

The Legal System and its Impact on Women's Health: A Largely Uninvestigated Terrain

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Health**

**Prepared for Made to Measure: Designing Research, Policy and
Action Approaches to Eliminate Gender Inequity,
National Symposium, Halifax, Nova Scotia, 3-6 October 1999**

This project was funded by Maritime Centre of Excellence for Women's Health (MCEWH). MCEWH is financially supported by the Centres of Excellence for Women's Health Program, Women's Health Bureau, Health Canada. The views expressed herein do not necessarily represent the views of MCEWH or the official policy of Health Canada.

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The Maritime Centre of Excellence for Women's Health is supported by Dalhousie University, the IWK Health Centre, the Women's Health Bureau of Health Canada, and through generous anonymous contributions.

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EXECUTIVE SUMMARY

This paper considers the potential and limitations of the legal system in women’s struggle for social justice. The argument put forward in the paper is that though rarely taken into account when examining women’s health, the legal system is a key determinant of women’s health. Law and the justice system govern nearly every facet of women’s lives. Having the power to regulate both private and public activities, oversee the protection of rights that affect women’s socio-economic status, the law – in all its dimensions has the potential to affect women’s physical and mental health directly and indirectly. Women are affected when the legal system fails to adequately respond to the inequalities (i.e., educational, economic and social) and harms (i.e., violence, harassment, trafficking, sexual exploitation) which women suffer. And as a result of the system’s shortcomings, women can *and do* suffer real physical and mental injuries.

Accordingly, the paper examines a selection of current issues in the legal system (i.e., access, criminal law, civil law, family law) that impact directly and indirectly on women’s health. This overview, however, should only be considered a beginning in the process of understanding the extent to which the law impact on women’s physical and mental health. Much more research, data collection, and evaluation are required to measure explicitly and fully the role of the legal system as a determinant of women’s health.

INTRODUCTION

Though rarely taken into account when examining women's health, the legal system is a key determinant of women's health. Law and the justice system govern nearly every facet of women's lives. Having the power to regulate both private and public activities, oversee the protection of rights that affect women's socio-economic status, the law – in all its dimensions has the potential to affect women's physical and mental health directly and indirectly. Without doubt, women are affected when the legal system fails to adequately respond to the inequalities (i.e., educational, economic and social) and harms (i.e., violence, harassment, trafficking, sexual exploitation) which women suffer. And as a result of the system's shortcomings, women can *and do* suffer real physical and mental injuries.

BACKGROUND

International legal instruments such as the *United Nations Charter*, the *Universal Declaration of Human Rights*, the *International Covenant on Economic, Social, and Cultural Rights* and *Convention on the Elimination of All Forms of Discrimination Against Women*, reveal gender disadvantages that women experience and provide legal frameworks for addressing women's equality needs. Such treaties and conventions guarantee women gender equality and non-discrimination. They also identify health as a fundamental human right for women including women's right to control their sexuality and to make decisions about reproduction free of discrimination, coercion and violence. Most importantly, women's health and their status in society are recognized as being inextricably linked:

Women have the right to the enjoyment of the highest attainable standard of physical and mental health. The enjoyment of this right is vital to their life and well-being

and their ability to participate in all areas of public and private life ... A major barrier for women to the achievement of the highest attainable standard of health is inequality both between men and women and among women in different geographical regions, social classes, indigenous and ethnic groups. (Platform of Action set out at the United Nation's Fourth World Conference on Women 1995: Chapter 4, Section 89)

The explicit acknowledgment of the synergy between women's health and their conditions in society, has been the catalyst for identifying the need to understand the social factors and determinants which influence women's health.

Canada is a signatory to all the above-mentioned central human rights treaties (Brodsky & Day 1998). Thus, Canada is legally bound to govern in accordance to these human rights treatise and is held accountably to the international community for any non-compliance with their provisions. Through its human rights legislation, equality rights guarantees constitutionally entrenched in the *Canadian Charter of Rights and Freedoms*¹ and federal position papers including the *Federal Plan for Gender Equality*² Canada has clearly committed itself to women's equality in all aspects of their lives. In the specific area of health,³ the Canadian government has made important strides to reflect the need to investigate further the determinants of women's health.⁴ Health Canada has embraced a population health approach⁵ and identified twelve health determinants which shape the health status of Canadians:

- income and social status
- employment
- education
- social environments
- physical environments

- healthy child development
- personal health practices and coping skills
- health services
- biology and genetic endowment
- gender
- culture

Further, through various initiatives⁶ and recently published *Women's Health Strategy*, Health Canada has responded to the need to improve the health care system's response to women. A commitment now exists to explore the various dimensions of women's health: the epidemiological, historical, psycho-social, cultural/ethnic, legal, political, and economic factors that impact on women's lives.

While Health Canada's list of determinants appears comprehensive, and its *Women's Health Strategy* states that Health Canada will work with other departments to promote a holistic, multi-sectoral approach to health and social policy development,⁷ what appears largely absent⁸ is any *explicit* recognition of the central role that the legal system plays in shaping women's lives and for the need to closely examine how it affects the determinants which impact on women's health.

THE POTENTIAL AND LIMITATIONS OF THE LAW

Law is essentially an instrument – it is a human creation, designed to minimize the harm we suffer in social life (West 1997). It is complex and diverse. Carol Smart labels this as the “refracted nature” of the law. She explains “law does not have one single appearance, it is different according to whether one refers to statute law, judge-made law, administrative law, the enforcement of law, and so on” (1989: 164). The legal system is therefore multi-faceted. The law also purports to be just, fair,

principled, and objective. Law's lofty claims for itself include an ability to arbitrate impartially the competing rights of individuals and to ensure the equality of treatment of all citizens (Naffine 1990: 17). Not surprisingly, because the law has the potential to both expand and restrict our rights, struggles for social justice often occur within the context of the law. Women in particular, have placed great emphasis on the law as a vehicle for change in their pursuit of social justice.

Since the beginning of the women's movement, feminists have turned to law to improve the status of women in Canadian society. Early efforts focussed on obtaining formal equality with men including the right to vote, and the legal recognition of personhood. Since the 1960s, however, feminists have been struggling for substantive changes to the Canadian legal system. Recognizing the limits of formal equality which requires treating “likes alike”, feminists have attempted to alter the actual content and impact of the law on women's lives. This process is two-fold. Feminists challenge the very foundations of the legal system as part of a more wide-spread gender critique of all societal institutions. At the same time, they seek substantive legal reform within the system.

