ship of Sweden in this matter of human rights and women's rights is impressive and hopeful.[38] Sweden has criminalized the traffickers, pimps, and buyers, and begun to protect the women and chidren. It regards prostitution as violence against women. It is no accident that Sweden is not building an economy on tourism or the sex tourism that goes with it.

To ignore women's equality aspirations and the current unequal status of women in Canada and in the world will undermine any progressive efforts to protect prostituted women from criminalization. Naive good intentions to protect the individual women should not be used to tolerate the development of this grotesque industry. In our efforts to address the needs of women trafficked into and throughout Canada, CASAC has come to the conclusion that we can only serve them by protecting their gender rights, their status as women, and the status of all women. No one is disposable or worthy of any lesser rights.

In our centres we are contending with women trafficked from abroad as indentured labour, mail order brides, domestic workers, and street level prostitutes. Sometimes we are asked to support beaten and raped exotic dancers, women in "escort" services, and "massage" parlours. Daily we are dealing with women dislocated from remote territories within Canada and trying to make their way in the cities. We are taking calls and housing and referring women who have been supplementing their incomes with prostitution and who want protection, both legal and political, from their pimps, johns, boyfriends, lovers, fathers, and sometimes government officials to whom they try to report incidents of violence.

The public provision of exit services to women is inadequate. From our centres in the early 1980s we supported the development of both the ASP (the Alliance for the Safety of Prostitutes), and POWER (Prostitutes and Other Women for Equal Rights) networks.[39] Both were spin-offs of the membership and politics of anti-rape centres that wanted to specialize in serving women prostituted.

We participated in Direct Action Against Refugee Exploitation (DAARE)[40] and have supported financially and politically Justice for Girls[41] and many other initiatives across the country. But we remain convinced that to use the easier provision of services as an argument for legalization is misguided. As Cherry Kingsley says:

> If we want to set up areas to protect women, to give women dignity and police protection, appropriate childcare, housing, and job training, and so on, then we should do that. Why should women have to service men sexually to be offered those things needed by all women?[42]

Certainly among the women who call us and come to us, most do not choose prostitution except as a highly available way to survive. We speculate that the few women in the world who do choose it are short-time participants with privileges that allow them to leave. The provision of services specific to women trapped in or wanting to leave prostitution is inadequate everywhere. But to think that such services alone will curtail the offence of prostitution in the midst of this economic agenda is ridiculous. And for the federal government to refuse to try to curtail the domestic and international prostitution of women is barbarous.

The recognition of the so-called "rights of prostitutes" or the new talk of decriminalization (meaning legalization) is a self-serving policy ploy.[43] It legitimizes men's right to abuse women and also legitimizes Canada's refusal to redistribute income to women, some of whom are the most needy women, both within her borders and in the international community.

Men who buy women on the streets of Canadian cities and in the third world are almost always situated in higher class and race designations.[44] Sex tourism is surely a cash cow for many a government (national and city). "The sex industry now accounts for five percent of the Netherland's economy."[45] "Prostitution has become an accepted side line of the tourism and casino boom in Victoria, Australia, with government sponsored casino's authorizing the redeeming of casino chips and wheel of fortune bonuses at local brothels."[46] Is it any wonder that Canadian rape crisis centres protested the mega tourism plans as far back as Expo and up to the current Olympic plans?[47] Before both those tourism events, there was a heightened promotion of prostitution in the city.

In Canada, most of the men buying the sex services of women on the street for use there or in their cars, could afford to purchase sex in more comfortable surroundings, but prefer the street trade where the degradation, humiliation, and violence are part of the purchase.[48] CASAC and many others have discredited the ineffective and silly use of John Schools to divert these men from the consequences of criminal activity.[49] The illusion that this trade will simply move indoors and be tamed by the legalization of prostitution is ridiculous. It hasn't worked anywhere else in the world and it won't work here.[50] Women who are so trapped as to be part of that disastrous practice will not be incorporated into the imagined self-organized bawdy house or the call girl trade of the Pretty Woman propaganda. More than 50 percent are aboriginal women raised in poverty and racism who are dislocated from their communities to the urban ghettos.

In any case, the phoney division in law and practice between the attitudes and approaches to innocents (the adolescents, survival trade women, "forced" trafficking of mentally handicapped women), victimized by sexual exploiters, and women somehow deemed complicit in their own victimization, is reminiscent of the traditional virgin/whore dichotomy used to divide and conquer each group of women who tried to use law on all other violence issues: the raped, the beaten, the impoverished, the racialized, the disabled, the designated lesbians.

Nor will their dignity, body integrity, or human right to a life without violence and a life with a reasonable standard of living be assured by legalizing prostitution. Pretending to accept prostitution as a viable option for our sisters and daughters, including the protection of men from criminal sanctions for buying and selling women and sex, presents us with a grim version of women's equality under the law. To use a woman in this state of desperation as the example of protecting women's agency is to make a mockery of the concept.[51]

CASAC women fear that we are facing an era when women will be designated, numbered, and regulated by city health departments as prostitutes. They will cooperate in order to evade immediate and punitive criminalization.[52] That designation will remain with them for life and will affect every aspect of their lives and futures. Those who are sick, drug addicted, or rebellious to this trade regulation will be further forced into the illegal informal economy and will simply be the "bad" prostitutes and "bad" drug addicts who have refused the "harm reduction" model and therefore are even less worthy of the protection of law.

The current public policy debate of adult prostitution is constructed around the wishes of men, and the needs of the big city interest in real estate development, and the international interests in migrant labour, and international capital. In those debates, pro-prostitution voices use the women subject to prostitution in their rhetoric. They try to box us into a discussion limited to the anecdotes about individual women and their individual adaptation to a horrible situation: choices. It is as though political concepts of disadvantaged groups are silenced. The public is confined in the debates to giving our approval, or not, of how women, and their children live in the belly of the beast of international trade.

City officials notably in Ottawa, Toronto, Montreal, and Vancouver trot out urban decay, including the debauchery of the informal economy in the sale of drugs and flesh, as a rationale for a new government relationship at the federal and city levels.[53] In the Vancouver Agreement, money-short services are bribed so obviously that local people refer to them as "poverty pimps" and the "poverty industry." But so far those negotiations do not invite or even tolerate participation from equality-seeking groups (those committed to redistribution not just services) and are not in any meaningful way public processes. The misery of the people on the streets is cynically used to justify new and questionable, if not bad, governance processes.

This is further weakening women's access to Charter rights. A federal legal and social policy approach is needed to address the plight of prostituted women and girls, which must be based on an equality-driven attack on the beast that is prostitution: a hugely profitable form of violence against women.

The Basic Social Unit: Enforcing the Private Domain and Upholding the Patriarchal Family After Divorce

It is questionable what privatizing public roads, rails, and airlines may be doing to Canada, but it seems now obvious to us that there are devastating equality losses with privatizing criminal and civil law, legal assistance to individuals, and consultative processes of law reform, as well as what we normally understand as "cops, courts and corrections."

Many Canadians are not yet aware that we are experimenting with privately-owned and run jails. And most are not aware that for a decade, policing has become more and more a matter of private companies guarding private property and private interests. Although, we are all getting inured to the image of security guards in shopping malls and

building lobbies who are armed with handcuffs, clubs, stun wands, sometimes guns, and never the Charter.

When we began this work we were worried by the imposition through public police of the "law and order" agenda, the promotion of insubstantial and false restorative justice as an alternative to that, the funding cuts to already inadequate legal aid and legal services, and the pressure to label and categorize our work as victim assistance rather than as initiatives toward the equality of women and the prevention of women's sexualized victimization.[54] These past five years has dramatically changed the picture. To take the example of the divorce law now under consideration by Parliament, we can see a different use of the state emerging.

This newly adjusted state carries with it the danger of further reinforcing the patriarchal family, including the violent ones. Most violence against women that enters the courts does so at family court level. This is not only because much of violence done to women is committed in the family, but also because of the history of law and policing, and because those designing the justice system prefer it that way. It is important to remember here that civil law contends with struggles between individuals or private parties, and criminal law was developed to deal with offences against the community/state.

CASAC claims that violence against women is not simply or best understood as a crime against one woman but as an individuated incident or stream of incidents in the campaign of sexist violence that terrorizes and contains most women. It has some of the character of hate crime against a minority, racialized group, and some of the character of violence that we categorize as terrorism. That is, it affects all women and all women's freedom. And this is no less true when the violence is committed in the family.

All through the 1970s feminists interfering with sexist violence negotiated with the welfare state. We were funded by it. We relied on it to guarantee income to women leaving abusive men. We referred women by the thousands to legal services. As assistants to women beaten (especially by their husbands) we were in constant contact with the courts.

Those of us who worked with women raped by strangers were constantly aware of the differences in criminal justice offered to wives. We always debated the acceptability of diversion of wife assault and child incest from criminal court rooms to civil law, mediation, and counseling rooms. We sometimes agreed that it was a solution women could sensibly try when police offered no court at all.[55] One side protested the acceptance of this diversion. The other side argued that it was useful to women and children that they be spared the rigors of criminal court, including the burden of proof of violence, and that relaxed and specialized methods could be applied in family courts, which might serve women well.

But we agreed then and agree now that mediation and counseling must never be mandatory. Sometimes the existence of the specialized courts for a year or more improved the criminal conviction rate and the response to women's complaints. In the early days, the concentration of professionals particularly interested in the problem and the coordination of their energy paid off.

The current Yukon Domestic Violence Treatment Option Court is a good example of such concentration. As long as the original personnel are present the conviction improvements are likely to hold. This option of course is built on the belief that women do not want their abusive marriages to end and that the court can reduce violence against women by intervening early with a conviction and treatment option. We applaud the conviction and question the promotion of these families.

Too often these specialized courts became job ghettos and policy pockets. They faced the lack of respect for women and carried that contempt into a lack of respect for woman-identified legal venues and proceedings.[56] However, isolated from the criminal justice norms, these venues and processes did replicate the racism and class biases of the wider legal movement. Men of colour and aboriginal men were much more likely to be tried and convicted of wife and incest assault than their white neighbours.

Generally, the Specialized and Unified Family Courts suffered a lack of financing from both federal and provincial budgets. On the whole, they failed to grapple with the many problems and any initial success was usually sabotaged. Whatever the motivation for its creation, family court, including specialized family courts, and unified family courts, often seemed to those of us working on the violent cases to be torture chambers for battered, and raped wives, and children sexually assaulted by their fathers. The problems ranged from nowhere to sit or stand that wasn't vulnerable to his gaze, view, harassment, following, verbal assault, silent intimidation, all the way to no way, and no assistance, to make her message understood to staff and professionals because of language, culture, and class, but mostly because of gender biases.

We do not hold out much more hope for the Domestic Violence Courts being instituted in Ontario. The 56 courts funded with some 24 million dollars claim to respond to the May/Iles and Hadley inquest jury demands.[57] Of course, the public outcry after those wife murders and after the investigative journalist series called *Hitting Home* in the *Toronto Star* in 1996 that examined the murder of wives, will not be silenced by these adaptations. Certainly, we hope that some practices may improve, at last.

As one example of the faulty practices in family courts, women, when they had lawyers through legal aid, were told to be careful not to breach the "friendly parent" or "maximum contact" rule for fear of appearing uncooperative with the court. It was unwise to raise violent incidents against either the wife or the child unless women and girls had winnable criminal cases of violence. And who did! Alternatively, they might be heard as truthful in this family court if the women and children had professional authorization of their voice as the officially raped and battered. That authority could only be attached by a medical or social work professional. Their lawyers were not free to assert it, and there was no police or crown function for checking out the criminal activity, even if there was abundant evidence still available.

In fact, in family courts most decisions were made by professionals other than legal ones and were then confirmed by the judge. In our minds, there was always a problem of

the equality issues. Even after the Charter and the discussions fostered by it, the staff, and professionals, including the few who were legally trained, didn't see themselves as being guided, much less bound, by the Charter, Human Rights law, or any other legal concept of equality. And their personal or collectively held view of equality was never declared or open to challenge or review.

These rooms were (and are still) finally technically answerable to the criminal justice accountability systems. With expert legal counsel, or a topnotch advocate, or highly trained and committed family court staff, some women could make their way. But that is rarely the situation. And like many other "special" venues offered to women, it could and often did turn out to be a ghetto or dead end in the search for assistance to assert a right to be free of violence.

Making her way through a custody and access agreement that protected her children from abuse, or protected them from helplessly watching and being trained by abuse, often seemed the best trade available. If the professionals believed women, they might get a separation settlement that protected both mother and children but no criminal procedure against the abuser. Criminal immunity for him in return for autonomy and or safety for her. Otherwise, women were better to remain silent about such criminal abuse and to fight for custody and access, supervised visits, and autonomy as though it had never happened. That was of course a difficult case to make once she had to leave out of her story the most important facts.

