SEGREGATION BY LAW AND IN FACT

Throughout history, people who have mental handicaps have been disfranchised and subjected to segregation on two fronts: 1) *de jure* (as a matter of law) segregation: which means segregation sanctioned by actual laws (i.e., the law that prohibited people with mental handicaps from voting); 2) *de facto* (as a matter of fact) segregation: which refers to the various customs and practices that separate and exclude people labelled mentally handicapped which are taken as facts of life but have no specific legal sanction (i.e., the practice of confining people with mental handicaps in institutions). It was *de jure* segregation — legally sanctioned discrimination — which governments, for the most part, were supposed to rectify in their legislative review under section 15 of the *Charter*. The drafters of the *Charter* acknowledged, by imposing a time delay, that there were numerous examples of *de jure* discrimination that needed to be rectified. However, both *de jure* and *de facto* forms of discrimination are open to challenge in court under the terms of the *Charter*.

Examples of laws which create *de jure* segregation are: laws that prohibit people with mental handicaps from making decisions for themselves; from voting; from receiving minimum wage; from marrying; and from being jurors. They also include laws that authorize use of aversive techniques, forced sterilization and unreviewable incarceration. These laws specifically and explicitly sanction differential treatment. *De jure* segregation has institutionalized prejudice and has had an obvious and destructive effect. The courts, in interpreting and upholding these laws, prior to the *Charter*, were allowing this prejudice to exist and were sanctioning the legal devaluation of people with mental handicaps.

Examples of *de facto* segregation include the practice of warehousing people in institutions, of training or rehabilitating them in sheltered workshops, and of providing housing in group homes. These are practices that exclude and implicitly