Equality For All

REPORT OF THE PARLIAMENTARY
COMMITTEE ON EQUALITY RIGHTS

P. PATRICK BOYER, M.P.
CHAIRMAN

OCTOBER 1985

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Chair: Patrick Boyer

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Président : Patrick Boyer

Minutes of Proceedings and Evidence of the Sub-committee on

Equality Rights

of the Standing Committee on Justice and Legal Affairs

Procès-verbaux et témoignages du Sous-comité sur les

Droits à l'égalité

du Comité permanent de la justice et des questions juridiques

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RESPECTING:

Order of Reference

INCLUDING:

First Report to the House

CONCERNANT :

Ordre de renvoi

Y COMPRIS :

Le premier rapport à la Chambre

First Session of the
Thirty-third Parliament, 1984-85

Première session de la
trente-troisième législature, 1984-1985

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EQUALITY RIGHTS OF THE
STANDING COMMITTEE ON
JUSTICE AND
LEGAL AFFAIRS

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Maurice Tremblay

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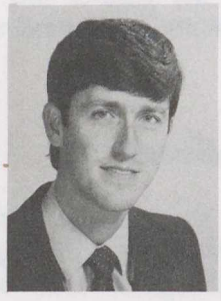

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ORDERS OF REFERENCES

Tuesday, February 26, 1985

ORDERED,—That the Standing Committee on Justice and Legal Affairs be empowered to examine, inquire into and report on equality rights under the Canadian Charter of Rights and Freedoms;

That the document entitled "Discussion Paper on Equality Issues in Federal Law", tabled in the House on January 31, 1985 (Sessional Paper No. 331-4/6), be referred to the Committee;

That the Committee seek the views and opinions of Canadians, both individuals and organizations on the subject matter of the Discussion Paper;

That the Committee review federal statutes, and particularly those mentioned in the Discussion Paper, in order to ensure their conformity with the letter and spirit of equality and non-discrimination guarantees in the Charter;

That the Committee report and make recommendations for any necessary changes or other actions to the House no later than September 9, 1985;

That the Committee have the power to retain expert, professional, technical and clerical staff;

That the Committee be empowered to adjourn from place to place within Canada; and

That, notwithstanding the usual practices of this House, if the House is not sitting when an interim or final report of the Committee is completed, the Committee shall report its findings by depositing its report with the Clerk of the House and, that it shall thereupon be deemed to have been laid upon the Table.

Tuesday, March 26, 1985

ORDERED,—That the subject-matter of Bill C-225, An Act to amend the Canadian Human Rights Act, be referred to the Standing Committee on Justice and Legal Affairs.

Thursday, October 10, 1985

ORDERED,—That, notwithstanding the order of reference of Friday, June 28, 1985, the Standing Committee on Justice and Legal Affairs be empowered to report its findings on the subject matter of that order no later than Friday, October 25, 1985.

ORDERED,—That, notwithstanding its order of reference dated Tuesday, February 26, 1985, it be an Instruction to the Standing Committee on Justice and Legal Affairs that it empower the sub-committee studying the status of equality rights under the Charter of Rights and Freedoms, to report its findings with respect thereto, directly to the House of Commons.

ATTEST

M. Kirby
for the Clerk of the
House of Commons

THE SUB-COMMITTEE ON EQUALITY RIGHTS

OF THE STANDING COMMITTEE

ON JUSTICE AND LEGAL AFFAIRS

has the honour to present its

FIRST REPORT

In accordance with the Orders of Reference of Tuesday, February 26, 1985 and Tuesday, March 26, 1985 to the Standing Committee on Justice and Legal Affairs, the Committee assigned responsibility for their examination to the Sub-committee.

The Sub-committee on Equality Rights submits its final report to the House and asks that the Government consider the advisability of implementing the recommendations contained in the report.

Pursuant to Standing Order 70(16), the Sub-committee requests that the Government table a comprehensive response to the report.

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CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Section 15

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 orgin, 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 orgin, colour, religion, sex, age, or mental or physical disability.

CHAPTER 1

Introduction

"A constitution...is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power and, when joined by a ... *Charter of Rights*, for the unremitting protection of individual rights and liberties....[It is not to be read] "like a last will and testament lest it become one."

...While the courts are guardians of the constitution and of individuals' rights under it, it is the legislature's responsibility to enact legislation that embodies appropriate safeguards to comply with the constitution's requirements."

—Mr. Justice Brian Dickson, now Chief Justice of Canada, in giving the judgment of the Supreme Court of Canada in *Hunter* v. *Southam Inc.* (1983)

The *Canadian Charter of Rights and Freedoms* has raised Canadians' expectations of their governments and legislatures. Fundamental rights and freedoms have become part of the constitutional foundation of the country as a result of the *Charter*. It is the Constitution itself that now provides, in ringing terms, for individual safeguards — many of which did not exist before or had a tenuous life at best.

Of the various *Charter* guarantees, the assurance of equality and non-discrimination is most likely to affect Canadians on a day-to-day basis. It has the potential for influencing many important employment relationships. It can also affect access to a wide range of benefits that are of concern to those outside the workforce. This important guarantee finds expression in section 15 of the *Charter*, the lens through which this Committee was directed to examine all federal laws that affect the individual. It was a challenging task but one the Committee undertook with enthusiasm and in a spirit of openness to change.

Section 15 came into force on April 17, 1985, three years after the rest of the *Charter* became effective. (For the full text of the *Charter* see Appendix A.) Since

Equality Day, as it came to be known, was celebrated so recently, section 15 has not yet acquired the gloss of meaning that comes from a history of judicial interpretation. This afforded the Committee a good deal of latitude in its approach to section 15. We describe that approach later in this introduction; for the moment, suffice it to say that we have assumed the section to have a very wide scope indeed.

The Committee's Approach to its Task

The Issues Addressed

We focused, through the section 15 lens, on federal regulations, policies and programs as well as federal statutes, for the *Charter* limits governmental as well as legislative activities (section 32 of the *Charter*). In our view, the law, which must afford equality, equal protection and equal benefit, should be interpreted broadly to include all formal governmental initiatives.

Given this range of inquiry, we concentrated on the larger issues and did not undertake a detailed audit of all federal laws. In some instances, we suggest specific changes in the law to accommodate section 15 rights. In others, we propose mechanisms to ensure that section 15 rights are and continue to be respected in the future. In general, we offer our recommendations in the firm belief that they are significant both for what their adoption will bring about immediately and for the climate they will create as catalysts for further change. Our objective must always be the full realization of equality, which begins but does not end with the exercise in which this Committee engaged.

We would encourage the kind of clause-by-clause review of the law, in light of the *Charter*, that the Department of Justice can conduct in co-operation with the various government departments and agencies. That process has begun and has borne some initial fruit in the form of the recently enacted *Statute Law (Canadian Charter of Rights and Freedoms) Amendment Act*. However that enactment is short on provisions that respond specifically to section 15 of the *Charter*. It is our strong hope that the principles and recommendations of this report will provide a framework for a continuing examination of federal laws from an equality perspective.

The concerns of individual Canadians are unlikely to respect the boundaries of federal, provincial and municipal jurisdiction. This Committee certainly found that to be the case in the representations it received about equality issues. Section 15 applies equally to federal authorities and to provincial authorities, from which municipalities also derive their powers. It was not unexpected, therefore, that we should receive submissions about inequalities that are not strictly within the sphere of Parliament and the government of Canada.

There are several issues that we would have addressed but for the limitation in our mandate to matters of federal law. We soon came to realize, however, that there are many areas where an adequate response to section 15 will require a co-operative approach on the part of various governments and legislative bodies. In those instances we took off the blinkers that often confine our perceptions in a federal system.

In other areas, it appeared to us that similar federal and provincial approaches were desirable, although not absolutely necessary. It makes sense, for example, that human rights, labour standards and pension legislation, which have both federal and

provincial manifestations, should be adapted to section 15 in a consistent manner. Therefore we chose, on several occasions, to follow the lead of those provinces that have taken the initiative in removing inequalities in the protection afforded by this type of legislation. We hope that some of our recommendations will, in turn, be taken as exemplary by the provinces in reviewing their legislation. We would encourage such reviews as essential to the overall objective of bringing the full panoply of laws that affect individual Canadians into line with section 15.

In determining an agenda, the Committee took as its point of departure a discussion paper issued by the Department of Justice, entitled *Equality Issues in Federal Law*. As a result of hearings and briefs, other issues were added to the initial list. The approach of the Committee was to deal as comprehensively and responsively as possible with the concerns we heard that are founded upon section 15 of the *Charter*.

The Consultation Process

The Committee undertook a busy schedule of hearings, in 12 centres across Canada, that exposed the members to the views of approximately 250 organizations and individuals. (For a complete list see Appendix C.) In all, the Committee accumulated over 2,500 pages of testimony. In addition to the briefs filed by witnesses to supplement their oral presentations, the Committee received almost 550 written submissions that spoke, often very eloquently, for themselves. (For a complete list of those that made submissions in writing, see Appendix D.)

These contributions to the work of the Committee came largely from individual Canadians or organizations and groups that are independent of government. But the Committee also invited a number of official representatives to express their views on the implications of section 15 for those government departments and agencies that seemed most likely to be affected, in the exercise of their responsibilities, by the new constitutional standard.

The consultation process served several important purposes:

- At a general level, it provided the public involvement that is essential to the development of sound legislative programs and government policies.
- It gave the intended beneficiaries of section 15 the opportunity to indicate their expectations of this new *Charter* provision.
- It brought to the attention of the Committee, in clear human terms, the kinds of inequalities that persist in our society, as evidenced by the experience of individual Canadians.
- It provided an understanding of the rationale behind several federal laws that make distinctions on bases that are covered by section 15.

In no way was the process of securing the views of Canadians intended as a polling device by which the Committee might determine the extent to which the community at large is prepared to tolerate the recognition, in practice, of equality rights. The content of those rights cannot, in our view, be limited by the wishes of the majority. That would be an anathema to the whole concept of guaranteed minority protections.

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

particular forms of equality or kinds of discrimination, although sometimes the two coincided. In a composite chapter on further equality issues we bring together a number of matters that are no less important than the rest but do not fit neatly into any of our themes. In the final chapter we discuss the process of securing equality.

The Committee's Approach to Section 15 of the *Charter*

A Broad Interpretation

In examining federal laws we took a broad and generous view of section 15 of the *Charter*. We did not concern ourselves with the nice, technical questions of interpretation that might trouble a court. For us, the standard has been one of critical examination of all laws, whatever type of prohibited discrimination they might involve.

We concluded early in our deliberations that the prohibited grounds of discrimination listed in section 15 are simply illustrative and do not exhaust the forms of discrimination that are proscribed by the *Charter*. In other words, there is room for other groups, whose distinguishing characteristics are not described in section 15, to claim the benefit of that provision for their members. The wording of the section makes it quite plain that this must be the case. That wording is an accurate reflection of the intent of those that had a hand in settling the form of section 15, as is evident from the proceedings of the Special Joint Committee on the Constitution in 1980-81.

Equality is an elusive concept. It is much easier to narrow it down by stating what it does not mean than by trying, initially, to articulate what it does mean. We can safely say that, in our view, it doesn't necessarily mean either sameness of treatment or patent equality. A law dealing with allowable time off from work that made no distinction between male and female employees would not demonstrate equality as between the sexes. Yet on the face of it, such a law does not treat women any differently from men. To realize true equality that law would have to account for women's childbearing role by permitting women to be absent from work to accommodate that function. Such a provision would serve the goal of equality, in an ultimate sense, by putting men and women on a similar basis in terms of their ability to obtain and hold jobs, without being impeded by the occurrence of a common condition particular to their sex. To put it positively, *equality of results* would be achieved. We consider that to be the proper emphasis in any consideration of equality under section 15.

Consistent with this results-oriented approach, we also believe that the kinds of discriminatory laws to which section 15 relates are those that have the effect, in practice, of discriminating. Therefore, a law that does not single out for adverse treatment members of a group protected by section 15 will nonetheless be discriminatory if that is the inherent result. This type of discrimination has been described as 'systemic' in arguments before human rights tribunals. The example most often cited by way of illustration is a minimum height restriction for membership in a police force, which has the effect of excluding most women and many racial minorities. That rule may be said to discriminate in a systemic way on the basis of sex and race. We have adopted this terminology to describe what we take to be a form of discrimination that is covered by section 15.

The Context of Section 15

We considered section 15 in the context of the *Charter* as a whole. Accordingly, we recognize the separate protection afforded to aboriginal rights (section 25) and to

Canada's multicultural heritage (section 27) and the general extension of the rights and freedoms of the *Charter* to both male and female persons "notwithstanding anything in [the] Charter" (section 28). These various provisions complement the guarantee of section 15 in some of its particular elements.

The only provision of the *Charter* that limits section 15 is the general qualification of section 1. That section reads as follows:

> The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

If a law is *prima facie* in violation of section 15, the onus will be on the government to justify that law in terms of this provision. We do not think that there are any other justifications that could restrict the application of section 15 unless it be the competing claims, in a particular case, of another *Charter* guarantee. We have treated section 15 itself as being without implicit qualifications.

We also considered section 15 in the broader context of Canada's international commitments. Some of the agreements and conventions that Canada has entered into are instructive in determining the proper scope of section 15 — for example, the International Covenant on Civil and Political Rights and the United Nations Convention on the Elimination of All Forms of Discrimination against Women. When that is the case we make specific reference in this report to the relevant international undertaking.

Who is Affected by Section 15?

Finally, we have had to consider what kinds of entities are entitled to the benefit and subject to the burdens of section 15. We take the beneficiaries to be natural persons, since the section refers to "individuals" and the prohibited grounds of discrimination relate to peculiarly human attributes.

We think that it is governments and legislatures, and those agencies they control or support, that are bound by section 15, for it is governments and legislatures that are responsible for the "law" to which section 15 relates. (See also section 32 of the *Charter*.) However, the *Charter* can have an indirect effect on private sector conduct because of the equal protection and equal benefit aspects of section 15. If Parliament enacts protective provisions, such as it has done, for example, in the *Canadian Human Rights Act*, it cannot deny or limit the full benefit of those provisions on a basis that offends section 15. Section 15 will therefore influence the scope of legislative protection to be afforded to individuals through limitations on the activities of others. Those others may include individuals and entities with absolutely no connection to government. Such persons will therefore be ultimately affected by section 15. In this sense, private persons can be subject to the constraints of section 15.

Human Rights Principles

Although section 15 contains some strong anti-discrimination provisions, there will still be a need for effective human rights legislation. That legislation covers discrimination in the private sector. Thus it affects situations such as the rental of accommodation and private employment, which are not directly affected by section 15. Human rights legislation also provides an expeditious procedure for dealing with

complaints of discrimination; it involves investigation, conciliation and the establishment of tribunals to hear and determine disputes that cannot be otherwise resolved.

In the course of this report we explore several human rights concepts that are helpful in analyzing federal laws from the perspective of section 15. They include **reasonable accommodation**, ***bona fide* occupational requirement** and ***bona fide* justification**. Reasonable accommodation describes the obligation to take reasonable measures to account for the special needs of those individuals in protected groups, such as disabled people, who require different treatment. The obligation is a positive one — to make special arrangements for a class of individuals and not simply to refrain from showing preference to others.

The terms *bona fide* occupational requirement and *bona fide* justification describe the standard defences to complaints of discrimination in employment and in the provision of goods and services. They too recognize limits to the prohibition of discrimination. However, they do not protect all action that is well-intentioned and in good faith. That action must also be reasonable and demonstrably justifiable in the circumstances, a qualification that also finds expression in section 1 of the *Charter*.

In summary, we have taken a very broad view of section 15 and the meaning of equality. It would be fair to say that we have been guided by the letter and the spirit of the new equality provision of Canada's *Charter of Rights and Freedoms*.

CHAPTER 2

Maternity and Parental Benefits

"Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole..."

—Preamble to United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1980

Introduction

Federal law accommodates women's childbearing functions by providing for unpaid maternity leave under the *Canada Labour Code* and in government employment policies. It also provides benefits for mothers under the *Unemployment Insurance Act* for the 15-week period surrounding childbirth. The intent of this legislation is to protect jobs and a portion of the wages of female workers who must leave the workforce to have children. It recognizes that women in the workforce have special needs relating to pregnancy and childbirth that are specific to them.

The Committee believes that there is no denial of equality to men by providing this type of protection to women during the period surrounding childbirth. However, several criticisms can be made of the Canadian system of maternity and parental protection on equality grounds. Perhaps the most obvious flaw is that men are unable to claim benefits under the *Unemployment Insurance Act* during any part of the 15-week benefit period should they wish to remain at home to participate in early child care.

Maternity Benefits

The *Unemployment Insurance Act* guarantees benefits to people meeting the entrance qualifications whose earnings have been interrupted due to job loss or layoff.

In 1971 it was recognized that sickness and maternity also cause unavoidable interruptions in earnings that should be covered by an employment income replacement system. Accordingly, benefits were introduced into the unemployment insurance scheme to provide protection in these events. Benefits to cover adoptive leave were added in 1984. Sickness, maternity and adoptive benefits are referred to as "special benefits".

Prior to a recent amendment to the Act, a woman was required to take a certain portion of her maternity leave before the birth of her child. Now she can take most or all of the leave after the birth. These last amendments to the Act raise questions about the continuing validity of the original rationale for maternity benefits. As stated in the 1981 Task Force report, *Unemployment Insurance in the 1980s*,

> When introduced [maternity benefits] were intended to protect the mother from an earnings interruption caused by the physical incapacity to work or look for work in the period surrounding the birth. In practical terms, however, the benefits have been used more to enable the mother to care for the child after the birth and less because of her strict physical incapacity to work.

The Task Force observed that for the great majority of claimants physical incapacity extending through the full eligibility period of 15 weeks is extremely unlikely. In effect, women are now using maternity benefits for the purpose of protecting wages lost through both physical incapacity and remaining out of the workforce to care for a child immediately after birth. The Task Force felt that in these circumstances it was difficult to justify the provision of maternity leave and benefits on the sole basis of physical incapacity.

The difference between the two purposes served by maternity benefits is of significance in considering the effect of section 15 of the *Charter*. If an important reason for maternity leave and benefits is to allow for a period of post-natal care of, and adjustment to, the baby, as we would suggest, the rules restricting benefits to the female parent must be questioned.

Fathers also have an interest in being involved in the care of their new-born children, yet the law does not give them the same opportunity afforded mothers to provide that care, because maternity benefits are available only to women. Women have also argued against the present system on the basis that continuing to treat women as primarily responsible for child care has consequences that work to the economic disadvantage of women in the long run.

There is a fundamental question whether 'equality' means the same treatment for men and women, or whether differences between men and women should be accommodated, where they are relevant in a particular context, by specific legislative provisions. We think that the latter approach is required. It is important, however, that lawmakers consider the essential ways in which the sexes differ and legislate with a view to only those specific differences. Using this approach, we suggest that the law should recognize that childbirth relates only to women but that the child-rearing function is the responsibility of both sexes. Except where the rationale for a provision relates to the physical act of bearing a child, men and women should receive the equal benefit and protection of the law.

It is possible that the courts might be prepared to sustain the current limitation of childbirth-related benefits to women. Section 15(1) of the *Charter* is qualified by section 15(2), which permits certain affirmative action programs, and by section 1,

which saves laws that can be "demonstrably justified in a free and a democratic society." The present benefit scheme might be defended successfully on the following grounds:

- It constitutes a special program having as its object the amelioration of the conditions of a disadvantaged group — in this case, women — and as such is permissible under section 15(2) of the *Charter*;
- it recognizes and deals with women's essential difference from men by compensating women for time lost due to childbirth and early child care; and
- it encourages and supports the dual role of women as mothers and workers and is necessary to deal with a condition that relates to women alone.

Even if a court were prepared to find the present sex-based limitations on benefits to be in violation of section 15, it is doubtful that a court would have an appropriate remedy at its disposal, because courts can generally strike down but not add to legislation. Any inequality in this area requires the kind of remedy that Parliament is best able to provide.

A Proposal for Maternity and Parental Benefits

Several organizations recommended to the Committee that, to accommodate the guarantee of equal protection and benefit of the law, the law should provide a two-tier system of benefits surrounding childbirth to recognize the physical needs of the mother who has just given birth and to recognize the period of adjustment required by the parents and the new child. The Canadian Human Rights Commission stated in its brief to the Committee that maternity leave and benefits should be composed of two distinct periods, one relating to the physical incapacity of the natural mother, the other relating to social adjustment. The Commission recommended that the *Unemployment Insurance Act* be amended to ensure that the portion of maternity leave relating to social adjustment or infant care be available to either parent.

We agree with this recommendation. The law should recognize the father's role in child care and enable him to take part in this important period of bonding with the newborn child. There is no doubt in our minds that the traditional emphasis on the mother as the primary care-giver has played a part in holding women back from full participation in society. Encouraging the participation of fathers at the earliest stage of a child's life can have only positive results for both men and women.

It is important, however, that a mother have sufficient time set aside during the late part of her pregnancy and the period following birth to recover and to nurse her child for a time, if she wishes. It is our view that the law should provide benefits during the childbirth period, but that either parent should be eligible for benefits during the subsequent parenting phase. We see these two distinct periods as having distinct rationales.

We did not determine the precise amount of benefits or length of the benefit period, as this is not within our mandate. We note, however, the concern expressed to us by several women's groups that, by expanding the recognition of the role of fathers in the early parenting period, we not take away from natural mothers the benefits to which they are now entitled. There are real reasons, related to the health of both the mother and the child, why women are eligible for maternity benefits. Legislation must not lose sight of these concerns.

1. **We recommend that Parliament amend the *Unemployment Insurance Act* to recognize a two-tier system of benefits relating to childbirth:**

   the first tier (maternity benefits), to be available to women only, during late pregnancy and the period following birth; and

   the second tier (parental benefits), to be available to either or both parents, during the period following maternity leave.

The two-tier approach is consistent with the leave provisions of the *Canada Labour Code* (section 59.2) which provide 17 weeks of unpaid maternity leave to women and a further 24-week period of parental leave available to either parent. Similar provisions, with a slightly different length of leave, are available to federal public servants not covered by collective agreements.

Implementing a Two-tier System

There are two ways to implement this recommendation, each with advantages and disadvantages. The first, and by far the simpler, would be to separate the present maternity provisions in section 30 of the *Unemployment Insurance Act* into distinct birth and parenting periods, the first part to be claimed by the mother, the second to be claimed by either parent, but not both, as is now the case with benefits for adoption. The major advantage to this approach is that it would meet equality arguments but involve no additional cost to the system.

We rejected this approach for several reasons, the most important being our reluctance to take away existing rights from one group (new mothers) in order to afford equality to another (fathers). Also, the 15-week benefit period does not provide enough time to accommodate both functions. This approach is also inconsistent with the present adoption leave provisions, where 15 weeks of benefits are available to either parent for child care and social adjustment. If this level of benefits is provided to adoptive parents, who do not experience any physical incapacity, it is appropriate that natural parents have the same parental benefits.

A second approach, which the Committee favours, is to grant parental benefits for at least the same period as that for which adoptive benefits are now available, and to provide for a separate period of maternity benefits. A drawback of this approach is that it would involve additional costs at a time when government and employers are attempting to cut back expenditures. We recognize these financial implications, but we nonetheless favour the second approach to implementing a two-tier benefits system because it is the most appropriate way of meeting the equality concerns that have been raised.

We considered the feasibility of relying on employer-sponsored sickness or disability insurance to provide benefits to women during the maternity period. We rejected this option for two reasons:

1. There are conceptual problems with treating pregnancy as an illness for the purposes of coverage under disability insurance.

2. Very few women have access to such plans, so that if maternity benefits were not provided in a disability plan, or if a woman were not covered by such a plan, she would not have access to benefits.

However, we do not wish to suggest that women covered by such plans should not be able to claim benefits to cover loss of salary due to pregnancy or childbirth.

Maternity benefits for women should be provided under new provisions of the *Unemployment Insurance Act* specific to this purpose. Maternity leave — that is, the period of leave immediately before and/or after birth — should not be equated with adoptive leave, sickness leave, or parental leave. We see the maternity period encompassing a period of time sufficient for a woman to recover from the physical aspects of giving birth. Periods ranging from four to eight weeks were suggested to us, but we are not prepared to recommend any specific period. Our concern is that benefits be flexible enough and last long enough to accommodate the needs of the majority of pregnant women and new mothers.

The Sharing of Benefits

Adoption leave under federal law is generally granted on the same basis as parental leave. The *Canada Labour Code* (section 59.2(1)(c)) provides that an employee who has worked continuously for six months with an employer is entitled to 24 weeks of leave beginning on the day an adopted child is placed in the employee's home. Either parent or both may claim the leave, but the total amount of leave cannot exceed 24 weeks. Federal public servants who are not covered by collective agreements are entitled to 26 weeks of unpaid leave under similar circumstances. Neither the Code nor the public service policy permits both parents to take leave at the same time.

While these provisions are available to either or both parents, the *Unemployment Insurance Act* affords adoption benefits for 15 weeks to either parent but does not permit parents to split the benefits (section 32). We recommended earlier that all parents be entitled to parental benefits, not just those who have adopted a child. We also believe that these general parental benefits, which would include adoptive benefits, should be available to either parent, or both, with the option to split. Parents should be able to choose to take parental leave at the same time or consecutively, to overlap a portion of their leave, or indeed to have only one parent take the leave. This is consistent with the Canadian Human Rights Commission policy stating that leave and benefit provisions should be equal for all parents, male or female, adoptive or natural.

2. **We recommend that parental benefits (for both natural and adoptive parents) under the *Unemployment Insurance Act* be available to either or both parents, the total amount of benefits provided not to exceed the maximum available to one parent.**

Eligibility for Benefits

Maternity and adoptive benefits under the *Unemployment Insurance Act* are now available only to "major attachment claimants" — that is, those who have been employed in insurable employment for 20 or more weeks in the qualifying period. New entrants and re-entrants to the workforce are also subject to the 20-week requirement. Regular benefits are available to those who have worked 10 to 14 weeks, depending on the local unemployment rate. The justification for a more stringent requirement for special benefits is apparently that a stronger attachment to the workforce should be required for special than for regular benefits. The fear of abuse of the system and the cost of benefits were also factors bearing on the longer eligibility requirement.

The higher qualifying standard was criticized by several organizations that made representations to the Committee. As well, the 1981 Unemployment Insurance Task Force felt that the longer eligibility period created a separate, disadvantaged, class of claimant. It noted that a particularly pronounced imbalance is evident when we compare the position of a regular claimant residing in a high unemployment area where the regular entrance requirement is relatively low because of local labour market conditions with the position of a special claimant. The Task Force recommended removing special entrance requirements for any class of claimants (special, new entrants or re-entrants) and extending the regular benefit entrance requirements to all classes of benefits.

Requiring a longer qualifying period for maternity benefits or the parental benefits we propose means making a distinction, based on sex or marital or family status (see Chapter 5), that is prohibited by section 15. The issue of whether distinctions based on pregnancy constitute sex discrimination has been the subject of litigation in both Canada and the United States, with mixed results. For greater certainty, the *Canadian Human Rights Act* now provides that "where the ground of discrimination is pregnancy or childbirth, the discrimination shall be deemed to be on the ground of sex" (section 3(2)). We have adopted this broad definition of sex discrimination for the purposes of our review of federal law in light of section 15. We find it difficult to justify a more stringent qualifying period for special than for regular benefits.

3. We recommend that no distinction be made between the qualifying periods for regular benefits and for special benefits under the *Unemployment Insurance Act* and that the Act be amended so that the current eligibility requirement for regular benefits applies in respect of all benefits.

We recognize that this change will have cost implications but we believe it is dictated both by section 15 and by considerations of equity.

While we have not dealt specifically with sickness benefits, we believe that a more stringent qualifying period for those benefits might also be subject to serious challenge under section 15 as a denial of the equal benefit of the law without discrimination based on physical or mental disability. In any case, we have included all special benefits in our recommendation for the sake of consistency. With implementation of our recommendation concerning parental leave, special benefits will include sickness, maternity and parental benefits. Eligibility for these special benefits will rest on the same basis as regular benefits — that is, 10 to 14 weeks, depending on the local unemployment rate. We have not addressed the longer eligibility requirement for new entrants or re-entrants into the labour market, as we do not believe it raises a section 15 issue.

Distinguishing Between Pregnancy and Sickness Benefits

It is inappropriate to deal with maternity and the proposed parental benefits in the same context as sickness benefits. Childbirth is a common occurrence, and the need to make provisions for maternity leave should be treated as a normal consequence of the full participation of women in the workforce. One result of our recommendation to treat all benefits as regular benefits for qualifying purposes would be to weaken further the conceptual link between pregnancy and sickness.

Section 22(3) of the *Unemployment Insurance Act* also relates to pregnancy and sickness, stating that the maximum number of weeks for which special benefits are

available in a benefit period for pregnancy, adoption or illness, or any combination of these, is 15 weeks. The effect is that a pregnant woman who becomes ill during the maternity leave period can claim only 15 weeks of benefits in total. If she has had to use two weeks, for example, for sickness, these are subtracted from 15 weeks to determine the amount of maternity benefits available to her. Similarly, an adoptive parent who claims the full amount of adoptive benefits is unable to claim sickness benefits for any cause within the same benefit period. It is the Committee's view that this restriction is unduly harsh to parents, natural and adoptive, who become ill, and should be eliminated as a consequence of the other changes we recommend.

4. **We recommend that section 22(3) of the *Unemployment Insurance Act* be amended to remove the present 15-week aggregate benefit limit so that the availability of sickness benefits is separate and distinct from any maternity, adoptive or parental benefits to which a person may be entitled.**

We note that a review of the *Unemployment Insurance Act* is now under way and that extensive changes may be made to the Act as a result of this review. We hope that our recommendations, made from the perspective of equality concerns, will be reflected in this process.

Consistency in the Federal Jurisdiction

A specific problem relating to maternity leave provisions in the Armed Forces was brought to our attention. While we have not dealt with the treatment of maternity leave by specific employers under federal jurisdiction, we note that there is great divergence in the coverage depending on whether an employee falls under the *Canada Labour Code*, Treasury Board or Armed Forces regulations, or collective agreements. This is particularly evident in relation to the availability of sick leave provisions to pregnant women or new mothers. We believe that, as much as possible, maternity leave provisions should be consistent within the federal jurisdiction.

5. **We recommend that maternity leave provisions for employees under federal jurisdiction, including the Armed Forces and public service employees not covered by collective agreements, be brought into line with the provisions of the *Canada Labour Code*.**

Family Allowance Benefits

The family allowance program is designed to supplement the income of Canadian families by providing monthly benefits for children under the age of 18. In most cases the payment is made to the mother of the child. The child tax credit is claimed for income tax purposes by the parent entitled to receive the family allowance cheque.

Like the present maternity leave provisions under the *Unemployment Insurance Act*, which provide benefits only to women, the family allowance program has been criticized in that it grants a benefit only to mothers, except in fairly rare cases. Awarding family allowance benefits only to mothers, it is argued, implies that it is women who have the primary responsibility for child care. It is also argued that the *Family Allowances Act* grants a benefit to women that is not granted to men. Men could therefore argue that they are being denied equal benefit of the law.

There is support for continuing the family allowance program in its present form because it provides women, many of whom have no other income in their own name, at least some recognition of their role as mothers and homemakers. We are sympathetic to those concerns.

While we recognize that awarding family allowance benefits automatically to mothers may constitute a *prima facie* breach of section 15, we think that the sex-based distinction in this case is justifiable. The payment is intended for the benefit of the child or children in the family, not the mother. Strictly speaking, it is not the mother who gets the benefit of the payment, but the children. There is no denial of benefits to fathers. We support continuation of the family allowance program in its present form, to the extent that payment is made to the mother.

CHAPTER 3

Mandatory Retirement

"Flexible or phased retirement is the trend of the future. This business of putting people out to pasture at 65 may be an administrative convenience but there is no doubt that it causes a lot of human grief.

...It is a hard thing to turn some people loose at an arbitrary age and expose them to the chill winds of poverty in their declining years."

—Senator David Croll, who served as Chairman of the Special Senate Committee on Retirement Age Policies (1979)

Introduction

The term 'mandatory retirement' refers to an employer's policy of terminating employees when they reach a given age or complete a fixed term of service. In fact some combination of these two factors may trigger retirement. In any case, mandatory retirement takes the form of an across-the-board rule. It does not allow for individual assessments of the capacities of particular employees, capacities that might justify continuation in employment beyond a usual retirement date. Mandatory retirement requires examination under the *Charter* because the criterion for termination is related to age, one of the prohibited grounds of discrimination in section 15.

The severity of the mandatory retirement rule is sometimes tempered by provisions for occasional extensions of employment after normal retirement. However any such extension is ultimately at the discretion of the employer and is usually limited in time. From the point of view of the employee retirement remains, in essence, compulsory — but with the opportunity to try to make a special case for a temporary reprieve.

Mandatory retirement is implemented in different ways. It may be an element of an employer's personnel policy, a written employment contract, a pension or superannuation plan or a collective agreement. In the case of public sector employment it is usually formalized in a statute, regulation or order.

Although mandatory retirement is a common practice in Canada, the proportion of employees forced to retire as a result is relatively small. Individuals are much more likely to discontinue employment by reason of poor health, death, layoff and personal choice. A 1980 Conference Board study, *Mandatory Retirement Policy: A Human Rights Dilemma?*, estimated that no more than one-tenth of one per cent of the total workforce actually retires, in any given year, because they have reached a maximum age or term of service.

Mandatory Retirement under Federal Law

The Public Sector Rules

In the federal public sector the mandatory retirement age is generally 65. For most employees, the source of the rule is the Public Service Superannuation Regulations. Different age or service limitations apply to members of the Royal Canadian Mounted Police, members of the Canadian Armed Forces, senators, federally appointed judges and members of various federal boards, commissions and tribunals.

A regular member or a civilian member of the RCMP must retire after 35 years of service. Regular members are also obliged to retire when they reach an age falling within the range of 56 to 62 years. The precise age that applies to a particular officer is rank-related. Generally speaking, the higher the rank the higher the retirement age.

In the Canadian Armed Forces, there are several stages at which a military engagement may come to an end: at a fixed point or points within the first 9 years of service; after 20 years of service or at age 40, whichever occurs later; and at age 55. Progression from one career pattern to the next depends on the results of competition for available openings.

The retirement age for federal judges is generally fixed by statute — at age 75 for judges of the Supreme Court of Canada and age 70 for other judges. The retirement age for superior court judges and for senators is fixed, by the Constitution, at age 75.

There are approximately 30 federal statutes and regulations that set an outside age limit on the term of office of individuals appointed to particular government boards, commissions and tribunals. Many of the holders of these offices are full-time, paid incumbents. The age limit is variously 65, 70 and 75.

In summary, mandatory retirement is the norm in the federal public sector. But there are many variations from the standard retirement age of 65 that apply to particular categories of service.

Limitations on Mandatory Retirement

The *Canadian Human Rights Act* prohibits age discrimination in employment in terms that would appear, on first impression, to eliminate mandatory retirement. However there are several exceptions that drastically narrow the prohibition.

Most important, the Act does not apply to a termination that is the result of an individual having reached "the normal age of retirement" for individuals working in similar positions (section 14(c)). Therefore, if retirement at a particular age is generally accepted in a certain line of work, it will not constitute a discriminatory

practice for an employer to adopt and apply that industry standard. Consequently employers will usually be able to raise a complete defence to complaints of wrongful termination on the basis of age simply by pointing to the practices of other employers. The Act has a similar exception for a trade union or other employee organization that terminates an individual's membership in the organization (section 9(2)).

There is also a general exception to the Act's prohibition of discrimination in employment that gives limited scope for mandatory retirement policies in relation to certain kinds of jobs. In effect, an employer is permitted to discriminate on the basis of a "*bona fide* occupational requirement" (section 14(a)). To fit within that phrase, a maximum age limit on employment must satisfy the double-barreled test set out by the Supreme Court of Canada in 1982, in a judgment rejecting a fixed retirement age of 60 for firefighters (the *Etobicoke Firefighters* case). The retirement age must have been

> imposed honestly, in good faith and in the sincerely held belief that it is...in the interests of the adequate performance of the job with all reasonable dispatch, safety and economy.

It must also be

> reasonably necessary to assure the efficient and economical performance of the job without endangering the employees and the general public.

The court also noted that this last requirement is not likely to be satisfied simply by evidence that a loss of productivity accompanies aging or, indeed, by any evidence on the effect of age on job performance that is no more than impressionistic.

The onus is clearly on the employer to come up with solid technical and medical evidence to meet the test. If it cannot do so, the employer is not obliged to retain all its older employees until they decide they are ready to retire. The employer has the option of introducing a system of performance testing for all employees that would select out those no longer capable of doing the job. Such a scheme would not offend the *Canadian Human Rights Act* if the testing standards were reasonable in relation to the essential requirements of the job.

The *Canadian Human Rights Act* applies to the federal Crown as employer as well as to private sector employers operating federally regulated undertakings, such as banks and airlines. However, there are two significant limitations in the Act that have the effect of giving special protection to the mandatory retirement policies of the federal government, putting such policies beyond the reach of the Canadian Human Rights Commission:

1. The Act provides that it is not a discriminatory practice if employment is terminated because an individual has reached the maximum age that applies to that employment by law (section 14(b)). Since mandatory retirement in the public sector invariably has its basis in laws of one kind or another, be they statutes, regulations or orders, the Act can have no application to the public sector rules.

2. That part of the Act that includes the prohibition against age discrimination does not apply to any superannuation fund or plan established by an act of Parliament enacted before March 1, 1978 (section 48(1)). Therefore, those retirement ages in the public service that are fixed by the terms of long established statutory superannuation plans may well be beyond question in any complaint proceedings brought under the *Canadian Human Rights Act*.

In short, the *Canadian Human Rights Act* does not affect mandatory retirement in the public sector at all and affects mandatory retirement in the private sector in only a limited way because of an exception to the prohibition on age discrimination in employment that permits forced retirement at the "normal age".

The Law in Other Jurisdictions

The human rights legislation of most Canadian provinces prohibits mandatory retirement before age 65, subject to a *bona fide* occupational requirement qualification. In Manitoba, Québec and New Brunswick there is no such age limit on the prohibition, although mandatory retirement is permitted in New Brunswick under the terms of a pension plan that establishes a fixed retirement age.

Initiatives have been taken or recommended in a number of other provinces to eliminate the '65 cap' on the prohibition against age discrimination. In Alberta and Prince Edward Island, statutory changes to this end are in process. In Nova Scotia and Saskatchewan, government-sponsored reports have suggested such a change.

There are no systematic studies of the practical effects of the general abolition of mandatory retirement in those provinces that have taken that step. Such a study has begun in Québec, and the results should be available by the end of 1985. The information the Committee received indicates that there have been no serious problems in provinces that have prohibited discrimination with no upper age limit. Indeed, in Québec it appears that there has been a distinct preference for earlier rather than later retirement, a trend that may have been accentuated by the availability, for the last two years, of reduced Québec Pension Plan benefits from as early as age 60, in lieu of full benefits from age 65.

In the United States, a 1978 amendment to the *Age Discrimination in Employment Act of 1967* raised the minimum mandatory retirement age in the private sector from 65 to 70 and introduced a general prohibition on mandatory retirement in the federal public sector, subject in both cases to a *bona fide* occupational qualification exception. In twenty U.S. states, which account for close to half the U.S. workforce, mandatory retirement at any age has been abolished in either or both the public and private sectors.

The 1978 amendment required the Department of Labor to report to the President and Congress on the results of the amendment. That report, which was tabled in 1982, came to the following conclusions, drawn from a survey of employers and employees:

- most workers continued to retire at relatively early ages between 60 and 65;
- the additional costs of performance evaluation systems, to replace mandatory retirement policies, had not proved significant;
- there were very few promotional backlogs or slowdowns as a result of older workers remaining employed; and
- the financial benefits provided under pension plans and, to a lesser extent, under the social security system, remained the important determinants of retirement age choice. Those benefits had changed little and continued to serve as incentives for retirement at or before age 65.

Flexible Retirement: An Alternative to Mandatory Retirement

The National Advisory Council on Aging urged the Committee to recommend government initiatives to encourage the development of flexible retirement as the norm for Canadians. The goal would be to maximize the range of choice for older people so that they could retire with an adequate level of financial security at any time during a period beginning several years before 65 and continuing beyond that age.

The Special Senate Committee on Retirement Age Policies espoused a similar objective in its 1979 report, *Retirement Without Tears*. A step towards that objective was proposed by the Parliamentary Task Force on Pension Reform in 1983. The Task Force recommended that Canadians be given the choice of commencing receipt of Canada Pension Plan benefits, subject to appropriate actuarial adjustments, at any time between the ages of 60 and 70. We are persuaded that it would be desirable for Parliament and the government of Canada to take steps to facilitate flexible retirement.

The opportunity for early retirement is not, in our view, mandated by section 15 of the *Charter*. However, if mandatory retirement were abolished, the availability of early retirement options would help to head off some of the concerns that might arise as a result of that action. In particular, any aging trend in the workforce that might increase employee benefit costs and indirectly reduce job opportunities for younger workers would be attenuated. We have therefore considered the benefits of flexible retirement in the course of our review of mandatory retirement.