While significant changes within the justice system have been realized,⁹ feminists remain divided over the extent to which the legal system should be relied upon to respond fully to the disadvantages and injustices women experience.¹⁰ Legal reform is not the panacea for all the inequality that women experience – it must be accompanied by reform in social and economic policy simultaneously. Moreover, the law has, and continues to disadvantage and discriminate against all women.¹¹ Women who seek redress from the law, often find themselves doubly injured – first by the experience or harmful event that brought them to the legal system and secondly, because the law has an

inadequate or nonexistent response to those harms (West 1997). Reforms which are achieved are often double-edged – they have both the potential to benefit women, and at the same time carry potentially disastrous consequences for women. In addition, the various areas of the law (i.e., criminal justice and civil justice systems) are not coordinated in their responses to women. So while there may be an improvement in one area, it may be completely undermined by the operations of another component of the law. This can be most clearly observed in the uneven treatment of woman abuse by the criminal and civil systems in relation to family breakdown, safety and protection and including child custody/ access.

These shortcomings stem at least partly from the fact that traditionally, the legal system has been the domain of white, able-bodied, heterosexual, middle- to upper-class men. The tradition persists as men continue to develop, enforce, and adjudicate the law in significantly higher numbers than do women. For example:

- There are approximately 2,500 judges in Canada: Women make up approximately 10.5% and visible minorities make up approximately 2% (Omatsu 1997: 4)
- 95% of law enforcement officers are men (Palteil 1997)
- Only 25% of all Canadian lawyers in practice are women¹²

This disproportionate homogeneity has definite implications for “impartiality” and “objectivity” in the law. Male dominance in the legal system is reflected in the privileging of a particular point of view of the world. More often than not, this orientation includes certain perspectives on sex and gender which have not worked in favour of women. Accordingly, many feminist critics have cited the underrepresentation of women as the bedrock of the systemic gen-

der, race and class biases in the structure and culture of the legal system.¹³ These translate into barriers to access to justice, biases in the content of the law,¹⁴ judicial disregard of women's experiences (see Wikler 1991), legal methods (see Mossman, 1986) which do not accommodate the reality of women in the diversity of their lives, and the oppressive and abusive treatment of female offenders. The biases of the system are so firmly entrenched and uncritically passed off as “objectivity” that alternative discourses which attempt to challenge the status quo are resisted and rejected on the basis that they are subjective and distorted.¹⁵ Similarly, Constance Backhouse has observed “discriminatory statements by white, able-bodied, heterosexual males pass for ‘normality’. When anti-racist activists, feminists, disability advocates, and gay men and lesbians try to explain their own sense of reality, their statements appear unconventional, aberrant, and askew.”¹⁶

Feminists are aware of the law's limitations. They know the difficulty of attempting to eliminate sexual discrimination and subordination through conventional legal reform. They recognize that the depth and scope of social transformation needed cannot be achieved through law alone (Bartlett and Kennedy 1991). However, feminists also recognize that while law can hinder change, it can also *facilitate* it. Consequently, feminists have not been deterred from interacting with the legal system, challenging its norms and values and struggling to secure a place for women's voices and experiences. Most feminist theorists, lawyers, activists continue to explore the transformative potential of legal reform and the possibilities for readjusting rules and norms to accommodate alternative approaches to doing justice (Miller 1998: 100). The law and legal reform continue to have important implications in women's struggle for social justice.

THE CHALLENGE

In many ways, the law is blind to the gender-specific aspects of women's lives. This is because the law is not fully responsive to the dimensions of gender. Women often experience their lives and sustain hurt, harm and disadvantage which has unique repercussions and has no counterpart in men's lives. For example, men do not get pregnant or have babies. They do not experience the range of views about how their lives should be shaped by their biological capacities. Developing a legal framework that responds in an accurate way to the gendered reality of women's lives is a great challenge to a system that is not ideally structured to "see the world from the standpoint of the oppressed" (Matsuda 1989). Robin West, an American legal theorist states it most persuasively when she argues:

Whenever a woman has sustained a harm in the same way that a man might, she has a good chance of receiving some legal relief. Where she has sustained gender-specific harms, however, the situation is far more complicated ... Gender specific harms, and the women who sustain them, create anomalies in our legal system, to which the system responds in a number of different but invariably perverse ways (1997: 98).

Understanding gender-specific harms requires the legal system to take into account all intersecting factors in women's lives – including women's diverse experiences and knowledge. Gender is not a unitary concept. The reality of all "categories" of women must be recognized. To regard it as such poses a real danger of reducing women to a unitary, usually white, middle-class heterosexual standard, thus suppressing race class, disability the sexual identity (Bourne 1996). The Canadian government has made some strides to reform and improve the legal system's response to women.

In 1997, the Department of Justice adopted an official policy to analyze every justice issue for its impact on gender equality.¹⁷ The policy is central to providing a more contextual view of how all women are affected by the law. However, it is only a beginning in the process of understanding the extent to which the law impacts on women's physical and mental health. Much more research, data collection, and evaluation are required to measure explicitly and fully the role of the legal system as a determinant of women's health.

SOME CURRENT GENDER ISSUES IN THE LEGAL SYSTEM

FEMINIST LEGAL ACTIVISM IN CANADA

Hundreds of academics,¹⁸ activists, researchers, consultants, national, provincial and grassroots organizations have been involved in revealing, investigating, lobbying, and reforming Canada's legal system.¹⁹ A number of key organizations which have played key roles in working towards making the legal system more equitable for women are listed and described briefly in Appendix A. Their work in conjunction with the efforts of feminist legal theorists, academics, researchers, lawyers, activists, and women consumers continue to inform strategies for change and prioritize areas for reform. While some aspects of the legal system been examined from the perspective of women's health, there is a significant gap in knowledge about the implications of the law for women's short and long term mental and physical health. The following represents a selected number of legal issues which have the potential to impact on women's health status and are worthy of further investigation.

ACCESS

Access to justice refers to one's ability to make effective use of the legal system. It includes access to information, advice, service, courts

and other appropriate remedies. Women continue to experience obstacles to access because of their lack of knowledge of criminal and civil remedies,²⁰ language barriers, cultural differences, lack of accommodation,²¹ and the lack of resources and finances required to engage with the system. The lack of access can result in injury, increased poverty, loss of children, loss of property, and even death (in particular for women who are trapped in violent relationships). Some attempts have been made to eradicate financial obstacles. For example, in 1994, the Court Challenges Program of Canada – a non-profit organization was established to provide financial assistance for important court cases which advance language and equality rights guaranteed under Canada's constitution. Funding is provided for cases that have the potential to change a law, policy, or practice in a substantive way.

One of the most significant issues in access today, however, is the issue of *legal aid*. All provinces and territories operate publicly-funded legal aid programs. The purpose of legal aid is to prevent a two-tiered system of justice by ensuring that everyone can have access to proper legal representation when necessary, regardless of financial circumstances. Studies have revealed that coverage categories have not always reflected the diversity of women's legal needs often resulting in their lack of access to the justice system. They have also shown that women with disabilities, immigrant and refugee women, abused women and Aboriginal women encounter specific hardships in trying to access legal aid (Addario 1998). These include inability to locate lawyers who take legal aid certificates, restricted financial eligibility criteria and categorization of coverage barriers. Women utilizing legal aid also report feeling that the legal service they received was compromised. Legal aid has been further devastated by the cutbacks to its funding (see National Council of Welfare 1995).

