested that young people should be made familiar with the laws that affect them both as young people and, more generally, as citizens. They should also be made familiar with the values and principles underlying the law. Young people should also know the resources available to them in the justice system. They should be made aware of the positive aspects of the legal system to reduce their fear of it and to "demystify" certain institutions. Young people should be helped to realize the importance of being informed about their legal rights and obligations.

The main principles and values of law, the institutions, and the services available should be covered in school courses. Delegates suggested that the topics should reach beyond the criminal law. More specifically, in kindergarten and elementary school, children should be informed of the protection available to them as potential victims of crime. Delegates suggested sexual abuse and domestic violence as typical abuses involving young children. Children should be told about their rights in a divorce or separation. They should be made to realize that they are the victims, rather than the cause of marriage breakdown.

By the time they commence secondary school children are more independent. They should receive information about criminal law and abortion. Delegates stressed the importance of being informed not only about rights, but also about responsibilities.

Should legal information courses be compulsory? Delegates tended to feel that they should. Some, however, felt that such courses would compete with other important subjects. Yet, it might not be necessary to set up a course of several hours per week. Legal information could be incorporated into courses on other subjects. Dictation exercises might concern the rights and obligations of tenants. A mathematics course might involve calculating the fines to be paid by offenders. The approach should be dynamic. It should encourage young people to participate. The emphasis should be on everyday situations. The product must be attractive. Delegates mentioned games, plays, visits by lawyers or notaries, puppet shows, videos and even short stories for children as appropriate means of educating about the law. Imagine how Little Red Riding Hood might be presented in a legal context.

Teachers were the most obvious resource. The importance of preparing teachers to deliver legal information was stressed. Delegates also suggested that others should be involved - judges, lawyers and the police. Personal contacts with such people would lead to a better understanding of the legal system. Others might also be involved. Who would be in a better position to explain the procedures in Youth Court than someone who has had to appear there?

Legal information in the schools should be supplemented by other mechanisms. Those who are no longer in school and those living on the "fringes" of society also need legal information. Television, radio, video clips, community groups and cable networks could all be used to disseminate legal information.

Delegates identified specific obstacles to obtaining legal information. People living in small communities feel disadvantaged. Besides, American programs such as People's Court and Miami Vice may lead Canadians to assume that laws mentioned in those programs also apply to Canada. Similar programs in Canada might be used to provide legal information about Canadian law.

Delegates were divided about the usefulness of televising trials. It would be essential to have a "host" present to explain the various elements of the trial process. Otherwise such broadcasts were likely to be confusing.

Attitudes about justice and the law were also discussed. Without adequate information about the law,

young people are often surprised by what they learn through the newspapers and other media. Since what is reported often relates to the deficiencies of the system, young people come to doubt that there is any equity in it. They are distrustful and afraid.

Young people are also afraid that they will not be taken seriously by the adults associated with the legal system. Even where young people are aware of their rights or are informed of the remedies they can exercise, they hesitate to act.

Delegates also discussed contacts with lawyers and other members of the legal profession. They stressed the importance of being able to choose a lawyer. Legal aid plans do not always allow such a choice and the services of salaried lawyers are not always considered effective. Several delegates suggested that remote areas and small towns were deprived of legal aid for all practical purposes.

Those delegates who had not been in contact with lawyers expressed some suspicion of them. Those who had dealt with lawyers felt they received good service. Several delegates said they would like to rely on an intermediary or a resource person before contacting a lawyer. Intermediaries might include mediators and social workers. Delegates felt that they must have confidence in lawyers, but it was difficult to evaluate whether the lawyer was competent.

The paternalistic attitudes of some lawyers were criticized. Delegates felt that young people are likely to be taken less seriously because they are young. Mention was also made of northern native communities, where the defence counsel, judge and prosecutor arrive and leave on the same airplane. This makes the native people sceptical about the independence of defence counsel. Means of preserving the image of defence counsel's independence should be explored.

Delegates briefly discussed law reform and their role in it. They felt that young people had little chance of influencing lawmakers. Two reasons were cited. Young people cannot vote, and they are not easily organized into pressure groups. Consideration should be given to the role of community groups working with young people in the law reform process. The temporary nature of "youth" remains a problem. By the time they have been made aware of issues, young people have often entered adulthood.

Delegates also criticized the language of the law.