Mandatory Retirement and Section 15

Section 15 of the *Charter* provides an assurance of equality without discrimination based on a number of factors, including age. In the view of the Committee, mandatory retirement is a classic example of the denial of equality on improper grounds. It involves the arbitrary treatment of individuals simply because they are members of an identifiable group. Mandatory retirement does not allow for consideration of individual characteristics, even though those caught by the rule are likely to display a wide variety of the capabilities relevant to employment. It is an easy way of being selective that is based, in whole or in part, on stereotypical assumptions about the performance of older workers. In the result, it denies individuals equal opportunity to realize the economic benefits, dignity and self-satisfaction that come from being part of the workforce.

The Canadian courts have consistently interpreted prohibitions on age discrimination in human rights legislation as precluding mandatory retirement. They have, however, recognized and given effect to the specific limitations and exceptions of such legislation, which generally allows for the imposition of *bona fide* occupational requirements and usually for mandatory retirement at or after age 65. We anticipate that the courts will also find that mandatory retirement offends the prohibition on age discrimination in section 15 of the *Charter*. Unlike many human rights codes, the *Charter* contains no upper age limit on that prohibition. The only permitted limitations on section 15 rights are those that are reasonable, prescribed by law and capable of being demonstrably justified in a free and democratic society, as provided in section 1 of the *Charter*. We believe that the *bona fide* occupational requirement exception set out in the *Canadian Human Rights Act* is such a limitation. It is a qualification that has been construed narrowly by the courts (in the *Etobicoke Firefighters* case) and is in common use in human rights statutes in both Canada and the United States.

We do not believe that the exception in the *Canadian Human Rights Act* that permits termination of employment at the "normal age of retirement" can be justified under section 1 of the *Charter*. If industry standards were accepted as a reasonable excuse for discrimination on a prohibited ground, the purpose of section 15 would be frustrated. The essence of section 15 is to protect members of vulnerable groups from being submerged by the values of the majority. It would be inconsistent with that purpose to allow a majority practice to dictate the limits of the rights of protected individuals. We therefore conclude that the "normal age of retirement" exception in the *Canadian Human Rights Act* cannot be supported under section 1 of the *Charter*.

6. We recommend that mandatory retirement be abolished by

(a) amending the *Canadian Human Rights Act* so that it is no longer a defence to a complaint of age discrimination that an employee who is forced to retire has reached the "normal age of retirement"; and

(b) amending the *Canadian Human Rights Act* so that it is no longer a defence to a complaint of age discrimination that an individual whose membership in an employee organization is terminated has reached the "normal age of retirement".

These recommendations accord with the position taken by the Canadian Human Rights Commission in its comprehensive brief to the Committee.

The effect of implementing these recommendations will be to make mandatory retirement a discriminatory practice in the majority of cases, capable of forming the basis of a complaint under the *Canadian Human Rights Act*. An employer will continue to be entitled, in appropriate circumstances, to raise the defence that an employment limitation tied to age or term of service is a *bona fide* occupational requirement for a particular job.

We believe that, as a general proposition, the retirement policies in the federal public sector should be subject to the *Canadian Human Rights Act*. It is evident that the usual mandatory retirement age of 65 in the public service will not qualify as a *bona fide* occupational requirement because the retirement age applies irrespective of the nature of the tasks a public servant might be performing. A *bona fide* occupational requirement must be job-specific. It is our opinion, therefore, that the general retirement age of 65 in the public service should be removed.

7. We recommend that those provisions of the Public Service Superannuation Regulations providing for mandatory retirement at age 65, as well as comparable regulations affecting public servants who do not contribute to the Superannuation Account, be revoked.

To ensure that all future government retirement policies, no matter what form they take, are subject to the *Canadian Human Rights Act*, the special limitations that put statute-based retirement rules beyond the scope of the Act should be eliminated.

8. We recommend that the *Canadian Human Rights Act* be amended so that it applies to all mandatory retirement policies embodied in legislation, regulations or orders.

We would anticipate that the mandatory retirement policies that apply to the RCMP, the Canadian Armed Forces and the holders of various federal offices would be considered, in due course, pursuant to the *Canadian Human Rights Act* to determine

whether they fit within the *bona fide* occupational requirement exception. We believe that the maximum term of service and rank-related retirement criteria, of the kind used in the RCMP, do not meet the test of *bona fide* occupational requirement. Retirement is dictated by these criteria at different ages. Therefore it is difficult to relate any effects of the aging process on job safety and efficiency to the particular retirement rules in any precise way.

The retirement rules of the Canadian Armed Forces also bear close examination, especially because of the possibility of very early retirement by those who aren't given the opportunity to proceed as far as the final career pattern, which ends at age 55. The Armed Forces treats a military engagement as a series of term commitments. However, as a general principle, that kind of employment arrangement is not likely to avoid the effect of a prohibition on age discrimination in the absence of a special exception.

These and other mandatory retirement provisions in the federal public sector should be reviewed in anticipation of challenges under the *Canadian Human Rights Act* and amended, where necessary.

We expect that the general abolition of mandatory retirement at the federal level will have to be accompanied by some transitional rules, for example, to preserve the effect of a compulsory retirement provision in an outstanding collective agreement until the expiry of that agreement. Such a rule could take the form of a permissive guideline issued by the Canadian Human Rights Commission (pursuant to section 14(c) of the *Canadian Human Rights Act*).

There may also be some relatively narrow classes of exceptions, in addition to that for *bona fide* occupational requirements, that may be necessary to avoid undue hardship as a result of the general prohibition of mandatory retirement. Any such situation could also be dealt with in guidelines issued by the Canadian Human Rights Commission. If there are to be any such additional exceptions, they should be clearly justified and carefully defined. They must not exceed the reasonable limits on freedom from discrimination on the basis of age allowable under section 1 of the *Charter*.

Consequential Changes

There are a number of changes that Parliament and the government of Canada should consider, to accompany the abolition of mandatory retirement, in order to promote a greater degree of choice in the matter of retirement:

1. extending unemployment insurance coverage to those 65 or over who continue in the labour market;

2. making available the full range of employment and training programs provided by the Canada Employment and Immigration Commission without reference to age;

3. providing for commencement of receipt of Canada Pension Plan benefits, on an actuarially adjusted basis, before or after age 65, at a time to be determined, within appropriate limits, by the contributor;

4. reviewing and revising the Canadian Human Rights Benefit Regulations to assure continued participation in benefit plans by all employees, as far as reasonably possible, notwithstanding the age of the participant;

5. requiring pension plans to allow contributors to accrue pension benefits for as long as they continue to work, subject only to the reasonable limits that Revenue Canada may see fit to impose in registering pension plans under the *Income Tax Act*;

6. requiring pension plans to provide for the commencement of actuarially adjusted pensions at any time during a specified range of years beginning before and ending after the normal pensionable age; and

7. requiring pension plans to offer a contributor the option of drawing a partial pension, if the contributor is of pensionable age, to compensate for a reduction in income as a result of the contributor assuming a reduced workload or responsibilities as part of a phased retirement process.

This list is not exhaustive; there may be additional initiatives that could be taken to help realize the objective of maximizing choice in retirement decisions. However, we would not wish to suggest any change in the age at which an individual becomes eligible for Old Age Security benefits — that is, age 65.

9. We recommend that Parliament and the government of Canada adopt measures to facilitate flexible retirement, so that individuals will have a greater degree of choice in the timing of their retirement, to complement the abolition of mandatory retirement.

CHAPTER 4

Sexual Orientation

"Citizens whose sexual orientation is gay or lesbian ought not to be excluded from the protections afforded to all other citizens through either neglect or the failure of governments to develop the legislation that would provide that protection.

To leave one group of citizens beyond the pale is a dangerous precedent. In a democracy, it is equally dangerous to leave the decision about inclusion or exclusion of any particular group from human rights safeguards to the will of the public at any moment in history."

—Working Unit on Social Issues and Justice, Divison of Mission, United Church of Canada, in a brief submitted to the Committee

Introduction

Section 15 of the *Charter* assures legal equality without discrimination. Some of the characteristics that have been regarded traditionally as objectionable grounds of discrimination are listed in the section; they are race, national or ethnic origin, colour, religion, sex, age, and mental or physical disability. But this catalogue of prohibited grounds of discrimination does not purport to be exhaustive, as we observed at the beginning of this report. Other similar characteristics — that is, those over which an individual has little or no immediate control and that are commonly used to make prejudiced judgments about an individual's particular qualities or capabilities — might also be improper grounds of discrimination. We have weighed the evidence we received with a view to deciding whether homosexuality is such a characteristic in contemporary Canadian society. If it is, the *Charter* can be properly taken to protect against discrimination on the basis of sexual orientation.

Many briefs and submissions to the Committee used a variety of terms to describe the same-sex relationships of men and women. To avoid confusion, we use the term 'homosexuals' to refer to both male and female persons involved in such relationships.

We recognize that many people react to questions involving homosexuality on a visceral level, reflecting longstanding attitudes and values in our society and, indeed, in our laws. We acknowledge this to be a controversial area. We are dealing here, however, with a question of public policy that must be reasoned through and not immediately accepted or rejected on the basis of one's personal response to the situation. Our report reflects what we have been told about present-day Canada. It also reflects the fact that section 15 exists because minorities within our society need a measure of legal protection to put them on an equal footing with others. That the state affords legal protection does not mean endorsement of a particular religion, political belief or personality trait; it means simply that in a free and democratic society, discrimination under our laws on the basis of those differences will not be tolerated.

We have paid particular attention to sexual orientation as a ground of discrimination against which protection might be offered because the subject matter of Bill C-225, sponsored by Svend Robinson, MP (New Democrat), was referred to us for study and consideration. The Bill, which received first reading on March 4, 1985, would amend the *Canadian Human Rights Act* to add sexual orientation as a prohibited ground of discrimination and to treat it on the same basis as any other ground of discrimination for the purposes of the Act.

This is not the first initiative of its kind. When Parliament was considering the *Canadian Human Rights Act* in 1977, an unsuccessful attempt was made to add sexual orientation as a proscribed ground of discrimination. Two private member's bills, Bill C-242 in 1980-81, sponsored by Pat Carney, MP (Progressive Conservative), and Bill C-676 in 1983, sponsored by Svend Robinson, MP, dealing with the same matter as the current Bill C-225, were talked out at the second reading stage.

Other parliamentary committees, such as the 1976 Special Joint Committee on Immigration Policy and the 1980-81 Special Joint Committee on the Constitution, have considered some aspects of the matter, but none heard as many expressions of opinion as we did in the course of our proceedings. Many submissions were directed exclusively to the subject, and many major national and regional groups and coalitions covered it in their submissions as well. We were shocked by a number of the experiences of unfair treatment related to us by homosexuals in different parts of the country. We heard about the harassment of and violence committed against homosexuals. We were told in graphic detail about physical abuse and psychological oppression suffered by homosexuals. In several cities, private social clubs serving a homosexual clientele were damaged and the members harassed. Hate propaganda directed at homosexuals has been found in some parts of Canada. We were told of the severe employment and housing problems suffered by homosexuals. Indeed, several witnesses appearing before us expressed some fear that their appearance before the Committee would jeopardize their jobs. At the same time, it was evident that there is resistance in some quarters to giving homosexuals the same rights as other minorities that traditionally have been protected. This resistance was sometimes explained in moral or religious terms.

Two Views

Opinions about including sexual orientation as a prohibited ground of discrimination tend to divide into two diametrically opposed camps. Those who favour treating sexual orientation as a prohibited ground of discrimination argue that sexual orientation is a personal matter and that, so long as it does not result in harm to others, it should not affect one's access to facilities, services, accommodation or employment.

They maintained that access should be based on capacities or abilities, not one's sexual preference. To continue to allow discrimination on the basis of sexual orientation, they argued, is directly contrary to the values expressed in anti-discrimination legislation and in the *Charter*.

Those who oppose treating sexual orientation as a prohibited ground of discrimination base their position on the moral values they believe are held by many Canadians. They also argue that the presence of homosexuals in many settings has a disruptive effect on those around them. Some suggest that homosexuals attempt to foist their views, and sometimes their practices, on others.

We gave long, careful and serious consideration to all these views. In doing so, we also looked for guidance to the actions taken in Canada and in other jurisdictions to protect homosexuals from discrimination.

Existing Provisions in Canada

The only jurisdiction in Canada where sexual orientation is a prohibited ground of discrimination is Québec. That province adopted its *Charter of Human Rights and Freedoms* in 1975. At that time, a member of the National Assembly tried unsuccessfully to add sexual orientation to the Act. Sexual orientation was eventually incorporated as a prohibited ground of discrimination as part of the 1977 amendments to the Québec *Charter*.

It should be noted that the Québec *Charter* takes precedence over all other legislation unless the other legislation states specifically that it prevails over the *Charter*. The rights guaranteed in the Québec *Charter* are not absolute but are subject to *bona fide* occupational requirements and to reasonable requirements justified by the charitable or religious nature of the institution against which discrimination is alleged.

A review of the Québec Human Rights Commission's annual reports indicates that complaints of discrimination based on sexual orientation have represented only a small proportion of its workload. Between 1978 and 1984, files opened on complaints of discrimination based on sexual orientation varied between one and four per cent of the total number of files opened by the Commission. It should be noted that this figure does not reflect the percentage of complaints *received* by the Commission — many complaints are withdrawn, settled, determined to be unfounded or abandoned because the complainant or respondent is untraceable.

The following situations illustrate the type of cases the Commission has dealt with successfully: the dismissal of several teachers because of their sexual orientation, the refusal of a newspaper to publish a classified ad for a homosexual club, the harassment of several homosexual waiters by a restaurant manager, the lowering of a student's mark because he was homosexual, and the refusal of a Roman Catholic school commission to rent a meeting room to a homosexual rights group.

Although Québec is so far the only jurisdiction in Canada where sexual orientation is a prohibited ground of discrimination, the experience of many human rights commissions has led them to conclude that sexual orientation should be a prohibited ground. The commissions in Ontario, Manitoba, Saskatchewan, Alberta and British Columbia have all proposed that sexual orientation be covered by their respective human rights acts. The Canadian Human Rights Commission has recommended, in every annual report from 1979 to date, that the *Canadian Human Rights Act* be

amended to add sexual orientation as a prohibited ground of discrimination. It reiterated this position in strong terms in its submission to this Committee. None of these recommendations by the federal and provincial human rights commissions has yet made its way into law.

There has also been action at the municipal level. The cities of Toronto, Ottawa, Windsor and Kitchener have policies prohibiting discrimination in employment on the basis of, among other grounds, sexual orientation. The City of Vancouver has applied to the British Columbia government for an amendment to the city's charter to enable it to prohibit discrimination by licence holders on the basis of, among other grounds, sexual orientation.

Other Jurisdictions

In the United States, a series of Supreme Court decisions has indicated that the right to privacy reserves to each individual primary control over such matters as marriage, procreation and contraception. It has yet to consider how the right to privacy doctrine applies to homosexuals. Most lower courts that have considered claims based on the right to privacy by homosexuals have rejected them. The U.S. courts have also found that the prohibition of discrimination based on sex in the *Civil Rights Act* and the 'equal protection' clause of the U.S. Constitution do not protect the rights of homosexuals. Since 1949, the U.S. Department of Defense and the various armed services have had a policy of dismissing homosexuals. Recent court cases have upheld this practice, holding that it does not violate any constitutional rights.

In Europe, the situation is somewhat different. In decisions dealing with the right to privacy guaranteed by section 8 of the European Convention on Human Rights, both the European Commission of Human Rights and the European Court of Human Rights have, in recent years, indicated that the criminalization of private homosexual acts between consenting adults over 21 years of age is unacceptable. The decisions were phrased in such broad terms that their implications will be wide-ranging in future Commission and Court decisions.

The Parliamentary Assembly of the Council of Europe urged member states in 1981 to decriminalize homosexual acts between consenting adults, to apply the same age of consent to both homosexual and heterosexual conduct and to assure equality of treatment to homosexuals. In 1984, the European Parliament made a similar plea but with an emphasis on employment concerns. France, Norway, The Netherlands and Spain have, since the early 1980s, amended their criminal and anti-discrimination legislation in conformity with the recommendation of the Parliamentary Assembly of the Council of Europe and the European Parliament.

In its 1984 report, entitled *Homosexuals and Society*, the Swedish Parliamentary Committee on the Place of Homosexuals in Society disclosed the results of a thorough study of all problems affecting homosexuals. Among other recommendations, it urged that constitutional and anti-discrimination statutes in that country be amended to protect against discrimination on the basis of "sexual preference".

The Committee's View

Developments in other jurisdictions indicate that there is an evolving recognition of the rights of homosexuals but that protection is not yet generally accorded to those

rights. What witnesses told us about the experiences of homosexuals in Canada indicates that they do not enjoy the same basic freedoms as others. Their sexual orientation is often a basis for unjustifiably different treatment under laws and policies, including those at the federal level, and in their dealings with private persons. We have therefore concluded that "sexual orientation" should be read into the general open-ended language of section 15 of the *Charter* as a constitutionally prohibited ground of discrimination.

The Canadian Bar Association expressed the view in its brief to the Committee that sexual orientation is one of the more obvious unenumerated grounds of discrimination prohibited by section 15. Peter Maloney supported this view when he told us

> I think, quite frankly, it is there already. It is not there in the sense that the words "sexual orientation" are there...[but] the legislative history is such that sexual orientation is already included in section 15...

Although we have concluded that "sexual orientation" should be read into section 15, we do not believe that this interpretation fully protects homosexuals in those situations where the equal protection of the law should prevail — as in employment, accommodation, and access to services. Thus we turn to the *Canadian Human Rights Act*.

During our travels across the country, we met homosexuals of all ages, many professions, different religions and various socio-economic backgrounds. We also met their parents and siblings, spouses and former spouses. We found them to express a common concern about the lack of access to facilities, services and economic opportunities. These same concerns were frequently expressed as well by non-homosexuals on behalf of homosexuals.

Sexual orientation is no more relevant to a person's fitness to compete for a given job or reside in particular accommodations than sex, race or religion. Because sexual orientation is a personal matter, it should not be a criterion in determining the availability of services, facilities, accommodations or employment to Canadians. Many organizations recommended to us that homosexuals should be afforded the equal protection of the law, the same as that enjoyed by all other Canadians. Among those advocating this approach were the Canadian Human Rights Commission, the National Union of Provincial Government Employees, Human Rights P.E.I., the B.C. Human Rights Coalition (Vancouver Region), the Canadian Association of University Teachers, the Anglican Church of Canada, Canadian University Press, the Canadian Teachers' Federation, the United Church of Canada, the National Action Committee on the Status of Women, and the Manitoba Teachers' Society. We therefore conclude that sexual orientation should be a prohibited ground of discrimination in the *Canadian Human Rights Act*.

If sexual orientation becomes a proscribed ground of discrimination in the Act, persons alleged to have discriminated on that basis would have the opportunity to rely on the usual defences provided by the Act — that they had simply imposed a *bona fide* occupational requirement or, in cases outside the employment field, that there was a *bona fide* justification for their action. By amending the *Canadian Human Rights Act* to add sexual orientation as a prohibited ground of discrimination, Parliament would be extending the equal protection and equal benefit of the law, which we take to be guaranteed by section 15 of the *Charter*, to homosexuals.

If the *Charter* were left to stand alone, without this complementary amendment to the *Canadian Human Rights Act*, many homosexuals might find it necessary to resort to the courts in the event of discrimination against them. They would be without any effective remedy at all if the discrimination were at the hands of another person and had no basis in federal laws or policies. This suggested amendment to the *Canadian Human Rights Act* would open up an expeditious and inexpensive forum for conciliation and conflict resolution to those alleging they have suffered discrimination, in the federal sector, on the basis of sexual orientation.

We should note further that several examples of how federal law and policy may adversely affect homosexuals were raised in briefs and testimony. The inclusion of sexual orientation as a prohibited ground of discrimination and the addition of a primacy or override clause in the *Canadian Human Rights Act* (which we recommend in Chapter 15) will provide a mechanism for their resolution.

10. We recommend that the *Canadian Human Rights Act* be amended to add sexual orientation as a prohibited ground of discrimination to the other grounds, which are race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability, and conviction for an offence for which a pardon has been granted.

Special Cases

It has been suggested that the Canadian Armed Forces and the Royal Canadian Mounted Police are special cases where discrimination on the basis of sexual orientation may be justified.

The Canadian Armed Forces has a policy of not recruiting homosexuals and dismissing homosexuals, once detected, from the Forces. If a member of the Canadian Armed Forces is suspected of being homosexual, the commanding officer conducts an investigation with the assistance of the Special Investigation Unit. If the suspicion is confirmed, the commanding officer makes a report to that effect to National Defence Headquarters. The member is then asked to resign with the promise of an honourable discharge. All of this is done in accordance with Canadian Forces Administrative Order 19-20. In his appearance before the Committee, the Minister of National Defence gave the following figures for the number of members discharged under C.F.A.O. 19-20 in the last four years: in 1981, 37 members; in 1982, 45 members; in 1983, 44 members; and in 1984, 38 members.

If this route of exit from the Forces, as just described, is not followed, the suspected homosexual member may be charged under the *National Defence Act* with a service offence of conduct in violation of good order or discipline. If the member is alleged to have committed a criminal offence, he or she may be tried by a civilian court or by a court martial.

The Royal Canadian Mounted Police has no formal written policy on homosexual members, although a draft *aide-mémoire* setting out the rationale for not knowingly recruiting and not retaining homosexual members was tabled with the Committee. When a member of the RCMP is discovered to be homosexual, the member is discharged.

We heard the stories of a number of former members of the Canadian Armed Forces, who had served in the Forces for years, apparently without problem, but were

released for only one reason — their sexual orientation. They described the arbitrary, grossly insensitive treatment to which they were subjected as part of the investigation of their personal lives. They were detained in isolated conditions for many hours and subjected to intensive interrogation about their activities and those of others.

The Canadian Armed Forces and the RCMP claim that military and police services involve special circumstances that justify the exclusion or removal of homosexual personnel. They cited several reasons for continuing their present practices with respect to homosexuals:

- members frequently serve in isolated posts in close physical proximity;
- members train and often live in confined quarters;
- homosexual members may be subject to blackmail;
- some countries to which members may be posted make homosexual relations illegal;
- the presence of homosexual members undermines morale and public confidence; and
- homosexual members are excluded for their own protection.

The arguments do not justify the present policies. They are based on the stereotypical view of homosexuals that assumes them to be dangerous people imposing their sexual preference on others. They also give undue weight to the presumed sensitivities of others. Finally, the blackmail argument is a circular one — if sexual orientation were not a factor in employment, the main reason for any such vulnerability of homosexuals would disappear. If a foreign power, or anyone else, wants to subvert a Canadian, they would use whatever blandishments appear most compelling to that particular individual; in this regard, heterosexuals are as vulnerable as homosexuals.

If the Canadian Armed Forces and the RCMP still wish to justify their policies with respect to homosexuals, the place for them to do so is before a Human Rights Tribunal established under the *Canadian Human Rights Act*. It would be up to them to persuade the tribunal that their policy was based on a *bona fide* occupational requirement. However, this Committee has not heard evidence justifying such an exemption from the Act.

11. We recommend that the Canadian Armed Forces and the RCMP bring their employment practices into conformity with the *Canadian Human Rights Act* as amended to prohibit discrimination on the basis of sexual orientation.

Security Clearances

Cabinet Directive 35, adopted in the early 1960s, sets out criteria for granting security clearances. Among the grounds upon which access to confidential information could be denied is a "character defect", such as "illicit sexual behaviour", that may make a person susceptible to blackmail or coercion. The government of Canada currently has Cabinet Directive 35 under active review; it is expected that replacement guidelines on security clearances will be issued shortly. The arguments about blackmail made with respect to members of the Canadian Armed Forces and the RCMP apply equally in this area.

12. We recommend that the federal government security clearance guidelines covering employees and contractors not discriminate on the basis of sexual orientation.

Consensual Sexual Activity

We received a number of representations that the *Criminal Code* be amended to eliminate the discrepancy between the ages at which private consensual sexual conduct does not constitute a criminal offence. (We are *not* referring here to sexual assault or to offences against children or young people.).

The effect of the current Code provisions is to establish 21 as the age of consent for homosexual acts between two consenting adults in private (section 158(1)). Other sections of the Code establish different ages of consent for consensual heterosexual activity. For example, under section 146(2) it is an offence for a male who is 14 years of age or older to engage in consensual sexual intercourse with a 14- or 15-year-old female who is not his wife and who is of previously chaste character. Under section 151, it is an offence for a male age 18 or over to seduce a 16- or 17-year-old female who is of previously chaste character.

The law, as it now stands, thus provides for a lower age of consent for those engaging in sexual intercourse than for those engaging in other forms of sexual activity; it thus discriminates against homosexuals. We believe that the *Criminal Code* should be amended to make uniform the age or ages at which all forms of private consensual sexual activity are lawful. This recommendation does not, we repeat, apply to the present sexual assault offences in the Code.

As to what those uniform ages should be, there are a number of possibilities. The report of the Badgley Committee on Sexual Offences against Children and Youth recommended that since the age of majority in most provinces is 18, that would be an appropriate age. In response to a recommendation of the Parliamentary Assembly of the Council of Europe, France amended its criminal law in 1982 to fix the age of consent for sexual activity by both sexes at 15. We do not ourselves have enough information to specify what the statutory age should be, but we are clearly of the view that the legal equality guarantees of section 15 require a uniform age or ages of consent for private consensual sexual activity.

13. We recommend that the *Criminal Code* be amended to ensure that the minimum age or ages at which private consensual sexual activity is lawful be made uniform without distinction based on sexual orientation. (This recommendation does not pertain to existing sexual assault offences in the *Criminal Code*).

Bill C-225

As noted earlier in this chapter, the subject matter of Bill C-225, tabled by Svend Robinson, MP, was referred to this Committee for study and consideration. The purpose of the Bill is to implement the recommendation of the Canadian Human Rights Commission to add "sexual orientation" as a prohibited ground of discrimination within federal jurisdiction.

14. We recommend support in principle for Bill C-225 and urge the government to enact legislation reflecting the principle of the Bill as outlined in this Committee's recommendations.

CHAPTER 5

Marital or Family Status

"While still the goal for many Canadians, the nuclear family is no longer the universal model. Family breakdown is [becoming] a more common pattern, leaving major questions about sharing and distributing family assets as well as the need for social safety nets. Patterns of child-rearing and child care are evolving to accommodate changes in family structure and labour force participation."

—Parliamentary Task Force on Pension Reform, 1983

Introduction

The legal treatment of married couples and of the partners in a marriage has undergone significant change in the last 100 years. In the nineteenth century the husband ruled the family and the wife had no independent legal status of her own. With the enactment of married women's property legislation, married women were given certain property rights, the capacity to enter into contracts and the ability to sue and be sued. The more or less equal division of matrimonial property between husband and wife, which is now required at the termination of marriage, represents a development that could hardly have been contemplated even 20 years ago. We are emerging from a period when the husband was, in law as well as in fact, the personification of a marital unit to a period when the rights of the individual parties to a marriage are increasingly acknowledged. Marriage should no longer be a justification for the loss or surrender of rights by the female partner to such a union.

Discrimination on the basis of marital status is now prohibited by the 1980 International Convention on the Elimination of All Forms of Discrimination against Women, to which Canada is a signatory, by all provincial human rights legislation, and by the *Canadian Human Rights Act*. Several of the provincial statutes also prohibit discrimination on the basis of family status. The federal Act makes both marital status and family status prohibited grounds. The 1966 International Covenant on Civil and

Political Rights, to which Canada has subscribed, states that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State".

We believe that section 15 of the *Charter* should be read against the historical background of the treatment in law of married women and the recognition nationally and internationally that marital and, in many cases, family status deserve protection by the state. Accordingly, while section 15 does not specifically prohibit discrimination on the basis of marital or family status, we believe that the ground can be properly read into the open-ended language of the section. In other words, marital or family status is implicitly covered by section 15.

The Ontario and Saskatchewan human rights codes state that a common law relationship confers a marital status on the parties for purposes of the codes' prohibition against discrimination on that ground. The terms "marital status" and "family status" are used but not defined in the federal Act; as a matter of policy, however, the Canadian Human Rights Commission includes common law relationships as marital relationships for purposes of applying these grounds of discrimination. This practice recognizes the reality that many couples now choose to live in permanent arrangements akin to marriage rather than entering into formal legal unions.

Consistent with our interpretation of section 15, we believe that an individual who is party to a common law relationship should have the same benefit and protection of section 15 as someone who is legally married.

In applying the *Charter* to distinctions on the basis of marital or family status, there are likely to be many situations where distinctions on that basis can be demonstrably justified in the sense of section 1 of the *Charter*. Many statutes, for example, treat those in a marriage or a family differently from others on the basis that the family represents an economic unit. That may be a fair and relevant assumption to make in fashioning the terms of a taxation scheme or an income security program. It might not be relevant in another context.

Marital Status Distinctions

We have identified a number of federal laws that make distinctions on the basis of marital or family status:

- The *Income Tax Act* allows a taxpayer to deduct certain child care expenses but not if the child care is provided by a spouse.
- The *Canada Pension Plan* precludes contributions from salary when a person is employed by his or her spouse, and such expense is not deductible under the *Income Tax Act*. (The *Income Tax Act* permits the deduction of a salary paid to a spouse only when it is reasonable and incurred for the purpose of earning income.)
- The *Unemployment Insurance Act* does not recognize employment of a person by his or her spouse for the purposes of participation in the insurance scheme.

Other distinctions arising under pension and superannuation legislation are considered in the next chapter.

All the provisions just cited differentiate between spouses and others and have serious financial implications for homemakers in particular. We received submissions from many individuals and groups arguing that homemakers receive insufficient recognition under the law. We deal with several aspects of that lack of recognition in the next chapter. The specific provisions referred to above appear to be designed to avoid abuses of the income tax, Canada Pension and unemployment insurance schemes, something that may be more likely to occur in a marital relationship than otherwise. We would suggest that the legislation in question be reviewed to determine whether other methods of safeguarding the system could be put in place that would permit an employer-employee relationship between a husband and wife to be treated in the same way as any other employer-employee relationship.

Recognition of Common Law Relationships

Section 15 of the *Charter* protects spouses, including common law spouses, from discrimination. Therefore a law that treats those in a common law relationship less favourably than those who are legally married (although no less favourably than single individuals) is arguably in violation of the *Charter*. It is no answer that legally married individuals are not discriminated against by that law. In our view, a law that favours some members of a class protected by section 15 over others of the same class is objectionable. For example, a law that prefers Mennonites over Jehovah's Witnesses, both of whom are members of the same (Christian) religious group, or that prefers those with a hearing impairment over those with a visual impairment, both groups being physically disabled, would be contrary to section 15. The same argument can be made with respect to legally married and common law couples, both of whom have marital status, and both of whom are protected under section 15. This is subject, of course, to the possibility that a reasonable basis for the relevant distinction might be established in the particular circumstances in accordance with section 1 of the *Charter*.

Although we do not wish to weaken the status and the rights of the traditional family, we believe that the time has come to give full recognition to common law relationships in Canadian law.

Canadian legislation already provides some recognition for common law marriages. Some provincial human rights acts specifically protect common law spouses from discrimination because of their status. Common law spouses are given protection in a variety of family law matters and are generally afforded access to social security benefits in provincial jurisdictions.

Federal laws and policies are accommodating the fact of common law relationships in increasing measure. The *Old Age Security Act* extends the definition of spouse to include a person who has been publicly represented as the contributor's spouse for the preceding year. Thus a common law spouse who meets the general income test is eligible for the Guaranteed Income Supplement at the married rate, as well as the Spouses Allowance.

The *Canada Pension Plan* permits an unmarried person to receive a surviving spouse's pension if that person was publicly represented as the contributor's spouse for at least one year before the contributor's death. However, as noted in the next chapter, division of pension credits on marriage breakdown is not now available to common law spouses.

Definitions

The Benefit Regulations under the *Canadian Human Rights Act* define a spouse to include a common law spouse if that spouse has been residing continuously with the employee and is of the opposite sex, and if the couple has publicly represented themselves as husband and wife for three years if there was a factor prohibiting them from marrying, or for one year if there was no bar to marriage. The regulations offer guidelines for pension and insurance plans within the federal jurisdiction and limit the distinctions those plans can make on the basis of marital status and other characteristics of employees.

The policy in administering the *Unemployment Insurance Act* is to permit a common law spouse to claim benefits, on the same basis as a legally married spouse, upon leaving employment to follow a partner who has been relocated. An individual is considered as a common law spouse for this purpose if he or she is party to a relationship that has lasted at least 12 months or produced a child, or if a child is expected.

Other statutes and policies have a narrower definition of the word spouse. We received several submissions on the treatment of common law spouses under the *Income Tax Act*. The Act provides a complex set of rules governing the tax treatment of individuals and other entities. Except for specific provisions relating to the taxation of property and income as a result of the termination of a common law relationship, the *Income Tax Act* does not treat common law unions as family units, but rather treats the parties to such a union as individuals. While the Act does not define the word spouse, that term, when used, is interpreted by Revenue Canada to mean only a legal spouse.

The income tax deduction afforded a married person is an example of a provision that creates an advantage for taxpayers who are legally married. The spousal deduction can be claimed by either the husband or the wife and is available whenever the other spouse has little or no income. It is not available to common law spouses. A similar deduction is available to an unmarried individual supporting another person related by blood, marriage or adoption. That deduction is also unavailable to someone supporting a common law spouse. We believe that someone in a common law relationship should be able to claim the spousal deduction.

If the provisions of the *Income Tax Act* that are beneficial to taxpayers, such as the spousal deduction, are to be extended to parties to common law unions, provisions of the Act that impose burdens or restrictions on married taxpayers should also extend equally to individuals in common law relationships. Rules will have to be developed concerning the manner in which the existence of a common law relationship is to be established for purposes of the *Income Tax Act*.

15. We recommend that the *Income Tax Act* be amended to extend the meaning of the words 'spouse' and 'married person' and similar expressions to include a common law spouse, and the word 'marriage' to include a common law relationship, so that the same tax treatment is afforded taxpayers in established common law relationships as now applies to taxpayers who are legally married.

Regulations under the *National Defence Act* do not acknowledge common law unions for the purposes of a range of benefits, including reimbursement for moving expenses, receipt of foreign service allowances, and accommodation in married quarters. We believe that this is unjustified and that eligibility for benefits should be extended to common law couples.

In the next chapter, we refer to provisions in the *Public Service Superannuation Act*, the *RCMP Superannuation Act*, and the *Canadian Forces Superannuation Act*. The provisions state that to be entitled to survivor benefits, an individual who was not legally married to a contributor must establish to the satisfaction of the Treasury Board that he or she was living with the contributor for three years prior to the contributor's death if there was a bar to marriage, or for one year otherwise. In both cases the claimant must have been publicly represented by the contributor as a spouse. The Canadian Human Rights Commission finds these provisions objectionable as they give the Treasury Board the discretion to withhold payment from a common law spouse who meets the statutory eligibility criteria. We recommend in Chapter 6 that these provisions be changed.

Another provision that differentiates between legally married and common law spouses is contained in the *Bankruptcy Act*. The Act states that preferences given in favour of creditors are deemed to be void if they occur within 3 months prior to the bankruptcy, except if the creditor is a related person, in which case the period is 12 months. Someone in a common law relationship is not included in the definition of "related" person, with the result that the provisions governing transactions between common law spouses operate for a 3-month rather than a 12-month period.

We believe that extending recognition of common law relationships in federal law must be such as to equate their effect with that given legal marriages, in terms of both the obligations and the benefits of the partners. To extend the benefits and not the obligations of legal marriage would be to favour common law relationships over legal marriages, which would offend section 15 of the *Charter*.

16. We recommend that when benefits are conferred or obligations imposed upon partners in a legal marriage by federal law or policies, such benefits and obligations apply in a similar manner to common law spouses.

As is evident from the preceding review of federal laws and policies that recognize common law relationships, even where the term spouse now includes common law spouses, there is little consistency in definition. If our previous recommendation is adopted, we would suggest that a standard definition be used and incorporated in all federal laws and policies. That definition should require that the parties be of the opposite sex, reside with each other continuously for at least one year, and represent themselves publicly as husband and wife. Individuals are entitled to expect that the question of their legal status will be determined on a consistent basis within the federal jurisdiction.

17. We recommend that a consistent definition of common law relationships be incorporated in all federal laws and policies that recognize such relationships, and for this purpose, we recommend that the definition require that the parties be of the opposite sex, reside continuously with each other for at least one year, and represent themselves publicly as husband and wife.

We must be careful that in recognizing common law relationships, we do not deny or put in doubt the legitimate claims of legal spouses. There is certainly some potential for creating unintentional conflicts between the legal spouse and the common law spouse of one individual. Any changes in law and policy should be developed carefully to anticipate and avoid such conflicts, or rules should be prescribed in advance for resolving such conflicts when they arise.

CHAPTER 6

Equality Issues in Pensions

"Today in the 1980s, women over 65 suffer from two kinds of discrimination: they are women and they are also over 65 years. When they reach the present age of seniority they will have little security. We know that their pensions will be considerably smaller because their earnings over the years will be limited due to the period of time when they raised a family. Many (up to one third) will also have been employed in part-time work and thus will have been paid less and will not have received many, if any, employee benefits. Also, most women do not have private pension plans. The result of these factors is that women over 65 are penalized in their senior years for having raised families and taken on part-time jobs."

—Social Planning Council of Metropolitan Toronto, in a brief submitted to the Committee

Introduction

The national pension debate in which we have been engaged for the last decade has focused attention on pensions as a subject of great concern to Canadians. It is in the interests of all of us to provide an adequate, fair income for our older citizens. With the advent of the *Charter* it is important to ensure that this income is granted without reference to factors now prohibited under section 15 of the *Charter*, including age, sex and marital or family status.

We have not addressed the broad social policy questions implicit in the pension debate, as our mandate is solely to examine federal laws in light of section 15. These larger questions have been dealt with in detail in a number of government reports, most recently the report of the Parliamentary Task Force on Pension Reform (1983) and the Green Paper, *Better Pensions for Canadians* (1982). Groups such as the National Council of Welfare, the Canadian Advisory Council on the Status of Women and the Business Committee on Pension Policy have also made valuable contributions to the debate. It is encouraging that changes at the federal level and in several provincial jurisdictions will have the effect of extending pension coverage to more people. We note

particularly the 1985 federal budget proposals to amend the *Pension Benefits Standards Act* to require vesting after two years and increased portability of pension benefits. These changes will be of special importance to short-term workers. Some progress is being made.

There are three levels of pension coverage in Canada, the first two of which are the focus of our recommendations. The first level includes government-run programs such as the universal Old Age Security (OAS), the income-tested Guaranteed Income Supplement (GIS) and the earnings-related Canada and Quebec Pension Plans. Occupational or employer pension plans, the second level, are governed in general by the *Pension Benefits Standards Act* in the federal jurisdiction. Public service employees are offered pension or superannuation coverage, as it is called in the public sector, by the *Public Service Superannuation Act* or by other specialized superannuation schemes. (See, for example, the *RCMP Superannuation Act*, *Canadian Forces Superannuation Act*, *Diplomatic Service (Special) Superannuation Act*, the *Judges Act* and the *Members of Parliament Retiring Allowances Act*.) The third level of pension coverage includes private savings and investment programs for retirement.

In our view section 15 of the *Charter* requires that income security and pension plans be non-discriminatory and that the factors of sex, age and marital or family status be eliminated where they cannot be demonstrably justified.

Benefits for Surviving Spouses

The level of benefits awarded to surviving spouses under section 56 of the *Canada Pension Plan* (CPP) varies according to the age, disability and family circumstances of the recipient. A surviving spouse who is disabled or has dependent children is entitled to a full pension. However, the rules that apply to surviving spouses who are able-bodied and have no dependent children introduce age variables:

- A surviving spouse under 35 years of age receives no pension.
- A surviving spouse between 35 and 45 years of age receives a reduced pension.
- A surviving spouse over 45 years of age receives a full pension.

Although CPP benefits for surviving spouses are not restricted to female spouses, it seems clear that these eligibility rules are based on assumptions about the dependency of women that may no longer be valid and that are unfair on their face. For example, the exclusion of spouses under 35 years of age who are neither disabled nor have dependent children is probably based on the theory that surviving spouses in their twenties and early thirties usually have little difficulty in finding employment or remarrying. The perception that options are fewer after age 35 is recognized by awarding a partial pension. Because of the decreased likelihood of finding employment or remarrying after age 45, surviving spouses may then receive a full pension. These rules appear even more arbitrary when seen in the context of male surviving spouses.

Virtually every group participating in the pension debate has expressed concern about surviving spouses' benefits, whether in relation to adequacy of coverage, eligibility or equality. Various proposals for reform have emerged. Some groups urge that these benefits be abolished, to be replaced by improved pension credit-splitting provisions and a homemakers' pension. (For a discussion of these options, see below.)

Others favour replacing the benefit with a pension equal to a certain fixed percentage of the deceased spouse's retirement pension.

The Committee believes that the eligibility criteria for surviving spouses' benefits should be based on factors that are not subject to challenge under section 15. The CPP provisions relating to surviving spouses' benefits now make distinctions based on age, disability, and family status. (See Chapter 5 for a discussion of the rationale for considering marital or family status as a prohibited ground under section 15.)

18. We recommend that section 56 of the *Canada Pension Plan* be amended so that surviving spouses' benefits are awarded without reference to disability, age or family status.