To do otherwise was considered by some professionals within the system and by the law an unfair use of the police and courts. It might well cost a mother sole custody of her children or an access order that eliminated the safety plan of the protesting ex-wife. There were always many pitfalls, even for those women granted custody. The victory might be limited to having the abusive husband or father ordered to see the child only under supervised conditions. But supervision was privatized and most of the time in most of the country had to be bought. Often men would claim inability to pay, but the legal order stood and had been hard won by women, so usually the abused wife paid. Even then the supervisor was neither under her contractual control nor ordered by the court to secure her safety or her equality interests.

Not every marriage break up is the end of an abusive, battering, or incestuous relationship of course. But of the ones that go before the state, most are troubled if not abusive. Otherwise, they would just resolve things themselves with less bother and expense for both of them. And the trouble is usually between two who are unlikely to be equally positioned, resourced, or of equal status in the world. In any case, shaping the policy law and procedure, applying our knowledge of the current unequal status of women, and the current level of violence in marriage is the most useful way to proceed.

Most women in family court do not choose to be there in the sense of asking for mediation in a struggle between two individuals. Many have called on the state because they are told by welfare departments and sometimes by legislation that they will not re-

ceive welfare unless they do. Staff of child protection agencies do blackmail abused women, often aboriginal women, with threats of apprehension of their children if they do not sever violent marriages formally. They are motivated often by the knowledge that men who abuse their wives often also abuse their children.[58]

The co-opting pressure on us introduced through protocols, coordination models, and funding standardization to screen or monitor the mothering of women who come to shelters, and the destructive pressure on our relationship with battered women by social workers bullying women into shelters for the sake of the children is short sighted and counter productive and an infringement on women's equality. The autonomy of these women is essential to the safety of their children and the voluntary relationship of trust between us and the women who call us is an essential ingredient of the children's safety and women's autonomy. For many reasons, usually less noble than the interests of the safety and freedom of the women and children, state officials demand that women formally settle child custody and access agreements. Police almost automatically press women to engage civil restraining orders and other family law processes. The poorest and racialized women, those most vulnerable to state apprehension of their children and those who have tried to involve police and criminal law are often those who enter the family courts.

Others who don't distinguish between civil and criminal law but understand themselves to be completely over powered and unfairly treated join them. They seek fairness and security and they think and are instructed that family court is the appropriate place to invoke the protection of the state for their children and themselves from inequality and sexist domination by their intimate enemy. They have no idea that, practically speaking, it could mean they are dependent on convincing some untrained person, who may well be empathetic or kind, but who is not Charter literate, never mind equality literate, to see the danger or unfairness in her situation.

This family court process shirks state responsibility to equality and to enforcing criminal law against violence even as it forces women to accept more and more state intrusion and imposition of inequality.

Sometimes what has been missing is the intervention that can be made in criminal court to assert the social interests of women as a group. The domestic violence courts in Ontario and the Yukon conceive of women's groups only as low cost service delivery systems for women's emergency housing and comfort. The court development incorporates the knowledge that the programs to counsel men (out of illegal abusive behaviour) that are tied to these courts as diversions from jail, require the ongoing assistance of the escaping wives. Men lie about the criminal violence they do even in these diversion programs promising them criminal evasion. The presence of the wives and ex-wives is essential to the therapeutic diversion plan. Both courts plan to spend inordinate amounts of time and money on these therapeutic approaches, which so far have very limited results, and which do not in any way address the equality issues of the women. And both

courts reduce women's groups to advisory committees outside the formal processes and do not guarantee even their operating expenses never mind their core funding. We might expect then that for a while these courts will improve some women's safety, but in the long run will fail. The independence of the women's services, which came from their connection to the wider independent women's movement, will be compromised and weakened. Their embodiment as a kind of women's auxiliary to the courts will render them as victim service providers directly under the control of the courts. The chance of women's groups advocating for Charter rights from that position and maintaining enough independence to do so is not very good. If not us, then who?

This year, CASAC women and all other anti-violence workers have had to examine the proposed amendments to the Divorce Act, Bill C-22, for their implications for women raped and battered by their husbands, and women mothering children who have been incestuously attacked by their fathers. Coalitions formed all across Canada to look at the issues from an equality perspective and to prepare proposals for the Standing Committee on Justice this fall.

The resentment about this is high. We have been forced into this work by the government pandering to the agitation of the fathers' rights groups in response to the small victory of the changes Allan Rock, then Minister of Justice, introduced to the Child Support guidelines in 1997. Senator Anne Cools traded her vote in support of those changes for a promise of control over and financing for The Special Joint Committee on Child Custody and Access and its attendant fathers' rights dog and pony show.[59] Our resentment and criticism centres on the repeated refusal of the Canadian government, in all its parts, to consider seriously how to respond to this political situation.

And then there is the refusal of the government to redress women's equality up to and including violence against women, in the proposals of law change to the current Divorce Act. There can be no need for education of state personnel on this matter. The same needs and the same issues have been illuminated in reports of women's experience and in women's groups' presentations on criminal and family law since 1973. Any ignorance of equality interests here is wilful.

Allowing a few right wing men and one Senator to front this irresponsibility is pretty transparent. These are not forces that could not have been handled. At least one reading is that women and our safety and freedom are being sacrificed as unimportant chattel in the negotiations for the imagined right wing votes. This is a strategy that will be destructive to everyone. The Charter and gender mainstreaming were supposed to side-step such banal politicizing.

In May 1995, the Federal and Territorial Minister Responsible for the Status of Women agreed "on the importance of gender-based analysis undertaken as an integral part of the policy process of government"; later that year, Status of Women Canada published *Setting the Stage for the Next Century: The Federal Plan for Gender Equality*,[60] which says that "the federal government will where appropriate ensure that critical issues and policy

options take gender into account." Elsewhere, we have reminded ourselves of the international expressions of the same promise to women.

No one could reasonably assert either that divorce law is an occasion where it is inappropriate to consider women's unequal status or that this proposed law has dealt with the risks to women. In this democracy we should be able to rely on implementations of the heart of the decisions of parliament in declaring the Charter, the Supreme Court adjudication of cases that interpreted it, and the legal precedents set in cases women have brought. Surely "mainstreaming gender" meant something to someone. That should have guaranteed at least due diligence and attention regarding equality and violence in the drafting of the amendments to the Divorce Act.

It is simply not credible to CASAC that competent state officials and politicians forgot, or are unaware of their equality obligations in the course of their work. But there it is! The unequal status of women in the family and the prevalence of violence in the family, which enforces that inequality, has been left intact. No one, no one group, no Justice Minister interfered with this sexist backlash when conducting the hearings of the Joint Committee in 1997, preparing the critique of the current legal practice and law, preparing the *For The Sake of The Children Report* in 1998,[61] preparing Justice Minister Anne McLellan's research and drafting in the next year, preparing the Federal/Provincial Territorial Family Law Committee report released in 2001, or the new report in November 2002 and in the work of the drafting staff that proposed the amendments announced in December of 2002. It must have been discussed yet still:

- This draft refuses to name gendered inequality;
- Acknowledges violence but not who does what to whom, including by stating the obvious: that men commit the violence in the family and they use the family structure to do it;
- Does not assure or attempt to assure women's equality at the time of divorce;
- Does not allow women to be assured that divorce ends the patriarchal relationship; in fact the amendments could keep her more married;
- Does not assure women of safety and security in divorce proceedings;
- Does not contribute to women's ability to plan for safety and security in the months after separation/divorce, which we know are potentially dangerous for women in tense or abusive relationships;
- Does not assure legal representation in legal processes that require representation to assure equality interests;
- Is not consistent with Charter obligations;
- Is not consistent with Canadian positions taken and promoted internationally;
- Is not consistent with election promises;
- Is not consistent with common sense versions of equality and safety.

Having parliamentary intent stated in a preamble just so that we can all now go about suing or intervening in court cases to accomplish that intent, is too silly for words. Twenty or thirty years ago we might have understood that differently. In this new era of government it is an example of the unlawful and unconscionable abdication of the state responsibility to protect women and children with the rule of law (in this case both criminal and civil law). At the same time, it imposes the state upon women in laws and legal processes that, by refusing to meet substantive equality standards, enforces the individual and collective rights of men over women.

The proposals in the draft to assert, exempt, screen, identify, or isolate violence against women cases and treat them differently are unworkable. Officials know it and therefore there is a cynical recognition of the violent reality. There is no workable plan to redress the violence or redistribute power. The government proposed draft leaves unchecked the power of violence to enforce inequality and the male held power of that inequality on which that violent behaviour is based.

It is still very unevenly wise for women to reveal to the state or the community the violence committed against them by husbands and fathers. They get blamed for the violence, labeled as attackable women, discredited in the story telling of their own lives, and belittled with facile advice about how they could or should have protected themselves. They may well be abandoned by the state to a more angry man. The justice system still grossly underconvicts violence against women reported to it. It is therefore unreasonable to base access to equality interests of women divorcing on whether a woman can prove or convince others about violence in her life. Women should not have to prove violence or even expose violence against them or their children in order to secure their right to safety and autonomy. The process and law should assure that universally.

Nor should they be invited to relinquish privacy and autonomy in a search for safety and security from sexual violence. We have not achieved any reasonable level of proving violence in any court yet. The draft, like all new family law initiatives, proposes to step even further back from equality law. It and all new law implements ADR approaches with no plan for how they will meet equality obligations to women, even as determined by the Charter law and rulings.[62]

"But don't worry," says the draft: First we accept inadequate universal entitlement to the rule of law, then we build in an exception designed to deal with violence. So now we easily and often could be put in the position of having to prove violence in order to apply for equality.

Two things are likely: One is the temptation on the part of non-feminists and humanists to widen and soften the definitions of violence in hopes more women can qualify for equality practices, whether or not they have suffered violence, and then there will be backlash against that tactic which uses that widening as a further excuse for the withdrawal of the state from assisting women against violence at all. The other is a gradual re-

alization that because there is no money, no legal initiative, or incentive, women will still get pushed through the screen that was supposed to catch their stories of violence because no one believes them, and anyway, all women continue to get unequal application of the law at divorce. In those cases where women are believed to be victims by the screeners, they will lose control over decisions of how to proceed by virtue of being victims. That is, they will predictably and too often face unwanted state intervention. Some women stand to lose even more agency, privacy, and dignity, and sometimes, security.

There are many practices of law applied to the family in which we could demonstrate the same degrading and sometimes lethal mix of abandonment and over-powering of women and children. The withdrawal of aid to the oppressed and simultaneously the insistence on intrusion into and control over the lives of the oppressed are practices that move away from the responsibilities of welfare and redistributive justice (for individuals and groups of individuals) within the state. They also move away from any equality-seeking protection of individuals (including the most historically disadvantaged) from the unfair intrusions of the state.

This is obvious to CASAC in the flip-flop application and reversal of the "mandatory" arrest practices as well as in the abandonment of any useful contextualizing policy such as the Violence Against Women policy in B.C.[63] It is clear in the apprehension of adolescents from the streets under "secure care acts"[64] and the failure to protect young women in the care of child welfare authorities from the prostitute training that is now well documented.[65] It is clear in the continued disproportionate acts of apprehension of the children of aboriginal women and the consequent damage to both women and children while maintaining an economic program that assures those women, on and off reserve, destitution, and impossible parenting conditions. Offering identity and recognition in place of legal entitlements and redistribution.

Recognition of Our Identity as Victims in Trade for Our Right to Equality

It is the overall policy framework of the new Justice department that sets the tone for all this. When we protested the changes to the sentencing bill that brought us conditional sentencing we only hunched that we were facing a new leviathan. Protest as we did, we got nowhere. Nor did anyone else. Judges complained that there was no probation staff at the provincial level to exercise any control or offer any support to achieve compliance with the conditions ordered.[66] Anti-prison activists complained that the set up for failure on conditions meant men habitually breached the conditions and were then jailed for longer terms.[67] Women found themselves dealing with men ordered to house arrest after assaults. That is, ordered to the community-based jail keeping of the very women and children who had sought assistance from the state to deal with a dangerous bully.

We could see that the legal aid system was being very quickly shrunk to a useless size and shape. Women had never had much access anyway so although we were

alarmed for the rights of the accused we did not see the full implications for women. Women violated were usually not accused but complainants wanting promised equality. Over these last five or seven years we noted the increase in criminalization of women, especially for self defence, poverty crimes, prostitution, and low level drug offences.[68]

We added that need for legal aid in the criminal law to the need that had never been filled for legal representation for women in the civil system.[69] Our hopes of funding for representation and intervention in Charter Challenge cases at the provincial level simply evaporated. Alternate Dispute Resolution had hardly begun to surface.

