

# TRANSFORMING WOMEN'S FUTURE

A GUIDE TO  
EQUALITY RIGHTS  
THEORY AND ACTION

edited by Melina Buckley



Produced by West Coast Women's Legal Education and Action Fund

*Transforming Women's Future: A Guide to Equality Rights Theory and Action*  
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The convening of the national forum *Transforming Women's Future: Equality Rights in the New Century* in November 1999 and the subsequent development of this guidebook was a hugely ambitious undertaking for West Coast LEAF. This initiative caused many stresses and strains on our small, provincial organization. We persevered because we truly believed in the need for a resource of this type and its potential contribution to the struggle for women's equality in Canada.

I would like to thank all of the members of the various organizing committees, speakers, workshop leaders and researchers, volunteers, West Coast LEAF staff, forum staff, funders and sponsors. Please take a moment to read through the following acknowledgments section, recognition of funders and sponsors, and the list of contributors set out in Appendix B. The sheer numbers of contributors is inspiring in and of itself.

As Chair of the initiative, I would like to recognize in particular the immeasurable contributions of: Tracey Brown, Margaret Hales, Sandra Jakab-Hancock, Nicole Kocay, Thelma O'Grady, Jeanette Ryan, Jennifer Scott, and Helen Wilkes. These dedicated women put in countless hours in the days leading up to the forum and through the forum itself and managed to keep smiling, and even have fun, in the face of all the challenges posed by this type of event. I would also like to highlight karima budhwani's excellent work in organizing and implementing the focus group consultations. The steadfast support of Christine Dearing and Alisa Noda, who served as Presidents of West Coast LEAF during these years, was also instrumental in the success of this initiative.

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*Melina Buckley,*

Chair, Equality in the New Millennium Initiative

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# Introduction

## THE MILLENNIUM INITIATIVE

As the 20th century drew to a close, many of us started to reflect upon and ask questions about where we are in terms of women's equality rights work: what are we having problems with; where things seem to be going well; and what should we be doing next.

In the fall of 1997, this conversation led West Coast LEAF, a provincial branch of the national Women's Legal Education and Action Fund (LEAF), to embark on a multi-year initiative entitled "Achieving Equality in the New Millennium." The overall goal of this initiative was to develop cutting-edge law-related strategies for the achievement of Canadian women's equality in the 21st century.

The first step taken by West Coast LEAF was to initiate consultations with women's groups across Canada. We conducted a national survey, held a series of focus groups across Canada, and talked with a lot of people to find out what the situation was in terms of women's equality and what was required to push ahead and achieve equality in the next century. On the basis of what we heard, we initiated several research projects and began planning a national forum that would lead to the development of an equality rights action guidebook.

A national forum entitled *Transforming Women's Future: Equality Rights in the New Century* was held November 4-7, 1999 in Vancouver. It consisted of six plenary sessions and 76 workshops. 428 people participated in the forum with broad and diverse representation of sectors of the women's community and different areas of work and with representation from each province.

The national forum served as an historic occasion to *reflect* on the progress women's equality-seeking groups have made over the last few decades and to look ahead to the future of employing law-related strategies (litigation, law reform/advocacy and PLE) to achieve equality.

The consultations, research and national forum produced an amazing collection of forward-looking critiques, analyses and accounts of experience in advocacy. These thousands of pages of focus group reports, research papers, workshop papers, taped plenary presentations, workshop notes and notes from networking sessions form the basis of this guidebook. A national Guidebook Advisory Committee was established to assist in synthesizing this vast quantity of information into a

short volume that would provide substantive and process direction to women's work on equality issues.

As this guidebook is a synthesis of vast amounts of information, it does not reflect all of the voices and perspectives of those who participated at the national forum, nor of the women for whom this guidebook was written. It also does not necessarily reflect the views or positions of West Coast LEAF Association.

### **WHY THIS GUIDEBOOK?**

Achieving women's equality requires not only awareness of our rights but the capacity to assert these rights. This means understanding the various levels of human rights protection and their institutional mechanisms of enforcement. It means recognizing the legal and political options and alternatives available and acquiring the skill to shape the strategies and alliances that are fundamental to the assertion of rights.

The aim of this guidebook is to be a resource for individuals and organizations that are or will be using law-related strategies to advance women's equality. It is intended to act as a springboard to help refocus law-related strategies as we enter the 21st century with the goal of ensuring that section 15 of the *Canadian Charter of Rights and Freedoms* ceases to be a mere constitutional promise and becomes a lived reality for Canadian women.

The guidebook is designed to empower women in order to assist them to secure concrete changes in women's everyday lives. It is a practical guide to facilitate the development and implementation of powerful advocacy strategies.

It may be particularly useful for those who already use law-related strategies and/or have some familiarity with equality concepts and the law. The guidebook may also be useful for those involved in movements for economic empowerment, the eradication of violence against women, women's health and education, and other women-specific issues to introduce them to ways in which law-related equality rights work can provide an additional tool for advancing women's interests.

### **WHAT THE GUIDEBOOK IS NOT**

Many of the women we consulted wanted a woman's guide to law containing legal information on all areas of law affecting women (such as family law, estates and wills, employment, child protection and so on). While we acknowledge that the need for this type of legal information is great, this is not something that we have the capacity to do in this

guidebook. This guidebook could be useful in clarifying the equality rights issues, strategies and/or approaches to specific legal issues that affect women. However, it does not provide information on the legal issues themselves.

### **WHO SHOULD USE THE GUIDEBOOK AND HOW**

The guidebook is intended for all organizations and individuals working to promote women's equality rights. Particularly, it is meant to be used by:

- organizations and individuals working on women's issues and wishing to incorporate an equality rights framework into their work;
- groups involved in social policy development or seeking to plan and implement strategies to influence government or other key players that have a significant impact on women's equality rights;
- organizations with experience in women's equality rights but which have reached a stage where they need additional tools to plan strategies for enforcing women's equality rights; and,
- organizations and individuals whose work involves training groups on how to use the legal system in defence and promotion of women's equality rights.

The guidebook offers a point of view, a framework for building strategies and concrete suggestions for initiating equality rights advocacy. It is intended to be a flexible tool for a broad range of women's groups. It can be used as:

- a training tool
- a process tool for developing strategies; and
- a guide for planning and carrying out an advocacy plan.

The guidebook is a reference point: readers will need to take the examples and suggestions and then apply them to their own particular contexts.

### **HOW THIS GUIDEBOOK IS ORGANIZED**

The guidebook is organized into four main parts:

#### **PART 1: AN AGENDA FOR ACTION**

This part provides an overview of the equality issues facing various

women's communities and talks about the current political and economic climate in which our work must take place. It provides a snapshot, not a comprehensive picture, of where we are today and where we might want to go next.

## **PART 2: LEGAL SOURCES AND DYNAMICS OF EQUALITY RIGHTS**

Part 2 provides a background overview of the legal sources of equality rights and how they operate in Canada.

One section describes the legal sources of equality protection under the Canadian Charter of Rights and Freedoms, human rights legislation and the international regime. The second section outlines the definitions of the main terms, major principles and concepts that have been developed through the legal system to shape the implementation of equality rights. The third section describes some of the dynamics of how equality rights get translated into social change. The main equality rights provisions are set out in full in Appendix A to this guidebook.

## **PART 3: FROM CONSTITUTIONAL PROMISE TO LIVED REALITY: ASSESSING OUR LEGAL TOOLS AND STRATEGIES**

This part evaluates our legal tools and strategies from the perspective of what needs to be done to translate rights guarantees into social change. What will transform the constitutional promise of equality into a lived reality for women in Canada?

One section examines the building block of our legal strategies: the concept of equality. A second section examines equality rights litigation and alternative legal strategies. A third section looks at the ways in which we carry out women's equality work.

## **PART 4: EQUALITY RIGHTS ACTION**

Part 4 is the "guide" part of this book. This section contains a number of actions and tips that you could provide assistance in implementing law-related strategies. It includes topics such as challenging sexist stereotypes, choosing between legal strategies, and designing a media strategy. Wherever possible, examples or best practices are also provided.

## **A NOTE ABOUT CONTRIBUTORS**

This guidebook is the result of the work undertaken by all of the women involved in West Coast LEAF's millennium initiative. Wherever possible, specific ideas and quotes have been attributed by name

to individuals based on their written texts and presentations at the national forum or to the workshop in which the ideas were proposed. The reader can find out more information about all of the resource people who assisted at the national forum in Appendix B. This appendix contains a list in alphabetical order along with a brief biographical sketch of the individual and a notation as to the paper(s) and/or presentation(s) that they made at the national forum. While only some presenters are specifically referenced in the text of the guidebook, we recognize that everyone who participated in the forum made an important contribution.

### **A FINAL WORD OF ADVICE AS YOU GRAPPLE WITH THE BEST WAYS TO APPROACH WOMEN'S EQUALITY RIGHTS ADVOCACY**

Be flexible, be creative! As Sheilah Martin pointed out at the national forum, we are only limited by our will and imagination.

Progress is the result of people's commitment to finding effective means to assure universal respect for women's equality and to promote it in all spheres of Canadian society. Your advocacy initiatives to promote and defend women's rights contribute to this process and are essential to the continued development of equality rights.

There is no one way to do equality rights advocacy. Every innovation and new idea helps us all in our quest to assure universal and consistent respect for women's rights. Together we will transform women's future.



# PART 1

## **An Agenda for Action**

*Transforming Women's Future: A Guide to Equality Rights Theory and Action*  
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Part I sets out the context for an evaluation of law-related strategies to achieve substantive equality for women. It provides an overview of the equality issues facing various women's communities. This is not comprehensive, but rather gives a sense of challenges and priorities at this time. It provides a snapshot, not a full picture, of where we are today and where we might want to go next.

Just as importantly, this section describes the current political and economic climate in which our work takes place. A recognition of these parameters is our starting point. It does not mean we accept the status quo as immutable.

## The Situation Today

This section describes today's situation, and identifies the barriers and challenges that shape our struggle for equality.

### The move to the right and globalization

In her presentation, Lee Lakeman noted that the Canadian ideal of social responsibility and social justice was forged through the experience of the two world wars and the depression in the intervening years. From this experience, we embarked on a period of social development that ran for three to four decades, peaking in the 1970s. This was a period of real development of social policy: unemployment insurance, health care, the Canadian Assistance Program, public pensions, human rights legislation, changes to family law to improve conditions of women, and the removal of restrictions on women's employment.

We recognize the strides that have been made, and yet in the same breath, we are forced to face the fact that women still confront what appears to be permanently unequal access to safety, money, time, power, status, and resources of all kinds. Women's inequality has almost an air of normalcy about it.

The last two decades have witnessed a sea change in the spirit of Canadian social policy and society. As many women in the feminist movement have pointed out this change is marked by a drastic shift in the vocabulary used in the social policy debate:

...from "community well-being" to "growing economy," from "individual development" to the need to be "competitive," and from "human rights" to "corporate rights"... quite quickly the public discourse changed. We all started talking about "global economic realities" and "government overspending."

We recognize the strides that have been made, and yet in the same breath, we are forced to face the fact that women still confront what appears to be permanently unequal access to safety, money, time, power, status, and resources of all kinds. Women's inequality has almost an air of normalcy about it.

So we are faced not only with an uncompleted agenda of progress toward women's equality, but also with conditions of worsening inequality.

This swing to the right within Canada reflects and is affected by the market forces of the global economy, resulting in external pressures to prevent new social programs and new social spending, and to dismantle existing social programs, all under the mantra of competitiveness and free trade. In Michèle Caron's words, "wanting to have government is now politically incorrect." So we are faced not only with an uncompleted agenda of progress toward women's equality, but also with conditions of worsening inequality.

### **Legal gains do not always translate into change**

Women go to court again and again over the same issues. How many times will it take for the Supreme Court of Canada to clarify that "no" really does mean "no" before this realization permeates the prosecution of sexual assault offences in Canada? How many times will we have to go to court to fight the "spouse in the house" rule?

Even when we win legal cases, they do not translate into genuine and effective equality for women. As Beth Symes and Judy Hecht explored in their workshop on the "unfinished abortion agenda," the de-criminalization of abortion has not resulted in safe and equitable access to abortion services across Canada. They noted that even clear laws do not eradicate the reality of inequality: abortion has been decriminalized but not legalized; access is still highly restricted; and "bubble zone legislation," which is meant to protect those providing and accessing abortion services, is not particularly effective.

### **Backlash**

In some instance, these legal gains are simply resisted. Other times, they trigger disproportionately explosive defensiveness and hostility – in other words, backlash.

Sheila McIntyre pointed out that feminist efforts to eliminate inequality in the laws proscribing sexual offences and in the enforcement and application of those laws have been consistently resisted by police, lawyers, judges and juries. These efforts also have consistently generated backlash against those responsible for and/or supportive of such egalitarian change.

For example, the aggressive pursuit by accused persons of a complainant's personal records appears to be a pointed retaliation for successful amendments to the definition of consent in sexual assault law.

McIntyre also showed how actual and imagined social, economic, political and legal equality gains by women as a class, however

unevenly distributed, have triggered a variety of types of backlash. This includes an escalation in actual or threatened violence against women accompanied by new “equality-resistant” strains of legal arguments and judicial decisions that effectively offset or bypass earlier reforms.

Women working with battered women have exposed how media backlash obscures the reality of the violence women experience. Various methods are used to disprove and trivialize male violence. These include: labelling such as “feminazis,” the father’s rights movement, publications by abusive men using the web to harass women who have been successful in leaving and protecting their children, and the misuse of statistics on violence in same-sex relationships.

### **Tricks of language: appropriation of equality and gender neutrality**

Another challenge faced by those working for women’s equality is the co-optation or appropriation of the language of equality rights by those who oppose the movement. Charges of “reverse discrimination” abound when the privileged status of men is challenged.

Gender neutralization can also be used to erase women’s experiences and make inequalities vanish. Problems arise, for example, with the growing use of victim terminology. If sexual violence/wife abuse are no longer a women’s issue, then male power-holders may resume control over their definition, causes and remedies. Using gender neutral terms such as domestic or family violence erase the reality that it is violence against women that has reached epidemic proportions.

### **What does equality mean, anyway?**

Despite a clear rejection of the sameness/difference model of formal equality by Canadian courts, this limited view of what equality means continues its stranglehold on the courts and in public policy debate.

Despite the legal and political recognition of the structural dimensions of inequality, there is still too much emphasis on individual acts of discrimination as if they are mere aberrations in an otherwise equal society.

### **Resurgence of the public/private dichotomy**

One of the consequences of the move to the right in Canadian politics is the resurgence of the public/private dichotomy. Feminist activism

Gender neutralization can also be used to erase women’s experiences and make inequalities vanish.

**As at the end of 1999, the socio-political context in which sexual inequality facilitates, institutionalizes and rationalizes male sexual violence is worsening exponentially. In this context, the full humanity, citizenship and fundamental rights to self-determination of even the most privileged of women remain far from established. An intensifying exploitation of women, women's productive and reproductive labour, women's bodies and women's body parts are currently the state-supported private order. Simultaneously, the dismantling of equality-enabling or advancing public benefits, services and institutions is the global market-dictated public order.**

*...continued on next page*

has shown how the distinction between what is seen as “public,” and therefore the responsibility of the state, and what is seen as “private” and therefore outside of the realm of government responsibility is not neutral. Rather it is this division between the two realms that has important consequences for women and other equality-seekers.

Feminists have been successful in showing, for example, the role of the state in maintaining women in a subordinate position within the family or the way in which state policies have contributed to violence against women. Highlighting the false nature of this public/private dichotomy and showing the connections between the two spheres has opened up areas of activity to legal and political scrutiny and in some cases has resulted in reform.

More recently, we have witnessed counter-moves that seek to resurrect this distinction, to reprivatize areas of activity in order to permit a “hands-off” approach and limit the role of government in attaining women's equality.

### **Complacency and distancing of women, particularly younger women from the feminist movement**

Where progress has been made, there is a growing tendency to hide behind the facade that things will now get better on their own. In Marguerite Ritchie's phrase, “In other words, women's rights would evolve in due course, like creatures at the bottom of the sea, waiting for the right combination of circumstances.”

The view that we have made progress or that equality is no longer a problem makes equality rights work harder, as many people seem to have lost patience with the messages of feminism. In particular, there is concern about the tendency among some younger women to support equality for women, but not want to identify as feminists.

### **Places where women are allowed to speak are growing fewer and fewer**

The deep cuts to funding of women's organizations have resulted in the drastic reduction of public space for women to speak and be heard. Governments feel free to discontinue consultations with women's groups in a way that would have been unimaginable ten years ago.

### Contemporary Challenges to Women's Equality Rights And Areas for Action

- The move to the right and globalization
- Legal gains not always translate into change
- Backlash
- Appropriation of equality language
- Inappropriate use of gender neutrality
- Lack of clarity in meaning of equality
- Resurgence of public/private dichotomy
- Complacency and distancing of women, particularly younger women from feminist movement
- Insufficient space for public discourse on women's equality

## Pause to Celebrate, but Don't Stop

The national forum was an opportunity to celebrate the legal victories we have had and the advances we have made. Given the current climate and the reversal of past successes in some areas, it is easy to discount some of the positive impacts of the public education and consciousness-raising efforts over three decades of feminist struggle. Our work has resulted in the eradication of many myths and stereotypes and of many formal expressions of discrimination, even where these strategies have not yet resulted in eliminating the substantively discriminatory impact on women.

It is also important to pause and celebrate the women's movement as it now reaches "mid-life." At the national forum's opening plenary, Catherine Frazee presented this metaphor in witty, funny and moving terms. While it is impossible to do justice to her presentation, the following excerpt attempts to capture some of its magic:

For me, the image of feminism as a mature social movement is – never mind a new millennium – entering something far more important to me personally, entering a revolution that might roughly correspond to mid-life.

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**Not least among the equality resources being dismantled or privatized are women's advocacy organizations and frontline women's services. Among other things, this domestic and global economic restructuring are reprivatizing women's work and re-isolating women in the home. The absence of affordable day care or elder care, the deinstitutionalization of mentally ill individuals, short (public funded) hospital stays and fewer hospital beds, are incrementally easing women out of full-time, well-paid jobs and into part-time, casual, temporary, discontinuous paid work, or into piecework at home or into full-time unpaid domestic service. The goals of fiscal conservatism resonate happily with those of moral conservatism. Family values ideology idealizes female subservience to a patriarch breadwinner, identify the home as the women's proper sphere, celebrates biological gender differences and vilify feminists.**

◦ SHEILA MCINTYRE

**Our court victories are like a few bright lights twinkling on a dark hillside. They are welcome and they are signs of hope, but certainly not enough to illuminate the world.**

◦ MARY EBERTS

I would like to share with you an inventory of the changes that signal to me that feminism has indeed crossed the threshold into mid-life.

**1. Corrected vision:** bringing focus, a heightened consciousness that time is precious. For feminism, the critical point of focus is power. Power is “the ability to take one’s place in whatever discourse is essential to action and the right to have one’s part matter.” To do so we must grapple with serious questions: identity, collectivity, difference, value, accountability, status, autonomy and voice.

**2. Thick leathery skin:** feminism is tough and is going to be tougher still to survive the pelting-down miseries of neo-conservative hail and sleet.

**3. Hot flashes:** we have always been prone to hot flashes; by and large, they have served us well. Only good can come from the red hot anger that we feel when our mothers, our sisters and our children are devalued, degraded, dismissed or brutalized by the brush of injustice.

**4. Memory loss:** selective, and frequently characterized by an irrational nostalgia for the good old days of feminism.

**5. Hardening of the categories:** responding to new circumstances in old ways, repeating patriarchy’s patterns. Failing to update our ethical and conceptual maps as the terrain we move through becomes even more layered, even more richly textured, even more charged. It is difficult for an old movement to remain nimble, but flexibility, openness and creativity are well worth the effort it will take to maintain and develop them.

**6. Flirtations with younger women:** I hope it will be more than a flirtation, and that it will be demonstrated by a little more commitment than there has been in the past. To many younger women, feminism may appear sadly ill-equipped to comprehend, let alone embrace, their perspectives. Somehow as feminists we must rise to the occasion and find a way to sustain that necessarily energetic level of dialogue and intercourse.

**7. Off-spring to be proud of:** and we have lots of them. All of the women’s organizations, frontline services...all grown up and almost self-sufficient. And for the grandchildren, a well refined capacity for storytelling with purpose and punch. If there is one integral truth at the core of feminist advocacy, it is that the stories of our lives are a wellspring of truth and power.

Who we are is so much more than the sum total of our actions and our accomplishments. Who we are is something of a very different nature from that reflected in the way we have been treated. Who we are is millions of stories, scripts that we have lived out, survived for better or worse. And tales of all that we might become in a just and ethical world. We have learned as feminists that we are entitled to tell our own stories in our own voices. We have learned that these are good stories, strong stories. We have learned that in our stories we are the subject, never the object. And in that simple telling of our story, we perform the ultimate act of resistance.

**8. Sensible shoes:** Feminism guides us to equip ourselves with tools that suit our purpose and to find confidence in an identity that is both comfortable and authentic. There is a great deal to be said for knowing who we are and living up to that and that alone.

**9. Changes in body chemistry:** the feminist approach has always been grounded in women's experience of the body and all that happens to us as a result of society's response to our bodies. As our movement matures and evolves, more and more of what Rosemary Garland Thompson calls extraordinary bodies have entered the circle, not as the other demanding special membership but affirmed as integral parts of a complex body, negotiating difference in the context of sameness. I see the old crone of my dreams – wise, weathered and disabled.

So, we should pause and celebrate what we have accomplished, but then move forward with the struggle for equality.

## Major Themes, Battles and Barriers

Activists are faced with advancing a huge number of women's equality issues and the need to consider the various interconnections between them. At the same time there is a heightened awareness of the indivisibility of the struggle, of the necessity of advancing the whole feminist agenda at once.

The consultations leading up to the *Transforming Women's Future* national forum identified four main themes that pull together the most prominent issues facing Canadian women in 1999. These were:

- violence, abuse and misuse of power in gendered relationships;

Who we are is something of a very different nature from that reflected in the way we have been treated. Who we are is millions of stories, scripts that we have lived out, survived for better or worse. And tales of all that we might become in a just and ethical world.

- women at the intersection: addressing compound discrimination;
- economic policy and women's rights; and
- equality for Aboriginal women.

The following sections highlight the sub-themes, battles and barriers that were identified for each of these four overarching themes.

## **Violence, Abuse and Misuse of Power in Gendered Relationships**

### **LONG-TERM ANTI-VIOLENCE AGENDA**

Rape and fear of rape control the behaviour of all women. In Andrée Côté's words, violence against women is of epidemic proportions; it is endemic and systemic. There have been huge successes in terms of legal victories, but the fear and the experience of violence is a reality for Canadian women.

A presentation by Sheila McIntyre, Christine Boyle, Elizabeth Sheehy and Lee Lakeman provided an overview of the progress made to date. The 1970 Report of the Royal Commission on the Status of Women did not even identify male violence as a significant women's issue. Yet, within the next decade grassroots feminist activists established rape crisis centres and transition houses across the country. The myths that rationalize male sexual violence were exposed and contradicted by the information that survivors of male sexual violence gave to frontline workers.

Groundbreaking feminist research documenting sexism in almost all legal doctrines and in law enforcement practices, and the increasing numbers of women enrolled in universities, including in law schools, also contributed to the long-term anti-violence agenda. Successes have included:

- reduction of sexually objectifying treatment of women in the media;
- birth of the anti-pornography movement;
- securing of prohibitions on and remedies for sexual harassment;
- attention to the pervasiveness of child sexual abuse;
- reform of the criminal law of sexual assault; and
- introduction of civil remedies for abuse.

Elimination of sexist bias in the law and in its administration has

been central to the battle to deter violence. Effective criminal laws, effectively enforced, became an indicator of state and societal recognition of women's full personhood, which includes the right to security of the person and to sexual autonomy. Two long-term goals remain: to reduce men's reasonable expectation of immunity from sanction and women's reasonable expectations of unjust treatment and unjust outcomes upon reporting violence.

At present, the current government focus is on a law-and-order program and on "quickie," "instant" legal solutions that do not address the roots of violence. At same time, governments have made huge cuts in funding to women's groups and front line services. State approaches to violence against women continue to ignore the clear links between violence and power and privilege, and between violence and poverty.

Lee Lakeman argues that the agenda for eradicating violence against women must focus on investing in equality and includes:

- taking care of children; increasing tolerance for children, keeping them away from brutal influences and under the care of men and women who will nurture and care for them;
- ensuring the public trial and accountability of adult men who infringe the human rights of women and children;
- obtaining resources to assist victimized women and to enable victimized women to speak in their own interest;
- demanding an end to the political leadership's illegitimate privilege over women;
- securing the social changes that equality-seeking women say will put women on an equal basis;
- recognizing social development as one part of the establishment of women's rights; and
- acknowledging social development as the intentional progress toward equality.

### THE EMERGING ROLE OF VICTIM/COMPLAINANT

We are witnessing the early stages of the development of a role for the victim/complainant in the criminal justice system. Our justice system has been structured with two parties in mind, the Crown/state and the accused. Feminists and others are now challenging this tradition.

The rights associated with the third voice (the complainant or woman who has been victimized), including the right to equality and

**The overall feminist strategy which shifts matters of fact in sexual offence law to matters of law creates new judicial norms that can operate to counteract the value judgments of individual judges.**

◦ CHRISTINE BOYLE

privacy, have developed more slowly and have not yet taken hold within the legal system. This form of empowerment is still on shaky ground as it is automatically assumed that protecting the complainant's rights can only be achieved at the expense of the accused's.

Participation by the victim/complainant serves several important purposes. It can enhance the protection and empowerment of women and it can also help to ensure that decisions are based on the real dynamics of gender-based violence, rather than on myth or outdated views on the appropriate role of the sexes.

### **SEXUAL HARASSMENT**

Sexual harassment has been legally acknowledged as discrimination based on gender. Education and awareness programs abound and policies and procedures for dealing with it are more and more widely available. However, the battle is not yet won.

One of the continuing problems is the lack of sufficient remedies for sexual harassment. At present, remedies often fail both in terms of providing adequate compensation for the injury suffered and in acting as a strong deterrent for further harassment and giving other women confidence in the system. If the human rights system is to accomplish its objectives of identifying and eliminating discrimination, the remedies must be effective.

There are also serious problems in the ways these cases are dealt with both in internal procedures in the workplace and by human rights commissions.

In their workshop, Irene Plett, Mary-Woo Sims and Jan Cheney made a number of suggestions for positive legal strategies in this regard. We can, for example:

- use non-monetary creative remedies;
- have a special employee advisor within the workplace who will advocate on the plaintiff's behalf so she doesn't have to continuously retell her story to many different people and organizations;
- deal with different grounds of discrimination and how they intersect within the complainant's experience of harassment;
- create an opportunity to address sexual harassment in its systematic context, not to simply close the case and move on;
- create mechanisms for monitoring by placing the onus on the participants to report back to the human rights commission on the status of the issue since the commission's involvement;

- develop creative and imaginative remedies that deal with systematic sexual harassment;
- educate frontline workers so they can advise women about their options, explain how to frame a complaint and what evidence is necessary, and prepare them for the fact that they are facing an arduous process;
- focus on prevention, for example, by ensuring that women in non-traditional jobs have protection within the workplace; and
- develop a way for women still working in a harassment situation to get interim relief through an injunction.

### TRANSFORMING THE PRACTICE OF CRIMINAL LAW AND OTHER CREATIVE APPROACHES

In the workshop on “Tracking and resisting backlash in sexual offence law,” the workshop facilitators suggested that it might be time to consider the possibility that the criminal law is fundamentally inconsistent with substantive equality principles. This is because the criminal law focuses exclusively on the individual and for the most part assesses fault by subjective measures. The accused’s perspective is enshrined as the starting point.

Feminist analyses link male violence with systemic inequality and biased codification and application of law. This approach renders problematic the presumption of individual (male) innocence of sexual exploitation. While each sexual abuser may imagine he is operating alone, his power to abuse as well as the abuse itself is part of the social order that aims to keep all women in our structurally debased place. No man on his own, without the overt or implicit collusion of others and with ideological and institutional backing, gets into a position to successfully attack women and get away with it.

As a result, the workshop facilitators suggested, “We should consider pronouncing criminal law incorrigible under present conditions, and that counsel should resort to it, if at all, under protest and for political ends that are realizable with or without securing a conviction.” Our struggle may have to be won in other fora.

An alternative field of action discussed in this workshop was transforming the practice of criminal law. Lawyers who practise criminal law have for the most part denounced equality-based reform, but are silent in the face of peers who advocate or use intimidation tactics against complainants. The culture of the criminal law bar sees the accused’s right to a vigorous defence as permission to be wilfully discriminatory

**In reality, though, it is not a question of cancelling out his rights and substituting hers. It is a matter of expanding the equation to reflect the complexity of sexual politics and the associated safety and privacy issues for women. Empowerment, that is, acknowledging the rights of everyone affected, is a far more delicate process than a fight between two parties.**

◦ PRESENTATION BY JANE COOMBE, LINDA LIGHT, TRACY PORTEOUS AND GISELA RUEBSAAT

Lawyers who practise criminal law have for the most part denounced equality-based reform, but are silent in the face of peers who advocate or use intimidation tactics against complainants.

and/or to flout legal rules.

One way to grapple with this legal culture would be to file multiple complaints with provincial law societies against both the most egregious practitioners and the most routinely discriminatory defence tactics. At a minimum, this would challenge the professions' laissez-faire approach to the boundaries of ethical criminal practice and force an articulation of what practices, if any, warrant professional censure. Another step would be to lobby for revision of the rules of professional conduct to require compliance with the equality guarantees of the Charter. Similarly, it might be possible to undertake to publicly name and censure individual defence lawyers who flout these equality principles and the law.

A wide range of other strategies emerged from various workshop discussions. These include:

- broadening the civil remedies for sexual assault in order to address the full range of survivor's needs and deal with institutional abuse;
- conducting safety audits: there is a need to work at the community level and hear women's stories in their own words; we need to understand what affects their safety; we also need to send a message to police that they should be doing murder prevention work, not just dealing with domestic squabbles;
- holding legal institutions accountable to their constitutional obligations under ss.7 and 15 of the Charter by (1) involving Crown attorneys in discussions of constitutional obligations to assist them in using equality arguments for victims, not just for benefit of accused and (2) creating funded positions in the Attorney General's offices of a women's advocate who can advise Crown attorneys who are not comfortable with making s.15 arguments; and
- creating a network of people across the country working on the issue of non-disclosure of records, as it will require a coordinated effort to provide support to victims and lawyers working on the disclosure applications.

All of these proposals are based on the creative use of legal rules and principles to transform the way the legal system addresses violence against women.

## WOMEN AND GIRLS IN CONFLICT WITH THE LAW

The reform undertaken in the last two decades to create “kinder, gentler” incarceration has not been true to the original feminist aims. There are, however, a number of steps that could be taken to improve conditions for women in prison.

In a workshop facilitated by Anne Derrick, Kim Pate and Karlene Faith, the following recommendations were made:

- have more external monitoring of the status of female inmates;
- improve access to healing lodges;
- increase community-based options;
- reduce the resort to segregation units;
- have an increased number of lawyers specializing in corrections law, with bar associations offering more training. If women had access to advice and help, compliance with the rule of law and options for redress would improve;
- mobilize feminists around access to legal aid and advocacy for women; this may simply involve witnessing and advocating (i.e., information on how to file a grievance); and
- repeal the mandatory minimum sentence for murder as it creates problems for some women facing trial. If their defence of self-defence fails, they face life with 25 years before parole. They are stuck choosing between pleading guilty to manslaughter or second-degree murder despite self-defence because if their defence fails, the consequences are so severe.

Women as a group share many characteristics and experiences, yet women as a group also encompass many different realities. Women’s equality work has been plagued by problems of universalizing and essentializing experiences and analyses as if there was one way to be a woman.

### Women at the Intersection: Addressing Compound Discrimination

Women as a group share many characteristics and experiences, yet women as a group also encompass many different realities. Women’s equality work has been plagued by problems of universalizing and essentializing experiences and analyses as if there was one way to be a woman.

Our lack of recognition or at least insufficient recognition of this basic truth creates problems at a number of levels. It is a political problem within the women’s movement. It is also a legal problem in terms of the limitations of traditional legal analysis of equality claims. As a movement our priorities here include reworking legal doctrine to reflect the diverse and intersecting discrimination faced by women.

They also include developing collaborative strategies and ways of working together to make this commitment to diversity a reality within the women's movement. These priorities are addressed in some detail in Part III of the guidebook.

The following sections provide an overview of some of the issues and priorities that reflect a range of women's experiences and struggles for equality.

The prevailing myth in the US is that Americans have overcome their racist past and are no longer racists, while the prevailing myth in Canada is that we are a country without a history of racism.

◦ CAROL AYLWARD

### **FACING UP TO RACISM**

Carol Aylward teaches us that the prevailing myth in the US is that Americans have overcome their racist past and are no longer racists, while the prevailing myth in Canada is that we are a country without a history of racism. This myth has contributed to a failure by the courts and policy-makers to confront the issue of race and the role it plays in law.

It is time for feminists to face up to racism and to fully integrate critical race analysis into equality rights work. Aylward explained that this will involve ongoing work to educate ourselves and integrate this learning into all that we do. A starting point is to inform ourselves of the experience of people of colour with subordination and racism. Secondly, we must always extend our equality analysis of an issue to include asking: does the doctrine, legal rule, principle, policy or practice at issue in the particular case subordinate people of colour?

### **IMMIGRANT AND REFUGEE WOMEN**

For immigrant women who enter Canada and become domestic workers, the struggle is for basic citizenship rights.

This is a situation of a number of intersecting inequalities, as these women as a group are low wage earners employed by middle and upper class Canadians. They are also likely to be racially and ethnically different from their employers, in a domestic labour market where socially constructed racialized and gendered preferences are accepted as job-relevant criteria in meeting the demand for live-in caregivers and other household workers.

Work by the West Coast Domestic Workers Association illustrates how foreign domestic workers face basic human rights violations, such as those related to employment standards, on a regular basis. It also shows the systemic gender bias in Canadian immigration policy.

Yet, Daiva Stasiulis has noted that there are strategic and practical deterrents to using the courts to challenge the basic underpinnings of

the domestic worker exploitation within immigration policy. Deterrents include: difficulty in finding plaintiffs; limited availability of remedies; and the nature of immigration law itself, which has been characterized as “unnecessarily arbitrary, unfair and discriminatory.”

Abolition of these coercive conditions within immigration policy has widely been recognized to be a key precondition to the realization and vindication of all other rights. Workers themselves have generated a number of policy options, including the need to provide workers with permanent residency status on landing and to make “living-in” optional.

As Chantal Tie pointed out, the plight of refugee women also underscores the limitations of human rights approach. To the extent that women are persecuted in the same ways and for the same reasons as men they are protected, for example, where they are persecuted for participation in the religious, social or political hierarchies and institutions of their societies. But where women flee such practices as extreme spousal abuse, forced abortions and sterilization, female genital mutilation, arranged marriages or violations of dress and behaviour codes in fundamental states, they have not been considered refugees. In these circumstances, they are not persecuted in ways that are like men’s persecution. The choice to wear makeup, to dress and behave as one chooses are actions that are not regarded as engaging core human rights.

The international system links refugee status with recognized civil and political rights, not problems in the “private sphere.” There is a tendency to respond on the basis that different societies have different standards of acceptable behaviour, including the proper role for women, and that these differences are merely the manifestation of a worldwide cultural diversity. This approach ignores the very real struggles of women within their own cultures to bring about change. In Tie’s words, “We don’t accept these arguments in terms of the treatment of racial or religious minorities - it is always those activities which affect women’s lives which are labelled as cultural and traditional practices.”

There are guidelines on women refugee claimants fearing gender-related persecution which recognize that severe discrimination on the grounds of gender at the hands of either private citizens or the government can be considered persecution, and that women who are persecuted for failing to conform to religious, social and cultural practices can be recognized as refugees. However, these guidelines are not living up to expectations.

**The campaigns of domestic workers and advocacy groups to win reforms within immigration and labour legislation can thus be viewed as movements to win national and trans-border citizenship rights for female, foreign domestic workers. These women workers are globally constructed as commodified surplus labour and expendable non-citizens by labour-importing states. They are also politically and administratively constituted by Canadian immigration policy, as non-citizens/non-permanent residents and as on probation for the more desirable landed status. As a result, further legal restrictions are imposed on their job and residency mobility, and on their standards of employment.**

◦ DAIVA STASIULIS

**“To provide such protection would constitute a concrete commitment by the international community to many of the United Nation’s declarations, treaties and conventions which address gender-based discrimination and the rights of women. The failure to include gender in the refugee definition in its own right, leaves all of these international commitments without remedial mechanisms, and makes hollow the promise of equality for women. At the end of the day one cannot help asking the question: Why are women’s human rights the last to be protected?”**

◦ CHANTAL TIE

The solution is to recognize outright that women are persecuted because of their gender, simply because they are women. If the definition of refugee were to include “on account of gender” as an additional ground, this change would protect women in a more comprehensive and forthright manner from discriminatory practices that are carried out, ignored, or sanctioned by states.

In addition to amending the grounds of persecution in Canada’s immigration act to include gender, it is necessary to radically rethink admissions and deportation policies to include broad notions of citizenship. Given that the immigration and refugee system is inadequate for the vast majority of women who are coming to Canada as migrants, we need to focus our efforts as advocates on the process of legislative review and consultation to ensure a more inclusive immigration policy.

### **LESBIANS - THE COMPLEX STRUGGLE FOR RECOGNITION**

The sustained legal battles of lesbian and gay activists have won impressive victories in the last decade. Relationship recognition has been a key focus of the campaigns for both legislative and judicial reforms. There has been an incremental and uneven extension of some laws applicable to unmarried heterosexual cohabitants to include same sex cohabitants - mostly through extension of the definition of “spouse” by way of analogy to the legal status of unmarried opposite sex cohabitants.