Private employer-sponsored pension plans are not always available to workers. Even when these plans are offered, they often don't provide benefits to surviving spouses. While most public sector employees are covered by superannuation plans, it is estimated that only one private sector worker in three is covered by a pension plan. It is unrealistic to expect the first level of pension coverage (which includes the universal OAS/GIS and the earnings-based CPP) to provide a retirement income that is adequate to fully replace income lost due to retirement. This is the role of government programs supplemented by employer-sponsored pensions and personal retirement savings.

Statistics show that women are less likely than men to be covered by occupational pension plans. This situation, coupled with the failure of many private pension plans to provide benefits for surviving spouses, results in women being particularly hard hit by the gaps in the private pension system. When private pension plans *are* offered by an employer, the plans should be required to offer surviving spouses' benefits without distinctions that would offend section 15 of the *Charter*, whether the contributor dies before or after retirement. Our recommendation is consistent with the proposal contained in the 1985 federal budget.

19. We recommend that federal superannuation plans and other employer pension plans under federal jurisdiction be required to provide benefits for surviving spouses of deceased contributors without distinctions that would offend section 15 of the *Charter*, whether the contributing spouse dies before or after retirement.

Several superannuation plans under federal jurisdiction contain provisions requiring that benefits for surviving spouses terminate on the remarriage of the surviving spouse (the *Canada Pension Plan*, *Public Service Superannuation Act*, *RCMP Superannuation Act*, *Members of Parliament Retiring Allowances Act*, *Judges Act*, *Canadian Forces Superannuation Act*, *Diplomatic Service (Special) Superannuation Act*). The Canadian Human Rights Commission, the Federal Superannuates National Association and others have urged that these provisions be repealed, so that entitlement would not be affected by changes in marital status. The Superannuates Association rejected the premise

> that marital status should be used to disenfranchise a survivor from his or her [surviving] spouse's allowance upon remarriage... Superannuation is neither welfare nor charity and the benefits provided should reflect that it is a contributory pension plan.

We agree that provisions in the *Canada Pension Plan* and federal superannuation plans requiring that benefits to surviving spouses cease on the remarriage of the spouse discriminate on the basis of marital status, and we urge that Parliament amend these plans to eliminate this discrimination.

20. We recommend the repeal of provisions of the *Canada Pension Plan* and federal superannuation plans requiring that the benefits to which a surviving spouse is entitled terminate when he or she remarries.

Many federal superannuation plans require the reduction of a surviving spouse's benefit where the widow or widower is 20 or more years younger than the deceased contributor (the *Public Service Superannuation Act*, *RCMP Superannuation Act*, *Canadian Forces Superannuation Act)*. This is a clear example of discriminatory treatment based on the age of the surviving spouse.

21. We recommend the repeal of provisions in federal superannuation plans that require that the amount of a benefit to a surviving spouse be reduced where the surviving spouse is 20 or more years younger than the deceased contributor.

The Federal Superannuates National Association also objected to a provision of the *Public Service Superannuation Act* that disentitles a widow or widower to a surviving spouse's benefit if the marriage to the contributor took place after his or her retirement. When surviving spouses' benefits are provided, they should be available regardless of the date of the marriage. Some superannuation plans also deny a surviving spouse's benefit if the contributor married after age 60 (*RCMP Superannuation Act* and the *Canadian Forces Superannuation Act*). We believe that this limitation also violates section 15 of the *Charter*.

22. We recommend the repeal of provisions in federal superannuation plans that disentitle a surviving spouse to benefits where the marriage took place after the contributing spouse retired or reached age 60.

We discussed the rights of common law spouses in the previous chapter, where we recommended that common law spouses be subject to the same benefits and obligations as partners in legal marriages and that a consistent definition of common law spouse be adopted in all relevant federal legislation and policies. These recommendations are especially important in the area of pensions.

Some superannuation plans give the employer the discretion to award a surviving spouse's benefit where the couple was living common law *(Public Service Superannuation Act*, *RCMP Superannuation Act*, *Canadian Forces Superannuation Act)*. For example, plans may allow Treasury Board to withhold recognition of a person as the common law spouse of the contributor, even where there is no other person claiming to be the spouse and where the common law spouse has met the eligibility requirements set out in the governing statute (see Chapter 5). It is our view that this differential treatment of common law spouses discriminates on the basis of marital status in the broad sense in which we have interpreted that term. Once the eligibility requirements have been met, the benefit should be granted on the same basis as if the common law survivor were the legal spouse of the deceased contributor.

23. We recommend that federal superannuation plans extend surviving spouses' benefits to common law spouses who fall within the definition of a common law spouse (see Recommendation 17), in the same manner as benefits are granted to surviving spouses who were legally married to a contributor.

Division of Pension Credits

CPP credits earned during a marriage can be divided equally between the spouses on termination of their marriage by divorce or annulment, provided the marriage lasted at least three years and the application for credit-splitting is made within three years of the termination of the marriage. This provision is an attempt to recognize the sharing of work by the partners in a marriage and, in particular, the contribution of the homemaker, who is not now entitled to a CPP pension. Although the provision was added to the Plan within the last 10 years, the experience has been that very few former spouses have taken advantage of it.

We see three significant loopholes in the present legislation; they should be closed to ensure that all former spouses receive equal benefit of the law. It is encouraging to note that the most recent federal budget proposed that action be taken in each of these problem areas.

First, the present provisions do not extend to the breakup of a common law relationship. To ensure that these sections of the *Canada Pension Plan* do not discriminate on the basis of marital status by denying application of the law to common law couples, the Plan should be amended to provide that pension credits be split between the parties upon termination of a common law relationship on the same basis as now applies to legally married couples.

Second, the present provisions define marriage breakdown very narrowly, to include only official termination of a marriage by divorce or annulment. The budget proposed that the division of pension credits be determined at the point of marriage breakdown, including separation. We agree with this proposal.

Third, the pension credit-splitting provisions raise an important question of access. The division of credits is now available on application by a former spouse. The split is not automatic. We would not suggest that section 15 requires that the split be automatic. However, it is our view that access to these provisions, which were introduced as a means of assuring some measure of equality between the spouses, would be greatly improved if the division occurred automatically upon termination of the relationship.

24. We recommend that the value of Canada Pension Plan credits earned during the marriage be split equally between the spouses automatically upon marriage breakdown — which would include divorce, separation or the termination of a common law relationship — except when the parties agree otherwise after having received independent legal advice.

Homemaker Pension

We received submissions from many groups and individuals concerning the need for pension coverage for homemakers. This topic has been discussed extensively in recent years, and there are several proposals on how best to accomplish the goal of recognizing the homemaker's work for pension purposes. While there is no consensus that a homemaker pension under the Canada Pension Plan is the most appropriate way to reach the goal, all groups agree that the problem of poverty among elderly women must be dealt with.

At present, homemakers cannot contribute to the Canada Pension Plan because they are not paid workers. The plan operates on the basis of compulsory contributions. It does not accommodate voluntary contributions from workers who do not earn a salary. By virtue of the fact that homemakers are not paid, they are denied the benefit of receiving a Canada Pension when they retire, unless their marriage should terminate, in which case they would automatically receive a half share of their spouse's pension, under our previous recommendation.

The lack of pension coverage for homemakers, above the basic OAS/GIS level, represents a serious flaw in our pension system. Although society values and depends on the contribution of homemakers, work in the home is not recognized as being of the same value as paid work performed inside or outside the home.

Some members of the Committee are not convinced that the Canada Pension Plan is the most appropriate vehicle for recognizing the homemaker's work. Others feel strongly that the *Canada Pension Plan* denies a benefit to homemakers that is available to other workers and that it should be amended to provide a pension for homemakers. We all agree that some mechanism must be found to recognize the vital contributions of homemakers to their families and to society and to ensure that all older Canadians have adequate retirement incomes.

Old Age Security

The *Old Age Security Act* provides two types of pension income other than the universal Old Age Security — the Guaranteed Income Supplement and the Spouses Allowance. Aspects of both programs were brought to our attention as being potentially in violation of section 15.

The GIS is an income-tested supplement to OAS. The benefit rates are determined partially by marital status. The supplement of a single pensioner is higher than that of a married person. It has been suggested that determining the amount of benefit payable on the basis of marital status offends section 15 in that the combined OAS/GIS pension benefits for two single people living together and sharing expenses is considerably higher than the benefits of a married or common law couple. We have considered this argument and have concluded that the current arrangements bear a reasonable relationship to the relative economic needs of a family unit and an individual. We do not believe that recognition of the economics of a family unit necessarily violates the letter or the spirit of section 15 as read with section 1 of the *Charter*. Consequently, we make no recommendation to change the levels of benefits paid to single people and to partners in a marriage or common law relationship.

The Spouses Allowance provides a benefit to legally married or common law spouses between the ages of 60 and 65, where their partners are already receiving OAS/GIS benefits. A recent amendment to the Act extends coverage to widows and widowers in the same age group. The rationale for the Spouses Allowance is that one-earner couples deserve government assistance during that transition period where the working spouse has reached 65 and has probably retired but the other spouse has yet to qualify for benefits under federal income security programs.

Many women's groups objected to the Spouses Allowance because one of the bases for eligibility is marital status. The argument was clearly articulated in the Report of the Statute Audit Project of the Charter of Rights Educational Fund:

> Recognition of the economic hardship which retirement may impose upon an individual or a family is admirable. However, to tie economic relief to marital status rather than to the hardship itself appears arbitrary and thereby discriminatory. In light of the fact that the greatest number of poor and the poorest in Canada are single women, it seems inappropriate to provide an allowance which is almost exclusively available to married women.

While the Spouses Allowance offers a significant benefit to a large number of needy people, it cannot be denied that eligibility for this benefit is clearly based on a factor that we consider to be a prohibited ground of discrimination under section 15 — marital status. Under no circumstances is the Spouses Allowance available to a single person (other than a common law spouse or a widow or widower), even though the single person might be in greater financial need. We believe that it is no longer acceptable to extend benefits on such a basis. It should be noted that the Royal Commission on the Economic Union and Development Prospects for Canada (the Macdonald Commission) recommended as a comprehensive solution that such allowances be abolished and replaced with a more universal income security scheme.

25. We recommend that the Spouses Allowance under the *Old Age Security Act* be replaced with an equivalent benefit that is available without reference to marital status.

Benefits for Surviving Children

The *Canada Pension Plan* and federal superannuation plans permit surviving children of a contributor to claim benefits if they are under 18 years of age. Many specify that benefits can be claimed by a surviving child between the ages of 18 and 25 if he or she is in full-time attendance at school or university and is unmarried (the *Canada Pension Plan*, *Public Service Superannuation Act*, *RCMP Superannuation Act*, *Canadian Forces Superannuation Act*, *Members of Parliament Retiring Allowances Act*, *Judges Act*). The marital status of the surviving child was undoubtedly made a factor of eligibility on the assumption that married individuals are likely to be financially independent of their parents and, therefore, should not be eligible for survivor benefits. If it is necessary to restrict eligibility for this group of survivors on a basis other than full-time school attendance, a criterion other than marital status should be used.

26. We recommend that provisions in the *Canada Pension Plan* and federal superannuation plans that allow unmarried surviving children under 25 and in full-time attendance at an educational institution to claim benefits, be amended to permit eligibility regardless of the marital status of the surviving child.

Sex-based Mortality Tables

The Committee heard many representations on the use of sex-based mortality tables in insurance and pension calculations. Individual women and women's groups were unanimously of the view that sex-based mortality tables discriminate on the basis of sex. Representatives from the insurance and pension industries and from the actuarial profession agreed that these tables make distinctions on what are now prohibited grounds, but described it as "fair discrimination" that can be demonstrably justified.

The issue was explained clearly in a brief to the Committee by Monica Townson:

> If a man and a woman go to an insurance company on the same day, with the same amount of money to buy an annuity, the monthly income that the woman's investment will provide will be lower than that of the man. The reason for the difference is the insurance company's assumption that the woman will live longer than the man and that therefore it will have to go on paying her a monthly annuity for a longer period of time. And the assumption is based on mortality tables for males and females which show that historically, on average, women tend to live longer than men.

Very few employees under federal jurisdiction are covered by money purchase pension plans, which are the type that commonly bring sex-based mortality tables into play. Under this type of plan, employer and employee pension contributions are accumulated until the employee's retirement, at which time they are used to buy an annuity to provide the employee's pension. It has been estimated that fewer than 1,000 women in the federal jurisdiction are affected by the use of sex-based mortality tables in determining pensions.

Strong arguments have been made for moving away from sex-based mortality tables in favour of 'unisex' mortality tables for men and women. Statistics show that 80% of male and female pensioners are the same age at death. Since only 20% of all deaths occur earlier or later than average life expectancy, it is argued that different annuity rates for men and women are unjustified. Another argument often heard, particularly in the American context, notes that race is no longer singled out as a separate risk factor, even though it has been shown that some racial groups have a shorter life expectancy than others. The reason is that it is now socially unacceptable to use race as a basis for differential treatment. The same argument can be made against the use of sex as a risk factor.

We are not satisfied that sex-based mortality tables should be retained. It is our view that the equality considerations outweigh the expense of moving to a unisex standard or the prospect of uncertainty in the marketplace that may arise as a result of turning away from sex-based tables.

Governments, legislators and courts are now dealing with this issue. The Task Force on Pension Reform (1983), the Advisory Committee to the Minister of Finance on Equal Pension Benefits (1985) and the May 1985 federal budget all proposed solutions that would eliminate unequal benefits based on sex, while not specifically preferring the adoption of a unisex standard. Manitoba recently adopted legislation prohibiting sex-based distinctions in pensions. The United States Supreme Court has held that the practice of giving lower pension benefits to women or of charging women more to obtain the same pension benefits as men is discriminatory, because it attributes to individual women a characteristic that applies to women as a group — that is, longevity. An Ontario Human Rights Board of Inquiry recently struck down sex distinctions in the context of automobile insurance premium rates. In that case a young unmarried male driver challenged the requirement that he pay more for automobile insurance premiums than a young woman in identical circumstances.

It is our view that section 15 requires an end to the use of sex-based mortality tables.

27. We recommend that Parliament amend the *Pension Benefits Standards Act* to require that sex-based mortality tables be replaced by unisex mortality tables.

Eligibility for Veteran's Allowances

The *War Veterans Allowance Act* and the *Civilian War Pensions and Allowance Act* provide that veteran's or spouse's benefits may be paid at an earlier age to women than men. Women are automatically entitled to an allowance at age 55 while men do not become eligible until age 60. This is an unnecessary sex- and age-based distinction.

Representatives from the Department of Veterans Affairs met with the Committee in Charlottetown and gave us the reasons for the present policy. They referred to recent statistics showing that of the population over age 55, 42% of males but only 17% of women are in the paid labour force. The policy of granting benefits to women at age 55 was seen as a 'protective' measure, reflecting the disadvantaged position of women in the paid labour force, particularly at that age. Another factor in favour of retaining the present provision is the economic cost of a fairer system.

The Department identified three ways of dealing with the situation. First, age could be disregarded entirely, with eligibility based on service. Second, the age for women could be raised to 60 from 55. Third, the age of 60 for men could be lowered to 55 to make it consistent with the provision for women.

Of these options, we recommend the third — and the one that is preferred by the representatives of the Department of Veterans Affairs — that is, that the age for both men and women be 55. They noted that it would result in providing benefits to 6,000 more people than are now covered. We believe that this option is the most equitable approach to resolving the current discrepancy between males and females.

28. We recommend that the *War Veterans Allowance Act* and the *Civilian War Pensions and Allowance Act*, which provide for benefit eligibility at different ages for men and women, be amended to provide that benefits for both male and female veterans be available at age 55.

Other pension issues are dealt with in the chapters on part-time work (Chapter 12) and mandatory retirement (Chapter 3).

CHAPTER 7

Women and the Armed Forces

"I am here simply to tell you that women *can* do the job. They *do* the job!"

—Linda Long, a former service woman, in testimony before the Committee at its Edmonton hearing

Introduction

The Canadian Armed Forces is a revered institution that has served Canadians in their defence and in the cause of world peace for more than 100 years. The great majority of Canadians that have been associated with the Armed Forces cherish the period of their lives spent with the military.

Shirley Robinson, an officer with more than 30 years of experience in the Canadian Forces, most recently as Deputy Director of Women Personnel at National Defence Headquarters, put her feelings in these terms: "The military has an extremely important role to play in this nation and I wanted to be part of that; the military was in my blood."

Linda Long, associated with the military through more than 10 years of regular and reserve force service, expressed the same attitude: "I am a military woman, I am loyal to the service, the service that I still love...". She added this explanation for her appearance before the Committee: "The reason I came is my depth of love for my military service and my feeling that a disservice was being done to my personal tradition in uniform and to those honourable women who yet are serving and cannot speak for themselves."

It was therefore with a feeling of pride in the Armed Forces, tempered by anger in the face of unfairness, that a number of former service women described to the Committee the treatment of women by the Department of National Defence and, more particularly, the wide restrictions placed on the employment and promotion of women in the Forces.

The Committee heard a number of other witnesses on the issue of the employment of women in the Armed Forces, including former service women, the Minister of National Defence, the Honourable Erik Nielsen, senior officers from Defence Headquarters, and several women's organizations. The Committee also received briefs and letters on this topic, some in favour of and some opposed to the full integration of women into the Canadian Forces.

Women in the Armed Forces

During this century, women have been called upon to fight alongside men on a more extensive scale than ever before. During World War II, a severe shortage of available personnel led to the use of women soldiers in unprecedented numbers. The Soviet Union mobilized about one million women as uniformed troops. Half that number appear to have served in combat units. Over 100,000 Yugoslavian women fought in partisan groups. In other countries at war, such as Britain and Germany, women flew planes, though mostly in non-combat roles, and served anti-aircraft batteries. Women also became resistance fighters in occupied Europe and were used as spies and saboteurs on missions that exposed them to danger and, sometimes, death.

The recruitment of women into the ranks of the Canadian Armed Forces predates this century. Women served as nurses more than 100 years ago. A number were killed or wounded in the course of their service. During World War II, women were enrolled to release men for combat duty. By 1944, there were 33,000 women in uniform. Many were employed in medical support roles, but many more served in communications, administration and logistics. At the end of the war, most women were demobilized from the armed forces of the belligerent countries, and Canada was no exception.

In the years following World War II, the proportion of women in the Canadian military fell dramatically. However, the signing of the North Atlantic Treaty in 1949 and the outbreak of the Korean War in 1950 gave new impetus to employing women. By 1955, more than 5,000 women were in service. Several years later, however, changes in defence policy sharply reduced the number of women. In 1965, a ceiling of 1,500 was placed on women eligible for Regular Forces work. This policy was continued into the early 1970s.

After the publication of the report of the Royal Commission on the Status of Women in 1971, a more flexible policy was adopted. There would no longer be any limitation on the total number of women in the Canadian Armed Forces, but women would still be excluded from combat roles and from service in remote locations or at sea. Furthermore, women would not be admitted to military colleges, although they would be eligible for subsidized training at civilian universities. By then, the 1,500 women employed in the Regular Forces amounted to 1.8% of total military personnel.

In September 1974, the Department of National Defence completed a review of the job classifications that could be filled by women. Over two-thirds of all classifications were, in principle, made accessible to women. Approximately 30,000 positions were theoretically open to both sexes, while 40,000 were reserved to men only.

With the advent of the *Canadian Human Rights Act* in 1978, more studies were undertaken to reassess the potential role of women in the Armed Forces. The statistics for 1979 indicate the presence of 5,074 women in the Regular Forces or 6.5% of the total. This jump, from 1,500 to over 5,000 in only 8 years, shows clearly the

attractiveness of the Canadian Armed Forces as a career for women. At the same time, 3,980 women belonged to the Reserve Force (19.1% of the total reserve complement).

Today, there are 8,900 women in the military (8.5%). Of those, 6,900 are active members. Of the officers trained in the Armed Forces, 6.3% are women, while women in training for officer positions now constitute 12.6% of the total.

Present Policy on Exclusion

The present policy of the Canadian Armed Forces in relation to the employment of women restricts employment as follows:

- Women are not employed in some units, occupations or positions; the purpose of this restriction is to ensure that women are not exposed to combat. This covers about 1 out of 3 job classifications.
- The ratio of women to men in certain of the other units, occupations or positions theoretically open to women is limited to the extent necessary to assure the continued effective staffing of those positions restricted to men as a result of the policy of excluding women from combat roles. This aims at ensuring that enough men will be available at any time for transfer to combat positions. Unlike affirmative action quotas, these quotas serve to place a ceiling on the number of women employed in these classifications.

The distinction between duties that are directly or indirectly combat-related is not clearly defined, and it is possible to argue that all military personnel are liable to be involved in combat, depending on the circumstances.

Although women cannot become combat soldiers, fighter pilots or sailors on fighting ships, they may work as air traffic controllers, aerospace engineers, weapons technicians, military police and in many other jobs. On the other hand, these and many other trades and occupations, such as cooks, are open to only a limited number of women under the present policy, because many of the positions must be reserved for men who might have to move to the front line. According to one witness, Adelle Karmas, who worked from 1981 to 1984 as a personnel selection officer at National Defence Headquarters, there are at least 70,000 positions closed to women because they are either combat-related or under a quota rule.

Proposals for Reform

The exclusion of women from so many job opportunities has several adverse consequences, especially since the Armed Forces is a major source of employment in many parts of the country. Women cannot aspire to many well-paid jobs after their military service because they are unable to take advantage of the relevant education and training programs offered in the services. The promotion of women within the Forces is also limited because, lacking 'operational' experience, they can hardly entertain the hope of progressing to the top of the military hierarchy.

Suzanne Simpson, a psychologist and former officer in the Armed Forces, conducted research at National Defence Headquarters on the employment of women in non-traditional military roles. She told the Committee that the effect of the present policy is that, even in those trades and occupations open to women, women are often prevented from serving in positions where the skills and abilities considered desirable

for advancement can be demonstrated. For example, women are excluded from postings where combat-related activities occur, such as field exercises and war games, which lend themselves to demonstrations of valued military characteristics such as leadership and courage. Since women are precluded from taking part in these types of activities, they do not have an opportunity to gain experience and show that they have the skills deemed important for promotion. Thus, they are at a disadvantage, in terms of career advancement, relative to their male counterparts, even in those trades and occupations open to them.

In its 1971 report, the Royal Commission on the Status of Women concluded that restrictions on the trades and occupations open to women generally reflected the concept of women as a group rather than as individuals. It therefore recommended that all trades and occupations in the Canadian Forces be open to women.

The Canadian Human Rights Commission has also received a number of complaints concerning Armed Forces policy on the employment of women. The Commission found that the arguments advanced in support of this policy were generally speculative and unpersuasive. In its submission to this Committee, the Commission expressed the view that women should be excluded from only those positions for which the Forces can establish that women are unable to perform the essential job requirements. The Commission also contended that the policy on women in combat, if continued in a modified way, must be flexible enough to allow women to progress through the ranks. According to the Commission, the Forces must amend their criteria for promotion to recognize the systemic barrier the policy imposes on women personnel.

Canadian Armed Forces Initiatives

The Canadian Armed Forces has reacted positively to some of the points raised by the critics of its policies on employing women. For instance, the Royal Commission on the Status of Women identified a number of discriminatory practices within the military — the exclusion of married women, different qualifications for men and women entering the Armed Forces, different lengths of military engagement for men and women, the release of service women who had children, the exclusion of women from military colleges. All these practices were discontinued following the report of the Royal Commission in 1971, and a substantial number of non-traditional occupations have been opened to women since that date. The number of women in the Forces has increased significantly in both absolute and relative terms.

The Armed Forces has been conducting tests since 1979 to assess the consequences of integrating women into various trades and occupations that are now restricted. Four different experiments were set up as part of the overall assessment. A maritime trial, a land trial, an air crew trial, and an isolated station trial have been held in recent years. The procedures and objectives of the trials have been described as follows:

1. The primary criteria against which suitability will be determined is the impact, if any, of service women on the operational effectiveness of the units involved.

2. Collaterally, an effort will be made to

   - Compare the individual effectiveness of service women and service men in carrying out representative work at trial units.

- Compare the effectiveness of groups of service women with similar groups of service men, and of integrated groups with all-male groups, in carrying out representative work at trial units.

- Assess the behavioural and sociological impact of service women on trial units, including the sociological impact, if any, on the immediate families of personnel at trial units.

- Assess the degree of acceptance of the public and our allies of the employment of service women in non-traditional roles and environments.

- Determine the resource implications of the expanded participation of service women in the Canadian Armed Forces.

As a consequence of the trials, some trades and occupations appear to have been opened to women. For instance, the employment of service women at isolated northern stations has been authorized. Volunteer service women in support trades have also been allowed aboard a non-combatant ship. No decision has been made as to whether service women should serve in Combat Service Support Units where the results of the trial showed that women encountered resistance from male colleagues. It appears that the process of reassessing the role of women by the Armed Forces is long and complex, and the final outcome remains uncertain.

The Right to Equality

The exclusion of women from combat in many other countries is sometimes used in support of the present policy of exclusion in Canada. However, the legal context in other countries often differs significantly from that in Canada. In the United States, the restrictions placed on the participation of women in combat in the Navy and Air Force are based on explicit statutory directions. It is specifically provided that "women may not be assigned to duty on vessels or in aircraft that are engaged in combat missions." The *Military Service Act* excludes women from registration.

Other NATO countries are bound by similar provisions. In West Germany, the constitution excludes women from combat roles by denying them the right to bear arms. In the United Kingdom, while there is no express restriction on women in combat, the military is given the latitude to adopt that policy by virtue of an exemption from the provisions of the *Sex Discrimination Act*.

The situation is quite different in Canada where the *Canadian Human Rights Act* has, since 1978, prohibited any policy that deprives an individual of any employment opportunities on the basis of sex (section 10). The Act applies to the Canadian Armed Forces. Any refusal or limitation of employment because of sex must be based on a *bona fide* occupational requirement (section 14(a)). The courts have indicated that any such requirement must be justified by the employer through reliable objective data. The Canadian Armed Forces has not yet demonstrated that the current policy of excluding women from some military roles can be so justified.

Section 15 of the *Charter* also prohibits discrimination based on sex, subject, in this case, "to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society" (section 1). The Canadian Armed Forces has not attempted to justify the present policy under the terms of the *Charter*.

It is therefore clear that, under Canadian law, women have a *prima facie* right to full integration into all trades and occupations in the Canadian Armed Forces. That is the result not only of federal law but of the Constitution. In many other countries this is not the case. The experience in other countries is generally relevant only to the extent that it may assist in determining what limitations on freedom from sex discrimination within military ranks can be demonstrably justified in a free and democratic society.

We agree in essence with the statement made by Linda Long, one of the witnesses appearing before us: "A blanket exclusion of 52% of the Canadian population from combat...must clearly be proved by the government, with concrete evidence, to be a reasonable exclusion."

Reasons Invoked to Justify Excluding Women from Combat

In his submission to the Committee, the Minister of National Defence did not attempt to justify the present policy of exclusion. He emphasized rather the complications and uncertainties surrounding the opening of all trades and occupations to women. In the absence of any better material evidence to support the exclusion of women from combat, we propose to examine the conventional reasons put forward in Canada and abroad for such a policy.

Lack of Physical Strength

Some research studies have shown that on average women have about two-thirds the upper body strength of men. Similarly, the average endurance capacity of women appears to be about two-thirds that of the average male. On this basis, it is argued that a very small percentage of potential female candidates would likely meet the physical standards for the sustained heavy physical workload involved in most combat situations.

We think that position overlooks a number of factors. First, such differences may be caused, in part at least, by the different body conditioning that the two sexes typically undergo. When women participate in a physical training program, it has been demonstrated that they can achieve a marked improvement in both physical strength and endurance. Some have therefore suggested that a pre-enlistment program of remedial training should precede basic training for women identified as lacking endurance and upper-body strength. A remedial program could lessen concerns about the inability of women to carry out the physical tasks associated with combat.

Second, tests to measure physical strength and endurance should be designed to meet combat needs in relation to particular trades or occupations, rather than the needs of the most physically demanding trades and occupations, with the result that fewer women would be excluded on the basis of these physical factors.

Finally, there is a good deal of room to adapt weapons and equipment to the capacities of those handling them. In many countries, the strength and height of combatants is much lower than the international average. Weapons and equipment are often modified and fitted accordingly. In effect, the tools are adjusted to those who use them, not the reverse. Japan and Vietnam have demonstrated that it is possible to devise more manageable weapons and vehicles. As a result, the physical requirements can be reduced, enabling more women to participate.

We do not believe that the Canadian Armed Forces can assume that all women lack the necessary physical capabilities to engage in all combat roles. The Forces must make a serious effort to utilize the best available human resources, male and female.

Absenteeism

According to a U.S. survey, one out of twelve women in the labour force can be expected to be absent from work for 1.3 days a year for reasons associated with menstruation. However, there do not appear to be any decreases in performance levels, while on the job, due to the menstrual cycle. Pregnancy constitutes another reason for absence from work. It is also alleged that, apart from these factors, women lose slightly more time to illness than men. These arguments are counterbalanced to some extent by the fact that women have been far less prone to disciplinary incidents, drug abuse and alcoholism.

Absenteeism hardly makes sense as a reason for excluding women from combat roles given the fact that women are able to perform other responsible functions in the workforce, including non-combat roles in the Armed Forces, without being seriously impeded by so-called 'women's conditions'.

Lack of Privacy

Practical conditions sometimes make it impossible in a combat situation for the Armed Forces to provide separate sanitary facilities, dormitories or barracks for women and men. It has been argued that this results in a lack of privacy and may encourage inappropriate sexual relationships.

This argument appears quite extreme. Instances where some separation of facilities cannot be provided are likely to be exceptional and of relatively limited duration. In any event, lack of privacy in a combat situation is unlikely to be a cause for concern because of everyone's preoccupation with the tasks at hand.

Danger to Cohesion of Military Units

Some commentators have suggested that the presence of women in combat units is likely to impair the camaraderie that is essential to developing a fighting spirit and tradition.

We do not believe that in this enlightened age men would be incapable of trusting and working co-operatively with fellow combatants who happen to be female. There will, of course, be men who cannot make the adjustment initially, but that difficulty can be alleviated by appropriate programs to sensitize service men to the realities of an integrated combat force. In high-stress situations, service men will have to trust service women and they, in turn, will have to earn that trust as they have in similar situations in the past.

When the U.S. Army first integrated black soldiers into previously all-white units it encountered instances of hostility and non-acceptance by white military personnel who would not consider blacks as 'buddies'. These feelings have now largely disappeared.

Exposure to Violence and Danger

It has been said that combat duty is unlike police work, firefighting and other dangerous civilian trades now open to women, where people face extreme danger for relatively short periods and, at the end of the day, resume normal life. In contrast, military personnel in combat can face weeks or even months of constant danger, fatigue, physical deprivation and mental stress, which, it is argued, are likely to take a particularly devasting toll on women. Moreover, it has been suggested that women do not have the 'killer instinct'.

It has also been argued that the increased risk of death, injury, rape and capture to which women would be exposed in combat might lead to a severe deterioration of morale among the civilian population and to a public demand to withdraw women from combat. This, in turn, might cause an unbearable logistical problem and constitute a risk of disintegration of the forces.

In fact, women are exposed daily to violence and danger. Sexual assault, battering, incest and killing unfortunately occur regularly in civilian society. Furthermore, women now occupy jobs where they are exposed to danger alongside men. There are close similarities between military life in high-stress situations and some types of police work in which women are successfully engaged, where potential danger to life and limb is always present and aggressive reactions may be called for. Recent polls indicate that the majority of Canadians supports the integration of women into all military trades and occupations in spite of the exposure to violence and danger.

The full integration of women into the Armed Forces does not preclude the possibility of retaining some special status for women. Any such status, in our view, should not bar women from the training, education and opportunities for promotion linked to the trades and occupations now closed to them or restricted under a quota rule.

Adverse Impact Abroad

There have been suggestions that Allied countries would feel uncomfortable and at risk if women were fully integrated into the Canadian Armed Forces. It has also been argued that potential foes would underestimate the fighting capability and spirit of an integrated defence force, thus diminishing its deterrent effect. Finally, it has been suggested that the civilian population in countries where Canadian forces are deployed might react negatively to the presence of women among our military personnel.

These views are highly speculative at best. At least three NATO countries have already integrated their fighting forces without any apparent ill effect. The use of women in combat has not been taken lightly by opponents, either in World War II or thereafter. Even today, there are regular reports of women playing a deadly role in insurgent forces and terrorist squads that are taken very seriously indeed by the authorities they oppose. As for the deployment of women abroad, this has occurred before without negative comments from host nations. Furthermore, such deployment is within the discretion of the military command, so that there is room to accommodate and respect any particularly strong sensitivities.

Full Integration

Canada is a peace-loving nation that has been involved many times in peace negotiations and peacekeeping operations under United Nations supervision. No Canadian relishes the prospect of war and combat. If, however, it became necessary for Canadians to fight in defence of Canada or pursuant to Canada's international obligations, we feel that women have a right and a duty to share the burden.

29. We recommend that all trades and occupations in the Canadian Armed Forces be open to women.

In making this recommendation, we are aware that very few countries integrate women fully into regular service in peacetime. We believe, however, that Canada should be in the vanguard in promoting full equality for men and women in the armed forces. To take any other position would, in the words of Adelle Karmas, "be offensive to the spirit and letter of a Charter developed for and by Canadians". Furthermore, some of the grounds already mentioned, such as absenteeism, lack of acceptance by male colleagues or lack of physical strength, are not valid grounds because they do not provide a proper basis for *bona fide* occupational requirements for a job.

We conclude that the Canadian Armed Forces must revise its present policy, a process that has begun but is proceeding all too slowly. The bias should always be in favour of introducing, whenever possible, reasonable objective standards that apply equally to men and women and relate to the nature of the various trades and occupations rather than continuing with blanket sex-based exclusions. We would not like to see the process of revision drag on for an extended period and therefore recommend that progress be monitored regularly.

30. We recommend that Canadian Armed Forces practices relating to the employment and promotion of women be monitored by the Canadian Human Rights Commission and that progress in revising policies in the manner we recommend be evaluated by the Commission at regular intervals.

In the past, the Canadian Armed Forces has implemented the official languages policy to ensure that a just proportion of Francophones were members of the Armed Forces. It has made accommodation for the religious needs of Sikhs and Jewish members and has been generally responsive to the need for a fair representation of visible minorities. The Canadian Armed Forces has also attracted women in increasing numbers. We believe that it must now integrate women fully into its ranks. This can be done without compromising the fighting capability of the Forces.

A number of Armed Forces policies that may affect women are dealt with elsewhere in this report, namely the policy in respect of homosexuals (Chapter 4), the policy on the medical testing of recruits and serving members (Chapter 13), and certain policies that limit the activities of the spouses of Forces personnel living on military bases (Chapter 14).

CHAPTER 8

Immigration

"The adoption of the *Canadian Charter of Rights and Freedoms*...has shown the importance of fundamental values to Canadians. It is now established beyond controversy that we are willing in appropriate areas to put them above the wishes of ephemeral majorities and political expediency. With regard to immigration, not only the rights guaranteed by the *Charter* but also section 27 of the *Charter* should be kept in mind:

> **This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canada.**

This may be a mere rule of construction but it is significant. It is an indication that Canada has not repudiated its beginnings as a nation of immigrants and that, whatever the temporary pressures of unemployment, social conditions, or security may be, a generally liberal attitude towards travel by foreigners and towards immigration is an integral part of our tradition and should continue."

—Professor Julius Grey, *Immigration Law in Canada*

Introduction

The *Immigration Act* and the Regulations under that Act provide the framework for Canada's immigration policy. Since the number of prospective immigrants to Canada far exceeds the capacity of the country to absorb additional numbers, the policy is necessarily highly selective. Many people are excluded from admission to Canada on the basis of general distinctions. These distinctions are often drawn with reference to characteristics that are prohibited grounds of discrimination in section 15 of the *Charter*, such as age, marital or family status, and physical or mental condition. Such factors are used as indicators of the likelihood that an individual, if admitted to Canada as a permanent resident, will become self-sufficient or receive adequate support from the family unit to which the immigrant belongs. The distinctions that are made generally appear to be justifiable in the sense of section 1 of the *Charter*. They bear a reasonable relationship to the objective of singling out those best able to adapt to life in Canada.

There are several categories of immigrants for which the requirements for admission to Canada are quite different. These include family class members, independent immigrants, Convention refugees, and members of designated humanitarian classes. In recent years, the proportion of immigrants falling within the family class has increased substantially (to 55% in 1983). The family class covers certain close relatives of Canadian citizens and permanent residents who are willing and able to sponsor the family class member by providing an undertaking of support.

An individual who has been lawfully admitted to Canada, pursuant to an immigrant visa, becomes a 'permanent resident' until that status is relinquished or, after three years of residency and upon application, Canadian citizenship is acquired. A permanent resident is sometimes treated differently from a Canadian citizen under federal law.

Section 15 of the *Charter* prohibits discrimination on the basis of "national or ethnic origin". In keeping with our generous interpretation of section 15, we believe that a law that treats recent immigrants to Canada more harshly than Canadian citizens involves discrimination on the basis of national origin in that it singles out those whose place of origin is other than Canada. Admittedly, not all Canadian citizens have Canadian origins — some are naturalized Canadians. However, the overwhelming majority of citizens consists of people born in Canada, whereas permanent residents were invariably born elsewhere. Consequently a distinction between Canadian citizens and permanent residents can be said to be based on national origin. A distinction between natural-born Canadians and naturalized Canadians would relate, even more clearly, to national origin.

The Canadian Ethnocultural Council has recommended that a comprehensive review of the *Immigration Act* be undertaken, making the necessary changes to sections inconsistent with notions of equality, such changes to include the removal, where possible, of discretionary powers vested in officials. We note that particular aspects of Canadian immigration policy have been subject to recent consideration in the report of W.G. Robinson to the Minister of Employment and Immigration on *Illegal Migrants in Canada* (1983) and the report of Dr. Gunther Plaut on *Refugee Determination in Canada* (1985). Neither of these reports deals directly with the effect of section 15 of the *Charter* on Canadian immigration policy. Now is the time to address that outstanding issue.

The Objectives of Immigration Policy

Section 3 of the *Immigration Act* states that Canadian immigration policy should recognize a number of needs, including a need for standards of admission to Canada that do not discriminate on grounds of race, national or ethnic origin, colour, religion or sex (section 3(f)). Section 15 of the *Charter* introduces additional grounds of discrimination, both explicit and implicit, as limitations on governmental action. We believe that this new reality should be reflected in the stated objectives of Canadian immigration policy.

31. We recommend that section 3(f) of the *Immigration Act* be amended to state, as an objective of Canadian immigration policy, that such policy should ensure that the Act, the Immigration Regulations and immigration guidelines contain standards of admission that do not discriminate in a manner prohibited by the *Canadian Charter of Rights and Freedoms*.

Medical Screening of Immigrants

All potential immigrants to Canada must undergo a medical examination. Those who are found to be suffering from any "disease, disorder, disability or other health impairment" that would likely

- be a danger to public health or safety, or
- place an excessive demand on health or social services

are automatically excluded (section 19(1) of the *Immigration Act*; see also section 22 of the Immigration Regulations). There is a safeguard for the individual applicant in the requirement that there be a second medical opinion that confirms the initial assessment. Medical examinations for immigration purposes are under the control of the Medical Services Branch of the Department of Health and Welfare. The Branch has produced guidelines for medical examiners to follow.

A number of witnesses appearing before the Committee maintained that the second ground for medical disqualification, namely the potential for overburdening the health and social service system, has been unduly restrictive in its application, causing many to be refused admission. Jim Derksen, the National Chairman of the Coalition of Provincial Organizations of the Handicapped, cited the case of Dominique and Maria, who immigrated to Canada from Italy in the late 1960s as newlyweds. Maria would like to bring her father, a talented tailor, to Canada to join her and and her husband in their successful family tailoring business. But the father has been denied admission because he is an epileptic. Mr. Derksen asks:

> What just reason prevents this father and grandfather, who happens to be a disabled person, from coming to Canada? Why cannot this family be admitted like countless other immigrant families?

Kenneth Zaifman, chairman of the Immigration Section of the Canadian Bar Association, referred us to the case of a Vietnamese refugee family in Canada. They wish to sponsor their mother left in Vietnam. Because of the situation there, she has contracted tuberculosis. Immigration officials advised that her admission would be considered if provincial authorities were agreeable. Those authorities would approve, however, only if a $40,000 bond were posted. The family could not afford the bond, and the application was refused.

Barbara Jackman, an immigration lawyer, related a third case to the Committee. Three brothers who left Vietnam as boat people applied to sponsor the members of their family who remain in Vietnam. Those family members have obtained exit visas in Vietnam and consequently are 'non-persons' in that country with no future there. One child in the family is deaf and has therefore been refused admission to Canada on medical grounds. Ms. Jackman concluded:

> I do not think, in the first place, that it should be grounds for refusal of an application that the child is deaf. In any event what they did not look at was the fact that this is a refugee family, in effect. They cannot go back to Vietnam to visit their family. Because the child is deaf, they said the family cannot come to Canada.

We also learned that some forms of mental disability, such as Down's syndrome, are bound to lead to rejection on medical grounds, notwithstanding a family's commitment to look after a child affected by such a condition. If one child in a family has Down's Syndrome the whole family is effectively excluded unless the child is left behind.