This new construction of the state was more apparent as women were encouraged to assume their victimization as an identity. Women were invited to trade recognition of that identity for their rights. Nothing has changed in that women are still largely unassisted by the state in their attempt to prove, document, censure, prevent, reduce, or ameliorate the crimes of violence committed against them. But as compensation, on the basis of an extra-legal status as victims, they were listened to and invited to participate in all manner of quasi-democratic, quasi-judicial, or administrative law practices affecting their lives:

- Parole hearings of men who attacked them in which they are asked their opinions on community safety and other sentencing principles as though they could take responsibility; often women were left with the impression of affecting sentence;
- Victim impact statements at sentencing hearings; women were invited to describe and convince judges of the seriousness of the crime in terms of the destruction of their physical and mental well being;
- Family group conferencing under the RCMP where their children might escape harsher threats if they and/or the mothers would be judged and sentenced without counsel;
- Mediation by nonlegal professionals with their abusers in family court;
- Requests that they participate co-operatively in discussions to inform and advise those doing court mandated counseling of abusive men evading criminal sanctions;
- Mandatory counseling for them and/or the men who abused them;
- Circle sentencing, sometimes of the criminally convicted and sometimes replacing criminal conviction;
- Victim offender reconciliation in and out of jail, including criminally raped victims;
- Restorative justice initiatives of many kinds usually falsely claiming to be based on aboriginal concepts;
- Privatized compulsory health programs like methadone administration as criminal sanctions in the name of "harm reduction" to the community;
- Privatized health programs that removed criminal sanctions, as in the diversion of violent men from conviction to anger management counseling, regardless of the low success rates of those programs;

- The "John schools" to divert, even from arrest, the men buying street women;
- Snitch lines paying for citizens to spy on each other;
- Programs which invite women to self-identify and be legally licensed and registered as prostitutes for brothels and massage parlours;
- Offering services only to licensed prostitutes which all poor women need;
- Diversion to privatized services delivered by religious leaders including Christian, Jewish and Moslem patriarchs.

At stake is every version of human rights and women's rights outlined in the Charter and the Charter cases, as well as the international human rights concepts of equality.

Women cannot always evade these legal processes and procedures. Often they feel that they are coerced into them by their security needs for the good will of the state officials observing or involved. Sometimes women are entering the processes in a purposeful but ill-advised search for equality. They don't realize which of these services are extensions of the state, which are privatized. We must at least suspect that a state evasion of equality obligations is part of why they are privatized. Which of these have no obligation to public interest or in meeting humane standards of privacy, security of the person, dignity?

We know that in some situations one could appeal or sue and women are preparing such cases but to do that requires legal information, safety from one's attacker, and legal aid of a whole new sort. Not to mention years of litigation work that could be avoided.

We first heard of the "victim-centred" approach to rape as a justice policy from Thea Herman in 1997. It was, she explained, "time for a victim-centred approach" in which we would improve on the old version of law, when rape was a crime against the state, by now seeing that it was in fact a crime against the victim (only). This is the shame of ADR applied to rape.

Women have not been struggling for thirty years to be told again that we are on our own with our rapists! The point of criminalization was to bring the power of the community, through the state, mediated by the Charter, to bear on the bullying: to put power on the side of the historically disadvantaged, the oppressed.

Of course that should include sensitivity and information sharing and other simple courtesies to complainants, but it does not mean that we want sexist violence to be privatized. If women could subdue these men on their/our own they would have already done so.

While the Minister Allan Rock was assuring us in the Members Lounge of the House of Parliament that he would approach provincial attorney generals to insure that conditional sentences would not be applied to violence against women, the Alternate Dispute Resolution policy was in fact over-riding everything. So much for a gender reviewed analysis and a commitment to equality. So much for the argument that there is no way to apply national standards. The state again proves its ability to shrink and expand at the same moment.

Restructuring Civil Society and the Community: Social Engineering

Some current practices have roots belonging to the previous government and can be best explained by looking back. Mulroney convened a conference too: the Family Violence Conference held in the government conference centre across the street from the House of Commons.[70] If we remember correctly, it was the occasion of the announcement of the fund from which this project got the last dregs and the first enactment of "gender mainstreaming."

We experienced it as the first occasion in which anti-violence workers and feminists in total were rendered a small caucus among a thousand "stakeholders" on violence against women. All were invited to celebrate Mulroney's Conservative approach to women's equality and new methods of consultation with civil society.

We were in the post-Montreal Massacre era. The year previously the public had amply displayed its understanding and displeasure with violence against women and with government responses to it. There was a surge in anti-violence organizing, including gun control, pro-woman organizing (including calls for a second Royal Commission), and demands for many layers of effective government action. In hindsight, we see how important it was for the new government to control the public discussion.

A never to be forgotten hour of that conference was spent listening to the YWCA national executive director usher in the new era. The YWCA had just been granted a million dollars to prepare a public education campaign on violence against women as though public ignorance was the problem. Looking back, we see that the problem was quite the opposite. After twenty years of successful frontline public education, women and many men were speaking the same message. Women deserve equality and violence prevents it. The state must act.

The YWCA spokeswoman was invited to address the conference not on violence but on the wonders of partnership with business as a key component of mainstreaming. Women's groups, in front of the assembled authorities from government, business, and the professions, were told we did not "own" the problem. While we might find this concept challenging, we were told to buck up and share the "power." The "community," meaning business and men had to participate (and take control) for progress to be made. "Violence is not a woman's problem but everyone's problem." And "everyone" had to be involved. Funding, we were told, could be politicizing for everyone. By partnering with business, they claimed we would all advance.

Since its inception, CASAC had been public in its opinion that, indeed, funding was a political issue.[71] We advised our members against being so dependent on government funds that they could not do the appropriate challenging and correcting of government at all levels for which we had been formed. We advised each other to cultivate community support for our explicit viewpoints and for the importance of expressing them.

We also advised and encouraged our membership to avoid corporate entanglements that promoted businesses, especially large ones, or that could compromise the independence of these small political/service/community/women's groups. But CASAC was not aware, until that speech, and perhaps neither was the YWCA, that the Conservative government was paying them to Judas goat us all on a new trail to the future of government funding and consultation policy.

The YWCA executive director explained that the Y had developed a business partnership. That partnership was "mutually beneficial beyond the dreams" of the YWCA boss. She and her executive had been invited "into the boardroom" of their partners to have their say in affecting "business culture" and they had "invited their business partners" to their boardroom. They had been lent corporate staff and expertise and resources. A marriage made in heaven. It was all working very well apparently.

Then she introduced the CEO of AVON Canada, her business partner in the enterprise of women's equality and coping with violence against women. From the back of the room, through the stunned silence of our caucus and past the cheery applause of the invited stakeholders, the CASAC delegate shouted, "how about you just pay the Avon lady."[72] In the intervening years, Avon has left Canada and the YWCA has been offered federal money over three years to restructure the anti-violence coalitions by gathering, "uniting and harmonizing" those groups who operate on an anti-feminist model of family violence with those who operate on an equality model.

In 2003, we face a more devious and sophisticated version of this reorganization of Canadian society through Social Entrepreneur initiatives. Universities, professional marketers, and professional social organizers vie for the proffered government contracts and corporate dollars to set up meetings of and manage systems of networking Social Entrepreneurs. Some of these new funding and control mechanisms link the power of the federal state with corporate control to contain, manage, and steer the non government groups, and the self-organizing of the oppressed. For several months, representatives of the federal, provincial, and municipal governments convened meetings under the Vancouver Agreement to get private industry to pay for a van for prostitute services in Vancouver. The money was to come from the private sector. The service was to be staffed and organized by two non-government groups. But they had not been searching to fund such a program; they had other priorities. The government supplied nothing yet controlled the exchange and the outcome.

This is not a shrinking of government but a shirking of government social responsibility to democracy and civil society. Business does not support all comers. Even United Way funding over the years has not been without strings and controls antithetical to women's equality (or anti-racist organizing or even to unions). Major battles had to be fought and won, for instance, to keep the United Way from imposing anti-abortion conditions on anti-violence groups.

Few in government seem to be concerned by or working against the loss of government support to women's groups (or other equality-seeking groups) or the effect of that on community development or on future government policy. Groups need money. The current policy of funding only through the Voluntary Sector Initiative compels groups to serve pre-stated government department policy intentions.

So, community groups or non-government groups are formed and sustained and directed in the name of community organizing, which have no base in the community and no political legitimacy to the claim as groups of the self-organizing oppressed. Existing women's groups twist themselves inside out to meet the criteria of serving government agenda's, not their own. Not only does this mean that groups who remain true to their own agenda lose funding, but it also means that groups disappear for lack of funding and the community is reorganized in the service of current government policy initiatives.[73]

Nor is this government intervention in the community restricted to funding the basic operations and organizing of lobby and advocacy groups. Current research funding can be skewed and close off intelligent consideration of issues. The funding for most violence against women matters is through the federal government and requires not only that the research complement government's agenda but also that the mandatory community partners be those that are approved by government.

In another reshaping phenomena, the federal government altogether reversed its policy of funding the independent women's movement. During the Trudeau years, a policy held that the government should be self-correcting by moving toward formal equality.[74] The leadership of the Cabinet, including Trudeau, accepted that women were on the rise, did not have equal citizenship, and should.[75]

Funding was established and programs developed through the Status of Women Canada. One expression of the policy within that department was to "spread seed money around and see what equality-seeking leadership emerged within that movement of the community and then follow it."[76] Through that policy, among others like the CYC (Company of Young Canadians), and LIP (Local Initiatives Grants), community organizing flourished.[77] That provided the start up funds for the first wave of women centres, transition houses, and anti-rape centres.[78] They then qualified for federal funds on the understanding that they helped to rectify the unequal status of women. The federal government policy was to assist in the development of women's access to equal citizenship.

Women's groups always had to battle intrusion and meddling and manipulation by Status of Women but on the whole those funding policies were at least honourable, if still inadequate. They have utterly disappeared.

Women centre funding was foisted off on the provinces. They had to re-invent themselves as social service delivery vehicles to meet provincial funding criteria. They had once been local organizing bases from which women designed and executed all manner of equality-seeking campaigns. By this funding shift, they were forced to rebuild

as deliverers of low cost social services to individual women. They built soup kitchens, anti-violence counseling programs; job training programs, assertiveness training workshops, and all manner of such things. They gradually were pushed away from equality-rights promotion for the collective good of women. Now each province, in turn, has increased the standardization of service delivery to shape them into traditional, if cheap, social services, or has cut off their funding entirely.[79] This process has had devastating results in terms of the interference in women's self-organizing in our own communities.

This policy shift has silenced our own version of integrated equality, and it has damaged women's capacity for participation in each nation-wide debate of social, political, and economic policy. A very similar process has been applied to anti-violence groups and indeed has reshaped the national women's movement. There is no doubt that this restructuring of women's self-organized formations has reinforced the capacity of the right wing to repress progressive political organizing. It may be a result of the swing to the right, but it is also a guarantee of the force of the right to control legislated unfairness. This too is a Charter issue.

Once we could come together as a movement with the breadth of the consulting group that met to inform the rape shield law and the depth of CASAC, which works with and learns from individual women on the frontline, but also sustains a national and international network of thinkers and actors committed to civil society, to work toward the equality desires of women, and an end to sexist violence. Such configurations as this movement advance democracy as well as women's equality. Such groups as this equality movement are essential to equality policy development.

For now, some groups like CASAC are finding ways to fund their activity and put forward their positions, but it is unlikely this can be sustained. We will be left with the Virginia Slim version of the equality network, or the Body Shop version, or the Ford Foundation version, or the Tampax version, or the Avon version, or the Marriott Hotel version.[80] Government funding used to be at least a little under the control of the electorate.

The uprising of the community during the last thirty years did push the government to the point of Red Book promises to support rape crisis services and transition houses and to create special funds to address sexist violence.[81]

But if we are expected to fund equality-seeking groups with corporate donations, how are citizens supposed to control international corporate agents in their manipulation of Canadian equality debates? What regulation can we fight for that can make it past WTO and World Bank scrutiny to control the behaviour of those corporate agents and their charitable foundations within our borders? Who will stand up to the corporate pressure to change immigration, labour, marriage, criminal law, citizenship, and governance if the equality-seeking groups continue to be delivered to them as dependent "partners?"

We have only begun to see the effects of this entrepreneurial approach to social and community development and to human rights. The American example is far from en-

couraging. While huge amounts of charitable dollars become available and great experimentation is possible, there is no standardized support for the advance of equality.

The constant undermining of collective and community initiatives shows up at the local level in racism, poor-bashing, and public, as well as, private violence against women and children, all of which are on the rise. People are in need of the leadership that their community figures should display in government policy.

