

LEGAL AID DENIED

Women and the Cuts to Legal Services in BC



By Alison Brewin
With Lindsay Stephens



CCPA
CANADIAN CENTRE
for POLICY ALTERNATIVES
BC Office



SEPTEMBER 2004

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September 2004

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ACKNOWLEDGEMENTS

Many thanks to those who reviewed this paper and provided feedback: Anne Beveridge, Penny Bain, Sylvia Fuller, Sarah Khan, Seth Klein, and Margot Young. Special thanks to Amber Prince for editing and footnote-fixing, and to Theresa Beer for her editing. Thanks also to all the dedicated volunteers who have been taking affidavits for West Coast LEAF's Family Law Legal Aid Campaign, and the summer students who have moved the Campaign forward each summer: Zara Suleman, Margot Young, Amber Prince and Azmina Ladha. And we send our thanks to the women who have donated their stories to our Affidavit Campaign, and all the women who would if they could.

West Coast LEAF and the CCPA would like to thank the Law Foundation and Status of Women Canada for their financial contributions to this paper.

Any errors and the opinions presented in this report are those of the author, and do not necessarily reflect the views of the Canadian Centre for Policy Alternatives or West Coast LEAF.

ISBN 0-88627-377-3

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Summary

In 2002, as part of massive cuts to public services, the British Columbia government dramatically cut legal aid coverage in BC. Family law legal aid and poverty law services, in particular, were substantially reduced or eliminated. The budget for the Legal Services Society (LSS) — which provides legal aid services to British Columbians — was slashed by almost 40 per cent over three years.

While these cuts have affected all British Columbians, they have had the greatest impact on women. Women's need for legal services and representation is overwhelmingly in the areas of family or civil law, not criminal law. Even prior to the cuts, women received only 38 per cent of LSS services; following the cuts, that dropped to 30 per cent. Legal aid coverage in BC is now almost entirely for criminal law matters.

Equality principles — recognized by the Supreme Court of Canada — demand that governments ask how their policy choices will specifically impact women. Yet, when cutting funding for legal aid programs and services, the BC government has clearly neglected to consider the gendered impact of this move.

Following the cuts, the Legal Services Society Board announced it could not meet its obligations under the Legal Services Society Act. The provincial government responded by firing the LSS Board of Directors, appointing a Trustee and proceeding to slash full time staff from 460 to 155, replacing 42 offices and 14 area directors around the province with seven offices and 22 local agents. As well as limiting physical access to legal aid, the government also eliminated LSS independence by changing the arms length relationship that is considered a key requirement for the delivery of legal aid services in Canada. The changed mandate for LSS means legal aid is no longer about providing legal representation for those in need, but about helping with legal information and managing budgets.

The Legal Services Society has traditionally used financial eligibility rules to manage budget fluctuations. Before the cuts, the LSS differentiated between eligibility for criminal and civil legal aid because of concern for how eligibility changes would affect men and women differently. LSS is no longer in a position to make these gender-based decisions.

Women are now less likely to be eligible for the legal aid services that they need because it is easier to access criminal legal aid than family legal aid. In fact, the number of referrals to private lawyers for family law matters has decreased by 58 per cent between 2000/01 to 2003/04, whereas during the same time, the number of referrals to private lawyers in criminal legal matters has decreased by just 2 per cent. The amount of actual representation that a private lawyer can provide to a client has also significantly decreased in family law matters. Clearly, family law, and correspondingly, women, are bearing the burden of the provincial cuts to legal aid over the last three years.

Further restrictions have been placed on legal aid eligibility. Family law legal aid is now only available to someone who is fearful for their own safety or that of their children. Legal representation used to be

provided for custody and access, maintenance and other family law issues. Using the presence of violence as a threshold for eligibility is wholly inappropriate given the complexities of domestic violence. Only access to adequate, quality legal representation based on need, not violence, will ensure that victims of domestic violence are able to free themselves of violence and abuse.

Without adequate legal representation, women are losing custody of their children and giving up legitimate rights to spousal support. Quotes from women that appear in this paper are taken from affidavits collected by West Coast LEAF. Sworn testimony is being collected until a strong test case emerges to establish the constitutional obligation of the government to provide adequate civil legal aid.

In addition to family law legal aid changes, provincial funding for poverty law (legal aid to low-income people denied income such as welfare or EI) and immigration law was completely eliminated by the cuts. Before the cuts, almost 40,000 British Columbians each year had legal assistance with poverty law matters; during the last year, that number is no longer recorded, though some services are being offered through the pilot LawLine.

The cut to immigration law legal aid has meant that women who have been abused and are without landed status to stay in Canada may be faced with staying in an abusive relationship with their sponsor (partner) or being deported.

Perhaps most outrageous to those suffering from massive legal aid cuts is the fact that the province collects considerably more than it spends on legal aid. It is hard to determine how much the government is collecting through the 7.5 per cent tax on legal services; some estimates put the amount over \$90 million. This, in addition to federal contributions of \$9 million for criminal legal aid, means the amount collected far exceeds the current spending allocation of \$55 million.

The impact of cuts to legal aid are even more devastating when combined with the broad-based cuts by the provincial government to programs, services and funding for community organizations.

Recommendations for the government to redress this situation include: ensure funding for legal aid goes directly to legal aid services; eliminate the requirement that violence be present in the eligibility rules for family law legal aid; restructure the LSS Board to re-establish an arms length relationship between the government and the Society; and provide civil law legal aid services according to need.

The provincial government has the obligation to develop a legal aid system that reflects the government's constitutional, human rights and international obligations to end women's inequality.

Introduction

Women's equality is accepted as a basic truth by most Canadians — but is it a reality? We generally accept such principles as women's right to education, their capacity for active professional work lives, and their ability to balance family life and paid work. We expect that men have the capacity and responsibility to contribute more to families than just a paycheck. As a society, we believe that if women are not overtly excluded from opportunities and services, there is no inequality between women and men. This sort of *formal equality* continues to define how we view women in our society.

If we look at women's experience from the perspective of *substantive, rather than formal equality*, we get a very different picture of women's equality in British Columbia and in Canada.¹ When we consider the justice system in BC — and family law in particular — from this perspective, the achievements towards women's equality do not seem as obvious.

The idea that our legal system should apply principles of gender neutrality to the resolution of family conflict seems fair when we consider men's ability to be nurturing parents and women's capacity for paid work. However, the superficially gender-neutral family law legal system in Canada is faulty: it does not reflect the division of labour based on gender in family life, and it is contributing to women's inequality by denying them access to justice.

Public policy decisions regarding legal aid in British Columbia over the past decade have made it very clear that women's needs for access to justice are not only not being met, but are the first target of funding cuts and program scale-backs.

These policy choices are based on the belief that family conflicts are private disputes. However, while marriage breakdown may be private in nature, there has never been a time in the history of our legal system that the government has not developed policy and law around the resolution of those conflicts.

The reasons Canadian federal and provincial governments have regulated marriage and marriage breakdown stem from four principles:

- a legal commitment to protecting the well-being of children,
- the imposition of societal moral norms,
- the protection of property interests and,
- a recognition over the past century that women are vulnerable to poverty when marriages breakdown.

