

Charter not enough to protect women's rights

by Ann Grever and Suzette C. Chan

Three major speakers addressed the Charting Our Rights conference. Beth Symes told women to educate themselves in legal matters and use litigation to protect their rights. Alberta attorney-general Neil Crawford said the province has finished an inventory of sexist statutes. Shelagh Day spoke on Human Rights Commissions.

Beth Symes, a Toronto lawyer who helped lobby for clauses in the Charter to protect women's rights, opened the conference by saying that the last minute inclusion of Sec. 28 was an important step for women in the political arena.

"It showed men and women that if women organized in Canada and exercised political power, they can indeed achieve anything they want."

Symes said it is important that women do not lose the momentum they built by lobbying for changes to the Charter.

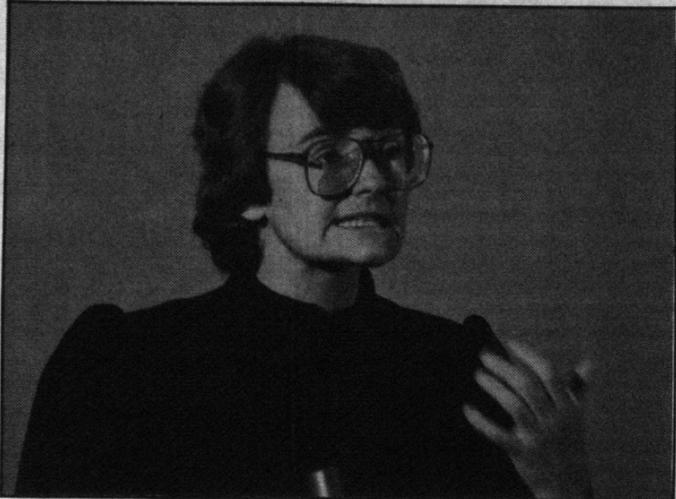
"It is time to pick up the pace," she said. "There is a real test for all of us to use the Charter effectively."

Symes says the Charter gives women "a new tool with which to tackle real problems" litigation.

She acknowledged litigation is "a lengthy, very costly, plaintiff-difficult process," but said the cause is worth the effort.

"If we win, doors may swing open, but if we lose, the doors may slam shut forever," she said. "The only effective way to achieve equality is to use litigation in a systematic manner."

She said the best strategy would be to define goals, take "winable" cases to court (such as an Ontario law that a widow may be disqualified from inheriting her spouse's estate if she is living in adultery, although the same rules do not apply to widowers), incorporate simple facts to keep issues clear and if possible use an individual as a plaintiff — "a woman, who if she doesn't get what she wants, will suffer and her children and family will suffer." Once won, Symes says



Lawyer Symes: under Charter amendments, women can use litigation to tackle real problems.

cases should be followed by lobbying for legal reform.

She said the first cases that should be brought to court are issues affecting everyday women, such as reproductive rights, including maternity leave and discrimination against pregnant women and women in their child-bearing years, employment cases, and economic opportunity issues, especially to ensure women do not live in poverty when they become elderly.

Symes recommended a national fund be established to aid women in taking sex discrimination cases to court and to appeal decisions. She said the women's Legal Education and Action Fund (LEAF) is an organization in its embryonic stages which may grow into a national fund.

Symes said, "Our goal should be to have two cases based on the amendments in every province on April 17, 1985."

Neil Crawford, attorney-general of the provincial government, spoke on Sunday and reported on the status of Alberta's statute audit.

According to him, the audit began

in 1982 to review the 450 Alberta statutes and "impacted" thirty statutes for revision.

Fifty lawyers were involved in the revision and organizing the statutes in three categories according to their conflict with the Charter. The lawyers were chosen from Crawford's department according to their expertise in provincial law.

Crawford said those in charge of categorizing the statutes did not adopt the view that every provision that could be in conflict be amended. Rather, they revised that statutes which were clearly in conflict with the Charter criteria form.

But Crawford stressed that in the "long tradition of the supremacy of parliament" in Canada, "the ability to continue to amend is always there."

Crawford also pointed out that a systematic electronic search program is used on all the statutes based on specific key words.

Crawford defended this system when members of the conference asked why there was no feminist input in the review. He said he was "curious as to what you can find that

our computers can't," but admitted "our people have observed legislation which on its face may indeed be neutral but when interpreted may have discriminatory impact."

He denied what he felt were allegations "that we dropped the ball with women's issues, and we have done a professional job on the others."

The statute audit itself is completed and is now in the final stages of consideration. It should be published in due course, according to Crawford, hopefully before it is introduced in the Alberta Legislature later this fall or early in the spring session.

Crawford remarked it would probably be a "thin package" without "every fanciful idea from the first days of 1982."

The last speaker at the conference was Shelagh Day, a former director of the Saskatchewan Human Rights Commission and the editor of the Canadian Human Rights Reporter.

Her speech dealt with the existing framework with which women must now work to achieve equality, the provincial Human Rights Commissions and what possibilities are open now with the Charter of Rights.

Day's point was made clear at the beginning of her speech. "It will be a major mistake if we use law as the only way to achieve equality." She stressed the importance of using law knowledgeably, forcefully and vigorously.

She said the present is a politically "good moment" because of the new climate provided by the charter and the recent election.

Day sees many problems with the present government mechanism to deal with discrimination: the Canadian Human Rights Commission.

"The enforcement process doesn't begin with breaking the law but by a complaint," which immediately puts the onus on the "disadvantaged individual" to act.

She said dealing with discrimination case by case is a "good way of maintaining the status quo."

Other flaws in the present system, according to Day, is that punishment is "paltry" and that the commission is not "tough enough" or independent enough.

She said the government treats appointments of commissioners as patronage appointments, with the commissioners more concerned about being "friends of government" than devoted to human rights.

The resources allotted to the protection of human rights in terms of money and people are inadequate according to Day. She said the Ontario Human Rights Commission was allotted only 65 people and a budget less than that which was allotted to "moose management." Governments hold the "appointment strings, the purse strings and the reporting strings" of the commissions.

What Day sees as an alternative to the present systems is creating more positive mechanisms for the Human Rights Commissions. She mentioned "contract-compliance programs" or "standard-maintenance programs" following models of other programs the government has instituted, such as the anti-inflationary and bilingual programs which are directly accountable to parliament.

In these programs "goals and standards are set" and the "onus is put on those who could really create change."

Day was optimistic about the commissions. The reason for the government taking such a hand in them is because "equality seekers are becoming successful, becoming louder ... firmer in their demands for justice ... and politicians want to control that change."

Day says the Charter is important because it is the "method of maintaining change."

"Women must not be passive in making of the interpretation of the charter and (not to) leave it to the lawyers."

The interpretation of the charter, Day said, must reflect the real experiences of women.

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