It is still possible in Canada to resist corporate control of governance, dialogue, and consultations even in the exercise of liberal democratic state obligations. But it is highly unlikely without positive government relations with equality seeking women's groups.

Notes

1. Letter dated May 28, 2003, from the Office of the Secretary of State (Multiculturalism) (Status of Women) is available at CASAC office.
2. Federal-Provincial-Territorial Ministers Responsible for the Status of Women (2002).
3. Johnson, H. (1993). *Violence Against Women Survey*. Ottawa: Statistics Canada. See also (2002), p. 53.
4. At least some parts of governments did. Jean Augustine signed this letter on behalf of those federal-provincial ministers responsible for the Status of Women. In fact, such ministries if they existed as stand alone ministries, and perhaps none still did, all had been greatly reduced in power and influence, which indicated at least a contrary point of view from other powerful parts of government.
5. Federal-Provincial-Territorial Ministers Responsible for the Status of Women (2002), p. 49.
6. We are saying that there is nothing different or intrinsic in the women and children who end up poor or violated. And the men who violate them are not biologically compelled; they make choices to do so.
7. Professor Dorothy Smith's work has helped us to keeping seeing this. Her early analysis of the United Way struggle in Vancouver from the 1970s to 1990s was followed by conversations about class and the women's movement over the years.
8. See Julia Sudbury in the proceedings of Women's Resistance: From Victimization to Criminalization. Opening Plenary. Locating this Conference in the Wider World–2001. And, for an example of a corporation profiting from mediation, see online: <http://www.mediate.ca>.
9. Brodsky, G., and Day, S.
10. The "State Public Policy and Social Change" discussion is best introduced in Dobash, E., and Dobash, R. (1992).
11. See online: <http://www.casac.ca/about/constitution.htm>.
12. Available at CASAC.
13. For panel results, see Health Canada online: <http://www.hc-sc.gc.ca>. For CASAC positions, see Lakeman, L. (1993).
14. See CASAC newsletters (1978-1982) available at Vancouver Rape Relief library.
15. For Alternate CEDAW report, see Appendix: Canada's Failure to Act: Women's Equality Deepens.
16. Such as the member groups of FAFIA and the B.C. CEDAW group.
17. The women who founded and work in our centres are largely from working class backgrounds. Most centres would have one or less women with university degree, for instance. Our structures are still largely cooperative, if not collective: Montreal, Toronto, and Vancouver are all collectives. There has always been about a third of the labour pool identifying as lesbian, and there have been women of colour in leadership within major centres for fifteen years at least. Our delegate to the UN Conference on Women, in Nairobi in 1985, for instance was chosen on an affirmative action strategy.

18. With Canadian equality-seeking women's groups like: BCFW (now closed), NAC, see online: <www.nac-cca.ca>, FAFIA, see online: <http://www.fafia-afai.org/>, FFQ, see CATW online: <www.catwinternational.org>, and Marche Mondiale des Femmes, see online: <www.ffq.qc.ca/marche2000/en/index.html>, but also with anti-racist formations, labour formations, and welfare rights organizing.
19. We have learned a lot from Penni Richmond, Madelaine Parent, Sharon Yandel, and Linda Shuto, and suggest their work as a source of that history and the importance to women.
20. Cameron, B. (1997, December). *Rethinking The Social Union: National Identities and Social Citizenship*. Ottawa: The Canadian Centre for Policy Alternatives.
21. Cameron, D. (1999, September 02). The Social Union Pact is Not a Backward Step for Quebec. *The Globe and Mail*.
22. Duncan, C. (2003, October). Raging Women: Fighting the Cutbacks in B.C. Paper presented at the Raging Women's Conference by Vancouver Women's Health Collective. Vancouver, Canada.
23. Brodsky, G., and Day, S. (1998).
24. *Ibid.*
25. Brodsky, G., and Day, S.
26. Lakeman, L. (1993).
27. Between 1975-1995 it was rare for women to have trouble getting welfare after living in a transition house.
28. In both B.C. and Ontario lifetime bans have been imposed. Temporary refusals have been instituted. Time limits, for instance, of only being eligible for two years out of five have been imposed. Health criteria have been imposed. Rate reductions have been imposed.
29. All welfare rates as well as minimum wage rates in the country are below the poverty line.
30. Federal-Provincial-Territorial Ministers Responsible for The Status of Women. (2002).
31. Sidel, R. (1996). *Keeping Women and Children Last: America's War on the Poor*. New York: Penguin.
32. Welfare workers and social workers are sometimes reported to us as abusers of their clients. They have much more power to do so if the women know they have no enforceable right to welfare: they are dependent on the discretion in his hands.
33. Asian Women Stand Together to Speak Out Against Violence, <http://www.rapereliefshelter.bc.ca/issues/asian_women_sJay.html>.
34. Personal communication, October 2001.
35. In our work we have become aware of the ownership and prostitution dealings of, at least the Hell's Angels in every province except the Maritimes, Big Circle Boys gang, the Lotus gang, Fukienese, the Russians, the Mafia related gangs, and the Vietnamese gangs.
36. Most of the Canadian women's movement has agreed that prostitutes and low level drug dealers should not be jailed or even criminalized. We have also agreed that those women trafficked as indentured labour or sex slaves should not be criminalized or deported. Our debates are about how to deal with the men and how to interfere with the trade.
37. Gunilla Eckberg, personal communication, September 2003. She is special advisor to the government of Sweden on prostitution.
38. See online <http://www.naring.regeringin.se/fragor/jamstadlldhet/aktuellt/trafficking.htm>.
39. See online: <http://www.rapreliefshelter.bc.ca/herstory/rr_files86.html>.
40. For those who wonder the extra A is because the cookie company DARE threatened us with law suits if we used their trademarked name.
41. A group focusing on feminist intervention against the exploitation of young women.

42. Kingsley, C., personal communication, October 2001. Cherry Kingsley works in the International Centre to Combat Exploitation of Children.
43. Decriminalization used to mean preventing charges against the women. Now it short hands the legitimating of the trade. We continue to stand with the women and against the trade.
44. Professor Dara Culhane, personal communication, October 2001. Some of our version of the situation in the street prostitution in Canada is being documented and analyzed by Professor Dara Culhane's projects in the Downtown Eastside of Vancouver.
45. Daley, S. (2001, August 12). New Rights for Dutch Prostitutes, but No Gain *New York Times*, pp. A1, 4.
46. Sullivan, M., and Jeffreys, S. (2001). *Legalising Prostitution is Not the Answer: The Example of Victoria, Australia*. Coalition Against Trafficking in Women, Australia and USA. Retrieved online October 2002 from CATW Web Site: <http://www.catwinternational.org>.
47. Lakeman, L. (1985 February 27). Who killed Linda Tatrai? A speech delivered in Vancouver available online: <www.rapereliefshelter.bc.ca/herstory/rr_files85_linda.html#02>, and at the meeting, October 2002, between women's groups and COPE candidates for Vancouver city election.
48. Dara Culhane, personal communication, January 2003, in conversation about the research she was conducting in the Downtown Eastside of Vancouver.
49. Lowman, J. (Ed.) (1998). Prostitution Law Reform in Canada. In *Toward Comparative Law in the 21st Century*. Institute of Comparative Law in Japan, Tokyo: Chuo University Press, pp. 919-946.
50. Amsterdam's Street Prostitution Zone to Close. (2003, October 21). *Expatica News*.
51. CASAC women note that the most destitute and violated are always invoked as a reason we should accept legalization: to save their lives and then the most uncommon and privileged are invoked as the proof of agency. We say we should look at the common and real.
52. We imagine them charged with nuisance charges or other offences. So far the regulating processes of Harm Reduction are not made to answer even indirectly to Charter rights. How for instance would we keep the records of past sexual history out of the case of sexual assault against a registered prostitute when the state already would own those health records and the legal practice would make those records vulnerable to disclosure obligation claims.
53. "Municipalities urge Martin to give Cities a Fair Share of Funds: Heads of Municipal Organization Tours Downtown Eastside and Calls It's Problems A Canadian Issue, Not a Vancouver Issue." (2003, September 24). *The Vancouver Sun*, p. B5.
54. Lakeman, L. (2000).
55. By not arresting and or laying criminal charges.
56. For the lack of respect for women in the profession see: Wilson, B. (1993) *Touchstones for Change: Equality Diversity and Accountability*. Ottawa: Canadian Bar Association.
57. May/Iles and Hadley Jury recommendations from the coroner's inquests, See Appendix.
58. Edelson, J. (2003). Should Childhood Exposure to Adult Domestic Violence be Defined as Child Maltreatment Under The Law? An essay, from (in part) Jaffe, P.G., Baker, L.L., and Cunningham, A. (Eds). *Ending Domestic Violence in the Lives of Children and Parents: Promising Practices for Safety, Healing and Prevention*. New York, NY: Guilford Press (in press).
59. The Joint committee of Senate and Commons held hearings across the country in 1998 that were noted for their inflamed hostility to women, especially to mothers, and most especially to women's advocates. Women's groups across the country complained of the indignity of these government proceedings.
60. Status of Women in Canada. (1995). *Setting the Stage for the Next Century: The Federal Plan for Gender Equality*. Ottawa: Author, cat. SW21-15/1995.
61. Special Joint Committee on Child Custody and Access. (1998). *For the Sake of the Children*: Report of the Special Joint Committee on Child Custody and Access. Ottawa: Author.

62. Alternate Dispute Resolution has been the over arching policy of the Department of Justice at least since George Thompson was deputy minister in Allan Rock's administration.
63. Gulyas, M. (2002, December 31). Proposed Abuse Policy Changes Worry Chiefs: Amendment Would No Longer Make Charge Automatic. *Delta Optimist*, p.11.
64. Justice for Girls. (2001). Statement of Opposition To The Secure Care Act, see online: <www.justiceforgirls.org/publicactions/pos_securecareact.html>.
65. Cherry Kingsley, personal communication, October 2001, in discussion of children in care.
66. Once, while attending court in Vancouver, I heard Judge Kitchener address a young man convicted of a drug offence, apologize to the young man that he, judge Kitchener, had been tricked by the two levels of government into supporting conditional sentences because he had been led to believe there would be supporting and monitoring services and without them, he implied, the young man was set up to fail.
67. Pate, K., personal communication, October 1996.
68. *Ibid.* (October 1-3, 2001). Opening Plenary Locating This Conference in the Wider World 2001. Women's Resistance: From Victimization to Criminalization. Canadian Association of Elizabeth Fry Societies and Canadian Association of Sexual Assault Centres.
69. Addario, L. (1998). *Getting A Foot In The Door: Women, Civil Legal Aid and Access to Justice*. Ottawa: Status of Women Canada.
70. The same space in which we later held the Women's Resistance conference in 2001.
71. CASAC newsletters are available at Vancouver Rape Relief Library.
72. Avon women were generally housewives who sold cosmetics door to door on a strictly commission basis and had few to no employee rights and protections since they were essentially private contractors.
73. The end of NAC was announced by Miriam Abou-Dib of the executive at the meeting of the Canadian Women's March Committee, September 19, 2003, in Ottawa.
74. Personal communication with Carol Assiz, at the end of June 1999, after she retired from field work of Status of Women Canada. I also spoke with Maude Barlow at the anniversary of the Royal Commission on the Status of Women, held at Kingston University, as to her role in the PMO circa 1973, personal communication, 2000.
75. Maude Barlow was hired in the PMO with a mandate to design what the Liberal government could use in the next election as a platform that would win the women's vote. Barlow, M., personal communication, 2000, Kingston.
76. Assiz, C., personal communication, 1999.
77. Kostash, M. (1980). *Long Way Home: The Stories of The Sixties Generation in Canada*. Toronto: J.Lorimer and Co.
78. Lakeman, L. (1999, June 22). Address on the Occasion of the Anniversary of the founding of Woodstock Women's Emergency Centre, Woodstock, Ontario.
79. The B.C. government cut 100 percent of every women centre's provincial funding on April 1, 2004.
80. Virginia Slim was a cigarette producer that used to advertise with a slogan: "You have come a long way baby." The Body Shop marketed environmentally friendly makeup and bath products; the Ford foundation has funded both imperialistic and pro democracy projects around the world; Tampax produces feminine hygiene products and at one point was accused of damaging women's health in search of profit; Avon was explained earlier; and Marriott Hotels profit from prison labour and are deeply implicated in the privatization of prisons.
81. Red Book was a listing of Liberal election promises, which included funding to women's anti-violence services, and funds to the Crime Prevention Fund, and the discussed Family Violence Initiative Fund.