These principles give governments rights and responsibilities for implementing policy decisions around family relations. Current and past provincial governments in BC, however, have used privacy arguments to pull away from their responsibility to provide a justice system that works equally for men and women.

In 2002, in order to meet an unprecedented budget cut, the province dramatically cut legal aid coverage in BC. Family law legal aid, in particular, was substantially reduced, and provincial funding for poverty law (legal aid to low-income people denied income such as welfare or EI, or aid in cases of disputes such as tenancy conflicts) and immigration law was completely eliminated. Legal aid coverage in the province is now almost exclusively for criminal law matters.

The virtual elimination of family law legal aid has disproportionately affected British Columbia women because their need for legal services and representation is overwhelmingly in the areas of family and other civil law, not in criminal law. Without adequate legal representation, women are losing custody of their children, giving up valid legal rights to support, and being victimized by litigation harassment. This is not the result of simple private disputes, but of clear policy choices by government.

The most damaging result of these changes has been the movement of women's struggles and injustices farther into the private realm. When combined with the broad-based cuts to all government programs, services and funding for community organizations, the legal aid cuts mean women's vulnerability to violence, inequality, poverty and exploitation can only increase.

This paper outlines the impact by gender of the 2002 provincial cuts, specifically looking at how the legal aid cuts and changes have affected women. The ways in which public policies are responsible for that impact are described. The history of legal aid in BC, the growing attack on family law services, and the BC government's funding choices provide the context for the discussion. The lack of independence of the Legal Services Society is also discussed. We conclude with recommendations for steps the government must take to provide women with the equality they require through Legal Aid Services.

In an effort to bring the true impact of these cuts to light, West Coast LEAF has been taking sworn testimony from women across the province describing their situations following the cuts. The quotes that appear are from sworn affidavits that have been collected by West Coast LEAF. These statements give voice to those whose access to justice rights has been ignored by the government.

Without adequate legal representation, women are losing custody of their children, giving up valid legal rights to support, and being victimized by litigation harassment.

Gender, Legal Aid and Women's Equality

The 2002 Budget Cuts and Women

On January 18, 2002 the British Columbia government announced a series of massive cuts to public services in the province. Dramatic cuts were made to legal services, including legal aid. The government planned to slash the Legal Services Society (LSS) budget by almost 40 per cent over a period of three years.² The Legal Services Society is the organization mandated to deliver legal aid services in BC. This collapse from a budget of just over \$90 million in 2001/2002, to a budget projected to be about \$60 million in 2004/2005³, dealt a devastating blow to the Board and staff of the Legal Services Society.

These expansive cuts have raised many concerns about the state of women's equality in BC. Even the United Nations has agreed that the actions of the current Liberal government may have undermined women's equality and breached Canada's international treaty obligations.⁴ The breadth of the cuts is staggering. Each ministry undertook a 'core review' and was directed to slash budgets by an average of one-third. Many of these cuts related directly to human rights, women's services and programs, and social services generally — services that are accessed more often by women than men.

In addition to legal aid, some of the changes include:

- The elimination of the Ministry of Women's Equality;
- The end of the universal daycare program that had begun to be implemented by the previous provincial government;
- Cuts in accessibility to child care subsidies;
- Elimination of the Human Rights Commission;
- End to funding for women's centres;
- Cuts and changes to welfare rules, including a lowering of rates, elimination of earnings and family maintenance exemptions, and lowering of the 'employability' status for single parents from when their child is seven years old to when their child is three;
- Cuts to, or elimination of, funding for advocates who assist welfare recipients;
- Relaxing of employment standards for part-time, low-paying positions;
- Cuts to education and community programs and services;
- Closure of Residential Tenancy Branch offices;
- Closure of the debtors assistance office, including the program that assisted women who qualified under the federal New Identities for Victims of Abuse (NIVA) program; and
- Cuts to funding of the Ombudsman's services.

It is important to consider the changes to legal aid in 2002 in the context of the overall cuts. The cuts — presented as being financial — actually represent a strong ideological shift away from a true social welfare system. The role of government, as seen by the BC Liberals, is to strip away social programs and services in order to increase the financial freedom of BC’s wealthiest citizens. Those citizens, so the argument goes, will best be able to generate business and wealth of which we will all, somehow, reap the benefits. This position has led the government to completely disregard the needs and realities of poverty, including its gender differences.

Part of the BC Liberal ideology includes the belief that women in BC have achieved equality, and if they haven’t it is a private and individual issue. This ideology also holds that only women who are victims of violence deserve services and programs and that old-fashioned visions of family and extended family are the answer to child care needs.⁵

In instituting changes to legal aid services, the government has completely disregarded the relevance of women’s experiences. By limiting legal aid services to only those areas that have been established by actual court decisions under the *Charter of Rights and Freedoms (Charter)*⁶ as absolutely mandatory, the government has ignored its obligations under the *BC Human Rights Code*⁷ and the *Charter* to govern in a way that reflects principles of justice and equality.

Our *Charter* is a part of our Constitution and it is not accompanied by a statement saying ‘governments are only required to follow this Constitution if the court has ordered them to’. In fact, both the *Charter* and the *BC Human Rights Code* require the government to consider and advance principles of gender equality, ensuring the basic human rights of all its citizens. In rejecting a gender analysis in its policy changes, this government has rejected its constitutional obligations as well as its obligation to serve *all* the people of the province.

In eliminating poverty law and limiting family law to very narrow circumstances, the government created a system in which far more men than women receive legal aid.

Men and Women and Legal Aid — The Numbers

When the government cut legal aid funding by almost 40 per cent, they directed the Legal Services Society (LSS) to cut family law, poverty law and immigration law services. In eliminating poverty law and limiting family law to very narrow circumstances, the government created a system in which far more men than women receive legal aid. The chart below compares the actual number of legal aid cases in 2001/2002, prior to the cuts, to 2003/2004, following the cuts.

Number of Legal Aid Cases Before and After the Cuts								
	Men				Women			
	2001/02		2003/04		2001/02		2003/04	
Case Type	Cases	Male %	Cases	Male %	Cases	Female %	Cases	Female %
Family	3,077	28	1,008	23	8,071	72	3,369	77
Criminal	20,123	82	18,034	83	4,308	18	3,632	17
Poverty	1949	46	0	0	2,282	54	0	0
CFCSA	854	30	643	29	2,032	70	1,557	71
Immigration	2,111	68	1,221	70	1,005	32	535	30
Total	29,207	62.08	20,906	70	17,842	37.92	9,093	30

“After being denied Legal Aid in 2002, I represented myself twice in court. Volunteers from a transition house came with me, but I had to stand up alone. I did not know what I was doing and it felt like nobody listened to me. My ex-partner’s lawyer was brutal towards me. No one in the courtroom recognized that I was representing myself or that English is not my first language. I was standing there alone trying to protect the boys. This new judge...disregarded the other judge’s decision. She said that my children could go back to overnight visits. The judge said my ex-partner’s actions were “just different parenting”. I had practiced going to court and representing myself, but this did not matter because I cannot argue with a lawyer. I am not a lawyer. I am just a mother. “

Affiant #14

These numbers tell us a great deal about how women and men use legal aid services, and are readily available to the government through LSS reports. The actual number of women referred to legal representation dropped by 8,749 during the two-year period. The number of men served dropped by 8,301, however the percentage of total referrals provided to men actually rose by eight per cent. Even prior to the cuts, women were only receiving 38 per cent of LSS services. Once the cuts hit, that number went down to 30 per cent. In addition, the types of legal aid to which women turn more often than men — family law, poverty law and victim representation (legal representation for victims of crime) — have been cut.