Currently, the federal government only participates in cost-sharing for criminal cases but not for family law cases.

OUTSTANDING ISSUES

- accessibility, coverage and financial eligibility to legal aid for women need to be revisited. access needs of rural women, women with disabilities, refugee and immigrant women need examining to ensure gender and culturally sensitive outreach
- lack of transportation, childcare for women seeking legal aid
- lack of legal interpreter services for non-English speaking women
- lack of appropriate aid for Aboriginal women

CRIMINAL LAW

VIOLENCE AGAINST WOMEN

Violence against women exists in all communities and cuts across all cultural, racial and religious groups, and income levels.²² Moreover, it has a wide-range of health implications for women. The World Bank has estimated that in industrialized countries, sexual assault and domestic violence take away almost one in five healthy years of life of women between the ages of 15-44 (United Nations n.d.: 1). For many years, feminists have struggled with the state to respond to the problem of violence against women. In particular, they have engaged with the criminal justice system in an attempt to promote concerns about this issue. Starting in the 1980s many state and legal responses were secured. In 1983, Canadian Criminal Code provisions were changed. "Sexual assault" replaced rape. Spousal immunity was removed. Other important developments have included the Canadian Panel on Violence Against Women and its recommenda-

tions for change (1993), Centres on Family Violence and Woman Abuse (1992) creating a national network of research centres. More recently, in the February 1999 case of *R v. Ewanchuk*, the Supreme Court rejected inappropriate myths and stereotypes about sexual assault in defining the nature of consent. While Canada is widely recognized an international leader in the area of violence against women there are many legal issues which require further reform. These highlight the limitations of the criminal justice system in protecting women from gender-based violence and its health effects including the loss of lives, severe physical trauma, short and long-term psychological harm.

OUTSTANDING ISSUES

- **Non-reporting of Abuse**

According to Statistics Canada 1993 survey on violence against women, only 14% of all violent incidents are reported by women to the police. There are many reasons for non-reporting. Resorting to law can often result in retaliation from abusive partners, extended families and communities. Women fear deportation and/or losing their children. If their partner is incarcerated, women may also experience a loss of economic security (Martina and Mosher, 1995).

- **Revictimization**

Women who have been abused or assaulted often find that engaging with the criminal justice causes revictimization.²³ Consistently, the process of seeking redress of remedies for harms suffered is reported to be worse than the original than the original incident which brought them into the system (Jiwani and Buhagier 1997). This includes all levels of interaction but seems to be most pronounced when women are required to

go to court. The process is often reported to be adversarial, terrifying, intimidating, and discrediting. Presentation of medical evidence, has been reported to make complainant's feel like they are on display, and that physical damage over psychological scarring is emphasized (Feldger 1997). Further Bill C-46 – which became law in May 1997²⁴ – was like its predecessor, Bill C-49, intended to limit the use of confidential records in sexual assault trials. While hailed as a victory for women's equality in sexual assault proceedings, many women continue to be discouraged from pursuing redress through the criminal justice system because of their fear of being violated in court. Moreover, service providers (therapist, counselors) continue to be concerned over the possibility of their records being subpoenaed and used against their clients in court.²⁵ There is often a lack of appropriately trained and experienced witnesses. Many Aboriginal women for instance, are denouncing their abuse in the courts and promoting healing in the community (Wawanoloath and Pelletier 1995).

- **Restorative Justice**

The restorative justice philosophy recently introduced in the Criminal Code can result in diversions from the formal justice system. Restorative justice includes programs such as victim-offender reconciliation, family group conferencing, neighbourhood accountability boards/panels, community reintegrative shaming of perpetrators, and circle remedies (Kachuk 1998; Miller 1998). However, these programs raise concerns in cases of sexual assault.²⁶ There is a need to re-visit alternative responses to criminal situations that include persons who encounter one

another in hierarchical relationships of unequal power and abuse.

- **Lack of Perpetrator Accountability**

Despite legal reform, many critics of the criminal justice system argue that men are not accountable for their violent and abusive behaviour. Because many perpetrators have little respect for the justice system, protection orders and peace bonds may give women a false sense of safety. Many controversial defences are still being utilized (i.e., defence of provocation). Sentencing for sexual assault is also woefully inadequate (Borich 1997).

- **Stalking**

Stalking laws first came into effect in 1993 under Section 264 of the Criminal Code as *criminal harassment*. Statistics show that the majority of victims of stalking are women and the majority of stalkers are their former partners (Gill and Bockman 1996). Stalking is not being treated seriously by the criminal justice system. In 1994, Statistics Canada reported that four in ten criminal harassment charges were dropped and of the 71 per cent that were prosecuted, the prosecution was done by way of summary conviction or a fine not exceeding \$2,000. Only 33 percent of all convictions. Less than 5% resulted in a prison term of more than 12 months (Kachuk, 1998).

- **Mandatory Arrest**

Serious concerns have been raised as to whether or not mandatory arrest provides real safety and security for women. Studies now show that it can have detrimental effects on the mental health and general well-being of women, particularly in immigrant and refugee community (Martin and Mosher 1995). Other stud-

ies report the escalation of violence over time after mandatory arrest (Davis and Smith 1995). First Nations women, immigrant and refugee women, women of colour and women with disabilities and women who are otherwise socially and economically disadvantaged appear not to be protected by this policy. Moreover, there is a question of how effective such a policy is if women are not willing to testify in court about their experience.

PROSTITUTION

Studies demonstrate that men and women charged with prostitution-related offences are not treated equally. Women are more likely than men (prostitutes and customers) to be arrested and convicted and to receive harsher sentences (Boritch 1997). The underlying assumption is that “women defendants are on trial both for their legal infractions and for their defiance of appropriate femininity and gender roles” (Edwards 1984: 216). The current response does not adequately address the stigmatization, criminalization or short and long term gender implications associated with prostitution. Most importantly, is a lack of responsiveness to the human costs of violence and death for the prostitutes themselves.

WOMEN OFFENDERS

Women and men do not experience equal treatment in prison (Boritch 1997). The inequalities permeate all aspects of incarceration including the type of treatment women receive, and the kind of programs and services they are afforded. Females also experience more health problems – both physical and mental – which appear to escalate or develop as a result of incarceration. A 1994 study found that 31% of women vs. 12% of men suffered from depression; 48% of women vs. 13% of men reported suicide attempts (Boritch 1997: 201). Incarcer-

ated mothers report depression, anxiety, and fears about their children's safety while they are apart (Miller 1998). Reports also document the problems of self-mutilation and overmedicalization of women with psychotropic drugs (Hattem 1994) and inadequate medical and psychiatric services in the prison system for women.