Laws were drafted in a complex manner. This constituted a further obstacle to the involvement of young people in law reform. Young people would have greater confidence in the law if it were drafted more clearly. For example, certain delegates were questioned about the Canadian Charter of Rights and Freedoms, which had been drafted in such a way as to render it readily intelligible. Even so, young people were only able partially to understand various provisions.

Delegates were also concerned that legal information sometimes promoted the status quo. It explained existing laws, but left little room for a discussion of their merits.

Delegates were asked what action they might take on returning home. One delegate would present a proposal to his local cablevision station to have it disseminate legal information. Several delegates who had received legal training said that they would become involved personally in providing information or in ensuring its dissemination.

MINORITY ISSUES WORKSHOPS REPORT

Moderator: Arnold Fox

I would like to thank delegates for the interest they showed in the workshops on cultural minorities. I have often witnessed a certain reluctance to discuss cultural issues. That reluctance is sometimes interpreted by minority groups - in my case, by native people - as discrimination and prejudice.

This reluctance was apparent in the workshops on cultural minorities. However it did not impede delegates from having fruitful and rewarding discussions. I sought in part to draw comment and opinion about cultural minorities, not only about the aboriginal populations in Canada. Delegates, however, chose generally to concentrate on aboriginal issues.

By far the most popular topic was aboriginal self-government. Although there was some confusion about what aboriginal self-government entails, the concept of native people becoming more responsible for their own course of development received almost unanimous support. Delegates acknowledged that if the values of a given group lead to the development of laws, native people have a strong case for self-government. The difference of aboriginal life-styles from those of "mainstream" Canada underlines the need for a unique system of government, including a more culturally appropriate justice system. Such measures will preserve aboriginal value systems and will be relevant to native Canadians on a day to day basis.

Some delegates suggested that if Canada is able to support ten provincial government systems, development of an additional system should not be impossible. Although aboriginal government would not be regionally based, it would meet the needs of a distinct group. Delegates felt that in a true democracy, minority rights must be acknowledged and protected.

Aboriginal self-government would place the responsibility to address social problems with aboriginals themselves. At present, a disproportionately large number of native children and adults enter the child welfare and judicial systems. This is the result of a "foreign" system being imposed on this group. Delegates identified a need for various native groups to reach consensus on the appropriate social and government systems for status Indians, the Metis population and the Inuit.

At least two provincial child welfare acts stand as examples of culturally appropriate legislation. The new Alberta Child Welfare Act, for example, allows for the unique needs of Alberta's native populations. Other governments in Canada could follow the example set by such legislation.

Delegates strongly recommended that "mainstream" Canadians develop a better understanding of aboriginal issues. Because various aboriginal groups have expressed different needs, Canadians are confused about the particular issues of importance to each group. Education was sorely needed to inform Canadians about the uniqueness of native life. Delegates also suggested a need for education about other cultural minorities in Canada. This would promote multiculturalism.

Delegates discussed the relationship between multiculturalism and bilingualism. If Canada is to achieve true multiculturalism, Canadians must respect the languages of other cultures. English and French should perhaps not be the only languages to be emphasized in Canada.

Delegates also discussed discrimination and how it affects native people. They were asked if the special recognition afforded to native people under the Charter of Rights and Freedoms was appropriate, since other cultural minorities were given no such special recognition. Some delegates felt that the aboriginal population had a basis for "special" status.

One group of delegates also discussed native land claims. There appeared to be a consensus that native people have a historical justification for making these claims.

The interest shown in the cultural minorities workshops underlined the need for Canadians to continue to learn about each other. Through that process, artificial barriers such as colour, race or religion, can be eliminated.

SYNOPSIS OF PRESENTATIONS OF PUBLIC LEGAL EDUCATION AND INFORMATION GROUPS

The Department of Justice funded six summer youth projects in support of International Youth Year. Two types of projects were undertaken. The first involved research into the attitudes of youth about law, justice and authority. The second involved providing legal education and information to young people.

Four public legal education organizations outlined to delegates the programs they had undertaken with the assistance of the Department of Justice.

The Public Legal Education Association of Newfoundland produced a booklet entitled "You and the Law". Aimed at young people from 16 to 20, it provided language information on the justice system and how it affects youth. The booklet was intended to supplement school texts with a plain language approach to legal questions, emphasizing the law as a helpful tool. It was designed in part to cover topics that interest youth, such as the criminal law. In addition, the booklet contained material on "need to know" aspects of the legal system - constitutional issues, consumer, labour and family law.