The Charter of Rights and Freedoms

Equality and The Charter records the ten years of shared work between CASAC and the Women's Legal Education and Action Fund (LEAF) in arguments applying the Charter before the Supreme Court. In its forward, Bertha Wilson says,

> Most judges have a thorough knowledge of the law and an extensive familiarity with the adjudicative process: it is in the achievement of the proper balance between citizen and state that we falter. Legislators may find the balance through their political ideologies: citizens may perceive it in their own self interest; but how do judges find it in their mandated stance of impartiality and neutrality (ix)?[1]

Too many Canadian legislators have learned to use the courts (cynically) to avoid revealing their ideologies. In so doing, they undermine democracy. If people don't know government and political positions clearly, their votes are of little value. The current situation regarding the same sex marriage debate is the latest case in point. This approach to governing hides the necessary value decisions in a democracy. It also upholds a pretence that human rights either do, or do not exist in some contractual or "scientific" way that courts can adjudicate. Responsibility to govern openly is evaded. The responsibility to develop rights is abandonned. We argue that it is a discredit to democracy to leave matters to the process of court cases that could and should be legislated in the interest of minority or equality rights. Moreover, with respect to sexist violence and equality issues, we are concerned with rights of a majority and rights to which the community has repeatedly given agreement.

Of course, the courts, too, are full of invisible ideology. The male supremacy, racism, and class bias is obvious to our callers and us. While we are not quick to dismiss liberal law or the possible protections available thereunder, we do look forward to the promised neutrality! We do agree with Bertha Wilson that part of the appropriate role for equality-seeking anti-violence groups is to bring that bigger picture to the courts and legal processes. Who else will?

CASAC women heard Bertha Wilson speak at her retirement address at a LEAF conference in Vancouver. She was guiding us as to what might be possible under the court

considerations of security of the person. It was an inspiring and moving experience to hear a Supreme Court judge address the question of Women's Liberation, especially the role the courts could play in liberating women from sexist violence. It was exciting to hear that speech in the company of feminist legal scholars and practitioners, including aboriginal leaders Sharon McIvor, and Theresa Nahanee, Anne Derrick (defender of the wrongfully convicted Donald Marshall), and intellectual feminist pioneers like Sheila McIntyre. It was the sort of occasion that raises expectations and engenders hope. It raised our expectations of law and of the implementation of the equality promised in the Charter.

When we undertook this work, we still had that speech in mind. We wanted to explore and examine for ourselves the nature of our call to the state on our own behalf and on behalf of the women who call CASAC. It is our understanding as CASAC that while we may not have been fully schooled, in a formal legal sense, in women's Charter rights, we are fully aware of the community understanding of those rights. We, as well as the Canadian community, express indignation at the unfairness of women's situation. CASAC members organize based on an explicit expectation that women in Canada should be treated better by their government and by the law. In an ordinary sense of the words, we express a belief that women's claims to government assistance against the inequality imposed by violence are righteous claims.

We wanted to replicate, for a new group of CASAC members, some of the enriching experiences that CASAC Regional Representatives had in participating in the Charter discussions that had occurred in the earlier national coalition and consultation work, particularly in the O'Connor case and in the development and protection of the Rape Law.

In the early eighties, CASAC and our member centres were barely involved in the lobby to enshrine the Charter and women's equality within it.[2] There was a battle to enshrine women's rights. It was largely middle class women, many with professional credentials as journalists, lawyers, and academics who waged that battle.[3] They were privileged to have the political information and connections to understand the situation and the opportunity created by Trudeau's attachment to the development of a Charter of Rights and Freedoms. They put that privilege to work for the rest of us.

There was a danger of women's rights being omitted in this process. Their personal contacts, positions, and professional judgments convinced these women of the importance of the new Charter of Rights and Freedoms and the importance of fighting to enshrine women's equality within it. They were matched, of course, by Doris Anderson, and others who researched the issue from other positions, both within and outside the government, including the Canadian Advisory Council on the Status of Women (CACSW), and the National Action Committee on the Status of Women (NAC).[4]

Of course, these women had more to gain from a formal equality approach: equality with the men of their class and race. Equal access to the privileges of their husbands, brothers, and classmates was essential to their advancement in their own professions

and personal lives. Yet their commitment was to far more than their own gain, even from the beginning, and for some, this has grown to include all women and to mean substantive equality. They knew that the construction of LEAF as an organization was also necessary so that they could act strategically to shape the meaning given to rights legally encoded in the Charter.

CASAC women of the time saw very little connection between this and our lives or work. We did not struggle to be included. There was no formal record of discussion, within CASAC, of any debate or position. Apparently, however, there were discussions among LEAF's founding leadership of the importance of the violence cases and issues.

LEAF made early efforts to solicit the data, connections, and intelligence of many parts of the anti-violence movement, including the frontline workers. There were consultations in which CASAC members participated across the country to prepare for early cases, for instance, Seaboyer and Gayme.[5] To be fair to us, the style of consultation was weak in its understanding of how to engage the frontline. In those days, we CASAC women were likely to defer to feminist lawyers and legal authority as though law was a foreign science. And feminist lawyers were likely to think of us as a source of raw data but not of political/legal theory or strategy born of a different point of view.

Even the work of supporting Jane Doe that connected LEAF and CASAC was not understood by us to be creating law from the ground up or as using and developing the Charter. Only in hindsight is that so clear. To add to that, most CASAC workers were properly sceptical of the possibility of achieving anything through law because of our frontline experience and understanding of the state. We were ignorant of what reform strategies and tactics might be possible and necessary in these forums, and we had very little opportunity to discuss what legal actions were consistent with our knowledge and goals.

But men like Seaboyer and Gayme attacked rape law and the women's movement achievements using the Charter! CASAC was dragged into court and constitutional debate to defend what little we had.[6]

We closed ranks with our feminist allies across class and race lines and began, occasionally, to assess and sometimes use Charter language and processes as we fought to hang on to the criminalization of violence against women and the rest of the legal imperative to resist the enforcement of women's inequality.

Our expectations for a living Charter have grown since then. Now we think it necessary, lawful, and righteous, albeit difficult, to call on the federal government as well as the courts to provide real and meaningful assistance in the achievement of women's substantial equality.

From our explorations, we understand that legally the Charter must be read together with CEDAW and the other international agreements and conventions signed by Canada. We understand the Charter to promise women dignity and the equality that springs from a fundamental belief in the dignity of every person. We understand that our

rights spring not from government but from our humanity. We understand women to be promised protection in Canadian as well as international law. We understand that the membership of all women in a historically disadvantaged group—women—has been established in law. And that that law has been enshrined in the constitution to protect it from shallow political considerations. We know that our recognized disadvantage entitles us to call on special redistributive action of the government to protect our interests in achieving the social, political, and economic equality that dignity requires. We understand that the law has understood that for any woman to experience fair treatment, government actions are required to move Canadian society toward human equality, especially in relation to all rights, including social, economic, civil, and political rights. We understand that no level of government, and no third party within Canada or affecting Canada, is exempt from that Canadian promise to all women.

We understand that these rights exist before law and before the Charter and it is not only these rights, but also the appropriate actions of others toward these rights, that are in debate. Those legal rights are the political achievement of people worldwide.

We wanted to use this research to advance the ongoing work of CASAC members: by selecting, supporting, and responding to Charter issues and cases; and, by building intelligent alliances based on those legal and political cases where our callers require it.

Current government policy makes Charter interventions on the part of CASAC, even within coalitions of groups, extremely difficult. Canadian rape crisis centres have never had the funding to employ lawyers. As far as we know, not one lawyer has been hired by a CASAC centre. Since the law is not fully or fairly applied, our work frequently requires challenging, if not defying, the law. CASAC is, therefore, not usually considered to be much of a placement opportunity for law students.[7]

CASAC women don't plan to study law in order to do our jobs as anti-violence workers and organizers. We manage by working with and learning from many of the women who have spearheaded the violence against women legal strategies. We have learned much from NAWL and LEAF.

Since CASAC has begun to initiate our own legal strategies, we have received the counsel of many of Canada's most outstanding feminist legal scholars, including Christine Boyle, Shelagh Day, Gwen Brodsky, Mary Eberts, Marilyn McCrimmon, Teresa Nahanee, Sheila McIntyre, Sharon McIvor, Mary Eaton, Joanne St. Lewis, Elizabeth Sheehy, Mary Lou McPhedran, Andrée Côté, Diane Olescieu, Kim Pate, Anne Derrick, and Elizabeth Pickett to name a few.

We began to identify and meet with these women through our coalition work with LEAF as well as in the parliamentary hearings that resulted in the *The War Against Women* report, the Kim Campbell conference, the meetings to confront the Canadian Panel on Violence Against Women, the C-49 hearings, and so on. It was our assessment then, as now, that we were fortunate to have a critical mass of feminist lawyers available and committed to Charter work in the years between 1980 and the turn of the century.

We gathered as many of these women as we could for the CASAC conference, *Critical Resistance: From Victimization to Criminalization*, in hopes of reviving some of the best energy of that feminist legal force. Most of these women have served in consultative roles with CASAC in the last five years and continue to be a source of strength (especially in the form of legal opinion) to our frontline women.

There are many others who work with us in specific regions or on specific cases or legal issues. For at least a decade, this cross-class alliance has been good for us all. But the pressure of the neo-liberal agenda, and specifically the changes to eliminate national funding to equality initiatives, is threatening this alliance.

It has become more and more difficult to keep lawyers under the direction of, or in, cooperative coalitions with frontline women's organizations. The class and race divide is being imposed on us all. The end of the federal funding of NAC is key to that loss. CASAC never received federal funding for its operations. Now no national women's organization receives sustaining core funding other than the Feminist Alliance for International Action (FAFIA) for work to see to it that international agreements are met domestically, and the Canadian Association of Elizabeth Fry Societies (CAEFS) for work with women in prison and the National Association of Women and the Law (NAWL). While these organizations merit support and contribute enormously to the movement, they cannot constitute the movement.

Even at the best of times, we quickly learned that we were disabled by a lack of funds in our attempt to use the Charter "in our own interests."[8] The women who complain to us about Charter violations often don't have money for their survival needs much less to hire legal help.

Our first concern, is why is this litigation necessary? Since the rights clearly exist in law, why must we chase them in the courts? Secondly, when an obvious breach of women's dignity occurs, and a woman challenges that breach in the courts, why is it that each woman is put in the position of having to fight the entire government to secure what the Charter and violence legislation already has promised her? Too often, the government spends a fortune defending a mistake of policy or practice. Why does the government itself not assume responsibility for that fight for equality? Bonnie Mooney and Jane Doe's cases are two clear examples.[9]

Why is there no ongoing internal process of self-correction within the justice system to uphold the standard set in the Charter and in the most recent cases? Even without a formal process, why is it that so many justice system players seem to be compliant, if not complicit, in accepting the ongoing enforcement of inequality?

Most women's cases of criminal violence, complete with the documentation of the infringements of their rights, disappear at the level of policing and the lower courts. No one at that level of the state mentions her equality rights.[10] In the rare exception, when someone has noted unfairness in the system, there is no correction offered. Too often, the

criminal justice representative will blame some other branch of the justice system. In our experience, there is often no correction even when advocates bring to the attention of authorities that an injustice has occurred.[11]

The system is not incapable of these reforming corrections, but it does require the active equality-seeking engagement of more than a few state functionaries. It requires that they believe in the Charter rights of women and act upon them or that their superiors at least not punish them for doing so. It also apparently requires the monitoring and political pressure created by an independent women's movement.

There is little or no access to funding for a legal case to assert a woman's rights. The lack of legal aid for civil cases, the lack of provincial test case litigation funds, Charter challenge funds federally and provincially, the government's move to mediation (ADR) effectively unsupervised by legal professionals accountable to the Charter, all compound the problem. We must at least promote the recording of lower court decisions so that processes of observing the application of the Charter can be noted. We can and do predict more situations where women's rights are trampled.

At this time, there is no way, at the bottom levels of the court hierarchy, for a complainant to meet with other women affected or to seek the advice of feminist legal scholars. Currently, women rely on hope that the rape crisis centre, transition house, anti-poverty group, or anti-racist formation, including the local LEAF office, can sustain not only their own ongoing under-funded work but can also take on her individual struggle until it reaches the national level. The closing of NAC and women's centres across the country make that much less likely. NAC's annual meeting and lobby provided an opportunity to note the on the ground situations we experienced in common from one end of the country to the other. It was also an opportunity to identify where there was new energy and leadership to fight a particular wrong. It was the only regular cross-class, cross-race, cross-region, and cross-issue meeting of the women's movement.