OUTSTANDING ISSUES

- investigation of “holistic, women-centered and culturally sensitive approaches” in responding to women offenders
- investigation of alternatives to incarceration, i.e., probation, suspended sentencing, attendance centres, educational and vocational training, therapeutic and community supervision (from halfway to quarter way houses)
- alternatives to segregation in the prison system
- improved access to health care, including preventative care (i.e., dental services, physical examinations) and mental health programs
- examination of the overmedicalization of women (especially to address the needs of the aging women's prison population)

PORNOGRAPHY

Since the 1970s, many feminist have defined pornography as an expression of male violence. In 1992, the Supreme Court upheld obscenity prohibitions on the basis that pornography degrades and dehumanizes women *R. v. Butler*.²⁷ The heterosexist bias in framing pornography in this matter has provided the backdrop for deeming gay and lesbian pornographic works criminally obscene. The issue is currently before the Supreme Court of Canada.²⁸

TRAFFICKING

According to the Global Alliance Against Traffic in Women, Canada is a country of destination, origin, and transit in the wider nexus of trafficking. Status Women of Canada, through its Policy Research Fund, is currently funding research on the theme *Trafficking in Women: The Canadian Dimension*. There is a pressing need for legislation and policy to address the issue of the “mail-order bride” industry, sex trade and undocumented women workers in Canada. Trafficked women are often subject to rape, violence and slave-like conditions.

CIVIL LITIGATION

During the last decade, claims by victims of incest and other sexual abuse have proliferated in Canadian civil courts and provincial compensation boards. Unique procedures have also been developed to process claims directly against provincial governments. Cases such as *Jane Doe v. Board of Commissioner of Police for Ontario*²⁹ have received wide media coverage. A recent study (Feldthusen et al. 1999) of the therapeutic consequences of civil actions for damages and compensation claims by victims of sexual abuse revealed that 84% of all respondents experienced some negative emotional experience and more than half experienced negative physical consequences as a result of engaging with the civil justice regime. However, the study also emphasized that there is the potential for positive therapeutic outcomes if the self-identified therapeutic needs of survivors are taken into account and the compensation processes value the claimants' dignity, participation and worth as human beings.

REPRODUCTION

ABORTION

Being able to decide when and whether to have children – controlling one's body in this fundamental way – is as essential to overall well-being as being free from disease (VanWagner 1989). Free and equal access to abortion is a prerequisite to reproductive health and freedom.

Lack of access including the criminalization of abortion force women to seek unsafe alternatives that can cause complications such as infection, poisoning, hemorrhaging or tearing of the uterus, cervical wounds, chronic pelvic pain, pelvic inflammatory disease, tubal blockage, secondary infertility, ectopic pregnancies, and death.³⁰ With the Morgentaler decision in 1988,³¹ the Supreme Court of Canada struck down Section 251 of the Criminal Code which prohibited abortions unless performed in a hospital after the approval of a therapeutic abortion committee. The court argued that Section 251 deprived women of their constitutionally guaranteed right to “life, liberty, and security of the person”.

Since 1988, there have been numerous attempts to restrict women's rights to abortion. In 1989, two important cases were decided regarding attempted injunctions preventing women from legally terminating their pregnancies – *Murphy v Dodd* (Ont. H.C., O'Driscoll, J) and *Tremblay v Diagle* [1989] 2 S.C.R. In both cases the courts decided in favour of the women seeking abortions. In *Diagle*, Justice Dickson argued that the “fetus has no legal status and purported fathers have no rights on behalf of the fetus or of themselves to seek intervention to prevent a woman from having an abortion”. In 1990, legislation in the form of Bill C-43 was introduced to restrict the availability of abortion. It was defeated by the Senate on 31 January 1991. More recently, in *R v. Lewis*, the Supreme Court in British Colum-

bia upheld women's right to a free and safe abortion as outlined in the *Access to Abortion Services Act* by restricting protestor's rights. Presiding Justice Saunders argued that “health care has fundamental value in our society. A woman's right to access to health care without unnecessary loss of privacy and dignity is no more than the right of every Canadian to access health.” Finally in 1997, in *Winnipeg Child and Family Services v. G. (D.F.)*,³² the Supreme Court ruled that a fetus is not a legal person and that the state is not entitled to take action against a pregnant woman on its behalf.

OUTSTANDING ISSUES

- equal access to safe abortion in all parts of Canada (rural and urban) – currently, there is regional disparity (i.e., abortion is unavailable in PEI) including long wait lists, and abortion is more accessible to women with resources
- women seeking abortion still experience both public and private harassment
- violence prevention (Dimon-Gaber 1998) – harassment, threats of violence and violence have caused many Canadian doctors to stop providing abortion services and deters many young doctors from entering this area of the health system
- equality in funding for abortions – hospital performed abortions are provincially funded while clinical abortions receive varying levels of funding
- approval of RU 486 – safe, effective method of abortion which can be used during the first nine weeks of pregnancy

MIDWIFERY

Beginning with Ontario, many provinces (Quebec, Manitoba, BC and Alberta) have all legalized midwifery symbolizing an important change to the highly medicalized process of

birthing choice. Legislation is aimed at ensuring that birthing women should have the choice of birth place and care givers and that the experience should be healthy and positive.

OUTSTANDING ISSUES

- there is a need for legislation on midwifery in every province in Canada
- the scope of legislation needs change to include a more comprehensive scope of midwifery practice
- the issue of non-legalized midwives needs to be addressed

REPRODUCTIVE TECHNOLOGIES

The Royal Commission on Reproductive Technologies was established by the federal government in 1989.³³ It heard from more than 250 organizations, many of them women's groups³⁴ concerned with how technologies are developed and used and what impact they have on women's equality and health (Royal Commission on Reproductive Technologies 1991). The Commission made a number of recommendations.³⁵ In 1996, the federal government introduced *Human Reproductive and Genetic Technologies Act* banning 13 practices including sex selection for abortion, commercial surrogacy, human cloning, the development of artificial wombs, retrieving eggs from fetuses of persons after death, and creating embryos for research purposes only. Because of the election call in 1997, the bill was never enacted. At present, there is no appropriate legislation regarding reproductive technologies and therefore no appropriate protection of women's health.

OUTSTANDING ISSUES

- unregulated clinics operating without accreditation or regulation

no laws exist to regulate the use of embryos and fetuses in research and experimental therapies (Lafave 1994).

