



REPORT OF MINISTERIAL ROUNDTABLE ON JUSTICE ISSUES

May 15, 2002





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Introduction

The Ministerial Roundtable on Justice Issues took place on May 15, 2002, in Ottawa. At the invitation of the Minister, nineteen representatives of non-governmental organizations were brought together to discuss, in an open and informal forum, future justice policy in Canada.

The Report focuses on the main themes that were raised in the course of the roundtable. It is not a verbatim transcription of the discussions, although it does use the participants' own words where possible. The Report does not analyze the participants' positions, nor does it attempt to respond to these positions. The Report is not a statement of consensus nor a commitment to action but rather a step in continuing the dialogue initiated at the Roundtable. The Report will be distributed within the Department as a policy-development tool, sent to all roundtable participants, and shared broadly with Canadians through the Department of Justice Web site.

Context

The Ministerial Roundtable on Justice Issues is an integral part of the Department of Justice's ongoing commitment to involving Canadians in the development of policies, programs and legislation. The event was organized to initiate a dialogue with non-traditional stakeholders who have not been, or are rarely, consulted by the Department of Justice in the development of its policies and programs. The organizations were invited based on the link between their activities and social policy, economic and financial policy, international policy, and access to justice.

The Department endeavoured to select a group of participants that would provide for a balanced discussion of these issues, reflecting a regional and linguistic balance.

The Roundtable began at 11:00 a.m. on May 15, 2002 in the Centre Block of Parliament. An informal dialogue between the Minister of Justice, the Deputy Minister, the Minister's Executive Assistant and justice stakeholders ensued for approximately four hours. After an engaging discussion addressing various justice issues, the Roundtable concluded at 3:00 p.m.

Main Themes

Although a variety of topics were raised at the Roundtable, certain recurrent issues emerged as particularly important. In this Report, these have been grouped into three main themes; Canada's Justice System, Access to Justice, and Innovation and Competitiveness.



Canada's Justice System

Many Roundtable participants stated their appreciation for Canada's justice system. Several participants agreed that Canada's justice system has "risen above many of the issues of corruption...or political interference" and that we have "one of the best justice systems in the world." However, the Roundtable was not intended to be a self-congratulatory meeting, and the comments raised by participants were indeed often not complimentary. In fact, several participants shared substantial concerns about integral elements of Canada's justice system, particularly, social rights and equality and Legal Aid. Others expressed concerns about Canadian law schools or called for expanding the use of alternative justice.

Social Rights and Equality

The very first comment contributed to the Roundtable was a plea to the government to translate "its principles into reality", highlighting a concern that certain equality or labour rights that exist in principle have not been entirely translated into legislation or otherwise implemented. This call to focus on the application of existing Canadian rights was echoed at the Roundtable by participants acquainted with disabled persons, youth, refugees, immigrants and other social groups or issues. One participant noted, "the policies are there – the equality rights are there – now the time is long overdue to concretize them." Participants also raised the issue of specific recommendations made to the government that have yet to be implemented, such as those from the Royal Commission on Aboriginal Peoples and the Civil Society Consultations for the World Conference on Racism. A guiding principle which emerged was that,

our agenda for the next five years needs to be not only to preserve the rights that we have already won but to implement the recommendations that have been made to the justice system for the last twenty years.

One participant suggested that Justice develop a type of "report card" to objectively evaluate its performance in this area. However, others expressed concern about implementing legislation in circumstances where there is considerable opposition. For instance, one participant called attention to the resistance that the *Youth Criminal Justice Act*, (Bill C-7) continues to face in Quebec.



Another area of concern was Canada's international commitments, especially with regard to translating treaty and convention responsibilities into domestic law. Several participants requested a review of such commitments that would evaluate their degree of implementation. Although most participants cautioned against adding further national engagements, one participant suggested that Canada should consider an auxiliary undertaking. The President and CEO of the Canadian Council for International Co-operation held that Canada had an opportunity to lead by example in the area of international law, notably, through the International Court of Justice.

Legal Aid

Participants considered Legal Aid a major part of Canada's justice system, noting that it is relied upon by thousands of low-income Canadians every year. Several participants raised concerns that Legal Aid is only accessible to the "very poor" but that many low-income individuals and families who need support do not qualify for assistance because their earnings slightly exceed the maximum income cut-off. Refugees and immigrants were singled out as one group for whom Legal Aid services are critically needed. A member of the Canada Council of Refugees noted that,

as immigration lawyers, we are the only people where our clients face the death penalty and it is absolutely essential that refugee claimants have access to competent, qualified, and universal (Legal Aid) coverage across the country.