The cutting of rape crisis centres and transition houses from federal women's equality-based funding and the pressure to conform to provincial "service only" criteria, impairs women tremendously in our attempt to keep a legal complaint alive. Often, having an intervener case requires some advocate risking quite a lot. Sometimes individual lawyers spot a good opportunity, and so they advance the expenses, but this is not the normal case and not a desirable relationship for a woman to have with her counsel.[12]

Along the way to Supreme Court, it seems governments feel the need to fight every woman to the breaking point. Why not accept responsibility for the unequal application of law and welcome the opportunities for change created by women's complaints? Still, women have not been stopped. Jane Doe and the civil suits following her are only the tip of the iceberg. The Bonnie Mooney case seems an obvious one in which all three levels of government are engaged in proving that there is no consequence for inadequate and sloppy policing in the lives of battered women.

How can this be in the interest of the public? By the time the court case is complete, the dollars spent in proving an absurdity will be enormous; the settlement with Bonnie Mooney's family could have been easily absorbed while justice was done and been seen to be done. While policing may be more an issue for the Department of the Solicitor General to correct through the RCMP, the legal strategy to fight against Bonnie Mooney was directed by the federal Justice Department. There seems to be much more government interest in using the courts to fight women in ways that maintain pockets of inequality or routes to escape accountability, than in assisting women to fight sexist violence in the courts.[13]

We fear that as the effects of restructuring settle in and public legal funds available to women are more and more restricted, it will become more and more the case that only those already privileged will be able to use the Charter and to prevent the advance of the dispossessed.

We, as centres or as a national association, also face these economic effects on Charter law. We did join with other women to defend the Charter Challenge Fund. But there has never been a fund for Charter litigation in all of the provinces where things begin and of course, even the national fund is limited and never fully pays the costs of a struggle. Nor has it paid for the costs of a woman being in charge of her own case and actually directing counsel. For Supreme Court interventions we, as advocates, are not paid for our staff time or full expenses to participate in the legal strategy. It is enormously time consuming. The Court Challenge Fund does pay lawyers and court costs, to a large degree, when a case is accepted for subsidy. Sometimes it pays the meeting expenses to develop the preliminary ideas for a national case's court preparation. But equality-seeking interveners still have to be willing to raise huge sums and because of the importance of the case, risk core funds.

What is more menacing is the combination of these pressures: the restructuring (or neo-liberal structural adjustment) of Canada and the abandonment of equality as enshrined and possible through Charter implementation. Together, they eliminate the context in which all the state's achievements of criminalizing violence and assisting women violated were secured.[14] Without that context, it is not clear how any of it will be maintained, much less developed.

We have been on the defensive to hold on to any of that interactive network of law and policy. Initially, LEAF secured and controlled what funding and feminist labour was available. CASAC forged alliances several times with LEAF to build coalitions that could intervene in cases already launched by others. LEAF had organized itself to accomplish this. In the jointly constructed factum, LEAF usually had all the responsibility for the administrative work and held final say over counsel and legal tactics and much of the public strategy, but as the years passed, they yielded more and more influence to their coalition partners on the substance and nuance of the arguments and the political battle outside the court. We could more effectively bring our frontline and working-class understanding to

the table. And we were joined there by groups of aboriginal and other racialized women and by formations such as the Disabled Women's Network (DAWN). At its best, we all participated in learning some equality-based thinking and action.[15] There is an entire body of work to be examined from those cross-class alliances and the leadership role that CASAC played in coalition and theory building. There is much to be recorded of the sophistication of the coalition politics from which we all gained. LEAF, with CASAC's permission, has published the factum, which emerged from the first ten years of Charter cases, including those cases affecting violence issues in which we were key participants:[16]

Canadian Newspapers v Canada
Seaboyer and Gayme v The Queen
R v Thibaudeau
O'Connor v The Queen

But more recent cases have also required and received less of the attention and involvement of front line anti-violence centres. The nature and integration of national coalition politics and the voice of the frontline has been substantially weakened, compared to our earlier work. This is not because of the wilful withdrawal of CASAC or other anti-violence coalitions from such work; it is the outcome of the financial impoverishment of the movement at the national level and also of the frontline organizations and our own national associations. No one could pick up the slack.

While the political agreements accumulated among equality-seeking women's groups during the earlier consultation work has held, there has been a sea change, after the work of the rape law and the years of the justice consultations, imposed on the women's movement by the legislated agenda.[17] This area too requires further study. The consequences are already visible in the conducting of casework. More and more, Canada is creating the public misunderstanding that the practice of litigation alone can be a route to the advancement of women. Surely no one believes litigation strategies can win much without the existence of the frontline community education, public agitation, and political organizing that must support and inform each case:

A.(L.L.)v Baharriell (1995)
Ewanchuck (1998)
Mills (1999)
Darrach (2000)

These recent cases defended against notions of "implied consent" and called the court to uphold statutory restrictions on the disclosure of confidential records and sexual history restrictions, all ideas that had been formulated and expressed in the C-49 consultations. The coalition building to create those legal notions of what was possible and necessary had already been done. The legislated impoverishment of Canada-wide coalitions of the women's movement and anti-violence casework has yet to be fully felt in working through the next development of ideas. And even with the consensus established, a huge political initiative has been necessary to propel each of these cases forward.

The CASAC LINKS project improved the ability of frontline workers to follow, understand, and assist the progress of these cases through the courts to the Supreme Court. It allowed women in their communities to respond to and develop the community consensus. LINKS gave quick electronic and digital access to the decisions once made. It allowed us to follow and affect the critiques and media considerations of those decisions.

As CASAC, we have now heard three Supreme Court judges speak to us on the question of intervener status and the importance of the role we play. At our conference Women's Resistance from Victimization to Criminalization, Madame Justice Louise Arbour spoke about her attitude toward interveners and effectively cautioned us about the loss of respect for that role and work.[18] Claire L'Heureux-Dubé discussed the importance of interveners providing context, in her address to NAWL at the announcement of her retirement.[19] Perhaps Bertha Wilson put it most optimistically in her foreword to LEAF's book of joint facta saying:

> Enter the intervener whose proper role, I believe, is to distance him or herself from the narrow facts of the case, to paint a broader picture and to assist the court by hypothesizing a wide range of contexts in which the section might be invoked, all with a view to discerning its purpose and delineating and defining its contours.[20]

But unless our groups continue to exist and are properly funded, such intervention will be impossible. Already, intervention is so impaired that we may not be able to defend equality initiatives we had believed secured in the will of parliament and the decisions of the Supreme Court.

CASAC thought we might be able to achieve something for women with the 1992 Criminal Code reforms. The federal government in reaction to the Supreme Court on Seaboyer, the demands from women's groups and the public, initiated them. The Charter was in place. The level of agreement among women's groups was very high and had been identified by CASAC in the parliamentary hearings leading to the *The War Against Women* report and in the feminist caucus of the conference Women, the Law, and the Administration of Justice.

CASAC advised the government on most of the provisions in new law by leading to consensus an unprecedented series of consultations between Canadian women's equality-seeking organizations. We remain solid in our opinion that the coalition work to prepare for advising the government was the most important element of the C-49 work. It was the theory, solidarity, and political consensus that were our best achievements. We were never naive enough to think that the law would be fully implemented. Nonetheless, we hoped. Even the consensus within the movement was a compromise for anti-rape workers.[21] But still, we hoped. Having applied ourselves to criminal law reform, we had expectations. Bill C-49 (Canada, 1992) was a well-crafted bill that introduced a set of procedures and criteria to govern admissibility of sexual history evidence and a codification

of a statutory definition of consent. Consent was defined as the voluntary agreement of the complainant to engage in the sexual activity in question and specified situations which ruled out consent including where agreement is expressed by other persons, where the complainant is incapable of consenting, where submission is introduced by abuse of authority, and where the complainant expresses a lack of agreement to continue. The bill also sought to limit the use of the defence of mistaken belief in consent, restricting it to circumstances where the accused has taken "reasonable steps, in the circumstances" to ascertain consent, and excluding "self induced intoxication" and "reckless or wilful blindness" as basis for claiming the belief that they had consent. It has been necessary for us to defend the sense of the law in all settings, including the courts.

Those who try to use criminal law in cases of violence against women are learning that we will more and more have to contend with men defending themselves from criminal charges by using the Charter. But so few men are charged and fewer still convicted and that made us begin to examine the other criminal law practices that prevent actual criminalization of violence against women. That defence, sometimes of patriarchal power against women's equality interests, is coming not only from the individual attackers but also from the commonplace behaviour of police, criminal defence bar, judges, and too many offices of the justice system.

As soon as we started to pay attention to Charter-based equality expectations, we learned that "Charter arguments" and "Charter rights" were most often colloquial expressions used (mostly by men) in the legal community to mean the rights of the accused. They are rarely understood to mean women's rights to autonomy, security, privacy, agency, dignity, or well being. They are rarely understood to mean the right of the complainant to a fair trial or the right of women to access the rule of law. If the state actors (police, victim assistance, crown, judge) even mentioned women's equality rights in any of the cases in which we have been involved, it was never in the context of advancing a complaint of violence against women. It was only in the construction of a limit to those rights such as "he has rights too" or yes, she has a right to...but we must "balance those rights" said by someone other than a judge and meaning something less than achieving her rights or any version of balance.

To have any progressive use, Charter rights will have to be understood to always mean some version of the right to substantive and meaningful equality. We need the legal community colloquialism to be the language of the aspirations of the historically disadvantaged; the oppressed. They should not just legally arm aggressors against the state. A fair trial is not one laced with indignity and bigotry.[22] The full defence, of even those unfairly targeted by the state for criminalization, does not need to resort to bigotry. And no amount of bigotry will produce a fair trial or protection from unfairness. Obviously such processes and attitudes dignify no one.

State functionaries regularly ask questions and solicit opinions of CASAC members as though there is a finite quantity of rights available to Canadians. We, including the

women we represent, are in some competition for them with all other groups of people wanting rights. This is not CASAC's analysis. Our understanding is that rights, entitlements, and obligations, even in the sense of rights within a liberal democracy, build on and compliment each other. We don't imagine a pie of rights to be divided. We imagine a democratic harmony in which each person's right, entitlement, or obligation is a voice, sometimes combining with groups of others, to create a fuller, more sophisticated, and refined sound of justice. We hope for a time when women's voices, individual and collective, will be heard above the sexist, racist, classist din. It is in the speaking, listening, recording, and upholding of everyone's rights that democratic liberty can be conducted.

In part, we saw C-49 as an aid to limit (through the Charter) the discretion of individual men within the system to collude with or assist attackers in their application of the power of the state against women. We were particularly interested in the state power exercised through decisions made by police, prosecutors, the governance of the defence bar, and judges. Feminists, including CASAC, have continued to attempt to limit that discretion, and the limits continue to be contested by one branch of justice or another and often by one branch of justice undermining another.

The mandatory arrest policy was an example. Women's groups have been very clear, over the years, that police discretion in handling wife assault has been used against women too often, too normally. While "mandatory arrest" was not the invention of CASAC or any part of the women's movement, we did not unite to oppose it. We understood it as an effort to curtail police discretion: to press them to arrest when they could indicate that men had probably assaulted. It has never worked. It has never been fully applied. Police are obviously told one way or another by their bosses not to follow it, as they were directed by their bosses previously not to respond to the crimes of violence against women. The policy was not and is not the only problem. Often police increased the arrests of the already targeted populations of men and consistently continued to refuse to respond to the calls of women for assistance from any, but especially from the same disadvantaged communities that they targeted for men's arrests.

Increasingly, women were aware of this and told us that they thought the equality rights of the men were being abused. Men in their lives were being arrested essentially for being aboriginal or black or, at best, for being drug dealers or thieves, when women complained of violence, but the rights of the violated women are also violated. Men would not be arrested for wife assault, or sexual assault, or incest simply because they had committed criminal acts of wife assault, sexual assault, or incest.

In B.C., the provincial government authorities had been substantially won over to the need for an over-arching provincial policy on the responses to wife assault and the need to include in that policy the encouragement to err on the side of arresting men who seemed to have beaten their wives. The RCMP fought tooth and nail in the name of their independence to reject the provincial policy. After the Vernon Massacre and the political

inquiry that followed, they created their own policy.[23] But the defence by all levels of government of the police behaviour toward Bonnie Mooney continues to the present. The RCMP continued to attempt to split any equality-seeking forces within the system regarding the necessity for the provincial policy and finally, they added to crown resistance contributing to the Liberal and B.C. provincial government reversal of the policy in 2002. Bonnie Mooney and CASAC continue to fight them in court.

Everywhere in the country, CASAC women see huge expenditures of public money and time on training and education of police prosecutors and judges with too little positive impact. Ongoing education within any profession is important. But this model of social change is clearly not working as a way to win compliance with the law or the best equality efforts of women. Why not apply more strict job performance requirements that these professionals meet the Charter standards?