We believe that in marginal cases admission to Canada should be allowed if a family assumes responsibility for supporting a family member with a medical condition requiring some continuous care. The present sponsorship rules do not allow several family members in Canada to join in a common undertaking of support to satisfy the applicable financial criteria when no one family member could satisfy the criteria alone. We believe that the broader base of family support should be taken into account, not only when a family class member is disabled but in any other case as well.

We have concluded that the medical standards for admission to Canada should be reviewed to determine how they can be relaxed or made more flexible. The guidelines used by medical officers should be made public so that it is quite clear what the detailed medical standards are. We believe that the medical assessment should be less rigorous in family class situations and in relation to accompanying dependents of family class members, Convention refugees and other humanitarian classes of immigrants. In the first case, family unification considerations are important; in the second case, an excluded individual with a medical problem is likely to be cut off from any support network.

32. We recommend that the medical standards for admission to Canada, applied pursuant to the *Immigration Act*, be made public and be reviewed and modified in order that they be more flexible in their application.

Permanent Residents as Family Class Sponsors

A Canadian citizen or a permanent resident can serve as the sponsor of a family class member. However, if the family class member is a mother or father there are limitations on the sponsorship rights of a permanent resident that do not apply if the sponsor is a Canadian citizen. A Canadian can sponsor a parent without qualification; a permanent resident can only sponsor a parent who is over 60 or who, if under 60, is widowed or incapable of working (sections 4 and 5 of the Immigration Regulations).

The Department of Employment and Immigration has indicated that the rationale for the distinction is that those individuals who have taken out citizenship have demonstrated a firmer attachment to Canada and are therefore likely to be better able to provide support to a parent. For most permanent residents, acquiring Canadian citizenship is simply a matter of time. Citizenship may be applied for after three years as a permanent resident. But some individuals may not become Canadian citizens after three years because of personal circumstances that have nothing to do with their attachment to Canada — for example, property and inheritance rights in their country of origin may be seriously jeopardized if they become Canadian citizens. We believe, therefore, that a permanent resident who is eligible for citizenship should not be disadvantaged because of failure to become a Canadian citizen. On the other hand, some minimum period of residence in Canada would appear to be a justifiable requirement for sponsoring a dependent parent, because a sponsor should be reasonably well settled in Canada to be in a position to provide the necessary support.

33. We recommend that the Immigration Regulations be amended so that a permanent resident who has been in Canada for at least 3 years is entitled to sponsor a parent without regard to the age, ability to work, or marital status of that parent, as is the case if the sponsor of a parent is a Canadian citizen.

The *Immigration Act* also differentiates between Canadian citizens and permanent residents who have sponsored an application for admission in relation to their rights if

the application is refused. A Canadian citizen can appeal a refusal to the Immigration Appeal Board but a permanent resident has no such right (section 79(2) of the Act). We note with approval that Bill C-55, now before Parliament, would remove this distinction and give permanent residents the right to appeal a refusal of a sponsored application. This amendment, if passed, will have retroactive effect to April 17, 1985, the date section 15 of the *Charter* came into force.

Permanent Residents and Assisted Relatives

An independent immigrant must qualify for admission to Canada on the basis of an approved job offer and the accumulation of 50 points under a point system that takes account of factors such as age, education, occupational experience, occupational demand and language ability. In the event that an applicant falls short of the 50-point requirement, the application can be reassessed in accordance with a less rigorous standard if it is entitled to be treated as an "assisted relative" application. An assisted relative is an individual who does not fall within the family class but has the benefit of an undertaking of support from a relative in Canada.

The benefit conferred on an applicant by an undertaking of support varies according to whether the person giving the undertaking is a Canadian citizen or a permanent resident. If a Canadian citizen is involved, the point requirement is reduced (from 50 to 20 or 30, depending on the relationship) by 5 more points than is the case if a permanent resident is involved (section 10(1)(b) of the Immigration Regulations). Thus the threshold for admission is lower for an assisted relative with an undertaking of support from a Canadian citizen than it is for an assisted relative with an undertaking of support from a permanent resident.

We believe that it is reasonable, in this situation, to distinguish between undertakings of support given by recent arrivals in Canada, who may be preoccupied with their own settlement in a new country, and those given by individuals who have been resident for some time. However, for the reasons indicated earlier in this chapter, the distinction should not be made simply between Canadian citizens and permanent residents, because members of those groups may have widely differing periods of residence in Canada. Since it takes 3 years for a permanent resident to become a Canadian citizen, it makes sense to treat undertakings of support given by those who are Canadian citizens and those who have had the status of permanent resident for at least 3 years on the same basis.

34. We recommend that the Immigration Regulations be amended so that an undertaking of support given by a permanent resident who has been in Canada for at least 3 years confers the same benefit on an "assisted relative" seeking admission to Canada as an undertaking of support given by a Canadian citizen.

The Admission of Common Law Spouses

Under the current immigration rules a common law spouse cannot be admitted to Canada as an accompanying dependent of an individual who has been granted an immigrant visa. Likewise, a Canadian citizen or permanent resident in Canada cannot sponsor a common law spouse as a family class member. The only situation in which a common law spouse can be sponsored is in the exceptional event that the spouse is a fiancé(e). To qualify as such there must be a *bona fide* engagement, no legal impediment to marriage and an agreement to marry within 90 days of admission to

Canada (section 4(1) of the Immigration Regulations). Once again, while the restrictions primarily affect prospective immigrants, they have a serious impact on Canadian citizens and permanent residents who wish to act as sponsors.

We have taken the position that section 15 of the *Charter* protects spouses, including common law spouses, from discrimination on the basis of their marital status (see Chapter 5). Accordingly, we believe that common law spouses in Canada should be able to sponsor their partners for admission to Canada. To be consistent, the *Immigration Act* and Regulations should also recognize a common law relationship as qualifying an individual as an accompanying dependent of an immigrant. We would suggest that, for immigration purposes, the standard definition of a common law relationship, which we proposed in Chapter 5, be applied. That is, the parties must be of the opposite sex, have resided together continuously for at least one year and have represented themselves publicly as husband and wife.

We recognize that there will have to be clear and fairly stringent rules for establishing the existence of a common law relationship. We cannot ignore the fact that, without such rules, the possibility of abuse of the immigration selection system is apt to increase, because we are proposing to recognize relationships that are not verifiable by an official document, such as a marriage, birth or adoption certificate. We suggest that it may be appropriate to reserve some authority to question the *bona fides* of a common law relationship. This does not mean, however, that we necessarily endorse the present system of screening out marriages of convenience entered into to secure admission to Canada.

35. We recommend that common law relationships be recognized, under the Immigration Regulations, for immigration purposes, so that a party to such a relationship may be admitted to Canada as an accompanying dependent of his or her common law spouse or may be sponsored for admission to Canada by his or her common law spouse. (For these purposes the definition of a common law spouse would be that set out in Recommendation 17.)

Adoptions

Under the Immigration Regulations, an adopted child qualifies as a dependent, who can accompany his or her parents to Canada upon their admission as permanent residents, only if that child was adopted before the age of 13. A similar limitation applies in the case of the sponsorship from Canada of an adopted child by a Canadian citizen or a permanent resident. A child under 13 may also be sponsored, in certain circumstances, if there is an intention to adopt that child (section 4(1) of the Immigration Regulations).

The rationale for excluding adopted children on the basis of this age factor is apparently to catch adoptions of convenience of older children. Such an adoption might be carried out simply to secure admission to Canada; there would be no real assumption of family support because the child is, or will soon be, self-sufficient. However the effect of the rule is that a child adopted after reaching age 13 will be unable to join or accompany the very individuals who are likely to have the obligation in law to support that child, that is, the child's parents.

We would point out that the adoption of an adult will not assist the adult in coming to Canada, because a son or daughter will qualify as a dependent or for family

class sponsorship only if under 21 at the time of application and under 23 at the date of admission to Canada. We believe that 21 can be justified as the age at which dependency can reasonably be taken to terminate for immigration purposes. It is obvious that there must be some cut-off if the number of individuals claiming dependency for immigration purposes is to be kept within manageable and realistic limits.

36. We recommend that the Immigration Regulations be amended so that a legally adopted child is treated in the same way as a natural child and can, therefore, accompany a parent or parents immigrating to Canada or join a parent or parents already in Canada as a family class member, notwithstanding the age at which the child was adopted.

This recommendation does not cover the sponsorship of children for the purpose of subsequent adoption in Canada; we believe that situation raises different considerations. In that case there is no existing family relationship between the sponsor and the individual being sponsored. We have not determined whether the age of 13 should continue as the upper limit for sponsorship for subsequent adoption and, if not, what the age should be.

The Processing of Immigration Applications

A number of witnesses drew our attention to the fact that there are significant geographic variations in the processing time involved in applications for permanent residence. An application from a country such as India or the Phillipines may take several years, whereas the processing time for an application from the United States is likely to be a matter of a few months. In each of India and the Phillipines there is apparently one visa office while there are 12 such offices in the United States. It was argued that the current distribution of visa offices involves a form of systemic discrimination, on the basis of national or ethnic origin, against those in certain third world countries and against their would-be sponsors in Canada.

Factors other than the placement of visa offices may help to explain the comparative backlog in third world countries; for example, applicants may encounter delays in obtaining required documentation from their governments. We cannot say for certain that the distribution of visa offices is responsible for the relatively long processing time in many parts of the world. We believe, however, that the Canadian government should be sensitive to the criticism that its immigration resources are not deployed in a manner that is responsive to the needs of prospective immigrants, particularly those in the family class who are intended to have priority. Whatever the cause, the present situation should be reviewed to determine what can be done to accelerate the processing of family class applications from third world countries. Immigration officers posted outside Canada are now part of the Department of External Affairs establishment. We note that this has apparently caused some inefficiencies in the operation of Canadian visa offices.

The Sponsored Wife

Two Toronto-based groups, the Charter of Rights Education Fund and Women Working with Immigrant Women, drew the Committee's attention to the fact that immigrant women are often subject to intimidation by their husbands who have sponsored their admission to Canada. Their vulnerability is the result, at least in part,

of a general lack of understanding of the immigration process. In particular, there is often a fear that their status as permanent residents could be jeopardized if the sponsor's undertaking of support were withdrawn, which is not the case. Clearly, more information needs to be provided to immigrant women so that they are aware of their rights as permanent residents.

We were also advised that under some provincial social assistance programs a sponsored wife is not eligible for help until Employment and Immigration Canada first certifies in writing that there has been a "sponsorship breakdown" to the extent that the wife can no longer rely on the support of her husband. This is a significant barrier to obtaining early assistance when the husband cannot be located, in which case Employment and Immigration Canada is reluctant to give the certificate. We believe that spousal undertakings of support should be enforced more aggressively by Employment and Immigration Canada so that the need for reliance on social assistance by a sponsored immigrant is reduced.

Finally, the Committee was told that those immigrant women who are not independent immigrants are classified as "not bound for the labour market" and, consequently, are not eligible for subsidized language training programs. As a result they find it difficult to gain language skills sufficient to enable them to participate in the mainstream of Canadian society and, in particular, in job skills programs. The fact is that many women who accompany their husbands to Canada will eventually move into the labour market.

37. We recommend that the federal government make provision for instruction in one of the official languages to all immigrants, regardless of sex, marital or family status, dependency or length of time in Canada.

Permanent Residents and Public Service Competitions

In any open competition for public service positions pursuant to the *Public Service Employment Act*, preference must be given first to war veterans and second to Canadian citizens. In the result, permanent residents do not enjoy the same opportunities as Canadian citizens to obtain public service appointments.

We believe that this represents a form of discrimination, on the basis of national origin, that offends section 15 of the *Charter*. Such a preference may encourage permanent residents to follow the desirable course of taking out Canadian citizenship as soon as they are able to do so. However, the failure to become a Canadian citizen should not be taken as a mark of lack of commitment to this country. As we pointed out earlier, the rights of some individuals may be severely prejudiced, if they become Canadian citizens, as a result of foreign laws. We believe it is unfair to favour Canadian citizens over permanent residents who are eligible for Canadian citizenship but have not yet taken that step.

We are unable to find any justification for a preference for Canadian citizens over permanent residents of less than 3 years' standing so far as public service employment is concerned. Canadian citizenship is not a condition of employment in the public service. Therefore the citizenship factor cannot be a *bona fide* occupational qualification in the sense of the *Canadian Human Rights Act*. Nor do we believe that it can be demonstrably justified as a reasonable limit, in the sense of section 1 of the *Charter*, on freedom from discrimination on the basis of national origin.

38. We recommend that the general preference in favour of Canadian citizens in job competitions in the public service, pursuant to the *Public Service Employment Act*, be eliminated so that permanent residents may compete for public service jobs on an equal footing with Canadian citizens.

CHAPTER 9

Religious Observance

"[F]reedom of religion includes the right to observe the essential practices demanded by the tenets of one's religion and, in determining what those essential practices are in any given case, the analysis must proceed not from the majority's perspective of the concept of religion but in terms of the role that the practices and beliefs assume in the religion of the individual or group concerned.

Section 27 [of the *Charter*] determines that ours will be an open and pluralistic society which must accommodate the small inconveniences that might occur where different religious practices are recognized as permissible exceptions to otherwise justifiable homogeneous requirements."

—Mr. Justice Walter Tarnopolsky in giving the judgment of the Ontario Court of Appeal in *R* v. *Videoflicks* (1984)

Introduction

Canada became a signatory of the International Covenant on Civil and Political Rights in 1976. Article 18 of the Covenant enunciates the right to freedom of religion or conscience and the right to manifest that belief or religion in worship, observance, practice and teaching. Canada has thus assumed an international obligation to accommodate religious observances and practices. The enactment of the *Canadian Charter of Rights and Freedoms* was part of Canada's fulfilment of its obligations under the Covenant.

The preamble to the *Charter* states that Canada is founded upon principles that recognize the supremacy of God. Although that statement has no binding effect, it does provide a guide to interpreting the provisions that follow. In fact, the preamble echoes throughout the *Charter* — section 2 guarantees freedom of religion, section 15 prohibits discrimination based on religion, and section 29 guarantees the status of certain religious schools. (Unlike the U.S. Constitution, the *Charter* does not require a

separation between church and state.) Section 27 provides that the *Charter* is to be interpreted in a manner that is consistent with the preservation and enhancement of Canada's multicultural heritage. Religious practice and observance often form an important part of the ethnic heritages of Canadians.

Reading all these provisions of the *Charter* together, we conclude not only that religion is to be accorded a special place in Canada but also that no particular creed or belief is to be given treatment that is less advantageous than that given another.

This interpretation of the *Charter* does not mean that there is no flexibility or room for manoeuvre in this area. Section 15 guarantees the equal benefit of the law to all without discrimination on the basis of religion. As a constitutional document subject to a generous interpretation, the *Charter* is aimed at remedying laws and practices that have the effect of frustrating the free observance of religion and its practices. The guarantee of section 15 is not absolute, however. It is subject to reasonable limits. Hence there is room for flexibility such as is involved in the notion of reasonable accommodation, about which we will say more later in this chapter.

Some Religious Practices

A number of religions involve observances and practices that differ from those of the majority of Canadians. They include religious days of rest, other days of religious observance, prayer breaks and dress requirements. Because our laws and practices were formulated in large part with only the Christian religion in mind, they make it difficult for those who adhere to other religions to observe their own creeds without some disadvantage. A number of religious observances and practices are often not fully accommodated.

For example, members of the Muslim and Jewish faiths and of the Seventh Day Adventist Church and the Worldwide Church of God observe a day other than Sunday as their required day of rest. Adherents of the following religions have days of religious observance, in addition to a weekly Sabbath, at times different from those of the Christian religion: Sikhism (5 days), Judaism (5 days) and Worldwide Church of God (12 days). Muslims pray 5 times daily for 10 minutes each time — 2 of the prayers are during the normal workday. Baptized members of the Sikh faith are required to wear 5 emblems: Kanga (comb), Kara (bracelet), Kach (undershorts), Kesh (turban) and Kirpan (dagger).

Reasonable Accommodation

The concept of reasonable accommodation developed first in the United States and has been applied in a number of cases by human rights tribunals in Canada. It imposes a duty on an employer to take reasonable steps to accommodate the known physical or mental limitations or the religious beliefs of an employee. The duty imposed on the employer is balanced by the requirement that the accommodation not impose undue hardship on the employer. The concept has sometimes been applied outside the employment context in relation to the provision of goods and services.

In the United States, Title VII of the *Civil Rights Act* makes it unlawful for an employer to refuse to hire, to discharge or to discriminate with respect to compensation or terms, conditions or privileges of employment on the basis of religion, among other grounds. The Act defines religion as including all aspects of religious observance and

practice and imposes a duty of reasonably accommodating this observance and practice unless the employer can demonstrate that such accommodation will cause undue hardship to the business.

In 1978, after a series of hearings, the Equal Employment Opportunities Commission, which has responsibility for the *Civil Rights Act*, identified the following examples of religious observance and practice that may have to be accommodated: observing a Sabbath or religious holidays, taking prayer breaks during the workday, adhering to certain dietary rules, refraining from work during a mourning period for a deceased relative, declining to undergo medical examinations, and following certain dress requirements and grooming habits.

The Commission adopted guidelines in 1980 setting out the techniques by which reasonable accommodation of religious observance and practices might be accomplished. One of these techniques is voluntary substitution or job swapping. An employee who has to be absent on a normal workday for religious reasons could be permitted to find a co-worker who is able to act as a replacement during the absence. Another means of reasonable accommodation set out in the guidelines is the adoption of flexible scheduling by the employer. Some examples are flexible arrival and departure times, floating or optional holidays, flexible work breaks, work during lunch time in exchange for early departure, staggered work hours, and permitting an employee to make up time lost due to religious observance. The final accommodation technique is lateral transfer or a change of job assignments. Employees could be assigned to other jobs where their religious observance could be accommodated if their present jobs made accommodation impractical.

The Commission's guidelines are qualified by the concept of undue hardship. If any of the accommodation techniques causes undue hardship to the employer, the employer is relieved of the duty to accommodate. Undue hardship arises when reasonable accommodation of religious observance imposes extra costs on the employer and disrupts business. The size and nature of the business and the number of employees involved are taken into account in determining whether reasonable accommodation imposes an undue hardship on an employer.

The *Canadian Human Rights Act* does not have a specific provision requiring reasonable accommodation, but section 14(a) sets out the *bona fide* occupational requirement defence to a complaint of discrimination. In its 1982 *Bona Fide* Occupational Requirements Guidelines, which are now in force, the Commission deals with religious belief as follows:

> Where an employer finds that he or she cannot make reasonable accommodation in order to offer an employment opportunity to a person on the basis of that person's religion the employer shall, before he or she refuses such employment opportunity based on a *bona fide* occupational requirement, support his or her findings based on evidence that to make an accommodation would impose an undue hardship involving either financial cost or business inconvenience to the employer.

The Commission has used the *Bona Fide* Occupational Requirements Guidelines in an attempt to import reasonable accommodation into the Act. The guidelines, insofar as they relate to religious observance, are terse and lacking in detail. Recognizing this, the Commission issued an Interim Policy on *Bona Fide* Occupational Requirements in February 1985 and has been conducting consultations on it. The Interim Policy sets out criteria for the avoidance of discriminatory effects — in essence, reasonable accommodation, although this phrase and the undue hardship terminology are not used.

The Interim Policy requires an employee to convey to the employer the need for accommodation and allows the employer to verify that need. Once the need has been identified and verified, the employer has a duty to take reasonable steps to avoid the discriminatory effect of established policies and practices. The Interim Policy indicates that the duty to avoid the discriminatory effect of an established policy or practice may be limited when such avoidance would

- alter the fundamental nature of the job in question;
- make unreasonable demands on co-workers;
- cause significant organizational inconvenience to the employer; or
- cause a significant loss in the employer's capacity to earn revenues.

There are a number of practical things an employer can do to accommodate the religious observances of its employees. Those whose Sabbath is on Saturday and begins on the preceding evening can be allowed to leave work early on Friday during the winter months when the sun sets at an earlier hour. To ensure that no work time is lost, employees could begin the workday earlier on Friday, work through the lunch hour or make up the time on another day of the week. Employees who need prayer breaks during the day could be allowed to take coffee and lunch breaks at flexible times to accommodate this practice. When an employee has a day of religious observance that does not coincide with a statutory holiday, the employer could allow the employee to work a different shift or work longer days at other times to make up for lost worktime. These options for accommodating religious observance or practices will not usually be disruptive or expensive to implement.

The concept of reasonable accommodation was recommended to us as the most appropriate approach to the goal of fully respecting religious observance by such witnesses as the Canadian Council of Christians and Jews (Atlantic Region), the Canadian Ethnocultural Council, the Seventh Day Adventist Church of Canada, and the League for Human Rights of B'nai B'rith. The Canadian Ethnocultural Council told us in its brief that the concept of reasonable accommodation can be used as a key to unlock present-day barriers and thereby achieve the goal of true multiculturalism expressed in the *Charter*.

We believe that the concept of reasonable accommodation should be the guiding principle in ensuring that laws, regulations, policies and practices do not inadvertently have the effect of frustrating religious observance. Reasonable accommodation requires flexibility on the part of both the employer and the employee. The employee must indicate his or her needs and, often, must adapt to compensating changes in the work pattern. The employer must make a goodwill attempt at accommodation to the employee's needs and should invoke a claim to undue hardship only when the necessary accommodation would be truly disruptive of the business. Elsewhere in this report the Committee recommends that the *Canadian Human Rights Act* be amended to include a requirement of reasonable accommodation on the part of employers subject to that Act (Chapter 15).

Statutory Holidays

Earlier in this chapter we noted that the members of several religions observe religious holidays that do not always coincide with statutory holidays. Provision is made for statutory holidays in the *Canada Labour Code* and the Public Service Terms and Conditions of Employment Regulations.

Under the *Canada Labour Code*, employees are entitled to the following general holidays with pay: New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day.

A collective agreement may, upon notification to the Minister of Labour, designate days other than those listed above as general holidays (section 51(1)(a)). When there is no collective agreement the employer may apply on behalf of the majority of employees to the Minister of Labour for permission to designate days other than those listed above as general holidays (section 51(1)(b)).

Under section 11 of the Public Service Terms and Conditions of Employment Regulations, employees are entitled to the following holidays with pay: New Year's Day, Good Friday, Easter Monday, Victoria Day, Dominion Day, Labour Day, Thanksgiving, Remembrance Day, Christmas Day and a recognized provincial or civic holiday. The Public Service Terms and Conditions of Employment Regulations do not provide for the designation of alternative holidays.

Although the *Canada Labour Code* allows the designation of holidays other than those set out in the legislation, it appears that this provision is used in very few instances. Even when it is used, it is through the collective bargaining process that other holidays can be had; if there is no collective agreement, the majority of employees have to agree to a departure from the standard holidays. Since those who require accommodation of their religious observances may represent only a small proportion of those working for a particular employer, their interests might not be taken into account.

Some of the statutory holidays set out in the *Canada Labour Code* and the Public Service Terms and Conditions of Employment Regulations are of religious significance to Christians. Because these are statutory in nature they are generally observed by Christians and non-Christians alike in the sense that they are non-working days for both. Those whose days of religious observance fall on days other than statutory holidays usually have to work on those religious days, use vacation time or take time off without pay, if permitted to do so, to observe the occasion.

The recognition of certain days as statutory holidays, for which employees are paid although they do not work, constitutes the conferral of a benefit. When such a benefit is granted to the adherents of one religion but not another, there is a denial of equal benefit of the law in violation of section 15 of the *Charter*. The effect of the *Canada Labour Code* and Public Service Terms and Conditions of Employment Regulations is to deny to those whose days of religious observance fall on other than statutory holidays the equal benefit of the law.

We believe that the laws and policies on statutory holidays must be changed to permit reasonable accommodation of freedom of conscience and religious belief. This must be done in such a way as to enhance the multicultural and pluralistic nature of Canada while at the same time not disrupting business activity unduly.

An example of a reasonable accommodation of religious diversity is the Canadian Armed Forces Leave Policy. It provides for two days of special leave during the Christmas season over and above the normal statutory holidays granted at that time. Members of other religions who do not take these two days of special leave can be granted another two days to observe their own comparable religious holidays. A commanding officer can also grant short leave of 48 hours in each month for the fulfilment of religious obligations, among other purposes.

The *Canada Labour Code* and the Public Service Terms and Conditions of Employment Regulations should be amended to be consistent with the *Charter*. Days of religious observance should be reasonably accommodated without undue hardship on the employer. We believe that the Act and Regulations must be amended to allow for a certain number of determinate statutory holidays to be taken by all employees and a certain number of floating statutory holidays to be taken as elected by an employee upon being employed. This recommendation would provide both a stable environment in which an employer can run a business and plan activities effectively and an option for employees who want to observe religious holidays.

39. We recommend that the *Canada Labour Code* and the federal Public Service Terms and Conditions of Employment Regulations be amended so that there is provision for a determinate number of statutory holidays to be taken by all employees and a number of floating statutory holidays that an employee may elect, upon being employed, in accordance with his or her religious observance requirements or personal beliefs.

Day of Rest Legislation

The *Lord's Day Act* has been on the federal statute books for almost 80 years. It was adopted by Parliament in 1906 after a decision of the Judicial Committee of the Privy Council concluding that the determination of a religious day of rest was within the criminal law jurisdiction of Parliament. The Act prohibited the carrying out of numerous business and entertainment activities on Sunday unless they were permitted by provincial legislation.

The *Lord's Day Act* survived numerous constitutional challenges. It also survived a challenge under the *Canadian Bill of Rights*. In April 1985 the Supreme Court of Canada, in the *Big M Drug Mart* case, ruled the *Lord's Day Act* to be of no force and effect because its purpose was inconsistent with the guarantee of freedom of religion in the *Charter*. Chief Justice Dickson indicated in his judgment that legislation such as the *Lord's Day Act*, which gives a special place to one religion over others, is not acceptable in a multicultural society. He wrote that Parliament could continue to legislate in the area of religious days of rest under its criminal law power but that such legislation would have to be drafted so as not to favour one religious group over another.

Members of the religions that observe a day other than Sunday as their religious day of rest are at a disadvantage when day of rest legislation designates Sunday. Although Parliament retains jurisdiction to legislate in relation to religious days of rest, we believe it is inappropriate to do so. Any legislation requiring the observance of a weekly day of rest should be on a secular basis. In that event, Parliament would not have jurisdiction to impose requirements; the provincial legislatures would.

We believe that weekly days of rest should continue to be covered by provincial hours of business and employment standards legislation. Any such legislation should ensure that those who observe a Sabbath other than Sunday are not treated any differently from those who observe Sunday as their day of rest. Such legislation should also be consistent throughout the country.

40. We recommend that the Minister of Justice refer to the Uniform Law Conference of Canada and to provincial ministers responsible for human rights the consideration of amendments to provincial hours of business and employment standards legislation to provide for days of rest that respect freedom of conscience and religious belief on a consistent basis.

CHAPTER 10

Access by the Physically Disabled

"Disabled persons...see the things which money is available for and understand very clearly that the question is one of priorities, not dollars. When one group is consistently overlooked as a priority, that message is very clear as well. The Charter of Rights and Freedoms, combined with a number of new initiatives, could make Canada the paragon of integration in the modern world. The failure to make the most of the opportunity will demean all of us."

—John Hochstadt, P.E.I. Council of the Disabled, in testimony before the Committee at its Charlottetown hearing

Introduction

The vision of the International Year of the Disabled (1981), following the adoption of the 1973 United Nations Declaration on the Rights of Disabled Persons, was no less than "full participation and equality" by disabled people and the elimination of the barriers they face. In keeping with that objective, disability was included as a prohibited ground of discrimination in the *Canadian Charter of Rights and Freedoms* and in the *Canadian Human Rights Act*. The provinces have all given statutory recognition to the rights of the disabled, limiting that protection, in some cases, to those whose disability is physical.

'Disability' is a relative term. Everyone is disabled in some particular area or to some extent. Disability can be defined as any level of ability to perform a particular function that falls below the range considered to be normal or necessary. For example, a person with 20% vision is not considered blind but would probably not be allowed to get a driver's licence. Someone who has adequate vision to drive a car might be unable to meet the visual acuity standards for piloting an aircraft.

Because there are several definitions of what constitutes disability, there are few if any reliable statistics on the percentage of disabled people in the Canadian population.

Transport Canada has stated that one Canadian in ten is disabled for transportation purposes, but this includes the elderly and the temporarily disabled — pregnant women, people with injuries and so on. A 5% figure is probably closer to reality. The 1986 census will include a question allowing people to identify themselves as disabled. But self-identification often leads to under-representation, because many people may not admit, or even believe, that they are disabled.

The Committee received representations from private organizations and groups representing physically disabled Canadians. The Canadian National Institute for the Blind, the Canadian Coordinating Council on Deafness, the Advocacy Research Centre for the Handicapped, the Canadian Paraplegic Association, the Coalition of Provincial Organizations of the Handicapped, and the Canadian Association of the Deaf, among other organizations, appeared before the Committee. The Committee also heard representations from government-directed or -appointed bodies such as the Secretariat for the Status of Disabled Persons of the Department of the Secretary of State and the Advisory Committee on Employment of Disabled Persons in the Public Service.

In the federal sector, the most important equality concerns of disabled people relate to access to employment opportunities and to facilities and services of one kind or another. In this chapter, we deal with access to facilities and services by physically disabled Canadians. We address barriers to employment in a separate chapter on employment equity (Chapter 13). We deal with the inequalities that particularly affect mentally disabled people in Chapter 11 and with disability as a ground for excluding potential immigrants to Canada in Chapter 8.

The Right of Equal Access to Facilities and Services

The inclusion of disability among the prohibited grounds of discrimination in section 15 of the *Charter* aims at alleviating the effects of prejudice that disabled Canadians now encounter. Equal benefit of the law also requires, however, that disabled persons have reasonable access to services and facilities offered or regulated by the government of Canada and provincial governments.

The case of *Huck* v. *Canadian Odeon Theatres* (Court of Appeal of Saskatchewan, March 1985) illustrates this right to reasonable access. Mr. Huck, a wheelchair user, went to a theatre to watch a movie. He was offered a seat, which he declined because he couldn't leave his wheelchair. He was then offered a space, in front of the first row of seats, from which to watch the movie, an offer he refused. Subsequently, Mr. Huck took action against the owner of the theatre. The Court of Appeal held that the service being offered to the public was a movie and a place, whether a seat or a space to place a wheelchair, from which to view the movie. The place in front of the first row was not an adequate place for these purposes. The court stated that "a physically reliant person does not...acquire an equal opportunity to utilize facilities or services which are of no use to him or her. *Identical treatment does not necessarily mean equal treatment or lack of discrimination*" (our emphasis).

Although this case was decided under provincial human rights legislation, the same principle applies for section 15 purposes. The right of equal access to public services and facilities means that disabled people are entitled to special treatment if that is what is required to produce genuine equality. Paternalistic attitudes and regulations preventing disabled people from travelling independently must be set aside. There will be situations where the personal safety of the disabled traveller or user of facilities and

services is at some risk. As long as the disabled individual does not endanger the personal safety of others, he or she should be allowed the dignity of risk.

Until fairly recently, public buildings, transportation terminals, trains, buses, ships and aircraft were virtually inaccessible to many disabled people with restricted mobility. Telephone, radio and television services were not adapted to the needs of the hearing impaired, effectively barring them from the use and enjoyment of these means of communication. While this situation has begun to change, many obstacles in the way of disabled Canadians remain to be surmounted.

The lack of access to facilities and services experienced by disabled people can have serious economic and psychological consequences. It may effectively foreclose job opportunities and deny the dignity and sense of worth that comes from being a self-supporting member of society. Yet there are ways of eliminating, or making it easier to cope with, most of these barriers.

The *Obstacles* Report and its Aftermath

Parliament appointed a Special Committee on the Disabled and the Handicapped in 1980. In its report, entitled *Obstacles*, the Committee identified many impediments to full participation by disabled Canadians in the life of this country. It made extensive recommendations to alleviate the special burdens on disabled people. Many of the recommendations have been adopted, but others remain in limbo or, at best, "under study".

We reviewed the current status of the implementation of this important report in the area of access to facilities and services. For that purpose, we used the substantial amount of information provided to us through the written and oral submissions of many organizations, as well the follow-up report to *Obstacles* and a number of government publications.

Access to Transportation

One of the main recommendations of the *Obstacles* report (Recommendation No. 84) was that major transportation terminals be equipped for the special needs of disabled people. The report emphasized the need to publish a plan of action and a time-frame for achieving reasonable access to transportation terminals.

The majority of air terminals have received funds to provide basic access to disabled people using wheelchairs. VIA Rail has developed a 7-year plan to provide access to its stations. Transport Canada has completed an accessibility survey of some bus terminals. Finally, a National Policy on Transportation of the Disabled was adopted in 1983. The policy sets out the government's intention to ensure that safe, reliable and equitable services are available to disabled people on all modes of transportation under federal jurisdiction. Draft accessibility standards have also been developed for most types of transportation facilities.

However, many terminals are still not fully equipped to meet the needs of disabled people. Communication techniques for the visual, hearing and speech impaired are to be introduced at air terminals in the near future. Spare wheelchairs and batteries are not yet available at many terminals and stations. No schedule of modifications to existing facilities to accommodate disabled people has been published. Progress remains

slow, and even new facilities do not always fully meet the real needs of disabled people. The government has recently announced its intention to transfer airport administration to local authorities, a step that may make it more difficult in the future for federal authorities to control the accessibility of these facilities.

The *Obstacles* report also recommended (No. 83) that a federal policy of "reasonable access" be established to meet the objectives of standardizing tariffs and procedures applicable to those with certain disabilities. Except for some real progress made by VIA Rail, disabled people are still meeting resistance from the transportation industry. There appears to have been a lack of determination by Transport Canada and the Canadian Transport Commission to use their considerable statutory powers in this regard.

Obstacles also recommended that all government-funded transport equipment be accessible to disabled people (No. 85). This recommendation has not yet been fully implemented. VIA Rail has, however, ensured that its new light railway cars provide special amenities for disabled passengers. Some improvements have been made in the road cruiser buses serving Newfoundland (Recommendation No. 86). Recommendation No. 87, that the purchase of accessible buses be exempted from federal sales tax, has been implemented. The relevant exemption covers parts and equipment as well as vehicles.

Recommendation No. 88 concerned the needs of disabled people for assistance while travelling. In particular, the report recommended that

- the government, through the Minister of Transport, require that air carriers adopt a policy of accepting the disabled traveller's estimate of his or her self-reliance without medical certificates or waivers of disability;
- where necessary, boarding assistance be provided by carriers;
- where an attendant is required to care for the personal needs of a disabled traveller, the attendant will travel free; and
- where more than one seat is required for the transport of a disabled person for various reasons arising from his or her disability, only one fare will be charged for that traveller.

The claim for autonomy in making travel decisions was expressed by one witness, Pat Danforth of the Saskatchewan Voice of the Handicapped, in the following terms:

> As disabled people, we know our strengths and limitations. Allow us the dignity to determine if we are able to travel unattended.

Another witness, Patricia Stobbs of the Advisory Committee to the President of the Treasury Board on Employment of Disabled Persons in the Public Service, noted that self-sufficient and experienced disabled air travellers are still told by ticket agents that they must have an able-bodied attendant with them. Recently, a woman who relies on a wheelchair, and who has been flying alone since 1953 without objections, was not allowed to board an Air Canada flight because she did not have an attendant.

Some Canadian airlines have volunteered a 50% reduction on the attendant's fare, but this falls short of the *Obstacles* recommendation, which we endorse. Some other accommodations for the disabled flyer have been made, but regulations are required to ensure that such action is universal and will become permanent.

We believe that disabled Canadians are entitled to be treated with the same respect and consideration that other passengers receive and to receive services customarily available to the general public, even if it is at some extra expense and inconvenience to the carrier.

Access to Buildings

Several recommendations of the *Obstacles* report dealt with access to buildings and parking spaces. The report recommended that Parliament Hill be made completely accessible (No. 77) and that all public buildings meet accessibility standards (No. 78). A 1983 deadline was suggested for retrofitting all existing federal buildings to conform with accessibility standards (No. 79). The report recommended that disabled people be consulted in connection with the upgrading of government buildings and the revision of the *National Building Code* and that the winter works program, then in existence, be used to make buildings and facilities accessible (Nos. 80-82).

The parliamentary complex was officially declared accessible to disabled visitors and employees on July 1, 1982. Public Works Canada is retrofitting public buildings under its jurisdiction. It has also formulated design standards for new construction to assure accessibility. However, no deadline appears to have been set for making all buildings and facilities accessible. Some disabled individuals were asked to evaluate accessibility projects. The National Research Council has established a committee to develop building standards to facilitate access by disabled people for incorporation into the *National Building Code*. A uniform parking policy for the vehicles of disabled drivers has been adopted by Public Works Canada but not in the form of enforceable rules.

In short, although some progress has been made, the recommendations made in *Obstacles* have not been fully adopted and no date has been set as a target for implementation.

Access to Polling Stations

During federal elections, many polling stations are inaccessible to disabled voters. It was therefore recommended in *Obstacles* that a postal voting system be established, that special polls be placed at hospitals and nursing homes, and that polling place personnel be briefed on the needs of disabled persons (Nos. 5, 6 and 7). All questions regarding accessibility for disabled voters were to be referred to the Standing Committee on Privileges and Elections (No. 8).

Several changes should indeed be made to allow disabled people to exercise their right to vote. In the 1984 federal election, there was a total of 64,169 regular polls and advance polls. Approximately 55% of them were in buildings with level access. Of the total number of polls, 19,742, or 31%, were in rural areas. Assuming that 55% of the rural polls were accessible, 8,884 polls were not in buildings with level access.

If it is impossible to find enough buildings with level access, there are alternatives. One is the mobile ballot box. This approach has been used at certain times in Canadian history, certainly when elections were conducted during times of war. Section 33(1) of the *Canada Elections Act* could be amended to provide that polling stations are to be established in buildings with convenient access that, as far as possible, provide level access. When a polling station provides no level access, the deputy returning officer and

the poll clerk should be authorized to take the ballot box and the necessary documents to the entrance of the polling station, or even outside, to permit disabled electors to cast their votes.

No amendments to the *Canada Elections Act* have yet been proposed in response to these recommendations, although we are aware that they are being developed. We believe that steps must be taken urgently to allow disabled voters to exercise their fundamental right to vote, a right enshrined in section 3 of the *Charter of Rights and Freedoms*.

Access to Television and Radio

The *Obstacles* report recommended that the Canadian Radio-television and Telecommunications Commission (CRTC) require captioned programming as a condition for obtaining or renewing a TV broadcast licence (No. 54). The CRTC has so far encouraged, but not ordered, broadcasters to provide such a service. Under the current signal substitution regulations, when the same program is broadcast by different stations, a local television broadcaster can require a cable broadcaster to replace a distant program signal with a local one. As a result, American signals carrying closed captioning may be replaced by Canadian signals without it. As organizations representing disabled people point out, the Regulations have the effect of blocking closed captioning vital to the reception of programs by the hearing impaired.

In response, section 19(2)(i) of the Cable Television Regulations was amended to allow cable broadcasters to apply to be exempted from the substitution requirement. The CRTC has also told broadcasters that they should request substitution only when they have obtained a closed captioned version of that program or have been unable to get one.

We are of the opinion that this provision does not accomplish its objective because it leaves each broadcaster to decide whether to apply to the CRTC to keep the American closed captioned signals. We believe that an obligation should be placed on all television licensees to broadcast signals that include closed captioning when they are available.

The other recommendations dealing with access to television and radio have not been implemented, except that a Canadian Captioning Development Agency has been established (No. 55). In particular, no special radio programs have been devised by the Canadian Broadcasting Corporation for the visually impaired and the print-handicapped, and no special copyright régime as been set up for the non-profit transcription into other media of reading materials for their use (Nos. 52 and 53).

Access to Telephone Service and Modes of Communication

Access to telephone service is most important for disabled people who cannot move about easily or frequently. For those with hearing or speech disabilities, a telephone may have limited use unless special aids are available to overcome those disabilities. It was therefore recommended in *Obstacles* that special equipment, such as teletypewriters, be available. That equipment should be provided under a basic monthly charge (Nos. 56 and 57). *Obstacles* also contains recommendations for equipping federal offices and conference centres with special telephone equipment for the disabled and for producing standards of quality and adaptability in respect of aids as well as devices for disabled people (Nos. 58 and 59).

At the urging of the CRTC or on their own initiative, federally regulated telephone companies have implemented most of the measures needed to help the hearing impaired. For instance, a discount is provided for users of telephone devices for the deaf, and special remedial equipment is offered to the disabled at cost or is included in the basic monthly charge. Many public buildings have been equipped with public telephones accessible to wheelchair users. Some progress has been made in installing facilities for the hearing impaired in offices and conference centres, but the objective of universal accessibility is still far from being reached. Health and Welfare Canada has developed guidelines for the selection, fitting and maintenance of acoustic and other devices. However, federal-provincial co-operation is needed in this field if the guidelines are to achieve their purpose.

More sign interpreter services should be available at government-sponsored meetings and other programs, and consistent funding policies should be established. Interpreter services for the hearing impaired should be available upon request, and public notices of meetings of federal public hearings, including those of parliamentary committees, should make reference to the fact that these services are available on request.