Kathleen Lahey noted that this is one issue where Canadian courts are ahead of law reform. Despite the advances, developments still fall short of treating sexual minorities as if they enjoyed the same legal capacities as heterosexual couples. She reviewed the experience of several European jurisdictions and Hawaii in legislating “reasonable alternatives to marriage,” such as registered partnerships, which entail some, but not all benefits that flow from marriage, and found them lacking. In this case, the litigation route may be a surer route to substantive equality.

Susan Boyd’s analysis of the situation is more qualified. She pointed out that at one level these successes are a cause for celebration. However, they raise concerns related to assimilation and critiques of marriage as an oppressive institution and the privatization of economic responsibility. They also raise deeper questions concerning the problems inherent in advancing a formal equality analysis to achieve advances for a disadvantaged group.

Fitting within existing legal categories such as “spouse” obscures

the diversity of lesbian/gay lives and reinforces a particular normative model of intimate relationships.

As well, family law can be seen as a mechanism that relieves the social welfare system (and society generally) of responsibility for those who experience economic dependency for a variety of reasons, whether it be illness, lack of participation in the workforce, poor paying jobs, discrimination and so on. Many people fall between the cracks of the social welfare system and the family law system, and they are predominantly members of historically disadvantaged groups.

These cases may be lost sites to fight for recognition of alternative families and to confront the structures of women's economic oppression. In Boyd's view, recognition, while clearly necessary, should not be seen as sufficient to achieve social equality.

### TRANSGENDER WOMEN

barbara findlay provided an introduction to the issues affecting transgender women. She defines "transgendered" as an umbrella term that includes everyone who does not fit neatly into one of the two boxes, "male" and "female." Transgendered people include anyone who identifies, whether temporarily or permanently, as other than the gender they were assigned at birth, and people who though they identify as their assigned gender, are mistaken for members of the "opposite" sex.

The structure of equality provisions in both the Charter and human rights legislation protect individuals from discrimination on the basis of sex, understood as a female/male category. This structure means that transgender people may not be adequately protected. In order to ensure the human rights protections of transgender people, it is necessary to amend human rights codes to add the ground of "gender identity." This will also facilitate interpretations of s.15 of the Charter as protecting gender identity as an analogous ground.

### DISABILITIES DISCOURSE

In a workshop facilitated by Catherine Frazee, Judith Mosoff and Yvonne Peters, participants discussed the limitations experienced in addressing the rights of women with disabilities through human rights law. Human rights commissions are receiving and dealing with many complaints of discrimination on the basis of disability. However, the complaints process does not address the substantive problems and disadvantages experienced by people with disabilities and does not lead to systemic change.

**We must not be so eager for recognition that we settle for too little when it is received. We must lobby strenuously for measures that enhance the redistribution of wealth and well-being [and] that are not contingent on whether we have had a wealthy spouse at some point in our lives or whether we conform to the model of "good" lesbians and gay men.**

◦ SUSAN BOYD

... I would just like to point out that as the result of the enactment of the Charter of Rights equality guarantees, the development of the progressive *Andrews* test of discrimination, the careful consideration of many courageous judges, and the efforts of a whole generation of litigants and lawyers to achieve judicial recognition of the constitutional personhood of sexual minorities, Canadians have a uniquely vigorous constitution. Before that path of law reform is abandoned in favour of legislation, I think we should find out how far it can take us. If law makers want to step in to assist once the end of that road has been reached, that would be wonderful. But to turn to legislative models that promise to be partial and discriminatory at this point in time would be to turn away from the continuing promise of genuine equality that is held out by this most vigorous of constitutionally-entrenched human rights instruments.

◦ KATHLEEN LAHEY

The priority is to find a way to advance a women with disabilities discourse. Obstacles to advancement include the fact that:

- there are many differences between women with different types of disabilities in terms of the discrimination they face and the remedies they require;
- disability is a fluid rather than a static category; and
- these issues are marginalized within the women's movement or compartmentalized within the equality movement.

As a way of advancing a disabilities discourse, Catherine Frazee advocates Carol Thomas' approach to disability theory and feminism in *Female Forms: Experiencing and Understanding Disability*, which articulates a distinction between two forms of disadvantage:

- 1 limitations to "doing": barriers, such as physical access, which the human rights legislation is designed to address;
- 2 limitations of "social being": barriers that jeopardize the identity, freedom, autonomy and dignity of women with disabilities.

In Frazee's words, "it is much harder to pinpoint, address and formulate a remedy for an attack on one's being." Yet, our approach must deal with both forms of disadvantage experienced by women with disabilities.

## Economic Policy and Women's Rights

One of the greatest challenges facing women is gaining acknowledgement that there is an inextricable relationship between equality rights and economic policy. To date, this is a place that neither the courts nor the legislatures will go, despite Canada's unequivocal international recognition of social and economic rights as fundamental human rights.

The Beijing *Platform for Action* issued by the United Nations' Fourth World Conference on Women contains many commitments in principle in a wide range of areas, including the following key agreement:

The advancement of women and the achievement of equality between men and women are a matter of human rights and a condition for social justice and should not be seen in isolation as a women's issue. They are the only way to build a sustainable, just and developed society. Empowerment of women and equality between women and men are prerequisites for achieving political, social, economic, cultural and environmental security among peoples.

Linda McQuaig suggested that women need to transform the debate on social programs. This involves combatting the apparent consensus that we can't afford social programs and that debt is bad. We need public space to create a real debate where we can put forth the alternative views and articulate a different set of values. Women need appropriate reinvestment in social programs. Equality requires it.

We need to draw up a map of “entry points” to the social policy debate. Two potential entry points are: the federal government's commitment under the Beijing *Platform for Action* to review and revise economic policies in relation to women, and the upcoming review of the social union framework. Economic literacy is “news” to many groups, not just in our society but globally. Work needs to be done here too so that we can participate fully in this debate.

Shelagh Day and Gwen Brodsky have identified obstacles to litigating women's economic equality rights. Activists need to be aware of patterns of argument in litigation that make it difficult to make claims of economic equality. These include:

- separation of powers arguments that lead courts to accept social and economic policy as a “hands-off” category;
- portraying economic policies as neutral;
- arguing that this is not what equality is about; and
- arguing that courts have no role in determining how scarce resources are to be spent.

However, it is fairly rare for governments to lead evidence to support these arguments. These arguments can be defeated by strategies such as arguing that a cost benefit analysis is not compatible with human rights; that courts cannot defer to legislature on equality issues; and that there are costs to denying human rights.

Social and economic rights do not have a set meaning. Day and Brodsky commented, “We need to forge them ourselves by what we insist they mean; we are the creators of the meanings of these rights.” They also pointed out that litigation strategies need to be backed up by advocacy in the political arena.

The federal government and in particular the Minister of Finance must live up to its commitment under the UN's *Platform for Action* (from the 1995 Beijing Conference) to review and revise macro-economic policies in light of their impact on women. Women must have an opportunity to participate in a public review process toward this end. Day and Brodsky suggested calling for a fresh inquiry into the status of

Women need appropriate reinvestment in social programs. Equality requires it.

women with a specific focus on macro-economic policy and its impact on women, with delegates chosen by the women's community.

### **PARTICIPATION: NECESSARY BUT NOT SUFFICIENT**

Participation alone does not guarantee that women's specificity will be taken into account in policy formulation and decision-making.

One priority is to pursue the Beijing promise of participation in formulation of economic policy choices. But as Lucie Lamarche pointed out, participation is necessary but not sufficient.

Under current economic conditions, it is clear that women's rights as legally guaranteed by statutory and constitutional standards, will be called upon to play a less important role in the determination of the equitable redistribution of wealth and resources within Canadian society. Women's citizenship will be determined more and more directly in the course of economic processes. As a result, greater emphasis must be placed on women's right to participate in social and economic decision-making at the local, regional, national and international levels.

The question is to know if the procedural right to participate will promote women's right to equality. Couldn't it simply mean: equality, citizenship and poverty! Participation alone does not guarantee that women's specificity will be taken into account in policy formulation and decision-making. The right to equality needs to be brought back into the discussion.

Lamarche suggested that the concept of citizenship is more meaningful when it has to do with analyzing the right of women to be involved in the working out of public and economic policies in respect to the equality standard. The content of citizenship (legal equality, economic autonomy, education, sharing of family responsibilities and participation in democracy) goes far beyond the right to be involved. Safeguarding the centrality of legal equality among men and women guarantees that the involvement will not become an end in itself. We do not want to limit the right to participate to a right of procedure. Take warning: participation in itself will not ensure the promotion of social and economic rights of women. Without the guiding principle of sex equality, it is a completely different agenda.

### **THE CHANGING WORKPLACE**

Beatrice Vizkelety described the challenges of the changing workplace for women's rights. Globalization, polarization, deregulation, downsizing, restructuring and subcontracting - such is the modern vocabulary that is being used to capture the essence of a new and changing workplace.

The list of negative implications of a non-standard workplace are legion:

- job insecurity
- burdens and increased risks associated with maternity leave, illness and retirement
- diminished access to non-wage benefits
- increased barriers to access to the social safety net
- low wages
- difficult working conditions
- lack of coverage by collective agreements or employment standards
- unprotected sectors
- explicit deregulation
- polarization between good and bad jobs
- high levels of overtime
- increased fragmentation of workplace
- a growing number of unprotected workers

Interestingly, these economic trends are coinciding with another trend: strong constitutional, legislative and judicial support for equality rights in Canadian law, as underscored by recent advances in jurisprudence.

Serious concerns are being raised regarding the effect that these new economic trends may have on the enforcement of anti-discrimination legislation. There are also concerns about the divergence between the orientations of employment and pay equity policies on the one hand and labour market transformation on the other.

Equity policies were designed in the 1960s and 1970s with a labour market that was more stable, unionised, and often involving an employment relationship with a single employer. It is unclear whether these can adapt and remain relevant to a dramatically changing workplace.

Vizkelely proposed a number of solutions:

- strengthening the coverage of employment standard legislation;
- rethinking collective bargaining approaches;
- providing access to benefits for non-standard workers;
- strengthening employment equity and pay equity legislation;

Equity policies were designed in the 1960s and 1970s with a labour market that was more stable, unionised, and often involving an employment relationship with a single employer. It is unclear whether these can adapt and remain relevant to a dramatically changing workplace.

Current legislative approaches for addressing wage discrimination have not led to the achievement of pay equity for all women.

- ensuring work-time flexibility for full-time workers; and
- improving support for family care.

Implementing these solutions will entail a number of proactive and reactive legal approaches, including legal challenges where government has attempted to rollback legislation aimed at combatting systemic forms of discrimination. For example, one case that is still before the courts involves challenging amendments to the Employment Insurance Act on the ground that the new eligibility rules have a discriminatory impact on women.

### **FUTURE OF EMPLOYMENT EQUITY AND PAY EQUITY**

One of women's equality gains in the last few decades has been the introduction of proactive legislation that imposes a duty to implement either an employment equity or pay equity program. These are distinct from complaints-based processes.

On the employment equity front, Sushila Samy pointed out that the federal legislation is relatively new and there has been no litigation under it. Employees and unions can take the opportunity to litigate it and shape it. We also have the opportunity to take proactive measures, such as using the compliance audit, and having the Canadian Human Rights Commission issue a directive and hold a review hearing. One of the problems to date is that enforcement is seen as random.

Activists have developed a number of strategies to promote and enhance employment and pay equity. However, as Fay Faraday pointed out, we are still in search of new approaches to make these statutes more effective and to build partnerships with unions and other organizations toward this end. This is particularly important for women who have the greatest difficulty in accessing rights to equal pay in the existing system, such as women working in non-unionized workplaces, women working in the private sector, and women working in predominantly female workplaces.

Current legislative approaches for addressing wage discrimination have not led to the achievement of pay equity for all women. In the end, it may well be that we need better legislation. Nevertheless, despite the flaws, pro-active pay equity laws have been able to advance pay equity more broadly and more effectively than any complaints-based mechanism.

Cornish and Faraday proposed a number of strategies for pursuing pay equity: grievances under anti-discrimination provisions of collective agreements; unfair labour practice complaints before labour rela-

tions boards; and Charter litigation. The latter is risky and expensive but could be used to gain access to pay equity for some groups of workers where government is the employer, such as the health care sector, or to protect gains that have been made under existing pay equity legislation.

Strategizing also needs to take place around what can be done in terms of public education to make sure that the backlash doesn't wipe out support for pay equity altogether. Employers and governments have fought tenaciously and spent lots of money to get around the pay equity issue; why isn't the perspective of how little money is really going out reported in the media?

The long-range project of pay equity requires us to lobby for:

- proactive pay equity legislation right across the country and proactive legislation that applies to both the public and private sector;
- amendments to existing pay equity legislation to broaden the permissible forms of comparison so that women in predominantly female workplaces can access pay equity; and
- amendments to human rights codes to broaden the definition of fair wages to get away from the equal pay for similar work definition. An example of a truly forward-looking definition of pay equity appears in s.14 of the *Yukon Human Rights Act* which provides that:

s.14(2) It is discrimination for an employer to establish or maintain a difference in wages between employees who are performing work of equal value, if the difference is based on *any of the prohibited grounds of discrimination.*

### SEXIST STEREOTYPES AND ACCESS TO BENEFITS

In addition to the major obstacle of judicial deference to the legislatures on matters of social and economic policy, women face judicial bias in the form of sexist stereotypes where courts have had to confront these issues.

Jeanne Fay showed how myths and stereotypes about women as either "saints" or "sinners" have influenced our access to social assistance and have far-ranging consequences, in terms of women's self-esteem and our willingness to engage in public struggles. Fay concluded that one of the lessons to be drawn is that strategies beyond good facts and good arguments are needed in the struggle for welfare and equality of women on social assistance. We must also address these

Strategizing also needs to take place around what can be done in terms of public education to make sure that the backlash doesn't wipe out support for pay equity altogether.

Aboriginal women have engaged in equality rights litigation and activism for over twenty years, and despite many setbacks have not given up on legal strategies and the courts.

myths and stereotypes and historical legacies of racism, sexism and classism.

There are similar problems with litigation on the discriminatory impact of the tax system. The tax system was developed with men in mind and this all-pervasive norm has blinded judicial appreciation of the impact of the tax system on women.

Women's realities and the ways in which women participate in, and contribute to, the economy are ignored in all aspects of Canadian economic policy-development. This can be seen in the collection of statistics upon which policies are grounded and evaluated.

One strategy that is being actively pursued as a counter to the de-gendering of economic policy is to develop a better understanding of unpaid work. In her workshop, Drescher outlined how valuing unpaid work can be a part of a legal strategy for equality. In her view, a fair monetary valuation of unpaid work is central to gender equality and women's economic and social rights.

### Aboriginal women

Aboriginal women have engaged in equality rights litigation and activism for over twenty years, and despite many setbacks have not given up on legal strategies and the courts. At the forum Sharon McIvor noted, "the hearts of Aboriginal women sank when the Supreme Court of Canada decided the *Lavell* and *Bedard* cases." In these cases, the court failed to find that a provision that stripped Indian women who had "married out" of their rights of community, including the right to vote in band council elections, discriminated against women on either the basis of their gender or race.

Aboriginal women across Canada face forms of discrimination, disadvantages and barriers that are in some ways shared by all Canadian women and at the same time they are unique. For example, Sharon McIvor outlined the current situation of women on reserve with respect to matrimonial law. She commented, "as far as matrimonial law is concerned the reserves are lawless and the lawlessness is getting worse." While women who do not live on a reserve may have concerns about the way family law provisions affect them upon the breakdown of a marriage, their rights are at least partially protected by the law. Women living on reserve have no such protection. The Native Women's Association of Canada is currently challenging this in the courts. But, she asked: "Why should we be fighting the government of Canada to get a law that all other Canadian women have had for some time?"

This active engagement should not let us conclude that the relationship of Aboriginal women to the Canadian justice system or the women's movements is a straightforward one.

In her paper, Patricia Monture-Angus reflected on Canadian legal history with respect to Aboriginal women and drew some lessons “in the spirit of renewal and as an act of relationship building across cultures, nations and experiences.”

At the outset, Monture-Angus stated that it is impossible for her “to vision attaining full rights of personhood (defined in an Indigenous way) when Indian<sup>1</sup> nations currently are denied the basic right to be self-determining and to self sustain culturally, linguistically, socially, economically and spiritually.” For her, there are contradictions in the fundamentals of the Canadian rights paradigm that set up competing rights of the individual and the Indian nation and proffer a simplistic resolution of conflicting rights.

Monture-Angus noted that the recognition of diversity among Indian women is essential to this discussion: there is no single Indian women's voice in Canada. Seeing gender first, is a position that is problematic for many Indian women, at least to the extent that it involves advancing a women's agenda before a cultural one. In her view, this is backwards. Her experience is that it is the culture that forms the gendered experience and gendered reality.

It is difficult for me to identify experiences that were only gendered where racialization was not an important aspect of the experience. I also acknowledge that I can easily identify experience that was only racialized based solely on my racial characteristics (while I acknowledge that the disappearance of gender under race is equally a form of negativity that is gender discrimination). It is the racial (and cultural) experiences (or intersectionality) with my gender that have often operated to distance me from feminist movements.

Another barrier is that the relationship with the so-called “mainstream” women's movement has not always fostered an Indigenous agenda. Part of the problem is the degree to which Indian's women's understanding of the problems, particularly at the community level, is not incorporated because it is not accessible to the “mainstream.” This

**Pay equity, pension reform, and access to day care are very important issues but when your people are dying they just do not seem like the central issues. And these are issues that arise more centrally from active or historic colonial practice than from patriarchy. Perhaps, when Indian nations and our citizens are not so preoccupied by our mere survival, then a time for alliances that are easily earned will be upon us.**

◦ PATRICIA MONTURE-ANGUS

1. In this paper, Monture-Angus uses *Indian* in a legal way and as it is defined in the *Indian Act*. She uses the term *Aboriginal* to describe all original people of what is now known as Canada including the Indian, Inuit and Metis.

gap across both our experiences must be narrowed if not bridged: “Non-Indian women need to consider ways that they can respectfully experience Indian women’s realities and learn lessons from those experiences (without over-relying on Indian women to make either this possible or interpret their experiences for them).”

Monture-Angus concluded that where Indian women have turned to judicial resolution to attempt inclusion and acceptance, there have been no absolute successes (or failures) in any one of these strategies. Often the successes only identified new areas where further work is required.

For example, despite the loss in *Lavell* and *Bedard*, the issue and consequences of former section 12(1)(b) gained national and international attention. This attention was, I believe, a pre-condition to the repeal of the section secured in 1985. In the *Lavallee* decision which acknowledged what has become called the “battered woman’s defence,” a Metis woman was the litigant. The racialized and cultural implications of the circumstances she found herself in were disappeared from the Supreme Court’s decision as well as much of the academic commentary on this case. The rules established in the case that a woman must have survived a long-term abusive relationship that led to the death of her partner remains a rule that excludes many Aboriginal women from access, as much of the abuse Aboriginal women survive is cyclical and not necessarily long-term at the hand of a single abuser. Equally, as was earlier pointed out, the “Person’s case” did not ensure full political emancipation for Indian women.

She noted that: “These examples demonstrate the sophistication that is required to accurately assess our successes and failures. It is, however, this kind of analysis that is required to bring about relationship renewal.”

Monture-Angus invites us to consider that “Indian ways, laws and traditions offer some vibrant and different solutions to the challenges which we face as women in a society which oppresses as it remains colonial and patriarchal.”

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## A New Impetus for Advocacy

This outline of an agenda for action can serve as a new impetus for advocacy. It gives us a sense of the breadth, complexity and scale of issues facing women today and the context in which further equality rights work is to be undertaken. And this is by no means a complete list.

National forum participants felt energized by a renewed sense of purpose and galvanized by the opportunity to recognize the progress we have made and by the sense that we are poised to make further gains as we regroup and update our approaches, tools, strategies, and skills.

One of the difficulties faced by many activists is the sense of isolation, of working alone against well-entrenched structures, laws, cultures, policies and practices. Given the current climate, the need to build partnerships and alliances and work in collaboration is heightened.

Another impetus for advocacy comes from the knowledge that across geographical boundaries, diversity of experiences, and the spectrum of specific areas of women's equality work, we share a unifying common goal of creating equality. How can we build on this shared vision? What are the common things that women's equality rights activists need to take action and to succeed?

This section sets out some of the common goals, actions and strategies identified at the national forum that will assist in achieving substantive equality for women.

Lucie Lamarche reported on the Council of Europe's statement concerning women's exercise of citizenship as defined by five essential elements:

- legal equality
- equal or democratic representation of women
- education
- economic independence
- sharing of family responsibilities

These five elements provide an overarching framework for equality rights work.

The workshop on ending women's poverty brainstormed a whole range of steps that could assist us in making equality rights real. We could, for example:

Another impetus for advocacy comes from the knowledge that across geographical boundaries, diversity of experiences, and the spectrum of specific areas of women's equality work, we share a unifying common goal of creating equality. How can we build on this shared vision? What are the common things that women's equality rights activists need to take action and to succeed?

- form a Women's Party, which could continually both provide information and alternatives in opposition to the existing political parties, and would operate on both a national and provincial level;
- form coalitions among women from all different backgrounds as there is strength in numbers and in diversity;
- develop ways to be informed globally; and,
- challenge people's ways of thinking through providing alternative sources of information.

The broad needs that were identified during the course of the national forum: include:

- the need to convince governments to invest in equality;
- the need for systemic understanding of inequality and systemic remedies;
- the need for more accessible and effective justice: reform of the human rights commissions; more civil legal aid; ensuring that the role of interveners are not limited by the courts;
- the need to create, maintain and enhance space in the public discourse for women's equality issues;
- the need to ensure the right of women to participate in all public policy-making processes within an equality framework;
- the need for government at the provincial and federal level to invest in equality-seeking women's groups; and
- the need to make equality consideration/arguments routine in litigation, law reform and all public policy processes.

In addition, Shelagh Day and Gwen Brodsky have called for an inquiry into the status of women today. Canada last engaged in a public participatory process to measure the status of women and develop recommendations for change more than 25 years ago. The inquiry into women's conditions would provide an up-to-date identification of the obstacles to women achieving equality in Canada. More importantly, it would cause governments to seriously and publicly engage, with the full participation of women, in an examination of their own conduct, and to reformulate policy and practice to reflect their long-standing and deep commitments to women's equality. The forum participants enthusiastically supported this proposal.

## Imagining Equality

The struggle for women’s equality is hard and the struggle is long. Often we feel as though we are working in isolation against an endless foe. What keeps us going is that elusive goal of transformation, of achieving substantive equality for women in Canada. But equality is the unknown.

At the national forum, we invited Kate Braid, a poet and carpenter, to share with us a vision of equality. Here is part of what she shared with us:

The first step in a transformation is the initial imagination it calls for (and the support for that imagination) and then saying yes to the opportunity. Physical and emotional challenges follow.

We already know from the history of the last century – seeking to be acknowledged as Persons, to vote, to break the many glass ceilings of prejudice – that change is not graciously bestowed by a powerful hierarchy that suddenly sees the terrible error of its ways.

Bringing transformation to the world means being ourselves transformed, sometimes in ways we didn’t expect, or that our families or partners aren’t always pleased with.

In our transformed future, women will be honoured as mothers, as well as lawyers and activists. National politicians will not sneer at the idea of universally accessible childcare. Decent hours and part-time work will all be recognized as givens for parents.

And it goes without saying that the transformed world will be one in which a vigorous mix of ethnicity and gender and ability and all our other so-called “differences” will be seen as a bonus, as one more way of opening us up to the broadest possible definition of “human being.”

But there is more. Our struggle for transformation, for equality, must ask, not only “equal to who?” but also “equal for what?” To do what? What will be the quality of our lives and our families’ lives? What will we value in this world?

Women in the labour movement have a slogan that symbolizes this larger question, this larger fight. They say they fight for bread and roses.

Bread: the universal symbol for the basic human need for food, shelter, and clothing for ourselves and our families. And

roses: meaning not luxury or frivolity but the beauty of dignity, self-respect, a hopeful future. Roses include the honour for the fact of being a woman, for being a feeling as well as a thinking being. Roses are food for the human being who is more than just a body, for the human spirit that feeds on our deepest need for each other, for caring, community, for beauty. Imagining a future of bread and roses, says we imagine nothing less for the millennium than to be fully human – body and mind and soul – every one of us.

– *Kate Braid*

# PART 2

## **Legal Sources and Dynamics of Equality Rights**

*Transforming Women's Future: A Guide to Equality Rights Theory and Action*  
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The rights enshrined in s.15(1) of the Charter are fundamental to Canada. They reflect the fondest dreams, the highest hopes and the finest aspirations of Canadian society...In order to achieve equality, the intrinsic worthiness and importance of every individual must be recognized regardless of the age, sex, colour, origins or other characteristics of that person. This in turn should lead to a sense of dignity and worthiness for every Canadian and the greatest possible pride and appreciation in being a part of a great nation. – *Supreme Court of Canada decision in the Vriend case*

Part II provides a background overview of the legal sources of equality rights and how they operate in Canada. These provisions provide the framework within which legal strategies must be forged. They also shape the ways in which we talk about women's equality and our expectations concerning the roles and responsibilities of various actors in this struggle. This part is an introduction to equality rights and how they work.

The first section describes the legal sources of equality protection under the Canadian Charter of Rights and Freedoms, human rights legislation and international regime. The provisions themselves are set out in full in Appendix A at the end of the guidebook.

The second section outlines the definitions of the main terms, major principles and concepts that have been developed through the legal system to shape the implementation of equality rights. The legal texts are just the beginning. How we interpret and give meaning to equality rights is an ongoing and changing process. This section sets out the current approaches taken by Canadian courts.

The third section describes some of the dynamics involved in translating equality rights into genuine and effective rights for women.

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◦ SUPREME COURT OF CANADA  
DECISION IN THE *Vriend* CASE

## Legal Sources of Equality Rights

### THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

The Canadian Charter of Rights and Freedoms, generally referred to as the Charter, forms part of the Canadian constitution. The constitution is the most basic, fundamental law that governs Canada's legal and political system. Much of the constitution sets out the framework for the roles and responsibilities of governments vis-à-vis each other, the Charter sets out the rights and freedoms that the governments guarantee for the people of Canada.

The rights and freedoms guaranteed by the Charter include:

The Charter protects equality rights from being taken away or infringed by any governmental actor, such as the legislature when it passes a law. It also provides that governments must ensure that all Canadians enjoy the equal benefit and protection of the law.

- the fundamental freedoms of expression, religion, peaceful assembly and association (section 2)
- democratic rights (sections 3, 4 and 5)
- mobility rights (section 6)
- legal rights (sections 7-14)
- equality rights (section 15)
- official language rights (sections 16-23)

The Charter also contains a number of provisions that govern how these rights and freedoms are to operate within the legal system.

These sections address issues such as limits on rights, who the Charter applies to, and remedies. It also includes a number of interpretive provisions that protect the rights and interests of specific groups or address certain situations. These include a recognition that Aboriginal rights and freedoms should not be affected by the Charter and a recognition of Canada's multicultural heritage.

The Charter sets out a guarantee of equality in section 15. Section 15 provides:

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its objects the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The Charter protects equality rights from being taken away or infringed by any governmental actor, such as the legislature when it passes a law. It also provides that governments must ensure that all Canadians enjoy the equal benefit and protection of the law. The Charter binds actions by governmental bodies. It is the "supreme law" which means that it supersedes all other Canadian laws. As a result, government laws, policies or practices that are in conflict with the equality guarantees are invalid. Once a court makes a Charter decision, the government has no choice but to act in accordance with the court's decision. However, the Charter does not have a direct impact on the activities of private actors.

The purpose of Charter equality rights is to remedy the disadvantages

faced by women (and other groups) in all sectors where government acts, including areas such as employment, housing, social benefits, taxation and others.

The section 15 right to equality is further reinforced by another Charter section that provides that the responsibilities and benefits created by law should apply equally to women and men (s.28).

Equality rights can be limited by governments in certain circumstances. Where a court has decided that a law or policy violates someone's equality rights the government has the opportunity to show that it had good reasons to place this limit on the right. Section 1 of the Charter sets out what the government has to prove if it wants to uphold a limit on a right. It must be a "reasonable limit" that is set out in a law and is consistent with the nature of Canada as a free and democratic society.

### HUMAN RIGHTS LEGISLATION

Every province and territory within Canada has human rights legislation. There is also a Canada-wide statute, the Canadian Human Rights Act, that applies to federal government services and to federally-regulated industries.

These laws identify types of discrimination and make them illegal. The aim is to prevent discrimination in the future. These laws also protect efforts by individuals and groups to create equality for those who have faced disadvantage in the past, through programs and policies such as employment equity.

Human rights laws are a way of making individual Canadians responsible for their opinions and actions in everyday matters such as employment, housing and the provision of services.

These laws also establish bodies called human rights commissions. Commissions provide a process through which individuals can seek a remedy when their rights have been violated. These laws also establish independent tribunals that make binding decisions on these discrimination complaints. With the exception of Quebec, these decisions are made by human rights experts rather than judges. The situation is different in Quebec, where the human rights legislation, the Charter of Human Rights and Freedoms, is a stronger instrument and is interpreted by a specialized court of judges. Some of human rights laws also create other avenues for promoting equality such as group complaints, inquiries and so on.

Human rights legislation creates another layer of equality protection. The commission processes are generally more accessible than the courts

Human rights laws are a way of making individual Canadians responsible for their opinions and actions in everyday matters such as employment, housing and the provision of services.

Any other legislative provision or common law principle that advances women's equality can be considered a source of equality law.

and do have an impact on private individuals and businesses. This legislation also plays an important role in education and in promoting the responsibility of all Canadians to act in a non-discriminatory manner.

Although the Charter and the human rights regimes are separate and distinct, litigation under the two systems does influence each other. There has been a great deal of overlap and back and forth in judicial decisions dealing with concepts and issues under the two systems. The Supreme Court of Canada has recognized that this interplay is normal and to be encouraged.

### OTHER DOMESTIC SOURCES

Any other legislative provision or common law principle that advances women's equality can be considered a source of equality law. Employment practices, laws about marriage, divorce and child custody also have a huge impact on women's equality. Equality rights can also be found in the general law that is made by judges as they are deciding cases, known as the "common law." For example, the courts have given legal recognition and a legal meaning to the "battered women's syndrome" as one kind of self-defence within the criminal law. This recognition is not written down in any law per se, rather it is legal principle that has emerged from decisions in specific cases.

In addition, equality principles that have developed in Charter cases and in human rights adjudication can be extended to assist courts in understanding equality issues in private law matters. For example, the case law on the fair distribution of resources upon marital breakdown was positively influenced by an equality rights analysis even though the Charter was not directly applicable.

### INTERNATIONAL HUMAN RIGHTS AGREEMENTS

Canada is a party to a number of international treaties, that is, formal agreements between states that contain equality provisions. These treaty agreements are often called "conventions." The main agreements that have an impact on the struggle for women's equality in Canada are:

- General equality rights provisions applicable to all as set out in the International Convention on Civil and Political Rights and the International Convention on Social, Economic and Cultural Rights. Together these agreements constitute the "international bill of rights."

Both of these conventions guarantee that the rights contained in

each convention will be available to all without discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 in both of these agreements further provides that “State Parties undertake to ensure the equal rights of men and women to the enjoyment of all...rights...set forth in the...covenant.” Article 26 of the International Convention on Civil and Political Rights makes an additional guarantee of equality in law and to provide effective protection against discrimination wherever it arises.

- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), developed in 1979, also recognizes that women are a subordinated group in all societies and that governments must make conscious, concerted efforts to change this fact. It is sometimes referred to as the “women’s convention” and was the impetus for the Beijing Conference.

International human rights agreements define human rights concepts and set standards for government conduct. Under these agreements, governments commit to taking positive steps to promote legal, social and economic equality.

These treaties create rights in favour of individuals and obligations with which states must comply. Canada has agreed to guarantee specific human rights for all individuals within Canada. As a result, Canadian governments have an obligation to adopt internal legislation and policies to implement these human rights standards. Where it fails to do so, it can be held accountable by international organizations charged with monitoring and reporting on state compliance.

In addition, some of these treaties provide avenues for individual Canadians to seek redress. For example, a remedy to the discrimination experienced by Indian women when they “married out” was eventually brought before and satisfactorily decided by a United Nations body.

Ratifying a treaty binds a member state to a dual obligation: first, to apply its provisions and second, to accept a measure of international supervision. The treaties also help to educate the public and create conditions for external and internal pressures for improved human rights enforcement.

In Canada, international human rights law does not automatically form part of the national law – it requires the passage of national legislation in order to have the force of law.

International human rights law can have a great impact on national systems. Canadian courts look at international and regional human rights

International human rights agreements define human rights concepts and set standards for government conduct. Under these agreements, governments commit to taking positive steps to promote legal, social and economic equality.

In addition, equality principles that have developed in Charter cases and in human rights adjudication can be extended to assist courts in understanding equality issues in private law matters.

norms in deciding how to interpret and develop the Charter and human rights legislation. Although a court may not be required to follow international law, it can use it as a guide. Reference to international human rights law is occurring more frequently and Canadian lawyers and judges have become more familiar with these developments.

Courts are not the only national bodies to enforce international human rights. States may also establish administrative bodies to monitor and carry out compliance with international human rights. For example, CEDAW requires states to take positive action to improve the status of women. The political and administrative bodies entrusted with carrying out these steps are an important component in the enforcement of human rights. So too are local NGOs that monitor state leaders to ensure that they hold true to their agreements.

Over the last few years, Canadian women's groups and other equality-seeking groups have become more adept at accessing international fora. The result can be decisions or reports of United Nations bodies that highlight inequalities within Canada and the deficiencies of Canadian governments in meeting their international obligations to work toward equality for all Canadians. These decisions and reports are highly persuasive and can be used by advocates to lobby governments for change.

## Equality Terminology, Principles and Concepts

Canadian courts have created a uniquely Canadian framework for implementing equality guarantees. This framework is continually in the process of evolution. This section outlines some of the main equality terminology, principles and concepts developed to date.

### ENUMERATED AND ANALOGOUS GROUNDS

Section 15 of the Charter, human rights codes, and the international equality guarantees all share a similar approach founded on the grounds of discrimination. All guarantee equality as defined as freedom from discrimination on the basis of certain group identities or characteristics. Examples of the *grounds of discrimination* include: sex, race, colour, national origin, religion, sexual orientation, mental or physical disability and so on.

Because of the way these provisions are worded, analysis of an equality

claim starts with a discussion of what “ground” or basis an individual or group of individuals experienced discrimination.

*Enumerated grounds* are those bases or group identities that are specifically set out in a given equality rights provision. There are differences between the various Canadian and international human rights documents as to which grounds are part of the list and which words are used to describe specific group identities.

Lists of grounds can be open-ended or closed. For example, the Charter equality provision is an open-ended list because it states that equality is guaranteed in general and then in particular with respect to the enumerated groups. This wording leaves the door open to others groups that are not specifically listed to make equality claims.

*Analogous grounds* are other bases that are not part of the list set out in the provisions but are similar in nature to those on the list. Under the Charter, the Supreme Court of Canada has held that sexual orientation is an analogous ground. However, sexual orientation is an enumerated ground in most human rights documents.

## SUBSTANTIVE EQUALITY

For many years, the central debate in equality theory was whether the purpose of equality guarantees and anti-discrimination provisions was to achieve *formal* or *substantive* equality. This formal/substantive dichotomy is now outdated. Canadian courts have clearly adopted a purposive approach to equality guarantees. This approach focuses on the context of disadvantage experienced by an individual based on membership in a protected group and the imperative of redressing this disadvantage in a substantive way.

Despite these clear developments in the law, the notion of formal equality or equal treatment continues to pervade the approach to equality in many legal fora and in public policy debates. It is therefore essential to examine the difference between the formal and substantive equality models.

*Formal equality* prescribes the equal (or same) treatment of all individuals regardless of existing circumstances. This approach fails to address the reality of existing inequality and results in the perpetuation of these inequalities. It also fails to acknowledge the built-in biases of apparently neutral, universal norms or standards that have in fact been shaped by the needs and experiences of socially privileged groups.

This notion of formal equality, of treating all persons the same regardless of their circumstances, must be contrasted with the concept of substantive

**To the extent that women are not like men, because they are biologically different from men or because society has assigned them a subordinate status, they cannot achieve equality through the application of formal equality.**

◦ *Women and the Equality Deficit*,  
SHELAGH DAY  
AND GWEN BRODSKY

equality.

*Substantive equality* demands the redress of existing inequality and the institution of genuine, real, effective equality in the social, political and economic conditions of different groups in society. Substantive equality requires a focus on systemic and group-based inequalities. It encompasses the right to have one's differences acknowledged and accommodated both by the law and by relevant social and institutional policies and practices.

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## DISCRIMINATION

Discrimination is the detrimental treatment of an individual or group of individuals because of their membership in a defined, protected group.

Canadian law recognizes that discrimination can take two main forms: direct and indirect. *Direct discrimination* occurs when an individual is accorded harmful treatment because of her or his group affiliation. The act or omission can be deliberate and conscious or unintentional and unconscious. The perpetrator may even believe that he or she is acting in the best interests of the individual. For example, it is direct discrimination when a woman is denied a job in a traditionally male sector of the labour force simply because she is a woman.

Again in the context of gender discrimination, *indirect discrimination* is the application of rules and procedures, which, while they are applied to everyone, have a disproportionate and negative impact on an individual or group of individuals because of their sex, because fewer women can comply with the rule or requirement. Minimum height standards for certain jobs is an example of indirect discrimination based on sex. This is also called *adverse effects discrimination*.