And it is important to note that these numbers only represent the number of individuals who were referred to some level of legal representation, such as a staff lawyer or private lawyer paid by a tariff, *they do not represent the number of hours of service each individual received, or the amount of money that was spent by LSS on each case.* In other words, when combined with the number of hours of legal representation available for different legal issues, one would find that the vast majority of LSS resources were spent on the male clients, particularly the criminal law clients.

For example, LSS will pay a lawyer up to \$700 per half-day (depending on the kind of criminal issue) of a criminal trial. In contrast, there is no legal aid available for family law trials whatsoever. In fact, 83 per cent of individuals referred to an actual lawyer *and* who have an opportunity to be represented at trial, are men, and only 17 per cent are women. If every one of those referrals involved a half-day trial (some require much more, some less), LSS would spend almost \$12.6 million providing trial representation services to men, and only \$2.5 million on those to women.

The direct comparison of criminal to family law services is a very simplistic way to illustrate the gender inequalities in the system, however it does show how the cuts in resources have been allocated. While comparing numbers is only one type of gender analysis, the numbers should nevertheless provide a red flag to public policy makers: they need to look beyond these numbers to examine the real, lived experiences of women.

The Public/Private Divide and the Canadian Legal System

Family and criminal law are very different legal areas. Because the government in criminal law cases is threatening to put the individual in jail (one of the criteria for receiving criminal legal aid), our justice system has always placed great importance on a fair trial and the necessity of stating one’s case before freedom may be taken away. In order to allow for that fair trial, accused people who have challenges in addressing the court, require legal representation.

This concept stems from a variety of legal sources including our Constitution, human rights codes, the common law we have inherited from England, and the variety of international treaties and agreements

Canada is a party to. Section 11 of the *Charter* states explicitly that a person charged with an offence has a series of rights, including the right to a fair hearing. Our common law has established a test called the Rowbotham test⁸ for determining when the state must provide legal representation to ensure a fair trial.

Family law, on the other hand, is viewed by the courts and the law as a dispute between private individuals. Family law is about separating or divorcing spouses trying to divide assets or arrange for the care of their children, and its nature as a private dispute means that the government holds that it has no responsibility for assisting in a resolution of the conflict. In the context of this private conceptual framework, governments in Canada can justify their provision of assistance in resolving family disputes as stemming from their responsibility for children, their desire for a functioning society, and their general role of ensuring the well-being of citizens.

This consideration of family law as private, has allowed governments across the country to focus legal aid funding on criminal law services. This is a firmly held belief among lawyers, governments and the justice system in Canada. The legal system, however, has not acknowledged its own contributions to the levels of conflict many people, particularly women, experience when engaged with the provincial family law justice systems. Nor have our legal institutions acknowledged that women's primary experience of discrimination occurs within the context of their private relationships.

Many of our laws, however, actually suggest that this private/public distinction is wholly inappropriate. Our laws say that it is discrimination to refuse services that are customarily available to the public to individuals on the basis of sex, race, disability, sexual orientation, and so on. The *Charter* not only includes Section 11's statements about the right to a fair trial: it also includes statements about rights to life, liberty and security of the person (Section 7); assurances that every one is equal before the law and has the right to equal protection of the law (Section 15); and guarantees that the fundamental rights outlined in the *Charter* must apply equally to men and women (Section 28).

In addition, Canada is a signatory to the *International Covenant of Civil and Political Rights*⁹ which includes:

Article 14 (1). All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...

Article 23 (4). States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

To suggest that family law is a simple private matter between two individuals also ignores the key role government plays in the complex web of law that governs family breakdown. Through the provincial *Family Relations Act* and the federal *Divorce Act*, the government provides abused women with the right to apply for civil legal remedies to enhance the safety of themselves and their children. Policies that inappropriately limit access to legal representation, effectively bar women's access to

"The hearing was very intimidating. There were many people around. I tried to explain to the judge that my ex-husband was a violent man. I asked if I could present evidence, affidavits from friends. The Master (judge) said that he had enough information to make a decision. He awarded interim custody of both my children to my husband. The hearing was over in 23 minutes..."

Affiant #11

(Despite two further attempts, she never regained custody of her children.)

these remedies. Because women require these remedies much more often than men, the lack of access to essential legal services can be viewed as discrimination in relation to women's right to life, liberty and security as well as to equal protection of the law.

A formal equality approach says that criminal issues are public and therefore warrant an expenditure of government money; family issues are private and do not. The real question is: do governments only have the obligation to remedy an inequality that government's themselves created? Or, do governments have a responsibility to dismantle inequalities that exist in Canadian society?¹⁰ The Supreme Court of Canada has, in fact, been clear that substantive equality — equality that recognizes *pre-existing disadvantage* in society — is the defining norm, and that the *Charter* obliges governments to make legislative choices that will not exacerbate the inequality of a group experiencing pre-existing disadvantage.¹¹ In the case of gender, substantive equality principles demand that governments ask how their policy and legislative choices will specifically impact women. The fact that the vast majority of individuals unable to afford

Legal aid will only be provided for someone who is fearful for her safety and needs a restraining order, or is fearful for the safety of the children.

criminal law services are male, and the majority of those unable to afford family law services are female, illustrates the complex ways in which men and women interact in society. Why do women need family law legal aid services more than men? What does that need look like? By eliminating services that women access more than men, is the government contributing to women's pre-existing inequality and disadvantage?

Women's ability to be free and full participants in the economic, social, political and cultural life of British Columbia is severely undermined by the cuts to civil law legal aid, particularly family law legal aid. This is apparent to anyone providing direct community services. The question remains as to why the government chose to make these cuts in the face of research that strongly advocate against such actions.¹²

Eligibility for Funding: Violence as the Threshold

In cutting the funding to family law legal aid, the provincial government has instituted strict rules about who is eligible for funding. One of the criteria is that legal aid will only be provided for someone who is fearful for her safety and needs a restraining order, or is fearful for the safety of the children. While on its surface, this exception to the elimination of legal aid seems pro-active, there is no evidence to support it as a practical policy determinate. A fact sheet prepared by a coalition of BC anti-violence groups describes the difficulties with this policy choice:

Requiring the presence of domestic violence to be the determinant factor in whether or not a woman will receive legal aid, will leave the women open to allegations that they are claiming abuse by ex-partners only to receive legal aid. It is a commonly held misbelief that separating partners raise a number of false allegations of abuse; research and documentation has shown that this misbelief has no basis in truth. Further, it is unclear what criteria will be used to determine cases where safety of women and children are at risk.

