The Legislative Process

Since this Committee's report will result, we hope, in legislative change, it is appropriate for us to suggest creative measures for implementing section 15 of the *Charter*, of the kind that can be fashioned by Parliament and the government of Canada. They are not under the same constraint as a court would be in dealing with a law that offends section 15. To put it simply, Parliament and the government are not restricted to eliminating the offending provisions.

We recognize, however, that the courts are bound to play an important role as one of the principal agents, along with legislatures and governments, for giving effect to section 15. We hope that our recommendations will limit that role, to some extent, by prompting changes in the law that will obviate the need to go the judicial route. The latter often proves an expensive and time consuming option. It is much better, in our view, to anticipate the effect of section 15 and put Parliament at the leading edge of change rather than simply leave it to respond, by picking up the pieces, after the courts have developed and applied their concept of equality to various federal laws.

There are features of the legislative process that make it more suitable, in many ways, than the judicial process as a means for taking proper account of section 15 of the *Charter*. First, the legislature is equipped to remove the inequalities in government benefit programs by widening the range of beneficiaries (and authorizing the necessary additional expenditures) to include members of those groups protected by section 15 that were not previously included. It may be that the only way a court could effectively eliminate such an inequality would be to apply the lowest common denominator, as it were, and invalidate the benefits currently available in order to put everyone on the same footing. That solution is not likely to be attractive to either those that receive or those that are denied benefits.

Second, the legislature is able to deal with that type of discrimination that requires positive measures for its elimination. This is particularly important with respect to disabled people, who may be in a position to take advantage of many facilities and services only if some accommodation is made for their special needs. A legislature can provide for that accommodation; a court cannot.

Third, the enactment of laws may be appropriate, though not mandated by the equality guarantee, to improve the conditions of groups that have been disadvantaged in the past. That kind of law is contemplated by the second subsection of section 15 and, obviously, cannot be created by judicial edict.

Finally, at a more general level, the legislature is able to offer comprehensive solutions to section 15 conflicts on a prospective basis rather than responding after the fact, as a court must do, to a narrow set of circumstances.

We have emphasized the flexibility of Parliament as a vehicle for dealing with inequality and discrimination. We would point out, however, that the government enjoys the same flexibility to respond to that inequality and discrimination that can best be addressed by executive action, through regulations or official policies.

The Organization of the Report

We have organized our report on a thematic basis that reflects the manner in which section 15 issues were presented to us. We focus on areas of concern rather than