## ADVERSE EFFECTS DISCRIMINATION

Adverse effects discrimination occurs when the application of an apparently neutral law or policy has a disproportionate and harmful impact on individuals within a particular protected group. The policy or law need not have been intended to discriminate against individuals based on their group affiliation. It is the effect of the law or policy, not the intent, that determines whether or not adverse effects discrimination has occurred.

## INTERACTIVE AND MULTIPLE DISCRIMINATION

Interactive or multiple discrimination consists of the cumulative and compounding effects of discrimination based on several group characteristics. It is impossible to untangle discrimination based on gender and on

one or more other grounds such as race and/or disability.

At the national forum, Carol Aylward asserted that it is critical to appreciate that the experience of interactive or multiple discrimination is of a different order than experiences of differential treatment based on one ground of discrimination. In fact the categories themselves obscure the way discrimination is experienced by women of colour and women with disabilities.

In her presentation, Aylward argued that multiple discrimination is not by itself a particularly useful concept. She sets out and defines forms of multiple discrimination: intersectional, compound, and overlapping. The following are her definitions of these three concepts.

*“Intersectional” grounds of discrimination*

Intersectionality has been described as the ability of Black women, Aboriginal women, other women of colour, women with disabilities, lesbian women or poor women, to base a claim of discrimination under s.15 of the Charter as a *distinct* group of women who are subject to discrimination quite apart from (in the case of Black women) Black men and White (and other) women regardless of colour. Intersectionality analysis in the case of women with disabilities would found a claim of discrimination that is *distinct* from that faced by able-bodied women and disabled men. Likewise intersectional discrimination for lesbian women would mean a claim of discrimination *distinct* from that faced by heterosexual women and gay men and a class/poverty intersectionality analysis would found a claim of discrimination distinct from those made by economically advantaged women. Intersectionality claims of discrimination may include one or more of the enumerated groups of discrimination set out in s.15 of the Charter or analogous grounds and, pursuant to the *Law* case, is itself, an “analogous” ground of discrimination.

*“Compound” grounds of discrimination*

Compound discrimination will be experienced by racialized (men and women); disabled (men and women), lesbian women and gay men and White heterosexual women. However, it will be intensified (or be an “added burden”) for the racialized, disabled, lesbian or poor woman. Claims of compound discrimination have also been recognized in the *Law* case. “Add-on” arguments, while addressing compound forms of discrimination, tend to leave the unstated “norm” of the White, heterosexual, middle-class woman in tact and

Interactive or multiple discrimination consists of the cumulative and compounding effects of discrimination based on several group characteristics. It is impossible to untangle discrimination based on gender and on one or more other grounds such as race and/or disability.

does not question the underlying white supremacy notions attached to the "norm."

*"Overlapping" grounds of discrimination*

Overlapping grounds have been described as the basing of a discrimination claim on two or more grounds (where a finding of discrimination could be found on both grounds e.g., race and age discrimination) and making a determination (as a matter of strategy) as to where the evidentiary emphasis will be placed. Overlapping grounds are *not* distinct grounds in the sense that intersectionality grounds are distinct *nor* do they constitute a "double whammy" or an "add-on" in the sense that compound discrimination claims do. In my view, while they do not constitute an "either/or" strategy (i.e., the finding of discrimination is based on one single ground mutually exclusive of the other(s)), overlapping grounds do require the making of a strategic choice as to where the evidentiary focus will be placed.

## SYSTEMIC DISCRIMINATION

Systemic discrimination has been defined as institutionalized policies or practices that disadvantage individuals because they are members of certain groups. This concept raises the pervasive problems of discrimination embedded within institutional practices and policies. Systemic discrimination can encompass both direct and adverse effects discrimination. Direct discrimination can contribute to systemic discrimination if it represents a widespread practice within an institution, such as sometimes occurs with sexual harassment. To the extent that manifestations of direct discrimination are so much a part of the workplace culture as to be accepted as practice, they constitute systemic discrimination.

## A THREE-STEP ANALYSIS

The Supreme Court of Canada has developed a three-step analysis that it applies to all equality claims under s.15 of the Charter. In every case a claimant must show that there has been (1) differential treatment; (2) the differential treatment is based on a ground that is protected by the Charter; and (3) the claimant experienced substantive discrimination as a result of the differential treatment.

**1. Differential treatment?** Does the law policy or practice under consideration (a) draw a formal distinction between the claimant and others on the basis of one or more personal characteristics, or (b) fail to take into account

the claimant's already disadvantaged position within Canadian society resulting in substantively differential treatment between the claimant and others on the basis of one or more personal characteristics?

**2. Enumerated/analogous ground?** Is the claimant subject to differential treatment based on one or more enumerated or analogous ground?

**3. Substantive discrimination?** Does the differential treatment discriminate, by imposing a burden upon or withholding a benefit from the claimant in a manner which reflects the stereotypical application of presumed group or personal characteristics, or which otherwise has the effect of perpetuating or promoting the view that the individual is less capable or worthy of recognition or value as a human being or as a member of Canadian society, equality deserving of concern, respect and consideration?

A claimant must be able to get the court to answer yes to all three questions before it will agree that a s.15 violation has occurred.

### CONTEXTUALIZED APPROACH

Existing inequality is redressed through a *contextual approach* to the interpretation of equality. In order to redress inequality, you must first identify the nature and extent of the disadvantage and this is done in part through an examination of the social, political and economic conditions in which the individuals and groups live, both historically and at the present time. The conceptual approach is the “kiss of death” to the concept of formal equality because it recognizes that you cannot treat individuals as if they were similarly situated.

Recently the Supreme Court of Canada set out some of the important contextual factors which will influence the determination of whether an equality right has been infringed. These factors include but are not limited to: pre-existing disadvantage, stereotyping, prejudice, and the vulnerability experienced by the individual or group making an equality claim.

Contextual factors are looked at from the perspective of the claimant.

### DUTY TO ACCOMMODATE

Human rights legislation is founded on the principle that there is a duty to accommodate the needs of individuals from historically disadvantaged groups. Recently, the Supreme Court of Canada has expanded the concept of the duty to accommodate to make it clear that employees must show that they have undertaken a process to review whether and how accommodation is possible and that this onus on employers is a high one.

Existing inequality is redressed through a *contextual approach* to the interpretation of equality. In order to redress inequality, you must first identify the nature and extent of the disadvantage and this is done in part through an examination of the social, political and economic conditions in which the individuals and groups live, both historically and at the present time.

**Employers designing workplace standards owe an obligation to be aware of both the differences between individuals and differences that characterize groups of individuals. They must build conceptions of equality into workplace standards.**

◦ SUPREME COURT OF CANADA DECISION IN THE *Meiorin* CASE

The duty to accommodate places a responsibility on employers, for example, to minimize the adverse impact that arises from their practices. Efforts to accommodate particular groups transform institutional policies, practices and standards to take into account previously excluded groups and to include their needs within the rules, standards and practices that shape the workplace.

The duty to accommodate is not unlimited. Employers have a duty to accommodate to the point of “undue hardship.” The meaning of this standard of “undue hardship” is not yet clear. However, employers must demonstrate both that they have taken steps to accommodate and that to do anything more would cause them “undue hardship.” The fact that accommodate will impose costs on the employer does not in itself constitute “undue hardship.”

### LIMITS TO EQUALITY RIGHTS

Section 1 of the Charter says that individual rights, including the right to equality, are subject only to “reasonable limits” which governments must carefully prove to be “demonstrably justified in a free and democratic society.”

Section 33 of the Charter, which is known as the “notwithstanding clause,” gives governments the power to override some rights and freedoms, including equality rights. With the exception of within Quebec where the government invoked this clause for political purposes, this provision has been used only in rare circumstances to date.

## The Dynamics of Equality Rights

Equality rights are guaranteed in a number of Canadian and international legal documents. However, these guarantees do not reflect the reality of women who experience layers of discrimination and disadvantage. Rather, these guarantees are the springboard from which equality rights advocacy takes flight. This final section sets out a few of the dynamics involved in using equality guarantees to achieve women’s substantive equality.

Equality rights advocacy using these legal sources can have a direct impact on individual women and groups of women. A decision in favour of an equality rights claimant establishes law that can, in turn, be used by other women whose rights are violated. This is the doctrine of judicial precedent.

A successful legal claim may also lead to the reform of legislation or policies found to violate women's equality rights. Women's rights advocates can thus take test cases to court to challenge policies or laws that are discriminatory to women as part of an overall law reform strategy.

In addition, equality rights education has an important role to play in communicating and reinforcing the government's commitment to equality, and individual responsibility for contributing to equality in Canada.

### The Dynamics of Human Rights (adapted *Women's Human Rights Step by Step*)

- Statements of rights provide a statement of a powerful and important human consensus about the dignity that must be accorded all human beings and about the willingness of human society to respect the basic rights of all. But these are not complete – rights are an open-ended project.
- The history of human rights can be seen as two streams: (1) the struggle to name previously un-named rights and to gain their acceptance as human rights, and (2) the ongoing struggle to ensure the enforcement of human rights.
- This dynamic characteristic is what makes human rights a powerful tool for promoting social justice.
- If the right is not recognized, the struggle is to assure recognition
- If the right is not respected, the struggle is to assure enforcement.
- The process of gaining recognition of a right leads to better enforcement and the process of enforcing leads to greater recognition of the rights.



# PART 3

**From Constitutional  
Promise to  
Lived Reality:  
Assessing our  
Legal Tools  
and Strategies**

*Transforming Women's Future: A Guide to Equality Rights Theory and Action*  
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## Introduction

Part I provided an overview of issues facing women's equality rights activists today and set out some of the factors shaping the context in which this work is to be carried out. It can be read as encompassing a long list of specific issues, and reading between the lines one can easily discern that there are many more issues not even addressed in those pages. At the same time, Part I also vividly illustrated the need to change the way equality rights are understood and operate in Canadian society. We need equality guarantees to be taken seriously; we need them to permeate and saturate social, economic and political discourse.

Part II provided an introduction to the legal sources of equality and a brief overview of the concepts and dynamics involved in equality rights action. It is a reference section that provides a framework for developing and implementing advocacy for women's rights through education, law reform and public policy development, as well as litigation.

Part III of this guidebook builds on these first two parts. It examines how to change these parameters of social, economic and political discourse and what role legal strategies could have in moving this agenda forward. We need to evaluate our legal tools and strategies from the perspective of what needs to be done to translate successes into social change. What will it take to transform the constitutional promise of equality into a lived reality for women in Canada?

Part III is written for an audience that has some familiarity with equality concepts and law. This does not mean only lawyers! It may be useful to refer back to Part II as needed to clarify references to equality concepts and terms.

At the outset, it is important to recognize that legal strategies are varied and represent choices among a whole range of means for seeking positive change in the everyday lives of women and girls. Many of the critiques and questions relating to equality as a legal strategy are rooted in more fundamental questions about the role of law in social change movements. While this guidebook is mainly concerned with strategies that engage the law and rights, it should not be interpreted as disparaging other forms of activism.

The working premise is that, despite the risks involved, law is a legitimate and worthwhile forum for feminist engagement. This does not mean that law is the only or even the primary forum in which to

At the outset, it is important to recognize that legal strategies are varied and represent choices among a whole range of means for seeking positive change in the everyday lives of women and girls.

**Equality is**

- the recognition that it is necessary to incorporate women's specificity, priorities, and values into all major institutions;
- freedom from discrimination, and the adjustment of social and cultural patterns and attitudes that perpetuate discrimination;
- the recognition that individual policies and programs can affect women quite differently than men, given differences in life expectancy, socio-economic status, health concerns, and employment patterns;
- a kind of "equal but different" approach; and
- a question of valuing both sameness and differences between men and women.

*...continued on next page*

engage. Law can be expensive, elitist, heavy-handed, crude and oversimplifying.

The term legal strategy is used in a very broad sense, with litigation as one potential form of action within an overall strategy that uses the law and equality rights in order to achieve social change.

The assessment of a particular litigation or advocacy strategy always needs to be made within a larger framework, considering other options and assessing the potential long- and short-term impact of the legal strategy on diverse groups and other issues.

Part III is divided into three sections.

The first section examines the building blocks of our legal strategies: the concept of equality. It assesses the strengths and weaknesses of the idea of equality as it is evolving under s.15 of the Charter and human rights legislation, and looks at alternatives to it. It also assesses two specific ways of conceiving equality in legal argument. These are: (1) the grounds approach to equality and intersectional analysis, and (2) adverse effects discrimination and the duty to accommodate.

The second section examines equality rights litigation and alternative litigation strategies. It also looks at the ways in which litigation is related to other law-related strategies such as law reform, political advocacy and public legal education.

The third section examines ways in which equality rights work is carried out and addresses working collaboratively in a way that is consistent with equality principles.

## Assessing the Building Blocks: Equality as a Legal Concept

This review starts with an identification of the concerns that equality activists have with the legal concept of equality as it is evolving through litigation involving s.15 of the Charter and human rights legislation. The second section looks at alternatives to equality as the building block of our equality-seeking arguments. The third section identifies a way forward based on these critiques and alternatives.

Two areas of equality analysis are particularly critical at this time. We focus on each of these in separate sections.

- The first section looks at the limitations of the grounds approach. It also reviews our capacity to do intersectional analysis that better represents the experience of women who face

inequality and discrimination based on both their sex and other defining identities such as race and/or disability.

- The second is adverse effects discrimination and the duty to accommodate. Despite the promise of adverse effects discrimination for conveying the structural and systemic aspect of women's experience of inequality, we have not seen the advances we hoped for. This section examines the reasons for this and how to overcome them.

The opposite appears true about the duty to accommodate. Many activists have had real concerns about incorporating the concept of accommodation in an equality analysis. However, recent developments have breathed new life into this legal concept. This section reviews the renewed potential for this concept.

## Legal Equality: Problems and Concerns

Our limited success to date in translating the constitutional promise of equality into a lived reality for women has led many of us to question whether the problems stem from the legal concept of equality itself.

Diana Majury and Carissima Mathen summarize the problems and concerns in this way:

- 1. Equality by definition is about comparison:** an equality analysis requires that one articulate whom one is saying one is equal to. The need for a comparator group, can end up perpetuating men and maleness as the norm.
- 2. Equality essentializes categories:** as women, we all share an essential female identity that is the basis of our subordination. This approach can result in advantaging those women who are relatively dominant or advantaged within Canadian society. It obliterates some of the important differences between women.
- 3. Equality is about asserting a negative, not a positive right:** for many people, equality is limited to the freedom from discrimination.
- 4. "Gender" is both over- and under-inclusive:** inequalities do not always operate in ways that apply to all women or do not apply exclusively to women.
- 5. Equality is gender neutral:** there is nothing within the idea of equality itself that precludes men from asserting claims of gender inequality.

### Equality is

- concerned with arriving at equal conditions for those most disadvantaged rather than being preoccupied with giving identical treatment;
  - acknowledges that women receiving their fair share of the benefits society derives from their participation in all its endeavours; and
  - recognizes important differences among women in terms of experience and intersecting forms of discrimination.
- BASED ON STATUS OF WOMEN CANADA, *Framework for Equality*

**6. Formal equality continues to inform equality analysis:** despite the fact that the Supreme Court of Canada has repeatedly rejected formal equality analysis and promoted a substantive equality analysis, the idea of equality as treating similar people the same way is so integrally tied to these ideas that it sometimes appears unavoidable.

**7. Remedies:** an equality analysis is either simplistic or unhelpful in pointing to a remedy; it does not provide any guidance as to what would ameliorate the conditions of inequality being challenged.

**8. Equality is an abstraction:** equality is pursued at the expense of concrete specific rights that would be of greater benefit to more women.

Given these concerns, Majury and Mathen suggest that activists need to ask some hard questions:

- Is equality too tame/taming a concept? Do we need a concept that is more radical, more directive, more demanding?
- Can problems be addressed within an equality paradigm or do we need to move outside? Should we add to equality? Should we abandon equality?
- Are there alternative models of equality or inklings thereof that have been articulated that we should be exploring more fully?
- Are we talking about fundamentally rethinking equality or revising our equality analysis?

Part of this inquiry is strategic: should we stop putting so much energy into abstractions and focus more on concrete rights? Which is the better strategy: maintaining an exclusive focus on equality, or diversifying strategies so as to downplay our reliance on equality? This aspect of the inquiry is dealt with in section 2, below.

One of the central concerns is that, despite clear pronouncements of the Supreme Court of Canada, the basic meaning of equality continues to be contested. It appears that we can't shake the ghost of formal equality:

Tensions over different meanings being ascribed to equality have become acute and are erupting on a number of fronts. In addition to the tension created by anti-equality positions masquerading as equality claims, the tension between formal and substantive equality continues to undermine equality initiatives. While the courts in Canada seem to have moved beyond formal equality, at least in theory, the popular understanding of equality seems still very much to be framed in formal equality terms.

Formal equality is the model that has been instilled in the minds of most Canadians as the definitive measure of equality. Most Canadians believe that treating people the same is what equality is all about. For them, equality means ignoring differences attributed to race, gender, class, disability and/or sexual orientation. Taking these factors into consideration is generally seen as discriminatory, unfair, and anti-equality. The requirements of a substantive approach to equality – that is, taking into account gender, race, disability, class, sexual identity – are counter to the neutrality that the general public has come to accept as a defining feature of equality. The substantive approach is more abstract, and more complex to understand and to apply than the formal equality approach. This is part of the tension that is being played out with respect to equality in the public domain and part of the challenge that equality advocates face.

The continued attraction of the formal equality model leads to the question whether some other concept might be more easily and effectively conveyed than the analysis we are trying to promote through substantive equality.

*Diana Majury and Carissima Mathen*

Nor are equality rights activists free from the grasp of formal equality analysis. As Sheila McIntyre points out, while LEAF has consistently advanced substantive equality arguments, the majority of lesbian and gay equality claims turn on formal equality arguments. In addition, some claims brought to advance the equality of people with disabilities have also been framed in formal equality terms.

This leads McIntyre to pose a number of questions: Can substantive and formal equality visions co-exist? Do formalist claims risk undermining the precarious foothold of substantive jurisprudence? If so, can the same claims be framed in substantive terms? On what basis and according to what principles can such strategic questions be resolved?

We also need to consider how to respond when anti-egalitarian claims are couched in the language of equality, and what this says about and means for the language of equality.

A second concern is that equality analysis as currently conceived requires us to compare “women” and “men” – which are both in turn conceived in essentialist terms. This is clearly problematic under a formal equality analysis since there are a wide range of areas of law in which women are not similarly situated to men (including family law,

**The difficulty with this [formal equality] paradigm is that it does not challenge the imbalances of power, or the discourses of dominance such as racism, able-bodyism and sexism, which result in a society being designed well for some and not for others. It allows those who consider themselves “normal” to continue to construct institutions and relations in their image, as long as other, when they challenge this construction are “accommodated.”**

◦ DAY AND BRODSKY QUOTED BY SUPREME COURT OF CANADA DECISION IN *Meiorin* CASE

Radha Jhappan argues that we should abandon the concept of equality as being central to our legal strategies because “it may be more of a liability than a liberatory force.”

alimony, child support, child custody, divorce, pregnancy and maternity benefits, reproductive rights, social welfare policy, child care, sexual and domestic violence, tax law, and employment policy).

However, even with a clear substantive equality approach based on recognizing and valuing differences, the requirement to compare on the basis of men/women remains problematic. It continues to obscure the differences among women; to privilege the male as the norm; and hinders the potential of advancing an equality claim where the discriminatory impact does not coincide perfectly with the categories of “women” and “men.”

The *Thibaudeau* case on the tax treatment of child support payments is an excellent example of the vulnerability of the notion of equality and the limitations of a narrow comparative analysis. In this case, the majority of the Supreme Court of Canada construed the appropriate comparators neither as women versus men (which was argued and supported by the evidence), nor custodial versus non-custodial parents (which was also supported by the evidence), but instead as divorced versus non-divorced “couples.”

## Alternatives

The national forum explored three alternative approaches to the existing legal concept of equality. One is the development of legal arguments outside of the equality discourse by focusing on the concept of social justice. The two other alternatives involve re-framing the concept of equality outside of its dependence on the wording of the equality provisions in the Charter or human rights legislation either through: (1) linking it to broader concepts such as citizenship or personhood, or (2) promoting equality as a fundamental constitutional principle.

## SOCIAL JUSTICE

Radha Jhappan argues that we should abandon the concept of equality as being central to our legal strategies because “it may be more of a liability than a liberatory force.” In her view, although there have been a number of important symbolic and practical victories using novel and creative contextualized approaches to equality, the equality approach nevertheless suffers from a number of problems inherent in the concept of equality itself. Her concerns are similar to those discussed above.

Jhappan suggests that women’s and other progressive social movement organizations that intervene in constitutional litigation might be better served by the much more flexible concept of justice. In her

view, equality analysis anchored in a justice frame could better capture the type of social change that we are truly seeking through law.

She is not talking about an overarching grand theory of justice, but a situational one. In her view, justice can be distributive, recognition-oriented, retributive, about process or about substantive outcomes, depending on the context.

Justice, in my view, is a concept both citizens and courts would be better able to cope with since it allows difference, releases us from essentialist and assimilationist imperatives, lends itself much more to situational rather than abstract analysis, and speaks to a sense of fairness, of treating people well, as worthy and as deserving of respect.

However, she acknowledges that feminist constructions of justice will be contested.

Jhappan proposes that we shift our focus away from constructing arguments based on the equality provisions in s.15 of the Charter and towards Charter provisions dealing with justice. She points out that there are at least two keys that can open the door to Charter challenges using a justice approach:

- s. 7 of the Charter, which guarantees the right to not be deprived of life, liberty and security of the person except in accordance with the principles of fundamental justice; and
- s. 1 of the Charter, which states that Charter rights and freedoms can only be subject to reasonable limits demonstrably justified in a free and democratic society.

For the most part, s.7 has been interpreted from the perspective of the accused in criminal proceedings, often in ways that have harmed women's equality. This alone is a compelling reason for women to develop just outcomes analyses to displace the primacy of the rights of the accused, where appropriate. LEAF has had some positive experiences to date with incorporating equality arguments into this analysis in the context of access to civil legal aid and in sexual harassment proceedings under human rights codes.

According to Jhappan, s. 7 of the Charter can be used in at least two ways. First, it can be used as a key to provide entrance into Charter litigation in and of itself, as it has already been used for a variety of issues (including abortion, apprehension of the foetus, foetal rights, assisted suicide, and immigration and refugee claims). Second, the "principles of fundamental justice" clause can be read into other

Charter rights, and vice versa, to argue for substantively just outcomes.

Section 1 of the Charter is generally treated as the government's defence clause to justify limits to Charter rights and judicial decisions to date have focused on what is a reasonable limit. However, Jhappan argues that we should be using this clause to construct feminist visions of a free and democratic society. Constitutional litigation using the justice frame would question whether a free and democratic society could be described as such if it were not just. It would unmask the ways in which society is not free and democratic.

As a strategic matter, section 15 or other sections could be used as the initial key with which to enter a Charter challenge. After that, the emphasis would be switched to an analysis of the principles of fundamental justice that are being violated in a supposedly free and democratic society.

The substantive/just outcomes approach would be buttressed by the remedies provisions of the Charter, in particular section 24(1). This section provides that "anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such a remedy as the court considers appropriate and just in the circumstances."

Jhappan points out that one of the advantages of the broader, justice approach is that it switches the focus from the identity of the claimant to the relationship in which she is oppressed. Justice is therefore more flexible in forwarding intersecting claims as it is unencumbered by narrow comparisons of ascribed identities.

As an example, Jhappan suggests we could ask questions such as: What principles of fundamental justice are served by the exclusion of foreign domestic workers from the benefits of those minimal standards in labour laws, in a way that sanctions their exploitation? This is very different from trying to decide which other group is the "correct" reference group to which claimants must compare themselves.

This is not a fix-all. The current limitations of the judicial system would continue to operate. In Jhappan's words: "I would not be surprised if judges had no more difficulty justifying injustices than they have had justifying inequalities."

The substantive social justice approach does signal a change in focus at the conceptual level. It contains the promise of avoiding narrow, abstract legal categories, and more accurately conveying the complex issues of women's reality. In Jhappan's view, we are selling ourselves short with equality analysis: "In my view, women who aim for equality with men lack ambition, we should aim higher, for justice."

### **MORE HOLISTIC CONCEPTS: PERSONHOOD / CITIZENSHIP**

Another potential approach to avoiding the limitations of equality analysis is to frame it within a broader claim to entitlement. Two possibilities along this line are “personhood” and “citizenship.”

The call to the recognition of women as persons under the law harkens back to one of the most celebrated Canadian legal victories for women, the Persons Case. This case recognized that women were indeed persons for the purposes of Senate appointment under the Canadian constitution. Yet, as Kathleen Lahey’s recent work illustrates, this legal and judicial recognition of women’s personhood has only been partially realized in the more than 70 years since. In particular, she shows how Aboriginal women, lesbians, and foreign domestic workers in particular are not fully “persons” under Canadian law.

Sheilah Martin analyzes the pros and cons of a legal strategy based on the concept of personhood. In her view, to say that a person is deprived of personhood highlights the extent of the deprivation and the gravity of the situation, and the vulnerability of the “non-person.” For these reasons, it can be a solid analytical tool that can help explain current inequalities.

However, she also warns about the limitation of this concept. For example, distinguishing features and socially relevant characteristics may be hidden in the abstraction of shared attributes among legal persons. It may not really get us far beyond the limitations of equality analysis since the concept of personhood tends to import an individualistic, identical treatment model of equality.

Another approach centers on the concept of “citizenship.” Like personhood, citizenship is a powerful concept that inherently conveys the claim that there is equal apportionment of rights and responsibilities among citizens. It can provide a valuable framework for rethinking the changing status of subordinated peoples. It is unencumbered by the language of victim and connotes an active participation in public life and civil society. However, like personhood, it shares the same problematic side of erasing difference. Like the conceptions of equality and social justice, citizenship has many meanings that are politically and historically constructed.

### **EQUALITY AS A FUNDAMENTAL PRINCIPLE**

Patricia Hughes has put forward a new approach to equality analysis that could avoid many of the limitations experienced to date with s.15 litigation. She suggests that we should develop ways to argue that

**Status as a fundamental constitutional principle, therefore, means that the concept involved will help to define the constitutional framework, influence the interpretation of express provisions and fill in the gaps of the constitutional text. It will apply to any exercise of political authority and to the courts. Consequently, as a whole these principles have the potential to play a role more extensive than that played by any particular express constitutional provision, no matter how important.**

◦ PATRICIA HUGHES

equality is a fundamental principle within the Canadian constitution.

The Supreme Court of Canada has identified an ever-growing list of constitutional principles as foundational or organizing principles. These are the political, social and legal values or principles upon which the ordering of Canadian society rest. They establish the parameters of our constitutional framework, influence the interpretation of express provisions, and fill in the gaps of the written constitutional test. These are not merely abstract or philosophical guidelines but may give rise to “substantive legal obligations” of either a general or precise nature.

To date the Supreme Court of Canada has recognized the following as fundamental principles: federalism, democracy, the rule of law, respect for minority interests, free speech, and judicial independence. According to Hughes, substantive equality should be recognized as a foundational constitutional principle: equality should be acknowledged as having at least the same status as free speech.

This recognition would not replace litigation under s.15. Rather, it would add to it. It would serve a different constitutional purpose and attract a different type of analysis. Importantly, it would not be subject to s.15 wording, which is tied to an anti-discrimination approach, nor to the requirements of the formula of s.15 analysis, including the two-stage formula and the reasonable limits defence.

The foundational principles inquiry is a dialogue about the nature of society through a legal lens. Substantive equality principles should be recognized as part of the “internal architecture” of Canada’s constitution, thereby providing a broad constitutional equality lens through which all other constitutional issues would be filtered.

## The Way Forward

The analysis to date does not lead to a conclusion that we should abandon a substantive equality approach to equality rights work. The alternatives set out above provide novel conceptual approaches that should be pursued as additional avenues. However, there is no escaping the need to improve our equality analysis.

Diana Majury and Carissima Mathen developed a list of attributes in response to their questions about what we want/need/expect/hope for from equality as a social justice strategy. These are the kinds of attributes that we might seek to import into an equality analysis in order to be able to promote a gender-positive vision of social justice:

- an approach that is flexible and able to address a wide variety of

different contexts and conditions but is at the same time grounded in an understanding of gender, race, class, (dis)ability, sexual identity, ethnicity, religion as pervasive factors of asymmetry that encode domination or subordination;

- an approach that facilitates an interactive analysis of intersecting oppression in their full complexity;
- an approach that mediates between universalizing and essentializing on the one hand and particularizing to the point of individualism on the other;
- an approach that provides guidance in terms of a remedy that looks beyond the same treatment response and that provides analytic grounding for that remedy; and
- an approach that is not dependant on existing legislative structures.

### GETTING BETTER AT SUBSTANTIVE EQUALITY ANALYSIS

One priority is to develop new ways of communicating a substantive equality analysis in legal terms.

Theory and experience shows us that substantive equality is in large measure about disassembling the norms that operate to shape Canadian society and privilege some individuals and groups and disadvantage others. Equality analysis is about revealing inequality that has been hidden from a particular point of view. Activists should go further in terms of employing women's stories and detailed factual analysis to ensure that the wonderful complexity is not lost. One of our related tasks is getting judges to feel comfortable with this approach.

Patricia Hughes puts it in this way:

Current inequality is a consequence of the interplay of historical practice, existing norms and the detritus of apparently outdated norms, deep-seated ideological assumptions and the failure to take adequate measures to overcome recognized disadvantages. The inquiry raised by claims of substantive inequality therefore requires asking what it is about societal structures, existing norms and ideological assumptions which results in inequality and what must be changed in order to achieve equality.

Equality analysis must convey the layers and complexities of women's inequality in a form that is understandable to the judiciary and policy-makers.

**While the Famous Five in the Persons case were working with an equality model which accepted men as the norm, what is needed is a concept which takes into account the many ways in which women are not physically or socially like men. Equality, when expansively defined and properly practised, allows for a shining of the light into the corners, and using the wide angle lens provided by social, political, and economic histories. It is not fooled by facially neutral provisions, but it insists upon an appreciation of the real life effects of challenged state action on a diverse and differentially situated population.**

◦ SHEILAH MARTIN

### **PUTTING FORMAL EQUALITY TO REST ONCE AND FOR ALL**

The second central task and huge project is eradicating the idea of formal equality. There appears to be an increasing gulf between Supreme Court of Canada and other courts and legislatures regarding the understanding and acceptance of equality principles.

We need to develop and deliver a consistent message on the passing of formal equality from Canadian public discourse. This requires a well-designed, all-encompassing educational strategy.

### **BROADENING THE EQUALITY LENS**

As Sarah Lugtig and Gillian Calder have pointed out, we do not think enough of the larger sense of equality. There is a difference between equality and equality law. Equality connotes an equal right to participation. This means the fundamental conditions by which all individuals can participate must be provided by meeting political, social, economic and cultural needs.

Two potential avenues for broadening the lens are: (1) pursuing Patricia Hughes' idea of equality as a fundamental principle or a general lens, and (2) demonstrating the ways in which equality is a fundamental norm underlying all of international human rights law.

### **CREATIVE USE OF DIFFERENT CONSTITUTIONAL PROVISIONS**

Section 15 litigation should not be abandoned, but equality activists should also consider developing the potential of other constitutional provisions. Radha Jhappan has suggested creative approaches to sections 7 and 1 of the Charter. Gwen Brodsky has suggested the use of s.36 of the Constitution dealing with equalizing regional disparities. Section 6 mobility rights could also be harnessed to implement women's economic equality rights.

### **LINKING EQUALITY TO OTHER CONCEPTS**

In particular circumstances, linking equality claims to broader concepts such as citizenship, personhood, and social justice may be effective. In employing these strategies, it will be important to ensure that we are not incorporating limited forms of equality analysis, such as formal equality.

## Overcoming the Grounds Approach: The Legal Analysis of Interactive Discrimination

One of the critical challenges facing us today is improving our capacity to do intersectional analysis so that it more accurately conveys the experience of women who face inequality and discrimination based on both their sex and other defining identities such as race and/or disability. There is a great deal of theoretical and judicial confusion, as well as resistance to the concept itself. This is a huge barrier to progress toward women's substantive equality.

This challenge was explored in a paper and presentation by Carol Aylward at the national forum. She began with a definition of intersectionality developed by Mary Eaton, based on the work of Kimberle Crenshaw: "Intersectional oppression arises out of the combination of various oppression which, together, produce something unique and distinct from any one form of discrimination standing alone."

In analytical terms, the barriers to strong intersectional analysis begins with the enumerated and analogous grounds approach adopted by Canadian courts. There has been a failure in understanding the distinctions between overlapping, compound, and intersecting oppression. Equality and anti-discrimination provisions have been restrictively interpreted, requiring the complainant to base her claim of discrimination on a single ground or *more than one single ground*, as though they were mutually exclusive. This approach fails to accommodate multiple sites of oppression and it excludes from protection those who are not included in the "enumerated" grounds or cannot bring themselves within an "analogous" ground.

Adding to this problem of the grounds approach to s.15 interpretation is the failure of mainstream feminist theory and advocacy (until recently) to put forth a theory of sex discrimination that did not have at its centre White, able-bodied, middle-class heterosexual women.

Reducing an account of "what happened" to uni-dimensional terms is much more than a symbolic problem. The result is that law is spared having to engage with the very real injuries of interactive inequalities as they are experienced by multiply oppressed people.

Recent decisions have attempted to move away from the limiting and unfair "watertight compartments" or "single-axis" analysis approach to s.15. Advocates need to move the courts further in this direction. The Supreme Court of Canada has been more creative in its recognition of intersectional and compound discrimination as analogous grounds under s.15, while unwilling to reject altogether the concept of grounds.

One of the critical challenges facing us today is improving our capacity to do intersectional analysis so that it more accurately conveys the experience of women who face inequality and discrimination based on both their sex and other defining identities such as race and/or disability.

Aylward provides an account of developments and sets out a number of fundamental concepts that will guide activists on this path. Her definitions of the three forms of multiple discrimination (intersectional, compound, and overlapping) are set out in full in the section on interactive and multiple discrimination in Part II.

Aylward's work makes a strong contribution to conceptual clarity but as she herself notes, conceptual clarity is important but will not be enough to overcome the barriers to a fully contextualized, intersectional analysis.

One very real concern with regard to overlapping grounds, where a breach of right to equality can be argued on more than one ground, is that the claimant will be forced to make strategic decisions regarding where to place the evidentiary focus of the claim. Aylward notes that this may result in advocates erasing race from the litigation agenda because other grounds of discrimination may be more palatable, or advocates may continue to address the multiple oppression of race, disability, lesbianism and class as merely "add-ons" to gender discrimination analysis.

Aylward argues that these problems give rise to a number of priority areas for equality rights work, including:

- the need to aggressively present to the court a clear analytical framework that demonstrates what an intersection of grounds as analogous grounds means as a concept and how this concept should be applied by the courts; which in turn require:
- release of the long-held belief by many mainstream feminists that arguing intersectionality before the courts will somehow fracture feminist legal goals; and
- resounding rejection of the feminist analysis of race, class, disability and sexual orientation as simply "add-ons" to the basic premise that discrimination based on sex is oppressive to women but *only more so* to racialized women, disabled women, poor women and lesbian women; thereby leaving intact the unstated norm of whiteness, heterosexuality, and able-bodiedness.

For Aylward, the goal is not development of a more comprehensive equality theory and framework, but rather recognizing that there is room for more than one legal theory. She is not advocating a hierarchical approach to discrimination but a fully contextualized one.

Contextualization places increasing emphasis on (1) interpreting legal rights, benefits and penalties in light of existing societal inequalities, and (2) the ability to analyze legal problems in their social

context – including their gender equality dimensions. A conceptual framework for intersectional analysis also requires close attention to the social and historical context.

Aylward points out that a good intersectional analysis furthers a number of goals. It allows us to formulate legal theory under s.15(1) of the Charter that address the reality of women’s lives while assisting the courts to fashion a remedy that fits the circumstances. It also allows us to better expose the inequalities in society, the underlying basis for them, and our own roles in their perpetuation.

In her work, Dianne Pothier points out that the problem is not with the grounds approach itself, but with a limited simplistic approach to grounds. She argues that we should not abandon the grounds approach, as it is the socially constructed grounds of discrimination that reveal dimensions of dominance and subordination.

For Pothier, the problem is not so much in the law as in the legal mindset. Canadian law is open to the theoretical possibility of claims based on multiple grounds of discrimination but that doesn’t mean such claims fit the legal mindset of what is expected in anti-discrimination law. There is pressure to simplify a claim, for if the situation is too complex, the discriminatory element gets buried. The nub of the problem is the tendency of the legal mind to want to compartmentalize.

For example, the Canadian Human Rights Act has recently been amended to clarify that a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds. This does not mean that our problems are over. We still need to prove the claim in a way that is accepted by an adjudicator.

Pothier warns that care must be taken so as to let grounds of discrimination illuminate rather than detract from the appreciation of context.

She notes that discrimination operates in different ways in the context of different grounds of discrimination and in the context of intersecting grounds of discrimination. It is through an understanding of the different ways in which discrimination operates that a more complex and comprehensive appreciation of equality can emerge.