The booklet format - text coupled with strategically placed graphics - was chosen because it represented an effective and inexpensive means of communicating information.

Community Legal Education Ontario (CLEO), a specialty clinic within the Ontario legal aid system, used its grant from the Department of Justice to attempt to reach "street kids" in a different manner than had been attempted before. CLEO produced ten posters, five radio commercials and ten newspaper articles. The aim was to use an integrated approach to reach this group of young people. It was hoped that they would hear about the law on the radio and see posters in places they frequented.

CLEO attempted to make the material interesting and relevant to the needs of these young people. Because the young people this material was designed for often did not have the literacy skills that would allow the production of material that contains considerable text, CLEO employed a colourful, graphic approach, with a limited emphasis on the written word.

CLEO sought through posters to inform young people of their legal position in day to day situations - for example, landlord and tenancy, marriage and living together, and sexual abuse. Radio messages dealt with shoplifting, obtaining legal aid, arrest and detention, contact with the police, the Young Offenders Act and the Ontario Child and Family Services Act.

The University of Sherbrooke used its grant to conduct a survey on the effectiveness of current legal education programs for 15 to 25 year olds. University of Sherbrooke students were employed for periods ranging from six to nine weeks to undertake the survey.

The Sherbrooke project was a pilot project, and was not conducted in a completely scientific manner because of time and financial constraints. Nonetheless, the project underlined matters that needed to be further explored in relation to providing legal information.

The survey evaluated several matters - the degree of awareness about the law among young people, their attitudes towards the justice system, means of disseminating legal information to young people and the quality of existing public legal information materials. Two questionnaires were used - one addressed to 15 to 25 year olds, and the other addressed to resource persons. The project also prepared an inventory of legal education materials available in Quebec.

The Alberta Legal Resource Centre used its Department of Justice grant to undertake an International Youth Year summer project entitled "Youth, the Charter and Contemporary Issues". This project involved a resource person and six young people between the ages of 17 and 21 in the production of a video. It was hoped that the video would be distributed to television stations and schools. The video involved a play about the Charter, entitled "What is Freedom to Us?"

To determine the appropriate content of the play, young people were interviewed about what they knew of the Charter. Many mistakenly thought that their constitutional rights stemmed from the American constitution, rather than from the Canadian Charter of Rights and Freedoms. After the interviews were completed, project members wrote, performed and videotaped the play. The play toured high schools and performed in northern Alberta.

Theatre was used to deliver public legal education

because it reaches people who otherwise would not learn about the law. Not all young people are sufficiently literate to learn from written information. Theatre was also used because it is one of the oldest teaching methods known to mankind.

Banquet Address by the Honourable John Crosbie, P.C., Q.C.,
Minister of Justice and Attorney General of Canada

Before I begin my formal remarks, I would like to express my sincere thanks to the many people who have contributed to the success of this Forum - my Cabinet colleagues, the Hon. Andr  e Champagne and the Hon. Perrin Beatty, Mr. Justice Allen Linden, members of the National Advisory Committee, our panellists and workshop moderators, and my Departmental officials. Perhaps most important, I thank our 150 youth delegates. Your participation has resulted in a unique and productive debate about the law as it affects Canada's young people.

Our youth delegates have spent this week sharing ideas about the complex challenges that face our legal system. You have touched upon constitutional and human rights issues in your discussions on the Canadian Charter of Rights and Freedoms. You have examined the impact of the criminal law on young people in Canadian society and you have debated issues relating to "access to justice". You have sampled a "smorgasbord" of law in just a few short days.

I and my Departmental officials have listened to your ideas. Good government requires communication between those in government and the Canadians they serve; yet the voice of youth is not always heard, despite the impact of government actions on your lives. That is why I am delighted at the level of enthusiasm you demonstrated this week in setting forth your views about our legal system.

The past eighteen months have demonstrated this government's commitment to consultation with Canadians. We have listened, and we have also acted to improve the economy, to bring the deficit under control and to improve federal-provincial relations. We have done that. And we have given the same high priority to promoting equality and increasing social justice in Canadian society.

Anyone who doubts our determination to build a society of fairness, opportunity and equality should reconsider. The tenure of this government has seen a drop in the national unemployment rate from 11.6% in September, 1984 to 10% in December, 1985; youth unemployment has decreased by 75,000 over that same period - a 14.2% decline in the number of young people unemployed.