Women who choose not to disclose violence because of their fear of repercussions by their abusers on them or their children, or women who, because of language or cultural barriers, are not able to tell their full stories at intake, will not have access to legal aid.¹³

Women from First Nations and immigrant communities are often not willing to bring police and the state into their lives, or the lives of their ex-partners. Loyalty to one's community can keep women silent, women who are often most likely to need the legal representation necessary to navigate a foreign legal system.

The nature of domestic violence is complex; the control and power exerted by abusive spouses extends beyond the life of the relationship. When violent relationships dissolve, an abused mother is much more likely than a non-abused mother to require no contact and no access or supervised access orders. An abusive ex-spouse will often use the legal system to control and manipulate his former partner and their children — claiming joint or full custody for the sole purpose of maintaining access to the former spouse.¹⁴

Women’s vulnerability to violence is in no way minimized by the policies this government has instituted in their funding of civil legal aid. For many women engaged in high conflict court cases, being dragged over and over into court, or being forced to appeal to the courts to maintain any control over their children or their life, the state of legal aid in BC has increased their chances of living in poverty, losing custody of their children, and experiencing increased violence. Only access to adequate, quality legal representation based on need, not violence, will ensure that victims of domestic violence are able to free themselves of that violence and abuse.

Women and Poverty and Immigration Law Services

Poverty Law Services

Poverty law is the one area of law defined by the income level of the individual, not the subject matter of the legal problem. Usually it involves an individual (or family) on some kind of social assistance, who is entitled to some financial resource under law, but cannot access it without legal assistance. Sometimes poverty law cases are situations in which an individual is responding to a matter, such as debt collection or accusations of welfare fraud. Given this definition, family law is actually poverty law, but generally the two are discussed as separate.

The BC Government eliminated all poverty law legal aid in the cuts of 2002. Prior to the cuts over 40,000 British Columbians received legal assistance with poverty law matters each year. In 2002/03 that number dropped to 512. In this last fiscal year the number has been eliminated from the statistics. LSS now records the numbers according to the service — i.e. how many individuals used the Law Line.

In terms of a gender analysis, the cuts to poverty law services seem neutral on the surface. Because slightly more women than men accessed poverty law services, the impact seems to have been the same. A gender analysis, however, requires public policy to consider how women were accessing poverty law services, what levels of legal assistance they needed, and what happens to women, as opposed to men, when they can’t assert their legal rights. And the fact remains that more women than men live in poverty in Canada.¹⁵

Has any gender analysis been done by the provincial government? Have they looked at women’s vulnerability to violence, exploitation by the sex-trade, or limited access to well-paid, full-time work? As well, the numbers of women who accessed poverty services may not reflect the numbers of women who actually needed them. Sociological evidence tells us that women are far less likely to assert their rights or access anti-poverty services. The government has access to all this information and has chosen to ignore it.

The BC Government eliminated all poverty law legal aid in the cuts of 2002. Prior to the cuts over 40,000 British Columbians received legal assistance with poverty law matters each year. In 2002/03 that number dropped to 512. In this last fiscal year the number has been eliminated from the statistics.

Immigration Law Legal Aid

The majority (70 percent) of people who access immigration and refugee legal aid are men, though most refugee applications by men involve women and children as part of the application. When women are faced with immigration or refugee claims, they are often on their own or with children, and may be making a more complex gender-based refugee claim. By eliminating any provincially-funded immigration legal aid, the intersection for women dealing with marriage breakdown, domestic violence, and immigration issues is a deeply dangerous and isolating one. The lack of legal aid for applications by abused women without landed status to stay in Canada on humanitarian and compassionate grounds, means they are faced with either staying in an abusive relationship with their sponsor or being deported.

In its 2003 report, “New Immigrant Women in Canada: Ways of Being Ways of Seeing”, the Social Planning and Research Council of BC (SPARC) describes this situation through compelling and dramatic stories:

...a sponsored woman finds herself unusually dependent upon her spouse — a situation that does not reflect the equality between men and women... At its extreme, this created dependency can set the stage for domestic violence. If domestic violence occurs, or the marital relationship breaks down, women may stay in dangerous situations because of the difficulty in gaining access to help that would routinely be available to other women. Indeed, most women seeking such help are likely to find themselves, as one immigration lawyer interviewed for this study succinctly put it “up the creek without a paddle.”

This highly vulnerable and diverse group of BC residents has been disproportionately impacted by all three layers of legal aid cuts — to the extent that their fundamental human rights have been utterly denied:

...My legal situation has had a profound effect on my family back in India, though we still speak. However, all my friends and community members who spoke with me before do not speak to me now.

I have no friends or close community members I can turn to because of this situation. I have no separation agreement in place with my husband, and receive no support from him, which I desperately need, I was forced to flee from my home because of threats of violence and have struggled to survive on my own with little income. I have not been able to assert any rights to support because of my inability to file any court documents because of my lack of legal aid and support.¹⁶

“I was so scared at that time that I was physically sick, but I had to be strong because no one else would represent me. I have been through a lot but this was the most embarrassing experience. I felt like a nobody. I ask myself why do I fight and what can I do at this point? ...I feel betrayed by the courts and having to represent myself. When I came to Canada, I was told I could get help and this country supports the best interest of children — I just don’t agree or see this happening.”

Affiant #14

Legal Aid in BC and Government Policy Choices

The Legal Services Society

Shortly after the announcement of the 2002 cuts, the Attorney General (AG) Geoff Plant presented the LSS Board with a list of the “hierarchy of services” that would now be covered by legal aid. The government was unabashed in its directions that only services that have been identified by the Courts as required under the *Charter* would be covered. LSS responded by undertaking a financial breakdown to assess whether or not it could meet its obligations under the *Legal Services Society Act*. In the end, the Board announced that LSS simply could not meet those requirements within the budget set by the AG. Board of Directors’ Chair Sandi Tremblay told Mr. Plant that board members “made it clear that what we need is more money to provide the necessary legal services to the poor and disadvantaged in this province. Furthermore, board members are adamant that LSS funding be provided with no strings attached, and that the independence of the board as written in the *LSS Act* be honoured.”¹⁷

Mr. Plant responded by firing the entire Board of Directors and rewriting the *Legal Services Society Act*.¹⁸ The AG appointed a trustee to oversee the transition period. The new trustee, Jane Morley Q.C., began to implement the changes as directed by the government in partnership with the senior management at LSS. The range and breadth of those cuts are described below.

As a statutory body, LSS is meant to be an independent organization, at arms length from the government for the purposes of administering legal aid. That independence is supposed to protect legal aid and the administration of justice from political interference. But in 1995 the NDP government of the time amended the Act to include Section 19, allowing the government to dissolve the LSS Board of Directors and appoint a trustee in its place. At issue then was, not surprisingly, funding. Like many other commonwealth jurisdictions, BC was struggling with a legal aid system designed without financial caps — legal aid was provided as needed, or as the Courts demanded according to principles of fundamental justice and equality.¹⁹ This issue needed to be addressed if the legal aid systems in the country were going to remain sustainable, either through a new source of revenue or new systems of delivery that would meet the basic principles of access to justice.