Our appreciation of interactive discrimination is suppressed by the current legal analysis and legal framework of discrimination. Nitya Iyer has proposed that we can try to overcome this problem by shifting the focus from the individual complainant to his or her relationship with others. The focus should be on the whole picture surrounding the discriminatory conduct rather than on the individual him or herself. Iyer suggests that while continuing to use categories of discrimination, dis-

**I have a similar reaction as a woman with a disability (visual impairment due to Albinism). I can never experience gender discrimination other than as a person with a disability; I can never experience disability discrimination other than as a woman. I cannot disaggregate myself, nor can anyone who might be discriminating against me. I do not fit into discrete boxes of grounds of discrimination. Even when only one ground of discrimination seems to be relevant, it affects me as a whole person. If I am excluded or marginalized from something because of my disability, I am also excluded or marginalized as a woman, and vice versa.**

◦ DIANNE POTHIER

criminatory behaviour ought to be assessed in light of three interrelated considerations:

- 1 the characteristics of all people involved in a given situation (race, gender, etc.);
- 2 their relationship and the conduct arising out of it; and
- 3 the larger social context within which that relationship is located.

She also suggests that the categories of discrimination should be “flexible, dynamic and relational.” They should, in effect, provide an opportunity or “jumping-off point” for human rights investigators and adjudicators to construct an intricate picture of the stereotypes and relationships involved. Such an analysis would address the problem of artificially isolating one category from another, as well as assuming homogeneity within each category.

### **Adverse effects discrimination/duty to accommodate**

Despite the promise of adverse effects discrimination for conveying the structural and systemic aspect of women’s experience of inequality, there have not been the advances expected in this area of equality rights law. This section examines the barriers that have inhibited development. How can we move forward with the law on adverse effects discrimination?

#### **STALLED ON ADVERSE EFFECTS DISCRIMINATION: HOW TO MOVE THE ANALYSIS FORWARD**

In *Women and the Equality Deficit*, Shelagh Day and Gwen Brodsky have demonstrated how the courts have “discounted” adverse effects, particularly with respect to women, by:

- focusing on legislative intent;
- redrawing the boundaries of the group and observing that not everyone in the group is adversely affected; and
- observing that people outside the group are also negatively affected.

Problems exist in the identification, analysis and proof of adverse effective discrimination and in the fashioning of remedies.

Adverse effects discrimination claims often fail because the inequality complained of is not seen as being based on personal characteristics. It is often difficult for complainants to demonstrate the relationship between structures and patterns of inequality and their

individual claim that they suffer an adverse impact that amounts to indirect discrimination under human rights legislation. In many cases, the courts and tribunals attribute the problems to lack of evidence. They ask: Where is the proof of the adverse impact?

A claimant is faced with two important considerations: (1) the most effective way to frame an adverse effects analysis and (2) what evidence is required to meet the prima facie case of discrimination. Melina Buckley has argued that the problems faced by women bringing adverse effects discrimination claims relate more to the first question than the second. In other words, the barriers to moving forward are more analytic than evidentiary.

The analytical problems that need to be overcome are:

- **difficulties in setting out the appropriate ground:** often a policy will have differential impacts on different members of a group; there is a risk of losing sight of the larger context; there is a danger of over-compartmentalizing; and there are difficulties in conveying intersecting disadvantage;
- **the relationship between the impugned policy and practice and the larger context:** the more disadvantaged a group is, the easier it becomes to attribute an adverse impact to pre-existing disadvantage rather than the challenged law, policy or practice;
- **the question of numbers:** courts have a hard time in finding discrimination where an adverse effect does not affect an entire group in a similar fashion; and
- **adverse effect discrimination based on sex:** the courts have experienced problems with claims that are not based on fairly limited conceptions of what are “male” and “female” characteristics, whereas women’s inequality has many interconnecting dimensions.

### DUTY TO ACCOMMODATE: HOPES FOR THE FUTURE

A related but reverse issue is the future of the concept of the duty to accommodate. Many equality activists have had real concerns with the notion of accommodation in an equality analysis, but recent developments have breathed new life into this legal concept. How can we build on these gains to take this issue further?

Until recently, when a employment rule was found to be legitimate but had a discriminatory impact on an individual, the duty to accommodate provided a remedy in the form of a modification in the rule to

This paves the way for reasonable accommodation to become an important feature of substantive equality. It represents a significant step forward in that it begins to redefine and reformulate the objectives of reasonable accommodation.

take into account the needs of that individual. This approach was based on a limited form of equality that did not require employers to consider the way they established the workplace rule to take into account the equality needs of its employees.

In the *Meiorin* case, the Supreme Court of Canada decided that employers have a positive duty to build conceptions of equality into workplace standards. As a result, the duty to accommodate could extend to actually invalidating an employment rule that had an adverse impact (this was always true for rule that discriminated directly). It also made it clear that reasonable alternatives to a single general rule that had a discriminatory impact could include a modified single rule, parallel but different rules, different means of meeting a general standard, and so on. The end result is a much higher onus of employers to scrutinize the workplace and be creative in accommodating employees and therefore much broader remedies for discrimination in the workplace.

Yvonne Peters is a well-known sceptic on whether there is a role for the concept of accommodation in an equality analysis. As a result she welcomes the new, broader approach to accommodation taken by the Supreme Court of Canada in the *Meiorin* case but asks if we are really moving from tinkering to transformation. In her view, the transformative potential lies in the fact that the analysis has shifted from a focus on the individual to a reconsideration of the standard itself. This paves the way for reasonable accommodation to become an important feature of substantive equality. It represents a significant step forward in that it begins to redefine and reformulate the objectives of reasonable accommodation.

Dianne Pothier shares this enthusiasm but also raises some concerns: Will we really be able to overcome the language of accommodation or is that too deeply ingrained? If accommodation involves changing the rule, then we are talking about more than accommodation so it might be better to introduce new concepts that better convey this meaning. It remains problematic that under human rights legislation the duty to accommodate is framed as a defence for employers. As currently interpreted, the duty to accommodate is in fact one aspect of the employers duty of non-discrimination. The employer's defence is that he or she has accommodated the employee to the point of "undue hardship."

There are still several undecided or open issues that will determine whether or not this reformulation of the duty to accommodate fulfils its promise. These include:

- does it go far enough in defining accommodation as a substantive equality concept?
- should human rights legislation be amended to reflect substantive approach to equality?
- should reasonable accommodation be argued in Charter cases?
- will the whole concept of undue hardship become a glass ceiling? and
- what will be the impact on other types of discrimination, for example with respect to disability?

## Assessment of Legal Strategies

### Equality Rights Litigation

This section takes a critical look at strategic litigation as a viable tool for advancing women's equality. It sets out the pros and cons of various approaches.

These problems were explored at various points during the national forum, including in a paper and mini-plenary by Carol Aylward, Sheila McIntyre, and Elizabeth Shilton entitled, "Using the Master's Tools: Whether and When Equality Activists Should Choose Rights Litigation to Advance Egalitarian Change." It was aptly introduced as a forum for "ambivalent litigators." The themes raised in this paper and in other workshop discussions are discussed in the following sections.

#### THE GENERAL CRITIQUE OF RIGHTS LITIGATION

The role of the courts in promoting equality has been roundly condemned as "judicial activism" by critics on the left, centre and right of the political spectrum. All of these critiques focus on the same concern of the "legalization" or "judicialization" of politics, the "abstract" and "indeterminate" language of rights and the bypassing of electoral processes and/or popular political action and thereby as threats to the "democracy."

For those critics who support social justice and equality, equality rights litigation is seen as naive and futile and hence a wasteful diversion of limited human and financial resources. As well, litigation is identified as anti-democratic. It is a doomed enterprise. From this perspective, Charter litigation will unavoidably prove an unequal resource in an unequal society serving ultimately to augment existing

Many of those engaged in equality rights litigation share this deep ambivalence about the possibilities and risks of working within and through dominant institutions like law in order to secure egalitarian change. We are aware of the limits of rights litigation and have to make difficult choices on a day-to-day basis to work in a system that is inconsistent in many ways with equality principles.

social, political and economic inequalities.

So even where it is possible to use litigation to advance creative progressive claims, they will disproportionately be used to shore up the status quo of inequality. Other concerns are: litigation forces you to be conservative in your approach to remedies; it submerges political claims in the abstract discourse of rights; and it reinforces the public/private distinction. From this perspective, the only alternative is genuine political struggle.

Many of those engaged in equality rights litigation share this deep ambivalence about the possibilities and risks of working within and through dominant institutions like law in order to secure egalitarian change. We are aware of the limits of rights litigation and have to make difficult choices on a day-to-day basis to work in a system that is inconsistent in many ways with equality principles.

For example, Chantal Tie has spoken eloquently about the problems that she faces as a practitioner needing to fit the facts of her client's life into the prevailing legal theories in a manner which best advances her case – this is often not an easy fit. She finds that she cannot say: “Women do not fit into this definition of refugee, because it was developed without reference to our experiences, our persecution. It is difficult for me to criticize the overall legal and analytical framework within which I am required to operate as such criticism would be taken as an admission that my client is not a refugee. What I have to argue is that her persecution can and does fit into the current definition of refugee.”

### THE IMPOSSIBILITY OF A COMPREHENSIVE STRATEGY

Strategic test-case litigation is the process of identifying and bringing forward legal challenges which go beyond the narrow outcome of a particular case to advance a broader vision of equality and further equality jurisprudence more generally.

Our starting point has to be an acknowledgement that there has not really been strategic test-case litigation for women's equality. Rarely has the decision to pursue even a specific piece of litigation a “strategic choices.” Aylward, McIntyre and Shilton identified an interesting pattern of how LEAF cases have been selected.

First of all, a big part of equality rights litigation has been reactive. As McIntyre points out, the majority of Charter cases which have proved significant in developing Canadian equality jurisprudence were launched by members of dominant groups – overwhelmingly

men – whose claims directly endangered the equality rights of women and/or threatened to limit equality jurisprudence to formalist norms. Equality rights litigation has largely been a defensive strategy. Yet, it has yielded some highly progressive jurisprudence, most notably a substantive rather than a formal equality approach to section 15.

Another group of Supreme Court of Canada decisions were not initially framed in equality terms: i.e., a number of private law cases contract, tort, family law, child welfare law, judicial bias. In each of these cases, LEAF interventions proved a fruitful vehicle for injecting substantive equality principles into non-Charter jurisprudence.

Most disability and sexual orientation cases have been initiated by individuals using the Charter proactively to press governments to extend needed benefits to marginalized and stigmatized groups. In the few instances where the Supreme Court of Canada has been required to squarely address issues of racism, the cases were not initiated by members of racialized minorities but rather in reaction to incidents beyond their control.

### THE SPECIFIC PROBLEMS

As part of the preparation for the *Transforming Women's Future* national forum, West Coast LEAF's Legal Committee undertook a review of LEAF's experience with equality rights test-case litigation. This review process included consultations with those who have been engaged in this enterprise, both inside LEAF and with other equality-seeking organizations. This review was set out in a paper written by Christina Litt.

Litt's paper lists a large number of limitations of the equality rights test-case litigation approach. Some of these arise from the limited conceptions of equality as discussed above but others emerge directly from the way litigation operates as a strategy. These include:

- the uncertain selection process for interveners;
- the unanticipated impact of a case and the inability to control the outcome once you go to court;
- the difficulty in ensuring a comprehensive theory of equality through a case-by-case process;
- the reinforcement of existing social inequities by the use of courts which are not universally accessible;
- the difficulty of translating equality demands into rights language or discourse without erasing the social context and hiding the power relationship in which they arise;

**This dichotomy between how I must characterize her case, and how she sees her actions, arises because I must fit her case within the refugee definition, despite the gender guidelines. I must characterize her fear of persecution as being “on account of” her political opinion, religion or because she is part of a social group.**

◦ CHANTAL TIE

Despite the critiques, difficulties and the ambivalences, most activists' discussions on this topic conclude in the same way: we can't abandon an entire sphere of struggle even as we recognize its limitations. Therefore the question very quickly becomes not a question of whether to use litigation, but how to do so.

- the reinforcement of dominant or majoritarian ways of thinking and talking about the world through the use of the courts;
- the sole focus on state actors (the government);
- dealing with injustices one-by-one and avoiding systemic inequities; and
- having to fit arguments within the language and test created by judges.

### REFORMULATING OUR APPROACH TO TEST-CASE LITIGATION

Despite the critiques, difficulties and the ambivalences, most activists' discussions on this topic conclude in the same way: we can't abandon an entire sphere of struggle even as we recognize its limitations. Therefore the question very quickly becomes not a question of whether to use litigation, but how to do so.

Carol Aylward emphatically rejects abandoning litigation: we can not afford the luxury of throwing out tools! Critical race theorists use "white rights analysis" as a starting point. However, they don't take it as the end product, rather they deconstruct the tools, in order to discard some and refashion others. In her view, people of colour see rights differently. As a group, they see that rights are limited and yet also as a cloak of safety. She points to Mari Matsuda's formulation of the dual consciousness with respect to race and rights: the minority experience is both legal indeterminacy and simultaneously an embracing of law to overcome the legal indeterminacy. The solution is to deconstruct all legal provisions; sit and look at the rules and challenge them!

We need to refine our understanding of what is achievable through test-case litigation. It is important to intervene where jurisprudence is being developed, so as to shape the framework for substantive jurisprudence even though the real gains may come ultimately by legislative change. A defensive approach is the minimum. Women rights advocates very quickly understood the problems caused by the fact that they had not "occupied the field" of s.7 interpretation before their involvement in the *J.G.* and *Blencoe* cases.

Some of the limitations of test-case litigation can be overcome by:

- grounding our work in substantive equality theory forged in and from on-going political struggles, not in the abstract;
- reconceptualizing how law must be altered to deliver on the constitution's equality imperatives rather than working within existing legal doctrine and norms;

- being accountable to the distinctive constituencies served;
- being mindful of how power and privilege operate through all legal actors; and
- carrying out litigation with an eye towards building political movements.

### THE FUTURE OF INTERVENTIONS

An intervener is a group who takes part in a court case to bring a broader perspective concerning the impact of the court's decision than that provided by the parties directly involved in the case. Individuals or groups need special permission from the court to participate in this way.

Public interest interventions can play an important role:

- ensuring that the court considers a broader perspective;
- recognizing the impact of a potential decision on non-parties;
- highlighting the impact of a decision as a precedent; and
- bringing expertise to consideration of the issues.

The vast majority of the work of equality-seeking groups is carried out by interventions rather than as parties to the case.

There has been a notable chill in the Supreme Court of Canada's reception of interveners in the last few years. Activists cannot afford to ignore this development and should take steps to counteract it.

One of the strategic questions facing us is whether equality-seeking groups rely more or less on appellate interventions. These are some of the advantages and disadvantages of interventions:

Advantages of interventions:

- they are far less costly than initiating a trial action;
- they do not depend on an individual plaintiff or applicant who may drop out or settle midway through a case; and
- they allow public interest groups to advance highly selective arguments in complex cases.

Disadvantages of interventions:

- interveners do not control the timing of the litigation or the factual record;
- the timing may prevent or constrain the possibility of meaningful consultations before interveners frame their equality arguments;

Some of the general advantages of these alternative strategies are that they engage the activities of individuals and organizations outside of public authorities. They encourage the incorporation of equality norms in a greater number of substantive legal matters.

- the factual record may be devoid of the content necessary to ground an equality analysis, particularly a systemic inequality analysis;
- interveners may find themselves publicly opposing a well-meaning challenger's equality analysis, political position, or self-interested legal goals; and
- over reliance on intervention will mean the jurisprudence will be skewed toward privileged interests or perspectives.

The ultimate success of interventions and all equality rights test-case litigation will depend on how well the work is carried out. Issues such as working in collaboration with partners are an integral aspect of whether or not test-case litigation is a good thing. These issues are dealt with in section 3 below.

## Alternative Approaches to Litigation

Equality rights litigation will continue to be one of the tools we can use to transform women's future. It is also clear that other approaches to litigation have played a role in enhancing women's equality. This section examines three alternative approaches to equality-enhancing litigation: developing tort law related to discrimination; class proceedings; and administrative hearings.

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### DEVELOPING TORTS RELATED TO DISCRIMINATION

One of the most exciting legal developments relating to equality in the last few years was the victory in the Jane Doe case. In this case, Jane Doe sued the Toronto Police Force for failing to warn her concerning a serial rapist who eventually raped her at knife-point. She was successful in arguing that the police were (1) negligent in the way they investigated the serial rapes, and (2) breached their statutory duty to protect the public, including the failure to warn. She was successful in integrating Charter arguments into her case in two ways: (1)

s.15 was engaged because the ways the police understood and investigated sexual assault was based on sexist stereotypes and; (2) s.7 was engaged because they were basically using women as bait. She was awarded monetary damages.

At the national forum, a workshop presented by Beverly Bain, Melinda Monroe and Clea Parfitt explored ways in which the developments in this case could be pushed forward. The decision may not lead directly to positive change in terms of police protocols despite a system-wide safety audit, partially because of police backlash. However, it is clear the Jane Doe case has a huge precedent value and potential to push the tort envelope. While the negligence aspect of this case is not a particularly novel legal development, it was the application in a gender context that makes the case valuable to women.

It is possible to argue that the *Jane Doe* case comes close to creating a tort of discrimination. The decision stands for the principle that it is negligent to have stereotypical assumptions about certain groups and to base your actions on those assumptions where they result in causing harm to another person. This could be characterized as a tort of discrimination, although it is not actually called that in the judge's decision.

Steps to further develop a tort or specific torts of discrimination may be considered a priority. If the courts were to recognize these, then it would be possible to extend the duty of non-discrimination to a greater range of private and public actors and to more varied fact situations. It would mean that it is negligent to act in a discriminatory manner, in the same way that it is negligent to take actions that are inconsistent with other duties of care we owe to one another.

In addition to the specific discussion in this workshop, the need to revisit the stunted law on a tort of discrimination was raised in a variety of presentations and workshops during the national forum. This avenue appeared to have been foreclosed by a 1981 decision of the Supreme Court of Canada in the *Bhaduria* case. The decision in this case has amounted to the foreclosure of civil actions for discrimination on the grounds that the human rights commissions were established to provide recourse and remedies for discrimination.

However, the *Bhaduria* decision is being chipped away at. It is no longer clear that human rights legislation commissions fully occupy the field of discrimination. For example, a lower court case in BC has held that while there is no tort of sexual harassment in Canadian law, it was open to the party to proceed on the basis of a tort of "intentional infliction of mental distress occasioned as a result of the defendant's sexual and general harassment of the plaintiff."

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The legal arguments in the *Jane Doe* case were unique in the way they were able to weave in the Charter equality rights and rights to life, liberty and security of the person with the negligence action. Also, the plaintiff was extremely successful at having the judge accept evidence of systemic discrimination. This has proven to be extremely difficult in many other cases.

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One of the challenges is to find ways to use the *Jane Doe* precedent to push the Charter into common law applicability/private actions without a government actor. Participants in the forum workshop recognized that this is an undecided area in law. There has been only tepid acknowledgement by the courts that there is a requirement to develop common law in light of Charter values. However, this case has taken a step in this direction by importing Charter analysis into negligence.

Workshop participants identified a number of initial ideas on how to build on the advances made in the *Jane Doe* case:

- we can make the link to other examples of systemic bias by those with statutory authority (for example, the disappearance of women on the lower eastside of Vancouver and the perception by police that sex trade workers cannot be raped; in the immigration field, the systemic poisoned culture against certain groups of migrants/refugees);
- we can identify government failure to act (for example, coroner's inquests/public inquiries where government is left immune from accountability in failing to implement recommendations, and fail to legislate, regulate, or address recommendations);
- we can extend our scrutiny in the private sector (for example, where employers are aware that women are being assaulted in their parking garage, or employers are aware of a pattern of sexual harassment in their workplace); and
- we can mount an out-and-out challenge to the decision in *Bhaduria*, as proposed by Carol Aylward, among others.

### CLASS PROCEEDINGS

Sharon Matthews explored the potential of class proceedings in sex discrimination cases in a workshop at the national forum. Class proceedings are a way of grouping together a number of related law suits in order to ensure efficient use of judicial resources and where it would cost too much for plaintiffs to pursue their claims independently.

At the present time, this legal avenue is available in Quebec, Ontario<sup>1</sup> and British Columbia. Although this option has been available in Quebec since 1978, this is still a fairly novel way of litigating. However, there is a great deal of experience in the US and it is now a burgeoning field in the three Canadian provinces.

Matthews notes that there are three objectives of class proceedings legislation: (1) judicial economy or the efficient handling of potentially complex cases of mass wrongs; (2) improved access to the courts for those whose actions might not otherwise be asserted; and (3) modification of the behaviour of actual or potential wrongdoers who might otherwise be tempted to ignore their public obligations.

There is a fair amount of experience in the US with class proceedings in gender discrimination cases. However, the rules are significantly different there. The main hurdles in US discrimination class actions have been: (1) to show that the claims and injuries suffered by a person alleging discrimination is “typical” of the claims of the absent class members, and (2) judicial concerns over whether the representative plaintiff adequately represent the class members. Matthews suggests that these concerns will not arise in the same way in Canadian common-law jurisdictions.

When is a class proceeding the preferable procedure? Human rights proceedings and Charter challenges already offer alternative methods of bringing what are in effect, class proceedings.

It is unlikely that courts will find Charter claims to be suitable for a class proceeding, given that Charter remedies are by definition of general application and have an effect beyond the parties. However, there is at least one BC case in which a Charter application on behalf of a class was accepted by the court even without resort to the class proceedings legislation.

Some human rights legislation, like in Saskatchewan, provide for a type of class proceeding. In BC, the Code provides that complaints may be filed on behalf of a class of persons but the Commissioner may refuse to accept it on behalf of a class of persons if the Commissioner is satisfied that proceeding with a complaint is not in the interests of the class.

Class proceedings make sense where there is an issue of compensation, rather than a Charter remedy or policy change. Other general advantages of proceeding via class action are: the protection offered in terms of notice provisions; close court scrutiny of the rights of absent

Class proceedings make sense where there is an issue of compensation, rather than a Charter remedy or policy change.

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1. The Ontario statute also permits national class actions.

class members; and, court ordered alternative means of resolving the individual legal issues.

The main hurdle is getting certification as a class. However, judges as a whole are extremely interested in promoting access to justice and therefore try to reduce the barriers to certification.

The starting point in the certification process is determining a cause of action. We have to ask ourselves: can common issues be identified which are issues of fact and/or law that move the litigation forward? This could run into the problem of the bars to torts of discrimination discussed above. An effective way to decide if a class proceeding will work is to:

- make a list of what issues of fact or law are common, and then proceed to break them down;
- ask whether there was a duty of care owed;
- ask whether it was foreseeable;
- ask what the standard of care was; and
- show causation.

The central point is that there must be a fact or law that will move the litigation forward. In the breast implant class proceedings litigation, the court rejected all of the common issues proposed by the plaintiffs and came up with its own common issue: were the breast implants suitable for the purpose which they were sold for?

In cases of sex discrimination, the defendants will usually claim that the factual circumstances and other factors will have changed from incident to incident. However in order to constitute a common issue, the answer need not be the same for each individual class member as long as the question can be framed in the same way.

### **“FLYING BELOW” EQUALITY RIGHTS LITIGATION**

Elizabeth Shilton points out that the critique of rights is about test cases where there is a conscious choice to use the law. This overlooks the fact that much rights litigation is “flying below” this level of analysis, in that it takes place in the context of administrative law and labour arbitration.

The law has a huge impact on women in these quasi-judicial fora on issues such as: defence to dismissals, claims to benefits; failure to accommodate, and so on. Shilton refers to these as the “fruits of the *Brooks* case” and notes that much of this litigation is the crucible for testing Charter ideas well before getting to the Supreme Court of

Canada. It is also the location of their implementation once the highest court's pronouncement is forthcoming. While we tend to focus on the courts, a lot of important equality rights work takes place in these more informal arenas.

This kind of everyday litigation is where the theoretical framework for choosing litigation as a strategy or determining how to litigate will be developed. This was also noted in the workshop on "Exploring the Future of Test-Case Litigation" where participants emphasized the importance of educating the legal profession on substantive equality analysis because so many equality issues arise outside of the section 15 test-cases.

In fact, there is a trend toward more and more privatization of equality rights, through employment standards investigation and under human rights legislation. The impact of these processes on women's equality rights cannot be overestimated. In these private processes there is no public enforcement of rights. The jurisprudence of private adjudicators interpreting private contracts is making important statements about public rights and public law but is for the most part beyond our scrutiny. Activists need to develop a more sophisticated understanding of private processes in administrative contexts with an eye towards their implications for rights claims.

Shilton suggests that it is critical to be able to get decision makers in these contexts to look at equality rights principles in novel ways. It is also important to convey to them the impact of their decisions on women and other disadvantaged groups. In her view, one important avenue for reform is rules of evidence to permit women to tell our stories in these processes.

Susan O'Donnell also explores how the location of equality rights adjudication can impact on women. She asks: In the workplace, do we look to collective agreements or human rights codes or both to realize our equality rights? What are the benefits and burdens involved in each jurisdiction? Selection of jurisdiction can have an important impact in terms of the availability of individual remedies versus more general ones. For example, there was an irony in the *Meiorin* case in that the Supreme Court of Canada could not strike down the workplace testing that it had found to be discriminatory against women because it was limited to the remedies that had been available to the labour arbitrator in the first instance.

While we tend to focus on the courts, a lot of important equality rights work takes place in these more informal arenas.

Equality activists need to build broader strategies, with litigation being one approach among many.

## Building Broader Strategies

Equality rights litigation alone is not going to transform women's future and ensure substantive equality. A review of experience with equality rights litigation, even hand in hand with other types of litigation is a necessary but not a sufficient approach. Equality activists need to build broader strategies, with litigation being one approach among many. This section reviews other law-related strategies of law reform/advocacy and public legal education. It also discusses how to bring these strategies together.

### LITIGATION VERSUS/AND POLITICAL ACTION

We have to ask two questions: What are the relative strengths and weaknesses of litigation versus political action? How do litigation and political strategies work together?

Again, we have to start with a recognition of the limitations of litigation. There simply isn't enough time/energy resources to litigate every case, even if we thought this was the best way to go about it. As Beatrice Vizkelety points out, this type of approach may provide short-term solutions and provide assistance to individual complainants but it cannot be a substitute for the major policy and legislative changes required to ensure adequate maternity leave provisions and benefits.

The remedy or outcome sought will help to sort out the appropriate strategy or strategies:

- if the gender-specific abuse is directed against a woman or a group of women, obtaining a legal remedy to stop the violation, punish the violators and/or compensate the women may be an appropriate objective;
- if the violation is the result of the application of a discriminatory law or customary practice, or of the absence of a law which is needed to defend women's human rights, then a possible objective may be to seek legal reform or the passage of a new law to improve women's rights; and
- if the violation is system-wide and government assistance is unlikely, then the appropriate objective may be to first raise public awareness about the issue or report it to an NGO or international organizations which may be able to influence the government in question to take action to improve women's rights.

The kinds of questions to pose in developing strategies include: Is the government being asked to reform a particular law? Is it being asked to stop specific actions constituting a violation of women's human rights? Is it being asked to ratify a treaty guaranteeing women's human rights or to report on its obligations under a treaty?

Litigation may be best suited for narrow issues or to trigger an inquiry leading to a broader policy change. The classic case of this is the issue of the tax treatment of child support payments. While the issue was raised unsuccessfully as an equality rights challenge in the *Thibaudeau* case, the challenge itself prompted public policy actions. This process can be described as the “see-saw” between the legislatures and the courts.

The most effective strategies combine political action and legal action. In fact, it could be argued that a strategy always includes both, as most legal decisions, even out-and-out victories, require political action to ensure implementation.

Women's equality rights advocacy is essentially a political process because it seeks to influence policy decisions and conduct in favour of women's human rights. Yet, because it rests on the bedrock of national and international human rights law and enforcement mechanisms, equality rights advocacy work often includes legal action. Effective advocacy strategies combine legal action, which directly engages the law, with political action, which mobilizes constituencies to pressure governments or institutions to change both law and practice.

Lobbying, legislative advocacy and monitoring – the most directly political part of advocacy – are often essential to the success of more legally oriented advocacy efforts.

The dynamic character of human rights law and the fact that remedies are fragile, require activists to include a strategy of substantial political pressure. On the other hand, political pressure absent the weight of human rights law has less effect on governments than political pressure that invokes legal standards.

The further refinement of equality concepts through litigation can be seen as a pre-requisite to responsible political activism.

As Mary Eberts has pointed out, “rights and even rights crystallized and made real in rights decisions do not in the tough world of policy-making enjoy primacy over other interests.” Rights have become nothing more than “table stakes that rights holders bring to the table as others push back in favour of maintaining the status quo; nobody's behaviour changes at all and everybody has more stakes.”

Effective advocacy strategies combine legal action, which directly engages the law, with political action, which mobilizes constituencies to pressure governments or institutions to change both law and practice.

Litigation is almost too polite a strategy. I ask myself should we not be getting tougher are we not being too easy on these guys by showing up in our little black suits with our nice little starched collars and saying: if you please, with respect, we submit. Shouldn't we be getting a bit more in their face, shouldn't we be going more for the big stuff. Use the little stuff, use the litigation to be the fuse that lights the powder keg. I don't know that we should be getting dressed up in black and white and going to court and submitting any more.

I think we might consider getting tougher.

◦ MARY EBERTS

Ultimately, legal and political actions are mutually reinforcing and work together to shape more equitable policies, standards and attitudes.

### TOWARD EFFECTIVE ADVOCACY

The following section is adapted from *Women's Human Rights – Step by Step*, a publication of Women, Law and Development International and Human Rights Watch Women's Rights Project.

Advocacy is a political process designed to influence policy decisions. Advocacy is citizen-initiated and aimed at changing popular interests/needs/desires into definable policies, practices or rights. Advocacy consists of actions designed to draw a community's attention to an issue and direct policy-makers to a solution. It consists of political and legal strategies that influence the shape and practice of laws or public policies. Successful advocacy often results in the recognition of and greater respect for citizen rights.

Advocacy initiatives require organization, strategic thinking, information, communication, outreach and mobilization. Equality rights advocacy uses the same basic approach but the goals and methods are framed by the human rights system. Human rights advocacy responds to citizen interest in transforming *formal* human rights into *genuine* and *effective* human rights. It uses constitutional guarantees and international norms, standards and mechanisms to hold governments accountable for their actions, to expand the core content of the guaranteed rights, and to make the system itself more responsive and effective.

Effective strategies have a ratio between political and legal action that is appropriate to the nature of the issues, the political situation, and the human and material resources available to the group. Selection of activities is also based on efficiency considerations and other criteria developed by the group. These criteria could include, for example:

- Activities that are efficient and cost-effective, i.e., that have a high results ratio for the effort involved.
- Actions that will best enable the involvement of all or most of the participants.
- Activities that will best publicize the issue and demands involved.
- A sequence best suited to achieving short-term and long-term goals.

Success in advocacy depends on building an appreciable con-

stituency or popular support. All government agencies respond to political pressure. If no one pushes them, the inertia of the status quo will rule the day. The effectiveness of an advocacy initiative will often depend on the number and range of people involved and how they target their efforts.

Effective advocacy strategies include outreach or constituency-building activities. The issue itself often points to potential participants. Those already working on the issue or whose work might be significantly affected by the success or failure of the advocacy effort are potential participants and activists.

The sooner people are invited to join the effort, the more of a stake in the effort they will have and the more important they will become to it. Activists should encourage not only those who will cooperate actively but those who will help to form opinion and support the initiative in less perceptible ways.

The stronger and more vocal the support group, the better poised the advocacy strategy will be for success. An organized, diverse and articulate constituency, exerting influence on decision-makers is a powerful engine for change in favour of women's equality.

Another characteristic of an effective strategy is a strong communication and public education program. This is a necessary condition for building citizen support for the advocacy initiatives. People cannot support a cause if they don't know about it. Organizations with effective advocacy strategies understand the power of communication and public education and know how to use the media well.

Consciousness-raising, education, training and media strategies are important tools for developing a constituency of individuals committed to respecting women's equality rights.

The final element in an effective advocacy strategy is the capacity to mobilize groups and individuals to take action in support of the desired change. Successful advocacy has both depth and breadth among its supporters. In addition to counting on expertise to build the case in legal terms, shape arguments, draft legislative proposals, document and verify abuse etc., effective advocacy counts on many people to stand up and defend or promote the issue from their own experience and perspective.

The workshop on civil legal aid concluded that an essential step toward increased funding was the profound need to educate the public on exactly how women and children's safety is being compromised as a result of cutbacks. Public polls have indicated that people support legal aid, but it appears that they remain largely unaware of the deep

**All women are affected by discrimination, violence and other forms of human rights abuse and they all can play a role in advocacy. Women, like other disadvantaged groups, can and will fight to end their own oppression when they recognize it and when they feel there is a clear solution or possibility of change. In addition, there are men who would like to promote social justice across gender divisions and be involved in advocacy to promote women's human rights. In short, anyone concerned about justice can be involved in equality rights advocacy.**

◦ *Women's Human Rights  
– Step by Step*

Activists need to tackle the feeling that we can't influence the government. Women's groups can and do have tremendous impact.

cuts that the government has undertaken in recent years and the consequences of those cuts. Public education is critical because in Daphne Dumont's words: "We must make it more uncomfortable for them to not give it to us!" Education must be part of a larger strategy that creates a broader pool of lobbyists and allies.

Effective mobilization strategies may require a sophisticated understanding of unity and diversity within the women's movement. We may need to consciously build solidarity. For example, Beatrice Vizkelety has suggested that in order to fully pursue economic equality, we may need to tackle class differences, poverty and disadvantages as well as promoting access to the labour market and removing barriers for women. In her words, organization must be based "not on simple unity, but on a recognition of diversity, which may among certain groups and on certain issues, lead to solidarity and common action."

### THE BOTTOMLESS PIT OF GOVERNMENT CONSULTATIONS

Many women's groups are suspicious of government consultations. There is a real fear of a waste of energy and being "used" by governments. Recent bad experiences include the consultations on reproductive technology, the Canadian Panel on Violence Against Women, and the Parliamentary Joint Committee's consultations on custody and access.

At several forum workshops where government consultations were discussed, participants were unanimous in the view that there is real consultation, pseudo-consultation, and window-dressing. They expressed frustration about the fact that it often felt to them that the agenda at a government consultation was already set and that the consultation was a mere formality so that government could say they had worked with representatives of the public in the decision-making process.

These feelings of disempowerment are reinforced by changes in the ways in which government works. For example, more policy-setting is occurring at the regulatory level without consultation.

Activists need to tackle the feeling that we can't influence the government. Women's groups can and do have tremendous impact. As a movement, we should negotiate for a common understanding with governments as to the terms and conditions of our participation in government consultations.

The Women In Public Policy Project has developed a framework to address these issues that call on governments to:

- establish a consultation and information-sharing process that effectively includes women’s organizations;
- take into account how women’s organizations operate; and
- provide relevant information to organizations in advance and incorporate their input.

### MAINSTREAMING

One of the priorities within political advocacy has been “gender mainstreaming,” that is, incorporating concerns for women in policy-making at every stage. The *Federal Plan for Gender Equality* is based on the federal government’s commitment that all future legislation and policies include an analysis of the potential for different impacts on men and women and is meant to “enhance the government’s ability to meet its commitment to gender equality.”

However, many activists view mainstreaming with caution. They are very concerned that lofty policy statements become a substitute for concrete action. It is difficult to argue against this approach as it is surely one of the many strategies required to meet challenges and to pursue our goal of equality. The question is how to make it effective. Mechanisms to increase the effectiveness of mainstreaming could include ensuring a role for independent research and participation of women’s organizations in the review process.

### BUILDING ONGOING MECHANISMS AND MONITORING

One way of overcoming this sense of powerlessness in government consultation processes is for women’s groups to insist upon ongoing mechanisms of information-exchange, monitoring and consultation. Ongoing mechanisms are more inclusive because they provide the opportunity for women’s groups to have a say in determining the agenda.

At the national forum, participants were vocal in their insistence on the reinstatement of the annual national consultations on violence against women. They also made it clear that these consultations should be in a format that enables women’s groups to develop common positions before the consultation.

In this context, it is important to reiterate Lucie Lamarche’s concerns about participation in the public policy process becoming an end in itself. She warns us that based on her analysis of the Quebec situation, women’s participation will not in itself ensure the promotion of

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social and economic rights of women. Without the guiding principle of sex equality, we are facing a completely different agenda.

### TRANSFORMATIVE PUBLIC LEGAL EDUCATION

Effective advocacy requires a training and education effort. A variety of educational activities are needed to reach specific individuals who have the capacity to play important roles in the success or failure of the effort and who may become either allies or enemies.

As part of the preparation for the national forum, Karey Brooks prepared a paper for West Coast LEAF's Ad Hoc Committee on Public Legal Education (PLE). Based on her review of activities and discussions with PLE providers, she concluded that training could be very limited if it approached the process only as a technical exercise to help women understand the human rights system. What is also needed is an educational process that fosters a deeper understanding of women's status as expressed in law and practice and the development of women's capacity to take action for change. Rights education in the context of advocacy should be aimed at facilitating the involvement of more women in exercising their human rights and demanding accountability for violations of those rights.

Brooks advances the concepts of transformative public legal education (PLE) defined as education in which women are full participants and which empowers women and teaches them skills to be critical about the legal system. It is a more participatory approach to PLE, in which all participants share their knowledge, experiences and concerns and work toward steps for social change.

At the national forum's "Towards Transformative PLE" workshop, the facilitators, Penny Bain, Andrée Côté and Helen Wilkes asked: What is it about the current model that is not working?

Helen Wilkes answered from her perspective as an educator. Education is supposed to be about information and skills. But it usually ends up just being about information and information does not transform you. She went on:

If I am not prepared to take action, what is the point of information? Information is largely useless, and it is skills we are not teaching. We need to practise; skills are an instrument like the piano. We tend to lecture – but where does the woman get the practice? Even in role-play, if we imagine different parameters of a situation, there is no room for practice. Practice is like a trade – you take action. It is always in the step toward action that we fail.

Brooks advances the concepts of transformative public legal education (PLE) defined as education in which women are full participants and which empowers women and teaches them skills to be critical about the legal system. It is a more participatory approach to PLE, in which all participants share their knowledge, experiences and concerns and work toward steps for social change.