41. We recommend that interpreter services for the hearing impaired be available upon request at federal public hearings, including those of parliamentary committees.

Access to Information

As citizens and taxpayers, disabled people are entitled to the benefit of the information services provided by the federal government. The *Obstacles* report recommended that the National Library co-ordinate reading services for disabled people and that a Canadian Information Resource Centre on Disability be established (Nos. 60 and 61). It was also recommended that disabled people have access to federal publications and to a captioned version of government-financed films (Nos. 62 and 63).

Some progress has been made towards these objectives. For example, a Treasury Board circular has asked all federal departments and agencies to set aside 1% of their total publicity and information budgets for publications in forms suitable for disabled people. The National Library has also taken initiatives in co-ordinating services for disabled people. This would appear to be the extent of the steps taken to date to make information available in suitable form.

We urge the government to make more government publications available on tape or translated into Braille. The government should also make use of new techniques and devices that 'read' written materials to the visually impaired. As well, parliamentarians should be aware that services are avilable to assist them in communicating with their constituents in Braille if need be.

A Task Unfinished

A Slow Rate of Progress

It appears to the Committee that bureaucratic delays are partly responsible for the slow rate of progress in implementing many of the recommendations in *Obstacles* and agreed to by the responsible departments and agencies. Priorities with respect to

improving access for disabled Canadians seem to vary from one department or agency to another. There also appears to be inadequate co-ordination among the officials involved. The Committee heard testimony about many situations where the approach taken by public servants to meet the needs of disabled people was not responsive to the real problems they encounter, with the result that the problems remain unresolved.

Another delaying factor is the absence of effective co-operation among governments and private organizations in many areas of concern. Some of the changes needed to eliminate barriers to accessibility involve action not only by the federal government but also by provincial and municipal governments. There must be a concerted effort to reach agreement on adequate measures to assure the right of disabled people to the equal benefit of public services.

The spectre of heavy costs has been raised at times as a reason for delays in making reasonable accommodation to the needs of disabled people. Some have argued that we simply cannot afford full accessibility. We believe that the cost factor is often overplayed and used as an excuse to avoid responsibility. It is true that some of the changes needed to assure accessibility to facilities and services do not come cheaply. However, the cost of improving access must be compared to the costs of failing to provide a reasonable degree of accessibility. Among the latter, we have to count the cost of social assistance and the cost of in-home or institutional care for those who, with appropriate access to certain facilities and services, might be able to take a job or be reasonably self-sufficient.

We should also point out that improvements have not always taken the most cost-effective form. The Committee has heard examples of well intentioned efforts that were made (e.g., installing four elevators in an airport where one would have sufficed) without involving direct advice from disabled users of those services or facilities, with the result that much more money was spent than needed to resolve the problem adequately or remove the obstacle.

Before jumping to the conclusion that the cost of access for disabled people is too onerous, we have to consider the whole picture. Many of the changes are likely to benefit other members of the community, particularly children and the elderly. For example, lower drinking fountains and elevator access are likely to be of assistance to people who are not disabled. As we get older, many of us who are not now disabled will benefit from improved access to facilities and services.

Reactions from Disabled Canadians

The Director of the Advocacy Resource Centre for the Handicapped, David Baker, expressed the reaction of disabled people to the slow rate of progress:

> The handicapped community has waited a long time for equality and has been told for a long time that it never seems to be the opportune moment to be raising issues of equality and the costs just never seem to be met within the budget situation.

The Committee believes that disabled Canadians have been patient and reasonable in their requests and in reacting to inaction and delays. But patience has its limits. Future delays are likely to encourage litigation. Section 15 is now in force. Time and energy that could be used to devise steps to assure reasonable access to facilities and services will be spent fighting cases before courts and tribunals instead.

The frustrations the Committee heard from those representing disabled people stems largely from these factors:

- It is sometimes difficult to know which department or agency is responsible for solving a problem and who has specific responsibility within the department or agency.
- In almost every area of concern, there is no timetable or schedule for change; thus there is no certainty about the probable date for implementing the measures proposed to achieve accessibility.
- The solutions put forward by public servants, even with the best of intentions, are sometimes off target.

The Committee has taken these concerns into consideration in the recommendations that follow.

A Time for Action

We believe that accessibility to facilities and services provided or regulated by the federal government is particularly important if disabled people are to be in a position to get the full benefit of federal laws, regulations, policies and programs. If access is not provided, employment opportunities and the enjoyment of life generally are jeopardized. The Committee believes that the recommendations put forward in the *Obstacles* report provide an answer to the needs of disabled people and should be acted upon.

42. We endorse the recommendations of the *Obstacles* report concerning access to facilities and services and urge the Government and Parliament of Canada to take all measures necessary to implement them without further delay.

Co-ordination at the Federal Level

The only centralized structure for co-ordinating federal government programs dealing with physically and mentally disabled people is the Secretariat for the Status of the Disabled in the Department of the Secretary of State. The Secretariat was created by order in council. It has a mandate to study new legislation and government policies affecting the disabled. The Secretariat tries to keep in touch with all relevant developments taking place in various departments and agencies. It also disseminates information on programs and facilities for disabled people.

The Secretariat is supervised by the Secretary of State, who is also the Minister Responsible for the Status of Disabled Persons. Neither the Secretariat nor the Minister has any statutory enforcement powers. They can only monitor developments and encourage change.

Recently, at the initiative of the Minister of State for Transport, a Transportation for the Disabled Implementation Committee was created, replacing an advisory group within Transport Canada. The Committee will co-ordinate the implementation of the *Obstacles* recommendations, the recommendations of a 1984 report to the Minister of Transport on air accessibility standards (the Ratushny report), and other measures affecting disabled people in areas under the jurisdiction of Transport Canada. This is a

welcome development that will deserve praise if it promptly turns recommendations into reality. Unfortunately, other departments have not taken similar steps.

A new permanent House of Commons Sub-committee on the Disabled and the Handicapped has also been constituted. It will "examine the annual reports of the Minister responsible for the Status of Disabled Persons and report and make recommendations to the House on any such reports and on questions referred to it by the House". Although the creation of the Sub-committee is an encouraging development, its mandate appears very limited in scope. The Sub-committee has no power to review existing government programs relating to disabled people unless they are referred to in the Minister's report or unless the Sub-committee is requested to do so by the House.

Provincial Initiatives

Two provinces have set up central agencies to co-ordinate governmental activities in relation to disabled people. These two examples might be used as models for a similar federal agency.

In Ontario, the Secretariat for Disabled Persons has acted since 1978 as the co-ordinating agency for all Ontario government programs for the disabled. The Secretariat reports to the Provincial Secretary for Social Development and the Cabinet Committee on Social Development. The Secretariat has four responsibilities that are quite similar to those of its federal counterpart: providing information, undertaking consultative activities, assisting in the review, analysis and co-ordination of policy, and facilitating or providing research. It also acts as a focal point between the government and disabled people to promote an awareness of government programs and to make sure that government policies are responsive to the needs of disabled people. In fact it acts as an advocate on behalf of disabled people in Ontario.

The Québec experience is also instructive. The *Office des personnes handicapées* was established by the *Act to Secure the Handicapped in the Exercise of Their Rights*. The Office is an autonomous body reporting direct to the National Assembly. Its mandate is to supervise and co-ordinate all services offered to disabled people, provide information and advice, promote the interests of disabled people, and encourage educational, professional and social integration of disabled people. This approach differs in many respects from that of the federal Secretariat. The Office identifies the problems encountered by individuals and groups in everyday life and initiates action to eliminate the barriers encountered in the areas of education, training, access to services and facilities and employment. The Office acts as a trouble-shooter in promoting the rights of disabled people. Over the six years of its existence, the Office has demonstrated its effectiveness and appears to have earned the trust of disabled people.

43. We recommend that a federal co-ordinating agency be made responsible for supervising the implementation of programs designed to help disabled people, including programs designed to provide accessibility to facilities and services, and that the agency actively promote the rights of disabled people.

44. We recommend that this co-ordinating agency and the Minister responsible for it be given statutory recognition and be required to report annually to Parliament, the report to be automatically and permanently referred to the Sub-committee on the Disabled and the Handicapped.

45. We recommend that the mandate of the parliamentary Sub-committee on the Disabled and the Handicapped be expanded so that the Sub-committee is authorized to initiate inquiries and make proposals concerning programs for the disabled.

The Need for Priorities and Timetables

Disabled Canadians realize that all the changes needed to provide complete accessibility to facilities and services cannot take place immediately. But the absence of time-frames and priorities for change has led understandably to frustration and anxiety. Priorities must be established, as some changes are more urgent than others. Timetables must be adopted, indicating when and where corrective measures will be implemented.

46. We recommend that, in consultation with the Minister Responsible for the Status of Disabled Persons, all departments and agencies immediately establish priorities and timetables for implementing programs to provide access by the disabled to facilities and services under federal jurisdiction. These priorities and timetables should be tabled in Parliament and referred to the Sub-committee on the Disabled and the Handicapped.

Consultation with Disabled People

The evidence before the Committee shows the need for more consultation between public servants and representatives of disabled people in devising cost-efficient measures to assure accessibility.

A number of departments and agencies have set up advisory committees with the participation of disabled people. The recently established Transportation for the Disabled Implementation Committee includes several representatives of disabled people. These initiatives should be encouraged and expanded in other areas.

47. We recommend that disabled people be consulted in the development of cost-efficient programs and measures designed to provide access by the disabled to facilities and services under federal jurisdiction.

Statutory Powers and Remedies

Accessibility standards for transportation facilities and for telephone and television services are not set out in statutes or regulations. Instead they are found in guidelines, policy statements and individual decisions from departments and regulatory agencies. As such, they can be shelved, forgotten or revoked without notice, at any time.

Several acts of Parliament allow for the adoption of regulations establishing accessibility standards for particular services or modes of transportation. Among them are the *Ferries Act*, the *Canada Shipping Act*, the *National Transportation Act*, the *Railway Act* and the *Aeronautics Act*. More generally, the government can, by regulation pursuant to section 19.1 of the *Canadian Human Rights Act*, define standards for access to services and facilities under federal jurisdiction. Under section 19 of the same Act, the government can also, by regulation, provide that conditions forbidding discrimination against disabled people be included in contracts, permits,

licences and grants made or granted by the federal government. To date the government has made little use of these statutory powers to establish enforceable accessibility standards. By comparison, the Quebec *Act to Secure the Handicapped in the Exercise of Their Rights* places strict obligations on provincial transportation agencies and telephone companies and on owners of public buildings and buildings used as workplaces to make their facilities and services accessible.

48. We recommend that the federal government use its statutory powers under the *Canadian Human Rights Act*, the *Ferries Act*, the *Canada Shipping Act*, the *Transport Act*, the *National Transportation Act*, the *Railway Act* and the *Aeronautics Act* to secure the full implementation of standards for accessibility by disabled people to facilities and services under federal jurisdiction.

The *Canadian Human Rights Act* lists disability among the prohibited grounds of discrimination under section 3 of the Act. Individuals cannot be denied goods, services or facilities on the basis of their disability. Section 15.1 of the Act provides for approval by the Human Rights Commission of programs to adapt services or facilities for disabled people. Approval of such a program precludes any subsequent complaints concerning the approved services and facilities. It is not a discriminatory practice under the Act if a disabled person is discriminated against in the provision of facilities and services if it is the result of a *bona fide* justification (section 14(g)).

Violation of a right recognized under the Act may give rise to a complaint to the Canadian Human Rights Commission. The Commission then conducts an investigation. If the complaint is found justified and attempts at concilation fail, the Commission is likely to appoint a tribunal to adjudicate the complaint. If the tribunal finds that the complaint is substantiated and that the premises or facilities in question require adaptation to meet the needs of a disabled individual, the tribunal "shall make such order...for that adaptation as it considers appropriate and as it is satisfied will not occasion costs or business inconvenience constituting undue hardship" (section 41(4)).

The Commission has attempted to define, in draft form so far, what constitutes a *bona fide* justification by using its power to enact guidelines under section 22(2) of the Act. It has not attempted to define the meaning of undue hardship. We believe that sections 14(g) and 41(4) of the Act may create undesirable loopholes if they are not interpreted strictly in the general context of the Act.

49. We recommend that the Canadian Human Rights Commission adopt new guidelines to ensure that any restrictions on the right of access by the disabled to facilities and services under sections 14(g) and 41(4) of the *Canadian Human Rights Act* are carefully limited and clearly defined.

We also believe that the Commission should play an active role in monitoring the rate of progress in providing accessibility to facilities and services under federal jurisdiction and take such steps as may be required to assure conformity with the Act.

The Need for More Inter-governmental Co-operation

Transportation, communication and building supervision are not within exclusive federal jurisdiction. This may result in attempts to pass the buck, an approach that is detrimental to the advancement of the rights of disabled people. According to one witness, Yude M. Henteleff, Q.C., past president of the Canadian Association for Children and Adults with Learning Disabilities,

There has been much tiptoeing in the labyrinth of federal and provincial relations. We appreciate and we believe in the appropriate decentralization of power. But in the tiptoeing too many rights have not been given the priority they deserve. What this has resulted in, tragically, is a misapplication of resources, an abuse of individual rights, and particularly of the rights of those who need them most. This tiptoeing has to stop. Some sense collectively must begin to be made between the provinces and the federal government.

50. We recommend that the federal government develop priorities and timetables, in collaboration with provincial governments, for implementing programs to provide access to facilities and services by the disabled, that the government report to Parliament, by July 1, 1986, on progress towards this end, and that the report be referred to the Sub-committee on the Disabled and the Handicapped.

CHAPTER 11

Mental Disability

"Mental illness is one of the least understood and least accepted of all illnesses. It creates fear and stereotypical responses in people. Yet who are the mentally ill? Potentially they can be people who suffer from varying degrees of illness, from short term situations that temporarily incapacitate an individual to long term illnesses that require continuous support and attention. Psychiatric disabilities have many possible causes, sometimes physical, sometimes psychological and sometimes social. For a great many people, such illnesses are shameful and embarrassing and as a result they are very reticent to stand up for their rights or to protest when injustice has been done to them."

—Canadian Mental Health Association, New Brunswick Division, in a brief submitted to the Committee

Introduction

The inclusion of mental disability in section 15 of the *Charter* marked an important step in the evolution of the protection of human rights in Canada. It recognized that we have an obligation to extend the equal protection and equal benefit of our laws to those who are often among the most disadvantaged in our society. The entrenchment of equality rights for the mentally disabled was in accord with Canada's international obligations enunciated in the 1971 United Nations Declaration on the Rights of Mentally Retarded Persons and the 1975 United Nations Declaration on the Rights of Disabled Persons.

The Meaning of Mental Disability

Although the *Charter* proscribes discrimination on the basis of mental disability, it gives no indication as to what is meant by this term. Mental handicap or disability is a prohibited ground of discrimination in the provision of public services and facilities and

in employment in the *Canadian Human Rights Act* and the comparable legislation of British Columbia, Manitoba, Ontario, Québec, New Brunswick and the Northwest Territories. The Ontario and New Brunswick human rights legislation has a definition of mental disability. Section 9(b) of the Ontario Code defines the term "handicap" as including a condition of mental retardation or impairment, a learning disability or a mental disorder. The New Brunswick Act includes in its definition mental retardation or impairment as well as learning disability or dysfunction.

The Canadian Association for Children and Adults with Learning Disabilities (CACLD) told us that there are 1.5 million Canadians with various types of learning disabilities. The CACLD urged that section 15 be interpreted as including learning disability — a hybrid physical and mental disability — as a prohibited ground of discrimination.

We accept this recommendation and would go even further. We believe that the concept of mental disability must be given a generous interpretation so that it results in the strongest protection possible for those involved. We would urge that mental disability, as set out in section 15 of the *Charter*, be taken to include mental retardation or impairment, learning disability and mental disorder, all of which are covered by the New Brunswick and Ontario human rights legislation. This comprehensive approach should also encompass previous and existing mental disabilities, whether actual or perceived.

Some federal statutes, such as the *National Training Act* and the *Vocational Rehabilitation of Disabled Persons Act*, do not use legal terms consistent with section 15 of the *Charter*. We believe that all legislation providing benefits or protection to the mentally disabled should be enacted in terms that reflect, so far as reasonably possible, the protection afforded the mentally disabled in section 15 of the *Charter*, broadly construed.

51. We recommend that federal laws and policies providing benefits or protection to the mentally disabled be appropriately amended so that they cover those with a mental disability in the comprehensive sense, that is, mental retardation or impairment, learning disability and mental disorder.

Canada Elections Act

Section 3 of the *Charter* guarantees to all Canadians the right to vote to elect members to the House of Commons. The participation of all Canadians in the choice of those who will govern them is the lifeblood of our political system. Section 14(4)(f) of the *Canada Elections Act* disqualifies from voting those who, by reason of "mental disease", are involuntarily confined or who are deprived of the management of their property.

Mental disabilities are not all alike. Some are short-term or temporary while others are long-term. Some are episodic — they are experienced for short periods of time. Some are totally disabling while others affect the ability to cope only in certain circumstances. Those who are mentally disabled are not necessarily less capable of casting a considered ballot than those who are not.

The Special Committee on the Disabled and the Handicapped, in its 1981 report, *Obstacles*, the Chief Electoral Officer, in his 1984 *Statutory Report*, and the House of

Commons Standing Committee on Privileges and Elections, in an April 1985 motion, have all called for a re-examination of section 14(4) of the *Canada Elections Act*. In the course of our proceedings, the Coalition of Provincial Organizations of the Handicapped, British Columbians for Handicapped People, the Alberta Committee of Consumer Groups of Handicapped People, the Saskatchewan Voice of the Handicapped, the Psychiatric Patient Advocate Office, the Canadian Human Rights Commission, the Canadian Association for Community Living and the Canadian Mental Health Association all called for the repeal of this provision.

Ontario has amended its *Election Act* to allow all people in psychiatric institutions and in institutions for the mentally disabled to vote. This amendment was given its first test during the May 1985 Ontario election. Patients were informed of their right to vote. Mobile polls were sent around the wards to facilitate the casting of ballots. Psychiatric institutions were designated as rural polls, thus allowing registration up to and including voting day. Of the residents in the 10 Ontario psychiatric institutions, 58.9% of those who were eligible to vote were enumerated. Seventy per cent of those enumerated actually voted on election day.

To continue to deny the franchise to those in psychiatric institutions is to deny them a benefit of the law on the basis of their mental disability. Although the denial of the right to vote to specific persons in particular circumstances may be justifiable, this is no reason to exclude a whole class of people from this benefit of the law. The mentally disabled should be subjected to the same rules as other Canadians when it comes to being enumerated and exercising the right to vote under the *Canada Elections Act*.

52. We recommend that section 14(4)(f) of the *Canada Elections Act* be repealed so that the mentally disabled have the same right to be enumerated and to vote as all other Canadians.

Unemployment Insurance Act

Unemployment insurance has developed into a scheme to provide income replacement during temporary involuntary losses of employment. The 'availability for employment' factor in the program is now of less importance because of the addition of sickness, maternity and adoption benefits — also known as 'special benefits'.

Claimants for regular unemployment insurance benefits must have between 10 and 14 insurable weeks of work before they are eligible (unless they are new entrants or re-entrants to the workforce). Claimants for special benefits, which include sickness benefits, must have 20 insurable weeks before they become eligible.

Those who are mentally disabled for short periods of time are treated unfairly by the provisions of the *Unemployment Insurance Act* because they have to contribute for a longer period to become eligible for sickness benefits than do those claiming regular benefits. As we stated in Chapter 2, the distinction between the contribution eligibility periods for regular and special benefits is inconsistent with section 15 of the *Charter*. We recommended in that chapter that the *Unemployment Insurance Act* be amended to make the qualifying period for special benefits the same as that for regular benefits.

Criminal Code

The provisions in the *Criminal Code* for dealing with the mentally disordered offender have been under critical review for many years. In 1976, the Law Reform Commission of Canada tabled a report entitled *Mental Disorder in the Criminal Process*. In 1981, the Special House of Commons Committee on the Disabled and the Handicapped recommended in *Obstacles* that the *Criminal Code* be amended to replace Lieutenant Governor's warrants, define the rights of the mentally ill and retarded, and establish procedural fairness for the accused at all stages of the criminal process.

In part as a result of this report, the Department of Justice Criminal Law Review established a Mental Disorder Project, which has recently completed consultation and reported its findings to the Minister. In an August 19, 1985 speech to the Canadian Bar Association annual meeting in Halifax, the Minister of Justice indicated that *Criminal Code* amendments dealing with the mentally disordered offender would soon be brought before Parliament.

At any time before issuing a verdict, a court may, where there is sufficient reason to believe that an accused is incapable by reason of insanity of conducting his or her defence, hear evidence on that question. If the accused is found unfit to stand trial, he or she is ordered by the court to be held in custody until the pleasure of the Lieutenant Governor is known. As well, an accused person found not guilty of an indictable offence by reason of insanity is ordered to be held in custody until the pleasure of the Lieutenant Governor is known.

Those found unfit to stand trial or not guilty of an indictable offence by reason of insanity can be held for an indefinite period under a Lieutenant Governor's warrant. The *Criminal Code* gives the provinces discretion to establish Lieutenant Governor's warrant review boards. Once such a board is set up, it must review each warrant on a regular basis. The opinions expressed by these boards are advisory and not binding on the provincial cabinet or attorney general who usually exercise the Lieutenant Governor's powers in this matter. Hearing procedures vary from board to board across the country.

The Saskatchewan Voice of the Handicapped, the Coalition of Provincial Organizations of the Handicapped, the Canadian Association for Community Living, the Psychiatric Patient Advocate Office and the Canadian Mental Health Association urged us to recommend that the *Criminal Code* be amended so that the mentally disabled are treated fairly, effectively and within the least restrictive environment possible.

In reviewing the provisions of the *Criminal Code* dealing with mentally disordered offenders, we identified a number of measures that may not accord equal protection and equal benefit of the law to the mentally disabled. These are as follows:

- both those found unfit to stand trial and those found not guilty by reason of insanity are subject to Lieutenant Governor's warrants although their respective statuses in the criminal justice system are different — one has not been to trial while the other has had the case against him or her presented in court;

- those found not guilty of an indictable offence by reason of insanity are subject to a Lieutenant Governor's warrant, while those with the same verdict in relation to a summary conviction offence are not;

- those acquitted by reason of insanity are subject to a Lieutenant Governor's warrant, while those who successfully invoke the defence of automatism are not;

- a convicted person who becomes mentally disabled in a provincial prison is subject to a Lieutenant Governor's warrant while such a person in a federal penitentiary is not; and

- a person subject to the jurisdiction of a Lieutenant Governor's Warrant Review Board has fewer evidentiary and procedural protections than a person dealt with under a provincial mental health act.

The amendments to the *Criminal Code* to be brought forward by the Minister of Justice as a result of the Criminal Law Review Project must deal effectively with these anomalies and inconsistencies. They should be based on the following general principles:

- the determination of guilt should be separated from the determination of mental competence;

- the mentally disordered accused should be provided with full evidentiary and procedural protections;

- a court hearing a mental disorder proceeding should have available to it a full range of detention and treatment measures;

- in each case, the court should impose the least restrictive disposition possible on the mentally disordered accused or offender; and

- each mentally disordered accused or offender's case should be reviewed by an independent quasi-judicial body whose recommendation is binding on the Lieutenant Governor.

53. We recommend that the Minister of Justice bring forward amendments to the *Criminal Code* at the earliest opportunity to eliminate those provisions denying the mentally disabled the equal protection and equal benefit of the law.

Other Matters

The medical screening process under the *Immigration Act* can have the effect of excluding those with certain mental or physical disabilities from admission to Canada. In Chapter 8 we discussed the medical standards that immigrants to Canada must meet and recommended the review of those standards. We deal with the mentally disabled, as well as the physically disabled, in the workplace in a subsequent chapter on employment equity (Chapter 13).

CHAPTER 12

Part-Time Work

"I have a business background, retired just last year, and had worked a little bit part-time before I decided to retire. So I can certainly see the need for changes in the part-time field. Part-time workers are certainly discriminated against. What was amazing to me, although I had chosen to do that work, was that you were expected to know just as much as full-time workers did, and to take the same responsibility; you got called on the carpet for the same type of things. Yet, there were no benefits for you at all."

—Mrs. Grace Hume, Canadian Federation of Business and Professional Women's Clubs, in testimony before the Committee at its Edmonton hearing

Introduction

Problems encountered by part-time workers were brought to the attention of the Committee by many organizations and individuals. They generally recommended legislative action to ensure that members of this group, which represents a significant minority in the workforce, receive the same treatment and benefits, on a *pro rata* basis, as full-time workers.

The majority of the Committee views the lack of benefit coverage available to part-time workers as compared to full-time workers as an example of the systemic discrimination referred to in Chapter 1, which is contrary to section 15. Since most part-time workers are female, it is women who must bear the impact of laws that treat part-time workers less favourably than their full-time counterparts.

On a breakdown of the part-time workforce by sex, that workforce turns out to be 72% female. On a breakdown by age, it is composed of young people aged 15 to 24 to the extent of 44%. In both cases, these groups are represented disproportionately to their numbers in the general population. The Canadian Advisory Council on the Status

of Women explained to the Committee their view of how the failure of legislatures and governments to assure adequate protection for part-time workers constitutes systemic discrimination against women:

> The drafting of the legislation would not be obviously discriminatory towards women, but the majority of part-time workers are women. An Act that included this type of exclusion would therefore have a disproportionate and adverse effect on women as a group. This adverse effect is actually a form of systemic discrimination....
>
> [I]t is rare these days that a piece of legislation deliberately excludes women. Systemic discrimination is much more deeply rooted in the system; it also has a disastrous effect on the economic situation of women as a group.

Several of the members of the Committee do not accept the view that the situation represents a case of systemic discrimination by the state against either women or young people. However, all members of the Committee are agreed that the position of part-time workers should be addressed on the basis of general equality concerns. There are obviously considerations of equity, which transcend the letter and spirit of section 15, that must be taken into account in any review of the part-time worker's situation.

One of the difficulties in dealing with the subject of part-time work in a precise way is the abundance of categories and definitions of part-time workers. Part-time workers may be regular, temporary, casual or seasonal. Different eligibility requirements for benefits or protection under different statutes lead to different concepts of part-time work for different purposes.

In general, the circumstances of part-time workers can be summarized as follows:

- they are frequently paid less per hour than their full-time counterparts;
- they may not qualify for unemployment insurance benefits;
- they are often denied the right to participate in employer-sponsored pension and benefit plans;
- they may not be eligible for sick leave, paid vacation or statutory holidays; and
- they may not be entitled to participate in the Canada or Quebec Pension Plans.

That this situation persists can be attributed to the fact that most employment standards and employment benefits legislation was drafted with the full-time worker principally in mind.

The Part-time Work Option

In 1981, 13.5% of the entire workforce was considered part-time. By 1985, the participation rate had grown to more than 15%. Experts predict that this work option will be even more popular in the future. The Commission of Inquiry into Part-time Work (the Wallace Commission), in its report entitled *Part-Time Work in Canada* (1983), estimated that the part-time component of the workforce could be expected to increase to between 15% and 19% of the entire workforce by the end of the century. We have already passed the 15% mark, and there are other projections that lead us to believe that this may be a conservative estimate. However, there is no reason to doubt

that the growth will continue. It is important that we recognize the increasing contribution to the economy of part-time workers and adjust our laws and policies accordingly.

There are many reasons why part-time work has become an attractive option. Studies have shown that people are more likely to work part-time when entering the workforce initially, or when leaving it prior to retirement. Women, however, are heavily represented in the part-time workforce during their prime working years. Statistics show that over 60% of women in part-time employment are married and are between the ages of 25 and 44. Part-time work is a useful and, in many cases, necessary means for these women to assist in supporting their families. It is one way for many women to accommodate family responsibilities and contribute financially to the family unit.

Young people who take part-time jobs often have commitments — for example, to educational programs they need to finance — that preclude full-time work. Sixty-seven per cent of young part-time workers are students. Others engage in part-time work because they have been unable to find full-time work in a period of high unemployment. It would be a mistake to undervalue these young people by denying them their equitable share of employment benefits.

Older people often view part-time work as the preferable way of maintaining a manageable role in the workforce. If a more flexible approach to retirement is substituted for mandatory retirement, as suggested in Chapter 3, it will be important to ensure that the part-time work option is attractive to older people. One way of doing that is to require that part-time workers receive their fair share of benefits.

In expressing the need for increased benefits and protection for part-time workers, we note and share the concern expressed by unions such as the Canadian Air Line Employees Association, in testimony before the Committee, that part-time work not be expanded at the expense of full-time jobs. Several recent labour disputes have focused on the subject of part-time work. The unions involved in these disputes and others fear that large employers, in the interests of economy, may attempt to reduce their full-time workforce, replacing these workers with part-timers. There would be fewer grounds for this fear if part-time workers had the advantage of similar status to full-time workers.

The Federal Role

Federal legislation and federal government activity affect the part-time work environment in several ways. The *Unemployment Insurance Act* and the *Canada Pension Plan* are potentially applicable to all Canadians who enter the workforce. However, by virtue of requiring that a person work at least 15 hours per week or earn at least 20% of the earnings ceiling per week ($92.00 in 1985) to be eligible for benefits, the UI Act prevents many part-time workers from receiving benefits in the event of loss of work, pregnancy or sickness (section 13(1) of the Regulations). Since a large percentage of part-time workers, almost 40%, works less than 15 hours per week, the minimum qualification for insurance coverage excludes a significant number of workers. The Wallace Commission, the Canadian Advisory Council on the Status of Women, and the Charter of Rights Educational Fund, in the report of the Statute Audit Project, all recommended that this requirement be less stringent. The *Canada Pension Plan*, by exempting the first $2,300 in earnings from contribution, is not fully responsive to the position of part-time workers in that those earning less than that amount yearly will not be members of the Plan. By relaxing the qualifications for these benefits, Parliament would be responding to a need identified by many groups.

On a narrower basis, the *Canada Labour Code* establishes employment standards for federal Crown corporations and employers operating federally regulated undertakings, such as banks and airlines. It is estimated that about 10% of the employees subject to the Code work part-time. The percentage of part-time workers in the federal public service is approximately 4.5%. While the number of part-time workers operating under federal law is much lower than in the provincial sphere, there is no doubt that Parliament and the government of Canada have a leadership role to play within the Canadian federal system in setting appropriate standards for the treatment of part-time workers.

Pension coverage, both public and private, is particularly problematic for part-time workers. The *Canada Pension Plan* and other pension statutes, which were obviously drafted to benefit full-time workers, do not adequately address the position of part-time workers. Many part-time public servants are not afforded pension coverage under the *Public Service Superannuation Act* whose regulations stipulate that only employees who work more than 30 hours per week can contribute.

The *Public Service Staff Relations Act* excludes from coverage those workers who work less than one-third of normal hours. This means that workers who fall below that line cannot be members of public service unions and cannot take advantage of the benefits available to full-time workers. The *Public Service Employment Act* has a similar application, excluding those that work less than one-third of normal hours from a number of benefits, including the right to enter in-house competitions for public service positions.

There are also situations where many part-time employees cannot qualify for benefits because the benefits were designed essentially for full-time workers. For example, those working less than one-third of normal hours in the public service can seldom qualify for overtime, because even if they work beyond their regular hours, they might still not exceed normal working hours, that is, normal *full-time* working hours. Until the *Canada Labour Code* was amended in 1984, many part-time employees under its jurisdiction were not paid for statutory holidays, because eligibility rested on the requirement of working 15 days in the 30-day period preceding the holiday. This provision in the Code, which would on its face have excluded many part-time workers, has been changed so that employees who cannot meet the requirement because their hours preclude them from doing so will be compensated on a *pro rata* basis (section 56(3)). Sick leave and maternity leave under the Code are provided on a *pro rata* basis but, as indicated elsewhere, employees working less than 15 hours per week would not be eligible for unemployment insurance benefits during their sick leave or maternity leave period.

In the recent federal budget (May 1985), several changes were announced that could improve the pension prospects of part-time workers. These include a proposed amendment to the *Pension Benefits Standards Act*, which sets minimum standards for pension plans established by companies in federally regulated industries and Crown corporations, to provide that part-time workers who have earned at least 35% of the Canada Pension Plan's yearly maximum pensionable earnings (that is, those who have earned $8,190, the CPP maximum for 1985) for two consecutive years with an employer must be eligible to join pension plans available to full-time workers in the same occupational group. Employers would have the option of setting up separate plans providing equivalent benefits to part-time workers. While this proposal represents an important recognition of one of the concerns of part-time workers, it is doubtful whether it will have a significant effect, because the salary floor is so high as to continue to exclude many part-time workers.

Benefit Coverage

We have considered the concerns of employers, which were documented in the Wallace Commission report, that if employer contributions to benefits for part-time workers were required on a more extensive basis than is currently the case, it would increase both direct and administrative costs to such an extent that many employers would significantly lessen their reliance on part-time workers. From the employee's perspective, it is quite likely that many part-timers, particularly young people and those at the low end of the wage scale, would be reluctant to accept a change that would require them effectively to forgo a portion of their salaries in order to contribute to certain benefit plans. We think that the cost factors, while important to many employers and some employees, should not overshadow the interests of fairness.

A Consistent Definition

The task of determining, under the *Canada Labour Code*, which part-time workers will be eligible to be members of the same bargaining unit — and therefore more likely to be entitled to the same benefits — as full-time workers has fallen to the Canada Labour Relations Board. In a series of cases since 1975, the Board has been following a general policy of including part-time workers in the same bargaining unit with full-time workers, unless there is good reason not to do so. Distinctions are made not on the basis of the number of hours worked or the way the job is classified, but on the regularity and continuity of employment. One way of assuring better benefit protection for part-time workers is to extend the coverage of union-negotiated benefit plans to them.

In considering the position of part-time workers, the Committee was struck by both the difficulty of arriving at a comprehensive and fair definition of part-time workers for benefit entitlement purposes and the inconsistency that exists in the provisions of federal laws affecting part-time workers. We are not prepared to suggest a specific general definition based on hours worked, because we realize that some variations will be dictated by the nature of the provisions of the various federal statutes and regulations we have reviewed. However, we do feel strongly that the inclusion of part-time workers within these provisions should be as broadly based as is reasonably possible.

The *Canada Pension Plan* and the *Unemployment Insurance Act* are complex statutes that would be difficult to modify on a piecemeal basis. The Canada Pension Plan is a contribution-based pension scheme, applying to both employed and self-employed individuals, that would seem to require some minimum income base from which contributions can flow. The $2,300 (1985) limit may exclude some workers, but we are not convinced that such a requirement is patently unreasonable. The *Unemployment Insurance Act* eligibility requirement of 15 hours per week or 20% of the weekly earnings ceiling may exclude many part-time workers, but once again, some minimum qualification for coverage would seem to be essential to the overall scheme. The challenge is to set the minimum requirements at a reasonable and fair level having regard to the legitimate interests and expectations of part-time workers.

The Committee had the benefit of the recommendations of the Wallace Commission, which dealt entirely with the problems associated with part-time work. Although the focus of this Committee and the Wallace Commission are different, we agree with many of the Commission's recommendations, as they satisfy our attempt to extend to part-time workers the equal protection and benefit of the law.

The Wallace Commission dealt with the question of whether government should adopt an all-encompassing definition that would include all types of part-time workers, or whether the definition, particularly for legislative purposes, should be a limited one including only regular part-timers. One of the factors considered in opting for a broad definition was the result of a study prepared for the Commission. The study indicated great diversity in the types of work schedules applying to part-time workers, a diversity that points to the need for a flexible standard. A narrow definition of part-time work based on a minimum number of hours per week or per month would exclude a large number of workers. It is our view that a broad definition is appropriate and that it should cover all types of workers, including seasonal. We would adopt the Wallace Commission's description of a seasonal worker as one who is hired seasonally or for part of a year to meet seasonal changes in an employer's demand for or supply of labour.

54. We recommend the adoption of a definition of part-time work that would cover all categories of part-time work, including seasonal work, as follows: a part-time worker is one who works fewer than the normally scheduled weekly or monthly hours of work established for persons doing similar work.

Statutory benefits of the kind required under the *Canada Labour Code*, such as vacations, statutory holidays, sick leave, and maternity leave, and benefits under similar federal employment policies, should be available to all part-time workers, including seasonal workers, on a *pro rata* basis.

55. We recommend that all federal employment standards legislation and policies be amended to ensure that part-time workers, including seasonal workers, receive the same statutory benefits on a *pro rata* basis as full-time workers.

Special considerations apply to contributory pension and insurance schemes, where a degree of certainty may be required. The cost to employers of providing pension coverage to part-time workers becomes disproportionate to the benefits realized when the number of hours worked is very small. This suggests that minimum qualifications may be desirable. It would also be difficult for employers to set up administrative mechanisms to accommodate contributions from workers who are attached to the workforce for a short length of time. We agree that a realistic period of continuous or regular employment may be necessary to establish eligibility.

While we agree that certain limited exemptions from pension and insurance benefit coverage may be desirable from both an employer and an employee point of view, we reject any suggestion that these distinctions be based on age or any other factor prohibited under section 15 of the *Charter*. Accordingly we reject the Wallace Commission's recommendation that those under 25 years of age should be exempted from participating in pension and insurance plans, even though the Canadian Human Rights Benefit Regulations treat this as acceptable.

56. We recommend that federal laws and policies be amended to ensure that part-time workers, including seasonal workers, who work eight hours a week or more and who have worked for their employer for at least one year, contribute to and be eligible for benefits, on a *pro rata* basis, under employer-sponsored pension and insurance plans applicable to full-time workers.

These same considerations apply to the eligibility requirements under the *Unemployment Insurance Act*. While we feel that the 15-hour per week limit is too high, we do not favour extending coverage to all part-time workers *pro rata*, primarily because of the administrative difficulties this would cause to employers and

government. We urge that the current review of the *Unemployment Insurance Act* take the needs of part-time workers into account when considering eligibility requirements. We recommend that the 15-hour limit be lowered. Without specifying what the hourly limit should be, we urge that it not be less than eight hours per week.

57. We recommend that the requirement that an employee work 15 hours per week to contribute to and be eligible for benefits under the *Unemployment Insurance Act* be reduced to reflect better the work schedules of part-time workers, and that the hourly limit that is set be not less than eight hours per week.

Vesting and Portability

Vesting and portability of pensions are general concerns in our increasingly mobile labour force, but they have particular implications for part-time workers. Part-time jobs are often short-term, so that part-time workers are not likely to stay in a job long enough for their pensions to vest. We note that the 1985 federal budget proposed amending the *Pension Benefits Standards Act* to allow for vesting of pension credits after two years. Other proposals were made to improve the portability of pensions. It is important that the concerns of part-time workers be kept in mind when these issues are considered.

58. We recommend that federal laws and superannuation plans reflect the particular needs of part-time workers for early pension vesting and portability rights.

Our recommendations relating to part-time work are general in nature for several reasons. This complex subject has provincial as well as federal implications that should not be treated in isolation. The Wallace Commission report illustrates the breadth of the issues and the difficulties involved in setting standards for divergent types of work. Submissions to the Committee underscored the concerns of part-time workers and reinforce our view that the federal government should assume the lead by taking steps to ensure that part-time workers are treated equitably and uniformly by comparison with full-time workers in similar positions.

CHAPTER 13

Employment Equity

"We must make every effort to identify and remove, barrier by barrier, discriminatory advantages. The federal government should set an example by further expanding its employment practices and decision-making processes so that all Canadians are not only free from adverse discrimination but, also, can enjoy just employment conditions which provide fair access to meaningful work and equitable participation in the life of our society."

—Gerald Vandezande, Citizens for Public Justice, in testimony before the Committee at its Ottawa hearing

Introduction

Employment constitutes a key area in which the right to equality and the equal benefit of the law must be achieved. Employment is one way for Canadians to become fully contributing, independent members of society. Employment equity is a way of eliminating discrimination against some Canadians in the employment area. It is, in the words of Judge Rosalie Abella, a "strategy designed to obliterate the present and the residual effects of discrimination and to open equitably the competition for employment opportunities to those arbitrarily excluded. It requires a special blend of what is necessary, what is fair and what is workable".

We believe that in an ideal system all individuals should be hired and promoted on the basis of merit. The best person should get the job. We recognize nevertheless that the merit system has not worked adequately for some groups. Employment equity programs are important instruments for redressing the present imbalances created by discrimination.

An employment equity program aims at more than non-discrimination in employment. It involves positive steps to remove discriminatory barriers and remedy the effects of past discrimination. A comprehensive, results-oriented program allows the

employer to identify and eliminate discriminatory practices and policies and to redress the balance by adopting appropriate special measures. The purpose of such a program is to open the competition to every qualified individual who would be eligible for employment but for the existence of discrimination, conscious or unconscious. It is not intended to penalize anyone or oblige employers to hire unqualified people. Rather, the objective is to advance individuals belonging to segments of Canadian society that have been discriminated against in the past so that they can compete equitably for employment or promotion.

Employment equity programs define the standard the employer must meet. There are three important aspects to such a program:

1. Equal opportunity measures, which come after a thorough examination of

   a) data on the participation rates, occupational distribution and income levels of employees by category; and

   b) all policies and practices in place to identify and subsequently eliminate any discriminatory barriers;

2. Special measures, which can be remedial or supportive. Training on the job is an example of such measures; and

3. Goals and timetables. These are an essential component of any affirmative action or employment equity program. They provide an indicator of the success and effectiveness of the measures taken.