In the fall of 1999, it is expected that a bill and regulatory package, the Reproductive and Genetic Technologies Act³⁶ covering licenses for clinics, data, and side effects of fertility drugs, will be announced formally. It is expected to cover licensing requirements for clinics, prohibit certain reproductive and genetic technologies, investigate fully side effects of fertility drugs and create a national regulatory agency the Health Protection Branch is revising its legislative framework for health protection (this covers technologies, drugs, and other devices).

FEMALE GENITAL MUTILATION

In 1992, the Department of Justice reviewed female genital mutilation and deemed the practice in violation of the Criminal Code of Canada. Moreover, it drafted Bill C-126 which was passed in June 1993 outlining the unlawfulness of removing children from Canada with the intention of undertaking this practice.³⁷ Moreover, the College of Physicians and Surgeons of Ontario banned genital mutilation in 1992.

OUTSTANDING ISSUES

- concerns that despite the legislation, female genital mutilation is continuing to be practised in Canada
- despite the fact that in 1993 Canada was the first country to recognize gender persecution as a ground for asylum, few women have been able to secure asylum on the basis of female circumcision

FAMILY LAW

Family law in Canada is regulated both federally and provincially through the *Divorce Act*

and other provincial family laws. A particular model of family has been reproduced and reinforced by the law – the heterosexual, nuclear, patriarchal unit. Women who have conformed to this family “norm” as well as those who have lived their lives outside of its confines have suffered detrimental consequences. Women who have been wives and mothers as well as women who have lived in same-sex relationships have endured a wide-range of social and economic injuries which have no doubt had impact on their emotional and physical health status.

Some important decisions and changes that have been made include the decisions and aftermaths of cases such as *Moge* (discussed below), *Thibaudea v. Canada*,³⁸ *M v. H.*³⁹ However, there still remain areas of family law which greatly disadvantage women and create conditions which can adversely affect their mental and physical well-being. These include:

CHILD CUSTODY

In May 1999, the government published *Strategy for Reform*, a response to the report of the Special Joint Committee on Child Custody and Access, *For the Sake of the Children*. These two documents signal a move towards a gender neutral policy on child custody and access. The recommendation made in both are far reaching. Treating men and women the same – when they have on balance have drastically different economic circumstances, and different levels of emotional attachment to children runs the risk of jeopardizing women’s well being. It ignores gendered social relations in society and in families.

OUTSTANDING ISSUES

- woman abuse in custody and access disputes and relocation rights of custodial parents (see Bala et al. 1998 and Na-

tional Association of Women and the Law 1998)

- a woman’s sexuality continually threatens her maternal rights – there is an inherent heterosexist framework used in custody arrangements
- many women with disabilities lose their children in custody battles, even in cases of abuse judges often decide that an abusive parent is more appropriate than a disabled women
- women with fewer resources are at risk of losing child custody due to lack of self-sufficiency
- single mothers are seen as less stable than fathers who provide mother-substitutes in forms of girlfriends, aunts, or new wives

BREAKDOWN OF MARRIAGE AND COMMON LAW RELATIONSHIPS

The breakdown of marriage continues to affect women disproportionately. The consequences of divorce are first and foremost economical. According to Statistics Canada’s report *Family Income After Separation, 1987-1993*, the economic situation between men and women following separation or divorce is significant. One year after separation, women experienced at loss of 23% in family income adjusted for the number of family members while men registered a gain of 10%.⁴⁰ Women who have spent many years as caregivers, childbearers, and childrears often find themselves unemployed, underemployed or unemployable and living in poverty. Given that poverty is the greatest determinant of poor health – the repercussions of the breakdown of marriage are significant. Moreover, because the courts’ approach to espousal support awards does not always result in an equitable sharing of the economic consequences of marriage many women suffer emo-

tional harm resulting from their unfair treatment by the legal system.

OUTSTANDING ISSUES

- adequacy of spousal support after divorce⁴¹
- law enforcement of payment requirements – studies have shown that between 33-80% of support payments are in arrears (Bourne 1996)
- provincial family law which sets down rules for the fair division of property in a divorce does not apply on reserves (The *Indian Act* is silent on the issue of divorce. Moreover, Bill C- 49 - the *First Nations Land Management Act* which became law in June 1999 does not set clear standards for the division of matrimonial property in a divorce. The Act allows bands to develop their own rules, with no national standards or appeal process, for the distribution of such assets. The Native Women's Organization of Canada has launched a lawsuit arguing that this law adversely affect women and children on reserves who are not protected in situations of divorce.)
- access to equitable division of property, adequate support payments to all common law couples, including same-sex partners

FAMILY MEDIATION

This process is rapidly being considered a complementary or alternative process to court-based family justice services. Mediation is seen as a constructive, consensual and low-cost alternative to litigation (see Goudry et al. 1998). The process is used to settle custody and access issues, division of property, and support issues (both spousal and child).

OUTSTANDING ISSUES

Recommendations (Goudry et al. 1998) for further research, analysis, evaluation and policy development have been made in the following areas:

- impact of family mediation on women's equality interests, in particular on women exiting from violence or abusive relationships
- impact of funding cutbacks and deficit reduction strategies on family mediation programs, and their resultant ability to protect the rights of women
- the impact of cutbacks to legal aid on the rights of women using mediation services

The NAWL has recommended that there be no mandatory mediation of family law disputes, particularly as a prerequisite to the formal justice system (see NAWL 1998).

OTHER IMPORTANT AREAS FOR REFORM: OCCUPATIONAL AND ENVIRONMENTAL HEALTH

EMPLOYMENT AND PAY EQUITY

According to a Statistics Canada survey of 1993 earnings,⁴² women on average earn 72¢ for every dollar than a man earns. *The Employment Equity Act* and *The Employment Equity Regulations* have been in force since October 1996. Pay equity is protected by the *Canadian Human Rights Act*. Both employment and pay equity seem to be eroding as demonstrated through a number of legal developments. In 1998, in the case of *Ferrel v. Attorney General of Ontario*, the Section 15 challenge to the Ontario government's elimination of the *Employment Equity Act* failed.⁴³ In 1999, the federal government announced an appeal of the decision of the Canadian Human Rights Commission regarding pay equity for public service employees.

OUTSTANDING ISSUES

- lack of unhindered access to good jobs and decent employment
- question of whether or not employment equity is a basic human right or something which can be revoked by government
- extending employment and pay equity to both private and public sectors
- Bell Canada's appeal to Supreme Court in efforts to divert from Human Rights Tribunal

SEXUAL HARASSMENT

Sexual harassment is a major workplace issue. Women employees have the right to be free from sexual harassment and employers have an obligation to provide a safe and secure environment for their employees. The *Canadian Human Rights Act* prohibits discrimination and harassment. Many women who are harassed experience both psychological and physical repercussions. They may become depressed and demoralized. The emotional strain can cause physical illnesses such as nausea, headaches, fatigue. Women who are harassed lose self-esteem, receive unfair evaluations, poor references, and because they are often unable to work – a disrupted work record. All of these can have economic repercussions which in turn can influence women's long term health status.

