

NFLD
HQ
792
C3
RE
1085
110
C.1

FEB 10 1985

Brief Presented To

Mr. Neville Avison
Senior Criminal Justice
Policy Co-ordinator

Tuesday, October 1, 1985

by

Newfoundland-Labrador Human Rights Association

by: Bert Riggs
NLHRA

The Newfoundland-Labrador Human Rights Association is concerned with all the issues covered in the Discussion Paper under consideration but would like to focus its presentation today to a number of human rights issues arising out of the Badgley Report.

Children's rights are often, albeit unintentionally, overshadowed in discussions of human rights in general. Human rights codes, as a rule, restrict its provisions to persons over the age of nineteen, based on the premise that all persons under that age are covered under various child protection statutes. Unfortunately such protection is not always as foolproof as we may think. Some of the Badgley report's recommendations illustrate this principle all too clearly. The report does not provide a clear definition of whom it considers to be a "young person" alternatively recommending age limits of fourteen, sixteen and eighteen years as the upper limit when considering criminal action for offences. This leaves all persons between eighteen and nineteen, and in some cases the persons between fourteen and nineteen without adequate protection under the law. The NLHRA firmly believes that before any recommendations of the Badgley report be considered for enactment a consistent, all-encompassing definition of the age limits of the term "young person" be established and if that definition is under nineteen years of age that appropriate changes be recommended for human

rights codes to bring their lower age limits in line with the upper age limits of child protection statutes.

The Discussion paper has posed a number of questions relating to implementing recommendations of the Badgley report. The NLHRA has taken these questions into consideration and would like to respond to them from a human rights viewpoint. We would urge that in considering these responses the Federal Department of Justice officials bear in mind the rights of young people and the rights of the offender.

Questions 1. The NLHRA feels it would be setting a dangerous precedent to criminalize all exploratory sexual behaviour between consenting young people. Any attempt to do this could cause delays in sexual growth which would have detrimental effect on the young people, resulting in sexual inhibitions and we feel that exploratory sexual behaviour among consenting young people leads to a more healthy awareness of sexual responsibility.

Question 2. The NLHRA feels that mistake in age should never be permitted to be used as a defense in child sexual abuse cases in situations where the offender is recognized as an adult. Exposing oneself to an eighteen-year old whom the offender believes to be more older can have as detrimental effect on the sexual maturity of that eighteen year old as it can on a five year old. Moreover it provides a cop-out plea which could become the norm rather than the exception to the law.

Question 3. The NLHRA feels that the implementation of recommendation B9 would result in more protection of the rights of young people. It would clearly define the responsibilities of a person in a position of trust and re-enforce the idea in people that betrayal of that trust is just as criminal an act as the act of child sexual abuse itself. This would encourage the adoption of a general, non-restructive, list as B9 provides but would recommend voluntary workers and siblings be added to the list. The protection should extend to the maximum age limite definition of young person that we advocated in the second paragraph of this response.

Question 4. No comment.

Question 5. The NLHRA agrees with the need for providing the child with the best opportunity and circumstances to present his/her evidence without fear of the judicial process or of reprisal. However, any method implemented should be one which does not infringe upon the accused's right to due process and a fair trail under the law.

Question 6. The NLHRA has always been a strong advocate of preventive education programmes as a means of curbing child sexual abuse. We feel all members of the judicial and enforcement branches of the law have the responsibility to participate and demonstrate leadership in such programmes.

While specifics are best developed by experts in those areas it is necessary that the approach taken be part of an integrated, consistent programme which should be implemented nationally. We feel strongly that the office of the Commissioner is the most appropriate means of developing and implementing these programmes in conjunction with the other concerned groups and individuals. We cannot stress enough the importance of establishing this Office without delay as the primary weapon in the fight against child sexual abuse.

Question 7. The NLHRA will continue to educate, advocate, and uphold the rights of both victims and offenders, in this area in conjunction with other organizations and individuals in a concerted effort to eradicate child sexual abuse in our society.