“I feel as though this experience is ruining my daughter’s childhood. This has been ongoing for seven years... My daughter is now seeing a counselor to help her deal with the effects of the case... I have tried to express my daughter’s feelings for her in court through her written statements. I always thought that this was supposed to be about her best interests. Yet it seems very clear that this is not at all about her interests.”

Affiant #8

History of LSS funding prior to 2002

Legal Aid in BC had been designed as a mixed service delivery model. Services were, and still are, provided through a combination of clinics, staff lawyers, public legal education programs, summary advice services, and tariffs paid out to private lawyers.²⁰

The economic and legal changes of the 80's and early 90's (particularly the recession and the existence of the *Charter of Rights and Freedoms*) placed a very heavy burden on the tariff side (when private lawyers are paid, rather than staff lawyers) of the legal aid system. Like Ontario, Quebec and Manitoba (provinces with mixed delivery models), the cost of court ordered counsel in criminal cases was particularly difficult to predict. The legal profession, legal aid providers, and provincial governments have been debating this issue for years.

BC tried a number of strategies for reducing costs. One strategy was to reduce the number of eligible recipients by lowering the financial requirements for coverage. This tool has been used repeatedly over the past decade. In 1989, the *Legal Services Act* allowed for flexible eligibility rules, meaning LSS had the discretion to consider a variety of things in determining whether or not an individual could afford a lawyer.

In 1993 LSS removed that flexibility and instituted strict eligibility rules about required monthly incomes for individuals or families. Since then, in an effort to control costs, LSS has either frozen or lowered that bar.

A new demand from government in 1994, that LSS keep its expenditures in line, created a huge debate. LSS came up with a plan to transfer 50 per cent of the tariff work from private lawyers to a team of staff lawyers. This would have involved the hiring of 108 staff lawyers. But the Association of Legal Aid Lawyers was adamantly opposed to that plan, and it was watered down eventually to a much smaller transfer.²¹

In the end, annual funding cuts have resulted in an increasingly diminished legal aid system in the province. The impact these cuts were having on women was obvious to many even before the massive blows of spring 2002.

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Funding Sources for Legal Aid

While the expenses for legal aid expanded and various strategies for controlling those expenses were tried, the revenue side of the legal aid picture also changed. The federal government had previously been contributing to the costs of legal aid through direct support for criminal and immigration legal aid, as well as a share of the costs for civil legal aid through monies transferred under the Canada Assistance Plan. The civil legal aid revenue, for family and poverty law issues, was a dedicated stream expressly earmarked in the transfer.

In 1995, then federal Minister of Finance, Paul Martin, changed the system of financial transfers to the province. Under the new Canadian Health and Social Transfer (CHST), the provinces were handed lump sums, with no express requirements to spend any portion on civil legal aid. The current system, introduced by the federal government in 2003, separates transfer payments for health costs from the federal contribution for social programs and services — and civil legal aid contributions are still not specifically earmarked.

A second source for funding legal aid was created by the provincial NDP government in 1992. In March of that year, the government amended the *Social Services Tax Act* to include a 7 per cent tax on legal services. This has since risen to 7.5 per cent. In defending the new tax, members of the government responded to opposition critics with comments much like the following response from then Cabinet Minister Moe Sihota on April 3, 1992:

*The new tax on legal fees will go a long way to making sure that the working poor in this province, who have traditionally had difficulty getting access to lawyers, will now have a comprehensive legal aid system that will assist them in protecting their legal rights...*²²

The Minister of Finance at the time, Glen Clark, was very clear that the tax was being imposed to offset the costs of legal aid. The government anticipated raising \$35 million with the new tax, while the cost of legal aid that year was well over \$80 million.²³

It is difficult to find accurate estimates of how much the government is currently collecting through this tax since the revenue has never been a dedicated stream — it has always been included in general revenues. Even the budget estimates do not show this as a separate line item; it appears only as part of the social services tax.

Some estimates in recent years put the actual amount collected through this tax at \$91.6 million per year.²⁴ As described above, the province also collects from the federal government: more than \$9 million for criminal legal aid, a portion of the CHST intended for civil legal aid (though not required to be spent that way), and the entire provincial budget for immigration and refugee legal aid is federal money, as of March 31, 2004.

In contrast, the total funding allocated by the BC government to the Legal Services Society in 2004/2005 is \$55 million dollars.²⁵

Perhaps the best person to describe the illogic of BC's legal aid funding system is our current Attorney General himself. On May 11, 2000, Mr. Plant was a member of the opposition. In a debate with then Attorney General Andrew Petter, Mr. Plant made the following speech:

The province notionally gives the society \$82 million, but of course actually got \$8 million of that from the feds, which reduces the amount the province actually had to fork out by \$8 million. Then there's the fact that the society is having to operate in a way that allows its accumulated deficit to be reduced, in this case to the tune of almost \$6 million. What looks like a provincial grant of something like \$82 million to the Legal Services Society works out to be more like \$68 million of actual and accounted-for cost versus revenue to the province from the PST of something like \$83 million.

Someone who was less than kindly disposed to the provincial government would argue that the province has, in effect, profited to the tune of \$15 million from the legal aid system, in the sense that it has collected \$83 million from the clients of lawyers in British Columbia but has really only actually had to fork out something like \$68 million — including both actual cash and the accounting for the impact of the accumulated deficit on the operational expenditures of the society of something like \$68 million.

I'm sure we can quibble about the numbers, but the larger public policy question still remains. Isn't there something wrong with the government taking all this money from legal accounts as a result of a tax which was imposed, the justification of which was for legal aid, yet it doesn't actually really direct all of that revenue into the legal aid system?²⁶

In defending his government's continued use of the legal services tax as general revenue, the Honorable Mr. Plant has suggested that the funds above and beyond the LSS budget are put to legitimate use to cover the costs of legal services outside legal aid, such as court programs and victim services.²⁷ But there can be little question that the accepted understanding of both Mr. Plant and his party when in opposition, and the New Democrats governing at the time, was that the tax was instituted to offset the costs of legal *aid*, not legal *services*.

Legal aid is the provision of legal representation and actual legal advice. Most importantly, legal aid is defined in the *Legal Services Society Act* as "legal and other services provided under this Act."²⁸ Legal aid, according to the laws of British Columbia, only includes those services provided by the Legal Services Society.

It is now clear that the province collects considerably more than it spends on legal aid.

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Non-Governmental Funding Sources for LSS

In looking at the LSS's provision of services, it is vital that one look beyond government funding. This is particularly important in light of the provincial government's efforts to take credit for the ways in which LSS has attempted to fill the service gaps left by the restrictions the government has imposed in the new *Legal Services Society Act*.

LSS funding — legal aid funding — is not restricted to government money. LSS is also funded annually by the Law Foundation and the Notaries Foundation. Those two bodies collect the interest that has built up on trust accounts held by lawyers and notaries, and distribute it broadly to legal service agencies and programs in the community. A large portion of each foundation's overall funding pool goes to the LSS.