OUTSTANDING ISSUES

- federal, provincial and territorial human rights commissions who are responsible for investigating and resolving harassment complaints are often slow and ineffective
- only four out of ten Canadian women who suffer harassment at work take any formal action⁴⁴

- legal action is stressful and expensive – often, awards are insignificant
- worker's compensation does not recognize that sexual harassment can cause a work-related disability

THE ENVIRONMENT

There is growing concern over the links between the environment, health and disease prevention for women (i.e., links between breast cancer and the environment). There is a need to further understand whether women are more vulnerable to diseases resulting from environment pollution, including breast cancer and other reproductive ailments. At present, there is inadequate understanding of chemical pollution (in particular, the health effects of existing chemicals and the synergistic effects of combinations of chemicals). Most importantly, there is no legislation in place to ensure adequate protection of women throughout their lifecycle. The existing Environmental Protection Act is an ineffective mechanism of regulation. Moreover, there is a lack of national standards in both federal and provincial jurisdictions over the environment.

MENTAL HEALTH

Women are more likely than men to seek psychiatric help and studies suggest that more women than men are involuntarily committed. Mental health reforms (of which legislative changes are a part) carried out in the context of fiscal constraints raise serious concerns that coercive legislation will be used in lieu of better and more comprehensive service delivery. This in turn would give the law more control over the lives of women with mental illness which is paternalistic and can be used as a tool of individual and social control. Current research on women's experiences in the mental health system in British Columbia suggests proposed legislative changes, in particular to mental

health acts across Canada will have a deleterious impact on women.⁴⁵

OUTSTANDING ISSUES

- more research is required to review all proposed changes to mental health legislation, including adult guardianship protection acts and all other legislation related to substitute decision making, to better understand the impact on women

APPENDIX A

CANADIAN ABORTION RIGHTS ACTION LEAGUE (CARAL)

CARAL is a pro-choice organization formed to ensure that every woman in Canada has reproductive freedom.

Contact:

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CANADIAN ASSOCIATION OF ELIZABETH FRY SOCIETIES (CAEFS)

The CAEFS is a federation of autonomous societies which works with, and on behalf of women involved with the justice system, particularly women in conflict with the law. Elizabeth Fry Societies are community based agencies dedicated to offering services and programs to marginalized women advocating for legislative and administrative reform and offering a forum within which the public may be informed about, and participate in, aspects of the justice system which affect women. They have been particularly vocal in regards to prison issues, incarceration and its alternatives and battered women's defense.

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CANADIAN RESEARCH INSTITUTE FOR THE ADVANCEMENT OF WOMEN (CRIAW)

A national, non-governmental organization founded in 1976 as a response to International Women's Year. CRIAW is committed to advancing the position of women in society, to encouraging research about the reality of women's lives and to affirming the diversity of women's experiences. CRIAW publishes women-centered research, administers a grant-in-aid program, scholarships and awards and sponsors national theme conference every two years. They have published in the area of women's health, reproductive technologies, violence against women, battered women syndrome and their upcoming conference in October 1999 is focused on "Feminist Definitions of Healthy Lifestyles and Caring Communities".

Contact:

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E-mail: ciraw@sympatico.ca
Website: www3.sympatico.ca/ciraw

CONGRESS OF BLACK WOMEN

The Congress of Black Women is a national organization that supports various communities in their struggles for women's and children's rights. It works with all women, regardless of age, sexuality, economic or ability status, to fight against issues such as violence against women, discrimination and poverty. It provides advocacy, referrals, and direct support to the community by providing resources and organizational assistance.

Contact:

2376 Eglinton Ave. E.
Scarborough, Ontario
Tel: (416) 269-4245

THE DISABLED WOMEN'S NETWORK (DAWN)

The DisAbled Women's Network Canada is a national, cross-disability organization of women with disabilities in Canada. The objectives of DAWN Canada include the following: to be a voice of women with disabilities, to provide support, information and resources to women with disabilities, to enhance communications among women with disabilities and between the disabled consumer movement and the women's movement, and to promote research on all issues affecting women with disabilities and work in cooperation with others who share concerns of equality and social justice.

Contact:

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EQUALITY FOR GAYS AND LESBIANS EVERYWHERE (EGALE)

EGALE was founded in 1986 to advance equality for Canadian lesbians, gays and bisexuals primarily at the federal level. EGALÉ's work is comprised of three components: political action, legal interventions and public education. Most recently, it intervened before the Supreme Court of Canada in *M & H. v. Ontario*, a challenge to the "opposite-sex" definition of "spouse" in Ontario's *Family Law Act*.

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FREDA CENTRE FOR RESEARCH ON VIOLENCE AGAINST WOMEN AND CHILDREN

The FREDA (Feminist Research, Education, Development and Action Centre) is a joint collaboration of academics at Simon Fraser University, the University of British Columbia, and community and women's organizations working at the grass-roots level. It is committed to participatory action research as defined by the community, and works in the interest of the community. The FREDA Centre's research focuses specifically on violence against women and children, and encourages partnerships between communities and academics who are working to end this violence.

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LEGAL EDUCATION ACTION FUND (LEAF)

LEAF is a national non-profit organization working to promote equality for women and girls in Canada. Using the equality provisions from Section 15 of the Canadian Charter of Rights and Freedoms as a basis to advance women's rights, LEAF presents arguments, or intervenes, in cases where women's rights are at risk in Canadian courts. To date, LEAF has taken on more than 100 cases, covering a wide range of issues including sexual harassment, pregnancy discrimination, unfair hiring practices, violence against women, sex bias in welfare regulations and employment standards, pension inequalities, and reproductive freedom.

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NATIONAL ACTION COMMITTEE ON THE STATUS OF WOMEN (NAC)

NAC is an umbrella organization for a coalition of some 700 member groups. NAC has been involved in issues related to women's equality since the early 1970s. NAC's membership is made up of diverse groups including women's shelters, shelters fighting male violence against women, trade unions, aboriginal and Métis women's groups, immigrant associations, and lesbian organizations. Much of NAC's work is done at the grassroots level. Women's groups involved with NAC take part in demonstrations, education, letter-writing campaigns, lobbying before provincial and federal committees, international solidarity work, conference organizing, and special events planning.

Contact:

203-234 Eglinton Avenue East
Toronto, Ontario M4P 1K5
Tel: (416) 932-1718

NATIONAL ANTI-POVERTY ASSOCIATION (NAPO)

NAPO is a non-profit, non-partisan organization that represents the interests of low-income Canadians. Its mandate is: 1) to raise public awareness about poverty and issues of concern to low-income Canadians; 2) advocate the concerns, values and wishes of low-income Canadians so that they are reflected in public policy; 3) to carry out research on issues of concern to low-income Canadians; and 4) to work with local activists and organizations to strengthen national, provincial and local efforts to eliminate poverty.