In spite of twenty years of demands for accountability processes like civilian review bodies over police and judges, public inquiries, inquests into deaths of women, and the governments that were implicated, not to mention costly and long civil suits against public officials, these generalizable results are ignored or undermined.[24] Increasingly, these political processes (coroners inquiries, public reviews, etc.) are disqualifying equality seekers or the interventions based on equality that they wish to make as irrelevant to the issue before them.[25]

"Coordinating" bodies[26] at the local and provincial levels have become roadblocks to effective reforms against sexist violence. They are not structured or funded to advance cases that could change the landscape nor are they neutral in their orientation. In fact, they play a significant role in exposing possible "problem" cases to the system for papering over. The committees are over-run, by design, with "systems" employees at the lowest levels of power and influence who are not required to demonstrate a commitment to equality and who, instead, are invited to window-dress inequalities with coordination rhetoric.[27] As though each incident of inequality was isolated and unusual and could be solved by communication and intra-professional courtesies. Aggressive, urgent equality seekers are either sandbagged or leave. Hamilton and Vancouver coordinating committees are prime examples. Ontario is now the most vivid example of province-wide pressure to pre-empt the independent critique of women's anti-violence centres. Domestic Assault Review Teams (DART), Children's Aid Society protocols, police departments, hospital-based victim services, and new Domestic Violence Courts embed women's groups and services within the current services and inadequate legal options in each community in a way that reinforces the status quo. It threatens to bury their advocacy on behalf of women and their knowledge of what is actually happening in much the same way that embedding journalists in military troops buries the truth of war by forcing journalists to see themselves as part of the military equipment and personnel. In this case it is the army of forces of the status quo.

Victim's Rights groups, including both those with a restorative justice orientation and those covering a more obvious right wing "law and order" agenda, oppose and interfere with women's equality-seeking initiatives.[28] In the last five years, they have succeeded in grabbing the public dollar and winning the cooperation of politicians without interference from those attached to Charter concepts. Every province has introduced mechanisms to fund police-based victim assistance and contributed to blurring, for the public, the difference between a non-government organization offering advocacy against government actions and inaction and a police-based or state-based one answerable at best to the state and usually to a current government. The Ontario Harris government created the Victims of Crime Office and tried to herd women's services and advocacy under it. The federal government, through the Department of Justice, assigned a victim file complete with a bi-annual victims conference, largely devoting its attention to inter-governmental plans to limit the services and roles of victims. It has, however, given rise to a national association of victims and a public debate about enshrining the "rights" of victims in the constitution. During these same years, both provincial and federal governments discontinued funding to many women's groups concerned with women's legal rights, especially those women victimized by sexist violence. How is this a Charter-based or "gender mainstreaming" perspective?

CASAC and other women's groups were quite vocal in our anticipation of this impact on equality-seeking groups and liberal justice concepts such as the role of the state versus the role of the individual complainant.[29] But there has been no Charter-based examination of these issues by the bureaucracy. Since its formation, CASAC has debated the possibilities and problems of relying on law, especially criminal law. These debates and examinations of positions and orientations continued at our recent Women's Resistance Conference and at the CASAC convention in 2001. As the list of speakers and workshops would indicate, we have had to discuss prison abolition, restorative justice initiatives, the making of monsters like Bernardo, Lepine, and Olsen. We have debated and reconsidered the racializing and classing that persists in the targeting of those arrested.

The victim rights voices argue with us that we should abandon men's civil liberties, call for increased police power and increased prison sentences for all crimes including violence. We do not agree that undermining civil liberties is ever in our interest. We are also aware that the increased criminalization of women for poverty crimes and self-defence would be ill served by such a solution to the crimes of violence committed against women.

Some, though not all, prison abolitionists argue that we should immediately and entirely reject criminalization. Using the current justice system, they say, moves away from democracy and economic justice. We are pressed to abandon any call for increased criminalization of violence against women to save our community from the imposition of unfair and undemocratic policing and jailing. We have had to consider whether race and class targeting compels us to advise women against cooperating with the criminal justice system at all.

But CASAC women have come again to the conclusion that, in Canada, we must press for the application of criminal sanctions against violence against women. We are aware and appalled that the law, especially criminal law, is selectively applied. The theft and wrong doing of the privileged is handled completely differently than the theft and the wrong doing of the poor and racialized. Drug taking and selling are obvious examples. Theft is even more obvious. But it is true too that this selective criminalization affects women violated in a specific way: the refusal of the justice system, as a whole, to use the resources of the police, crown, courts, and other parts of government, to effectively protect women and hold men to account. We believe that progressive forces should join us, locally and nationally, in defending women by demanding the shift of priorities for the use of public resources from managing the interests of men, however privileged, to protecting equality rights.

Not the least of our reasons for this reform demand is the fact that most women cannot escape the reach of law, including criminal law. When they are sexually violated, they are under the eye of the state already. Women asking for medical assistance in response to a rape or assault, women seeking economic assistance from the state, women who are institutionalized in any public institution, including marriages, cannot just hide their attack.

Increasingly, women cannot leave abusive marriages without state authorized mobility permission from their husbands in formal custody arrangements. To get such arrangements, women often tell someone of the violence. If that someone is a professional representing her legally, mediating the end of the marriage, teaching her child, counselling her or her children, managing her housing, day care or her immigration, she may well be pressured to report. Women are ordered to pursue charges of violence to protect custody of our children. A live-in caregiver faces similar pressure. She cannot voluntarily choose to change her employer without penalty, and she cannot report her employer as violent without facing pressure to report to police. A prostitute numbered by the health department wanting to escape a violent john will be similarly pressured.

Women who call police in the heat of an emergency, for instant protection from a punch or a gun, can be and are selectively pressed into formal report giving, whether they like it or not, by threats of mischief charges, or the accusation that if they do not proceed, they are effectively recanting and should be punished for wasting the time of the state.

The least able to escape the wishes of the state's actors, are those pushed out of social protections that used to be available from the state and the voluntary sector. That push comes from the economic and social changes described earlier and is experienced in the forced migrations of the poor of the world from one part of Canada or the world, to another, and out of welfare and marriages into the informal economy. Ex-wives managing on women's depressed incomes receiving under the table child support, aboriginal women on reserves subject to unprincipled band council decisions about how to handle

the violence, First Nations women forced into the informal economy of the urban ghettos, poor women cheating because of too little (if any) welfare, immigrants without adequate settlement services, students working under the table to supplement smaller student loans, older women on insufficient pensions, disabled women (those that qualify at all) working to supplement their meagre aid, all live in a permanent state of illegality.

Unless we force the redistribution of policing and other criminal justice to their aid, they are left to face both the targeted criminalization for their adaptations to violence and poverty, and the withholding of legal protections and services on the basis of their status as women and their therefore unworthiness of the legal services and protections of their community. How can women cope with the ever present reality of harassing and stalking husbands prepared to murder, drug merchants selling date rape drugs in bars, raping and pimping motorcycle gangs, multinational traffickers, raping priests and murderous, armed prison guards without the aid of criminal law?

It seems to us that the women in Mission who called on us to "speak to the bigger picture" in the wife murder described in our Preface, are calling upon CASAC to collect the stories of all the women who call and make the solutions proposed suit as many of us as possible. That role can and should be played both in and out of court. Canadians need women's groups who are informed by work against violence to give time and attention to the larger picture and the predictable scenarios. We need to meet, discuss, write, and otherwise give voice to and act as equality advocates. This is the role we wish to play using the Charter, and Charter cases, as part of the fight to end violence against women as we "remember the dignity of womanhood, take courage, and stand with us."[30]

Notes

1. Wilson, B. (1996). In *Women's Legal Education and Action Fund* (LEAF). Toronto: Emond Montgomery Press.
2. In 1982, The Charter was enacted, and in 1985, Equality provisions came into effect.
3. There were labour leaders, as well, for instance, Kathleen O'Neil of the women of the Women Teachers Federation; for an account of the Charter gang see: Razack, S. (1991). *Canadian Feminism and the Law: The Women's Legal Education Fund and the Pursuit of Equality. Toronto*: Second Story Press.
4. Doris Anderson, former editor of *Chatelaine*, who headed the Canadian Advisory Council on the Status of Women (CACSW), is a well-known feminist and Liberal. She organized for the conference on the constitution, and NAC declared constitutional reform would be its priority for the year.
5. Marilyn McLean, Toronto Rape Crisis Centre participated as CASAC in on-going consultations, too.
6. LEAF acknowledges too in its book of Facta "it has spent much of its time defending existing provisions for equality that have been threatened." See: Women's Legal Education and Action Fund. (1996) *Equality and the Charter: Ten Years of Feminist Advocacy before the Supreme Court of Canada.* Introduction. (p. xii). Toronto: Emond Montgomery Publications.
7. This is explained in the tribute to L'Heureux Dubé delivered at the University of Ottawa event on her retirement, See: Lakeman, L. (2002) *Farewell Address to Madame Justice L'Heureux-Dubé* available online: <www.casac.ca/ issues/fairwell_heureux-dube.htm>.
8. "In our own interests" in the sense that Bertha Wilson used the expression above.
9. Both of these stories are included in this report as high profile cases.

10. Frontline workers have been frustrated in almost every city trying to deal with these situations in Coordinating meetings and Coordinating Committees.
11. See, for example, Bonnie Mooney's case or Jane Doe's case.
12. Jane Doe, Bonnie Mooney, and the women fighting Bishop O'Connor all suffered for lack of money to control the case. Without the intervention of women's groups it is arguable that none of them would have proceeded.
13. In the Bonnie Mooney case, federal government lawyers led the defence of all levels of government irresponsibility. After the original police officer was proved guilty, the government should have accepted responsibility.
14. That context included state funding for women's groups and services, funds to compensate victims of crime, consultations with women's group's on policy and law reform, court and police policy changes to aid women and children complainants.
15. For an assessment of the case success see: McIntyre, S. (1996). Feminist Movement in Law: Beyond Privileged and Privileging Theory. In Jhappan, R. (Ed.), *Women's Legal Strategies in Canada*. Toronto: University of Toronto Press, pp.42-98.
16. LEAF. (1996) *Equality and the Charter*.
17. The national women's groups meeting in Ottawa at the invitation of NAWL and CRIAW (Canadian Research Institute for The Advancement of Women), in September 20 and 21, 2003, constructed this analysis.
18. Women's Resistance: From Victimization to Criminalization plenary: Can Law Deliver for All Women? Chair: Dawn McBride, Madam Justice Louise Arbour, Supreme Court of Canada, Former War Crimes Prosecutor and Commissioner for the Inquiry Into Certain Events at the Prison for Women, Kingston. Plenary proceedings, see: <http//www.casac.ca/conference01/cd_order02.htm>.
19. National Association of Women and the Law Conference, March 7-10, 2002, "Hats Off" event.
20. Women"s Legal Education and Action Fund. (1996). *Equality and the Charter: Ten Years of Feminist Advocacy Before the Supreme Court of Canada*. Forward (p.ix). Toronto: Emond Montgomery Publications.
21. Our political position as CASAC was that our records and women's personal sexual history were never necessary evidence in court cases of violence.
22. This idea was raised repeatedly by both by Sheila McIntyre and by Christine Boyle during our deliberations in planning the O'Connor facta and the struggle to protect the confidentiality of records of complainants (1992) Vancouver.
23. RCMP policy E division was adjusted after the inquiry in 1998 by Josiah Wood into the Vernon Massacre.
24. See the May/Iles and Hadley cases in this report. Hadley raises the horror of the failure to apply the inquest recommendations from May/Iles.
25. Ontario Inquiry into the death of Kim Roger's for what was ruled out, see the DisAbled Women's Network of Ontario (DAWN) *Kimberly Rogers Inquest Alerts: Judicial review decision in CAEFS vs. Dr David Eden, coroner* available online: <http://dawn.thot.net/kimberly_rogers/judicial_review.html>.
26. Usually comprised of the paid staff of some service organizations and the lowest levels tolerated by them of the police and crown office.
27. Selecting representatives for instance that are half from government systems and half from the community is a complete sham. All should be based in equality-seeking work and the self-organized groups of the oppressed must have pride of place even for this tiny reform to have meaning. Otherwise, it just steals the time and energy of the equality-seeking groups to no good end.
28. Lakeman, L. (2000).
29. See the record of the Justice consultations and presentations to Minister Allan Rock available from Justice Canada and on file at CASAC.
30. Nellie McLung: "Remember the dignity of your womanhood; take courage and stand with us."

Bonnie Mooney's Story

Louisa Russell

BONNIE MOONEY'S story begins with a police officer saying, "I am sorry there is nothing we can do." Those were the words of Constable Craig Andrichuk as he responded to Bonnie's desperate plea for help in dealing with her ex-common -law husband, Roland Kruska. The police knew Kruska to be armed and dangerous (he had previous convictions, including manslaughter, sexual assault, and forcible confinement, and had been imprisoned numerous times).[1] Kruska beat Bonnie time and again from 1991 to 1995, three of which resulted in her being hospitalized. Each time the violence escalated, until he choked her unconsciousness, and battered her with a stick in November 1995.