In Wilkes' view, education must lead to some measurable form of action, not a document. Ongoing education is also critical. Involving people in long-term projects is an excellent way of reaching our transformative objectives. There is much to be learned from approaches to AIDS education. This approach can be summed up as follows: teach peers to teach their peers; have repeat programming to increase skills and knowledge; support peers in putting forth what they know; this will lead to more action, and more opportunity to take action.

Women's groups hunger for information. The information itself has to be dynamic, evolutionary, has to make you rethink – you, the access person as well as you, the expert. The urgency here is for information to become transformative. There is strong concern among activists that we are beginning to lose what we have acquired. Actual versus theoretical equality has to be understood and communicated.

While the primary focus of transformative PLE is the need to provide education for women who are disempowered, the other challenge that we have shied away from is changing the policy-makers.

Allies can be made in all sectors, including police, judges, lawyers, government officials and politicians. People working with human rights bodies at all levels can also benefit from training to build their capacity to protect women's equality rights.

One important strategy in these education initiatives is exposure to general equality themes. These can make the critical difference in winning over potential supporters. Key themes, in addition to the specific content of a given advocacy initiative, can include:

- the concept of substantive equality and the place of women's equality in the human rights system and movement;
- general information on the types/extent of inequalities experienced by women; and
- information on how to push for legal reform aimed at bringing laws, policies and practices in line with constitutional equality guarantees and international human rights standards.

There is always room to provide transformative models – even when intervening in open-line, public place information systems!

**In the context of creating and defending rights, education plays an important role. Through empowering rights education, the structures of the system can be exposed, challenged and pressed to be responsive to gender issues. In the final analysis it is not changing the law or getting the favourable judgment that defines the value of women's human rights advocacy, it is the process by which women not only activate the rights they do have, but also redefine and reshape inadequate laws and human rights standards and ensure their full and fair application. Rights education in this context is about helping women to use the law, rights and the human rights system as a political resource to gain the power needed to effect change.**

◦ *Women's Human Rights – Step by Step*

# How We Work

## Collaborative Work, Partnerships and Coalition Building

Coalition formations have been increasingly endorsed as a response to essentialist tendencies of much foundational feminist legal theory, as well as in the name of enhancing the political leverage of equality-seeking groups. But we all have a lot to learn about how to do collaborative work well.

Sheila McIntyre has written about the need to build our movement through collective and collaborative work. Coalition formations have been increasingly endorsed as a response to essentialist tendencies of much foundational feminist legal theory, as well as in the name of enhancing the political leverage of equality-seeking groups. But we all have a lot to learn about how to do collaborative work well.

McIntyre poses some hard questions:

- What makes a working group truly representative?
- What structures and practices effectively guard against the tokenizing or marginalizing of those representing the more marginal or less powerful or resourced groups?
- What recruiting processes enhance the possibility that those expected to “represent” a particular constituency actually are in touch with that constituency’s wishes?
- Where particular disempowered groups are deeply divided on matters of substance or on matters of strategy, how should those wishing to work in coalitions identify who is and what views are “representative” of a divided constituency?

And more fundamentally, McIntyre asks whether coalition work is always desirable or possible. If there is no time for coalition building, should we forego intervening altogether?

The following list of reasons for working together and the difficulties faced in trying to do so are pulled from a number of sources (including the papers by McIntyre, Go and Fisher and Litt).

### REASONS FOR WORKING TOGETHER

- Legal professionals must be willing to learn from and work with the real experts, women themselves and those who are involved in frontline and advocacy work with them and on their behalf.
- Those of us who work with abused women can forge positive connections and develop powerful proposals for change in how we all do our work.
- It helps us to recognize the limitations of law and encourages us to be creative with law in order to deal with women’s concerns.

- It offers differing areas of expertise, perspectives and experiences.
- The resulting positions or arguments are more inclusive and more representative of the diversity of women’s experience than when team members are socially, racially and economically homogenous.
- Accountability is enhanced through the development of strong partnerships with the community and multidisciplinary approaches.
- The quality of the legal analysis is much better, since it benefits from a broad range of experience.
- The arguments advanced contribute to the development of a comprehensive equality strategy and take into account the impact on the equality communities as a whole, rather than the more narrow interests of a single group.
- The opportunity to work in coalition develops the knowledge and experience of the coalition partners, who get to discuss concrete issues and ideas with members of a broad range of communities and who benefit from a diversity of perspectives.
- Alliances are developed between equality communities, which can enable more effective participation in the future at both the legal and political levels.
- Coalitions with a broad range of backgrounds have increased credibility with courts and tribunals.
- Coalition partners with less litigation experience can be empowered by their involvement in a coalition with more experienced groups, and partners with more litigation experience can be grounded in community rather than legal activities.

**We need to take a moment to reflect on how important new coalitions are to the development of a common human rights understanding in our communities. This work has the potential to broaden and strengthen our influence not only in the courts, but in the country.**

◦ EILEEN O'BRIEN

### **RECOGNIZE THE DIFFICULTIES IN WORKING TOGETHER**

- Working together is intellectually and emotionally demanding.
- It is sometimes wearing on the egos of professionals accustomed to having independent charge of the work at hand.
- Working in coalition is considerably more time-consuming, particularly under the pressure of tight deadlines which are often imposed externally by courts or tribunals.
- Participating in coalitions increases the demand on both financial and human resources.

- There is a greater degree of conflict when it is necessary to reconcile many different perspectives than when a group is intervening by itself.
- The need to reconcile conflicts can lead to compromises with which coalition partners are uncomfortable.
- Decision-making processes can be unclear; conflicts can arise that are more difficult to resolve.
- Short timeframes can make meaningful participation unrealistic.
- Groups with less power and/or experience can require some “hand-holding.”
- Groups with more power and/or experience often do not see it as their role to do the “hand-holding” and tend to impose their perspectives on others.
- The representatives of organizations and the organizations available can vary from one meeting to another and this high turnover results in loss of continuity.
- Not all lawyers are willing to take directions from a coalition or have experience in giving power to a participatory or community process.
- Each coalition partner will have its own internal group structures, which can make the process cumbersome and time-consuming.

One important way to improve coalition work is to develop ongoing alliances rather than project-specific ones. Carol Aylward notes that “good coalition work means going into the community, talking to the leaders. . .you need to be in the community routinely; it is important to be involved before the crisis.” She reminds us that coalition building improves over time; we must be willing to share power.

### **Towards Feminist Organizational Principles**

Many women equality activists have expressed concerns about how feminist organizations operate both internally and in relation to each other. We have also recognized our organizations face employment and organizational issues that are common within the non-governmental sector. Carissima Mathen and Fiona Sampson, assisted by Diana Majury, developed and presented a paper on this topic at the national forum.

Mathen and Sampson noted that the lack of clearly defined feminist principles and practices disadvantages staff and volunteers, particularly during times of acute crisis. They also recognize that the means and processes by which organizations achieve their goals are as important as the goals themselves. In some cases, the actual practices adopted by many feminist organizations belie their purported commitment to feminism.

The following issues of concern were identified:

- 1 accountability;
- 2 power dynamics, both acknowledged and unacknowledged;
- 3 the need to make diversity real;
- 4 interpersonal dynamics: means of communications and norms of behaviours; and
- 5 the effect of class distinctions in feminist organizations.

Feminist organizations have tried hard to create an alternative to traditional corporate hierarchical structures. However, some of these positive developments are hindered by phenomena such as:

- close personal alliances, similarity in background and life experiences have an impact on who is heard despite apparent similarity of position/responsibility;
- despite the formal commitment to diversity, we still experience profound difficulties in transforming the ideal of diversity into the actual mechanisms, policies, choices; we have difficulty in moving beyond diversity in membership to allowing diversity to flow through to actual organizational practices; the related issues of belonging, tolerance and making room are also important;
- we put lots of emotional investment into the work and vision of feminist organizations, and this can result in a tendency to personalize issues; we may respond to objective criticism in an emotional and impulsive fashion that is ultimately counterproductive; political differences get turned into personal conflicts;
- a common problem in group discussions occurs when disagreement is expressed not openly but in a sidebar conversation – this inhibits full and frank discussions and disadvantages those excluded from the sidebar discussions who may not have had the opportunity to advocate/defend or repudiate/criticize a position or argument;

**The commitment is not enough, we need to make rules of order on how to work together rather than theorizing diversity.**

◦ CAROL AYLWARD

Activists need to place a high value on certain kinds of behaviour and on creating safe spaces. We must also take responsibility for our own conduct.

- there are high levels of stress, burnout and exhaustion; and
- we need to examine how power is used and recognize the greater advantage to economically privileged women, which translates into the power to determine the political goals and methodologies of an organization.

This conversation is far from over. We are still at the stage of identifying the concerns, but this acknowledgment is an important first step. The workshop helped to identify the following areas where further work needs to be done:

- developing feminist principles and practices;
- operationalizing substantive equality as a feminist principle and practice;
- developing a feminist code of conduct;
- developing systems of accountability;
- making diversity real; and
- working toward power sharing in feminist organizations, with participatory democracy as a reference point.

Activists need to place a high value on certain kinds of behaviour and on creating safe spaces. We must also take responsibility for our own conduct.

During the same workshop, Diana Majury took a look at what feminist principles look like in the context of a non-feminist organization. She asks: Why have feminists and other activists been able to effect so little fundamental change in our non-feminist workplaces? Where are the feminist principles and practices in my daily life? Where is the passion and energy and commitment to change?

Many feminists are now in senior, fairly powerful positions in their workplaces and yet, relatively few standards have changed in a fundamental way. She points to the hiring and tenure examples within the university setting where she works. Many feminist undertakings, including conferences and peer-reviewed journals, look and act just like their mainstream counterparts.

Majury speculates that the following factors are at work: self-censorship, isolation, exhaustion, fragmentation, siege mentality, the tyranny of democracy, and related issues of assimilation and cooptation.

At the national forum, Michèle Caron identified another vital issue concerning relations within the women's movement: the growing gap between the feminist movements in Canada/Quebec. She describes

the situation as having moved “from solidarity to two solitudes.” She argued that we must make a sustained effort to reopen the dialogue on a principled basis that affirms the right of Quebecers to decide their autonomy. For those of us working in other parts of Canada, it is critical that we not ignore reality of Quebec and the advances made there. We must also be careful never to generalize for Canada, without making sure it is true for Quebec, or at least admit that we have not inquired into its validity for that province. She concluded that we need to recognize and support Quebec women’s groups if this makes more sense than pursuing pan-Canadian activities.

In this context, it is also important to recall Patricia Monture-Angus’ reflections on the gap between the women’s movement and Aboriginal women and her suggestions for renewal.

Part of our agenda must be improving the way we work. We need to devise strategies to deal with the fundamental differences among us, differences relating to strategy and more fundamentally to values, beliefs, and identities. A number of participants in the forum suggested that we need to rethink the goal of consensus and develop alternative ways of incorporating a range of divergent views and/ or think about ways of presenting analysis/argument without feeling we need to provide the answer. We have to develop the ability to disagree without being destructive.

Part III has examined the role of legal strategies in achieving equality for women. A number of general lessons can be drawn from this assessment of our legal tools and strategies. First, our legal strategies should be inspired by broad, substantive conceptions of equality. Narrow, legalistic formal conceptions of equality must be consistently resisted. Secondly, equality strategies themselves should reflect the differences among women: diversity and complexity are strengths and the law must be further developed to recognize and address these realities.

Just as our building blocks of legal equality concepts must be further developed and refined, so too, our law-related strategies need to become more sophisticated. In particular, priority should be placed on increasing our capacity to develop litigation strategies as part of broader, comprehensive advocacy strategies. We need to become more creative in how we build transformative public legal education and monitoring of progress into our litigation and advocacy work.

Finally, we need to pay as much attention to the way in which we carry out equality rights work as we do to our goals. We need to ensure that the means we choose and follow, both individually and collec-

tively, embody the spirit of collaboration, inclusiveness and substantive equality that we aim to achieve. Only then we will achieve the constitutional promise of equality and experience it as a lived reality for all.

**We need to intervene in every place we can. We need to understand that the goal of our adversary is to ground us down; to erode our convictions, to prevent us from moving forward, to turn those small waves of anxiety into paralysis. But we must refuse the discouragement we are invited to accept. This is a critical and exciting moment of possibility in Canadian politics. It is time to turn all of these ideas and proposals into political action.**

**To be as imaginative and courageous as we know how to be. To make public space wherever we can make it.**

**Let's use the moment.**

◦ GWEN BRODSKY

# PART 4

## Equality Rights Action

*Transforming Women's Future: A Guide to Equality Rights Theory and Action*  
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The first three parts of the guidebook set out some of the current priorities for achieving women's equality, provide an outline of the legal framework and assesses the ways in which we have carried out equality rights work to date. These parts also contain numerous examples of interesting ongoing work and ideas of what types of initiatives could be considered in the near future.

Part IV of the guidebook contains a collection of actions and tips that could provide assistance in implementing law-related strategies. They are set out in the form of checklists, lists of steps or issues to consider and so on. In some cases, we have attempted to identify specific examples or resources or describe best practices based on information that we received at the national forum.

This Part includes the following sections and topics:

### **GETTING STARTED**

- 1 Identifying equality issues
- 2 Challenging sexist stereotypes
- 3 Choosing among legal avenues

### **LAW RELATED STRATEGIES**

- 4 Doing strategic test-case litigation
- 5 Engaging in critical race litigation
- 6 Choosing options for using international legal norms/working at the international level
- 7 Doing transformative public legal education
- 8 Working with human rights commissions

### **ORGANIZING AND ADVOCACY SKILLS**

- 9 Designing a comprehensive advocacy strategy
- 10 Choosing options for mobilization activities
- 11 Lobbying tips
- 12 Designing a media strategy

### **WORKING COLLABORATIVELY**

- 13 Overcoming obstacles to coalition work in the litigation process
- 14 Developing a credible and inclusive public policy process
- 15 Developing working principles for inclusive processes
- 16 Doing collaborative work: a checklist

# Getting Started

## 1. Identifying Equality Issues

Potential Sources:

- Directly from women experiencing the discrimination
- Through research about widespread problems or laws that discriminate against women
- Through published reports by other organizations

Focus on a few key targets:

- the laws and policies that define how women's equality rights are interpreted
- the institutions at the national, regional and international levels charged with upholding these rights
- the attitudes and behaviours of officials and ordinary citizens (including women) about women's rights

Clear analysis of the issue involves:

- showing that a right exists
- proving that a violation of the right has occurred
- demonstrating that the state was responsible for the violation
- overcoming conceptual problems with fact-finding and analysis
- applying an intersecting equality analysis

## 2. Challenging Sexist Stereotypes

Based on her work on archetypes of women as “saints” or “sinners” in the context of fighting for welfare benefits, Jeanne Fay has developed this list of strategies for dealing with deeply embedded historical stereotypes.

- 1 Look at the historical context and the history of the law with respect to the particular group of people you are representing in order to understand its impact.
- 2 Contextualize the story so that it is not a narrow perspective of the woman as passive abused victim.
- 3 Develop a language so that we can begin to talk about women as fluid rather than fixed.

- 4 Make the woman the centre of the legal and factual analysis.
- 5 Avoid “Kraft dinner” arguments and challenge existing understandings of an issue or problem. Adopting the “saint and sinner” construction and portraying a mother as a “saint” feels wrong when used in litigation. In addition, portraying the women as a “saint” re-creates the charity model.
- 6 Talk to women about how they view their struggles.
- 7 Treat women as activists or collaborators rather than clients. This is very important in equality-based litigation. This approach may also empower women to become political in their struggle. People in poverty want to make sense of their oppression.

### 3. Choosing Among Legal Avenues

Often there is only one legal option available to an individual or group asserting an equality right.

In some cases, activists will have a choice of mechanisms by which to pursue a particular issue. For example, you may be able to pursue the issue:

#### Making Formal Rights Real Rights From *Women’s Human Rights – Step by Step*

##### TYPE OF RIGHT

- Rights found in the general human rights instruments intended to apply to both men and women

- Rights found in specialized instruments such as CEDAW intended to cover rights specific to women (such as freedom from sex discrimination)

- Evolving rights (such as reproductive and sexual rights) that are not yet in any instrument

##### ADVOCACY GOAL

- To assure that these apply to women consistently

- To assure that these rights be treated with the same seriousness as the general human rights

- To make explicit the identification, definition and protection of these rights

- in court through a s.15 Charter challenge to a law, public policy or government practice
- through a human rights complaint before the relevant commission/tribunal
- in a quasi-judicial setting before an administrative tribunal or regulatory board proceeding
- in a labour arbitration
- in a civil action

How an equality issue is framed will depend on which legal procedure is available/selected.

The following is a list of questions that an activist should consider in selecting among the available options.

- What type of procedure is involved? (complaint, monitoring and reporting or “mixed”)?
- To whom is the procedure available?
- What must activists do to access the procedure? (admissibility requirements)
- How does the system work and what role can activists play?
- What are the possible remedies?
- What are the advantages and disadvantages of using the particular mechanism?

## ISSUES TO CONSIDER

### TYPES OF ENFORCEMENT PROCEDURES

The goals and strategies of an advocacy effort will be influenced by what types of enforcement procedures are available to the activist. For example, while a complaint procedure may help establish a legally enforceable precedent and gain a clear remedy in a particular case or class of cases, it may not be available or desirable. On the other hand, monitoring and reporting procedures may better address broad, systemic problems and win more sweeping changes to advance women's equality rights, but will not necessarily provide individual relief.

### ADMISSIBILITY

Each legal avenue will have different requirements in terms of paperwork and formal ways of stating the case or issue. Usually you can pur-

sue only one procedure at a time, and some options are only available after you have tried all other avenues.

#### KNOWING HOW SYSTEMS WORK

Take the time to make sure that you know how each option works as there are large procedural differences on issues, such as the role of advocates, specific rules, level of formality and so on.

#### REMEDIES

Remedies can be very specific and geared towards compensating an individual woman whose equality rights were violated, or they can be mandates for broad changes in government policy, and sometimes both.

## Law Related Strategies

### 4. Doing Strategic Test-Case Litigation

Here are the elements of a test-case strategy:

- defining long-term clear objectives
- developing a comprehensive theory of substantive equality for all women or a number of related/compatible approaches
- developing fundamental principles of legal analysis
- establishing case and project selection criteria
- assessing community views to determine a litigation mandate
- setting priority issue areas
- building from one case to another
- carefully assessing the potential positive impact of cases
- carefully assessing the potential negative impact of cases
- constantly adjusting tactics in order to achieve the strategic objectives
- tracking and monitoring cases
- carefully assessing the actual impact of cases after they have been decided, not only on legal doctrine, but also on the equality-seeking groups which are meant to be affected
- ensuring appropriate follow-up

Here is a checklist for improving the effectiveness of strategic test-case litigation:

**1. Select the “priority areas”:** Review these each year (or two) in consultation with a diverse and inclusive group of Canadian women and women’s groups. Decisions on priority areas should also be informed

Checklist for weighting advantages/disadvantages (from <i>Women’s Human Rights – Step by Step</i> )		
	check if applicable to system	check if important to you
◦ Allows for direct participation of activists		
◦ Allows for indirect participation of activists		
◦ Remedies are specific		
◦ Remedies are geared toward compensating individual women		
◦ Remedies are broad		
◦ Remedies are geared toward change in government policies		
◦ Results in a legally-binding decision		
◦ Results in non-binding recommendations for action		
◦ Women can participate while remaining anonymous		
◦ Women cannot participated unless named		
◦ NGOs can have substantial input		
◦ NGOs have limited input		
◦ Quick procedure		
◦ Slow procedure		

by case impact studies performed on an annual basis. These should provide a reasonable evaluation of the effects of litigation on the actual conditions of women's lives.

**2. Consider more sponsorship of cases:** Interventions are limited by the boundaries of a case. In particular, interveners have an extremely limited ability to influence the presentation of facts or evidence. Sponsorship of the party in a case may be particularly important in emerging issues so that the case can be framed in a way that best meets the overall goal of promoting equality for women.

**3. Make increased use of strategic partnerships and coalitions:** This improves the quality of legal analysis, builds credibility before the courts, facilitates an enriched understanding of intersectionality, and promotes alliances that can enable more effective participation in the future at both legal and political levels. Also encourage multidisciplinary approaches.

**4. Consider a strategic integration of other Charter provisions into legal analysis:** Also consider other Charter provisions when you are doing equality strategic test-case litigation (such as section 7, 1, 28).

**5. Track and evaluate decisions:** Monitoring of previous cases is crucial to the revision and improvement of legal strategies.

**6. See litigation as one part of an overall strategy:** Combine litigation, law reform and public legal education efforts to produce a more effective “multi-faceted” approach. A coordinated effort is needed since legal victories alone do not ensure equality. Cases won or lost in court can be neutralized, strengthened, or reversed through subsequent government actions or inaction.

## 5. Engaging in Critical Race Litigation

(The following is reprinted from *Canadian Critical Race Theory* by Carol Aylward by permission of the author)

1. Be aware of the history of racism in Canadian society and the role the myth that Canadian society does not have a racist past plays in the perpetuation of racial oppression.
  - the advocate must: be aware of or inform herself or himself of the experiences of people of colour with subordination and racism; and be willing to accept that Blacks and other people of colour possess a unique voice to articulate those experi-

### Funding for equality test-case litigation

The Court Challenges Program of Canada is a funding agency that can provide monies for case development and litigation for certain equality rights test-cases. The Program can also provide funding to assist in consultations and research to assist in the development of cases.

In order to be eligible for funding, a case must:

- involve a section 15 of the Charter challenge to a federal law, policy or practice;
- be a test-case; and
- advance the equality rights of a historically disadvantaged group.

An independent panel reviews applications for funding and decides whether funding should be granted. Assistance with the application process is available.

For more information see the website: <http://www.ccppcj.ca>

ences that must be listened and deferred to, even though racial perspectives can be intellectually accessed transracially.

2. Develop the ability to identify when race is an issue in a given circumstance and the ability to identify oppression that can be overcome or limited through law.
3. Deconstruct the discriminatory legal rule, principle, doctrine, policy or practice in order to challenge it. Deconstruction is designed to confront both overt and subtle forms of discrimination perpetuated by law. The question is: Does the doctrine, legal rule, principle, policy or practice at issue in the particular case subordinate people of colour? If the answer is yes, an in-depth analysis of the rule is required to flush out what may often be hidden forms of discrimination.
4. The final step is reconstruction: What are the alternatives, if any, to the existing doctrine, legal rule, principle or practice that will not subordinate people of colour or will lessen the subordination of people of colour? What harm or benefit to the Black client and/or the Black community might result from the adoption or rejection by the courts of the change sought? What are the advantages in pursuing a critical race litigation strategy?

## 6. Choosing Options for Using International Legal Norms/ Working at the International Level

### WITHIN CANADIAN LEGAL PROCEDURES

- International legal norms, as expressed for example in UN Committee reports, can be presented in litigation under s.15 of the Charter.
- International agreements can be used as a tool to interpret sections of the Charter. (They often contain more specific provisions.)
- Canadian human rights commissions are looking at how they can assist in implementing international human rights obligations in the ways they promote human rights.
- We can look to international norms when rights are not well developed or understood within Canada, such as social and economic rights.

### ADVOCACY AT THE INTERNATIONAL LEVEL

- We can conduct lobbying efforts vis-à-vis various United Nations bodies, such as the Committee on Women, the Human Rights Committee, and the Committee on Social, Economic and Cultural Rights.
- Various United Nations bodies can issue a report and recommendations.
- Under some international treaties there is the opportunity to take individual cases to the responsible monitoring agency.

### NEW OPPORTUNITIES

- The new Optional Protocol under the Convention to Eliminate all Forms of Discrimination Against Women (CEDAW) makes it possible to go directly to the UN with gender-specific complaints against Canada for violating women's equality rights, in addition to existing gender neutral provisions.
- The United Nations Conference on Racism in 2001 is an opportunity to develop strategies for addressing racism in Canada.

### STRATEGIES FOR USING INTERNATIONAL LAW NATIONALLY

- Base the human rights claims on international or regional law, where such law is part of the national law or has otherwise been incorporated into national law.
- Use the international and regional human rights law as an aid to interpretation of national law provisions. Judges in many countries can and have been guided by international law in their interpretation of specific legal provisions.
- Remind the state that it has, through ratification of a treaty, freely assumed an obligation (e.g., to eliminate discrimination against women). National enforcement mechanisms should be under a duty to interpret national law so as not to conflict with the state's international or regional obligations.
- Use international human rights law as the minimum standard of protection which national law should attain. Advocacy for law reform and responsive judiciaries can endeavour, in the first instance, to bring national law in line with internationally accepted standards for the protection of women's human rights.

## 7. Doing Transformative Public Legal Education (PLE)

Transformative public legal education (PLE) is education in which women participate and which empowers women and teaches them skills to be critical about our legal system.

Here are the elements of a transformative PLE strategy:

- it must entail both information-sharing and skill development
- the target audience should participate in the development of the session
- the education must lead to some measurable form of action, not a document
- it involves people in long-term projects
- where possible, it involves ongoing meetings/relationship
- the information has to be dynamic and evolutionary; it has to make you rethink; in this way information itself becomes transformative
- it is often necessary to repeat programming to increase skills and knowledge
- PLE needs to be available both for women and for policy-makers; the education addresses the two sides of the equation

**Best practices:****AN EXAMPLE FROM ONTARIO**

One recent example of an innovative education project on women's equality rights that incorporates the transformative/participatory approach was initiated by the Table féministe francophone de concertation provinciale de l'Ontario. The project, entitled, "Francophone Women of Ontario and the Right to Equality," is reported in an article by Andrée Côté, who facilitated the process.

The project consisted of three parts: education, consultation, and strategizing. The model aimed at acquisition of basic legal knowledge, and an understanding of the historical, social and political evolution of the law, as well as the actual working of the "law in action."

**Highlights:**

- The participants in this education process were all feminists who worked with various women's groups and therefore already had a solid knowledge about various aspects of the status of women.
- The objectives were:
  - to give participants the opportunity to acquire basic legal knowledge about women's equality rights
  - to give them the tools necessary to critically analyze government policies within the context of constitutional equality guarantees
  - to provide assistance in identifying possible legal/political recourses available to address these barriers to equality.
- The women participants were involved right from the beginning in designing the parameters of the project.
- The first part of the project was a session we offered in five cities and that lasted for a day and a half. It addressed the following themes:
  - historical discrimination in the law and government policies and practices

*...continued on next page*

## Best practices, cont...

- battles brought by women against this discrimination and the laws adopted in response to women's actions
- distinctions between different equality rights regimes (human rights, the Charter, and international)
- definitions of equality and spheres of application of equality rights
- the distinction between formal and substantive equality;
- the state's responsibility in promoting equality
- the mandate of the Court Challenges Program
- the work of LEAF and other women's groups, including for example, the Native Women's Association of Canada, in the judicial arena
- the jurisprudence developed under section 15 of the Charter (equality guarantee) and various legal avenues available under Canadian and international law

One of the key aspects of these sessions was that the participants were given the legal texts on equality rights. Participants read aloud from and discussed the meanings of these equality provisions. The realization that these texts were accessible had a hugely empowering effect on the female participants.

- The second part of this project was a consultation with the women who had participated in the education session on the ways in which government's laws, policies or practices have a negative impact on their rights to equality. This consisted both of a general brainstorming session and small group focussed discussion on four or five examples. At the end of the consultation there was a brief discussion on potential legal avenues to address these problem areas. A report on these discussions was prepared. About 75 women from five cities took part in the first two sessions.
- The third and final part was a province-wide two-day strategy session involving 30 of the women who had par-

*...continued on next page*

## Best practices, cont...

anticipated in the earlier sessions. The first day provided an opportunity to review the consultation summary document that identified government action that could give rise to infringements of women's equality rights. The day ended with a very creative brainstorming session around different avenues of action. The second day focused on developing priorities and strategies to develop the priority issues. The three priorities identified were: rights of immigrant women; workfare; and violence against women. A final report was prepared following this final session.

- We did an evaluation of the project. The participants evaluated the project in extremely positive terms. They really appreciated the historical approach to the evolution of rights and having access to the legal texts themselves. They underscored that they would be able to utilize what they had learned in their analysis and strategies and that they would be able to share what they had learned with other women. Suggested improvements included:
  - the education sessions should have lasted longer and allowed for more detailed exploration of some themes and questions
  - the international perspective could have been more effectively integrated in the session.

Participants made many specific suggestions with respect to follow-up work:

- the main weakness of the project, according to the evaluation, was the limited ability of the organizing group to follow up on the excellent work that had taken place. However, specific concrete actions were taken with respect to the three priority areas identified through the process.

– *Andrée Côté, “Pour les damnées de la terre: l'éducation juridique populaire sur les droits des femmes.”*

## 8. Working with Human Rights Commissions

Human rights commissions have a number of tools beyond the complaints process that can be used to promote women's equality. As outlined in a paper by Mary-Woo Sims and Sheri Helgason, these include:

- support prevention through education
- provide draft policies to employers and unions as models to follow, such as a policy on how to deal with sexual harassment in the workplace
- support internal education of human rights commission members
- organize roundtable discussions with those in the target groups, for example, discussions with women's groups, anti-poverty groups, anti-racism groups
- require commitment and follow up actions on employment equity
- develop ways to increase accessibility to human rights processes
- educate other tribunals and regulatory bodies
- influence parallel processes involved in human rights, such as grievance procedures
- work proactively to improve conditions in various sectors
- encourage voluntary review processes with industry
- support an anonymous complaint process
- work toward improving available remedies
- work with community groups to enable them to go beyond complaints process
- counter negative public perceptions about human rights, bias in the process and so on
- provide education through professional associations, such as law societies
- participate in training the trainers

# Organizing and Advocacy Skills

## 9. Designing a Comprehensive Advocacy Strategy

(adapted from *Women's Human Rights – Step by Step*)

### ELEMENTS OF A COMPREHENSIVE APPROACH TO ADVOCACY:

- identify a clear equality rights issue, concern or problem to be resolved
- investigate the nature and extent of the problem/concern
- define a clear position and desired outcome (e.g., articulate the entitlements or the rights desired and offer policy or legislative proposals, etc.)

### Critical Components of the Advocacy Process in Action

<b>Progress Toward Goal</b>	achievement of objectives
<b>Communication and Education</b>	message reaches public message reaches policy makers necessary training and skills obtained political alliances formed
<b>Mobilization and Action Plan implemented</b>	legal and political action undertaken interested and affected groups take action to secure change process monitored/evaluated
<b>Strategy</b>	clear objectives and demands activities organized plan or action and schedule
<b>Knowledge of the Issue</b>	clarity about the human rights violation analysis of the political and legal context cases articulated remedy selected strategy designed
<b>Leadership and Organization</b>	ability to identify and initiate advocacy effort ability to inspire and attract interest ability to manage process ability to mobilize support

- articulate the strategy (goals, target and actions to be taken)
- build alliances in support of the proposition
- educate constituents, allies and the public about the issues
- lobby for the changes needed or litigate test cases to clarify the content of the rights or achieve the desired judgment

#### KEY CHARACTERISTICS OF EFFECTIVE ADVOCACY:

- strong organization and leadership
- a compelling human rights issue
- a clear analysis of the issue
- a dynamic strategy
- an appreciable constituency or support group
- effective communication and education
- visible mobilization and action

## 10. Choosing Options for Mobilization Activities

Mobilization activities might include:

- meetings with decision-makers and other person who have influence over the violators
- meeting with the violators themselves
- media interviews to publicize the issue
- public hearings in which victims of the human rights violation narrate their experience
- public meetings rallying the communities of the victims
- parliamentary hearings considering the merits of a law reform initiative
- court testimony
- turnout at electoral polls
- petitions calling for specific reforms
- boycotts
- protest marches to highlight and oppose abusive practices
- letter-writing or email campaigns targeting officials responsible for abuse

## 11. Lobbying

(This section is reprinted from *Take Action for Equality, Development and Peace*, by permission of the editors)

Lobbying is the process of convincing. When you lobby, you are trying to convince an individual or an institution (e.g., politicians, school trustees, policy makers, etc.) that it is to their advantage to see an issue your way.

When lobbying you can consider various strategies for action for your issue such as:

- meeting with politicians and policy makers at all levels of government (federal, provincial, territorial)
- organizing public meetings
- writing letters – letters to MPs don't need stamps
- writing briefs to present to parliamentary committees
- circulating petitions etc.

### CONSIDER THESE FIVE STEPS WHEN YOU LOBBY

#### 1. Know your issue

Research and prepare the presentation of your issue carefully. Be ready to back up your statements and state your sources, particularly when statistics are involved.

#### 2. Find allies

Find out who else is working on your issue. They could be individuals, groups (local, regional, national), the media, researchers, and professionals. Meet with them and enquire how involved they are in the matter and what their objectives are. This will allow you to determine whether you wish to work with them.

#### 3. Decide whom to approach

Make sure you are lobbying the right people. For example, if you want to change a law you are better off trying to meet with a minister; if you wish to draw attention to something regional, then it might be best to start with your member of parliament; if you wish to change television commercials, then you want to pressure the CRTC.

Remember that it is easier to meet with an MP or policy-makers than it is to meet with a minister. Don't expect to call up a minister's office and think that you will see her/him the following day. Usually you will have to speak with the person responsible for her/his agenda. You can call directly to the minister's office and ask to speak to that person.

Once you have the information don't be shy to call back within reasonable delays. Follow-up your conversations with letters, by fax preferably.

#### 4. Present your issue

Above all, be specific and express yourself clearly.

- know who you are dealing with: Where do they stand on the issue? Are they very knowledgeable on the issue? You need to be well prepared.

#### Avoiding the Pitfalls of Consultation Processes

The whole consultation experience leading up to the Parliamentary Joint Committee Report on Custody and Access was a shocking experience for women's rights activists – it was basically a take-over by one constituency, the Fathers' Rights movement. Luckily, the federal government's response has been to pursue further research and consultation before any changes are acted upon.

Carole Curtis suggests the following general lessons can be learned from this experience and should be drawn on in ongoing work on this subject:

- Recognize the power of a disinformation campaign and the need to deal with it directly.
- Use research to change the parameters of the debate
- Get access to the best Canadian research for this challenge.
- Make sure your research is digestible, easy to read, and accessible.
- Demand space and places for the discussion of the issues as well as strategy sessions on how to put issues forward to the government
- Address the haste with which the Committee worked.
- Use broader mobilization strategies, such as a post-card mobilization
- Develop networks to create a hub in each province to follow up on the report; also develop networks among provinces.

- Don't be deterred by resistance to your point of view and your objectives.
- Be persistent in a reasonable fashion when you are not receiving the information you seek and the means for participation.
- When you disagree, accept the other's point of view and agree to disagree.

### 5. A few tips

- Do things in stages
- Keep your allies informed
- Keep records of your activities

## 12. Designing a Media Strategy

Media strategies can range in sophistication from minimal (e.g., one or two press conferences advertising the launch and the successful conclusion of an advocacy effort) to full-blown campaigns that include ongoing relationships with media contacts.

### BEST PRACTICES

- Early in the project, decide where media coverage fits into the overall priorities of the advocacy effort. Media planning is thus incorporated into the initial blueprint for the project.
- Have the organization's top spokespersons get involved early in the process and take responsibility for planning media coverage.

#### Working with the media: building a strategy

“Think about media coverage as a water faucet. When the systems are turned on, water pours through the faucet. When the systems are turned off or left dormant, the water stops. Likewise, if an organization aggressively works at getting news coverage, then good press coverage will become routine. Waiting passively for the media to call you may mean that your group stays invisible to the outside world. If the leaders of your group decide media coverage is a top priority, they must be prepared to allocate resources accordingly.”

(From *Strategic Media: Designing a Public Interest Campaign* (Communications Consortium Media Center, 1994))

### Tips for dealing with the media

- Work at developing long-term relationships in the media, not one-shot attempts at publicity.
- Read the papers, watch TV and listen to the radio. Identify media who deal with your issue, positively or negatively.

- Analyze and assess your media outlets and opportunities.

Remember that “the media is only a vehicle to help you reach an audience.”

- Be pro-active; take the initiative; make the call; send the letter.

- Seek out potential “partners”; cultivate them by sending regular information/newsletters etc.; keep in touch.

- Be clear, succinct and professional

- Remember to register your approval. Congratulations/thanks are a very useful tool to ensuring further progressive/positive coverage of your issue. You may also encourage a potential “partner” in the media.

◦ (REPRINTED FROM *Take Action...* WITH PERMISSION OF THE EDITORS)

- Periodically measure and track public opinion.
- Use different approaches to change public opinion on the issue and mobilize the people who already support the issue.
- Chart past press coverage. Reviewing previous press coverage of the issue, if any, helps assess how it might have been more accurate, who was quoted, and what arguments were put forth by representatives from all sides of the issue.
- Encourage creativity among people involved in the advocacy initiative. Brainstorm strategies for achieving the best possible press coverage and presenting issues to reporters. Think about using visuals to get attention. Consider using alternative formats, including political cartoons.
- Keep track of all press coverage.
- Periodically review, revise and repeat the message.

## Working Collaboratively

### 13. Overcoming Obstacles to Coalition Work in the Litigation Process

(*Working Together Across Our Differences*, Avvy Go and John Fisher, reprinted by permission)

Here are some things we can do to overcome obstacles to coalition work:

- Develop realistic expectations about what can or cannot be accomplished.
- Have more experienced groups take responsibility for supporting those with less litigation experience, and ensure that their perspectives are equally valued.
- Develop a buddy system to pair up coalition partners with various degrees of familiarity with litigation. This is a way of ensuring partners with less experience can participate meaningfully.
- Develop realistic timeframes, because decision-making is always a lengthy process.
- Have a coordinating partner who is responsible for the administration of the coalition, and who is responsible for passing instructions on to the lawyer.