The social welfare net has been maintained and strengthened with new measures such as the spouses allowance program. Concrete steps have been taken to help the

disabled, including the recently announced implementation plan for the recommendations contained in the Parliamentary Report on the Disabled. Equality for women has been enhanced by employment equity legislation introduced in the House of Commons by the Hon. Flora MacDonald. Discrimination against native women under section 12(1)(b) of the Indian Act has been eliminated.

As Minister of Justice and Attorney General of Canada, I have had the opportunity to put forward changes in the law in a number of important areas, particularly with respect to divorce reform, impaired driving and equality rights under the Charter of Rights, to name but a few.

I expect that Parliament will soon pass the new Divorce Act [Note: The Act was subsequently passed by Parliament. It came into force on June 1, 1986]. Spouses will be able to divorce if they live separate and apart for one year, instead of three years. They will be able to divorce even before the expiry of that one year period if one spouse can establish that the other has committed adultery or cruelty.

The new Divorce Act encourages parents to try to reconcile their differences if at all possible. The legislation does recognize, however, that once a marriage has deteriorated beyond the point of recovery, the law should not unnecessarily prevent parents and children from leaving an unhealthy domestic situation, and it should make the process as non-adversarial as possible. We must remember that divorce is not an adversarial process as far as children are concerned.

Where parents do decide to proceed with a divorce, the new Divorce Act encourages them to mediate their differences concerning custody and support arrangements without going to court. Mediated agreements are more likely to be respected by the parents and, most important for the offspring of the marriage, they tend to lead to better arrangements for custody of and access to the children.

Children and young people still need their parents - both of them - whether or not the parents are divorced. But until now, children have often been the forgotten partners when divorce cases have been dealt with by the courts. The new Divorce Act requires a court deciding on custody or access rights to consider the best interests of the children. It must also permit children as much contact with both parents as is consistent with the good of the children.

Too often in divorce cases - in fact, in almost three-quarters of cases where support is ordered - the parent who is obliged to pay support does not pay, or pays late, or fails to pay the full amount. Without dependable support, the other spouse, often a mother with custody of children, is unable to provide adequately for her needs and those of her children. I have described this situation as a "national disgrace". As a remedy, I have asked Parliament to pass the Family Orders and Agreements Enforcement Assistance Act [Note: The Act was subsequently passed by Parliament. It is expected to be proclaimed in force in 1987].

This Act will provide access to certain federal government information to assist in locating a parent who has defaulted on support payments or who has abducted a child in violation of a custody or other agreement. The Act will also allow certain money that the federal government owes to a person who has defaulted on a support order or agreement - for example, income tax refunds and unemployment insurance benefits - to be withheld in order to meet that support obligation.

I am very concerned about the need to provide as much assistance as possible to Canadians who become victims of crime by amending the Criminal Code and by other measures which I will mention later.

Last month, the Criminal Law Amendment Act, 1985 came into force. One of the most important changes the Act brought about was the increase in Criminal Code penalties for those who become impaired by drinking or taking drugs and then operating a motor vehicle, vessel or aircraft. Too many Canadians - particularly young Canadians - are victims of impaired driving.

Where an impaired or drunk driver causes injury, the penalty may range as high as ten years imprisonment. Where death results, and where criminal negligence can be shown, the penalty may be as high as life imprisonment. In addition, the driver may in some circumstances be prohibited from operating a motor vehicle for life. Those may be harsh penalties, but I not willing to stand by while young Canadians, or any Canadians for that matter, are needlessly killed or maimed by these irresponsible acts.

As soon as the legislation was passed, I made a nationwide tour to inform Canadians about its provisions, and I asked my Department to organize a national publicity program aimed at convincing those who drink not to drive. Although I have seen no firm statistics yet, it does appear

that the legislation will help in significantly reducing the numbers of impaired drivers.

The hidden terror of children who are victims of sexual abuse must also be dealt with openly. Young people must be better protected against this exploitation. I will shortly propose to my Cabinet colleagues further changes in the criminal law to provide better protection for children against sexual abuse, juvenile prostitution and pornography. Our criminal justice system has failed the alarming number of Canadian children who have fallen victim to sexual abuse and exploitation.

