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JUSTICE

RESEARCH NOTES

Making the Justice System More Accessible to Canadians

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In this issue of *Justice Research Notes* we highlight some of the recent work of the Research Section on access to justice and public law, touching on topics that range from providing better legal services for people in the remote reaches of Canada's north, to making regulations on activities such as pollution control acceptable to corporations and individuals.

The first broad area, access to justice, covers a number of current issues in which the Department has been active over the years — such as improved access to legal aid and the provision of legal information to the public. We present three such articles here: one examining a program to make legal aid more accessible to low-income working people; another presenting the results of a survey aimed at helping to identify the public's legal information needs; and a third studying the use of paralegal workers in remote regions.

Another avenue of access-related research is the alternative resolution of disputes of all kinds, focussing on community-based, as well as court-based, techniques. In the past we have initiated projects on various procedures for divorce mediation, for example, and recently we have begun work on the question of alternative dispute resolution in general. In the 1970s, pilot projects on unified family courts were conducted which, for the first time, brought together provincial and federal court systems to resolve marital property and other issues

in divorce proceedings. We look forward to reporting on the results of our dispute-resolution work in future issues of this newsletter.

Public law research embraces the many complex socio-legal issues surrounding the application of the *Canadian Charter of Rights and Freedoms* and regulatory law.

Recently, a major focus for research has been the relationship of the Charter to national unity issues. The Department has been actively seeking ways to improve Canadians' understanding of the implications of the Charter for their rights and responsibilities as citizens. Research is ongoing on such topics as the use of extrinsic evidence in Charter cases (social science data-analysis material, for instance, which is now considered relevant by the courts) and the impact of the Charter on the policy-making process.

Research on regulatory law has concentrated on compliance with regulations, particularly the exploration of "positive compliance" techniques that avoid the traditional command-penalty approach to enforcement. A comprehensive study of these techniques in three countries (the United Kingdom, Australia and the United States), with implications for improved Canadian systems, has recently been published and we are pleased to present a summary here.

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Canadians and the Law: Assessing Knowledge and Information Needs

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What do Canadians know, or need to know, about the law? In particular, what do people in low-income and minority groups need to know?

Given that citizens in our increasingly complex society need to know a great deal, how do we develop means to meet these needs, and what are the barriers preventing the provision of such information? To help answer these questions, the Department of Justice Canada, with additional funding from the office of the Attorney General of British Columbia, commissioned the study *Focus Groups on Public Legal Information — Needs and Barriers to Access*. It was conducted by Gallup Canada Inc. and published in 1990.

Since the inception of the Department's Public Legal Education and Information (PLEI) program, various research activities have provided a view of the possible range of methods used; but, as the consultants pointed out in their report, the impact of these methods has generally not been considered. Moreover, they observed that organizations funded by the Department under this program generally have not based their work on adequate or methodologically sound assessments of need.

It is critical for the development of national policy in this field that we know more about PLEI needs across all jurisdictions and segments of the population, and that we understand the effectiveness of various methods.

Seven Population Groups Surveyed

The Gallup study represents a preliminary step in identifying PLEI needs in Canada and suitable ways to meet these needs. It provides qualitative

data collected through a series of 12 discussion groups, called "focus groups," conducted in Halifax, Montreal, Toronto, Winnipeg, Vancouver and Kamloops. The groups focussed on seven different sectors of the population: youth; the elderly; low-income people; aboriginal people; members of visible minorities; immigrant women; and working women.

In all, 110 people participated in the groups, three of which, by design, contained only women. The other nine comprised a total of 34 men and 47 women. One group was conducted by people who work with clients from disadvantaged sectors of the population.

Study Findings Show Wide Variations in Awareness of the Law

► *General Awareness of the Law:* Awareness of the impact and importance of the law in everyday life was quite high among all focus group participants. The level of awareness of different aspects of the law varied according to the participants' range of personal experiences.

For example, many participants who were immigrants associated "the law" with government regulations, since they had dealt with government bureaucracies about their immigration status, unemployment and social benefits, student loans, and so on. Many of the single working women thought mainly in terms of family law and social welfare regulations. Participants from native communities in Winnipeg and Vancouver had extensive personal and second-hand experience with criminal law, and many felt that the law intrudes on their daily lives. The individuals who showed the lowest awareness of the impact of the law on their lives were teenagers in Halifax and elderly people in Montreal.

Areas of law most commonly cited included family law, employment standards, landlord and tenant law, and human rights. Less frequently mentioned were consumer rights and criminal law,

though participants often called attention to their perceived rights to public services and support from the income security system.

There was wide variation in awareness of beneficial laws or mechanisms to resolve legal problems, such as provincial ombudsmen, human rights commissions, small claims courts, and tenant advisory bureaus. Participants cited minor regulations and government bureaucracy as examples of "the law."