- Designate decision-making bodies or individuals who have authority to make decisions in emergency or time-sensitive situations, as well as guidelines to determine what decisions they can or can't make.
- Ensure clarity of decision-making and other structures.
- Develop good mechanisms for information sharing and keeping each other informed.
- Ensure a welcoming environment in which introductions are made, explanations are given as to who is or is not able to be present and what everyone's role is; and processes are explained and respected.
- Ensure a multidisciplinary approach in which those with legal experience, academics, community advocates and others can participate equally.
- Recognize that each group will contribute to the extent that it is able. Each group must have the equal opportunity to contribute to the extent that it wishes, but different groups will choose different levels of participation.
- Ensure the selection of lawyers who are comfortable working with community groups and sharing decision-making.

## 14. Developing a Credible and Inclusive Public Policy Process

(from *Toward a Credible and Inclusive Public Policy Process*, developed by Women in Public Policy Process Project)

These steps can help you decide what you need to begin a public policy process that involves community groups, researchers and government.

### 1. Identify common understandings and ground rules for working together

It is important that all parties - members of community-based equality seeking groups, government policy-makers and researchers - agree to work together on the basis of shared understandings. This involves: agreeing upon an open, clear and inclusive process; recognizing the value of community-based and academic research; agreeing to ensure that all activities, materials, and forms of communication are accessible; and agreeing to ensure that accountability mechanisms are established and put in place.

## 2. Lay the groundwork

When the three parties start to work together, each needs to clarify and outline its roles and responsibilities; adopt accessibility guidelines; and discuss and find ways to address power imbalances.

## 3. Identify and access information and resource needs

There are key resources that need to be recognized and made available for all three parties to effectively work on public policies.

## 4. Build strategies and work plans

For effective involvement in the public policy process, all parties, particularly communities new to the process, should plan their approach in advance. Standard processes should also be set up to inform each group of what to expect, and what is expected of them in terms of input into the process.

## 5. Put strategies and processes into action

When working together it is important that the three parties adhere to the agreed upon standard processes and forms of input.

## 6. Evaluate joint process and outcomes

An evaluation process is to be carried out and progress monitored to assess the success of the public policy process and agreements made.

# 15. Developing Working Principles for Inclusive Processes

(based on the WIPP report)

Here is a list of attributes that work to ensure your process is inclusive:

- the parties listen, are honest, do not personalize attacks: we are hard on problems, easy on people
- we recognize and acknowledge different perspectives

### Building an equality network: working with the Internet

During the national forum consultations took place about developing an action plan for an Internet-based network of equality-seeking groups across the country. The network would share information about upcoming section 15 cases and issues and possibly link into a database of equality cases, materials and facts. Starting in the fall of 2001, look for developments at the Court Challenges Program website: <http://www.ccpcj.ca>

- we have made a commitment to working inclusively
- we have made a commitment to involve all those affected early on in the process
- our work is grounded in women's grass roots experience
- we take into account the broader/global issues and forces
- our participants are educated about and sensitive to issues of discrimination
- we ensure that diverse groups are represented and heard
- we recognize and acknowledge fear of consequences or reprisals
- we ensure accountability: there is clarity on who is speaking for whom
- we have a process in place for negotiating power asymmetries

## 16. Doing Collaborative Work: a Checklist

*(How do we get there from here? The Mountain and Beyond, Interdisciplinary Project on Domestic Violence)*

This checklist was developed for activists involved in addressing domestic violence; however you can substitute your priority of area of concern as you work through it.

### DO YOU HAVE A FOCUS FOR COLLABORATION?

1. Are you ready at the personal, organizational, community or systems level to increase collaboration?
2. What are the most important needs in your workplace/practice/community or province for increased collaboration on domestic violence issues?
3. Have any problems related to domestic violence been identified as priorities by leaders in your professional or community groups?
4. Is a conference or workshop on domestic violence planned in the near future in your community? Could you use this form to stimulate collaboration around stopping the violence?

### HAVE YOU MADE A PERSONAL COMMITMENT TO COLLABORATION?

5. How can you learn more about others in the field and the services they offer?

6. How can you make this information available to others?
7. What are the major barriers to collaboration in your situation?
8. What actions can you take to address these barriers?

#### HOW CAN YOU INCREASE COORDINATION WITHIN AND BETWEEN ORGANIZATIONS?

9. Are there programs and activities in your organizations that could work better using a multidisciplinary team?
10. How could you encourage managers to make a commitment to coordination?
11. If you have a board or directors, how could you bring them on-side?

#### HOW CAN YOU COLLABORATE WITH OTHERS IN THE COMMUNITY?

12. What community initiatives concerning domestic violence could you or your organization initiate or become involved in?
13. Is there any coordinating committee, group or task force in your community already? Could you join it?
14. Are any of the central “players” excluded from the coordinating process? How can they be included?
15. Given the needs, participants, constraints and strengths of your community, what is the best way to develop collaboration?

#### HOW CAN YOU PROMOTE CHANGES IN PROFESSIONAL AND GOVERNMENT POLICIES, PROGRAM AND LEGISLATION?

16. What information and arguments can you present to decision-makers that will help to convince them of the need for more integrated responses to domestic violence?
17. How can you work with others to achieve change in the “system’s” response to domestic violence?
18. How can you try to overcome the systemic barriers to collaboration?

*(Examples of People Working Together, The Mountain and Beyond, Interdisciplinary Project on Domestic Violence)*

## ATTITUDES THAT SUPPORT CONSENSUS

- having an expectation of cooperation, of sharing information and resources
- placing an emphasis on mutual trust
- believing in the common ownership of ideas
- valuing feelings
- valuing conflict that results from diverse points of view and is handled constructively
- making an effort to equalize power

## OVERCOMING THOUGHT BARRIERS TO COOPERATION

<b>Barrier</b>	<b>Solution</b>
All or nothing thinking	Try not to see all issues in black and white. There is usually room for compromise.
Overgeneralizing	Don't blow failures in cooperation out of proportion. Make sure you celebrate the victories as well.
Jumping to conclusions	Don't assume you know what your colleagues are thinking. Ask questions. Clarify. Talk it out.
Relying on "old" information	People and organizations change. Too often we have long memories for the errors of the past.
Discounting others	Many of us have subtle biases against those who are "different" from us in appearance, belief, styles, etc. This bias can interfere with real communication and understanding.



# APPENDIX A

## **Selected Equality Rights Provisions in Canadian and International Law**

*Transforming Women's Future: A Guide to Equality Rights Theory and Action*  
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# Canadian Charter of Rights and Freedoms

## (Selected Provisions)

### *Guarantee of Rights and Freedoms*

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

### *Legal Rights*

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

### *Equality Rights*

- 15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.  
  
(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

### *Enforcement*

- 24 (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.  
  
(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

*General*

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

*Application of the Charter*

- 32 (1) This Charter applies
- (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
  - (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.
- (2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

*Equalization and Regional Disparities*

- s. 36 (1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to:
- (a) promoting equal opportunities for the well-being of Canadians;
  - (b) furthering the economic development to reduce disparity in opportunities; and
  - (c) providing essential public services of reasonable quality to all Canadians.
- (2) Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

*General*

- s. 52 (1) the Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

# Canadian Human Rights Act

## (Selected Provisions)

### PURPOSE OF ACT

2. The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

### PART I PROSCRIBED DISCRIMINATION

#### General

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.  
  
(2) Where the ground of discrimination is pregnancy or child-birth, the discrimination shall be deemed to be on the ground of sex.
- 3.1 For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds.
4. A discriminatory practice, as described in sections 5 to 14.1, may be the subject of a complaint under Part III and anyone found to be engaging or to have engaged in a discriminatory practice may be made subject to an order as provided in sections 53 and 54.

#### Discriminatory Practices

5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public
  - (a) To deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

(b) To differentiate adversely in relation to any individual, a prohibited ground of discrimination.

6. It is a discriminatory practice in the provision of commercial premises or accommodation
  - (a) to deny occupancy of such premises or accommodation to any individual, or
  - (b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.
  
7. It is a discriminatory practice, directly or indirectly,
  - (a) to refuse to employ or continue to employ any individual, or
  - (b) in the course of employment, to differentiate adversely in to an employee, a prohibited ground of discrimination.
  
8. It is a discriminatory practice
  - (a) to use or circulate any form of application for employment, or
  - (b) in connection with employment or prospective employment, to
  - (c) publish any advertisement or to make any written or oral inquiry expresses or implies any limitation, specification or preference based on a prohibited ground of discrimination.
  
9. (1) It is a discriminatory practice for an employee organization on a prohibited ground of discrimination
  - (a) to exclude an individual from full membership in the organization;
  - (b) to expel or suspend a member of the organization; or
  - (c) to limit, segregate, classify or otherwise act in relation to an individual in a way that would deprive the individual of employment opportunities, or limit employment opportunities or otherwise adversely affect the status of the individual, where the individual is a member of the organization or where any of the obligations of the organization pursuant to a collective agreement relate to the individual

(2) Notwithstanding subsection (1), it is not a discriminatory practice for an employee organization to exclude, expel or suspend an individual from membership in the organization

because that individual has reached the normal age of retirement for individuals working in positions similar to the position of that individual.

10. It is a discriminatory practice for an employer, employee organization or employer organization
  - (a) to establish or pursue a policy or practice, or
  - (b) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment, that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.
  
11. (1) It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.
  - (2) In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.
  - (3) Separate establishments established or maintained by an employer solely or principally for the purpose of establishing or maintaining differences in wages between male and female employees shall be deemed for the purposes of this section to be the same establishment.
  - (4) Notwithstanding subsection (1), it is not a discriminatory practice to pay to male and female employees different wages if the difference is based on a factor prescribed by guidelines, issued by the Canadian Human Rights Commission pursuant to subsection 27(2), be a reasonable factor that justifies the difference.
  - (5) For greater certainty, sex does not constitute a reasonable factor justifying a difference in wages.
  - (6) An employer shall not reduce wages in order to eliminate a discriminatory practice described in this section.
  - (7) For the purposes of this section, “wages” means any form of remuneration payable for work performed by an individual and include
    - (a) salaries, commissions, vacation pay, dismissal wages and bonuses;
    - (b) reasonable value for board, rent, housing and lodging;
    - (c) payments in kind;

- (d) employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans; and
  - (e) any other advantage received directly or indirectly from the individual's employer.
12. It is a discriminatory practice to publish or display before the public or to cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation that
- (a) expresses or implies discrimination or an intention to discriminate, or
  - (b) incites or is calculated to incite others to discriminate if the discrimination expressed or implied, intended to be expressed or implied or incited or calculated to be incited would otherwise, engaged in, be a discriminatory practice described in any of sections 5 to 11 or in section 14.
13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.
- (2) Subsection (1) does not apply in respect of any matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.
- (3) For the purposes of this section, no owner or operator of a telecommunication undertaking communicates or causes to be communicated any matter described in subsection (1) by reason only that the facilities of a telecommunication undertaking owned or operated by that person are used by other persons for the transmission of that matter.
14. (1) It is a discriminatory practice,
- (a) in the provision of goods, services, facilities or accommodation customarily available to the general public,
  - (b) in the provision of commercial premises or residential accommodation, or
  - (c) in matters related to employment, to harass an individual on a prohibited ground of discrimination.
- (2) Without limiting the generality of subsection (1), sexual harassment shall, for the purposes of that subsection, deemed to be harassment on a prohibited ground of discrimination.

- 14.1 It is a discriminatory practice for a person against whom a complaint has been filed under Part III, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim.
15. (1) It is not a discriminatory practice if
- (a) any refusal, exclusion, expulsion, suspension, limitation, or preference in fide occupational requirement;
  - (b) employment of an individual is refused or terminated because that individual has not reached the minimum age, or has reached the maximum age, that applies to that employment by law or under regulations, which may be made by the Governor in Council for the purposes of this paragraph;
  - (c) an individual's employment is terminated because that individual has reached the normal age of retirement for employees working in positions similar to the position of that individual;
  - (d) the terms and conditions of any pension fund or plan established by an employer, employee organization or employer organization provide for the compulsory vesting or locking-in of pension contributions at a fixed or determinable age in accordance with sections 17 and 18 of the Pension Benefits Standards Act, 1985;
  - (e) an individual is discriminated against on a prohibited ground of discrimination in a manner that is prescribed by guidelines, issued by the Canadian Human Rights Commission pursuant to subsection 27(2), to be reasonable;
  - (f) an employer, employee organization or employer organization grants a female employee special leave or benefits in connection with pregnancy or child-birth or grants employees special leave or benefits to assist them in the care of their children; or
  - (g) in the circumstances described in section 5 or 6, an individual is denied any goods, services, facilities or accommodation or access thereto or occupancy of any commercial premises or residential accommodation or is a victim of any adverse differentiation and there is bona fide justification for that denial or differentiation.
- (2) For any practice mentioned in paragraph (1)(a) to be considered to be based on a bona fide occupational requirement and for any practice mentioned in paragraph (1)(g) to be considered to have a bona fide justification, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.

# B.C. Human Rights Code

## (Selected Provisions)

### DISCRIMINATION AND INTENT

2. Discrimination in contravention of this Code does not require an intention to contravene this Code.

### PURPOSES

3. The purposes of this Code are as follows:
  - (a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia,
  - (b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights,
  - (c) to prevent discrimination prohibited by this Code,
  - (d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this Code,
  - (e) to provide a means of redress for those persons who are discriminated against contrary to this Code,
  - (f) to monitor progress in achieving equality in British Columbia,
  - (g) to create mechanisms for providing the information, education and advice necessary to achieve the purposes set out in paragraphs (a) to (f).

## Part 1

### DISCRIMINATORY PRACTICES PROHIBITED

#### DISCRIMINATORY PUBLICATION

7. (1) A person must not publish, issue or display or cause to be published, issued or displayed any statement, publication, notice, sign, symbol, emblem or other representation that
  - (a) indicates discrimination or an intention to discriminate against a person or a group or class of persons, or
  - (b) is likely to expose a person or a group or class of persons to hatred or contempt because of the race, colour, ancestry, place of origin, religion, marital status, family

status, physical or mental disability, sex, sexual orientation or age of that person or that group or class of persons.

7. (2) Subsection (1) does not apply to a private communication or to a communication intended to be private.

#### DISCRIMINATION IN ACCOMMODATION, SERVICE AND FACILITY

- 8 (1) A person must not, without a bona fide and reasonable justification,
- (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
  - (b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public, because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation of that person or class of persons.
8. (2) A person does not contravene this section by discriminating
- (a) on the basis of sex, if the discrimination relates to the maintenance of public decency or to the determination of premiums or benefits under contracts of life or health insurance, or
  - (b) on the basis of physical or mental disability if the discrimination relates to the determination of premiums or benefits under contracts of life or health insurance.

#### DISCRIMINATION IN PURCHASE OF PROPERTY

9. A person must not
- (a) deny to a person or class of persons the opportunity to purchase a commercial unit or dwelling unit that is in any way represented as being available for sale,
  - (b) deny to a person or class of persons the opportunity to acquire land or an interest in land, or
  - (c) discriminate against a person or class of persons regarding a term or condition of the purchase or other acquisition of a commercial unit, dwelling unit, land or interest in land because of the race, colour, ancestry, place of origin, religion marital status, physical or mental disability, sexual orientation or sex of that person or class of persons.

#### DISCRIMINATION IN TENANCY PREMISES

10. (1) A person must not
- (a) deny to a person or class of persons the right to occupy, as a tenant, space that is

represented as being available for occupancy by a tenant, or

(b) discriminate against a person or class of persons regarding a term or condition of the tenancy of the space, because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or class of persons, or of any other person or class of persons.

10. (2) Subsection (1) does not apply in the following circumstances:

(a) if the space is to be occupied by another person who is to share, with the person making the representation, the use of any sleeping, bathroom or cooking facilities in the space;

(b) as it relates to family status or age,

(i) if the space is a rental unit in residential premises in which every rental unit is reserved for rental to a person 55 years of age or older or to 2 or more persons, at least one of whom is 55 years of age, or

(ii) a rental unit in a prescribed class of residential premises;

(a) as it relates to physical or mental disability, if

(i) the space is a rental unit in residential premises,

(ii) the rental unit and the residential premises of which the rental unit forms part,

(A) are designed to accommodate persons with disabilities, and

(B) conform to the prescribed standards, and

(iii) the rental unit is offered for rent exclusively to a person with a disability or to 2 or more persons, at least one of whom has a physical or mental disability.

#### DISCRIMINATION IN EMPLOYMENT ADVERTISEMENTS

11. A person must not publish or cause to be published an advertisement in connection with employment or prospective employment that expresses a limitation, specification, or preference as to race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, or age unless the limitation, specification, or preference is based on a bona fide occupational requirement.

## DISCRIMINATION IN WAGES

12. (1) An employer must not discriminate between employees by employing and employee of one sex for work at a rate of pay that is less than the rate of pay at which an employee of the other sex is employed by that employer for similar or substantially similar work.
12. (2) For the purposes of subsection (1), the concept of skill, effort and responsibility must, subject to such factors in respect of pay rates as seniority systems, merit systems and systems that measure earnings by quantity or quality of production, be used to determine what is similar or substantially similar work.
12. (3) A difference in the pay rate between employees of different sexes based on a factor other than sex does not constitute a failure to comply with this section if the factor on which the difference is based would reasonably justify the difference.
12. (4) An employer must not reduce the rate of pay of an employee in order to comply with this section.
12. (5) If an employee is paid less than the rate of pay to which the employee is entitled under this section, the employee is entitled to recover from the employer, by action, the difference between the amount paid and the amount to which the employee is entitled, together with costs, but
  - (a) the action must be commenced no later than 12 months from the termination of the employee's services, and
  - (b) the action applies only to wages of an employee during the 12 month period immediately before the earlier of the date of the employee's termination or the commencement of the action.

## DISCRIMINATION IN EMPLOYMENT

13. (1) A person must not
  - (a) refuse to employ or refuse to continue to employ a person, or
  - (b) discriminate against a person regarding employment or any term or condition of employment, because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.
13. (2) An employment agency must not refuse to refer a person for employment for any reason mentioned in subsection (1).
13. (3) Subsection (1) does not apply

- (a) as it relates to age, to a bona fide scheme based on seniority, or
  - (b) as it relates to marital status, physical or mental disability, sex or age, to the operation of a bona fide retirement, superannuation or pension plan or to a bona fide group or employee insurance plan.
13. (4) Subsections (1) and (2) do not apply with respect to a refusal, limitation , specification or preference based on a bona fide occupational requirement.

#### DISCRIMINATION BY UNIONS AND ASSOCIATIONS

14. A trade union, employers' organization or occupational association must not
- (a) exclude any person from membership,
  - (b) expel or suspend any member, or
  - (c) discriminate against any person or member because of the race, colour, ancestry, place of origin, political belief, religion , marital status, family status, physical or mental disability, sex , sexual orientation, or age of that person or member, or because that person or member has been convicted of a criminal or summary conviction offence that is unrelated to the membership or intended membership.

# The Saskatchewan Human Rights Code (Selected Provisions)

## PART I BILL OF RIGHTS

### Right to freedom of conscience

4. Every person and every class of persons shall enjoy the right to freedom of conscience, opinion and belief and freedom of religious association, teaching, practice and worship.

### Right to free expression

5. Every person and every class of persons shall, under the law, enjoy the right to freedom of expression through all means of communication, including, without limiting the generality of the foregoing, the arts, speech, the press or radio, television or any other broadcasting device.

### Right to free association

6. Every person and every class of persons shall enjoy the right to peaceable assembly with others and to form with others associations of any character under the law.

### Right to freedom from arbitrary imprisonment

7. Every person and every class of persons shall enjoy the right to freedom from arbitrary arrest or detention.

### Right to elections

8. Every qualified voter resident in Saskatchewan shall enjoy the right to exercise freely his franchise in all elections and shall possess the right to require that no Legislative Assembly shall continue for a period in excess of five years.

PART II  
PROHIBITION OF CERTAIN DISCRIMINATORY PRACTICES

Right to engage in occupations

9. Every person and every class of persons shall enjoy the right to engage in and carry on any occupation, business or enterprise under the law without discrimination because of his or their race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, nationality, ancestry, place or origin or receipt of public assistance.

Discrimination in the purchase of property prohibited

10 (1) No person shall:

(a) deny to any person or class of persons the opportunity to purchase any commercial unit or any place of dwelling that is advertised or in any way represented as being available for sale;

(b) deny to any person or class of persons the opportunity to purchase or otherwise acquire land or an interest in land; or

(c) discriminate against any person or class of persons with respect to any term or condition of the purchase or other acquisition of any commercial unit or any place of dwelling, land or any interest in land; because of the race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, age, nationality, ancestry or place of origin of that person or class of persons or the receipt of public assistance by that person or class of persons.

(2) Nothing in subsection (1) prohibits discrimination on the basis of age, where such discrimination is permitted or required by any law or regulation in force in the province.

(3) Nothing in subsection (1) prohibits the sale, the offering for sale or the advertising for sale of a place of dwelling for occupancy by persons over 55 years of age exclusively.

Discrimination in occupancy of commercial unit or housing accommodation is prohibited

11 (1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall:

(a) deny to any person or class of persons occupancy of any commercial unit or any housing accommodation; or

(b) discriminate against any person or class of persons with respect to any term or

condition of occupancy of any commercial unit or any housing accommodation; because of the race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, nationality, ancestry or place of origin of that person or class of persons or of any other person or class of persons or the receipt of public assistance by any person or any class of persons.

(2) Subsection (1) does not apply to discrimination on the basis of the sex of a person with respect to housing accommodation, where the occupancy of all the housing accommodation in a building, except that of the owner or his family, is restricted to individuals who are of the same sex.

(3) Subsection (1) does not apply to discrimination on the basis of the sex or sexual orientation of a person with respect to the renting or leasing of any dwelling unit in any housing accommodation that is composed of not more than two dwelling units, where the owner of the housing accommodation or his family resides in one of the two dwelling units.

(4) Nothing in subsection (1) prohibits the renting or leasing, the offering for rent or lease or the advertising for rent or lease, of any housing accommodation for occupancy by persons over 55 years of age exclusively.

#### Discrimination prohibited in places to which public admitted

12 (1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall:

(a) deny to any person or class of persons the accommodation, services or facilities to which the public is customarily admitted or which are offered to the public; or

(b) discriminate against any person or class of persons with respect to the accommodation, services or facilities to which the public is customarily admitted or which are offered to the public; because of the race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, age, nationality, ancestry or place of origin of that person or class of persons or of any other person or class of persons or the receipt of public assistance by any person or any class of persons.

(2) Subsection (1) does not apply to prevent the barring of any person because of his sex from any accommodation, services or facilities upon the ground of public decency.

(3) Subsection (1) does not apply to prevent the denial or refusal of any accommodation, services or facilities to a person on the basis of age, if the accommodation, services or facilities are not available to that person by virtue of any law or regulation in force in the province.

(4) Subsection (1) does not apply to prevent the giving of preference because of marital status or family status with respect to membership dues, fees or other charges for services or facilities.

### Right to education

- 13 (1) Every person and every class of persons shall enjoy the right to education in any school, college, university or other institution or place of learning, vocational training or apprenticeship without discrimination because of his or their race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, nationality, ancestry, place of origin or receipt of public assistance.
- (2) Nothing in subsection (1) prevents a school, college, university or other institution or place of learning from following a restrictive policy with respect to enrolment on the basis of sex, creed, religion or disability, where it enrolls persons of a particular sex, creed or religion exclusively, or is conducted by a religious order or society, or where it enrolls persons who are disabled.

### Prohibitions against publications

- 14 (1) No person shall publish or display, or cause or permit to be published or displayed, on any lands or premises or in a newspaper, through a television or radio broadcasting station or any other broadcasting device or in any printed matter or publication or by means of any other medium that he owns, controls, distributes or sells, any representation, including, without restricting the generality of the foregoing, any notice, sign, symbol, emblem, article, statement or other representation:
- (a) tending or likely to tend to deprive, abridge or otherwise restrict the enjoyment by any person or class of persons of any right to which he is or they are entitled under law; or
  - (b) which exposes, or tends to expose, to hatred, ridicules, belittles or otherwise affronts the dignity of any person, any class of persons or a group of persons; because of his or their race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, age, nationality, ancestry, place of origin or receipt of public assistance.
- (2) Nothing in subsection (1) restricts the right to freedom of speech under the law upon any subject.

### Discrimination prohibited in contracts

- 15 (1) No person shall, in making available to any person a contract that is offered to the public:
- (a) discriminate against any person or class of persons; or
  - (b) include terms or conditions in any such contract that discriminate against a person or class of persons; because of the race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, nationality, ancestry or place of origin of that person or class of persons or the receipt of public assistance by that person or class of persons.

(1.1) The right pursuant to subsection (1) does not apply to discrimination on the basis of disability within the meaning of subclause 2(d.1)(ii) where a person refuses to contract with another person who does not have the legal capacity to contract.

(1.2) The right pursuant to subsection (1) is not infringed where:

- (a) a contract of automobile, life, accident or sickness or disability insurance;
- (b) a contract of group insurance between an insurer and an association or person;
- (c) life annuity;
- (d) a pension contract; or
- (e) any contract other than one mentioned in clauses (a) to (d); is prescribed in the regulations as a contract or one of a category of contracts that differentiates or makes a distinction, exclusion or preference on reasonable and bona fide grounds because of disability or family status.

(1.3) The Lieutenant Governor in Council may make regulations prescribing contracts or categories of contracts for the purposes of subsection (1.2).

#### Discrimination prohibited in employment

- 16 (1) No employer shall refuse to employ or continue to employ or otherwise discriminate against any person or class of persons with respect to employment, or any term or condition of employment, because of his or their race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, age, nationality, ancestry, place of origin or receipt of public assistance.
- (2) No employment agency shall discriminate against any person or class of persons because of his or their race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, age, nationality, ancestry, place of origin or receipt of public assistance in receiving, classifying, disposing of or otherwise acting upon applications for its service or in referring an applicant or applicants to an employer or anyone acting on an employer's behalf.
- (3) No employer shall use, in the hiring or recruitment of persons for employment, an employment agency that discriminates against any person or class of persons seeking employment because of his or their race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, age, nationality, ancestry, place of origin or receipt of public assistance.
- (4) No provision of this section relating to age prohibits the operation of any term of a bona fide retirement, superannuation or pension plan, or any terms or conditions of any bona fide group or employee insurance plan, or of any bona fide scheme based upon seniority.

(5) Nothing in this section deprives a college established pursuant to an Act of the Legislature, a school, board of education, or conseil scolaire of the right to employ persons of a particular religion or religious creed where religious instruction forms or may form the whole or part of the instruction or training provided by the college, school, board of education, or conseil scolaire pursuant to The Education Act.

(7) The provisions of this section relating to any discrimination, limitation, specification or preference for a position or employment based on sex, disability or age do not apply where sex, ability or age is a reasonable occupational qualification and requirement for the position or employment.

(8) This section does not prohibit an employer from refusing to employ or refusing to continue to employ a person for reasons of any prohibited ground of discrimination where the employee is:

- (a) employed in a private home; or
- (b) living in the home of his employer.

(10) This section does not prohibit an exclusively non-profit charitable, philanthropic, fraternal, religious, racial or social organization or corporation that is primarily engaged in serving the interests of persons identified by their race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, age, nationality, ancestry, place of origin or receipt of public assistance from employing only or giving preference in employment to persons similarly identified if the qualification is a reasonable and bona fide qualification because of the nature of the employment.

(11) This section does not prohibit an employer from:

- (a) granting employment to, continuing to employ or advancing a person who is the parent, child or spouse of another employee of the employer where a reasonable and bona fide cause exists for the employer's action; or
- (b) refusing to employ, to continue to employ or to advance a person who is the parent, child or spouse of another employee of the employer where a reasonable and bona fide cause exists for the employer's refusal.

# International Convention on the Elimination of All Forms of Discrimination Against Women

## Preamble

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect of human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, and in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

## **PART I**

### **Article 1**

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or propose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil and any other field.

### **Article 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

### **Article 3**

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

### **Article 4**

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

### **Article 5**

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudice and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social

function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

#### **Article 6**

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

### **PART II**

#### **Article 7**

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for selection to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

#### **Article 8**

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

#### **Article 9**

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of her husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

**PART III****Article 10**

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

**Article 11**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
  - (a) The right to work as an inalienable right of all human beings;
  - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

- (c) The right of free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
  - (d) The right of equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
  - (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
  - (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, State Parties shall take appropriate measures:
    - (a) To prohibit, subject to the imposition of sanctions, dismissal on the ground of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
    - (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
    - (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
    - (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.
  3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

### **Article 12**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connexion with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

### Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

### Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
  - (a) To participate in the elaboration and implementation of development planning at all levels;
  - (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
  - (c) To benefit directly from social security programmes;
  - (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
  - (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
  - (f) To participate in all community activities;
  - (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
  - (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

**PART IV****Article 15**

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

**Article 16**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
  - (a) The same right to enter into marriage;
  - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
  - (c) The same rights and responsibilities during marriage and at its dissolution;
  - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
  - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
  - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
  - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

# International Covenant on Economic, Social and Cultural Rights (Selected Provisions)

## PART II

Article 2. 1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3. The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

## PART III

Article 6. 1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Article 7. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:

- (a) remuneration which provides all workers, as a minimum, with:
  - (i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) safe and healthy working conditions;
- (c) equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 9. The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10. The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

Article 11. 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
  - (a) to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
  - (b) taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12. 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Article 13. 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Article 15. 1. The States Parties to the present Covenant recognize the right of everyone:

- (a) to take part in cultural life;
- (b) to enjoy the benefits of scientific progress and its applications;
- (c) to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

# International Covenant on Civil and Political Rights (Selected Provisions)

## PART II

### Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

### Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

As of 15 February 1996

Total Number of States Parties: 133

Most recent States Party: Uzbekistan 28 September 1995

The dates indicated are the dates of deposit of the instrument of ratification, accession or succession by States Parties with the Secretary-General through the United Nations Treaty Section in New York.

In accordance with its article 49 (2), the Covenant enters into force for States Parties three months after the date of deposit of the instrument.

Canada 19 May 1976 a

# APPENDIX B

## List of Contributors at the National Forum

*Transforming Women's Future: A Guide to Equality Rights Theory and Action*  
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**Note:** *These biographies were completed based on information provided for the national forum, Transforming Women's Future: Equality Rights in the New Century, held in November, 1999. The information has not been updated.*

**Abdelmalik, Marie** Marie Abdelmalik has worked with battered women and sexual assault survivors for the past 11 years. She is presently Project Co-ordinator of the Vancouver Custody and Access Support and Advocacy Association. Much of her work has involved direct support and advocacy on behalf of women. Through several organizations she is currently involved in systems change work which involves strategizing for change with other women's groups, service agencies and includes ongoing consultations with government policy and decision-makers to ensure that family justice system policies and practices protect the safety and well being of women and children. The focus of her recently completed thesis is women's experience of post-separation custody and access and the ways in which current Canadian custody and access laws, policies and practices reinforce key aspects of women's inequality.

**Workshop** "Civil Legal Aid in Canada and Gender Equality"

**Aebi, Renata** Renata Aebi has worked in the area of women's rights and promoting rights for children and youth for the past 16 years. She has worked in collectives to establish women's services and programs in Toronto and Vancouver, worked with the transition house movement, taught fine arts in the school system and managed outreach services to street-involved youth. More recently, she has been focusing on the rights of children and youth, particularly with respect to commercial sexual exploitation. Ms. Aebi is employed as the Executive Co-ordinator of the Vancouver Coalition for Children and Youth.

**Workshop** "Justice for Girls"

**Paper** "Justice for Girls" by Annabel Webb, Renata Aebi, and Yasmin Jiwani

**Addario, Lisa** Lisa Addario was called to the Bar in 1988. Since 1993, she has worked in the area of women's equality issues. For the last several years, she has had passion for and advocated on the issue of women's access to civil legal aid. In 1997, she published a report through Status of Women Canada on women's access to civil legal aid services in Canada, *Getting a Foot in the Door: Women, Civil Legal Aid and Access to Justice*. Ms. Addario currently works on policy development issues for the National Associations Active in Criminal Justice, a coalition of direct service organizations who provide services to people in conflict with the law.

**Workshop** "Civil Legal Aid in Canada and Gender Equality"

**Aiken, Sharryn** Sharryn Aiken is currently teaching immigration law and international human rights law at Osgoode Hall Law School in Toronto. She is a faculty associate of the Centre for Refugee Studies at York University and is past President of the Canadian Council for Refugees.

**Workshop** "Refugee Determination: Protecting Women's Equality Rights"

**Aylward, Carol** Carol Aylward is a law Professor at Dalhousie Law School where she has also been Director of the Indigenous Blacks and Mi'kmaq Programme since 1991. She is a Black critical race theorist and has recently published *Canadian Critical Race Theory: Racism and the Law*. In addition to her scholarly work, Professor Aylward is a strong believer in community activism and coalition-building. She is concerned with applying critical race theory to practice and was part of the team involved in the first critical race litigation to reach the Supreme Court of Canada, *R.D.S. v. The Queen*.

**Plenary** Women at the Intersection: Addressing Compound Discrimination

**Workshop** "Litigating Racial Equality"

**Workshop** "Using the Master's Tools: Whether and When Equality Activists Should Choose Rights Litigation to Advance Egalitarian Change"

**Paper** “How to Engage in Critical Race Litigation: Raising Issues of ‘Race’”

**Paper** “Intersectionality: Crossing the Theoretical and Praxis Divide”

**Paper** “Using the Master’s Tools: Whether and When Equality Activists Should Choose Rights Litigation to Advance Egalitarian Change” by Carol Aylward, Sheila McIntyre, and Elizabeth Shilton

**Bain, Penny** Penny Bain is the Executive Director of the BC Institute Against Family Violence. She is a Board member of West Coast LEAF and a researcher for the Women’s Access to Legal Services (WALS) Coalition. She was a senior manager with the BC Legal Services Society for 14 years. She has made presentations and published articles and books on access to legal services, public legal education and violence against women.

**Workshop** “Civil Legal Aid in Canada and Gender Equality”

**Workshop** “Towards Transformative Public Legal Education for Women’s Equality”

**Paper** “Civil Legal Aid in Canada and Gender”

**Bain, Beverly** Beverly Bain is a black lesbian feminist anti-violence educator and trainer. She has worked in the anti-violence movement for the past 17 years. She teaches in the Assaulted Women and Children Counselor Advocate Program at George Brown College in Toronto. Ms. Bain was one of the consultants to the Social Audit which looked at how police handle sexual assault of women in Toronto. She also worked actively with women’s groups during the 12 years of the Jane Doe civil suit against the Metropolitan Police in Toronto.

**Plenary** Violence, Abuse and Misuse of Power in Gendered Relationships

**Workshop** “Creative Application in the Decisions of Jane Doe v. The Metropolitan Police”

**Barabé, Claudine** Claudine Barabé is a lawyer in the firm Campeau, Ouellet & Associé(e)s in Montreal. She practices mainly in the areas of social law, (income

security, employment insurance and so on), administrative law, the Charter and anti-discrimination law. She is currently working on several legal-equality challenges to the Employment Insurance regime. She is also active in the human rights community and participated in the Mouvement action chomage de Montréal.

**Workshop** “Does the Employment Insurance Regime Respect Women’s Equality Rights?”

**Barnsley, Paula** Paula Barnsley is a part time member of the BC Benefits Appeal Board. She recently completed her LL.M thesis on “Understanding Economic (In)equality for Women in Canada’s Retirement Income System: Reform, Restructuring and Beyond.” She is a former teacher and psychologist and a member of the Bar in New Brunswick and Nova Scotia.

**Workshop** “Understanding (In)Equality for Women in Canada’s Retirement Income System: Case Study of the Delivery of a Social Program by the Tax System”

**Paper** “Understanding (In)Equality for Women in Canada’s Retirement Income System: Case Study of the Delivery of a Social Program by the Tax System” by Paula Barnsley and Claire Young

**Basi, Narinder** Narinder Basi has a Ph.D in Economics from Punjab University, Indian and a M.Phil. in Ethnic Relations from Warwick University England. She currently works as an Employment Counselor and Co-ordinator at Progressive Intercultural Community Services in Surrey. She is a co-author of *Asian and White Businesses in Britain*, published in 1996.

**Workshop** “Pathways Through the Maze: How Immigrant Women Navigate Their Early Years in Canada”

**Black, Bill** Bill Black is a Professor of Law at the University of British Columbia, Faculty of Law. He teaches and writes in the areas of the Charter, human rights and social justice. He was a special advisor to the Government of British Columbia and undertook a review of human rights, issuing his report in December of 1994. He is presently a member of the four per-

son Canadian Human Rights Act Review Panel. He is also active in the equality-seeking community and is presently a member of the board of directors of the BC Coalition of People with Disabilities.

**Workshop** “Reforming the Canadian Human Rights System”

**Bogaert, Stephanie** Stephanie Bogaert is a Human Rights Officer with the BC Human Rights Commission. For the last year, she and her colleague, Karen Spears, have been involved in establishing a co-location project in the Downtown Eastside of Vancouver. The objectives of the project were to identify the barriers that prevent this community from pursuing complaints with the Commission and to seek ways of eliminating these barriers.