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NATIONAL ASSOCIATION OF WOMEN AND THE LAW (NAWL)

NAWL is a national non-profit organization dedicated to advancing the equality rights of women through legal research, law reform, advocacy and education. NAWL's members and supporters include lawyers, academics, law students, human rights activists, local women's groups, social policy analysts. Since its inception in 1974, NAWL has significantly advanced the causes of gender equality in relevant areas of the law, including constitutional, family, criminal justice, equality, human rights, health, the profession, income security and employment. It also offers annual essay competitions encouraging post-secondary students to explore an issue of importance in dismantling the barriers to all women's equality incorporating a feminist research and analysis.

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NATIONAL ORGANIZATION OF IMMIGRANT AND VISIBLE MINORITY WOMEN (NIOVMWC)

NIOVMWC is a non-profit, non-partisan and non-sectarian organization. The purpose of NIOVMWC is to ensure equality for immigrant and visible minority women, within a bilingual Canada.

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E-mail nolvmwc@web.apc.org

NATIVE WOMEN'S ASSOCIATION OF CANADA (NWAC)

NWAC is a national Aboriginal organization. NWAC was founded on the collective goal to enhance, promote and foster the social, economic, cultural and political well-being of Aboriginal women in urban, rural, Métis and First Nation communities in Canada. Incorporated in 1974, it is an aggregate of native Women's organizations in Canada. NWAC is structured to represent the views of various Native women, organizations and leaders in areas such as the *Indian Act*, the Constitution, health, family violence, AIDS, aboriginal rights, child welfare and justice issues.

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ONTARIO WOMEN'S JUSTICE NETWORK

A private electronic conference newsgroup of Ontario organizations working to further women's equality. OWNJNet currently operates as part of METRAC - Metro Toronto Action Committee on Public Violence Against Women and Children and is a Toronto based organization that works on

advocacy, law reform, lobbying, and public education on all issues of violence against women and children.

Contact:

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STATUS OF WOMEN CANADA

Status of Women Canada's mission is to promote gender equality and the full participation of all women in the economic, social, cultural and political life of the country. Status of Women Canada's Policy Research Fund,⁴⁶ instituted in 1996 to support independent, nationally relevant policy research on gender equality issues identified access to justice as a research priority and has funded projects examining abused immigrant women, lesbians, women and civil legal aid, family mediation and the implications for victims of sexual harassment of the Supreme Court ruling in *Beliveau-St. Jacques*. More recently, in its *Report on Plans and Priorities 1999-2000*, Status has identified the intention to work with Justice Canada to review the Canadian Human Rights Act, family law reform, Criminal Code reform and implementation of recommendations regarding federally sentenced women, an continued commitment to addressing problem of violence.

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THE WOMEN'S JUSTICE NETWORK

A coalition of organizations and individuals who are concerned about women's justice issues. The network has its own e-mail list on which current actions are discussed. Some of the people and groups with WJN include the National Action Committee on the Status of Women, The FREDA Centre for Research on Violence Against Women and Children, The Ontario Women's Justice Network, the Barbara Schlifer Commemorative Clinic.

Contact:

E-mail: wjn@web.net

Website: www.web.net/wjn/index.html

REFERENCES

1. In 1982, the Canadian Constitution was amended to include the Canadian Charter of Rights and Freedoms. Since 1985, Section 15 – equal right section – has guaranteed equal rights to women as well as making provisions to correct past discrimination on the basis of sex. According to Section 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 based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”
2. Published in 1995, it sets out the government’s commitment to integrate gender into all its programs and policies by conducting gender-based research. The document also includes a discussion on “Improving the Health and Well-Being of Women.”
3. The *Canadian Health Act* with its five basic principles of comprehensiveness, accessibility, universality, portability, and public administration provide an important foundation for Canadian health.
4. The National Forum on Health (1996) observed the lack of responsiveness to women’s distinct health care needs and inadequate knowledge of the social and economic factors which influence women’s health. Further, the 1999 federal budget has committed to investing in further health research through the establishment of the Canadian Institutes of Health Research (CIHR). The organizational structure of these institutes is expected to incorporate an integrated health research agenda including the society, culture and health of populations. The CIHR Task force has also included in its list of possible institutes – a Women’s Health Institute. See *A New Approach to Health Research for the 21st Century – The Canadian Institutes of Health Research*, Government of Canada, 1999.
5. This approach takes into account the range of factors that play a part in determining the health of entire groups in population.
6. These include most notably the Canadian Women’s Health Network, five Centres of Excellence for Women’s Health and most recently, The Women’s Health Strategy.
7. See page 3 of the *Women’s Health Strategy*.
8. Health Canada does set out in 1.11 of the *Women’s Health Strategy* that a “gender analysis of Health Canada’s legal work, including legal advice, litigation, legal policy, and legislation, will be carried out by the Legal Services Unit, supported by the Unit’s Gender Equality Specialist who is designated by Justice Canada.”
9. In last few years women have secured important legislation on gun control, child support, and prohibitions against female genital mutilation.
10. The critique of the legal system has been heightened in light of the litigation record of women using Section 15 of the Charter to press for legislative changes.
11. Perhaps no group of women, however, has been as negatively affected as Aboriginal women who have been systematically dehumanized and marginalized by various provisions of the *Indian Act*. An outstanding issue is the inadequacy of Bill C-31 – amendment to the *Indian Act* that was intended to restore band membership to thousands of women who had lost their status when they married non-Indians. See also O’Doherty, 1997.
12. This excludes the province of Quebec. See Federation of Law Societies of Canada, *1997 Law Societies’ Statistics*, Quebec, 1998.
13. See Brockman and Chunn, 1993; Bourne, 1996; DeKeseredy and McLeod, 1997; and P. Coontz, “Gender Bias in the Legal Profession: Women See it, Men Don’t,” *Women and Politics* 15(2)(1995). The

biases have also been investigated by many task forces, legal and justicial groups including the Canadian Bar Association's 1992 Task Force on Gender Equality.