Distinctive features may be added to suit the needs of different employers, regions or sectors of the economy. Special programs must be flexible, adjusted to each situation, and reviewed periodically to assess their adequacy and the continuing need for them.

The Constitutional Foundation of Employment Equity

The concern about employment equity and the need for special programs to eliminate discriminatory practices and redress imbalances conforms with the letter and the spirit of section 15(1) of the *Charter*, as interpreted in light of other *Charter* provisions. The wording of section 15(2) is particularly relevant. It states that subsection 1 does not preclude laws and programs intended to ameliorate conditions of disadvantaged groups, including those disadvantaged because of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

Other sections of the Constitution demonstrate a similar concern with ensuring that economic disparities are tackled by appropriate measures favouring disadvantaged groups. For instance, section 36 states that Parliament and the government of Canada are committed, with the provinces, to promoting equal opportunities for the well-being of Canadians and furthering economic development to reduce disparity in opportunities. The same concern is reflected in section 6, which states that the right to move and the right to gain a livelihood do not preclude laws and programs favouring the socially or economically disadvantaged.

We therefore believe that, as a constitutionally enshrined right, no individual should be denied employment opportunities or benefits for reasons unrelated to ability.

We also believe that the amelioration of conditions of groups that have suffered discrimination in the past, because of their race, colour, sex, ethnic origin and other prohibited grounds of discrimination under section 15, is a constitutionally established goal that must be reached. Employment equity makes sense, because the efficient use of human resources requires the assurance of equal opportunities. Otherwise, essential skills and talents will be lost or underused.

Although the courts are empowered, under section 24(1) of the *Charter*, to enforce violations of the right to equal treatment in the employment area, we believe that Parliament must act quickly and effectively to assure employment equity at the federal level and encourage similar changes at the provincial level.

The Victims of Past Discriminatory Practices

The *Charter* pays special attention to women, disabled people, Native peoples and visible minorities. These are the "designated groups" we refer to later in this chapter. These groups are mentioned in section 15 of the *Charter*, and other sections are equally explicit. Section 25 recognizes aboriginal rights and freedoms. Section 27 states that the multicultural heritage of Canadians must be pursued and enhanced. Section 28 affirms that the rights confirmed by the *Charter* are guaranteed equally to men and women.

Various statistical studies, some of them referred to in the report of the Royal Commission on Equality in Employment (the Abella report), provide a bleak picture of employment opportunities and benefits for these designated groups. They show an imbalance, both statistical and monetary, in the workforce. Women have lower average incomes. They are employed predominantly in the sectors and jobs that are the lowest paid. They do not earn the same amount as their male counterparts for performing the same or similar jobs.

Disabled people suffer from extraordinarily high unemployment rates. When they are employed, they tend to be concentrated in the low-paying, marginal sectors of the labour market. They also have expenses that non-disabled workers do not face, such as medication, special aids and devices and special transportation services.

Native people also experience high levels of unemployment — about five times higher than the non-native population. When they are employed they are usually concentrated in the lowest paid, unskilled sectors of the labour market and have disproportionately low incomes.

Recent immigrants to Canada also face difficulties advancing in the workforce. They are frequently found in the lowest paid, lowest skilled and most vulnerable sectors of the labour market.

From a purely economic standpoint, employment equity is needed to ensure that human resources are not wasted because of discriminatory practices. A healthy economy needs the contributions of all qualified people willing to work. The exclusion of women, visible minorities, disabled people and Native people from job opportunities and benefits can only contribute to the high cost of social service programs.

The Need for Special Programs

Many witnesses heard by the Committee advocated strengthening and extending existing special programs in employment to cover all employers under federal jurisdiction. These recommendations come not only from interest groups representing women, disabled people and visible minorities but also from groups such as the Solidarity Coalition of British Columbia, a broadly based organization of provincial and community groups, the Citizens for Public Justice, an ecumenical movement of Canadian Christians, and the Public Service Alliance of Canada. Some witnesses, however, such as Professor Conrad Winn of Carleton University, were opposed to setting quotas as part of special programs, while other individuals and organizations, such as the Christian Labour Association of Canada, were opposed to special programs. One of their main concerns was that a person's membership in a particular group, rather than his or her qualifications, would determine eligibility for employment and promotion. It was also argued that remedial measures give an unfair advantage to women, disabled people, Native people, and members of visible minorities. The fear was expressed that individuals hired or promoted under special programs would face hostility from other employees and that some people so hired would feel they had been accepted on a token basis and not on their own merit.

Shari Stein, of the Coalition for Employment Equity for Disabled Persons, expressed the view of the majority of witnesses that addressed the subject of employment equity when she told the Committee:

> In an ideal society you do not need affirmative action. But in a society such as ours, where it has been recognized that certain groups of people, including handicapped adults, are at a disadvantage, you do need some kind of measure to catch up, to bring those people to a point of equal competition on the job market.

The majority view is in line with the recommendations made in *Obstacles*, in the report of the Parliamentary Committee on Visible Minorities in Canadian Society, *Equality Now!*, and in the Abella report, *Equality in Employment*. All these reports came about as the result of broad and comprehensive consultative processes. They all independently recommended the implementation of employment equity through legislation.

Few employers have followed suggestions, made by bodies like the Human Rights Commission and Employment and Immigration Canada, to set up voluntary employment equity programs. Quantitative and qualitative imbalances in the labour market still remain. As a result, we have concluded that the time has come for statutory employment equity programs.

Existing Employment Equity Programs

Government Initiatives

After World War II, an affirmative action program gave returning veterans preferential treatment in relation to job opportunities. The program was successful, but it worked to the detriment of women. Many were excluded or dismissed from jobs they had held during the war, particularly blue collar jobs. The preferential hiring program for veterans still exists under the *Public Service Employment Act*. More recently, a massive program, fully supported by successive governments, was successful in increasing francophone representation in the federal public service to a level comparable to their presence in the Canadian population. Targets and goals were

established to redress an historical imbalance. Other programs, many of which were of a voluntary nature or lacked enforcement mechanisms, have not been as successful.

Special programs for women in the federal public service were introduced in the 1970s. Others were established to promote the participation of Native people in the public service, more particularly in the Department of Indian Affairs and Northern Development. The *Canada Oil and Gas Lands Act* has also been used in some instances to require corporations undertaking resource development to promote the employment and training of Native people.

Since 1980, affirmative action pilot projects have been introduced in the Treasury Board Secretariat, Employment and Immigration Canada, the Department of the Secretary of State, the Public Service Commission and Environment Canada. The experience drawn from these projects was used to establish general guidelines on affirmative action, which were adopted by the Treasury Board in 1983. The guidelines aimed at improving employment opportunities and benefits for women, disabled people and Native people. The guidelines were recently amended to include members of visible minorities. The guidelines cover most federal departments and agencies, with the notable exceptions of the Canadian Armed Forces, the Royal Canadian Mounted Police, Crown corporations and federal agencies with few employees. The RCMP has, however, taken steps to attract more recruits from the designated groups.

Under the guidelines, departments and agencies are to draw up action plans neutralizing discriminatory practices, set numerical targets, and establish temporary special measures to redress the effects of past discrimination. Action plans are supposed to be implemented in 1985 and reviewed beginning in 1987.

The Treasury Board Secretariat, in conjunction with the Public Service Commission, is to review the action plans and provide comments to departments and agencies. However, several departments and agencies have missed the implementation deadline called for in the guidelines. As a result, many federal departments and agencies have still not implemented special employment equity programs.

Employment and Immigration Canada has also encouraged, advised and assisted industries in setting up employment equity programs or related strategies. However, few employers have signed agreements to implement employment equity. Again, the voluntary approach appears to have met with a disappointing response.

Canadian Human Rights Commission Initiatives

The *Canadian Human Rights Act* empowers the Commission to participate actively in setting up employment equity programs. Because discriminatory employment practices are prohibited under section 10 of the Act, they may give rise to a complaint to the Commission. Under section 38(1) of the Act, a Commission investigator or a conciliator can recommend the adoption of a special program as part of the settlement of a specific complaint.

Section 15 of the Act states that special programs for assuring employment equity do not constitute discriminatory practices. Under section 15(2), the Commission can advise and assist employers who want to adopt a special program. The Commission has published guidelines called Special Programs in Employment: Criteria for Compliance, but few employers have used the guidelines to set up programs.

Tribunals appointed under the Act to inquire into complaints have even wider powers than the Commission itself. Section 41(2) of the Act allows a tribunal to order a respondent to adopt a special program or take other steps. The wording of these provisions appears to have been influenced by Title VII of the U.S. *Civil Rights Act*. Saskatchewan and Québec have followed suit; in both jurisdictions, a competent court or tribunal can impose a mandatory affirmative action program. Other provincial jurisdictions authorize only voluntary programs.

Although the Canadian Human Rights Commission has been active in advising and assisting employers with respect to special programs, few employers have set up such programs, either voluntarily or following settlement of a complaint.

In *Action Travail des Femmes* v. *Canadian National* (1984), a Human Rights Tribunal found that CN's hiring practices in respect of blue collar jobs in its St. Lawrence region had an adverse impact on the employment of women. The Tribunal ordered CN to comply with a detailed order concerning a special program to eliminate discriminatory practices against women. Among other temporary measures, the Tribunal ordered CN to hire one woman for every four blue collar positions filled in the future until an objective of 13% for female employees in such positions is attained. This particular measure was struck down by the Federal Court in a split decision. As of the writing of this report, an application for leave to appeal had been filed with the Supreme Court of Canada.

This long and expensive case remains an isolated one, and the Commission has endorsed the concept of statutory employment equity programs for employers under federal jurisdiction, because the Commission's powers have not proven effective in eliminating discriminatory practices by employers. Many discriminatory practices that might be addressed through an employment equity program are not obviously or intentionally discriminatory although they may have such an affect. Therefore the Commission's authority to promote employment equity is limited, as its jurisdiction does not extend to systemic discrimination in the view of the Federal Court of Appeal (*The Canadian National Railway and Canadian Human Rights Commission* (1983)). We recommend in Chapter 15 that such discrimination be covered by the *Canadian Human Rights Act*.

The Employment Equity Bill and Contract Compliance

The need for employment equity programs, as set out in the Abella report, brought a response from the federal government. Bill C-62 was introduced in June 1985. The bill provides for the establishment of employment equity programs in all corporations under federal jurisdiction, including Crown corporations with 100 or more employees. It does not include federal departments and agencies, which are already covered under the 1983 Treasury Board guidelines, the Canadian Armed Forces or the RCMP.

Under the Bill, the affected corporations would be required to take steps to remedy irregularities in the workplace experienced by specific, defined groups within Canadian society. These groups are women, Native peoples, people with disabilities, and members of visible minorities. Section 4 of Bill C-62 states that employment equity will be implemented by eliminating discriminatory practices, instituting positive policies and making necessary reasonable accommodation so that people belonging to designated groups will achieve a degree of representation proportionate to their representation in the Canadian population.

Employers would be required to report on employment equity to the Minister of Employment and Immigration who, in turn, would make public the progress of each regulated corporation towards the goal of employment equity. The Minister is empowered to issue guidelines to assist employers in implementing employment equity programs. An annual report would be tabled in Parliament by the Minister. Copies of individual reports made by each employer would also be available. Employers who fail to report would be liable to a fine of up to $50,000. Regulations are to be issued specifying the nature of the information required from employers and the reporting procedures.

The government has also indicated that guidelines will eventually be adopted to ensure that contractors providing goods and services to the federal government adopt employment equity programs. Firms with 100 or more employees submitting tenders for goods and services worth more than $200,000 will have to make a commitment in writing to implement employment equity programs on the basis of criteria to be established. Standards will be devised to assess contractors' employment equity performance. Employment and Immigration Canada is to supervise the implementation of the guidelines and assess the performance of contractors.

Firms that refuse to make such a commitment will not be invited to bid or be considered for contracts worth more than $200,000. Firms that do not take the necessary steps to implement an employment equity program after agreeing to do so can be removed from further consideration for contracts worth more than $200,000.

The Need for Employment Equity Programs for Federal Employers

The present Treasury Board guidelines, as well as the proposals embodied in Bill C-62 and the suggested contract compliance guidelines are to be commended. Taken together, they demonstrate the conviction that most major corporations under federal jurisdiction must take the necessary steps to eliminate discriminatory practices and enhance the employment opportunities of groups that were victimized by such practices in the past, thus redressing the balance. We support the approach of comprehensive employment equity programs as defined in the Abella report (Recommendation No. 3).

59. We recommend the adoption of legislation providing for employment equity programs at the federal level and obliging employers to

(a) develop and maintain employment practices designed to eliminate discriminatory barriers and

(b) improve where necessary the participation of qualified women, Native people, disabled people and underrepresented visible minorities in the workplace, without necessitating the use of quotas.

The 1983 Guidelines on Affirmative Action in the Public Service do not apply to the Armed Forces and the RCMP. Bill C-62 will not apply to the federal government as employer but will apply to Crown corporations and federally regulated corporations with 100 or more employees. There is no basis for such differences; employment equity legislation should apply to all employers under federal jurisdiction, including the Crown, with necessary adjustments being made by regulation for smaller corporations and agencies.

60. We recommend that employment equity legislation apply to all federal public sector employers and to employers under federal jurisdiction, with necessary adjustments being made by regulation for small businesses and agencies.

Many witnesses told the Committee that members and representatives of designated groups have not been consulted in the implementation of particular special programs. The Abella report recommended the establishment of employment equity committees consisting of representatives of management, labour and the designated groups (No. 5).

61. We recommend that representatives of the appropriate designated groups (women, underrepresented visible minorities, Native peoples and disabled people) be involved, as the case may require, with management and labour in developing employment equity programs.

A principal shortcoming of Bill C-62 is the absence of enforcement mechanisms. Employers must file annual reports with Employment and Immigration Canada, and some evaluation process appears likely. However, if successive reports show little or no progress towards equality of employment opportunities and benefits for the designated groups, no sanctions are available. Several witnesses criticized this omission. Shari Stein of the Coalition for Employment Equity for Disabled Persons expressed this point of view:

> One of our main areas of concern is the lack of an enforcement mechanism in the proposals... What essentially [was] announced is a voluntary employment equity program. This means that employees should be encouraged — not required by law, rather encouraged — to implement employment equity programs. The only mandatory feature of [the] proposal is a mandatory reporting requirement for certain kinds of employers... Without an enforcement agency, the proposal is just not going to work, and I would hate to be back here five years from now sitting in this same chair and saying that the proposal, after all the effort and all the money that has gone into it, just has not worked.

Rights that are not enforceable are not rights. The Abella report recognized that the enforcement of employment equity requires an independent agency with a qualified staff, sufficient resources to discharge its mandate, and an ongoing relationship with employers, labour and the designated groups (No. 23). Since we believe that all government departments and agencies should be subject to employment equity legislation, we support the view that it is preferable to have an independent agency, such as the Canadian Human Rights Commission, enforce the implementation of employment equity.

62. We recommend that legislation on employment equity contain enforcement mechanisms providing for the review of special programs by the Canadian Human Rights Commission, and that the Commission be given additional financial and human resources for this purpose.

Section 19 of the *Canadian Human Rights Act* allows the government to adopt regulations making it a condition of government contracts that contractors adopt practices and standards to prevent discrimination in employment. This statutory power has never been used. Draft regulations prepared by the Canadian Human Rights Commission were not adopted by Cabinet.

Contract compliance has been required in the past in a number of joint public/private projects, but it has not been in general use. The proposals on contract

compliance contained in the government's working paper on employment equity (June 1985) do not contemplate a statutory framework for implementing the proposals. Instead they would involve the adoption of guidelines that might — or might not — be implemented equally in all firms. Moreover, the guidelines would apply only to firms of 100 or more employees bidding for contracts of $200,000 or more. In the United States, a similar executive order, enforced by the Office of Federal Contract Compliance Programs, applies to contracts worth $50,000 or more granted to firms with 50 and more employees.

In our view the proposed guidelines do not go far enough to assure contract compliance. In their present form, they could be discarded at will. We agree with the concern expressed in the 1985 report of the Royal Commission on the Economic Union and Development Prospects for Canada (the Macdonald Commission) that "as often before, governmental actions will turn out to be 'toothless'. In order to ensure compliance, these approaches should be firmly legislated rather than merely set out in guidelines."

We also believe that the ceiling of $200,000 and 100 employees is too high. Various suggestions for a lower ceiling were made to the Committee. For instance, Citizens for Public Justice expressed the view that contract compliance should apply to all individual firms whose annual business with the government exceeds $200,000. We believe that a contract compliance program should be flexible enough to apply to large and small firms alike. Standards and goals can be adapted to small businesses. Lower targets are better than none in the search for equality.

63. We recommend that, to assure employment equity, a contract compliance program be established by legislation and that it apply to all firms providing goods and services to the government of Canada, with necessary adjustments being made, by regulation, on the basis of the size of the firm or the volume of its business with the government.

The data base available in Canada at present is sometimes insufficient to determine with accuracy the number of available and qualified women, disabled people and visible minorities in the labour pool. It is important that this information become available. Data are now collected through the census every five years. However, some information is not available or not entirely reliable under the present census methodology. The Abella report suggested that the census should seek information on subjects such as pre-employment training and education, length of time and wages paid in the current occupation, number of years in the labour force and so on. Respondents should be informed as to the purpose of collecting this information.

64. We recommend that Statistics Canada provide, through the census, relevant data to be used for devising and evaluating employment equity programs.

We are aware that the implementation of employment equity legislation involves significant administrative costs that will be shared by the public and the private sectors. On the other hand, eliminating discriminatory practices will generate economic benefits for employers, who will have access to a larger pool of human resources, and for members of designated groups, as well as social benefits for Canadians generally.

Administrative programs have a way of perpetuating themselves even after they have lost their usefulness. We believe that employment equity programs should be of a temporary nature and should be regularly reviewed and re-evaluated to assess their adequacy and the continuing need for them. The disadvantaged of today will one day be

part of the mainstream of society, and other disadvantaged groups may need remedial measures. For that reason, we believe that a special program must be both tailored to particular needs and responsive to changing economic and social conditions.

65. We recommend that employment equity legislation provide for regular review of special programs and that they be adjusted or terminated according to changing circumstances.

Special Measures

Eliminating discriminatory practices and mounting a determined effort to reach and hire qualified candidates from designated groups are essential steps towards assuring the equal benefit of the law in the employment field. These efforts could prove fruitless, however, if adequate complementary steps are not taken to enlarge the pool of qualified candidates from designated groups for the types of jobs where they are now underrepresented.

Training

The lack of adequate training programs and difficulties in gaining access to available programs appear to be important factors explaining the absence of qualified women or disabled people in some job classifications. Carol Connick of the Women's Employment and Development Program emphasized this concern:

> It is not sufficient for an educational institution to offer a training program and state that it is available for everyone. Because of discrimination and stereotyping, special provisions have to be made to enable women to enter and remain in training and employment, especially in non-traditional areas.

This situation and the difficulties encountered by some disabled people are analogous. At present, we were told by Joan Westland of the Canadian Coordinating Council on Deafness, "mainstream vocational training programs, skills development and upgrading programs and career development programs are not accessible to the deaf or hard of hearing."

Under the *Vocational Rehabilitation of Disabled Persons Act*, the federal government can enter into an agreement with a province to provide contributions for costs incurred by the province in administering a comprehensive program for the vocational training of disabled people. Some witnesses mentioned the paternalistic attitude of the provincial officials administering these programs in determining whether a vocational program will be made available to a disabled individual. Descriptions of vocational programs should outline the necessary minimum requirements so that disabled people can decide which vocational alternatives are within their capacity. Programs should also be more attuned to employment prospects. To that end, Employment and Immigration Canada, rather than National Health and Welfare, should be the department responsible for federal contributions to these programs.

Efforts have been made in the last decade to ensure that members of designated groups can compete in the labour market. In June 1985, the Minister of Manpower and Immigration publicized a new program, known as Canadian Jobs Strategy. The plan has several components. One of them, job entry, aims at helping women who face difficulties entering the labour market, through a combination of training and work experience. Another component of the plan, job development, will offer training and

work experience for people who have been unemployed for 24 of the previous 30 weeks, including women, disabled people, Native people and members of visible minorities. Employment and Immigration Canada has stated that "the new programs have been specifically designed to ensure that target group members will benefit from them by providing a greater share of employment opportunities than there has ever been before. Fair access to participation by target group members at the local, regional and national level is a basic requirement of each of the new programs."

It remains to be seen whether this ambitious program will attain its goals. We believe that it is a step in the right direction, but other steps must also be taken. We strongly support programs that encourage and assist industries to provide on-the-job experiences for members of the designated groups. Tax incentives can be used for that purpose.

66. We recommend that federal training and education programs be made accessible to women, disabled people, Native people and members of underrepresented visible minorities to assist in achieving employment equity.

Equal Pay for Work of Equal Value

Section 11 of the *Canadian Human Rights Act*, passed in 1977, states that "it is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value".

By assenting to this provision, Parliament formally adopted the principle of equal pay for work of equal value, to which Canada was already committed by ratifying the Equal Remuneration Convention in 1972. This concept is not universally recognized in North America. It is a hotly debated matter in the United States. Among the provinces, only Québec has enshrined the principle in its *Charter of Rights*. Similar proposals are being studied in other provinces, including Manitoba and Ontario. Nevertheless, there is still strong opposition to introducing, implementing or extending equal pay for work of equal value through the use of legislation.

The criterion to be applied in assessing the value of work under section 11 is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.

Under the Canadian Human Rights Commission guidelines for applying section 11, every job evaluation should include three stages:

1. job analysis that defines the duties involved in each job and the requirements for it;

2. job evaluation involving a comparison of the factors of the job with those of other jobs using a point system that weights those different factors; and

3. establishment of a wage scale taking into account general economic conditions, the ability to pay, the rate of pay for analogous positions in other companies in the region, the current rate of pay within the company, and the comparative value of the jobs to the company.

Historically, women have earned less than men in many similar or analogous job classifications. Several complaints have been lodged with the Canadian Human Rights

Commission for alleged violations of section 11. Some complaints were settled by inquiries or following concilation. For instance, in 1980, 475 librarians received approximately $1 million when their jobs were compared to those of predominantly male historical researchers. In 1982, a $17 million settlement was negotiated with the Treasury Board, involving tasks performed primarily by women (kitchen, laundry and miscellaneous personal services) that attracted considerably lower wages than other tasks performed primarily by men (messengers, custodial, building and store services).

In its recent report, the Royal Commission on the Economic Union and Development Prospects for Canada recommended maintaining section 11 but applying it, for the present, to the public sector, where the impact of market forces is weaker. There is a fear that implementing policies of equal pay for work of equal value will actually reduce employment and training opportunities for women, at least in the private sector.

Some women's organizations, including the Vancouver Association of Women and the Law and Real Women of Canada, share this concern. Most other witnesses who expressed views on this matter, however, asserted the need for aggressive enforcement of section 11 to assure employment equity.

Section 11 is in force and applies to all employers under federal jurisdiction, and it should be diligently implemented so that the goal of equal pay for work of equal value becomes a reality in the federal employment area.

67. We recommend that the Canadian Human Rights Commission pursue actively the implementation of equal pay for work of equal value performed by men and women working in the same establishment, as provided in section 11 of the *Canadian Human Rights Act*, in all areas under its jurisdiction.

Some concern was also expressed about the present wording of section 11, which specifies that job comparisons are to be made only within the same establishment. The Abella report recommended that this limitation be deleted from section 11.

68. We recommend that the federal government review the present provisions of section 11 of the *Canadian Human Rights Act* to ensure that the principle of equal pay for work of equal value is not unduly restricted by the present wording of the Act.

Employment-related Expenses

The Committee heard witnesses and received briefs describing the special costs often incurred by disabled workers. Extraordinary transportation costs have to be met, as do extra expenses for aids and devices.

We believe that disabled people should be able to itemize and deduct employment-related expenses reasonably and necessarily related to disability. An income tax deduction should be available when such aids and devices are essential to a person's ability to work or look for work.

69. We recommend that the *Income Tax Act* be amended so that disabled people are entitled to a deduction for the cost of special aids and devices, including extra transportation costs, incurred because of their disability and necessary for their employment.

Medical and Physical Tests and Other Job Requirements

Many employers require medical and physical tests as a prerequisite for employment. Such tests are not discriminatory *per se* if the standards required constitute *bona fide* occupational requirements under section 14(a) of the *Canadian Human Rights Act*.

It is essential for the employment of disabled individuals that they do not face blanket exclusions on physical or medical grounds. All employers must recognize that a person with an impairment to an ability that is not required for a given activity is not handicapped for employment purposes. Employers should consider whether the part of the job that a disabled candidate cannot fulfil could be exchanged for other functions. Essential elements of the job, not peripheral tasks, must be used to evaluate a job applicant who has some disability.

The Canadian Armed Forces establishes specific medical categories in a manual entitled *Medical Standards for Canadian Forces*, issued by the Chief of the Defence Staff. The manual is used to evaluate the medical condition of recruits and serving members; it establishes a level of health that they must maintain. It also assigns levels of medical condition that are intended to be commensurate with the tasks to be performed and the skills required for the different trades in the Canadian Armed Forces. The justification given for this system of medical classification is that all members of the Forces, no matter what their trade, rank or posting location, may be called upon at any time to put themselves at risk in difficult circumstances when it is operationally required.

There is a degree of truth to this argument, but it does not apply to the Forces in their entirety. Many members perform clerical tasks and engage in trades that are much like those done in any large, widely-dispersed organization.

In its submission to the Committee, the Coalition of Provincial Organizations of the Handicapped told us that

> One must question whether the Forces are properly informed of exactly how different disabilities would affect the performance of different military tasks. Certainly an attitude which reflects a reluctance to allow any disabled Canadian a position in the Forces must not be allowed to continue. Canada's disabled population have the equal right to serve their country if they desire and steps must be taken to ensure this is possible.

It is our view that some jobs in the Canadian Armed Forces could be filled by disabled people. The Forces must evaluate individuals for the specific job they are to perform. The Canadian Human Rights Commission expressed its views forcefully in its brief to the Committee:

> From the Commission's perspective there are two issues of concern. First, the Forces must ensure that any employment decision it makes is based only on the ability of the individual to perform the essential duties of the job in question, or, if based on ability to do a different job, must show that its hierarchic nature makes reasonably necessary a corporate policy requiring that recruits progress through the ranks. The Forces must then demonstrate that this policy is in fact implemented, that is that recruits do, in fact, progress through the ranks. Second, the Forces must ensure that the capacity of the individual to perform the job in question is measured accurately and not based on group assumptions.

Clearly, disabled people should be excluded only on the basis of clear *bona fide* occupational requirements that are essential to the proper performance of the specific job.

The Committee believes that employment decisions must be based on the ability of the individual to perform the essential duties of the job in question. We commend the Canadian Human Rights Commission for its guidelines on Physical Handicap and Employment. We also believe that when an employee is dismissed because of incapacity as a result of a physical disability, every effort should be made to retrain the employee for other trades or occupations and to give the employee priority for reassignment, without having to re-apply for a job. Similarly, we commend the Canadian Transport Commission for its recently amended *Railway Vision and Hearing Examination Regulations*. The amendments relax the visual acuity requirements for people entering railway service and those already in service. They also provide for more accurate testing of hearing and allow the use of ear protectors. We would like to see this policy of reassessment followed in other areas.

70. We recommend that the Canadian Human Rights Commission ensure that physical and medical tests required of job applicants in employment under federal jurisdiction relate only to the ability of the individual to perform the essential duties of the job in question.

Child Care

Many women's organizations that made submissions to the Committee supported the recommendation of the Royal Commission on Equality in Employment that child care be universally available. The importance of child care was described to the Committee by Carol Connick of the Women's Employment and Development Program in the following terms:

> We are concerned that child care be available to reflect the hours that women work — shift work, etc. In the absence of an adequate, universally accessible and affordable child care system, women cannot participate fully in the work force.

The establishment of nurseries on job sites, with tax incentives for employers, is an effective measure to attract women into the workforce. When such nurseries were discontinued after World War II, the consequences were disastrous for the employment of women in non-traditional jobs.

The federal government currently spends $75 million annually on child care through the Canada Assistance Plan; there is also a tax expenditure of $105 million through the child care expense deduction provision of the *Income Tax Act*. In June 1984, a Task Force on Child Care was established to examine and assess child care and parental leave in Canada in terms of need, adequacy and financial support. The Task Force will make recommendations concerning the development of a system of quality child care in Canada, with particular reference to financing measures. The Task Force is to report in the Fall of 1985, and its recommendations will be reviewed by a parliamentary committee.

71. We recommend that the federal government move quickly, in consultation with its provincial counterparts, to ensure that child care services across Canada are adequate, accessible and affordable.

Reasonable Accommodation

The right to equal employment opportunities for disabled people has a necessary prerequisite. Buildings and plants must be made accessible to disabled workers. If need be, alterations must be made in offices to accommodate equipment to their particular handicaps. Bill C-62 on employment equity recognizes this principle in stating in section 2 that "employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences."

In the concluding chapter of this report, we recommend that the *Canadian Human Rights Act* be amended to give a statutory basis to the concept of reasonable accommodation in employment. The Canadian Human Rights Commission has already adopted guidelines on Physical Handicap and Employment. These determine what are and are not *bona fide* occupational requirements in relation to employing disabled people.

Under the Canadian Jobs Strategy recently announced by the Minister of Employment and Immigration, employers who require special or structural renovations to the workplace, to accommodate disabled people, will receive up to $10,000 to defray costs. We support this initiative and urge the government to devise or extend other measures, such as tax incentives, so that disabled people will have the benefit of working facilities in which they can function easily.

CHAPTER 14

Further Equality Issues

"Where, after all, do universal rights begin? In small places, close to home — so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman or child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning here, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world."

—Eleanor Roosevelt, as quoted by Myrna Nerbas in testimony before the Committee at its Regina hearing

In this chapter we turn to a number of matters that do not fit neatly into any of the other chapters of this report. That these further equality issues are not easily compartmentalized does not mean that they are any less important.

The Use of Non-sexist Language in Federal Laws

Whether writing legislation or drafting contracts, the practice in the past has been to use the male gender as a short-hand way of covering males, females and, often, corporate entities. The *Interpretation Act* makes this approach possible for legislative drafting purposes by providing that "words importing male persons include female persons and corporations" (section 26(6)).

The Manitoba Teachers Society, the Manitoba Association of Women and the Law, the Saskatchewan Action Committee on the Status of Women, the Wednesday Morning Group of Carmen, Manitoba, and the YWCA of Winnipeg all urged the Committee to recommend a change in this practice. They want federal laws to be drafted in non-sexist language.

The government of Ontario recently announced that provincial statutes will now be drafted in a style affording equal recognition to both sexes. We believe that this is a feasible policy and that it should be adopted at the federal level as well.

72. We recommend that all federal laws henceforth be drafted in non-sexist language.

Appointments to Federal Offices

The people appointed to federal offices perform roles important not only for their intrinsic significance but also for what they represent. Their backgrounds, as well as their abilities, make an unspoken statement about the kind of country Canada is.

The Canadian Ethnocultural Council drew the Committee's attention to the fact that minority ethnic groups continue to be underrepresented in governor-in-council appointments to federal boards and commissions. In 1984, the Special Committee on the Participation of Visible Minorities in Canadian Society recommended in its report, entitled *Equality Now!*, that the government use the appointment process to increase the participation of visible minorities in federal boards and commissions and in the senior management of the public service and Crown corporations (Recommendation No. 21). The Saskatchewan Federation of Business and Professional Women's Clubs and others have urged us to ensure that more women are included among federal appointments.

In the future, governor-in-council appointments may not be within the sole control and prerogative of the executive. The Special Committee on the Reform of the House of Commons, in its 1985 report, recommended that many such appointments be subject to scrutiny by a Commons committee. As an initial response to that proposal the Prime Minister announced, on September 9, 1985, that all governor-in-council appointments would be subject, on an experimental basis, to parliamentary review.

Whatever the appointments process, it is the results on which we focus our attention here. It is important that government institutions be seen to reflect, in their composition, the contribution made to Canadian society by all those groups protected by section 15 of the *Charter*. This will demonstrate to everyone that, at the highest level, our national government is committed to according important roles to individuals notwithstanding their race, origin, colour, religion, sex, age, disability or other distinguishing characteristics. In short, we suggest that there be a greater reflection of the Canadian mosaic in those appointed to federal offices.

The same considerations apply with respect to the appointment of judges, a point that was made to us by Human Rights P.E.I. and other groups. However, the *Charter of Rights* has to be considered in another respect when it comes to judicial appointments. The *Charter* is bound to thrust the courts into the unfamiliar role of making value judgments about government policies. We think, therefore, that it will be increasingly important to avoid any perception that judges have been selected because they are sympathetic to a particular government.

Some witnesses suggested that federal judicial appointments should be vetted by a parliamentary committee. The Report of the Canadian Bar Association Committee on the Appointment of Judges in Canada (1985) rejected that idea. Instead, it recommended the establishment of independent advisory committees for each province or territory to assist the Minister of Justice in coming up with nominees for judicial

appointment. We note that the appointment process is currently under active review by the Minister. Whatever system is adopted, the selection of judges should be sensitive to the new *Charter* realities and more reflective of the composition of Canadian society.

73. We recommend that governor-in-council appointments, including judicial appointments, be made in a manner that reflects the composition of Canadian society, in keeping with the objectives of section 15 of the *Charter*, and that the criteria for the selection of judges take into account the policy role they perform in interpreting and applying the *Charter*.

The Concerns of Native Women

Before the recent enactment of Bill C-31, the *Indian Act* provided that an Indian woman who married a non-Indian lost her Indian status. An Indian man in the same situation suffered no change in status. During the time the Committee was conducting hearings and consultations, Bill C-31 was before Parliament. The time and attention of many Indian organizations was directed to the important equality issue addressed in this bill. A major conference involving government leaders and representatives of aboriginal peoples also took place during the time the Committee was active. Accordingly, we did not receive as many representations as we might have, in other circumstances, from Indian people.

Several of the organizations that did make submissions to the Committee suggested that Bill C-31 is simply a first step towards securing equality for Native women. They urged that government funding be provided to support information and education programs to facilitate the reintegration of Indian women who had lost their status into their Native communities.

We believe that the provisions of Bill C-31 should be implemented quickly and with the co-operation of band leaders. The federal government should remain attentive to this situation and should act, in whatever ways are necessary, to see that this goal of reintegration is achieved by all Indian women who seek it.

Laws in Relation to Children and Young People

We considered the subject of maximum age restrictions, in the employment context, in Chapter 3, dealing with mandatory retirement. Now we come to the other end of the scale. Many federal laws have age limitations relating to the early, rather than the later, part of life. Some of these laws are designed to protect young people in their vulnerable years, others to withhold rights and benefits until a particular level of maturity is reached, and still others to assist those upon whom a young person may be dependent.

It is hard to generalize about the reasonableness of these age distinctions as so much depends on their purpose. The fact is that in many instances some age factor is necessary because there is no other practicable measurement to limit the protection, right or benefit at issue. We must then ask whether the age that has been selected is reasonably appropriate in the circumstances. That is often a difficult judgment call.

In assessing references to age in federal laws in light of the *Charter*, we think that the following general questions should be asked:

- Is age really relevant in the particular situation?

- Is there some other objective factor or testing mechanism that can be substituted for age without excessive cost or inconvenience?
- Is the designated age consistent with that in other laws that introduce the criterion of age for the same basic purpose?

We tested this methodology by applying it to section 4(1)(a) of the *Public Service Superannuation Act*, which excludes public servants under age 18 from participating in the superannuation plan.

In our view, anyone old enough to work is old enough to understand and participate in the benefits and obligations normally associated with being part of the permanent workforce. There may be some question about the enforceability of the obligations accompanying participation in the public service superannuation scheme if a participant is under age 18. Such an individual is a minor without full legal capacity to enter into binding contracts. But this concern could be addressed in the governing legislation by making it clear that the obligations of contributors to a superannuation plan are indeed enforceable, notwithstanding the age of the contributor. Therefore, age need not be a relevant factor in respect of participation. The fact that an individual is employed would seem to be an adequate objective basis for determining eligibility for superannuation purposes.

We conclude, therefore, that public servants under the age of 18 should be contributors to the Superannuation Account.

74. We recommend that the *Public Service Superannuation Act* be amended to eliminate the minimum age of 18 for contributors to the Superannuation Account so that there will be no minimum age limitation for those purposes.

A number of provisions of the *Criminal Code* deal with offences against young people. This kind of protective provision is likely to be supportable even though older victims of the same conduct do not have the right to launch a criminal complaint. We accept the position of the Committee on Sexual Offences against Children and Youth (the Badgley Committee), taken in its 1984 report, that a special legal framework to deal with sexual abuse and exploitation of young persons is "both necessary and desirable". The report documents that conclusion with extensive evidence. In fact the Badgley Committee recommended a reformulation of the sexual offences in the *Criminal Code* that would make them even more specific to young people than the current provisions of the Code.

Those Code provisions should, in our view, be reconsidered in light of the Badgley Committee report and in light of the *Charter* protections, as part of the criminal law review process in which the Department of Justice is currently engaged. A number of lower court decisions have held that some of the sexual offence provisions of the Code are invalid on various *Charter* grounds. Section 146(1) of the *Criminal Code*, for example, which makes it an offence for a male person to have sexual intercourse with a female under age 14, with or without consent, has been found to violate the prohibition against sex discrimination in section 15 of the *Charter*, because no comparable offence can be committed by a female in relation to a male. This and other sexual offences in the Code that can be committed only by males should be revised so that offenders of both sexes are covered and any patent distinction between the sexes is eliminated.

75. We recommend that the *Criminal Code* be amended so that sexual offences that can be committed only by a male person in relation to a female person be extended to cover similar conduct by a female person in relation to a male person.

Finally we note that the Special Senate Committee on Youth has been charged with examining the problems and issues facing Canadian youth and may have recommendations to make with respect to the equality of young people under the law.

Custody of Children on Marriage Breakdown

The Committee heard a number of individuals and organizations that expressed strong criticisms of the manner in which the custody of children of a failed marriage is handled. It was pointed out that approximately 85% of custody awards made by the Canadian courts are in favour of the female parent; this, it was suggested, indicates a form of systemic discrimination against men. This situation was said to foster feelings of injustice that contribute to the high rate of delinquency (60%) among divorced fathers in making support payments.

The solutions offered by the witnesses included removing matrimonial matters from the courts and creating a system of mandatory mediation, placing a greater emphasis on joint custody, and introducing a statutory direction that neither parent is to be preferred as a custodian simply on the basis of sex.

These concerns raise the broad issue of the appropriate role of the courts and of judicial discretion in matrimonial matters. While we sympathize with the position of the non-custodial parent, we believe that the concerns put to us can best be addressed in the general context of divorce reform, which was initiated with the introduction of Bills C-46, 47 and 48 in the current parliament. We know that the concerns expressed to us — by such groups as the Organization for the Protection of Children's Rights of Canada, Fathers for Equality in Divorce, Fathers Fighting Back, and the *Association des hommes séparés ou divorcés de Montréal* — have been heard by the parliamentary committee reviewing the new divorce legislation.

There has undoubtedly been inadequate recognition of the capabilities of those fathers who are willing and able to be closely involved in raising their children. The judicial approach to custody orders is no doubt a reflection of that lack of recognition. Some of our recommendations are designed to weaken the historical assumptions about the proper role of the male parent. We recommend in Chapter 2, for example, that parental benefits be available under the *Unemployment Insurance Act*, in addition to maternity benefits, and that they could be drawn by either the father or the mother who took time off from work to care for a newborn child. This change, though incremental, will be important in helping to alter the sex-role models that are a factor in explaining the current statistics on custody orders.

Family Violence

Statistics indicate that one-tenth of the women who live in relationships with men are battered each year. They are often seriously injured and forced to leave their homes. They frequently meet with police indifference, an inflexible social service system that cannot accommodate their needs and an inappropriate response by the courts. The transition houses and shelters to which they might go are frequently operating at their physical and financial limits. In the rural and northern parts of Canada, the lack of facilities and services for battered women is particularly acute. Children are also victims of family violence through physical abuse or simply because they are dispossessed along with their mothers.

It has been argued that the absence of adequate support networks to deal with the needs of victims of family violence is a denial of the equal protection and benefit of the law. However it is hard to pinpoint responsibility, since this is an area where several levels of government need to be involved, along with social service agencies, in devising and implementing solutions to the problems.

While we make no specific recommendations on this subject, we recognize that family violence is a matter of growing concern that must be given immediate attention with a view to both prevention and the provision of adequate care for victims.

Health Issues Relating to Women

Several organizations directed the Committee's attention to the special health care concerns of women and expressed the view that if some of the products and procedures were for men as well, the standards would be more exacting and the marketing and promotion of such products would be less prejudicial to the image of women. In short, there is a view here that unequal treatment exists. The health care concerns mentioned to us included the limited amount of government-funded research into women's health problems, the inadequate monitoring of the safety, packaging and labelling of women's health products, the stereotyping and degradation of women in the advertising (to both physicians and the general public) of health products, excessive prescribing of mood-altering drugs for women patients (three times more common than for male patients), and the failure of the federal government to tie a portion of provincial funding under the *Canada Health Act* to the provision of clinics to address women's health needs and to support the practice of midwifery.