▷ *Legal Aspects of Problems:* Participants identified the legal nature of problems in areas such as immigration, tenancy disputes, unresolved family maintenance situations, and apprehension by the police for suspected wrongdoing. Although most were aware of the legal nature of their problem from its beginning, in many instances their low level of general legal knowledge ultimately thwarted their interest.

For example, an immigrant woman said she had been refused an apartment because she had a child, and that this was unjust and possibly illegal. In fact, the landlord did have the right to refuse her in this instance. However, her *previous* landlord may have illegally forced her out of her apartment "because the property was being sold."

Several others — such as a single parent and a young native man — gave examples of having submitted to questioning by authorities (police, game wardens) and later learning that they had in fact had the right to refuse to cooperate.

The identification of a legal problem also seemed to correlate to the perception of injustice. That is, if the individual felt that a situation was grossly unfair, then he or she would be more likely to search for a legal element in it.

▷ *Administration of Justice and Respect for the Legal System:* Although most participants thought that the law treated average Canadians fairly, very few saw themselves as average. Most did *not* feel that everyone is equal before the law. Money was seen as a guarantee of better treatment

before the law, buying connections, influence, and effective representation.

Many individuals and groups had a cynical view of the administration of justice. Canadian laws as they are written were considered fair, but the means by which those laws are applied were seen as flawed. For example, a woman who was ineligible for legal aid did not press divorce proceedings. A number of native participants talked about mistreatment by the police or corrections officials, with most concluding that it "wasn't worth it" to pursue a formal complaint. Moreover, some research and probing with participants suggested that aboriginal cultures — or at least recent history and experience of these cultures — emphasize dealing with one's problems oneself. According to this philosophy, public revelation of a personal problem, or revelation to a stranger, would result in a loss of face and would not be "the Indian way."

*Many individuals and groups
had a cynical view of the
administration of justice*

A troubling aspect of the group discussions was the frequency with which participants assumed there was corruption within the court system. This extended to dealings with lawyers, who, as a whole, were perceived to be allied with the complex and often frightening court system, rather than being on the side of the individual. Complaints about lawyers included high fees, stereotyping of clients, callousness, and lack of person-to-person communication. On the other hand, participants sometimes betrayed unrealistic expectations of lawyers. Many had little understanding of the applicable laws or legal process, and saw hiring a lawyer as a panacea.

► *Sources of Legal Knowledge:* Participants' legal knowledge tended to be spotty and often inaccurate, showing little understanding of the structure and process of the law. Friends, relatives and social intermediaries already known to the participants were the most common sources of any legal information or referrals. Most respondents dismissed the police as being unreliable sources of legal information.

Most people displayed little interest in gaining an overall understanding of the law

Awareness of existing PLEI sources was very low. Most of the services and resources suggested for handling legal questions were, in fact, general counselling or referral services. Immigration counsellors, welfare social workers, Outreach counsellors, church pastors, school advocates, self-help groups for single parents, and native community centres were all mentioned in lieu of specialized legal information services.

► *Use of Legal Information Services:* Immigrants and low-income working women had the most experience in searching for and using various legal information services. They might be expected to be the ones who would make most effective use of a public legal education facility once they were aware of it.

Native people and low-income people appeared to have the greatest need for legal information and assistance. However, they seemed less likely than others to make use of outside resources other than legal aid.

Access to public legal education facilities, once they were known, was an issue. Social intermediaries suggested — and participants corroborated

the fact — that people categorized as disadvantaged often move in a very limited geographic area. Language difficulties, financial hardship, or apprehensiveness about those outside one's ethnic or minority group could mean that a single office in a downtown location is beyond the reach of many.

In general, advocacy rather than advice, and case-specific rather than general information, would be preferred. By and large, most people displayed little interest in gaining an overall understanding of the law. Although there was general agreement that knowing more about the law could help to ensure one's rights or to get what one deserves, most participants said they would be unlikely to learn about their rights in law until they were in trouble.

This predisposition to solving specific problems has implications for the level of resources, ways of identifying target populations, and types of approaches that might be required to significantly improve knowledge about the law among Canadians in disadvantaged groups.

Many focus group participants were surprised to hear about the Dial-a-Law and other PLEI services, and felt that these should be more widely advertised on television and in newspapers and through mass mail drops in the schools. Use of existing general counsellors to make referrals was also emphasized.

► *School Curriculum:* A few younger participants in each group had studied law as an elective subject in high school. However, most did not seem to feel that these courses had great applicability to the legal questions they would face in adult life.

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Focus Group on Public Legal Information — Needs and Barriers to Access, by Gallup Canada, Inc. Department of Justice Canada, Working Document [WD1991-1a].