The actual dollar amounts provided by each foundation to LSS hasn't changed substantially over the past few years — the Law Foundation provides approximately \$3.6 million, and the Notaries Foundation three quarters of a million dollars. But the percentage of the budget that these amounts now represent has changed.

It is actually this funding that has allowed LSS to pilot the new Family Law website, the new Law Line that provides callers with access to actual legal advice over the phone, and family law duty counsel. In fact, government funding only accounts for 6 per cent of the revenue that supports these 'strategic initiatives' that represent LSS's attempt to fill the family and poverty law gap.

Legal aid is no longer about providing legal representation, but about helping with legal information and managing budgets.

The New *Legal Services Society Act* — The Elimination of LSS Independence

On May 9, 2002 the provincial government passed amendments to the *Legal Services Society Act*. In the new Act, there is no mention of what types of services can be covered, or exactly how those services can be provided. Rather, the Act forms a kind of constitution for LSS, outlining its organizational and governance structure and providing for financial reporting to the ministry. And while one aspect of the LSS mandate continues to include helping low income people, the language is ambiguous, allowing for help to 'resolve legal problems' and 'facilitate' access to justice. There is no explanation of what that means.

The old Act directed the society to ensure that:

- 3 (1) (a) services ordinarily provided by a lawyer are afforded to individuals who would not otherwise receive them because of financial or other reasons, and
(b) education, advice and information about law are provided for the people of British Columbia.
- (2) The society must ensure, for the purposes of subsection (1) (a), that legal services are available for a qualifying individual who meets one or more of the following conditions:
 - (a) is a defendant in criminal proceedings that could lead to the individual's imprisonment;
 - (b) may be imprisoned or confined through civil proceedings;
 - (c) is or may be a party to a proceeding respecting a domestic dispute that affects the individual's physical or mental safety or health or that of the individual's children;
 - (d) has a legal problem that threatens
 - (i) the individual's family's physical or mental safety or health,
 - (ii) the individual's ability to feed, clothe and provide shelter for himself or herself and the individual's dependents, or
 - (iii) the individual's livelihood.

These clearly articulated requirements that the society must provide services under these terms, were undermined over the years by the cuts in funding that began in 1994. In fact, women's advocates had been arguing even before the changes in 2002, that the LSS was not meeting its own obligations under Section 3 of the Act.²⁹

Two fundamental shifts in policy were reflected in the new Act: a change in the mandate to include a statement about maintaining an efficient legal aid system and the elimination of an arms length Board of Directors.

The mandate change — from “providing legal representation to individuals who cannot afford a lawyer” to “facilitate access to justice [for low income people] and manage an effective and efficient legal aid system” — illustrates an ideological priority shift from service provision to fiscal management. Legal aid is no longer about providing legal representation, but about helping with legal information and managing budgets.

In addition, the government restructured the Board of Directors and eliminated the arms length relationship that has generally been considered a key principle in the delivery of legal aid services in Canada. Prior to the changes, only five of the Board’s 15 members were appointed by the government. The current structure has only nine Board members, of which five — a majority — are appointed by the Cabinet.

Section 21 of the *Legal Services Society Act* provides the basis for a Memorandum of Understanding (MOU) to be negotiated between the LSS and the Attorney General. This MOU outlines what kinds of services LSS is allowed to provide. The current MOU is described below.

“After I became self-represented I had to draft my own court documents such as the Notices of Motion and Notices of Hearing. I had to do my own research and present my own evidence in the court...Dealing with this case became like a part time job for me because it was taking up so much of my time...This has meant keeping very late hours in order to ensure that my children do not have to deal with what is going on...

Because of the time I had to spend working on this case I lost a job working at a restaurant because I didn’t have the time to do both the job and prepare for court appearances.”

Affiant #17

The Impact of the Budget Decisions on Legal Aid Services

Limiting the Physical Access to Legal Aid

Under the management of the Official Trustee, LSS began the complete dismantling and rebuilding of a legal aid system with 38.8 per cent less funding. The first step was to shut down existing legal aid offices and replace them with fewer regional centres. Before the budget cuts of March 2002, LSS maintained:

- 13 community law offices
- 17 branch offices
- 12 Native community law offices
- and had 13 'area directors' in communities without offices.

By September 2002, the number of physical offices shrunk to seven regional offices and 24 local agents. (Local agents are private lawyers in communities contracted to provide LSS intake services. Their contracts are very specific about not providing any kind of legal representation or assistance.)

Limiting the Areas of Law — the Memorandum of Understanding

LSS also began rolling back the kinds of legal matters they would cover. These limited subjects were eventually included in a Memorandum of Understanding (MOU), signed in March 2003. Prior to the cuts, the government did not dictate what kinds of services LSS was allowed to provide. The money was allocated and LSS was governed by its responsibilities under the *Legal Services Society Act*. This change represents an important shift in public policy.

Because the administration of justice is expected to act independently of government — a concept with a long history in the British common law system we use in English Canada — legal aid was seen as requiring an arms length relationship to government in order to be fairly administered. By redrafting the *Legal Services Society Act* and dictating the kinds of services provincial government funding can go to, the Attorney General has made a clear decision to let government control how legal aid is administered.

Legal aid in BC, and across the country, is divided into three main legal subject areas: criminal, civil and immigration law. Criminal matters generally are any that arise when an individual is accused of breaking the *Criminal Code* of Canada.³⁰ Civil matters include anytime two different parties have a dispute, such as contract law, wills and estates, or marriage breakdown. Civil law usually involves private individuals, but can involve the government or a public body, if an individual has a dispute with that public entity.

The MOU signed between LSS and the government outlines the relationship between the parties, including:

- a. Anticipated government funding and how that funding can be spent (both parties acknowledge that LSS can access funding from other sources to provide services outside those listed in the MOU);
- b. Exactly what services will be covered by the provincial government funds;
- c. How the parties (the LSS and the A.G.) will address exceptional costs, such as complex criminal litigation and court-ordered counsel costs; and
- d. How disputes between the parties will be resolved.

The schedules attached to the MOU give more specific detail about each of these things, and it is here that the government limits the categories of legal services that LSS can cover.

Legal services, according to the MOU, are no longer to be provided to those who need them, but only to 'eligible individuals'. So instead of looking at the subjective need of the individual for assistance, legal aid is provided to individuals according to financial eligibility alone. The old mandate allowed LSS to take a broader approach if, for example, someone has financial assets on paper, but none in fact. In practice, however, LSS had abandoned that mandate a number of years prior to the 2002 cuts, relying entirely on strict financial income levels to define eligibility.³¹ LSS did, however, allow field staff some discretion in overriding financial eligibility rules with respect to poverty law cases. Under the MOU, eligibility is determined by government solely on the basis of income.

Of key significance in the MOU is the complete elimination of poverty law services, and the profoundly diminished services available in the family and immigration law areas.