A good measure of the responsibility in this area rests with the provinces, the health care professions and the pharmaceutical industry. However we believe the federal government could demonstrate leadership by facilitating research into women's health needs, by asserting a greater degree of control over the marketing of women's health care and personal hygiene products, and by ensuring that product promotion is not carried out in a way that is demeaning to women. As well, packaging and labelling requirements under federal law should provide for more complete disclosure to consumers about the nature and content of these products. Federal jurisdiction is clear in this respect.

76. We recommend the government improve its monitoring of women's health care and hygiene products, including drugs; exert, through the Departments of Consumer and Corporate Affairs and National Health and Welfare, a larger measure of control over the labelling, packaging and promotion of such products; and increase the level of funding directed to research into women's health needs.

Abortion

The Committee received representations from many individuals and organizations critical of the abortion provisions in the *Criminal Code* (section 251). Some urged the repeal or relaxation of these provisions while others wanted them strengthened to limit the availability of abortion. Both groups relied on section 15 of the *Charter*.

Those who take the pro-choice position argued that the Code discriminates against women by singling out a particular medical procedure, which happens to be carried out on women alone, for regulation. They also argued that the Code is unequal in its

geographic application because of discrepancies in the hospital policies and procedures that determine whether and to what extent legal abortions are available in a particular area of the country.

On the other hand, those who take the pro-life position advanced the argument that the legal protection offered by section 15 should extend to the unborn. They argued, among other things, that the present law discriminates, on the basis of age, against the unborn and, on the basis of sex, against fathers of the unborn, who have no right to participate in the decision to terminate a pregnancy.

We do not doubt that equality considerations are relevant to the abortion issue. However, if Parliament is to reconsider the abortion provisions of the *Criminal Code* it will have to take account of other factors as well. It will be obvious even to the casual observer of Canadian society that the subject of abortion is one on which there are deeply felt and clearly divided views. Indeed that division of views is reflected among the members of the Committee.

Pornography

The Committee received several submissions to the effect that the laws dealing with pornography should be strengthened.

The past 15 years have seen a dramatic increase in the volume of sexually explicit material available in Canada. Much of it demeans and exploits women, portraying them as submissive and unworthy of equal treatment. Some depicts children in degrading situations. This kind of material is available not only in print but also on movies and videocassettes.

It is argued that the selective denigration of women in this context may contribute to the unequal treatment and physical abuse of women in other contexts, with the result that women are not receiving the equal benefit of the law and the equal protection of the law, which section 15 of the *Charter* guarantees.

The subject of pornography was dealt with at length in the 1978 report on pornography by the House of Commons Standing Committee on Justice and Legal Affairs, the 1984 report of the Committee on Sexual Offences against Children and Youth (the Badgley Committee), and the 1985 report of the Special Committee on Pornography and Prostitution (the Fraser Committee). Each of these reports recommended changes in the law dealing with pornography.

We understand that the Department of Justice is now preparing draft legislation that will tighten the controls on the distribution of pornographic material. We urge the Minister to bring this legislation forward at an early date.

Voting Outside Canada

An anomaly with respect to voting by certain Canadians living outside Canada was brought to our attention as an unnecessary distinction that may well be seen as a denial of equality before the law as guaranteed by section 15 of the *Charter*.

Under the Special Voting Rules pursuant to the *Canada Elections Act* (Schedule 2), members of the Canadian Armed Forces must complete a statement, upon enrolment in or transfer to the Regular Forces, indicating their place of ordinary

residence prior to enrolment or transfer. Members and their spouses and dependent children who accompany them during service outside Canada are then deemed to continue to reside ordinarily in that place of residence for the purpose of voting in general elections. Therefore, the electoral district where an accompanying spouse or dependent child of voting age must vote is determined by the ordinary residence of the member as disclosed by the prescribed statement. Yet the ordinary residence of that spouse or child may, in some instances, have been different from that of the member.

Similar voting rules apply to spouses and dependent children of members of the public service posted outside Canada. In either case, it can be argued that the rules constitute a form of systemic discrimination against women, because an accompanying spouse is most likely to be female. It would appear that the potential discrepancy between the voting prerogatives of spouses and dependent children, on the one hand, and those of the Forces member or public servant posted abroad on the other, could be eliminated easily without significant administrative difficulties.

77. We recommend that the *Canada Elections Act* be amended so that spouses and dependent children accompanying Canadian Armed Forces personnel and public servants posted outside Canada are entitled to vote, in general elections, in the electoral district where they declare themselves to be ordinarily resident in Canada. For this purpose, spouses and dependent children should be required to complete a declaration of residence comparable to that currently required of the members of the Forces and public servants whom they accompany outside Canada.

Political Rights of Public Servants

All Canadian citizens have the right to take part in the political process of their country. Freedom of expression and freedom of association are enshrined in section 2 of the *Charter*. The democratic right to vote and to serve as a candidate in provincial and federal elections is also recognized in section 3 of the *Charter*. The law does recognize a number of legitimate restrictions on these broadly stated rights. Concern was expressed in several submissions to the Committee about the limitations on the political rights of federal public servants.

Section 32 of the *Public Service Employment Act* forbids public servants from "working for, on behalf of or against" a political party or candidate for election to the House of Commons or a provincial or territorial legislature. Federal public servants subject to the Act are also barred from being candidates in such elections unless they obtain a leave of absence from the Public Service Commission. The participation of public servants in the political process is limited to voting, contributing funds to a political party or candidate and attending meetings. If a public servant engages in activities prohibited under section 32, he or she can be dismissed by the Public Service Commission upon inquiry after a complaint is made by a candidate or former candidate for election.

While we believe that the political neutrality of the public service must be preserved as a general principle, it seems to us that the rights of public servants are, at least in certain circumstances, unduly curtailed. The prohibition against campaigning, soliciting funds and assuming official functions with a political party applies to all public servants, even to those whose job classifications are such that no suspicion of conflict of interest or breach of trust might arise from the exercise of such political rights.

78. We recommend that section 32 of the *Public Service Employment Act* be amended to ensure that no greater limitations are imposed on the political rights of public servants than are necessary to maintain a politically neutral public service.

Spouses of Armed Forces Personnel

Concerns were brought to the attention of the Committee by the Organizational Society of Spouses of Military Members (OSSMM) and by several other spouses of past or present members of the Canadian Armed Forces. These concerns all dealt with restrictions on the activities of civilians who live with their Armed Forces spouses on military bases. The Department of National Defence is in a position to impose these restrictions because it owns the houses and runs the schools and recreational facilities used by members and their families. The Department is therefore able to exercise authority over aspects of the lives of military spouses that would, in the civilian world, be matters of individual decision. In the view of OSSMM, the base authorities place unjustified limitations on those spouses who are not members of the Armed Forces, so that in matters of a purely civilian nature they are not treated equally with other Canadians.

Representatives of OSSMM indicated to the Committee at its Calgary hearing that they have been prevented from lobbying for a family dental plan on the base, seeking crossing lights at a busy provincial highway, and acting in leadership roles in community groups. These activities are prohibited because the Department of National Defence views them as 'political' in nature, and a possible threat to the political neutrality of the military.

We agree that spouses of service personnel on military bases may have a different role in some respects than civilian spouses living in civilian communities. However, a balance must be reached between recognizing the special situation that exists on military bases, and giving effect to the claims of spouses to be treated as independent individuals. A similar organization to OSSMM exists in the United States, operating as a support group for spouses and as a community focus. We believe that spouses on military bases should not be precluded from taking part in community activities and arguing for increased services. We urge that the Department of National Defence recognize the special concerns of spouses of military personnel — mostly women — when developing and implementing policies concerning the operation of military bases.

Amendments to the *Charter*

A number of organizations and individuals urged the Committee to recommend amendments to the *Canadian Charter of Rights of Freedoms* to give express recognition in section 15 to certain factors, not currently mentioned in that section, as prohibited grounds of discrimination. Others recommended repealing section 33, which allows Parliament or a legislature to override various provisions of the *Charter*, including section 15.

Our terms of reference limit us to reviewing federal laws and do not permit us to recommend changes to the Constitution itself, which would require legislative action at the provincial as well as the federal level.

We would observe, however, that the ability of Parliament or a legislature, pursuant to section 33 of the *Charter*, to legitimize a violation of one of the fundamental protections under the *Charter*, such as that of equality, is at odds with the very notion of guaranteed rights that apply from coast to coast. Section 33 is out of place in a constitutional charter of rights and freedoms.

CHAPTER 15

The Process of Securing Equality

"While the *Charter* is a legal document, it is also a political document. The legal approach is one route with many hurdles, particularly for those Canadians who are the most disadvantaged and the most powerless. To be effective and not to be just fine words, the *Charter* needs commitment and leadership by government in adopting policies and changing laws to redress discrimination."

—Kathleen Ruff, Editor and Publisher, *Canadian Human Rights Advocate*, in testimony before the Committee at its Toronto hearing

There are several ways to achieve equality. We deal in this final chapter with the administrative process, the judicial process and the parliamentary process as means by which we may move effectively towards that goal. We offer recommendations as to how these various processes can be best adapted to secure equality of the kind mandated by section 15 of the *Charter of Rights and Freedoms*.

The Canadian Human Rights Act

The *Canadian Human Rights Act* establishes an administrative framework for dealing with individual instances of discrimination, some of which may be isolated events while others are manifestations of a discriminatory policy or rule. In this section we propose a number of changes to the structure of the Act to bring conduct covered by it into line with the scope of section 15 of the *Charter*.

A Primacy or Override Clause

We have noted that the *Canadian Human Rights Act* provides an established and expeditious régime for resolving complaints of discrimination. Many of our recommendations involve the assignment of responsibilities to the Canadian Human Rights Commission and ultimately, when appropriate, to tribunals constituted under its

governing Act. Some of these new or expanded responsibilities cannot be exercised to the fullest extent without accompanying changes to the *Canadian Human Rights Act*.

It is particularly important, in our view, that individuals have the right to challenge federal government policies under the Act. However, many official policies that might be put in issue take the form of statutes, regulations or orders. That is the situation, for example, with mandatory retirement policies in the federal public sector (see Chapter 3). In the event of a conflict between a law authorizing a particular discriminatory practice and a prohibition on discrimination in human rights legislation, the former has often prevailed.

This will no longer be the case following the recent Supreme Court of Canada decision in *Winnipeg School Division No. 1* v. *Craton* (September 1985). The court made it clear that a human rights statute is a fundamental law to which exceptions may not be created except "by clear legislative pronouncement". In other words, if a law is to take priority over a provision of a human rights statute, it must say so expressly. We believe that this is an important principle. It means that a government that proposes a measure intended to override the usual protection accorded human rights will be clearly exposed to whatever criticisms are justified in the circumstances for taking that initiative.

The *Canadian Human Rights Act* should be amended to make it clear, on its face, that this rule of priority for human rights principles will be applied in the administration of the Act. In Ontario and Québec the human rights legislation is explicit in this regard.

79. We recommend that the *Canadian Human Rights Act* be amended by the addition of a primacy or override clause that will confirm its priority over conflicting federal laws unless they purport specifically to apply notwithstanding the *Canadian Human Rights Act*.

Reasonable Accommodation

We noted in Chapter 9 that freedom from discrimination in the workplace on the basis of religion would be better served if employers had a positive duty to make a "reasonable accommodation" to the religious practices of their employees. That duty would be excused if the employer could show that it would suffer "undue hardship" by making such an accommodation.

We observed that the *Canadian Human Rights Act* does not now impose a duty of reasonable accommodation in so many words but that the Canadian Human Rights Commission has introduced the concept as part of its guidelines on the application of the *bona fide* occupational requirement defence to a complaint of discrimination in employment. At the time of writing this report it was unclear whether the duty to make reasonable accommodation can be properly treated as part of the requirements of the *Canadian Human Rights Act*. The issue is likely to be dealt with by the Supreme Court of Canada when it delivers its judgment in *Re Canadian National Railway Co. and Canadian Human Rights Commission* (the *Bhinder* case).

Reasonable accommodation is an important way of according the full benefit of the law to disabled people as well as to religious minorities. As we pointed out in the chapter dealing with employment equity (Chapter 13), positive action is often required to respond to the special needs of disabled people in the workplace.

Accordingly, we believe that the *Canadian Human Rights Act* should be amended so that it is clear that employers have a duty to make reasonable accommodation in respect of those characteristics of employees that reflect the prohibited grounds of discrimination under the Act.

80. We recommend that the *Canadian Human Rights Act* be amended so that employers are obliged to make "reasonable accommodation", that is, such special provisions as would not cause undue hardship to the employer, in response to the needs peculiar to those classes of employees that are protected from discrimination by the terms of the Act.

Systemic Discrimination

The *Canadian Human Rights Act* does not now state, in clear terms, that it applies to systemic discrimination, that is, practices that have an adverse impact on members of protected groups but that are not obviously discriminatory. (See Chapter 1 of this report for a discussion of the application of section 15 of the *Charter* to systemic discrimination.) Whether the Act can be so read is an issue that is also before the Supreme Court of Canada in the *Bhinder* case. Once again, we believe that the benefit of the law that protects against discrimination can be better secured by widening the scope of protection afforded by the *Canadian Human Rights Act*. In our view, the Act should clearly cover systemic discrimination as well as direct discrimination. That is now the situation under the Ontario *Human Rights Code* as a result of a 1981 amendment that was proclaimed in force on June 15, 1982.

81. We recommend that the *Canadian Human Rights Act* be amended to ensure that it covers systemic discrimination, that is, practices that may not be obviously discriminatory in their formulation or nature but that, in their result, have an adverse impact on those who are protected from discrimination by the Act.

The Special Committee on Visible Minorities made a similar proposal in *Equality Now!*, but the government, in its response to the report, said that it would not consider any amendment to the *Canadian Human Rights Act* in this regard until the final outcome of the *Bhinder* case was known. We believe that, even if the Supreme Court of Canada holds that systemic discrimination is covered by the Act, there is a good deal to be said for amending the Act so that it states unequivocally that systemic discrimination is prohibited.

We should point out that some observers, apparently including officials of the Canadian Human Rights Commission, are of the view that such an amendment would eliminate the need to impose an express obligation on employers to provide reasonable accommodation for the special needs of members of classes protected under the Act. While this may be the case, we believe that the Act should be explicit so that employers and others know precisely what is expected of them in terms of positive action — in relation to both identifying and avoiding systemic discrimination and adopting policies to accommodate the special needs of protected groups when that can be done without undue hardship.

Prohibited Grounds of Discrimination

At the outset of this report we stated our firm view that the list of prohibited grounds of discrimination in section 15 of the *Charter* is not exhaustive. We identified two additional grounds in earlier chapters, namely sexual orientation and marital or

family status, that we believe should be treated as falling within the general prohibition on discrimination in section 15. Of the two, sexual orientation is not currently a prohibited ground of discrimination in the *Canadian Human Rights Act*. Accordingly, we have recommended that it be so included.

In keeping with the broad reach of section 15 of the *Charter*, the grounds of discrimination that are included in the *Canadian Human Rights Act* should be kept constantly under review so that, when experience discloses the need for protection against discrimination on new grounds, the Act is extended promptly to reflect that need. At this time, the Canadian Human Rights Commission has recommended the inclusion of political belief and criminal conviction or charges, as well as sexual orientation, as prohibited grounds of discrimination under the Act.

82. We recommend that the *Canadian Human Rights Act* be amended to include political belief and criminal conviction or criminal charges as prohibited grounds of discrimination, subject to the usual defences of *bona fide* occupational requirement and *bona fide* justification, as applicable.

An Equality Litigation Fund

It is inevitable that the courts will be called on to resolve many important issues relating to section 15 of the *Charter*. Our recommendations anticipate some of the important challenges that might be made to federal laws. We propose changes that would remove the basis for some challenges and divert some disputes to the Canadian Human Rights Commission. But the adoption of our proposals will simply stem, not stop, the flow of equality litigation that has already begun. Because equality rights are new to the Canadian Constitution, because they affect individuals in so many ways, and because they have been recognized in very general terms, the courts must play an important role in defining the meaning and practical application of section 15.

In a recent public address, Chief Justice Dickson of the Supreme Court of Canada emphasized the importance of accessibility to the courts to secure the advantage of section 15 of the *Charter*, suggesting that it is particularly important that some form of legal assistance plan be available in this new context.

In the short time since section 15 came into force on April 17, 1985, there have been many lawsuits initiated on the basis of this provision of the *Charter*. They involve individuals on the one side and, generally speaking, government departments or agencies on the other side. The imbalance in financial, technical and human resources between the opposing parties constitutes a serious impediment to those who might wish to claim the benefit of section 15, thus reducing the effectiveness of resorting to the courts as a means of obtaining redress.

The government of Canada has a number of programs to assist individuals and organizations in proceedings before the courts and regulatory tribunals. The Department of Consumer and Corporate Affairs provides funding to the Regulated Industries Program of the Consumers' Association of Canada and to the Public Interest Advocacy Centre. This funding allows the organizations to appear before regulatory agencies and courts on behalf of their members, in the case of the Consumers' Association of Canada, or on behalf of low-income or disadvantaged clients, in the case of the Public Interest Advocacy Centre.

For many years the Department of Justice has shared in the cost of legal aid in criminal law matters through financial contributions to provincial legal aid plans. The Department also provides funding to the Advocacy Resource Centre for the Handicapped. The Department of Justice has a Human Rights Law Fund that makes grants to individuals and organizations to enable them to inform Canadians about the *Charter* and human rights, to promote the development of human rights law in Canada, and to enlarge the knowledge of human rights law. Several of the organizations appearing before the Committee were assisted by the Fund.

Since 1978, the Court Challenges Program, administered by the Human Rights Directorate of the Department of the Secretary of State, has provided financial assistance to individuals and organizations initiating litigation relating to Canada's official languages. The purpose of the Program was to facilitate court rulings clarifying language rights, which are guaranteed in the Constitution. In fiscal year 1984-85, the program had a budget of $200,000.

Before the Program agreed to fund any case, the matter was referred to the Department of Justice for advice as to whether it met the established criteria for funding. All accounts for legal services were referred to the Department of Justice for its approval before being paid by the Program.

The Court Challenges Program was an important initiative. It helped litigants obtain a number of important judicial decisions in the area of language rights. However, it had a major weakness. The Department of Justice participated in determining who received financial assistance in litigation, yet its own lawyers could be acting for a government department involved in that litigation. This put the Department in a position of potential conflict.

Many of the witnesses appearing before the Committee emphasized the need for some form of funding by the federal government of section 15 litigation. Among the many who did so were the Canadian Ethnocultural Council, the Coalition of Provincial Organizations of the Handicapped, the Canadian Bar Association, the National Action Committee on the Status of Women, and the Women's Legal Education and Action Fund. We agree that funds should be provided to assist those involved in equality litigation as an appropriate supplement to the law reform approach to implementing section 15.

While this report was in preparation the Minister of Justice and the Secretary of State announced the establishment of a modified and expanded Court Challenges Program, covering both language and equality rights litigation, to be funded by the government and administered by the Canadian Council on Social Development. Some members of the Committee are concerned about the limitations, financial and otherwise, that have been imposed on the Program.

A Continuing Consultation and Review Process

As indicated in the introduction to this report, the Committee received many representations, from individuals and organizations, over the short span of its existence. The variety of equality issues presented to the Committee and the quality of the presentations were particularly impressive. Certainly, the consultation process proved useful in identifying and refining the issues and in advancing the Committee's consideration of those issues.

There are undoubtedly some forms of inequality in federal laws that have escaped our attention and the attention of those who made submissions to the Committee. There are also bound to be some laws that are apparently neutral but that will prove, over time, to discriminate — in a systemic way. As new laws and policies are developed, new equality issues will arise as well. We have therefore concluded that there is a real need for a vehicle to continue to monitor and review federal laws in light of section 15 of the *Charter*. Our favourable experience with the consultation process suggests that the format should be suited to receiving public input and reaction. The Canadian Bar Association, the Canadian Council on Social Development and the Canadian Association for Children and Adults with Learning Disabilities all recommended that a consultation and review process be initiated so that there is a continuing focus on federal laws in relation to section 15 of the *Charter*.

The recently enacted *Statute Law (Canadian Charter of Rights and Freedoms) Amendment Act* requires the Minister of Justice to examine all government bills and all new regulations to determine whether they are inconsistent with the *Charter*. The Minister is directed to report any inconsistencies to the House of Commons. We have also suggested that the Minister conduct a detailed audit of all existing federal laws in light of the *Charter*. These ministerial responsibilities do not, however, fully satisfy the need for an ongoing assessment of federal laws in light of section 15 for for several reasons:

- there is no structured way of obtaining public input;
- future government policies and programs that do not take the form of proposed legislation or regulations, but that may contain inequalities, are not subject to scrutiny;
- the Minister is not likely to be perceived as a severe critic of federal laws, being a member of the government that administers those laws, and may have introduced them in the first place;
- as the senior law officer of the Crown, the Minister may be inclined to take an approach that reflects the results or expected results of court challenges rather than being guided by the spirit of section 15.

Responsibility for continuing the task begun by this Committee should be entrusted to a new standing committee of the House of Commons. This is consistent with the Report of the Special Committee on Reform of the House of Commons, which recommends a larger role for standing committees and, indeed, includes a Committee on Human Rights in its recommended list of standing committees. The report does not specify the responsibilities of that new committee.

We would suggest that the Standing Committee on Human Rights have broad responsibilities for human rights matters as well as a specific and continuing mandate to review federal laws (including legislation, regulations, programs and policies) in light of the letter and spirit of section 15 of the *Charter*. It would seem appropriate for the Committee to have permanently referred to it the annual reports and estimates of the Canadian Human Rights Commission. In that event the Commission should be responsible directly to Parliament. We agree with the recommendation of the Special Committee on Visible Minorities that the Commission should not have to report through the Minister of Justice to Parliament (as now required by section 47 of the *Canadian Human Rights Act*), as this current procedure may carry the appearance of conflict.

The relevant portions of the annual reports of the Departments of Justice, the Secretary of State, and Employment and Immigration, as well as any other departments, that deal with human rights and equality rights, including employment equity, should also be referred to the Committee on Human Rights.

83. We recommend that the standing orders of the House of Commons be amended to provide for a Standing Committee on Human Rights with responsibility for overseeing the protection of human rights, including equality rights.

84. We recommend that the annual report and estimates of the Canadian Human Rights Commission and those portions of the annual reports of any government departments, including the Departments of Justice, Secretary of State, and Employment and Immigration, dealing with human rights and equality rights, including employment equity, be referred to the Standing Committee on Human Rights.

85. We recommend that the *Canadian Human Rights Act* be amended to provide that the Canadian Human Rights Commission report direct to Parliament.

Summary of Recommendations

Maternity and Parental Benefits

1. We recommend that Parliament amend the *Unemployment Insurance Act* to recognize a two-tier system of benefits relating to childbirth:

   the first tier (maternity benefits), to be available to women only, during late pregnancy and the period following birth; and

   the second tier (parental benefits), to be available to either or both parents, during the period following maternity leave. (page 12)*

2. We recommend that parental benefits (for both natural and adoptive parents) under the *Unemployment Insurance Act* be available to either or both parents, the total amount of benefits provided not to exceed the maximum available to one parent. (page 13)

3. We recommend that no distinction be made between the qualifying periods for regular benefits and for special benefits under the *Unemployment Insurance Act* and that the Act be amended so that the current eligibility requirement for regular benefits applies in respect of all benefits. (page 14)

4. We recommend that section 22(3) of the *Unemployment Insurance Act* be amended to remove the present 15-week aggregate benefit limit so that the availability of sickness benefits is separate and distinct from any maternity, adoptive or parental benefits to which a person may be entitled. (page 15)

5. We recommend that maternity leave provisions for employees under federal jurisdiction, including the Armed Forces and public service employees not covered by collective agreements, be brought into line with the provisions of the *Canada Labour Code*. (page 15)

* Page numbers in parentheses indicate where the recommendations can be found in the text.

Mandatory Retirement

6. We recommend that mandatory retirement be abolished by:

   (a) amending the *Canadian Human Rights Act* so that it is no longer a defence to a complaint of age discrimination that an employee who is forced to retire has reached the "normal age of retirement"; and

   (b) amending the *Canadian Human Rights Act* so that it is no longer a defence to a complaint of age discrimination that an individual whose membership in an employee organization is terminated has reached the "normal age of retirement". (page 22)

7. We recommend that those provisions of the Public Service Superannuation Regulations providing for mandatory retirement at age 65, as well as comparable regulations affecting public servants who do not contribute to the Superannuation Account, be revoked. (page 22)

8. We recommend that the *Canadian Human Rights Act* be amended so that it applies to all mandatory retirement policies embodied in legislation, regulations or orders. (page 22)

9. We recommend that Parliament and the government of Canada adopt measures to facilitate flexible retirement, so that individuals will have a greater degree of choice in the timing of their retirement, to complement the abolition of mandatory retirement. (page 24)

Sexual Orientation

10. We recommend that the *Canadian Human Rights Act* be amended to add sexual orientation as a prohibited ground of discrimination to the other grounds, which are race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability, and conviction for an offence for which a pardon has been granted. (page 30)

11. We recommend that the Canadian Armed Forces and the RCMP bring their employment practices into conformity with the *Canadian Human Rights Act* as amended to prohibit discrimination on the basis of sexual orientation. (page 31)

12. We recommend that the federal government security clearance guidelines covering employees and contractors not discriminate on the basis of sexual orientation. (page 32)

13. We recommend that the *Criminal Code* be amended to ensure that the minimum age or ages at which private consensual sexual activity is lawful be made uniform without distinction based on sexual orientation. (This recommendation does not pertain to existing sexual assault offences in the *Criminal Code*). (page 32)

14. We recommend support in principle for Bill C-225 and urge the government to enact legislation reflecting the principle of the Bill as outlined in this Committee's recommendations. (page 32)

Marital or Family Status

15. We recommend that the *Income Tax Act* be amended to extend the meaning of the words 'spouse' and 'married person' and similar expressions to include a common law spouse, and the word 'marriage' to include a common law relationship, so that the same tax treatment is afforded taxpayers in established common law relationships as now applies to taxpayers who are legally married. (page 36)

16. We recommend that when benefits are conferred or obligations imposed upon partners in a legal marriage by federal law or policies, such benefits and obligations apply in a similar manner to common law spouses. (page 37)

17. We recommend that a consistent definition of common law relationships be incorporated in all federal laws and policies that recognize such relationships, and for this purpose, we recommend that the definition require that the parties be of the opposite sex, reside continuously with each other for at least one year, and represent themselves publicly as husband and wife. (page 37)

Equality Issues in Pensions

18. We recommend that section 56 of the *Canada Pension Plan* be amended so that surviving spouses' benefits are awarded without reference to disability, age or family status. (page 41)

19. We recommend that federal superannuation plans and other employer pension plans under federal jurisdiction be required to provide benefits for surviving spouses of deceased contributors without distinctions that would offend section 15 of the *Charter*, whether the contributing spouse dies before or after retirement. (page 41)

20. We recommend the repeal of provisions of the *Canada Pension Plan* and federal superannuation plans requiring that the benefits to which a surviving spouse is entitled terminate when he or she remarries. (page 42)

21. We recommend the repeal of provisions in federal superannuation plans that require that the amount of a benefit to a surviving spouse be reduced where the surviving spouse is 20 or more years younger than the deceased contributor. (page 42)

22. We recommend the repeal of provisions in federal superannuation plans that disentitle a surviving spouse to benefits where the marriage took place after the contributing spouse retired or reached age 60. (page 42)

23. We recommend that federal superannuation plans extend surviving spouses' benefits to common law spouses who fall within the definition of a common law spouse (see Recommendation 17), in the same manner as benefits are granted to surviving spouses who were legally married to a contributor. (page 42)

24. We recommend that the value of Canada Pension Plan credits earned during the marriage be split equally between the spouses automatically upon marriage breakdown — which would include divorce, separation or the termination of a common law relationship — except when the parties agree otherwise after having received independent legal advice. (page 43)

25. We recommend that the Spouses Allowance under the *Old Age Security Act* be replaced with an equivalent benefit that is available without reference to marital status. (page 45)

26. We recommend that provisions in the *Canada Pension Plan* and federal superannuation plans that allow unmarried surviving children under 25 and in full-time attendance at an educational institution to claim benefits, be amended to permit eligibility regardless of the marital status of the surviving child. (page 45)

27. We recommend that Parliament amend the *Pension Benefits Standards Act* to require that sex-based mortality tables be replaced by unisex mortality tables. (page 46)

28. We recommend that the *War Veterans Allowance Act* and the *Civilian War Pensions and Allowance Act*, which provide for benefit eligibility at different ages for men and women, be amended to provide that benefits for both male and female veterans be available at age 55. (page 47)

Women and the Armed Forces

29. We recommend that all trades and occupations in the Canadian Armed Forces be open to women. (page 57)

30. We recommend that Canadian Armed Forces practices relating to the employment and promotion of women be monitored by the Canadian Human Rights Commission and that progress in revising policies in the manner we recommend be evaluated by the Commission at regular intervals. (page 57)

Immigration

31. We recommend that section 3(f) of the *Immigration Act* be amended to state, as an objective of Canadian immigration policy, that such policy should ensure that the Act, the Immigration Regulations and immigration guidelines contain standards of admission that do not discriminate in a manner prohibited by the *Canadian Charter of Rights and Freedoms*. (page 60)

32. We recommend that the medical standards for admission to Canada, applied pursuant to the *Immigration Act*, be made public and be reviewed and modified in order that they be more flexible in their application. (page 62)

33. We recommend that the Immigration Regulations be amended so that a permanent resident who has been in Canada for at least 3 years is entitled to sponsor a parent without regard to the age, ability to work, or marital status of that parent, as is the case if the sponsor of a parent is a Canadian citizen. (page 62)

34. We recommend that the Immigration Regulations be amended so that an undertaking of support given by a permanent resident who has been in Canada for at least 3 years confers the same benefit on an "assisted relative" seeking admission to Canada as an undertaking of support given by a Canadian citizen. (page 63)

35. We recommend that common law relationships be recognized, under the Immigration Regulations, for immigration purposes, so that a party to such a relationship may be admitted to Canada as an accompanying dependent of his or her common law spouse or may be sponsored for admission to Canada by his or her common law spouse. (For these purposes the definition of a common law spouse would be that set out in Recommendation 17.) (page 64)

36. We recommend that the Immigration Regulations be amended so that a legally adopted child is treated in the same way as a natural child and can, therefore, accompany a parent or parents immigrating to Canada or join a parent or parents already in Canada as a family class member, notwithstanding the age at which the child was adopted. (page 65)

37. We recommend that the federal government make provision for instruction in one of the official languages to all immigrants, regardless of sex, marital or family status, dependency or length of time in Canada. (page 66)

38. We recommend that the general preference in favour of Canadian citizens in job competitions in the public service, pursuant to the *Public Service Employment Act*, be eliminated so that permanent residents may compete for public service jobs on an equal footing with Canadian citizens. (page 67)

Religious Observance

39. We recommend that the *Canada Labour Code* and the federal Public Service Terms and Conditions of Employment Regulations be amended so that there is provision for a determinate number of statutory holidays to be taken by all employees and a number of floating statutory holidays that an employee may elect, upon being employed, in accordance with his or her religious observance requirements or personal beliefs. (page 74)

40. We recommend that the Minister of Justice refer to the Uniform Law Conference of Canada and to provincial ministers responsible for human rights the consideration of amendments to provincial hours of business and employment standards legislation to provide for days of rest that respect freedom of conscience and religious belief on a consistent basis. (page 74)

Access by the Physically Disabled

41. We recommend that interpreter services for the hearing impaired be available upon request at federal public hearings, including those of parliamentary committees. (page 81)

42. We endorse the recommendations of the *Obstacles* report concerning access to facilities and services and urge the Government and Parliament of Canada to take all measures necessary to implement them without further delay. (page 83)

43. We recommend that a federal co-ordinating agency be made responsible for supervising the implementation of programs designed to help disabled people, including programs designed to provide accessibility to facilities and services, and that the agency actively promote the rights of disabled people. (page 84)

44. We recommend that this co-ordinating agency and the Minister responsible for it be given statutory recognition and be required to report annually to Parliament, the report to be automatically and permanently referred to the Sub-committee on the Disabled and the Handicapped. (page 84)

45. We recommend that the mandate of the parliamentary Sub-committee on the Disabled and the Handicapped be expanded so that the Sub-committee is authorized to initiate inquiries and make proposals concerning programs for the disabled. (page 85)

46. We recommend that, in consultation with the Minister Responsible for the Status of Disabled Persons, all departments and agencies immediately establish priorities and timetables for implementing programs to provide access by the disabled to facilities and services under federal jurisdiction. These priorities and timetables should be tabled in Parliament and referred to the Sub-committee on the Disabled and the Handicapped. (page 85)

47. We recommend that disabled people be consulted in the development of cost-efficient programs and measures designed to provide access by the disabled to facilities and services under federal jurisdiction. (page 85)

48. We recommend that the federal government use its statutory powers under the *Canadian Human Rights Act*, the *Ferries Act*, the *Canada Shipping Act*, the *Transport Act*, the *National Transportation Act*, the *Railway Act* and the *Aeronautics Act* to secure the full implementation of standards for accessibility by disabled people to facilities and services under federal jurisdiction. (page 86)

49. We recommend that the Canadian Human Rights Commission adopt new guidelines to ensure that any restrictions on the right of access by the disabled to facilities and services under sections 14(g) and 41(4) of the *Canadian Human Rights Act* are carefully limited and clearly defined. (page 86)

50. We recommend that the federal government develop priorities and timetables, in collaboration with provincial governments, for implementing programs to provide access to facilities and services by the disabled, that the government report to Parliament, by July 1, 1986, on progress towards this end and that the report be referred to the Sub-committee on the Disabled and the Handicapped. (page 87)

Mental Disability

51. We recommend that federal laws and policies providing benefits or protection to the mentally disabled be appropriately amended so that they cover those with a mental disability in the comprehensive sense, that is, mental retardation or impairment, learning disability and mental disorder. (page 90)

52. We recommend that section 14(4)(f) of the *Canada Elections Act* be repealed so that the mentally disabled have the same right to be enumerated and to vote as all other Canadians. (page 91)

53. We recommend that the Minister of Justice bring forward amendments to the *Criminal Code* at the earliest opportunity to eliminate instances where the mentally disabled are not accorded equal protection and equal benefit of the law. (page 93)

Part-time Work

54. We recommend the adoption of a definition of part-time work that would cover all categories of part-time work, including seasonal work, as follows: a part-time worker is one who works fewer than the normally scheduled weekly or monthly hours of work established for persons doing similar work. (page 100)

55. We recommend that all federal employment standards legislation and policies be amended to ensure that part-time workers, including seasonal workers, receive the same statutory benefits on a *pro rata* basis as full-time workers. (page 100)

56. We recommend that federal laws and policies be amended to ensure that part-time workers, including seasonal workers, who work eight hours a week or more and who have worked for their employer for at least one year, contribute to and be eligible for benefits, on a *pro rata* basis, under employer-sponsored pension and insurance plans applicable to full-time workers. (page 100)

57. We recommend that the requirement that an employee work 15 hours per week to contribute to and be eligible for benefits under the *Unemployment Insurance Act* be reduced to reflect better the work schedules of part-time workers, and that the hourly limit that is set be not less than eight hours per week. (page 101)

58. We recommend that federal laws and superannuation plans reflect the particular needs of part-time workers for early pension vesting and portability rights. (page 101)

Employment Equity

59. We recommend the adoption of legislation providing for employment equity programs at the federal level and obliging employers to (a) develop and maintain employment practices designed to eliminate discriminatory barriers and (b) improve where necessary the participation of qualified women, Native people, disabled people and underrepresented visible minorities in the workplace, without necessitating the use of quotas. (page 109)

60. We recommend that employment equity legislation apply to all federal public sector employers and to employers under federal jurisdiction, with necessary adjustments being made by regulation for small businesses and agencies. (page 110)

61. We recommend that representatives of the appropriate designated groups (women, underrepresented visible minorities, Native peoples and disabled people) be involved, as the case may require, with management and labour in developing employment equity programs. (page 110)

62. We recommend that legislation on employment equity contain enforcement mechanisms providing for the review of special programs by the Canadian Human Rights Commission, and that the Commission be given additional financial and human resources for this purpose. (page 110)

63. We recommend that, to assure employment equity, a contract compliance program be established by legislation and that it apply to all firms providing goods and services to the government of Canada, with necessary adjustments being

made, by regulation, on the basis of the size of the firm or the volume of its business with the government. (page 111)

64. We recommend that Statistics Canada provide, through the census, relevant data to be used for devising and evaluating employment equity programs. (page 111)

65. We recommend that employment equity legislation provide for regular review of special programs and that they be adjusted or terminated according to changing circumstances. (page 112)

66. We recommend that federal training and education programs be made accessible to women, disabled people, Native people and members of underrepresented visible minorities to assist in achieving employment equity. (page 113)

67. We recommend that the Canadian Human Rights Commission pursue actively the implementation of equal pay for work of equal value performed by men and women working in the same establishment, as provided in section 11 of the *Canadian Human Rights Act*, in all areas under its jurisdiction. (page 114)

68. We recommend that the federal government review the present provisions of section 11 of the *Canadian Human Rights Act* to ensure that the principle of equal pay for work of equal value is not unduly restricted by the present wording of the Act. (page 114)

69. We recommend that the *Income Tax Act* be amended so that disabled people are entitled to a deduction for the cost of special aids and devices, including extra transportation costs, incurred because of their disability and necessary for their employment. (page 114)

70. We recommend that the Canadian Human Rights Commission ensure that physical and medical tests required of job applicants in employment under federal jurisdiction relate only to the ability of the individual to perform the essential duties of the job in question. (page 116)

71. We recommend that the federal government move quickly, in consultation with its provincial counterparts, to ensure that child care services across Canada are adequate, accessible and affordable. (page 116)

Further Equality Issues

72. We recommend that all federal laws henceforth be drafted in non-sexist language. (page 120)

73. We recommend that governor-in-council appointments, including judicial appointments, be made in a manner that reflects the composition of Canadian society, in keeping with the objectives of section 15 of the *Charter*, and that the criteria for the selection of judges take into account the policy role they perform in interpreting and applying the *Charter*. (page 121)

74. We recommend that the *Public Service Superannuation Act* be amended to eliminate the minimum age of 18 for contributors to the Superannuation Account so that there will be no minimum age limitation for those purposes. (page 122)

75. We recommend that the *Criminal Code* be amended so that sexual offences that can be committed only by a male person in relation to a female person be extended to cover similar conduct by a female person in relation to a male person. (page 122)

76. We recommend the government improve its monitoring of women's health care and hygiene products, including drugs, exert, through the Departments of Consumer and Corporate Affairs and National Health and Welfare, a larger measure of control over the labelling, packaging and promotion of such products, and increase the level of funding directed to research into women's health needs. (page 124)

77. We recommend that the *Canada Elections Act* be amended so that spouses and dependent children accompanying Canadian Armed Forces personnel and public servants posted outside Canada are entitled to vote, in general elections, in the electoral district where they declare themselves to be ordinarily resident in Canada. For this purpose, spouses and dependent children should be required to complete a declaration of residence comparable to that currently required of the members of the Forces and public servants whom they accompany outside Canada. (page 126)

78. We recommend that section 32 of the *Public Service Employment Act* be amended to ensure that no greater limitations are imposed on the political rights of public servants than are necessary to maintain a politically neutral public service. (page 127)

The Process of Securing Equality

79. We recommend that the *Canadian Human Rights Act* be amended by the addition of a primacy or override clause that will confirm its priority over conflicting federal laws unless they purport specifically to apply notwithstanding the *Canadian Human Rights Act*. (page 130)

80. We recommend that the *Canadian Human Rights Act* be amended so that employers are obliged to make "reasonable accommodation", that is, such special provisions as would not cause undue hardship to the employer, in response to the needs peculiar to those classes of employees that are protected from discrimination by the terms of the Act. (page 131)

81. We recommend that the *Canadian Human Rights Act* be amended to ensure that it covers systemic discrimination, that is, practices that may not be obviously discriminatory in their formulation or nature but that, in their result, have an adverse impact on those who are protected from discrimination by the Act. (page 131)

82. We recommend that the *Canadian Human Rights Act* be amended to include political belief and criminal conviction or criminal charges as prohibited grounds of discrimination, subject to the usual defences of *bona fide* occupational requirement and *bona fide* justification, as applicable. (page 132)

83. We recommend that the standing orders of the House of Commons be amended to provide for a Standing Committee on Human Rights with responsibility for overseeing the protection of human rights, including equality rights. (page 135)

84. We recommend that the annual report and estimates of the Canadian Human Rights Commission and those portions of the annual reports of any government departments, including the Departments of Justice, Secretary of State, and Employment and Immigration, dealing with human rights and equality rights, including employment equity, be referred to the Standing Committee on Human Rights. (page 135)

85. We recommend that the *Canadian Human Rights Act* be amended to provide that the Canadian Human Rights Commission report direct to Parliament. (page 135)

APPENDIX A

Canadian Charter of Rights and Freedoms

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association.

Democratic Rights

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be

continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.

Mobility Rights

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(a) to move to and take up residence in any province; and

(b) to pursue the gaining of a livelihood in any province.

(3) The rights specified in subsection (2) are subject to

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

(b) any laws providing for reasonable residency requirements as a qualification of the receipt of publicly provided social services.