**Workshop** “Women at the Extreme Margins: Equality Rights of Sex Trade Workers”

**Boyd, Susan** Susan Boyd is a Professor at the University of BC Faculty of Law where she holds the Chair in Feminist Legal Studies. She has written many articles and books and made numerous presentations on subjects relating to women and the law, particularly in relation to custody of children. Professor Boyd worked on LEAF’s factum in *M. v. H.*

**Workshop** “Same-Sex Recognition in Law: Moving Away from the Sameness Trap”

**Paper** “From Outlaw to Inlaw: Bringing Lesbian and Gay Relationships in to the Family System”

**Boyle, Christine** Christine Boyle is a Professor of Law at the University of British Columbia. She has also taught at Queen’s University in Belfast, the University of the West Indies, the University of Windsor, Dalhousie University and Simon Fraser University. Her research interests lie generally in the fields of equality, criminal law and the process of fact determination. She is active in the field of test case equality litigation, most recently in the case of *R. v. Darrach* before the Ontario Court of Appeal. Formerly the Walter S. Owen Professor of Law at UBC, she was the 1995 recipient of the Canadian Association of Law Teachers Award for Academic Excellence, and the

1997 recipient of the Killam Teaching Award at the Faculty of Law, UBC.

**Workshop** “Tracking and Resisting Backlash Against Equality Gains in Sexual Offence Law”

**Paper** “Tracking and Resisting Backlash Against Equality Gains in Sexual Offence Law” by Christine Boyle, Lee Lakeman, Sheila McIntyre and Elizabeth Sheehy

**Braid, Kate** Kate Braid is a poet and carpenter. She holds a master of fine arts in Creative Writing from the University of British Columbia and is the recipient of multiple grants, awards and honours. Her poems have been dramatized nationally on television, video and in live theatre performances. She has also written in the field of women in trades. She has published essays, non-fiction, poetry and anthologies. She has recently won the VanCity Book Prize for the best book by a BC writer pertaining to women’s issues for her book of poetry *Inward to the Bones: Georgia O’Keefe’s Journey with Emily Carr.*

**Plenary** Celebrating Achievements in the Struggle for Women’s Equality: Outlining the Unfinished Agenda

**Paper** “Hearts Starve as Well as Bodies”

**Brodsky, Gwen** Gwen Brodsky is a lawyer and human rights activist in Vancouver. She recently completed and defended her doctoral dissertation on equality rights at Osgoode Hall Law School. Ms. Brodsky has been involved in equality rights litigation for many years and has appeared before a number of administrative tribunals and all levels of court. Her recent cases in the Supreme Court of Canada include *Vriend* and *BCGEU v. PSERC* (the “Firefighter’s case”) She recently co-authored the book *Women and the Equality Deficit: The Impact of Re-Structuring Canada’s Social Programs.*

**Closing Plenary**

**Workshop** “Economic Policy and Equality Guarantees: Making the Connections”

**Buchanan, Kim** Kim Buchanan is a staff lawyer at the National LEAF office. She co-ordinated the community consultations for the Little Sisters case and co-ordinated the Sub-Committee's work with counsel, Karen Busby and Claire Klassen, on developing the written argument in that case.

**Workshop** "Freedom of Expression and Women's Equality: From Butler to Little Sisters"

**Buckley, Melina** Melina Buckley is a lawyer/researcher working mainly in the fields of human rights and dispute resolution and a Ph.D. candidate in law at the University of BC. She was co-counsel (with Kate Hughes) to the CLC, DAWN, LEAF coalition in the *Firefighter's* case and co-counsel in the Canadian Bar Association's intervention in the *Symes* case.

**Closing Plenary**

**Workshop** "Moving Forward with the Law on Adverse Effects Discrimination"

**Workshop** "Exploring the Future of Strategic Test-Case Litigation"

**Workshop** "Reforming the Canadian Human Rights System"

**Paper** "Moving Forward with the Law on Adverse Effects Discrimination: Analytical or Evidentiary Solutions"

**Paper** "Exploring the Potential of Mediation in the Human Rights Context: The Problem of Power and Power Imbalance"

**Burnham, Christine** Christine Burnham is an activist in the trans community. She is an electrolysisist with offices at the Vancouver Gender Clinic. She has published articles about the situation of trans people and employment and other related issues.

**Workshop** "TRANS/Activism: Equality Rights for Trans Women"

**Calder, Gillian** Gillian Calder is an associate with the law firm of Russell & DuMoulin in Vancouver. She is a graduate of the University of British Columbia, Faculty of Law, and is currently a member of West Coast LEAF's Legal Committee. She has done extensive

research in feminist issues. Ms. Calder has facilitated at the 1995 United Nations World Conference on Women in Huairou, China on the issue of the involvement of young women in the United Nations process.

**Workshop** "Advancing Women's Equality Through Law: Section 15 Analysis at the Turn of the Century"

**Paper** "Advancing Women's Equality Through Law: Section 15 Analysis at the Turn of the Century" by Sarah Lugtig and Gillian Calder

**Caron, Michèle** Michèle Caron teaches law at la Faculté de droit de l'Université de Moncton. She has work experience in various domains, including human resources management and as union representative and organizer. She has been a member of the LEAF National Legal Committee for the past three years.

**Plenary** Celebrating Achievements in the Struggle for Women's Equality: Outlining the Unfinished Agenda

**Workshop** "Freedom of Expression and Women's Equality: From Butler to Little Sisters"

**Workshop** "Exploring the Future of Strategic Test-Case Litigation"

**Carty, Elaine** Elaine Carty is a Professor in the School of Nursing at the University of British Columbia. She has previously taught at the University of New Brunswick at Queen's University. Her interests lie in the areas of maternal, newborn and family health. She has focused on the demonstration and evaluation of innovative health care services and has published extensively in these areas. Ms. Carty aspires to influence practice as well as inform the academic community.

**Workshop** "Missing Patients: Transforming Perceptions of Women's Health in Drug Advertising"

**Paper** "Missing Patients: Transforming Perceptions of Women's Health in Drug Advertising"

**Chalifoux, Carolyn** Carolyn Chalifoux is a representative of the New Westminster & District Labour Council, a central labour organization chartered by the Canadian Labour Congress (CLC). She is a facilitator

for the CLC Education Department and assisted in the development of a course for young people on workplace rights. The “Job Smart” course covers workplace legislation including Employment Standards, Health & Safety, Human Rights and Unions. Ms. Chalifoux is a regular guest speaker at school forums and on career days.

**Workshop** “Equality Issues for Young Women in the Workplace”

**Chandi, Serena** Serena Chandi is a graduate of the University of British Columbia. She is actively involved in many non-profit organizations such as the B.C. Human Rights Coalition. She has also served as a volunteer for the West Coast Domestic Workers’ Association and for West Coast LEAF. Ms. Chandi is currently an Advocate for the West Coast Domestic Workers’ Association.

**Workshop** “Domestic Workers and Equality in the Workplace: Stories and Solutions”

**Chappell, Monika** Monika Chappell is a community-based participatory researcher and currently the BC Provincial Trainer for a Portfolio Development Program for the DisAbleD Women’s Network Canada. As a member of diverse communities who has also survived the mental health system, she has experience and authorship in issues of violence, access to services, access to justice, mental health and substance abuse.

**Workshop** “Becoming Comfortable with the Uncomfortable”

**Charlie, Barbara** Barbara Charlie is a member of the Capilano Family, Squamish Nation, (“Nauknacklavct”). She has long been an activist in Native interests. She served for two years on the National Task Force of Aboriginal Women on Bill C-31, the Indian Act. She has developed training programs for Aboriginal groups and is the past President and General Manager of Vancouver Native Housing. At present she is a Chief and Council’s elder adviser to the social development department of the Squamish Nation.

**Plenary** Celebrating Achievements in the Struggle

for Women’s Equality: Outlining the Unfinished Agenda

**Closing Plenary**

**Cheney, Janice** Janice Cheney is Legal Counsel with the Canadian Human Rights Commission. She is also Chair of the Legal Issues Committee for EGALE (Equality for Gays and Lesbians Everywhere), a national lobby group which advocates for the equality rights of lesbians, gays and bisexuals in Canada. She has worked on several cases including: *M. v. H.*, *Vriend et al v. Alberta*, *Regan v. Canada*, *CUPE and Rosenberg v. Canada*, and *Hurley v. the Minister of Justice*. Ms. Cheney has written books and articles and made presentations on women’s legal rights.

**Workshop** “Sexual Harassment and Human Rights Legislation: Toward Effective Remedies”

**Paper** “The Statistics: What do they Mean? What Questions Do They Raise”

**Chettiar, Valli** Valli Chettiar practises law at the firm of Ladner Downs in Vancouver. She is very active within the Law Society of BC (Multiculturalism Committee and Multicultural Policy Task Force) and the Canadian Bar Association (Branch and National Equality Committees, Executive Committee and Law Practice Management Section). She is currently involved in the implementation of the Association’s Report on Racial Equality in the Legal Profession.

**Workshop** “Addressing Equality and Diversity within a Professional Association: The Experience of the Canadian Bar Association”

**Chrest, Shelley L.** Shelley Chrest is a lawyer and a past member of the Board of West Coast LEAF and former Chair of the Law & Government Liaison Committee. She advocated for law reform to the *Bankruptcy and Insolvency Act* in relation to assault judgments and for the recognition of sexual harassment as a compensable injury under the *Workers Compensation Act*.

**Workshop** “Law Reform and Consultation in the Women’s Equality Seeking Community: Taking a Conscious Look”

**Cole, Lesley** Lesley Cole, a registered nurse, is a research assistant and nurse educator at BC Women's Hospital. She is the co-ordinator of the Domestic Violence Screening Program at BC Women's and St. Paul's Hospital and a nurse examiner at BC Women's Sexual Assault Service in Vancouver. She has presented numerous workshops on domestic violence and health care.

**Workshop** "Transforming Institutional Cultures – Domestic Violence and the Challenges for Health Care and Legal Systems"

**Paper** "Transforming Institutional Culture – Domestic Violence and the Challenges for Health Care and Legal Systems" by Patricia Jansen, Kathleen Mackay, Lesley Cole, Jude Poirier

**Conkie, Jennifer** Jennifer Conkie has a small law firm in Vancouver where she practices an eclectic mix of employment and commercial litigation with a particular interest in women's rights and issues. A past board member of West Coast LEAF and Chair of its Legal Committee, she was also counsel for LEAF in its Supreme Court of Canada intervention in the *Blencoe* case.

**Workshop** "Litigating Social Justice"

**Coombe, Jane** Jane Coombe is a program manager and policy analyst for the BC Ministry of Attorney General Victim Services Division with particular responsibility for justice system issues relating to violence against women in relationships. She developed the policy and plan for the implementation of the Attorney General's Violence Against Women in Relationships (VAWIR) Policy. Ms. Coombe also developed police, Crown Counsel and victim services workers training in criminal harassment enforcement. She is a member of several inter-ministry committees relating to violence against women.

**Workshop** "Finding a Balance: Justice System Discretion and the Empowerment of Women Who Have Been Victimized"

**Paper** "Finding a Balance: Justice System Discretion and the Empowerment of Women Who Have Been Victimized" by Jane Coombe, Linda Light, Tracy Porteous and Gisela Ruebsaat

**Cornish, Mary** Mary Cornish is a Toronto feminist labour and human rights lawyer. She was recently counsel in a successful Charter section 15 challenge to the Ontario government's repeal of certain pay equity laws (*SEIU v. Attorney-General*). Ms. Cornish is co-founder and spokesperson for the Equal Pay Coalition, the principal lobby group which persuaded the Ontario Government to implement pay equity legislation. She has authored numerous legal publications on women's and labour issues and Chaired a Task Force on reform of the Ontario Human Rights Commission which reported in 1992.

**Workshop** "Reforming the Canadian Human Rights System"

**Workshop** "Strategizing Around the Beijing Process"

**Workshop** "Section 15 at the Trial Level"

**Paper** "Achieving Equality: A Proposal for a New Canadian Human Rights Enforcement System"

**Paper** "Canadian Compliance with Beijing Platform for Action Pay and Employment Equity Requirements"

**Paper** "Section 15 at the Trial Level – Presenting the SEIU 204 Charter Challenge" by Mary Cornish, Elizabeth Shilton and Fay Faraday

**Côté, Andrée** Andrée Côté is Director of Law Reform at the National Association of Women and the Law (NAWL). She is committed to research, training, and popular legal education, specializing in judicial treatment of crimes of violence against women and access to justice issues. She has been active in women's groups in Quebec and Ontario, has co-ordinated a number of projects within those communities and has been a sessional lecturer in Women's Studies at York University.

**Plenary** Violence, Abuse and Misuse of Power in Gendered Relationships

**Workshop** "Towards Transformative Public Legal Education for Women's Equality"

**Cross, Pamela** Pamela Cross is a sole practitioner and the Legal Director of METRAC (Metropolitan Action Committee on Violence Against Women and

Children), which addresses the issue of justice and violence against women and children. She is also the co-ordinator of the Ontario Women's Justice Network, whose members are primarily women's shelters and sexual assault centres.

**Workshop** "Providing Legal Services for Women Experiencing Violence"

**Paper** "Providing Legal Services for Women Experiencing Violence"

**Curtis, Carole** Carole Curtis, a Toronto lawyer who practices family law, has been counsel for LEAF on *Albrecht v. Albrecht* (1991), *Gordon v. Goertz* (1996), and *J.G. v. New Brunswick* (1999). Her practice includes equality rights and constitutional litigation. Ms. Curtis is active in many associations, including as a Bencher of the Law Society of Upper Canada (since 1991), a member of the Ontario Legal Aid Committee, and a member of the National Association of Women and the Law Custody and Access Committee. She has published papers and presented numerous talks on issues relating to women's legal rights.

**Workshop** "Custody and Access Reform: A Challenge for Women's Rights"

**Workshop** "Civil Legal Aid in Canada and Gender Equality"

**Paper** "The Tortured Path to Law Reform of Custody and Access Law in Canada: Do Women's Experiences Matter?"

**Day, Shelagh** Shelagh Day is a human rights advocate in Vancouver, President and Senior Editor of the Canadian Human Rights Reporter, and author of many articles and studies on women's equality rights. She recently co-authored *Women and the Equality Deficit: The Impact of Restructuring Canada's Social Programs* and several studies on reform of the human rights complaint process. Ms. Day has been active in taking women's equality claims to the United Nations and other international fora.

**Plenary** Economic Policy and Women's Rights

**Workshop** "Economic Policy and Equality Guarantees: Making the Connections"

**Workshop** "Reforming the Canadian Human Rights System"

**Derrick, Anne**

**Plenary** Violence, Abuse and Misuse of Power in Gendered Relationships

**Workshop** "Women and Girls in Conflict with the Law"

**Workshop** "Women at the Extreme Margins: Equality Rights of Sex Trade Workers"

**Diamond, Bonnie**

**Workshop** "Toward Effective Government Consultations/Law Reform"

**Drescher, Evelyn** Evelyn Drescher is a national and international social activist on the subject of women's unpaid work. She has researched, written and spoken on unpaid work as an equality issue for eight years. She is the Chair of Research and Policy Development for Mothers Are Women and the project manager of the "Foundations of Equality and Work in the New Millennium" Project.

**Workshop** "Valuing Unpaid Work"

**Workshop** "Strategizing Around the Beijing Process"

**Paper** "Just Awards and Fair Value: Valuing Unpaid Work as a Legal Strategy for Equality" by Evelyn Drescher, Kathryn Spracklin and Sonya Nigam

**Drewitt, Nancy** Nancy Drewitt is Project Co-Coordinator of the Vancouver Custody and Access Support and Advocacy Association and is a member of the Women's Access to Legal Services Coalition.

**Workshop** "Civil Legal Aid in Canada and Gender Equality"

**Workshop** "Law Reform and Consultation in the Women's Equality Seeking Community: Taking a Conscious Look"

**Dukovich, Senka** Senka Dukovich is a graduate of McGill University and Osgoode Hall Law School. She

is the Executive Director/Lawyer with P.E.A.L.S., Pay Equity Advocacy & Legal Services and CUPE Airline Division Women's Committee. She has extensive expertise in the area of pay equity and has written and lectured on this topic nationally.

**Workshop** "The Future of Pay Equity Enforcement"

**Dumont, Daphne** Daphne Dumont, a lawyer from Prince Edward Island, is the President of the Canadian Bar Association (2000 – 2001). She is a founding member of LEAF and ex-member of the LEAF Legal Committee. She is a member of the Canadian Bar Association Equality Committee and was a member of the Bertha Wilson Task Force on Gender Equality in the Legal Profession. She is the Chair of the Prince Edward Island Legal Aid Committee. Ms. Dumont has written articles on matrimonial property law.

**Workshop** "Civil Legal Aid in Canada and Gender Equality"

**Eberts, Mary** Mary Eberts received her law degree from the University of Western Ontario and her masters in law from Harvard University. She practices with the firm Ebert Symes Street & Corbett. She has been a lecturer and Assistant Professor at the University of Toronto, Faculty of Law and has served on many community based organizations. Ms. Eberts is a co-founder of LEAF and has served as counsel in many equality rights cases for LEAF, Native Women's Association of Canada and other women's groups. She is the recipient of many distinguished awards including the Law Society Medal, Law Society of Upper Canada, a Doctor of Human Letters from Mt. St. Vincent University and the Woman of Distinction Award from the YWCA of Metro Toronto.

**Plenary** Celebrating Achievements in the Struggle for Women's Equality: Outlining the Unfinished Agenda

**Workshop** "Litigating Aboriginal Women's Equality"

**Faith, Karlene** Karlene Faith is an associate Professor in the Schools of Criminology and Women's Studies at Simon Fraser University. In addition to being a lecturer she has spent the better part of three decades as

a researcher, public speaker and activist on issues of women's imprisonment and human rights. In addition to other books and articles written by her, Ms. Faith is the author of the book, *Unruly Women: The Politics of Confinement and Resistance*.

**Workshop** "Women and Girls in Conflict with the Law"

**Faraday, Fay C.** Fay Faraday was the 1993 gold medallist at Osgoode Hall Law School and currently practises in Toronto with Cavalluzzo Hayes Shilton McIntyre & Cornish. Her practice focuses on written advocacy, research and appellate level co-counsel work with an emphasis on constitutional, Charter, administrative, human rights and pay equity law. Ms. Faraday was co-counsel representing the Ontario Federation of Labour in *Ferrel v. Ontario*, a Charter challenge to the Ontario government's repeal of Ontario's *Employment Equity Act*. She is a long-standing member of the National Association of Women and the Law.

**Workshop** "Employment Equity – Who Has Benefited?"

**Workshop** "The Future of Pay Equity Enforcement"

**Paper** "Strategies for Achieving Employment Equity" by Mary Cornish and Fay Faraday

**Fay, Jeanne** Jeanne Fay is a legal worker with Dalhousie Legal Aid Services. Since 1969, she has worked with and advocated on behalf of single mothers on social assistance. She has written articles and papers and made numerous presentations on poverty issues and women's legal rights.

**Workshop** "Beyond Saints and Sinners: Equality and the Ideological Construction of Single Mothers on Social Assistance"

**Paper** "Getting Beyond Saints and Sinners: Strategies for Addressing the Effect of Archetypal Constructions of Single Mothers on Equality Seeking Litigation"

**findlay, barbara** barbara findlay is an equality rights lawyer and activist with thirty years experience in the equality and liberation struggles, first of white, straight feminists and then of people of colour and queers. She writes from and about the perspective of an ally to trans people.

**Workshop** “TRANS/Activism: Equality Rights for Trans Women”

**Workshop** “Becoming Comfortable with the Uncomfortable”

**Paper** “An Introduction to Transgender Women”

**Paper** “With All of Who We Are: a Discussion of Oppression and Dominance”

**Fraze, Catherine** Catherine Frazee, an Ontario lawyer practicing in the areas of mediation and arbitration, is the Associate in Research and Social Development at the Roehr Institute and serves as the part time Vice-Chair of the Ontario Workplace Safety and Insurance Appeals Tribunal. She is a former Chief Commissioner of the Ontario Human Rights Commission. She is active in numerous volunteer committees including the Council of Canadians with Disabilities Human Rights Committee. Ms. Frazee is a former member of the LEAF National Board and the Legal Committee. She has written many articles and made numerous presentations on equality and disability rights.

**Plenary** Celebrating Achievements in the Struggle for Women’s Equality: Outlining the Unfinished Agenda

**Workshop** “Equality Issues for Women with Disabilities”

**Fry, Hedy** Dr. Hedy Fry is a Liberal Member of Parliament representing Vancouver Centre and Secretary of State (Status of Women and Multiculturalism). She is a native of Trinidad and a medical practitioner. Dr. Fry’s deep concern for the welfare of the community has been reflected in her work and in her active participation in many community and professional groups. She was Parliamentary Secretary to the Minister of Health (1993 – 96), a member of the Task Force on Reform of the Social Security System (1994), and a

member of the Standing committee on Health (1994). She is also a member of the Sub-Committee on AIDS and a member of the caucus Committee on Social Policy.

**Closing Plenary**

**Fudge, Jennifer** Jennifer Fudge is the provincial Innovations Program Co-ordinator for the Vancouver based People’s Law School and the former Program Co-ordinator and newsletter editor for the Public Legal Information Association of Newfoundland.

**Workshop** “Strategies to Overcome Geographical Isolation as an Intensifying Barrier for Women Accessing Legal Information: a Roundtable Discussion”

**Paper** “Accessing Legal Information and Education: A Discussion of the Universal and Intensifying Barriers Facing Geographically Isolated Women”

**Genaille, Sheila** Sheila Genaille is a seventh generation Métis from the historic Rupert’s Land. She is a strong advocate of Métis rights and a defender of the Canadian federation. She has served as a member of the Canadian delegation to the 43rd United Nations Session on the Status of Women, March, 1999, and she is Co-Chair of the Indigenous Women of the Americas, Canadian Committee. She has published extensively in the area of Métis women. Ms. Genaille is currently National President, Métis National Council of Women.

**Plenary** Revisiting Constitutional Personhood: A Focus on the Experience of Native Women

**Gillis, Laurie** Laurie Gillis is a law student at Queen’s University and a community activist. She has done research and writing on human and equality rights and on access to justice issues. She assisted West Coast LEAF with research for the “Firefighters” case.

**Workshop** “Being a Woman can Add Up against Us: The Discriminatory Impact of Adult Guardianship Laws on Women”

**Paper** “An Equality Critique of Adult Guardianship Laws in Canada”

**Go, Avvy** Avvy Go received her bachelor of law degree from the University of Toronto. She has worked in the legal clinic system since her call to the bar. She focuses on immigration and refugee, policing, anti-poverty issues and human rights issues. She has been involved with a number of community based organizations such as Chinese Canadian National Council (Toronto Chapter) of which she was President from 1989 to 1993, Urban Alliance on Race Relations, Social Planning Council of Metro Toronto and the Court Challenges Program. Ms. Go recently completed her LL.M. at Osgoode Hall Law School.

**Plenary Coalition Works!**

**Plenary Women at the Intersection: Addressing Compound Discrimination**

**Paper** “Working Together Across our Differences: A Discussion Paper on Coalition-building, Participatory Litigation and Strategic Litigation” by Avvy Go, Metro Toronto Chinese and Southeast Asian Legal Clinic (MTCSALC), John Fisher, Equality for Gays and Lesbians Everywhere (EGALE)

**Gray, Victoria** Victoria Gray, Q.C., a Vancouver lawyer practicing commercial and general litigation, is a previous Chair of West Coast LEAF and former member of the National LEAF Legal Committee. Ms. Gray was counsel for LEAF at the Supreme Court of Canada in *Norberg v. Wynrib*. She is frequently asked to speak on civil litigation remedies and practice.

**Workshop** “Section 15 at the Trial Level”

**Paper** “Litigating an Equality Case: An Intervenor’s Perspective”

**Hamilton, Jamie Lee** Jamie Lee Hamilton is the Director of Grandma’s House, a shelter and support program for women and transgendered people who are sex trade workers.

**Workshop** “Women at the Extreme Margins: Equality Rights of Sex Trade Workers”

**Hawkins, Kathy** Kathy Hawkins is the National Coordinator for Disabled Women’s Network Canada

(DAWN) and has been involved in that organization in a volunteer capacity for over five years. She is responsible for all the technological aspects of the DAWN network and has an extensive background in technology and facilitating a wide array of internet workshops.

**Workshop** “Spinning the Web of Equality”

**Hecht, Judy** Judy Hecht has been on the steering committee for the Pro-Choice Action Network (formerly the BC Coalition for Abortion Clinics) for the last eight years. Prior to that she was a counselor at Planned Parenthood for two years. She is also a Vice-President of the Canadian Abortion Rights Action League. Ms. Hecht received a degree in sociology and political science with a minor in women’s studies from Boston University at a time when women’s studies was just starting to become part of the liberal arts curriculum. Her other community involvements include anti-racism work. Ms. Hecht was a member of the intervener coalition (on behalf of Pro-Can) in the *Lewis* case which reinstated the *Access to Abortion Services Act* (“Bubblezone legislation”) in British Columbia after it had been struck down in the lower courts.

**Workshop** “Abortion in Canada: The Unfinished Agenda”

**Helgason, Sherri** Sherri Helgason is the Regional Director of the BC and Yukon Regional Office of the Canadian Human Rights Commission. She has worked in the human rights field for most of the last decade and has represented the Commission at numerous conferences and workshops promoting equality throughout Canada.

**Workshop** “Working Together for Change: Seeking Equality through the Strategic Use of Human Rights Law”

**Hughes, Kate** Kate Hughes is a lawyer with the Toronto firm of Cavalluzzo Hayes Shilton McIntyre & Cornish. She has practiced union side labour law with an emphasis on human rights, discrimination and harassment issues for the last 12 years. She is a graduate of Osgoode Hall Law School and has been called

to the Bar in both Ontario and British Columbia. She was recently co-counsel (with Melina Buckley) to the CLC, DAWN, LEAF intervention in the Firefighter's case.

**Workshop** “The Role of Unions in Furthering Women's Equality”

**Paper** “The Role of Unions in Furthering Women's Equality” by Penni Richmond, Kate Hughes and Karen Schucher

**Hughes, Patricia** Dr. Patricia Hughes is the Mary Louise Lynch Chair in Women and Law of the University of New Brunswick Faculty of Law. She is a former President of LEAF – New Brunswick and a member of the National Board of Directors of LEAF. She has written numerous articles and books and made many presentations on the legal rights of women and access to justice. Dr. Hughes has served as the Alternate Chair of the Ontario Pay Equity Hearings Tribunal and Vice-Chair of the Ontario Labour Relations Board.

**Workshop** “Equality as a Fundamental Principle”

**Paper** “Equality as a Fundamental Principle”

**Jackman, Martha** Martha Jackman is a Professor in the Faculty of Law (French Common Law Section) at the University of Ottawa. She received her master in law from Yale University. She has copious conference papers and presentations to her credit in the areas of social rights, equality rights, the Charter, women and the law and in other areas of constitutional law and has published extensively in these and other areas of the law. Professor Jackman is also active in equality rights litigation especially on behalf of the Charter Committee on Poverty Issues.

**Workshop** “International Human Rights Covenants, the *Charter* and International Advocacy”

**Paper** “International Human Rights Covenants, the *Charter* and International Advocacy” by Martha Jackman, Michelle Williams, and Margot Young

**Jamieson, Kathleen** Kathleen Jamieson is a Program Director of the Social Planning and Research Council

of BC, a provincial social planning organization. She carries out applied research on contract for community groups and government on a wide variety of social issues. Ms. Jamieson believes that independent applied research on gender issues is being actively discouraged by government and that women need to seek every opportunity to scrutinize and comment on the gender impacts of government policies.

**Workshop** “Pathways Through the Maze: How Immigrant Women Navigate Their Early Years in Canada”

**Paper** “Making New Canadians or Making Martyrs? Foreign-born Domestic Workers' Views and Recommendations about Immigration Policy and Legislation”

**Jansen, Patricia** Dr. Patricia Jansen is Consulting Epidemiologist with the BC Research Institute for Children's and Women's Health, Centre for Evaluation Sciences. She has implemented a universal screening program for domestic violence for pregnant women in Vancouver. She has written numerous articles and made many presentations on domestic violence and women's health.

**Workshop** “Transforming Institutional Culture – Domestic Violence and the Challenges for Health Care and Legal Systems”

**Paper** “Transforming Institutional Culture – Domestic Violence and the Challenges for Health Care and Legal Systems” by Patricia Jansen, Kathleen Mackay, Lesley Cole, Jude Poirier

**Jhappan, Radha** Dr. Radha Jhappan is Associate Professor in the Department of Political Science at Carleton University and Visiting Scholar, Beatrice Bain Research Group, University of California, Berkeley. She has written numerous articles and presented many papers on legal issues relating to women's equality and to Aboriginal people.

**Workshop** “Litigating Social Justice”

**Paper** “Litigating Social Justice: A Modest Proposal for a Strategic Change”

**Jiwani, Yasmin** Yasmin Jiwani is the Executive Coordinator of the Feminist Research Education Development Action Centre (FREDA), which is one of the five violence research centres that were established in 1992. Ms. Jiwani's work focuses on issues of intersectionality, and in particular, the impact of violence on immigrant and refugee women and girls from racialized communities; police response; and media representation of women of colour and violence against racialized women.

**Workshop** "Justice for Girls"

**Paper** "Justice for Girls" by Annabel Webb, Renata Aebi, and Yasmin Jiwani

**Johnstone, Jennifer** Jennifer Johnstone has been a professional fundraiser for women's organizations for 10 years and is a founding member of the Vancouver Women's Fund. She has an ongoing interest in fundraising for social justice and collaborative development for women.

**Workshop** "Developing Donor Activities: Feminist Philanthropy in the New Century"

**Paper** "Strengthening women's groups in Canada: Feminist fundraising is movement building"

**Kelly, Frances** Frances Kelly is a lawyer with the Community Legal Assistance Society in Vancouver. She has practiced in the area of disability law since 1990. She specializes in human rights and Charter litigation and has appeared before numerous tribunals and superior courts, including the Supreme Court of Canada, on disability issues.

**Workshop** "The Duty to Accommodate: the promise, the reality, the limitations"

**Paper** "The Duty to Accommodate: What Has it Meant for Disadvantaged Groups?" by Frances Kelly, Yvonne Peters, and Susan O'Donnell

**Kirkey, Jennifer** Jennifer Kirkey has been a member of Women Educating in Self-defence Training (W.E.S.T.) since it was founded in 1986. While pursuing her master's degree in physics at Simon Fraser University she took her first self-defence courses and

the confidence she gained during that course led her to continue on with the group, eventually becoming a certified instructor. She pays the rent by teaching physics full time at Douglas College, but continues to teach self-defence to women and their children in her spare time.

**Workshop** "Self-Defence for Women – A Hands on Workshop"

**Koshan, Jennifer** Jennifer Koshan is a legal consultant and researcher. She is the former legal director of West Coast LEAF and Crown counsel in the Northwest Territories. She has written numerous articles and made many presentations on the equality rights of women and of Aboriginal people.

**Workshop** "(Non)disclosure of Complainants' Records in Sexual Assault Cases"

**Workshop** "Reforming and Re-envisioning Civil Remedies for Abuse"

**Paper** "History and Background of Disclosure Applications in Sexual Assault Cases"

**Paper** "Reforming and Re-envisioning of Civil Remedies for Abuse" by Jennifer Koshan and Susan Zimmerman

**Lahey, Kathleen** Professor Kathleen Lahey joined Queen's University Faculty of Law in 1987 and is a Queen's national scholar. She has been deeply involved in Charter equality theory and litigation, including working with LEAF in formulating its submissions on the meaning of "equality" in *Andrews*. She is currently representing the Métis National Council of Women in Charter challenges arising out of the refusal of the Federal government to include MNCW in negotiations and contractual agreements relating to service areas, and in their intervention in *Lovelace* before the Supreme Court of Canada. Professor Lahey's most recent book is entitled *Are We 'Persons' Yet? Law and Sexuality in Canada*.

**Plenary** Revisiting Constitutional Personhood: A Focus on the Experience of Native Women

**Workshop** "Same-Sex Recognition in Law: Moving Away from the Sameness Trap"

**Paper** “Legislative Recognition of Queer Relationships: New Forms of Discrimination”

**Lakeman, Lee** Lee Lakeman has worked directly in and for rape crisis centres and transition houses since 1973. Her current writing, national lobby work and international network reflect that radical feminist praxis. She has served as a member of the Violence Committee of the National Action Committee on the Status of Women, and regional representative of Canadian Association of Sexual Assault Centres. Ms. Lakeman currently holds positions on the ruling bodies of March2000 and the Canadian Feminist Alliance for International Action.

**Workshop** “Why the Law and Order/Restorative Justice Approach Won’t Reduce Violence Against Women”

**Workshop** “Toward Effective Government Consultations/Law Reform”

**Workshop** “Tracking and Resisting Backlash Against Equality Gains in Sexual Offence Law”

**Workshop** “Can Transgender and Feminist Movements Work for Equality Compatibly?”

**Workshop** “Toward Effective Government Consultations/Law Reform”

**Paper** “99 Federal Steps Toward an end to Violence Against Women”

**Paper** “Tracking and Resisting Backlash Against Equality Gains in Sexual Offence Law” by Christine Boyle, Lee Lakeman, Sheila McIntyre and Elizabeth Sheehy

**Paper** “Why the Law and Order/Restorative Justice Approach Won’t Reduce Violence Against Women”

**Lamarche, Lucie** Lucie Lamarche is a lawyer and Professor of Law at the Université du Québec à Montréal, Département des sciences juridiques. She has been active in the women’s and human rights communities in Quesbec and Canada for a number of years, with a focus on women in the workplace and social and economic rights. In 1998-99, Professor Lamarche was the recipient of the Jean Monnet Post-Doctoral Fellowship at the Institut universitaire européen in

Florence, Italy. She is also active on the international level and has participated in many United Nations conferences and advisory committees. She has published several books and many articles.

**Plenary** Economic Policy and Women’s Rights

**Workshop** “Rights to Participation and Equality Rights”

**Paper** “Women’s Right to Participate in Public Policy-making: from the rhetoric to the practice of citizenship”/”Le droit des femmes de participer à la détermination des politiques publiques: de la rhétorique à la pratique des attributs de la citoyenneté”

**Leavitt, Sarah** Sarah Leavitt is the Education Coordinator of Battered Women Support Services in Vancouver. She has worked as a support worker and advocate for battered women for seven years. She has presented workshops to a wide range of groups on violence in relationships and related issues.

**Workshop** “Getting the Full Picture: Staying True to Battered Women’s Stories in the New Century”

**Light, Linda** Linda Light is a senior policy analyst with the BC Ministry of Attorney General, Victim Services Division. She is a member of the West Coast LEAF Board of Directors. She has developed and coordinated comprehensive justice system policies on violence against women and children. She has served as an international expert in South Africa, assisting in the development of an international conference on violence against women and advising on violence against women, child abuse and victim empowerment issues.

**Workshop** “Finding a Balance: Justice System Discretion and the Empowerment of Women Who Have Been Victimized”

**Paper** “Finding a Balance: Justice System Discretion and the Empowerment of Women Who Have Been Victimized” by Jane Coombe, Linda Light, Tracy Porteous and Gisela Ruebsaat

**Love, Nancy** Nancy Love is a doctoral student at the University of Calgary, a former teacher and the former

principal of Grande Cache Community High School. She is a former member of the Alberta Arbitration and Mediation Society.

**Workshop** “Working Together – Mediation for Women”

**Paper** “Working Together – Mediation for Women” by Nancy Love and Maxine Mott

**Lugtig, Sarah** Sarah Lugtig is the Director, Equality Rights Program at the Court Challenges Program of Canada. She has a combined master's of social work and law degree from McGill and clerked for Madam Justice L'Heureux-Dubé at the Supreme Court of Canada. She was Assistant Professor at Memorial University's School of Social Work and has written about the rights of children and youth.

**Workshop** “Advancing Women's Equality Through Law: Section 15 Analysis at the Turn of the Century”

**Paper** “Advancing Women's Equality Through Law: Section 15 Analysis at the Turn of the Century” by Sarah Lugtig and Gillian Calder

**Mackay, Kathleen** Kathleen Mackay is a social worker and program developer with the St. Paul's Hospital Domestic Violence Intervention Program and with the Vancouver Hospital and Health Sciences Centre Emergency Department Domestic Violence Program in Vancouver, B.C. Kathleen has facilitated the development of the programs on both sites and has provided follow up counselling for persons who have been abused. Kathleen has worked extensively with women and families around a number of issues including child protection, stress due to illness, life changes associated with aging and domestic violence.

**Workshop** “Transforming Institutional Cultures – Domestic Violence and the Challenges for Health Care and Legal Systems”

**Paper** “Transforming Institutional Culture – Domestic Violence and the Challenges for Health Care and Legal Systems” by Patricia Jansen, Kathleen Mackay, Lesley Cole, Jude Poirier

**Majury, Diana** Diana Majury is Associate Professor at

the Carleton University Department of Law. She is a member of the National Association of Women and the Law and is active in other community and professional organizations. She has published numerous articles, reports and papers on issues relating to women's equality rights, including lesbian rights, reproductive technologies, sexual assault, women's health, child custody and mediation, and wife assault. Professor Majury has earned a LL.M and S.J.D. in equality theory at the University of Wisconsin.

**Workshop** “Equality Encore: Is it Time for a New Tune”

**Workshop** Pushing for Change/Staying the Same”

**Paper** “‘What Have You Done for me Lately’ – Examining the Limitations of Equality Law” by Diana Majury and Carissima Mathen

**Paper** “An Addendum to Feminist Principles and Priorities”

**Marshall, Pat** Pat Freeman Marshall has worked in the area of anti violence for the past two decades at the local, national and international level. She has focused on creating a variety of strategies to support women's safety and equality. During that time she has been the founding executive director of METRAC, a member of the Society for the Reform of Criminal Law in Common Law Jurisdictions, a member of the Task Force on Sexual Abuse of Patients (College of Physicians and Surgeons of Ontario) and Co-Chair of the Canadian Panel on Violence against Women.