"As a result of the legal proceedings I have been separated from my two youngest children and my (*current*) husband since September of 2003 (*4 months earlier*). I have not been able to work while I study family law to learn how to represent myself at court appearances... as a result there is less money for food and less money to meet our needs generally. (*My son*) is very scared that he is going to have to live with his father, my ex-spouse, for the rest of his childhood. He knows that his father has money to pay for a lawyer and that I do not."

Affiant #16

The Numbers: How the Funding Cuts were Distributed

No one questions the fact that civil law matters were the hardest hit when the legal aid cuts took effect. The MOU, and the directions to the LSS prior to the final MOU, made it very clear that family, poverty and immigration would be most deeply affected.

Schedule J of the MOU sets out provincial government funding, stipulating how it must be distributed over the life of the agreement. (Note that the government has since amended the MOU to reflect \$1.7 million for immigration law, coming directly from the federal government.)

Allocation of Memorandum Funding (in thousands of dollars)			
	2002/03	2003/04	2004/05
Criminal	25,428	23,861	23,801
Family – Domestic Violence	4,920	5,040	5,040
Family Tariff	7,712	1,700	380
Child Apprehension	4,547	4,026	4,026
Immigration	4,884	4,924	000
Other Constitutionally required Services	750	1,069	1,069
Legal Education	2,000	1,993	2,000
Exceptional Matters	1,900	2,700	2,700
Staff Provision of Client Services and Support (legal representation via clinic services)	21,469	13,792	15,031
Services and Strategic Objective Initiatives	0	0	983
Transition Costs	1,700	0	0
Retirement of Deficit	0	4,517	0
Total Allocation of Memorandum Funding	\$75,310	\$63,622	\$55,030

The provincial government commitment to family law has decreased from 23 per cent of the overall budget, to 17 per cent over these three years.³² The overall budget of LSS in the year prior to the cuts was \$90 million, but the LSS Annual Report for that year does not divide the amounts spent in the same way, so it is difficult to directly compare.

However, we can directly compare how much funding went toward tariff funding prior to the cuts. The tariff is the amount LSS would pay to a private lawyer to provide representation to a low income individual. Prior to the cuts, tariffs were available for a variety of family law matters and made up 19.7 per cent of the overall LSS budget. In 2004/05, amounts for family law tariffs, other than for child apprehension cases, represented less than 1 per cent of the budget.³³

Poverty law services do not even appear in this budget breakdown. Those services were provided entirely by legal staff through the clinic model of service. By April 2002, LSS had begun phasing out all poverty law services.

Actual Service Provision — Behind the Numbers

In analyzing the impact of the cuts, we need to look at more than dollar amounts. Not only has the provincial government cut the dollars and limited the subject areas for which legal aid is available, but LSS has also had to make decisions about how much service each individual could receive in order to stay within the financial limits imposed upon them.

Before the cuts, civil law services were provided to financially eligible individuals. In family law, they could receive legal representation for custody and access trials, maintenance applications and many other family law issues. Under the new service structure, eligible individuals can only receive a maximum of one emergency referral to a private lawyer for up to eight hours of legal representation for issues relating to their own, or their children's, safety. The chart below shows the dramatic drop in the numbers of applications for family law legal aid and referrals to actual legal representation since the cuts began.

LSS has also had to make decisions about how much service each individual could receive in order to stay within the financial limits imposed upon them.

	Total family applications received	Referrals			Referrals as % of applications
		STAFF LAWYERS	PRIVATE BAR	TOTAL	
2000/01	25,217	1,491	14,035	15,526	61.6
2001/02	23,168	1,413	12,578	13,991	60.4
2002/03	11,029	528	5,926	6,454	58.5
2003/04	11,294	N/A ³⁴	N/A	6,615	58.6

In criminal law, LSS will currently cover the entire trial for an eligible individual if there is a threat of jail time. This includes hours of legal representation, with set amounts for trial preparation and services outside courtroom representation.³⁵ The numbers below illustrate the amount of service those who need criminal legal aid actually receive.

	Total criminal applications received	Referrals			Referrals as % of applications
		STAFF LAWYERS	PRIVATE BAR	TOTAL	
2000/01	35,713	4,260	21,585	25,845	72.4
2001/02	33,662	3,939	20,349	24,288	72.2
2002/03	28,837	780	21,190	21,970	76.2
2003/04	28,821	N/A ³⁶	N/A	21,828	75.7

These two tables tell us that the number of referrals to private lawyers for family law matters has decreased by 58 per cent, whereas the number of referrals to private lawyers in criminal law matters has decreased by just 2 per cent. Added to this, is the fact that the amount of actual representation that a private lawyer can provide to a client has also significantly decreased in family matters.

It is clear from these tables that family law is bearing the burden of the changes in legal aid provision over the last three years.

Financial Criteria

Over the years, LSS has used financial eligibility rules to manage budget fluctuations. By lowering the monthly income amounts that make a person eligible for legal aid, LSS has saved money by decreasing the number of people eligible to receive services. Below is a chart illustrating how these numbers have changed recently. Prior to the changes of 2002, LSS differentiated between eligibility limits for criminal and civil legal aid because of concerns about how lowered criteria might cut off more women than men. Recognizing that women's need for legal aid was primarily in civil law matters, particularly family law, LSS chose to lower the eligibility rate for criminal legal aid matters so that the actual numbers of men and women receiving legal aid was evenly affected.

The recent changes reflect the current public policy direction that eliminates gender as a consideration when cutting funds to programs and services. LSS is no longer in a position to make those gender-based choices. As the chart below indicates, it is now easier to access criminal law legal aid than family law and other legal aid. Women are now less likely to be eligible for the limited legal aid services they need.

Income Threshold for Legal Aid Eligibility				
Household Size	Net Monthly Income Effective April 1, 2000		Net Monthly Income March 1, 2004 – March 31, 2005	
	CRIMINAL	ALL OTHERS	CRIMINAL	ALL OTHERS
1	\$ 925	\$ 1,002	\$ 1,154	\$ 1,002
2	1,388	1,504	1,558	1,504
3	1,620	1,755	1,962	1,755
4	1,792	1,941	2,366	1,941
5	1,975	2,140	2,712	2,140
6	2,147	2,326	3,058	2,326
7 or more	2,294	2,486	3,404	2,486

Conclusion and Recommendations

Throughout the world governments are applying concepts like ‘gender budgeting’, ‘gender-based analysis’ and ‘gender mainstreaming’ to public policy and legislative development. In fact, Canada is seen by many countries as a global leader in such practices, even though, the reality of gender influence on Canadian public policy is limited.³⁷

The BC government, as this paper has shown, has clearly rejected any consideration of gender in its budget and policy development. The suggestion by this government that fiscal demands necessitate painful cuts to programs diverts attention away from the reality that women and low-income people are the hardest hit by changes to legal services.³⁸ It also diverts attention away from the fact that funding sources exist specifically for the purposes of legal aid provision — revenue streams that the government has chosen to redirect.