We do not currently have adequate statistics that describe the full extent of the sexual victimization of children in our society. The statistics we do possess vary widely. Research conducted by the Badgley Committee on the Sexual Abuse of Children and Youths estimated that one in two females and one in three males have been victims of unwanted sexual acts. Four out of five incidents of this type have been committed against individuals under 21 years of age.

The Department of Justice has recently completed consultations with the provinces and with private sector groups on the Badgley Report, as well as on the report of the Fraser Committee on Pornography and Prostitution. I intend to propose legislative changes on the basis of these consultations and in response to the recommendations contained in these two reports.

These legislative changes will include the creation of new offences to ensure that any acts of sexual abuse which are not now adequately covered in the Criminal Code will be added. Current inadequacies in the Criminal Code prevent the successful prosecution of many cases of sexual abuse. And the law must extend not only to sexual assaults against children, but to unwanted sexual acts as well.

I am also proposing changes to ensure that a court can receive the evidence of a child without the archaic restrictions which now exist. There is growing evidence of the use of children in the production and manufacture of pornography. It is necessary that the Criminal Code treat the exploitation of children for this purpose as a serious offence.

Juvenile prostitution is also an increasingly frequent problem in our society, and one that represents the most blatant victimization of children by adults. I am not

alone in my concern about juvenile prostitution. A recent Gallup poll of Canadians between the ages of 15 and 24 found that over 70% rated prostitution among young people as either "quite a serious problem" or as "a very serious problem". I am at present carefully considering the range of recommendations contained in the Badgley and Fraser reports which seek to respond to this plague.

In addition to these proposals to reduce victimization by impaired driving, sexual abuse, juvenile prostitution and pornography, I will be proposing amendments to the Criminal Code designed to benefit all victims of crime. Recent changes to the Criminal Code provided procedures to enable the prompt return of stolen property to victims. Further amendments regarding the increased use of restitution, the use of victim impact statements and the use of photographic evidence, along with others designed to assist the victim's participation in the criminal justice system, will be discussed with my provincial colleagues.

I will also be taking measures to enhance the capacity of the criminal justice system to respond to the needs and concerns of crime victims through the provision of information and the promotion of innovative victim services. I will be discussing these measures along with measures aimed at improving the provincially administered criminal injuries compensation programs, which are cost-shared by the federal government, with my provincial colleagues in the near future.

During the last few days, you have discussed the Charter of Rights and its impact on youth. Of particular interest to me as Minister of Justice is Section 15 of the Charter - the equality rights section - which came into force last April 17.

Young people are not immune from discrimination, whether based on age, race, national or ethnic origin, religion or other characteristics. For the past several months, I have been examining ways to eliminate discrimination in legislation passed by the federal government. I am coordinating the response of the federal government to the recommendations on this topic made last October by the Parliamentary Committee on Equality Rights.

One exception to the equality rights provisions of the Charter lies in the protection of aboriginal rights. The Charter recognizes our obligation to redress the pattern of disadvantage that has affected Canada's aboriginal people. And the Charter at the same time recognizes that the strength of Canada rests on its multicultural heritage.

Section 27 of the Charter accordingly provides for an interpretation of the Charter that will preserve and enhance the multicultural heritage of Canada.

I hope that those of you representing Canada's many cultural groups or its aboriginal peoples will press your elected representatives to ensure that the Charter is used to its full extent to protect our cultural minorities and aboriginal groups.

I have canvassed with you just a few of the host of projects that I and my Department oversee in order to keep Canada's laws and legal system current. But it is important to appreciate that governments cannot act alone, whether they deal with criminal law, constitutional issues such as the Charter of Rights, or family law. They need to know the views of their constituents, young or old. By attending this Forum and by speaking out, you have contributed to an informed government.

I hope as well that this Forum has taken you one step closer to understanding the complex and varied issues that I and my Department face. Lawmaking is not a simple process; there is no one "correct" method of proceeding with legislation. In a democracy, there are many valid viewpoints on many difficult issues.

My Department will carefully review your recommendations and the record of the sessions in which you participated. A report of the proceedings will be prepared and distributed to you and to Department of Justice officials. In this way, your views will be heard by those directly involved in changing our laws.

In his welcoming remarks to you on Monday evening, Mr. Iacobucci, Deputy Minister of Justice, referred to the view of 19th Century British statesman Benjamin Disraeli that youth is the "trustee of posterity". Disraeli also maintained that "almost everything that is great has been done by youth". I am not yet ready to concede that those who have passed beyond the days of their youth cannot aspire to greatness, but I do support Disraeli's conviction about the potential of youth to lead the process of change.