**Workshop** “Getting to Safety: Seeking Equality for Women Abused in Intimate Relationships”

**Martin, Sheilah** Dr. Sheilah Martin, Q.C. is Professor of Law and former Dean of Law at the University of Calgary Faculty of Law. She is the former Chair of the Advisory Committee on the Interim Moratorium on New Reproductive and Genetic Technologies. She has written numerous articles and books on issues relating to women's equality rights, including equality of women in the legal profession, the duty to accommodate, women's reproductive freedom, freedom of expression, sexual violence against women, and gender bias and the law. Dr. Martin has been counsel in

several equality rights cases, including the G. case.

**Workshop** “(Non)disclosure of Complainants’ Records in Sexual Assault Cases”

**Workshop** “Beyond the *Persons Case*: Equality in Political Institutions”

**Paper** “Women at the Table: Legal Strategies for Political Change”

**Paper** “An Overview of the *Mills Case*”

**Mathen, Carissima** Carissima Mathen is the Director of Litigation of LEAF National. She has managed and conducted LEAF’s equality litigation before appellate courts with emphasis on the Supreme Court of Canada. She has presented briefs to Parliamentary and Senate Committees and Commissions of Inquiry. She wrote the introduction to *Equality and the Charter*, a volume of LEAF’s Supreme Court of Canada facts and has made numerous presentations on women’s equality rights.

**Plenary** Coalition Works!

**Workshop** “Practising What we Preach: Feminist Principles and Practices in Operation”

**Workshop** “Equality Encore: Is it Time for a New Tune”

**Paper** “‘What Have You Done for me Lately’ – Examining the Limitations of Equality Law” by Diana Majury and Carissima Mathen

**Paper** “Discussion Paper for Workshop on Feminist Principles & Practices” by Carissima Mathen and Fiona Sampson

**Matthews, Sharon** Sharon Matthews is a lawyer practising with Camp Church & Associates in Vancouver. She is counsel for the plaintiffs in a class action by Canadians who contracted Hepatitis C through tainted blood transfusions. Sharon has authored and co-authored various articles, including the recent “Actions Brought Under the *Class Actions Proceedings Act*, RSBC 1996, c.50”.

**Workshop** “Class Proceedings Action in Sex Discrimination Cases – Exploring the Potential”

**Paper** “Class Proceedings Action in Sex Discrimination Cases – Exploring the Potential”

**McIntyre, Sheila** Sheila McIntyre is a Professor of Law at Queen’s University where she teaches public, administrative, constitutional, labour and human rights law as well as feminist jurisprudence. She has been actively involved in LEAF since 1987. In the past 12 years, she has been counsel in several interventions and has participated in the development of many other cases either as a member of sub-committees or in her capacity as member of the National Legal Committee. These cases include: *Wen-do, R. v. Mason, R. v. O’Connor, Vriend, Canadian Council of Churches, Conway, Darrach, Granek, Ferrell, Seaboyer, Norber, M(K) v. M(H.), Butler, Moge, Schacter and Behariell*. Professor McIntyre has also been active in law reform efforts on sexual assault law.

**Workshop** “Tracking and Resisting Backlash Against Equality Gains in Sexual Offence Law”

**Workshop** “Using the Master’s Tools: Whether and When Equality Activists Should Choose Rights Litigation to Advance Egalitarian Change”

**Paper** “Sexual Politics at Century’s Turn”

**Paper** “Tracking and Resisting Backlash Against Equality Gains in Sexual Offence Law” by Christine Boyle, Lee Lakeman, Sheila McIntyre and Elizabeth Sheehy

**Paper** “Using the Master’s Tools: Whether and When Equality Activists Should Choose Rights Litigation to Advance Egalitarian Change” by Carol Aylward, Sheila McIntyre, and Elizabeth Shilton

**McIvor, Sharon** Sharon McIvor is a practicing lawyer and a partner in the law firm of McIvor Nahanee Law Corporation in the community of Merritt, BC. She is also enrolled in a Doctor of Laws Program at the University of Ottawa School of Graduate Studies and Research. Her thesis analyses the role of Aboriginal women in community criminal justice, including sentencing circles. Outside of her career and academic life Ms. McIvor is dedicated to furthering sexual equality for Aboriginal women in their civil, political, property and human rights.

**Plenary** Revisiting Constitutional Personhood: A Focus on the Experience of Native Women

**Plenary** Celebrating Achievements in the Struggle

for Women's Equality: Outlining the Unfinished Agenda

**Workshop** "Litigating Aboriginal Women's Equality"

**McKenzie, Pearl** Pearl McKenzie is a consultant and activist, particularly in relation to the rights of abused older women. She is the former executive director of BC Coalition to Eliminate Abuse of Seniors and North Shore Community Services. She is a member of the Joint Working Group to develop adult guardianship legislation in BC and a former member of the BC Task Group on Family Violence and the Advisory Committee to the Canadian Panel on Violence Against Women. She has written numerous articles and books on legal issues relating to older women.

**Workshop** "Being a Woman can Add Up against Us: The Discriminatory Impact of Adult Guardianship Laws on Women"

**Paper** "Women and Guardianship Laws in British Columbia"

**McPhedran, Marilou** Marilou McPhedran is an academic and legal philosopher. Currently, she is the Project Director, International Women's Rights, at the York University Centre for Feminist Research. She was counsel to the Ad Hoc Committee of Canadian Women on the Constitution which successfully lobbied for the inclusion of a broad equality provision in the Charter. She has worked assiduously since 1982 to ensure that these equality provisions have a positive impact on women's lives. One of the co-founders and current National Chair of the Board of LEAF, she has been involved in a variety of feminist organizations for over twenty-five years. She has been the recipient of many honours including the Order of Canada.

**Workshop** "International Perspectives on Using CEDAW"

**McQuaig, Linda** Journalist and best-selling author Linda McQuaig has developed a reputation for challenging the establishment. Winner of a National Newspaper award for uncovering the Patti Starr affair in 1989, she has written for the *Globe and Mail*, the

*Toronto Star* and *Maclean's Magazine*. For the past four years, she has done a regular bi-weekly commentary on politics and economics, which airs on CBC Radio morning shows in most Canadian cities. She also writes a bi-weekly column for the *National Post*. In 1991, she was awarded an Atkinson Fellowship in Journalism in Public Policy to study the social welfare systems in Europe and in North America. That research became the foundation for her 1993 best-seller, *The Wealthy Banker's Wife: The Assault on Equality in Canada*. In her 1995 best-seller, *Shooting the Hippo: Death By Deficit and Other Canadian Myths*, she traced the real story behind the deficit, and showed how social spending has been falsely blamed. Her most recent book *The Cult of Impotence*, refutes the popular notion that governments are powerless in the global economy to deliver full employment and well-funded social programs.

**Plenary** Economic Policy and Women's Rights

**Workshop** "Economic Policy Choices and Women's Rights"

**Meadus, Jane** Jane Meadus is a lawyer with the Advocacy Centre for the Elderly, where she is the Institutional Advocate, representing clients in long-term care facilities, hospitals, psychiatric facilities and care homes (retirement homes) with legal issues related to their accommodation. Ms. Meadus Co-Chaired the 1997 Joint Canadian Bar Association/Law Society of Upper Canada seminar on Consent and Capacity law and is a regular speaker on a wide variety of topics including resident's rights in long-term care, *Health Care Consent Act and Substitute Decisions Act*, powers of attorney, elder abuse and care homes. She is a member of a number of Ministry of Health committees and is also a member of the Mental Health Legal Committee.

**Workshop** "Being a Woman can Add Up against Us: The Discriminatory Impact of Adult Guardianship Laws on Women"

**Paper** "Guardian and Capacity Laws in Ontario: Issues in Practice"

**Millar, Elizabeth** Elizabeth Millar works as a Classification and Equal Pay Officer at the Public Service

Alliance of Canada (PSAC) in Ottawa. She is a long time staff member of PSAC where she helped to establish the Union's approach to equal pay legislation and supervised the initiation of all pay equity complaints including the recent successful complaint. Ms. Millar studies in Newfoundland and Ontario.

**Workshop** “The Future of Pay Equity Enforcement”

**Paper** “Pay Equity from a Federal Perspective: Success in Spite of Sabotage”

**Mikita, Jeanne** Jeanne Mikita teaches geography at Capilano College and Kwantlen University and volunteers on the policy committee of the West Coast Domestic Workers Association (WCDWA). In 1993, as part of the research for her master's thesis on the migration of Filipina caregivers to Canada, Ms. Mikita worked with WCDWA to produce a survey of the working conditions of domestic workers. These findings are included in the WCDWA's brief to the Employment Standards Act Review Committee.

**Workshop** “Domestic Workers and Equality in the Workplace: Stories and Solutions”

**Monture-Angus, Patricia** Patricia Monture-Angus is a Professor at the University of Saskatchewan and member of the Task Force on Federally-Sentenced Women. In 1998, she was a Visiting Fellow of the Legal Research Foundation of New Zealand. Professor Monture-Angus has written numerous articles and two books, *Thunder in My Soul: A Mohawk Woman Speaks* (1995) and *Journeying Forward: Dreaming First National Independence* (1999).

**Workshop** “Is Canadian Law a Solution for Aboriginal Women?”

**Paper** “Aboriginal Women and Legal Personhood: Lessons in Activism”

**Moreau, Linda** Linda Moreau has been an anti-poverty activist for 20 years and has worked with End Legislated Poverty in Vancouver for 10 years. Her work is informed by her first hand experience of poverty as a mother of two children living on welfare.

**Workshop** “Ending Women's Poverty – Who has Benefited?”

**Paper** “Ending Women's Poverty – Who has Benefited?”

**Mosoff, Judy** Judy Mosoff is Assistant Professor at the Faculty of Law, University of BC. She was the Director of the Mental Patients Advocate Project at the Community Legal Assistance Society in Vancouver for a number of years. She has written and spoken extensively on women's rights and the rights of people with disabilities. Professor Mosoff has also been active in the community including with the Canadian Disability Rights Council and Downtown Eastside Women's Centre.

**Workshop** “Equality Issues for Women with Disabilities”

**Mott, Maxine C.** Dr. Maxine Mott is the Dean of Community and Health Studies Kwantlen University College. Dr. Mott has lectured and written on a wide range of topics including, women and higher education leadership, gender issues in higher education, and women's ways of leading. One of her most recent works, “*A Woman on Campus – Are we part of a mosaic myth or melting pot reality?*” is soon to be published in *Women in the Canadian Academic Tundra: Trails, Trials and Triumphs*.

**Workshop** “Working Together – Mediation for Women”

**Paper** “Working Together – Mediation for Women” by Nancy Love and Maxine Mott

**Munro, Melinda** Melinda Munro is a mediator and trial lawyer with a specialty in employment law. Her practice has included actions for discrimination, wrongful dismissal, sexual harassment and historical sexual abuse of children in foster care. She is a partner in Munro Parfitt, whose mandate as a law firm is to provide quality legal services in a women friendly atmosphere. Ms. Munro is also a member of the West Coast LEAF Legal Committee.

**Workshop** “Creative Application in the Decisions of *Jane Doe v. The Metropolitan Police*”

**Muyinda, Estella** Estella Muyinda is a graduate of the University of Manitoba, Faculty of Law. She also holds a degree in law from the Faculty of Law from Makerere University, Uganda. She is a legal analyst with the Court Challenges Program of Canada. She has practiced in the areas of criminal defence and family law and has practiced in the Northwest Territories. She does extensive community service work with groups such as The Uganda Canadian Association of Manitoba, the African Association, Aids Shelter Coalition of Manitoba and LEAF (Manitoba).

**Workshop** “Spinning the Web of Equality”

**Nagel, Stacy** Stacy Nagel is the Finance/Office Manager at the Court Challenges Program of Canada. She has shared responsibility for the Program’s outreach to equality-seeking communities and oversaw the establishment of the Program’s website. Ms. Nagel has also worked for the Community Legal Education Association of Manitoba.

**Workshop** “Spinning the Web of Equality”

**Nelems, Martha** Martha Nelems is a Senior Policy Analyst, Children’s Rights, with the Canadian International Development Agency. Her academic background is in Political Science. In her role at CIDA she analyses children’s issues and formulates policy recommendations, strategies, and initiatives for approval by CIDA’s senior management. She has lectured extensively on these issues for CIDA’s programming partners.

**Workshop** “What Can a Young Person Do to Promote the Rights of Girls and Women?”

**Noda, Alisa** Alisa Noda is a lawyer in private practice in Vancouver. She has worked for the Department of Justice in both Ottawa and Vancouver. Presently, her practice focuses on Aboriginal issues. She is very active in West Coast LEAF where she currently serves as Chair.

**Plenary Panel Moderator** Women at the Intersection: Addressing Compound Discrimination

**O’Brien, Eileen** Eileen O’Brien was the Chair of Disabled Women’s Network Canada (DAWN) for almost five years. During her term, she established and nurtured DAWN’s Human Rights Committee in order to facilitate DAWN’s litigation and law reform work. She has also worked with the Council For Canadians with Disabilities. She has been an activist in the women’s rights and disability movements for many years and has worked in coalitions on many occasions and in many different situations.

**Plenary** Coalition Works!

**O’Donnell, Susan** Susan O’Donnell is the Executive Director of the BC Human Rights Coalition. In this position she is responsible for education and continuing consultation in human rights law and policy, and of assisting complainants through the human rights process. Since 1978, Ms. O’Donnell has been an instructor in the Labour Studies Programme at Capilano College, where she teaches Human Rights Law and Advocacy Techniques. She also teaches Human Rights Law for the Justice Institute of BC.

**Workshop** “The Duty to Accommodate: the promise, the reality, the limitations”

**Paper** “The Duty to Accommodate: What Has it Meant for Disadvantaged Groups?” by Frances Kelly, Yvonne Peters, and Susan O’Donnell

**Parfitt, Clea** Clea Parfitt is a civil litigator and labour lawyer with considerable specialty interest in sexual harassment and sexual discrimination in the labour and employment context. Her practice has included representing complainants in sexual harassment cases and challenging the inappropriateness of sexual harassment language in collective agreements and policies in institutions. She recently acted for the complainant in *Mahoodi v. University of BC and Dr. Donald Dutton*.

**Workshop** “Creative Application in the Decisions of *Jane Doe v. The Metropolitan Police*”

**Parsons, Margaret** Margaret Parsons is the Executive Director of the African Canadian Legal Clinic, a race-based test-case litigation clinic in Ontario. Ms.

Parsons is also actively involved in the Congress of Black Women Canada (Toronto Chapter) and the National Action Committee on the Status of Women. She is committed to, and has been actively involved in, social justice issues and the development of policy and legislation that impacts upon Canadian women, in particular women of colour and immigrant women.

**Workshop** “The Experience of Legal Clinics in Fostering Women’s Equality”

**Workshop** “Litigating Racial Equality”

**Pate, Kim** Kim Pate is the Executive Director of the Canadian Association of Elizabeth Fry Societies. In addition to her work on behalf of women who have come into contact with the law, Kim has been a strong advocate for social justice and has worked on criminal justice reform matters for more than a decade. A teacher and lawyer by training, she has experience working from a grassroots perspective on policy development and legislative formulation at local, regional and national levels. Her interests and expertise span a huge range of equality/justice issues and process issues including self-help advocacy approaches, community development, mediation and other forms of alternative dispute resolution.

**Workshop** “Women and Girls in Conflict with the Law”

**Workshop** “Toward Effective Government Consultations/Law Reform”

**Peppin, Patti** Patti Peppin is an Associate Professor in the Faculty of Law at Queen’s University in Kingston, Ontario. Her main teaching and research interest is health law, which she teaches in the School of Medicine. She is Associate Editor of the new *Journal of Women’s Health and Law*. She is also Chairing the Developmental Consulting Program at Queen’s which does work in the disabilities area.

**Workshop** “Missing Patients: Transforming Perceptions of Women’s Health in Drug Advertising”

**Paper** “Missing Patients: Transforming Perceptions of Women’s Health in Drug Advertising”

**Peters, Yvonne** Yvonne Peters is a practising lawyer in Winnipeg, Manitoba specializing in equality rights and human rights law. Since 1989, she has provided legal research and consultation to government, community groups, human rights organizations, and others on human rights legislation and the *Canadian Charter of Rights and Freedoms*. She is a founding mother of LEAF and is currently on the boards of the Women’s Health Clinic and the Canadian Centre on Disability Studies.

**Workshop** “Equality Issues for Women with Disabilities”

**Workshop** “The Duty to Accommodate: the promise, the reality, the limitations”

**Paper** “The Duty to Accommodate: What Has it Meant for Disadvantaged Groups?” by Frances Kelly, Yvonne Peters, and Susan O’Donnell

**Plett, Irene U.** Irene Plett is in her final year as a law student at the University of BC. She was a co-presenter of a recent workshop to the Black Business and Professional Association on equality in the workplace and of a public lecture on sexual harassment for the Prince George Women’s Centre. Ms. Plett has co-ordinated a number of public workshops, including one on the human rights complaint process.

**Workshop** “Sexual Harassment and Human Rights Legislation: Toward Effective Remedies”

**Paper** “When Women Prove Sexual Harassment, what are they Getting, and Why?”

**Poirier, Jude** Jude Poirier is a nurse educator in the Domestic Violence Intervention Program at St. Paul’s Hospital in Vancouver, responsible for the implementation and ongoing evaluation of a screening program for domestic violence/abuse in the Emergency Department and the Maternity Care Unit. She also assists in providing care, support and medical attention to survivors of sexual assault at BC Women’s Hospital.

**Workshop** “Transforming Institutional Cultures – Domestic Violence and the Challenges for Health Care and Legal Systems”

**Paper** “Transforming Institutional Culture – Domestic Violence and the Challenges for Health Care and Legal Systems” by Patricia Jansen, Kathleen Mackay, Lesley Cole, Jude Poirier

**Porteous, Tracey** Tracey Porteous has advocated for social change at the community level for 18 years, including on behalf of BC’s Sexual Assault Centres, Specialized Victim Assistance Programs and Stopping the Violence Programs. She is currently studying the feasibility of a non-profit fundraising company to benefit organizations serving women who have been the victims of violence. Ms. Porteous co-authored a booklet for adolescents on sexual assault which earned her a Solicitor General Award for Crime Prevention and has been awarded a medal from Canada for a significant contribution to compatriots, community and to Canada in the field of violence against women. She is currently Co-ordinating Consultant at the BC Association of Specialized Victim Assistance and Counselling Programs.

**Workshop** “Finding a Balance: Justice System Discretion and the Empowerment of Women Who Have Been Victimized”

**Paper** “Finding a Balance: Justice System Discretion and the Empowerment of Women Who Have Been Victimized” by Jane Coombe, Linda Light, Tracy Porteous and Gisela Ruebsaat

**Pothier, Dianne** Dianne Pothier is Associate Professor at Dalhousie Law School in Halifax. Her areas of interest and specialization include: Constitutional Law; Public Law; Labour Law; Judicial Remedies; and Judicial Rule Making. Her recent research has focused on the issue of adverse effects discrimination particularly with respect to its disproportionate impact on marginalized groups based on gender, race and disability. She is a member of the LEAF National Legal Committee. She has acted in several equality rights cases including as counsel in *R.D.S. v. The Queen* in the Supreme Court of Canada.

**Plenary** Women at the Intersection: Addressing Compound Discrimination

**Workshop** “Moving Forward with the Law on Adverse Effects Discrimination”

**Paper** “Connecting Intersecting Grounds of Discrimination to Real People’s Real Experiences”

**Paper** “Adverse Effects Discrimination: Addressing Compound Discrimination”

**Richmond, Penni** Penni Richmond is the single daughter of a single mother and a single mother of a single daughter (and recently a grandma!). She is the National Director of the Women’s Human Rights Division of the Canadian Labour Congress. She has been involved in the women’s movement and union movement for many years and has worked in community and international development. Ms. Richmond was a rank and file activist in the Public Service Alliance of Canada where she helped organize the first women’s conference within that union in the early 1980’s.

**Workshop** “The Role of Unions in Furthering Women’s Equality”

**Paper** “The Role of Unions in Furthering Women’s Equality” by Penni Richmond, Kate Hughes and Karen Schucher

**Ritchie, Marguerite E.** Dr. Marguerite Ritchie, Q.C. has worked for the rights of women for over 50 years. She was responsible for the Divorce Act amendment that allowed women to bring divorce proceedings where they lived instead of having to bring the proceeding where the husband lived. She provided legal advice to Native women for 30 years, and helped work for amendments to the *Indian Act* that stripped native women who married non-natives of their status. She was the first legal advisor to the Elizabeth Fry Society and in 1974 she established the Human Rights Institute of Canada.

**Workshop** “Beyond the *Persons Case*: Equality in Political Institutions”

**Paper** “Beyond the *Persons Case*: Equality in Political Institutions”

**Robillard, Nicole** Nicole Robillard, is the Links Project Coordinator at the Canadian Association of Sexual Assault Centres. She is currently working on a five

year project that will examine how the justice system fails women in cases of violence against women.

**Workshop** “How the Justice System Prevents Conviction of Crimes of Violence Against Women”

**Ruebsaat, Gisela** Gisela Ruebsaat is an independent consultant and policy analyst. She has worked on policy issues related to the criminal justice system and women for the last ten years, both for federal and provincial justice ministries and for community groups. Recently, Ms. Ruebsaat has been responsible for the delivery of regional training on confidentiality and records management for sexual assault counselors, and the development of the Ministry of Attorney General’s policy on sexual assault.

**Workshop** “Finding a Balance: Justice System Discretion and the Empowerment of Women Who Have Been Victimized”

**Paper** “Finding a Balance: Justice System Discretion and the Empowerment of Women Who Have Been Victimized” by Jane Coombe, Linda Light, Tracy Porteous and Gisela Ruebsaat

**Saani, Veenu** Veenu Saini is the Legal Advocacy Program Co-ordinator at Battered Women’s Support Services in Vancouver. She has worked as a support worker and advocate for battered women, particularly in the criminal and civil justice systems, for several years.

**Workshop** “Legal Challenges in Family Law for Battered Women: An Overview”

**Sampson, Fiona** Fiona Sampson is a staff lawyer at the National LEAF office. She has worked as Legal Director with the Metropolitan Toronto Action Committee on Violence Against Women and Children and as legal counsel to the Ontario Human Rights Commission. Ms. Sampson’s community service includes working with female political refugees who are the survivors of violence and torture and she is a member of the Thalidomide Victims’ Association and of the DisAbled Women’s Network Canada (DAWN).

**Workshop** Pushing for Change/Staying the Same”

**Paper** “Discussion Paper for Workshop on Feminist Principles and Feminist Practices” by Carissima Mathen and Fiona Sampson

**Samy, Sushila** Sushila Samy currently provides consultation services to the Alberta/NWT Network of Immigrant Women. Following seven years as a Human Rights Officer with the Alberta Human Rights Commission and then the Canadian Human Rights Commission, she now conducts workshops and information sessions to employers and community organizations on human rights and workplace issues. Ms. Sushila also develops or assists others to develop diversity training packages and employment equity programs, and has conducted various research projects on the rights of immigrant women.

**Workshop** “Employment Equity – Who Has Benefited?”

**Paper** “Background Paper – Employment Equity: Who has it benefited?”

**Schirra, Angela** Angela Schirra is the first woman elected in 1989 to the full-time job of Secretary-Treasurer of the 450,000 member BC Federation of Labour and has been reelected for her fourth term. This election followed a career of ‘firsts’ in the airline industry and International Association of Machinists. Ms. Schirra comes from a strong working class background – in fact she is literally a coal miner’s daughter. Her family roots in coal mining go back more than 150 years. Her interest and involvement in the union movement is matched by her commitment to women’s issues, social change and justice for all working people.

**Workshop** “Equality Issues for Young Women in the Workplace”

**Shah, Priti** Priti Shah is a lawyer, investigator, arbitrator, researcher and mediator practising in Winnipeg. She Chairs the Canadian Bar Association’s Standing Committee on Equality and is a member of the City of Winnipeg’s Race Relations Committee. Ms. Shah has lectured extensively on a wide range of topics,

including diversity in the workplace, conflict management, and the investigation of sexual harassment complaints.

**Workshop** “Addressing Equality and Diversity within a Professional Association: The Experience of the Canadian Bar Association”

**Sheehy, Elizabeth A.** Elizabeth Sheehy teaches at the University of Ottawa, mainly in Criminal Law and Procedure and Women and the Law. She publishes in the field of feminist analysis of criminal law, specifically violence against women. Professor Sheehy’s most recent publications include a comment on the criminal procedures reforms and an evaluation of Judge Ratushny’s Self-Defence Review.

**Workshop** “Tracking and Resisting Backlash Against Equality Gains in Sexual Offence Law”

**Paper** “Tracking and Resisting Backlash Against Equality Gains in Sexual Offence Law” by Christine Boyle, Lee Lakeman, Sheila McIntyre and Elizabeth Sheehy

**Shilton, Elizabeth** Elizabeth Shilton is a founding partner in the law firm of Cavaluzzo Hayes Shilton McIntyre & Cornish, a firm specializing in labour and employment law on behalf of unions and professional associations. She is a past member of the National LEAF Board of Directors, the LEAF National Executive, the LEAF Foundation and the LEAF National Legal Committee. Ms. Shilton has prepared numerous papers and has been a university guest lecturer on issues relating to the Charter of Rights, public interest advocacy, women’s equality issues in human rights and pay equity.

**Workshop** “Using the Master’s Tools: Whether and When Equality Activists Should Choose Rights Litigation to Advance Egalitarian Change”

**Paper** “Using the Master’s Tools: Whether and When Equality Activists Should Choose Rights Litigation to Advance Egalitarian Change” by Carol Aylward, Sheila McIntyre, and Elizabeth Shilton

**Memo** “Bibliography on Evidence Issues”

**Sims, Mary-Woo** Mary-Woo Sims is the Chief Commissioner of the BC Human Rights Commission. She was a founding mother of Women Against Violence Against Women Rape Crisis Centre in Vancouver and was awarded the Chinese Canadian National Council’s 1977 Chinese Canadian Pioneer Award. She has broad experience in human rights issues, from the perspective of activist, trade unionist, and manager. Ms. Sims is the President and Chair of the International Network of Lesbian and Gay Officials and is the Canadian representative on the board of the International Association of Official Human Rights Agencies.

**Workshop** “Sexual Harassment and Human Rights Legislation: Toward Effective Remedies”

**Workshop** “Working Together for Change: Seeking Equality through the Strategic Use of Human Rights Law”

**Paper** “Some Things to Think About when a Complaint is about Multiple Grounds Harassment of Which Sexual Harassment is a Component”

**Stasiulis, Daiva** Daiva Stasiulis is a Professor in the Department of Sociology and Anthropology at Carleton University in Ottawa. Her current research includes work in the following areas: women of colour, work, and citizenship; diversity, racism, and women’s politics; the state, ‘race’ policies, and ethnic representation; and the sexualization of children in popular culture. She is the author of numerous scholarly articles on the issues of race and gender, and she has been interviewed on the subjects of domestic workers, nannies, and Canada’s race questions for a variety of national radio and television programs.

**Workshop** “Negotiating the Citizenship Divide: Legal Strategies for Foreign Domestic Workers”

**Paper** “Negotiating the Citizenship Divide: Foreign Domestic Worker Policy and Legal Strategies”

**Symes, Beth** Beth Symes is a partner in the law firm of Eberts Symes Street & Corbett. She was called to the Bar of Ontario in 1978 and carries on a practice of administrative law, civil litigation and equality rights. Ms. Symes has written and spoken extensively in the

area of administrative law and equality issues. She is an instructor at Osgoode Faculty of Law in Trial Practice, teaches in the Intensive Trial Advocacy Program and has organized and given courses on the conduct of administrative hearings and decision writing. Ms. Symes is a member of the Queen's Faculty of Law Advisory Counsel and is the recipient of the Law Society of Upper Canada Medal.

**Workshop** “Abortion in Canada: The Unfinished Agenda”

**Workshop** “Section 15 at the Trial Level”

**Tanner, Susan** Susan Tanner is General Counsel at the Department of Justice Canada where she serves as the Senior Advisor, Gender Equality and leads the Department's Gender Equality Initiative. Susan has been actively involved in gender issues for over 40 years. She was the founding Chairperson of LEAF. Ms. Tanner has earned a master's of law degree and is currently teaching a “Women and the Law” course at Carleton University.

**Workshop** “Toward Effective Government Consultations/Law Reform”

**Thobani, Sunera** Sunera Thobani is currently the Ruth Wynn Woodward Endowed Professor in the Department of Women's Studies at Simon Fraser University. She has lectured extensively on the issues of race, class, gender relations, and violence against women. She completed her doctoral dissertation in 1998 on the subject of ‘Immigrant Women: Globalization and the Racialization of Women's Citizenship in Late 20th C. Canada’. She was awarded her doctorate “with distinction” and was nominated for SFU's Department of Sociology Distinguished Dissertation of the Year Award.

**Plenary** Economic Policy and Women's Rights

**Tie, Chantal** Chantal Tie is an immigration and refugee lawyer and Executive Director of South Ottawa Community Legal Services. She is an adjunct-Professor of Law at the University of Ottawa Law School where she teaches Immigration and Refugee Law. She studied law at Osgoode Hall Law School and

the University of Ottawa Law School where she obtained her masters degree writing her thesis on Canadian immigrant selection and equality under s.15 of the Canadian Charter of Rights and Freedoms. From 1993 to 1997 she served on LEAF's national legal committee as the operational Co-Chair.

**Workshop** “Refugee Determination: Protecting Women's Equality Rights”

**Workshop** “The Experience of Legal Clinics in Fostering Women's Equality”

**Paper** “Protecting Women's Equality Rights: Refugee Determination”

**Tobler, Silvia** Silvia Tobler is a legal support worker with the West Coast Domestic Worker's Association. She has worked as a domestic worker and was initially involved with the work of the Domestic Worker's Association as a volunteer and then as staff.

**Workshop** “Domestic Workers and Equality in the Workplace: Stories and Solutions”

**Vizkelely, Beatrice** Beatrice Vizkelely is Legal Counsel with the Commission des droits de la personne et des droits de la jeunesse of Quebec. She specializes in discrimination law and her publications include *Proving Discrimination in Canada*. Current research involves employment equity, adverse effect discrimination and systemic discrimination.

**Workshop** “Equality in the Changing Workplace”

**Paper** “Equality in the Changing Workplace”

**Waddell, Lindsay** Lindsay Waddell is currently a law student at the University of Manitoba and Articles Editor for the Manitoba Law Journal. She is a sub-committee member for the LEAF intervention in the *Little Sisters* case and worked as a research assistant to counsel in that case. Ms. Waddell also holds a bachelor degree in Human Kinetics and has worked as a research assistant at the law firm of Ladner, Downs in Vancouver.

**Workshop** “Freedom of Expression and Women's Equality: From Butler to Little Sisters”

**Webb, Annabel** Annabel Webb has been involved in the feminist anti-violence movement since 1991. She began her frontline work at Vancouver Rape Relief & Women's Shelter and later became a founding member of the Alliance of Feminists Across Campuses, a coalition of feminists who fought against racist and sexist attacks on women in universities and colleges. Out of frustration with trying to bring her feminist politics to street outreach work with youth in downtown Vancouver, Ms. Webb has moved on to create Justice for Girls Outreach Society, an advocacy organization for girls who are on the street.

**Workshop** "Justice for Girls"

**Paper** "Justice for Girls" by Annabel Webb, Renata Aebi, and Yasmin Jiwani

**Wilkes, Helen** Dr. Helen Wilkes is an educator who has worked extensively with young children, adolescents and young adults (at Simon Fraser University and the University of BC) and with mature adults. She is an ardent volunteer for organizations committed to combating injustice in all its forms.

**Workshop** "Towards Transformative Public Legal Education for Women's Equality"

**Williams, Mary** Mary Williams is a long-time advocate for equality for persons with disabilities. She is former President of the BC Coalition of People with Disabilities and has been an active participant in Disabled Women's Network Canada (DAWN) and in Women's Access to Legal Services Coalition.

**Workshop** "Civil Legal Aid in Canada and Gender Equality"

**Williams, Michelle Y.** Michelle Williams has over 10 years of education and experience focusing on social justice issues, particularly anti-discrimination initiatives designed to address racism. She has been instrumental in the development and implementation of litigation, policy and community legal education strategies to promote access to justice and resources for African Canadians and other historically disadvantaged groups. Ms. Williams is currently the policy and

research lawyer for the African Canadian Legal Clinic in Toronto.

**Workshop** "International Human Rights Covenants, the Charter and International Advocacy"

**Paper** "International Human Rights Covenants, the Charter and International Advocacy" by Martha Jackman, Michelle Williams, and Margot Young

**Young, Claire** Claire Young is a Professor in the Faculty of Law at the University of British Columbia. Her areas of special interest are in the areas of taxation and feminist legal studies, and include the application of feminist theory to tax policy issues and the use of tax expenditure analysis as a critical tool. She has been invited to speak in a variety of forums around the world on tax issues such as spousal status, pension benefits, child support, tax policy as it impacts lesbians and gay men, income splitting, the GST, and attribution rules, amongst other items. Professor Young participated in the case development of the *Thibaudeau* case.

**Workshop** "Understanding (In)Equality for Women in Canada's Retirement Income System: Case Study of the Delivery of a Social Program by the Tax System"

**Paper** "Understanding (In)Equality for Women in Canada's Retirement Income System: Case Study of the Delivery of a Social Program by the Tax System" by Paula Barnsley and Claire Young

**Young, Margot** Margot Young has been a member of the University of Victoria's Faculty of Law since 1992. Professor Young teaches constitutional law, feminist legal theories, social welfare law, and civil liberties. Her current research interests are equality law and theory, social program restructuring and the Canadian welfare state. She is active in the National Association of Women and the Law (NAWL) where she serves as a member of the National Steering Committee and Chair of the Law Reform Committee.

**Workshop** "International Human Rights Covenants, the Charter and International Advocacy"

**Workshop** "Comparative Perspectives: Legal Developments in South Africa/Australia"

**Paper** “International Human Rights Covenants, the Charter and International Advocacy” by Martha Jackman, Michelle Williams, and Margot Young

**Zimmerman, Susan V.** Susan Zimmerman is the Director of Research for the Law Commission of Canada. She has been a lecturer, panellist and author on a number of topics, including medical law, Aboriginal law, and health law. For several years, she was the on-air host for *Jurisprudence*, a weekly broadcast of Supreme Court of Canada decisions, aired nationally on cable television. Ms. Zimmerman’s community work includes volunteering on the Research Ethics Committee for the Ottawa Hospital.

**Workshop** “Reforming and Re-envisioning Civil Remedies for Abuse”

**Paper** “Reforming and Re-envisioning Civil Remedies for Abuse” by Jennifer Koshan and Susan Zimmerman

#### OTHER PAPERS AND BOOKS REFERRED TO IN THE GUIDEBOOK:

Shelagh Day and Gwen Brodsky, *Women and the Equality Deficit: The Impact of Restructuring Canada’s Social Programs* (Status of Women Canada, March 1998)

Women, Law & Development International Human Rights Watch *Women’s Rights Project, Women’s Human Rights – Step by Step* (Washington, D.C.: 1997)

Karey Brooks, “Towards a Transformative Public Legal Education Program for West Coast LEAF: A Background Paper” (West Coast LEAF, 1999)

Christina Litt, “Towards Substantive Equality: A Discussion of the Future of Strategic Test-Case Litigation” (West Coast LEAF, 1999)

# Evaluation Form

## **Transforming Women's Future** An Activist's Guide to Equality Rights Theory and Action

To users of *Transforming Women's Future: An Activist's Guide to Equality Rights Theory and Action*:

West Coast LEAF would like to receive some feedback from you. Please fill in the evaluation after you have read through the Guidebook or used it in a group workshop situation. The completed form can be sent by mail or fax to:

West Coast LEAF Association  
1517 – 409 Granville Street  
Vancouver, B.C. V6C 1T2  
TEL (604) 684-8772 FAX (604) 684-1543

1. How did you first hear about the Guidebook?
  
2. Where did you get the Guidebook?
  
3. Was the Guidebook presented by a facilitator or did you use it on your own?
  
4. Was the Guidebook enjoyable and/or interesting to read?  
Yes                      No      If no, please explain:
  
5. How would you rate the organization of the Guidebook?  
 Excellent               Good               Fair               Poor

		extremely likely				not very likely
6.	Will the Guidebook likely achieve its goal of helping readers to engage in their own equality rights action?	1	2	3	4	5

		extremely useful				not very useful
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	Part One – An Agenda for Action	1	2	3	4	5
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	Part Two – Legal Sources and Dynamics of Equality Rights	1	2	3	4	5
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	Part Three – From Constitutional Promise to Lived Reality: Assessing Our Legal Tools and Strategies	1	2	3	4	5
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	Part Four – Equality Rights Work	1	2	3	4	5
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	8. As a result of reading or using the Guidebook, how likely are you to do the following:	extremely likely				not very likely
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	Identify equality rights issues?	1	2	3	4	5
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	Engage in law reform advocacy or lobbying?	1	2	3	4	5
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	Engage in transformative public legal education?	1	2	3	4	5
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	Engage in test case litigation?	1	2	3	4	5
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9. Are there any other actions you might undertake?

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10. Who are you? What is your primary role in working on equality rights/women's issues? (e.g. community activist, human rights advocate, women's rights advocate, lawyer, teacher, etc.)

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11. Where do you or will you work on equality rights issues?

- |  |   |
|--|---|
| <input type="checkbox"/> community organization  | <input type="checkbox"/> women's organization                     |
| <input type="checkbox"/> education system        | <input type="checkbox"/> academic institution                     |
| <input type="checkbox"/> social services system  | <input type="checkbox"/> human rights system                      |
| <input type="checkbox"/> criminal justice system | <input type="checkbox"/> legal system other than criminal justice |
| <input type="checkbox"/> other sector: _____     |   |

Do you have any other comments on the Guidebook?

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Please give us your name and work address. This information will only be used for follow-up purposes. Your responses to the evaluation will be confidential.

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