Recommendations to the Province of British Columbia:

1. Direct existing funding for legal aid to legal aid services, which means, as the current structure demands, into Legal Services Society revenue for the provision of adequate legal representation in family law matters for those who need it;
2. Restructure the LSS Board to re-establish an arms length relationship between the government and the Society;
3. Immediately eliminate the requirement that violence be present in the eligibility rules for accessing family law legal aid;
4. Provide civil law legal aid services according to need, including covering trials and hearings for the life, liberty and security of the citizens of BC. Ensure citizens their fundamental right to access our legal system. Provide these services for all those who have a legal problem that threatens:
 - (i) their family’s physical or mental safety or health,
 - (ii) the individual’s ability to feed, clothe and provide shelter for himself or herself and the individual’s dependents, or
 - (iii) the individual’s livelihood;
5. Engage in extensive and rigorous research into the true nature of women’s experience with the justice system to identify the impacts of current government policy; and
6. Develop a legal aid system in BC that reflects the government’s constitutional, human rights and international obligations to end women’s inequality.

Endnotes

- ¹ The best analogy to help define the difference between substantive and formal equality is a bathroom related one: In designing bathrooms, formal equality would have a men's bathroom and a women's bathroom with the exact same dimensions, number of stalls and sinks, etc. Substantive equality would demand the designer to look at how men and women use bathrooms, and create ones that actually respond to those needs (ie: more stalls for women).
- ² LSS Press release, (30 March 2004), online: <http://www.lss.bc.ca/whats_new/Archived_noninclude-asp/background_summary_of_cuts.asp>.
- ³ Legal Services Society Annual Service Report 2002/2003, (Vancouver: Legal Services Society) page 35.
- ⁴ Canada was up for review by the Committee for the Elimination of Discrimination Against Women in 2003. In its report the Committee raised concerns that the federal government seemed to have little power to enforce international agreements on issues falling under provincial jurisdiction, and expressly raised grave concerns about the actions of the BC government. In particular, the Committee said:
- 27. The Committee is concerned that, within the framework of the 1995 Budget Implementation Act, the transfer of federal funds to the provincial and territorial levels is no longer tied to certain conditions which previously ensured nationwide consistent standards in the areas of health and social welfare. It is also concerned about the negative impact that the new policy has had on women's situation in a number of jurisdictions.*
- 35. The Committee is concerned about a number of recent changes in British Columbia which have a disproportionately negative impact on women, in particular Aboriginal women. Among these changes are: the cut in funds for legal aid and welfare assistance, including changes in eligibility rules; the cut in welfare assistance; the incorporation of the Ministry of Women's Equality under the Ministry of Community, Aboriginal and Women's Services; the abolition of the Human Rights Commissions; the closing of a number of courthouses; and the proposed changes regarding the prosecution of domestic violence as well as the cut in support for programmes for victims of domestic violence.*
- CEDAW Fifth Periodic Report on Canada, January 31, 2003, Online:
<<http://www.un.org/womenwatch/daw/cedaw/cedaw28/ConComCanada.PDF>>.
- ⁵ There is plenty of evidence of this perspective. One particularly poignant example is an interview of then Minister of State for Women's Equality Lynn Stephens with the Langley Advance News that appeared on February 15, 2002. Ms. Stephens was quoted as saying:
- "People have choices to make for themselves," she said. "The opportunities are exactly equal. A single woman and a single man have exactly the same opportunities, with the same education."
- The budget will "maintain" funding to safe houses, transition houses, counselling programs, and education, she said. But Stephens maintained that that isn't an issue of equality: "More women are abused, not oppressed," she said.

- ⁶ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11
- ⁷ *BC Human Rights Code*. R.S.B.C. 1996, c. 210, s. 8.
- ⁸ The test is named after the case *R. v. Rowbotham* (1988) 41 C.C.C. (3d) 1
- ⁹ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, arts. 9-14, Can T.S. 1976 No. 47, 6 I.L.M. 386 (entered into force 23 March 1976, accession by Canada 19 May 1976) [ICCPR].
- ¹⁰ Kasari Govender, “Standing on the Fringe: Legal Aid advocacy in the Context of the Fight for Economic Rights” (written for West Coast LEAF, March, 2004) [unpublished].
- ¹¹ Gwen Brodsky & Shelagh Day, “Poverty is a Human Rights Violation” (The Poverty and Human Rights Project, December 1, 2001).
- ¹² For example, see West Coast LEAF, BC Institute against Family Violence, and VACASSA, “Civil Legal Rights of Abused Women, A Transformative Public Legal Education Project” (Vancouver, 2002) online: <www.westcoastleaf.org/pdf/civilrightsreport.pdf>. Or Kathryn Thomson & Thomas Broeren, “BC Law-related Needs Survey: A Report for the Law Foundation of B.C.” (Vancouver, 2003).
- ¹³ BC Institute Against Family Violence, BC Association of Specialized Victim’s Assistance and Counselling Programs and the BC/Yukon Society of Transition Houses, “BC Provincial Cuts to Legal Aid: Anticipated Impact on Women Who Experience Violence” online: <http://www.bcifv.org/cuts/legal_aid.pdf>.
- ¹⁴ West Coast LEAF *et al.*, “Civil Legal Rights of Abused Women: A Transformative Public Legal Education Project” (Vancouver, 2002) online: <www.westcoastleaf.org/pdf/civilrightsreport.pdf>.
- ¹⁵ Citing Statistics Canada in “Beyond Social and Economic Rights Debate” (2002) 14:1C.J.W.L., authors Gwen Brodsky and Shelagh Day write:
- Our argument that women’s poverty should be understood as a justiciable section 15 sex equality issue is grounded in an empirical picture that shows that women are economically unequal and disproportionately poor. In 1998, 17.6 per cent of all women in Canada were living below the poverty line, compared with 13.5 percent of men. Single mothers and other ‘unattached’ women are most likely to be poor, with poverty rates for these groups reaching as high as 54.2 percent for single mothers under sixty five, 41.9 percent for unattached women under sixty-five and 39.4 percent for unattached women over sixty-five in 1998. Unattached men have significantly lower poverty rates.*
- ¹⁶ Affiant #10, West Coast LEAF Family Law Legal Aid Affidavit Campaign.
- ¹⁷ LSS Press Release (7 February 2002), online: <http://www.lss.bc.ca/whats_new/Archived_noninclude-asp/news_release_feb_7.asp>.
- ¹⁸ *Legal Services Society Act*, R.S.B.C. 1996, c. 256. The Act was amended in 2002. See current Act: *Legal Services Society Act*, R.S.B.C. 2002, c. 30.
- ¹⁹ John McManus *et al.* *Ontario Legal Aid Review* (Ontario: Ministry of the Attorney General, 1996).
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www.westcoastleaf.org

West Coast LEAF is a charitable organization founded in 1985 to advance the equality of women in Canada using the Charter of Rights and Freedoms and other human rights law. West Coast LEAF promotes women’s equality through public legal education, law reform and litigation. Although Canada has strong equality rights provisions in the Charter, Human Rights Codes and International Treaties, it has been necessary to defend those provisions in Court to bring the promise of equality into reality. LEAF and West Coast LEAF’s role is to help the law makers interpret the meaning of the law in a way that addresses the roots of women’s equality.

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