

Canadian Bar Association
August 14-15, 2010

Resolution 10-02-A

Fetal Alcohol Spectrum Disorder in the Criminal Justice System

WHEREAS a person, whose mother consumed alcohol during a critical development period in her pregnancy, may be born with a permanent organic brain injury which results in a cognitive disorder known as Fetal Alcohol Spectrum Disorder (FASD), a the range of neurological and behavioural challenges that may affect an individual;

WHEREAS disabilities of FASD reflect the underlying brain and central nervous system damage, including impaired mental functioning, poor executive functioning, memory problems, impaired judgment, inability to control impulse behavior, inability to understand the consequences of their actions, and inability to internally modify behavior control;

WHEREAS the nature of behavior resulting from these disabilities means that persons with FASD frequently come into conflict with the law;

WHEREAS the criminal justice system is based on normative assumptions that a person acts in a voluntary manner, makes informed choices with respect to the decision to commit crimes, and learns from their own behavior and the behavior of others;

WHEREAS these normative assumptions and the sentencing principles such as specific and general deterrence are not valid for those with FASD;

WHEREAS sentencing options available to courts are often ineffective in changing the behaviour of those with FASD and those with FASD are frequently repeat offenders;

WHEREAS the approach to offenders with FASD has been inconsistent and some courts have ruled that absolutely no rehabilitative or deterrent purpose is served by incarceration of those with FASD;

WHEREAS those with FASD are entitled under the *Charter of Rights* to substantive and not merely formal equality before and under the criminal law without discrimination on the basis of their disability;

WHEREAS laws, programs or activities could ameliorate the disadvantages experienced by those with FASD whose behaviour is judged on a standard that they are incapable of meeting because of their disability;

WHEREAS recognizing the forgoing, Federal, Provincial and Territorial Ministers

responsible for Justice have established an initiative with respect to access to justice for people with FASD;

BE IT RESOLVED THAT the Canadian Bar Association:

1. support the initiative of Federal, Provincial and Territorial Ministers responsible for Justice with respect to access to justice for people with FASD and urge all levels of government to allocate additional resources for alternatives to the current practice of criminalizing individuals with FASD;
2. urge the federal, territorial and provincial governments to develop policies designed to assist and enhance the lives of those with FASD and to prevent persistent over-representation of FASD affected individuals in the criminal justice system; and
- 3.-urge the federal government to amend criminal sentencing laws to accommodate the disability of those with FASD.

Certified true copy of a resolution carried by the Council of the Canadian Bar Association at the Annual Meeting held in Niagara, Ontario August 14-15, 2010

John D.V. Hoyles Chief Executive Officer/Chef de la direction

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