I thank you for coming to Ottawa from the far reaches of Canada in order to share your ideas on justice. I hope that the inquisitiveness and enthusiasm you demonstrated this week remain with you as you step into the future.

Closing Remarks by Daniel C. Préfontaine, Q.C., Assistant Deputy Minister, Policy, Programs and Research, Department of Justice

I would first like to thank those delegates who accepted to spend this week participating in this Forum. I would also like on behalf of the Minister of Justice to thank our moderators and panellists for their enthusiasm and their interest. Finally, I would like to offer special thanks to the members of the advisory committee for their work in organizing the Forum.

When the Minister of Justice first assumed his portfolio, he asked officials from the Department of Justice, "Whose opinion do you seek when you want to find out what changes need to be made to the law?" The response was that the Department of Justice regularly consulted with various associations and interest groups. The Minister was concerned, however, that there was no group representing youth. That is why we asked that you participate in this Forum.

We had three objectives in mind when we conceived of the Forum. First, we sought to determine the level of awareness of young people of the major social issues affecting them. Second, we wanted to know what young Canadians thought about the law as it now stands. Third, we wanted your ideas on what the law should be.

I hope that we will soon be able to take your ideas and your perspectives to those who must deal with issues affecting young people.

Your moderators have very adequately assisted you to discuss many issues. I do not now intend to respond to your ideas in any detailed fashion. The purpose of this Forum was to listen to your views.

Many of the issues you discussed are currently being examined by Members of Parliament. Your views are therefore timely. They are discussing marriage. What should be the prohibited degrees of marriage as they affect blood relationships and as they affect inter-marriages - uncles and aunts marrying nieces and nephews? The Senate Standing Committee on Legal and Constitutional Affairs is examining the Marriage Act right now. I will strongly recommend to the Minister of Justice that your views be brought to the attention of that committee.

I note with interest the emphasis on rights that

has arisen with the passage of the Canadian Charter of Rights and Freedoms. My only comment is that with every right there is a corresponding responsibility. I am sure you are conscious of that.

We at the Department of Justice will continue to try to learn what you feel are the problems of living in this democratic society.

I will not deal in detail now with your discussions on prostitution and soliciting. Many people have strong ideas about these topics. But let me say this much. The government is concerned about the nuisance caused to others by such activities. It is also concerned about the exploitation associated with these activities. Some people hold strong religious or moral beliefs about prostitution. We must balance these views.

How do we on one hand allow people the freedom to do things as individuals and, on the other hand, ensure that their activities do not have an adverse impact on others? The question arises in debates on smoking versus non-smoking, abortion versus no abortion. In fact, it arises with almost every issue. We must balance freedom of choice for the individual with what we consider to be a sensible way to conduct ourselves and to live together in society.

You cannot live in our Canadian society without being concerned about what happens to you and what happens to the rules that govern our conduct. I hope that your level of awareness of legal issues has been raised by attending this Forum - that you see how difficult it is to reconcile differences, and that in fact we are managing to do just that. I hope that you will be satisfied that it was worthwhile coming to meet other young people from different regions of the country.

We are all afraid of the unfamiliar. We are all afraid of the unknown. That applies to religion and racial differences. You will find that the more you expose yourselves to other people's ideas, the more that fear will dissipate. That is what a democratic society should be all about.

Do not go away and forget us. You should consider writing letters to your Members of Parliament about issues you have discussed. You should write to your provincial representatives as well. Many of the issues you examined are the responsibility of provincial governments - legal aid, administering the Young Offenders Act, disseminating

information about the police and the court process, and providing child welfare services, to name a few.

We hope to develop better mechanisms to obtain the views of young people about deficiencies in our legal system. In the meantime, we will take your views to the appropriate committees at the federal level to ensure that they are made aware of your comments. I will make the Ministry of the Solicitor General aware of your comments on the Young Offenders Act. I will make other departments aware of what you said. We will be looking at the possibility of having further forums, perhaps national or perhaps regional. We will attempt to determine what kinds of public legal education materials we can develop with the direct assistance of young people.

We have all shared our ideas, our thoughts and, in essence, our lives with one another. We will return home to our communities with some ideas reinforced and with new ideas to share. Again, thank you for your participation during this Forum. Bon voyage de retour.