Many participants agreed that there is an urgent need to reform the Legal Aid system and to build its resources, and some also lamented that it is not on the social agenda because most Canadians do not see themselves as likely to be beneficiaries of Legal Aid.

Other problems affecting the Legal Aid system identified by the participants included delays and waiting time as well as multiple appearances without meaningful results that drain Legal Aid's limited resources. According to President/CEO of Legal Aid Ontario, the increasing shortage of Legal Aid lawyers is due to several factors: the "greying" of the bar, low salaries (i.e. \$67/hour and \$57/hour for duty counsel), debtload for young lawyers coming out of law school, and less interest in providing "community service" through legal aid.



Law Schools

A related issue discussed was the accessibility of law schools. Participants argued that higher tuition fees were discouraging many qualified candidates from legal education and therefore ensuring that only those from the upper echelons of society would form the next cadre of law school graduates. There was great concern about the implications of this situation, in particular with regard to the representativeness of Canada's legal community and the substantial debt loads that would oblige new lawyers to seek out high-paying jobs with private firms instead of positions with Legal Aid or government.

Alternative Justice

Concerns were expressed about Canada's court system and its ability to handle the volume of cases placed before it. Participants suggested that alternatives to the traditional methods of resolving disputes could help reduce these pressures. As the President of the ADR Institute of Canada noted, arbitration and mediation, applied to family or commercial matters, could save a lot of money and time and "be more sensitive to people's needs." He cited several examples where mediation had already achieved notable success, such as in the Ontario and Manitoba courts. The feasibility of applying non-traditional forms of justice was referred to occasionally throughout the remainder of the Roundtable.

Access to Justice

The theme of access to justice was clearly of great importance to the Roundtable participants. For instance, some participants raised a challenging point about perception – many Canadians believe that they do not come in contact with the justice system when, in reality, they do so frequently. Even more important, others mentioned, were the cases where individuals are desperate for access to the justice system but find their way blocked. Marginalized social groups, it was noted, are those who suffer most from limited access to justice. Participants suggested a range of causes for this situation. For instance, judges are often unfamiliar with these social groups and particular services required to assist individuals brought in contact with the justice system are often unavailable.



Barriers to Access

Participants discussed the challenges that individuals from certain social groups face and the implications these have for their ability to access justice. For example, it was noted that people with disabilities face a variety of barriers when interacting with police and court services where certain communication protocols and reporting mechanisms are particularly inaccessible. As the Director of Public Education at the Roehrer Institute remarked,

If people with disabilities actually get to the point where they would contact the police, the case is not pursued because the police often feel it just won't stand up in court. The issue of credibility of victims is a huge issue for people with disabilities in their attempts to access the justice system.

The lack of adequate resources that prevent marginalized groups from effectively interacting with the justice system was also mentioned as a significant barrier.

Some participants maintained that the challenges disadvantaged individuals face can often lead to other injustices, particularly, the inability to obtain legal representation. Participants voiced concern for the overrepresentation of Aboriginal people in the justice system and the challenges they face when seeking assistance.

Children were identified as another vulnerable group facing grave injustices and needing access to representation. The representative from the National Youth In Care Network stressed that “children in care” are particularly at risk. He noted that the United Nations Convention on the Rights of the Child theoretically gives youths the right to legal representation, but this right has not been articulated within concrete policies. As a result, youths, especially those in care, often appear unrepresented before quasi-judicial bodies that make critical decisions about their lives. In that sense, he noted, they have been excluded from the Canadian judicial system.

Minimum Sentencing and the Role of Judges

The other side of the access to justice theme is that of the values which underpin Canada's legal system. A discussion contesting one participant's proposal for mandatory minimum sentences for offences involving knives highlighted the question of Canadian values. The participants who opposed to such minimum sentencing evoked the importance of judicial discretion – as one participant noted, “judges need to use their judgment.” Relying on mandatory minimum sentences, some participants argued, would be inconsistent with Canadian values, which include the belief that



judges are best placed to determine the sentence, taking into consideration not only the nature of the crime but also the context and circumstances.

Participants spoke of the critical role that judges play in ensuring Canadians' access to justice. Some expressed the belief that judges were often insufficiently prepared to deal with certain cases brought before them. For example, one participant stated that the Federal Court has a large majority of cases dealing with refugees and immigration but "none of our current Canadian judges have this type of expertise." Mandatory training programs for judges, aimed at increasing awareness levels and minimizing stereotypes and inadvertent biases, were proposed as a means of addressing barriers to justice. For instance, the Executive Director of the Canadian Race Relations Foundation, recommended,

the development of training and awareness at every level of the system from the universities that train the lawyers who will eventually become officers and judges, right through the system, to overcome the overt and systemic barriers to equality that lead to systemic racism.