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

Legal Rights

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

8. Everyone has the right to be secure against unreasonable search or seizure.

9. Everyone has the right not to be arbitrarily detained or imprisoned.

10. Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed of that right; and

(c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

11. Any person charged with an offence has the right

(a) to be informed without unreasonable delay of the specific offence;

(b) to be tried within a reasonable time;

(c) not to be compelled to be a witness in proceedings against that person in respect of the offence;

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(e) not to be denied reasonable bail without just cause;

(f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

(g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

(i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

Equality Rights

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.

Official Languages of Canada

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.

(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

(2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

(2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

(2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

(a) there is a significant demand for communications with and services from that office in such language; or

(b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

Minority Language Educational Rights

23. (1) Citizens of Canada

(a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province.

have the right to have their children receive primary and secondary school instruction in that language in that province.

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

Enforcement

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

General

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

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 refrred to in it are guaranteed equally to male and female persons.

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

30. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

31. Nothing in this Charter extends the legislative powers of any body or authority.

Application of Charter

32. (1) This Charter applies

(a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

(2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

(4) Parliament or a legislature of a province may re-enact a declaration made under subsection (1).

(5) Subsection (3) applies in respect of a re-enactment made under sub-section (4).

Citation

34. This part may be cited as the *Canadian Charter of Rights and Freedoms*.

APPENDIX B

Hearings

Date	*Location*	*Minutes of Evidence and Proceedings*
March 26, 1985	Ottawa	Issue No. 1
April 16-18, 1985	Ottawa	Issue Nos. 2, 3 & 4
April 23-25, 1985	Ottawa	Issue Nos. 5 & 6
May 1, 1985	Ottawa	Issue No. 6
May 7, 1985	Ottawa	Issue No. 7
May 9, 1985	Ottawa	Issue No. 8
May 15-16, 1985	Ottawa	Issue No. 9
May 27, 1985	Vancouver	Issue No. 9
May 29, 1985	Edmonton	Issue No. 10
May 30-31, 1985	Winnipeg	Issue Nos. 11 & 12
June 4, 1985	Montreal	Issue No. 13
June 6, 1985	Halifax	Issue No. 14
June 13, 1985	Regina	Issue No. 15
June 17-18, 1985	Toronto	Issue Nos. 16 & 17
June 19, 1985	Ottawa	Issue No. 18
July 15-16, 1985	Ottawa	Issue Nos. 19 & 20
August 26, 1985	St. John's	Issue No. 21
August 27-28, 1985	Charlottetown	Issue No. 22
August 29, 1985	Fredericton	Issue No. 23
September 9, 1985	Ottawa	Issue No. 24
September 16, 1985	Ottawa	Issue No. 25
September 18, 1985	Vancouver	Issue No. 26
September 20, 1985	Calgary	Issue No. 27
September 26, 1985	Ottawa	Issue No. 28

APPENDIX C

Witnesses

Abortion by Choice, Calgary (Issue No. 10:70-82)*
Abortion by Choice, Edmonton (Issue No. 10:70-82)
Ad Hoc Coalition of Feminist Groups of Montreal (Issue No. 13:162-172)
Ad Hoc Concertation Committee on Affirmative Action (Issue No. 13:39-49)
Advisory Committee to the President of the Treasury Board on Employment of Disabled Persons in the Public Service (Issue No. 16:5-16)
Advocacy Resource Centre for the Handicapped (Issue No. 17:76-89)
Alberta Association for the Mentally Handicapped (Issue No. 27:39-47)
Alberta Committee of Consumer Groups of Disabled Persons (Issues No. 10:49-60)
Alberta Federation of Labour (Issue No. 10:82-95)
Alberta Federation of Women United for Families (Issue No. 10:40-49)
Alberta Native Women's Association (Issue No. 27:32-39)
Alberta Status of Women Action Committee (Issue No. 10:33-40)
Alberta Union of Public Employees (Issue No. 10:4-10)
Alcock, Stuart (Issue No. 26:41-49)
Alliance of Canadian Cinema, Television and Radio Artists (Issue No. 15:27-37)
Association des femmes collaboratrices (Issue No. 13:49-59)
Association des hommes séparés ou divorcés de Montréal (HSD) Inc. (Issue No. 13:172-190)
Association pour les droits des gais du Québec (Issue No. 13:133-139)
Barlow, Maude (Issue No. 19:83-91)
Barry, Leo (Issue No. 21:25-29)
Battcock, Adrian (Issue No. 21:62-67)
Baxter, Mr. and Mrs. J.M. (Issue No. 27:59-66)
Bell Canada (Issue No. 25:70-80)
Black, William (Issue No. 2:9-30)
B'nai B'rith, League for Human Rights (Issue No. 24:6-20)
Bouchard, Mario (Issue No. 20:5-13)
British Columbia Association of Social Workers (Issue No. 9:34-42))
British Columbia Coalition of the Disabled (Issue No. 26:101-106)
British Columbia Human Rights Coalition, Vancouver Region (Issue No. 26:36-41)

* Figures after the colon indicate the pages in a given issue of the Minutes of Proceedings and Evidence of the Sub-committee on Equality Rights where the witness's testimony can be found.

APPENDIX D

Submissions

Abortion by Choice, Calgary
Abortion by Choice, Edmonton
Action League of Physically Handicapped Adults
Action Life Ottawa Incorporated
Ad Hoc Coalition of Feminist Groups of Montreal
Ad Hoc Concertation Committee on Affirmative Action
Adam, Barry
Advisory Committee to the President of the Treasury Board on the Employment of Disabled Persons in the Public Service
Advocacy Resource Centre for Handicapped
Aird, Deborah, London, Ontario
Aitken, Terrence, Stratford, Ontario
Alberta Association for the Mentally Handicapped
Alberta Committee of Consumer Groups of Disabled Persons
Alberta Federation of Labour
Alberta Federation of Women United For Families
Alberta Native Women's Association
Alberta Rehabilitation Council for the Disabled
Alberta Status of Women Action Committee
Alberta Union of Public Employees
Alcock, Stuart, Vancouver, British Columbia
Allan, Thomas, Guelph, Ontario
Alliance for Life
Alliance of Canadian Cinema, Television & Radio Artists, Regina
Alliance of Canadian Cinema, Television & Radio Artists, Toronto
Alternatives for Single Parent Women
Andres, Mr. & Mrs. Larry, Niagara Falls, Ontario
Anglican Church of Canada
Anglin, C.R., Nepean, Ontario
Arajs, Mr. & Mrs. Peter, Niagara Falls, Ontario
Armstrong, Rose, Hamilton, Ontario
Association canadienne pour la santé mentale de l'Outaouais
Association Communautaire Homosexuelle à l'Universite de Montréal
Association des femmes collaboratrices
Association des hommes séparés ou divorcés de Montréal

Association of Southwestern Ontario Pro-Life Groups
Association of Universities and Colleges of Canada
Association pour les droits des gais du Québec
Association Québécoise pour la défense des droits des retraitées et pré-retraitées
Atlantic Conference on Learning Disabilities
Averell, Susan, St. Catharines, Ontario
B'Nai B'rith League for Human Rights
Babe, Joan, Medicine Hat, Alberta
Bailey, Barbara, Elmira, Prince Edward Island
Baldwin, Dr. & Mrs. D., Pefferlaw, Ontario
Banks, David, Victoria, British Columbia
Barber-McKinney, Joyce, Washago, Ontario
Barlow, Maude, Ottawa, Ontario
Barry, Leo, St. John's, Newfoundland
Bastorius, R.M., Callander, Ontario
Bates, Kirk, Windsor, Ontario
Battcock, William, St. John's, Newfoundland
Baxter, Mr. and Mrs. J.M., Priddis, Alberta
Bejik, Louise, Ganges, British Columbia
Bell Canada
Bell, Faye Cecile, Fredericton, New Brunswick
Belzing, Wolf, Edmonton, Alberta
Bernard, Ruby, Sherwood, Prince Edward Island
Berry, J.J.O., Ottawa, Ontario
Berscheid, Mary, Cranbrook, British Columbia
Better Obstetrics & Neonatal Decisions in the New Grace
Bijan, Roman, Toronto, Ontario
Bindner-Blanchfield, Margaret, Sarnia, Ontario
Bisson, Marie, Toronto, Ontario
Black, Lois, Kitchener, Ontario
Black, William, Ottawa, Ontario
Blackburn, Wilfred, Midland, Ontario
Blacklock, Peter, Hamilton, Ontario
Blain, Joseph, Ottawa, Ontario
Blunston, Lee, Charlottetown, Prince Edward Island
Bochmann, Walter, Toronto, Ontario
Booiman, S.H., White Rock, British Columbia
Bouchard, Mario, Ottawa, Ontario
Boulet, Conrad, Truro, Nova Scotia
Boulet, Gilles, Sainte-Foy, Quebec
Bregzis, Ritvars, Toronto, Ontario
Bril, Natalija, Niagara Falls, Ontario
Brink, Mr. & Mrs. Martin, Sardis, British Columbia
British Columbia Association of Social Workers
British Columbia Coalition of the Disabled
British Columbia Human Rights Coalition
British Columbia New Democratic Party, Women's Right Committee
British Columbia Teachers for Life
British Columbia Women's Liberal Commission
British Columbians for Mentally Handicapped People
Broderick, John, Vancouver, British Columbia
Broughton, Richard, Weston, Ontario
Brown, Cyril, Sebringville, Ontario

Brown, Robert, Waterloo, Ontario
Bryant, J.H., Mississauga, Ontario
Bunkowsky, Angela, Winnipeg, Manitoba
Burn, Elsie, London, Ontario
Burns, Peter, Vancouver, British Columbia
Burtch, Rita, Smith Falls, Ontario
Business and Professional Women's Club, Sudbury
Business and Professional Women's Club, Montreal
Business and Professional Women's Club, Toronto
Byrne, Gerald, Scarborough, Ontario
Byrne, J.L., Sebright, Ontario
Calgary Association of Women and the Law
Calgary Birth Control Association
Calgary Women's Liberal Club
Callaghan, Marilyn, Cardigan, Prince Edward Island
Callbert, Charles, Kingston, Ontario
Cameron, J.M., Ottawa, Ontario
Cameron, Norma, Ottawa, Ontario
Campaign Life
Campbell, Wendy, Calgary, Alberta
Campeau, Sally, Wingham, Ontario
Canadian Abortion Rights Action League
Canadian Abortion Rights Action League, Halifax Chapter
Canadian Abortion Rights Action League, Ottawa Chapter
Canadian Abortion Rights Action League, Prince Edward Island Chapter
Canadian Advisory Council on the Status of Women
Canadian Advisory Council on the Status of Women, Vancouver
Canadian Advocates for Human Life
Canadian Air Line Employees' Association
Canadian Association for Children & Adults with Learning Disabilities
Canadian Association for Community Living
Canadian Association for the Advancement of Women in Sports
Canadian Association for the Deaf
Canadian Association for the Mentally Retarded, Downsview
Canadian Association for University Continuing Education
Canadian Association of Internes & Residents
Canadian Association of Rehabilitation Personnel
Canadian Association of University Schools for Nursing
Canadian Association of University Teachers
Canadian Association of Women Executives
Canadian Bar Association
Canadian Bar Association - Ontario Immigration Section
Canadian Co-ordinating Council on Deafness
Canadian Coalition Against Media Pornography
Canadian Coalition for Peace Through Strength Inc.
Canadian Congress for Learning Opportunities for Women, Charlottetown
Canadian Congress for Learning Opportunities for Women, Nova Scotia Committee
Canadian Council of Christians and Jews
Canadian Council of the Blind, London
Canadian Council on Rehabilitation and Work
Canadian Council on Social Development
Canadian Diabetes Association
Canadian Ethnocultural Council

Canadian Federation of Business & Professional Women's Clubs
Canadian Federation of University Women
Canadian Hearing Society, Toronto
Canadian Hospital Association
Canadian Human Rights Advocate
Canadian Human Rights Commission
Canadian Institute of Actuaries
Canadian Institute of Strategic Studies
Canadian Jewish Congress
Canadian Labour Congress
Canadian Legal Advocacy, Information and Research Association of the Disabled
Canadian Life and Health Insurance Association Inc.
Canadian Mental Health Association
Canadian Mental Health Association, New Brunswick
Canadian National Human Resources
Canadian National Institute for the Blind
Canadian National Institute for the Blind, Quebec Division
Canadian Nurses Association
Canadian Paraplegic Association, New Brunswick Division
Canadian Paraplegic Association, Toronto
Canadian Parents for French, Ottawa
Canadian Parents for French, Saskatchewan
Canadian Psychiatric Association
Canadian Psychological Association
Canadian Rehabilitation Council for the Disabled
Canadian Research Institute for the Advancement of Women, Nova Scotia Chapter
Canadian Sociology & Anthropology Association
Canadian Teachers' Federation
Canadian Union of Public Employees
Canadian Union of Public Employees, Saskatchewan Division
Canadian University Press
Canadian Women for Free Enterprise
Cantin, Pierre, Beloeil, Quebec
Cappe, L.P., Toronto, Ontario
Capuano, Mr. & Mrs. G.L., Stittsville, Ontario
Carr, Betsy, Don Mills, Ontario
Cassidy, Michael, Ottawa, Ontario
Catholic Women's League of Canada, British Columbia & Yukon Council
Catholic Women's League of Canada, Edmonton
Catholic Women's League of Canada, Prince Edward Island
Catholics for Life
Celebrate Life
Centre for Research-Action on Race Relations
Chapeshia, David, Spencerville, Ontario
Charter of Rights Coalition, Manitoba
Charter of Rights Coalition, Vancouver
Charter of Rights Educational Fund
Chatham-Kent Human Rights Committee
Chesterville Medical Clinic
Chetwynd Women's Resource Society
Chimko, Andrew, Winnipeg, Manitoba
Chinese Canadian National Council
Christian Labour Association of Canada

Christians Concerned for Life
Church of Scientology of Toronto
Citizens for Public Justice
Citizens for Reproductive Choice
Citizens Helping in Life's Defense
City of Moose Jaw
City of Ottawa Advisory Committee on Visible Minorities
City of Toronto
City of Vancouver
Clancy, Isobel, Vancouver, British Columbia
Clark, Ralph, Waterloo, Ontario
Clinton, Mary, Souris, Prince Edward Island
Club de l'âge d'or de Victoriaville
Coalition for Gay Rights in Ontario
Coalition of Provincial Organizations of the Handicapped
Coalition on Employment Equity for Disabled Persons
Columbian Ladies
Comité d'intégration Afro-Québécois
Committee for Racial Justice
Communist Party of Canada
Confederation of Canadian Unions
Congress of Canadian Women, British Columbia Chapter
Conklin, William
Conscience Canada Inc.
Consumer Organization of Disabled Persons of Newfoundland and Labrador
Consumer Support Network
Contact Information Centre Midland
Continuing Legal Education Society of Nova Scotia
Conway, Cathy, Souris, Prince Edward Island
Conway, Estelle, Souris, Prince Edward Island
Corbett, Marie, Toronto, Ontario
Corner Brook Status of Women Council
Côté, Denis, Montreal, Quebec
Cottreau, Julia, Arcadia, Nova Scotia
Council of Ontario Universities
Council on Homosexuality and Religion
County of Parkland No. 31
Covert, Earle, Hay River, North West Territories
Cox, Mary, Lantzville, British Columbia
Craig, Louis, Simcoe, Ontario
Crawford, David, Montreal, Quebec
Critchley, Dawn, Niagara Falls, Ontario
Croatian Committee for Human Rights
Crosbie, Honourable John, Ottawa, Ontario
Crunican, Mr. & Mrs. John, Stratford, Ontario
Cunningham, Carrie, Salmon Arm, British Columbia
D'Eon, Sheila, Yarmouth, Nova Scotia
Danells, Bonnie, Shearwater, Nova Scotia
Danis, Eva, Callander, Ontario
Davies, Betty, Cranbrook, British Columbia
Davies, Monica, Sudbury, Ontario
Davis, Honourable Jack, Victoria, British Columbia
deBoon, Mr. & Mrs. B.G., Lacombe, Alberta

Deboran, Joe, Toronto, Ontario
Dedhar, D.M., Nepean, Ontario
Deigan, Charles, Willowdale, Ontario
Dellhon, Gord
Demers, Marilyn, Nelson, British Columbia
Department of Employment and Immigration
Department of Health and Welfare
Department of Justice
Department of Justice, Human Rights Law Section
Department of Labour
Department of National Defence
Department of the Secretary of State, Human Rights Directorte
Department of the Secretary of State, Multiculturalism Directorate
Department of the Secretary of State, Status of Disabled Persons Secretariat
Department of Veterans Affairs
Deurloo, Mr. & Mrs. J., Niagara Falls, Ontario
Dignity Canada Dignité
Dignity Edmonton Dignité
Dignity Winnipeg Dignité
Directions ESL
Disabled Women's Network
Dolski, E.T., Winnipeg, Manitoba
Donohue, Maureen, Sarnia, Ontario
Doulis, Alexander, Toronto, Ontario
Downe, William, London, Ontario
Dubois, Constance, Toronto, Ontario
Ducharme, Theresa, Winnipeg, Manitoba
Duggan, Coleen, Yarmouth, Nova Scotia
Duguay, Réjean, Saint-Basil-Le-Grand, Quebec
Dunn, Mark, Niagara Falls, Ontario
Dussault, Philippe, Montreal, Quebec
Duthie, Pat, Etobicoke, Ontario
Duwyn, Mr. & Mrs. Larry, Delhi, Ontario
East Toronto Community Legal Services Ltd.
Edwards, J.C., Delta, British Columbia
Elizabeth Fry Society of Halifax
Ellis, G.L.T., Stevensville, Ontario
Erindale Secondary School
Ernewein, Joseph, Edmonton, Alberta
Estable, Juan, Ottawa, Ontario
Ettinger, Harry, Scarborough, Ontario
Eva, William, Winnipeg, Manitoba
Eylat, Martin, Montreal, Quebec
Fabian, Jozsef, Downsview, Ontario
Families of Gays
Farlinger, Shirley, Toronto, Ontario
Farrish, Elmer, Prince George, British Columbia
Fathers Alberta
Fathers Fighting Back
Fathers for Equality in Divorce
Fearns, Steve, Vancouver, British Columbia
Federal Superannuates National Association
Federation of Sikh Societies of Canada

Ferguson, John, Brampton, Ontario
Fernie Women's Drop-in Centre
Field, James, Edmonton, Alberta
Flanagan, A.J., Burlington, Ontario
Folzer, Cynthia, Guelph, Ontario
Fontaine, Alain, Cap-de-la-Madeleine, Quebec
Ford, Joan, Vancouver, British Columbia
Forecastle Realty Ltd.
Former Dominion/Willett Non-Union Employees
Fort St. John's Women's Resource Centre
Fortier, Jean-Guy, Sainte-Foy, Quebec
Fox, John, Amherstburg, Ontario
Fralick, Dawn, Chilliwack, British Columbia
Fraser, Fil, Edmonton, Alberta
Fredericton and District Labour Council
Fredericton Rape Crisis Centre
Frémont, Jacques, Montreal, Quebec
Fricker, Annerose, Calgary, Alberta
Friends of Schizophrenics of Elliot Lake
Fuykschot, Cornelia, Gananoque, Ontario
Gagnon-Lamarre, Blanche, Montreal, Quebec
GaiCampus
Galarneau, Madeline, Saint-Bruno, Quebec
Gallant, Michelle, St. Peter's Bay, Prince Edward Island
Gallant, Vera, St. Peter's Bay, Prince Edward Island
Gamblin, Stephen, Toronto, Ontario
Gardam, John
Gardiner, Connie, Kelowna, British Columbia
Garnett, Karen, Niagara Falls, Ontario
Gay Alliance for Equality
Gay Alliance Towards Equality
Gay and Lesbian Awareness
Gay and Lesbian Legal Advocates, Calgary
Gay Association in Newfoundland
Gay Community of Regina
Gay Interest Group of the Canadian Library Association, Manitoba Chapter
Gay People at Carleton University
Gay Rights Union
Gay, Jim, Niagara Falls, Ontario
Gayblevision
Gays and Lesbians of the University of British Columbia
Gays of Newfoundland
Gays of Ottawa
Gays of Wilfrid Laurier University
Germain, Monique, Belleville, Ontario
Gerol, Al, Mississauga, Ontario
Gilmore, W., Victoria, British Columbia
Gittins, Mrs. J., Nanaimo, British Columbia
Godin, J.D., Callander, Ontario
Goetzke, Reimar, Aldergrove, British Columbia
Goff, Clarence, Etobicoke, Ontario
Goodwin, W.L., Harbour Grace, Newfoundland
Gounder, Saga, Vancouver, British Columbia

Gow, Harry, Chelsea, Quebec
Grande Prairie Pro-Life Association
Gray, Carol, Chilliwack, British Columbia
Gray, Douglas, Mahone Bay, Nova Scotia
Greater Vancouver Association of the Deaf
Grief, Penny, Thunder Bay, Ontario
Guliker, N., Chilliwack, British Columbia
Haayema, Mr. & Mrs. G., Chilliwack, British Columbia
Hamm, Carolyn, Toronto, Ontario
Hanish, Michelle, Streetsville, Ontario
Hanlon, Leila, Souris, Prince Edward Island
Harford, Lorna, Montreal, Quebec
Harmes, Paul, Toronto, Ontario
Hebert, Mary, Souris, Prince Edward Island
Hedley, Max
Hennessey, Sean, Argenta, British Columbia
Henry, Margaret, North Bay, Ontario
Herrington, Michael, Wingham, Ontario
Hogan, Alice, Morell, Prince Edward Island
Hogan, Lea, Morell, Prince Edward Island
Hogan, Verna, Souris, Prince Edward Island
Homophile Association of London Ontario
Hotch, Mrs. W.R., Maple Ridge, British Columbia
Howlett, Monica, Souris, Prince Edward Island
Hudec, Catherine, Bow Island, Alberta
Huisbrink, Erwin, Niagara Falls, Ontario
Human Rights Institute of Canada
Human Rights Prince Edward Island
Hurtubise, Yvette, Sudbury, Ontario
Hvidsten, Sylvia, Toronto, Ontario
Hyhaway, Joseph, Winnipeg, Manitoba
Indian Homemakers' Association
Industrial Training Centre for Women of Sudbury Inc.
Integrity/Ottawa: Gay and Lesbian Anglicans & Friends
Island Gay Society
Jackman, Barbara, Toronto, Ontario
James, Richard, Toronto, Ontario
Jeffries, Fern, Vancouver, British Columbia
Kalins, Ruth, Toronto, Ontario
Kanagasabapathipillai, S., Abbey, Saskatchewan
Karmas, Adelle, Ottawa, Ontario
Keenan, Nancy, Souris, Prince Edward Island
Keith Bagg Personnel Limited
Kennard, Roy, Kingston, Ontario
Kennelly, Joseph, Kingston, Ontario
Kensick, Josie, Dauphin, Manitoba
Kiera, Helen, Toronto, Ontario
King, A., Toronto, Ontario
Kirkman, W.P.M., Regina, Saskatchewan
Kitchener-Waterloo and District Association for the Mentally Retarded
Klassen, Susan, Niagara Falls, Ontario
Klein, Joyce, Bancroft, Ontario
Knowles, Kathleen, Torbay, Newfoundland

Koenig, Susan, London, Ontario
Kosonen, Saimi, North Vancouver, British Columbia
Krcmar, Zoltan, Brockville, Ontario
Krenz, Cecil, Saskatoon, Saskatchewan
Krieg, Hilda, Surrey, British Columbia
Krueger, Hanna, Lacey, Washington, U.S.A.
Kugel, Herbert, Toronto, Ontario
Kutcher, Mrs. L., Dauphin, Manitoba
La Magnétothèque, Montreal
La Margelle, Montreal
Lalonde, Raymond, Penetanguishene, Ontario
Latham, David, Coquitlam, British Columbia
Latham, Gregory, Edmonton, Alberta
Latimer-Needham, Barbara, Kelowna, British Columbia
Latter, Carol & Walter, Duncan, British Columbia
Laurentian University
Laurentian University Status of Women Committee
Lavigne, Raymond, Ottawa, Ontario
Law Reform Commission of Canada
Lawrence, Wendy, Calgary, Alberta
Lawson, Frank, Barrie, Ontario
Lea, Walter, Victoria, Prince Edward Island
Leblanc, Maurice, Ottawa, Ontario
Leclère, Claude, Montreal, Quebec
Lee, Mary, Chatham, Ontario
Lefebvre, Mary, Ottawa, Ontario
Legal Education Action Fund for Women, New Brunswick
Legal Education and Action Fund for Women
Legault, Fran, Niagara Falls, Ontario
Legault, Vince, Niagara Falls, Ontario
Legge, Bruce, Toronto, Ontario
Legislative Assembly Alberta
Lennoxville & District Women's Centre
Les, Corney, Chilliwack, British Columbia
Lesbian and Feminist Mothers
Lesbian Association of Southern Saskatchewan
Lesbian Information Line, Calgary
Lesbian/Gay Community Service Group
Lesbians for Equality
Levangie, Augustus, Heatherton, Nova Scotia
Leveridge, Marie, Belleville, Ontario
Liaison Committee in Support of the Handicapped
Ligue des droits et libertés
Lingley, Bob, Campbellford, Ontario
Linnell, E.T., Vancouver, British Columbia
Little, Doug, Vancouver, British Columbia
Llambias-Wolff, Jamie, Montreal, Quebec
Long, Linda, Edmonton, Alberta
Lowe, Darren, Vancouver, British Columbia
Lowes, Marsha, West Vancouver, British Columbia
Luca, M., Foremost, Alberta
Lunam, J.B., Fanny Bay, British Columbia
Lunge, Richard, Mississauga, Ontario

Lusk, Robert, Stratford, Ontario
MacAulay, Betty, Souris, Prince Edward Island
Maccoll, M.A., Toronto, Ontario
MacCormack, Irene, Souris, Prince Edward Island
MacCormack, Mollie, Souris, Prince Edward Island
MacDonald, Ann, Elmira, Prince Edward Island
MacDonald, D.A., New Westminster, British Columbia
MacDonald, M., Toronto, Ontario
MacDonald, Susan, Dauphin, Manitoba
MacInnis, Flo, Souris, Prince Edward Island
MacInnis, Gail, Elmira, Prince Edward Island
MacIntyre, Constance, Souris, Prince Edward Island
MacIntyre, Daniel, Cape Breton, Nova Scotia
MacIsaac, Mrs. M., Charlottetown, Prince Edward Island
MacKesy, Florence, Toronto, Ontario
MacKinnon, Audrey, St. Peter's Bay, Prince Edward Island
MacKormack, Beatrice, Souris, Prince Edward Island
MacMaster, Helen, Port Perry, Ontario
MacPhee, Pauline, Souris, Prince Edward Island
MacPhee, Winnifred, Souris, Prince Edward Island
Mahar, Mary, Elmira, Prince Edward Island
Maiolo, R., Niagara Falls, Ontario
Maiolo, Sal, Niagara Falls, Ontario
Mallard, Mrs. M.H., Souris, Prince Edward Island
Maloney, Gretta, St. Andrews, Ontario
Maloney, Peter, Toronto, Ontario
Maltby, Frank, Don Mills, Ontario
Management and Professional Employees Society of British Columbia Hydro
Manitoba Action Committee on the Status of Women
Manitoba Association of Rights and Liberties
Manitoba Association of Women and the Law
Manitoba Gay Coalition
Manitoba League of the Physically Handicapped
Manitoba Teachers' Society
Manning, Agnes, Souris, Prince Edward Island
Marcil, Louise, Montreal, Quebec
Marriott, Kathryn, Red Deer, Alberta
Marter, Rod, Toronto, Ontario
Mason, F.G., Edmonton, Alberta
Massiah, H.J., Ottawa, Ontario
Matheson-Paton, Claudia, West Vancouver, British Columbia
Matthews, Dan, North Bay, Ontario
McConnell, Wayne, Montreal, Quebec
McGeough, John, Scarborough, Ontario
McInnes, Ian, Niagara Falls, Ontario
McIntosh, Anna, Souris, Prince Edward Island
McIntyre, John, Vancouver, British Columbia
McKay, Katherine, Niagara Falls, Ontario
McKirdy, Elizabeth, Valemount, British Columbia
McQuaid, Catherine, Souris, Prince Edward Island
Melanson, Mrs. Armand, Souris, Prince Edward Island
Metro Action Committee on Public Violence Against Women & Children
Metro Service for the Deaf

Metropolitan Community Church
Metropolitan Community Church of Winnipeg
Miller, C.K., Thunder Bay, Ontario
Minton, Henry
Mitchinson, Wendy
Mitro, Reta, Sarnia, Ontario
Mitter, S., Abbotsford, British Columbia
Mittlested, Jeremy, London, Ontario
Mock, Irene, Nelson, British Columbia
Mockle, Daniel, Ottawa, Ontario
Montreal Men's Network
Moore, May, Scarborough, Ontario
Morrone, Rosaria, Woodbridge, Ontario
Morse, Mr. & Mrs. A.R., Ottawa, Ontario
Morse-Chevrier, Jean, Aylmer, Quebec
Mountain, Frank & Margaret, North Gower, Ontario
Mouvement Laïque Québécois
Multicultural Association of Fredericton
Multicultural Association of Nova Scotia
Multiple Sclerosis Society of Canada
Munich, Zivko, Windsor, Ontario
Munro, Donald, Victoria, British Columbia
Muscular Dystrophy Association of Canada
Musgrove, Phil, Guelph, Ontario
N.D.P. Women's Rights Committee
Nano Nagle Library of the Presentation Convent
Naqvi, Rabab, Sainte-Anne-de-Bellevue, Quebec
National Action Committee on the Status of Women
National Action Committee on the Status of Women, British Columbia Chapter
National Advisory Council on Aging
National Association of Canadians of Origins in India
National Association of Japanese Canadians
National Association of Women and the Law
National Council of Veteran Associations in Canada
National Film Board of Canada, Studio D
National Union of Provincial Government Employees
Neill, Samuel, London, Ontario
Nerbas, Myrna, Regina, Saskatchewan
New Brunswick Advisory Council on the Status of Women
New Brunswick Coalition for the Protection of Human Life
New Brunswick Human Rights Commission
New Brunswick Telephone Company Ltd.
Newfoundland Teachers Association
Norman, Kenneth, Saskatoon, Saskatchewan
North American Centre for Ombudscience
North Shore Women's Centre
Northern Lesbians Collective
Northwestern Ontario International Women's Decade Co-ordinating Council
Nova Scotia Advisory Council on the Status of Women
Nova Scotia League for Equal Opportunities
O'Hanley, Jean, Morell, Prince Edward Island
O'Keefe, Mary, Souris, Prince Edward Island
Ogura, Sachiko, Montreal, Quebec

Okanagan Farm-Workers Group
Ontario Association of Alternate & Independent Schools
Ontario Institute for Studies in Education
Ontario March of Dimes
Organization for the Protection of Children's Rights of Canada
Organizational Society of Spouses of Military Members
Oscar Wilde Memorial Society
Parker, A., Scarborough, Ontario
Parr, Reta, Windsor, Ontario
Payne, Eli, Bay of Islands, Newfoundland
People United for Self Help, Central Region
Perron, Denis, Sept-Iles, Quebec
Personnel Association of Edmonton
Petsche, Gerard, Niagara Falls, Ontario
Pilipino Bayanihan of Mississauga
Planetary Association for Clean Energy Inc.
Planned Parenthood Federation of Canada
Planned Parenthood Saskatchewan
Plante, Reginald, Brandon, Manitoba
Pogue, Lawrence, Dundas, Ontario
Porter, Mrs. S., Mississauga, Ontario
Potter, D.A., Ottawa, Ontario
Premier's Council on the Status of Disabled Persons
Prettyman, E., Willowdale, Ontario
Price, Kathryn, Callander, Ontario
Primus, Robert, Sherbrooke, Quebec
Prince Edward Island Advisory Council on the Status of Women
Prince Edward Island Association for the Mentally Handicapped
Prince Edward Island Association of the Hearing Impaired
Prince Edward Island Coalition Against Pornography
Prince Edward Island Council of the Disabled
Prince Edward Island Human Rights Commission
Prince Edward Island Right to Life Association
Prince Edward Island Women's Network Inc.
Pro-Teck-Life
Professional Native Women's Association
Provincial Advisory Council on the Status of Women for Newfoundland and Labrador
Provincial Association of Protestant Teachers of Quebec
Psychiatric Patient Advocate Office
Public Service Alliance of Canada
Quebec Multi-ethnic Association for the Integration of Handicapped People
Quebec Native Women's Association
Racicot, Jacques, Lebel-sur-Quevillon, Quebec
Ranger, Rupinder, Edmonton, Alberta
Ratushny, Ed, Ottawa, Ontario
Ray, A.K., Gloucester, Ontario
RealWomen of Canada
RealWomen of Canada, British Columbia Chapter
Red Deer Status of Women Association
Rees, Carroll
Regent Park Sole Support Mothers' Group
Regina Status of Women
Reid, Suzanne, Toronto, Ontario

Reilly, Roscoe, Welland, Ontario
Rhodes, Kathleen, Etobicoke, Ontario
Richardson, Joseph, Toronto, Ontario
Richardson, Scott, Vancouver, British Columbia
Right to Life, Chatham-Kent
Right to Life, St. Thomas
Right to Privacy Committee
RITES for Lesbian and Gay Liberation
Robinson, Shirley, Gloucester, Ontario
Rogers, P., Toronto, Ontario
Ronald, U.P., Roxboro, Quebec
Rose, Chris, Pubnico, Nova Scotia
Rose, Frances, Elmira, Prince Edward Island
Rose, Mr. & Mrs. Ernest, Souris, Prince Edward Island
Rowley, Susannah, Halifax, Nova Scotia
Roy, Albert, Ottawa, Ontario
Royal Canadian Mounted Police
Royal Canadian Mounted Police, Association of 17 Divisions
Royal Canadian Mounted Police, Divisional Staff Relations
Ruby, Clayton, Toronto, Ontario
Ruelle, Mrs. John, Calgary, Alberta
Rumble, Dorothy, Stratford, Ontario
Rutledge, Anne, Gaderich, Ontario
Sandhu, Balbir, Hamilton, Ontario
Sarch, Peter, Cornwall, Ontario
Saskatchewan Action Committee on the Status of Women
Saskatchewan Association for the Mentally Retarded
Saskatchewan Association on Human Rights
Saskatchewan Battered Women's Advocacy Network
Saskatchewan Business & Professional Women's Clubs
Saskatchewan Government Employees' Union
Saskatchewan Human Rights Commission
Saskatchewan Native Women's Association
Saskatchewan Voice of the Handicapped
Schadenberg, Harry & Mary, Woodstock, Ontario
Schoenberger, Ellen, Toronto, Ontario
School of Social Work - Laurentian University
Schouten, Monica, Chatham, Ontario
Schwarz, Margarete, Edmonton, Alberta
Scott, Jeanne, Langley, British Columbia
Seeley, R.J.G., Hay River, North West Territories
Seventh-day Adventist Church of Canada
Shenton, J., Langley, British Columbia
Sheppard, Rick, Ajax, Ontario
Shergold, C., Shawnigan Lake, British Columbia
Showler, Frank, Toronto, Ontario
Signorile, Vito
Simco County Board of Education
Simons, Joy, Ladysmith, British Columbia
Simpson, Alec, Halifax, Nova Scotia
Simpson, Joe, Lloydminster, Saskatchewan
Simpson, Suzanne, Ottawa, Ontario
Sinco, Rey, North York, Ontario

Singh, Jang, Windsor, Ontario
Singh, Sutantar, Ottawa, Ontario
Sinha, Deba, Montreal, Quebec
Sioux Lookout Community Legal Clinic
Skirrow, Helen, Edmonton, Alberta
Sloterdyk, P., Woodstock, Ontario
Smith, Robert, Ottawa, Ontario
Snyder, Marian, Whitby, Ontario
Social Planning Council of Metropolitan Toronto
Society for the Retired and Semi-Retired
Solidarity Coalition
Solomon, Randy
Sorensen, Mr. & Mrs. Hagbarth, Nelson, British Columbia
Sosnokowski, Anthony, Toronto, Ontario
Special Libraries Cataloguing Inc.
Spencer, Violet, Craik, Saskatchewan
Spencer-Mills, Elma, Brighton, Ontario
St. Catharines Right to Life Association
St. Jérome Bar-BQ
St. John's Status of Women Council
St. Lawrence Institute
St. Leonard's Society Chatham-Kent
Stam, Connie, Chilliwack, British Columbia
Stapleton, Steve, Regina, Saskatchewan
Steciuk, Anne, Toronto, Ontario
Stephenson, Mr. & Mrs. Phil, Niagara Falls, Ontario
Stewart, Allan, London, Ontario
Stratford and District Right to Life
Sudbury Women's Action Group
Sullivan, Dwyer, Toronto, Ontario
Sullivan-Blain, Betty, Ottawa, Ontario
Summers, Isabelle, Toronto, Ontario
Swain, Joy, Georgetown, Ontario
Switzer, Israel, Toronto, Ontario
Syndicat des employés de production du Québec et de l'Acadie
Tahir, Ben, Ottawa, Ontario
Tang, Ho-ling, Nepean, Ontario
Taxes Pour La Paix, Montreal
Taylor, A., Regina, Saskatchewan
Telford, Karen, Niagara Falls, Ontario
Terrace Pro-Life Education Association
Tes, Janet, Chilliwack, British Columbia
The Tamaracks
Theisen, Donrae, Niagara Falls, Ontario
Theisen, Julie, Niagara Falls, Ontario
Theisen, Len, Niagara Falls, Ontario
Thérien, Serge, Montreal, Quebec
Third World Community of Saskatchewan
Thompson, Mike, Charlottetown, Prince Edward Island
Thomson, Kenneth, Etobicoke, Ontario
Throne Pneumatic Systems Ltd.
Times Change Women's Employment Service
Timlick, Brian, Winnipeg, Manitoba

Toronto Birth Centre Committee
Toronto Mayor's Committee on Community and Race Relations
Toronto Women's Health Network
Townson, Monica, Ottawa, Ontario
Transition House
Tschannen, R., St. John's, Antigua, West Indies
Turcotte, Dan, Thetford Mines, Quebec
Turner, Florence, Whitby, Ontario
United Church of Canada
United Church of Canada, Winnipeg Presbytery
Universal Fellowship of Metropolitan Community Churches
Universal Library Systems
Urban Alliance on Race Relations
Uzelac, Mike, Niagara Falls, Ontario
Van Den Assen, John, Brussels, Ontario
Van Kessel, Rob, Windsor, Ontario
Vancouver Association of Women and the Law
Vancouver Gay and Lesbian Community Centre
Vancouver Island Human Rights Coalition
Vancouver's Pioneers Association
Vaughan, Fred, Toronto, Ontario
Veer, W.W., Chilliwack, British Columbia
Vickers, Jill, Ottawa, Ontario
Victims of Violence Inc.
Victoria Charter of Rights Coalition
Wainwright District Support Services
Waite, Sidney, North Vancouver, British Columbia
Wallenberg, Kate, Barrie, Ontario
Walsh, Anne, Ottawa, Ontario
Walters, Darlene, Niagara Falls, Ontario
Ward 5 Community Centre, Halifax
Warner, A., Vancouver, British Columbia
Waters, Betty, North Vancouver, British Columbia
Watson, W.J., Toronto, Ontario
Webster, Robert, Vancouver, British Columbia
Wednesday Morning Group of Carmen, Manitoba
Weir, J.R., Collingwood, Ontario
Wells, Marion, Fredericton, New Brunswick
Wendover, Robert, Buckhorn, Ontario
Western Canada Feminist Counselling Association
Whalen, Elmer, Souris, Prince Edward Island
Whalen, Mrs. Frank, Souris, Prince Edward Island
Whalen, Vivien, London, England
Whitehurst, Robert
Whiting, Ronald, Chilliwack, British Columbia
Williams Lake Pro Life Society
Williams, June, Nelson, British Columbia
Williamson, Richard, Willowdale, Ontario
Willis, Herbert, Kingston, Ontario
Wilson, Samuel, Cayuga, Ontario
Winn, Conrad, Ottawa, Ontario
Winnipeg Gay Community Health Centre Inc.
Winnipeg Gay Media Collective

Women for Life, Faith and Family
Women Working with Immigrant Women
Women Working with Immigrant Women of New Brunswick
Women Working with Immigrant Women, Windsor
Women's Employment Development Program
Women's Employment Outreach
Women's Health Education Network
Womersley, Marcus, Vancouver, British Columbia
Womonspace Social and Recreational Society of Edmonton
Woodside, Donald, Hamilton, Ontario
Working Women's Education Committee
Wright, Gerald, Cambridge, Ontario
Yarmouth & Area Right to Life
Young Women Christian Association of Metropolitan Toronto
Young Women Christian Association, Calgary
Young Women's Christian Association
Yukon Anonymous Gays
Yukon Child Care Association
Zaifman, Kenneth, Winnipeg, Manitoba
Zimmerman, Nancy, Niagara Falls, Ontario

A copy of the relevant Minutes of Proceedings and Evidence of the Sub-committee on Equality Rights (*Issue N^os^ 1 to 28 inclusive and Issue No. 29 which contains this Report*) is tabled.

Respectfully submitted,

J. Patrick Boyer, M.P.

Chair