14. As quoted in Wikler, 1993. Gender bias refers to attitudes and behaviours on the part of participants in the justice system that are based on or reflect: 1) sex stereotypes about the proper "roles" and "true natures" of women and men; 2) cultural assumptions about the relative worth of women and men; 3) myths and misconceptions about the social and economic realities encountered by both sexes. Gender bias is also found in 4) behaviours that impose a gender burden on one sex than on the other.
15. Most recently, this was highlighted in the case of *R. v. R.D.S.* over the issue of judicial impartiality. The original case had been heard by Judge Corrine Sparks who contextualized her decision taking into account systemic racism that is prevalent in Nova Scotia. Her judgement was deemed biased and was appealed to the Nova Scotia Court of Appeal and finally to the Supreme Court. In a 6-3 decision the Court found that the comments of Judge Sparks did not give rise to a reasonable apprehension of bias. The case, according to Christine Boyle, highlights how evaluating events in light of the unequal social relations and institutionalized discrimination that is pervasive in Canadian society is often misunderstood or misrepresented as "bias" in the legal system. See Introduction in Case Comments - *R v. R.D.S.: An Editor's Forum*, *Canadian Journal of Women and the Law*, vol. 10, 1998.
16. See "Bias in Canadian Law: A Lopsided Precipice," *Canadian Journal of Women and the Law* 10(1998): 181.
17. The policy will be monitored and evaluated and requires the following:
 - Gender equality analysis be integrated in all work of the Department of Justice. This includes policy and program development, research, interpreting judgements, legal advice, drafting legislation and regulatory provisions, litigation instructions and strategies, revolving disputes, establishing management policies and consultations as well as communications plans.
 - Specifically, each file shall be approached in a way cognizant of the different life situations of women and men, and where gender equality issues arise, solutions will be developed to prevent or remedy any inequality
18. One of the most significant forums for feminist legal scholarship is the *Canadian Journal of Women and the Law*, a multidisciplinary journal established in 1985 and dedicated to examining a wide-range of issues in relation to women and the law.
19. One such organization, now defunct is the Canadian Advisory Council on the Status of Women (CACSW) whose mandate was to advise the federal government and inform the public about issues of concern to women in Canada. Specifically, CACSW had carried out research on abortion, birth planning, child support, housing, wife battering, women and well-being, and women as caregivers and health guardians and a significant 1995 report entitled *What Women Prescribe: Report and Recommendations* from the National Symposium "Women in Partnership: Working Towards Inclusive, Gender-sensitive Health Policies".
20. Women with disabilities often have little understanding of the justice system. See Masuda, 1992.
21. While accommodation in the legal system is an important issue, the legal system can also be utilized to secure the right to be accommodated by the health care system. For example, in the 1997 case of *Eldridge v. British Columbia* the court found that sign language interpretation should be funded as a medical service under B.C. health care legislation to ensure proper communication between deaf persons and doctors.
22. According to Statistics Canada, *Violence Against Women Survey 1993*, 51% of all women have experienced at least one incident of physical or sexual abuse since the age of 16.

23. Revictimization also occur in processes which are intended to by-pass the criminal justice system. For instance, in 1993 the *Regulated Health Professions Act* was made law in Ontario. This law is supposed to discipline doctors and other health professionals who engage in sexual misconduct with patients without forcing complainants to go through the court system. The lengthy, expensive and often unjust process of filing a complain to one of Ontario's self-regulating boards (i.e., College of Physician and Surgeons of Ontario), however, is resulting in more and more complainants turning to the courts for redress.
24. The purpose was to amend the production of complainant records in sexual assault cases.
25. These important findings have been recently made in Denike and Renshaw, 1999.
26. Similar critiques have been made by some Aboriginal women in regards to culturally-appropriate responses to woman abuse. See the discussion in Laroque, 1997.
27. [1992] 1 S.C.R. 452.
28. *Little Sisters and Art Emporium, B.C. Civil Liberties Association, James Eaton Diva, Guy Allen Burce Smythe v. Minister of Justice, Attorney General of Canada, Minister of National Revenue, Attorney General of British Columbia*. EGALE is the proposed intervener.
29. This case involved the successful bid to sued the police for negligence and a Charter violation in their sexist approach to investigating a serial rapist in Toronto.
30. UN: Abortions kill 80,000 women a year, story posted March 20, 1998.
31. *Morgentaler v. Queen* (1988), 82 N.R. 1 at 24.
32. This case involved the constitutionality of forced confinement in a treatment centre for a pregnant Aboriginal woman who was addicted to solvents.
33. Lobbying by feminists including the Canadian Coalition for a Royal Commission on Reproductive Technologies played a key role in the process. See Dawson, 1994.
34. A full list is found in *Proceed with Care: Final Report of the Royal Commission on New Reproductive Technologies, Volume 2*, Ottawa: Minister of Government Services Canada, 1993: Appendix D, pp. 1229-1251.
35. These included the creation of a new reproductive technologies commission, the monitoring and prohibition of certain practices such as the selling of eggs, sperm, embryos, fetuses, fetal tissue, advertising and payment of contractual motherhood.
36. According to the Regulatory and Legislative Initiatives 98/99, Policy Planning and Coordination Directorate, May 21, 1999.
37. According to Bill C-126:273.(1) No person shall do anything for the purpose of removing from Canada a person who is ordinarily a resident in Canada and who is:
 - under the age of fourteen years, with the intention that an act be committed outside Canada that if it were committed in Canada would be an offense against Section 151 or 152 or subsection 160(3) or 173(2) in respect to that person;
 - over the age of eighteen years, with the intention that an act be committed outside Canada that if it were committed in Canada would be an offense against section 155 or 159, subsection 160(2) or section 170, 171, 267, 268, 269, 271, 272, or 273 in respect to that person.
38. [1995] S.C.R. decided that provisions of the *Income Tax Act* requiring persons receiving child support payments to include them in their income for tax purposes, and permitting those paying child support

to deduct them from income, did not contravene s. 15 of the Charter. The significance of this ruling is that it precipitated eventual change to the Act that eliminated the inclusion/deduction provision.

39. In the ruling of this case, the Supreme Court included same sex relationships in the definition of common-law couples in Ontario. The Court defined “conjugal” to include same-sex relationships. This decision has far-reaching impacts for the social and economic circumstances of lesbians across Canada.
40. Income Analytic Report no. 5, Catalogue Number 13-588-MPB.
41. In 1992, a groundbreaking decision was rendered by the Supreme Court in *Moge v. Moge* which involved the issue of terminating spousal support. The court recognized that women are more likely to be disadvantaged economically by marriage due to the fact that they are usually the primary caregivers and caretakers of household and that these responsibilities often detract from paid employment outside the home. So even after 19 yrs of paying support, Moge’s ex-husband was ordered to continue to pay her indefinitely.
42. Statistics Canada, *Earnings of Men and Women 1993*, Ottawa: 1995, cat. no. 13-217.
43. It is, however, currently being appealed to the Supreme Court.
44. See *Fact Sheet on Sexual Harassment*, Vancouver Rape Relief and Women’s Shelter, 1997.
45. See Marina Morrow with Monika Chappell, *Re/Visioning Women’s Mental Health Care* Vancouver: BC Centre of Excellence for Women’s Health, 1999.
46. Priorities for the Fund were identified through consultation with a range of national, regional and local women’s organizations, researchers and research organizations, community, social services and professional groups, other levels of government, and individuals interested in women’s equality.

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