Innovation and Competitiveness

A discussion on the need to expand the current legal framework for innovation and competitiveness added another dimension to the Roundtable. One participant stated that Canada is "second in the world in terms of discoveries in biotechnology, in number of dollars, and in number of companies." As a result, Canada is at a critical point in terms of the ethical implications of these discoveries. Participants also remarked that while Canadian scientists are making key contributions to the scientific community, the current legal framework is inadequately fostering these developments. Participants looked to the government to nurture the growth of scientific industries by providing ethically sound and efficient decisions in modifying the existing patent and intellectual property legislation. To sustain the competitiveness of the Canadian financial sector, government leadership was also urged.

Patents and Intellectual Property

Many emerging issues associated with patents and intellectual property are creating new challenges for Canadian society. In response, participants proposed that the Department of Justice take a lead role in developing a legal environment that will reflect both the evolving values of Canadians and the needs of innovation-dependent industries. The Vice-President of BIOTECCanada stated that, as the biotechnology sector grows swiftly, the industry "needs regulation and wants regulation." However,



she cautioned against the inclusion of ethical and social values into patent legislation, such as the *Patent Act*, as this could threaten the ability of such legislation to operate effectively. These comments were echoed by the President of the Intellectual Property Institute of Canada, who urged greater speed in adopting legislative and regulatory changes to ensure that infrastructure remains able to compete internationally by attracting high technology business to Canada. Particular issues identified concerned the slowness of Canadian drug approvals and the question of patentability of higher lifeforms leading to Canadian companies selecting the U.S.A. or Europe as a base for their research and development.

Financial Sector

The issue of competitiveness was also brought up in terms of Canada's financial sector. Concerns were raised regarding a number of recent attempts by provincial governments to regulate the business of banking, an exclusively federal jurisdiction. For instance, the Senior Vice-President of the Canadian Bankers Association noted that in addition to jurisdictional concerns, the regulatory overlap and duplication threatens the competitiveness of Canada's banking sector and the economy as a whole. He noted that the federal government needs to play a strong leadership role in ensuring that federal jurisdiction in this area is not eroded and further, that concerted efforts by all governments across Canada need to be made to improve regulatory efficiency. He pointed out that if the government does not respond appropriately to these jurisdictional concerns, "we may lose the efficiency and effectiveness of the banking system that we currently have". For these reasons, the Canadian Bankers Association representative urged the Department of Justice to get involved in the British Columbia and Alberta court cases that raise these important issues.

Conclusion

Several Roundtable participants expressed their appreciation of the opportunity to engage in dialogue with the Minister of Justice and to network with other justice stakeholders. As one participant put it, in our communities there lies "extraordinary wisdom and strength and capacity" which the Department of Justice needs to "tap into".

In his concluding remarks, the Minister of Justice emphasized that public engagement is of paramount importance. He expressed gratitude for the contributions made by the participants and noted that they would be very helpful to him and the Department. Furthermore, the Minister indicated his willingness to host future Roundtable consultations.



Appendix: List of Roundtable Participants

| DELEGATE | ORGANIZATION |
|--|---|
| Mr. Stuart Wilkinson President | Intellectual Property Institute of Canada (IPIC) |
| Mrs. Doris Rajan Director of Public Education | Roeher Institute |
| Ms. Carole Nap Vice-President, Policy and Public Affairs | BIOTEC Canada |
| Mr. Warren Law Senior Vice-President | Canadian Bankers Association |
| Mr. David Farnes Vice-President | Canadian Wireless Telecommunications Association |
| Mr. John Schmal 1 st Vice-President, City of Calgary | Federation of Canadian Municipalities |
| Mr. Gerry Barr President and CEO | Canadian Council for International Co-operation |
| Mme Andrée Côté Director of Legislation and Law Reform | National Association of Women and Law (NAWL) |
| Ms. Monica Patten President and CEO | Community Foundations of Canada |
| Ms. Chantal Tie Member of Council | Canadian Council of Refugees |
| Mr. Eugene Oscapella Founder | Canadian Foundation for Drug Policy |
| Mr. Matthew Geigen-Miller Member of Network | National Youth In Care Network |
| Dr. Sid Frankel Director | Social Planning Council of Winnipeg |
| Dr. Karen Mock Executive Director | Canadian Race Relations Foundation |
| Ms. Céline Morin Coordinator | Regroupement des maisons de jeunes du Québec |
| Mr. Martin Bélanger Chairperson of the Board of Directors | Regroupement des organismes de justice alternative du Québec |
| Ms. Angela Longo President/CEO | Legal Aid Ontario |
| Mr. Laurier Boucher Administrator Mr. Barry C. Effler President | Ordre professionnel des travailleurs sociaux du Québec ADR Institute of Canada |