Kruska was subsequently charged with *attempted murder* but was sentenced to 21 days for *assault using a weapon causing bodily harm*—after the charge was reduced.[2] While on bail, Kruska told Bonnie that he would sign over the house to her if she concocted a story to the courts. Terrified for her life, and convinced that the criminal justice system wouldn't protect her; she agreed to tell the courts that her police statement was "bullshit."[3] The Judge relied solely on Bonnie's "testimony" and did not believe hospital records, previous records of his violence, nor the witness statements to the contrary. Consequently Kruska was soon roaming freely.[4]

Kruska reneged on the deal; he called Bonnie frequently, threatening to kill her. "I was feeling like his eyes were on me and he could hear and see everything I was doing. Like I said, this man had so much power over me."[5] The attacks continued to escalate. Bonnie drove to the RCMP detachment and begged for help. She told the Constable everything that had happened in the past and why she was so fearful now. Andrichuk took a brief statement and informed Bonnie that there were no grounds to get a peace bond under S.810 of the Criminal Code. He told her to consult a lawyer about a civil restraining order, and advised her to "stay in a public place in the future."[6]

She left in disbelief, echoing the voices of so many battered women: "Surely the police can do more?"[7] Scared for her life, Bonnie made several efforts to protect herself and her family. She got her best friend Hazel White to sleep over and installed bars on the windows. Six weeks later, on March 11, 1996, Kruska "smashed through the patio door of her rural B.C. home with the butt of his sawed off shot gun." He killed Hazel, and severely wounded her twelve-year-old daughter, Michelle. Bonnie, Michelle, and her other daughter, Kristy, escaped while Kruska set fire to the home and killed himself.

Certain the RCMP could and should have done more to protect her, Bonnie pursued the matter. She became the first ever to sue all three levels of the state: the RCMP, The Attorney General (AG) of B.C., and the Solicitor General of Canada. She launched a civil action on the grounds that *reasonable steps were not taken to ensure the "safety and security of her family."*[8] Women's groups across the country wrote letters to the named authorities demanding that they stop making Bonnie fight in court and that they assume responsibil-

ity.[9] Rape Relief called a meeting with the Director of Police Services, Kevin Begg. We asked why the AG of B.C. was in concert with the federal government, making Bonnie fight in court, as it was in their interests that their own policy on wife assault be upheld. Our concerns were forwarded to A.J. (Tony) Heemskerk, Assistant Deputy Minister of the AG, who replied that they were not a named party in the case.[10]

I faxed copies of the court transcripts that showed the AG as a named party. He later called back and told us that he had recently learned that the "Fed's" had retained a lawyer on behalf of their ministry. He said that he had lodged a complaint with the Solicitor General of Canada, for not advising him sooner, but did little more.

The case proceeded. The defence lawyer on behalf of all Canadians, George Caruthers, argued Bonnie was the *"author of her own misfortune,"* stating a protection order would have done *"nothing"* to prevent the shootings.[11] Women's groups were outraged when Justice Collver announced the dismissal of the case stating although

> ...a careful investigation was warranted but not undertaken...[but] there was no clear connection between Constable Andrichuk's failure of March 11, 1996 and Kruska's fateful trip...seven weeks later...the officer's inaction did not materially increase the risk of harm to the extent that [the state] must bear responsibility for Kruska's acts.[12]

Collver's decision went on to quantify damages to be awarded to Bonnie and her children in the event that their claims were to prove successful on appeal. They came to less than $500,000.[13]

Rape Relief filed an application to intervene in the appeal so we could inform the courts of a feminist perspective before they made their decision.[14] We knew that Bonnie's experience was shared by thousands of battered women and it was important that this case be placed in that context. We asserted in our application that the individual constable's failure to follow the guidelines on wife assault guaranteed Bonnie and her family would not be safe.[15] We stated that the negligence, agreed to by Justice Collver, did not uphold the *Charter* values that Bonnie and her family had to the right to *life, liberty, and security of the person and the right to equality before the law.*[16]

When Bonnie ran into that Prince George detachment, the constable made several sexist stereotypical assumptions about all battered women, and *"left her out to die."*[17] He "deprived her of her right *to security of the person* by subjecting her to the very real risk of attack by her ex-partner."[18] Women know that the police judge battered women in this way; it's because of this that so many women do not go to the police for protection from male violence committed against us in the first place.[19] And still we fight. We fight with the belief in equality and with hope for all women who follow. I hope that Bonnie receives some compensation for so much of the life she has lost and that other women may be spared the same ordeal. The case continues today, awaiting hearing at the Supreme Court of B.C.

Notes

1. Transcript of *Bonnie Mooney v The Attorney General of Canada, The Attorney General of The Province of British Columbia, The Solicitor General of Canada, Corporal K.W. Curle, Constable E.W. Roberge, and Constable Andricuck*, T.V., T.V. 3, pp. 570-573.
2. Transcript, Vol. 2, p. 197.
3. Transcript, Vol. I, p. 131, lines 22-44, p. 134, lines 40-42, p. 135, lines 2-19.
4. A.B. V1, p. 68 "The Judge accepted the Appellant's statement to the court (A.B. V1, pp. 8-9) and remarked in sentencing Kruska to 21 days that he was "relying a great deal on what Ms. Mooney had told me."
5. A.B., Vol. V, p. 1030, para 16, (RFJ) Transcript, Vol. I, p. 153, line 22 to p. 154, line 9, and p. 156, line16, to p. 157, line 10.
6. Trial transcript, February 23, 2001, line 34.
7. Trial transcript, p. 7, line 23.
8. Trial transcript.
9. Some of these groups were: Aboriginal Women's Action Network, Phoenix Transition House, B.C. and Yukon Society of Transition Houses, Canadian Association of Sexual Assault Centres.
10. Letter addressed to Louisa Russell from A.J. (Tony) Heemskerk, Assistant Deputy Minister, Attorney General of British Columbia, April 23, 2001.
11. Kwan, K. (2001, February 20), Abused Wife Wants Cops to Pay, Vancouver: *The Province*, p. A3.
12. See Transcript, Reasons For Judgment of the Honourable Mr. Justice Collver.
13. Court of Appeal Appellants' Factum p. 8, section 21. A.B. Vol. VI, p. 1062.
14. Intervener status was granted and our intervention was heard in November 2003. The government lawyer argued that Bonnie was only *inquiring* about protection and that she was only a *potential* client of the police and had no claim to protection once they refuse her.
15. Court of Appeal Proposed intervener—Notice of Motion, January 2003, filed by Gail Dickson, Q.C.
16. Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B of the Canada Act, 1982 (U.K.), c11 [hereinafter "the Charter"].
17. Transcript, p. 7, line 23.
18. *Jane Doe v. Metropolitan Toronto (Municipality) Commissioners of Police*.
19. *The Daily*, Statistics Canada, November 18, 1993: "The Violence Against Women Survey," p. 7, "violent incidents experienced by women 18 years and over by type of victimization and criminal justice processing, Canada, 1993: Total: 20,543; Total reported to Police: 2,796; not reported: 17,571; of those reported to Police (2,796) Perpetrator Arrested: 913; Not arrested/Charges not laid: 1,671."

Bonnie Mooney's Story...Continued

Suzanne Jay

"IF ONLY THEY HAD done something, two people would still be alive," Bonnie Mooney told me as we walked back to the courtroom on Thursday. The two dead were her best friend, Hazel White, and Bonnie's ex-common-law partner Roland Kruska. Kruska was trying to kill Bonnie when he broke into her house and shot Hazel and Bonnie's twelve-year-old daughter. He set the house on fire and then he killed himself.

Several weeks earlier, Bonnie escaped Kruska after he threatened to kill her and chased her through town. She asked the Prince George RCMP for protection. They refused her, and thus, they failed her. I think the RCMP's refusal to arrest allowed Kruska to escalate to murder. I was shocked when the lawyers for the RCMP and the government claimed in court that their refusal to arrest and the shootings were two unconnected events.

I'm not a lawyer, but that assertion does not make sense to me. I don't believe the police can absolutely guarantee my safety or the safety of any woman. However, I expect the police to be more effective than a woman alone in stopping a man with a gun. This belief is the main reason why I'm willing to allow the police to have guns, cars, training, and power that the ordinary citizen does not have.

Are the police claiming they were powerless to stop this dangerous man? What kind of message does that send to women? I'm a small unarmed person, should I just stand aside and let men beat up or rape whoever they choose: Should I just not bother calling the police? Are they really more helpless than I am to prevent this kind of violence?

Bonnie survived the attack in 1996. With help, she compiled evidence about the police attitude, behaviour, and policy related to her case. She found a lawyer to help her sue the RCMP and the government of Canada. In the first trial, the judge agreed with her that the RCMP had been negligent. But he failed to see that Kruska's rampage was facilitated by that negligence.

Vancouver Rape Relief and Women's Shelter supported Bonnie's appeal because we've heard similar stories from far too many women. We engaged a lawyer and got intervener status. We provided the judges with information about how those women's interests are involved in the case and how women's rights can be positively affected by good public policing.

My heart and mind raced while one of the lawyers for the government talked about other Kruska attacks on Bonnie. I remembered her telling me she reinforced her front and back doors, she used a stick in the runner of the heavy glass patio door and sometimes, when she couldn't bear the fear anymore, she would call him to make sure he wasn't actually lurking outside her house. Hazel stayed with her and the girls; it must have helped them feel better to have each other.

I have deadbolts on my doors, bars on my windows, outdoor security lights, and I live with someone. I make an effort to know my neighbours, and I draw the curtains at

night. I'm not hyper-afraid, but then I'm not dealing with a man who has beaten me, has guns, and has threatened to kill me. I'm not responsible for children who are counting on me to protect them too. However, even without children, I am entitled by law to police protection. And so is any other woman.

Yet, the lawyer for the government describes Bonnie as a "potential client" for the RCMP, as though she is required to buy her policing. They claim they had no obligation to serve and protect her—as if police have that option. They claim she was not entitled to expect anything more of them after they turned her down.

We directed our lawyer to remind the judges public policing is guaranteed by the Charter of Rights and Freedoms to be available to everyone in a fair and non-discriminatory way, including women. Although I'm sure it is something that the judges know, it's a relief to hear this asserted in the courtroom by our lawyer. Beside me, Bonnie turns and whispers, "Good for her!" It was as though even she wasn't fully aware that it was her case that had been making this point.

It would be fair and just for Bonnie to win this appeal. It would confirm to those watching that police have a responsibility to protect us from violence against women—especially when women ask. I think it would be a long overdue and bittersweet victory for Bonnie. It would be a victory for every woman in Canada, including me.

Local **Documents** Reviewed

As we began this book, we were especially interested in whether and where policies and procedures to address violence against women failed to meet our understanding of the Charter obligations to women and equality. We were tired of training personnel in the state machineries of Health, Justice, and the Solicitor General, tired of chastising individuals, and individual offices, or departments when the problems seemed to us to be much more systemic.

We examined the international law and context, the restructuring of Canada, the Charter cases, and processes. We also decided to examine, using those discoveries, the documents, and policies affecting local officials as they handled violence complaints. Gathering documents was an instructive activity in itself. We found that where once women begged for institutionalization of policy to instruct the ignorant and contain the erratic, we now found ourselves buried in paper. The system seems to have adapted to our attempts to curtail problems by keeping huge numbers of civil servants and contractors writing policy to the exclusion of much effective change.

Getting the documents is difficult. Officials guard them with suspicion that some wrongdoing will result from citizens understanding the obligations of state officials. When we asked for assistance, despite a letter of introduction from the Justice Department, we were repeatedly refused. Apparently there is some suspicion of danger at that level too. But when we actually secured what we could, we wondered why anyone would worry. There is little possibility that anyone could follow the chain of command, be reassured that they know what the legal policy or procedure is, or be assured that they could find the offending ignorance or obstruction to the enforcement of that policy. No ordinary citizen could possibly know what is going on or how to use the existing policy and procedure to her own benefit. Obfuscation is the order of the day.

CASAC LINKS was interested in their compliance with Charter obligations, as we understand them. We undertook a simple analysis: Do the documents identify and acknowledge that violence is gendered and oppressive to women in particular? Do they apply a substantive equality notion to the situations about which women call?

What we were looking for, of course, was reassurance that workers in the police department, or crown offices, or 911 call centres, as well as court workers, are instructed to

treat women as humans with their own worth who always merit, by their existence alone, the equal access to and protection of the law. We hoped to find instructions to address the conditions in which women find themselves. We wanted to see that these public officials and functionaries are instructed that such treatment of all women is nothing more than the law requires.

A Document Review: 911

The mandate of the 911 operators in most places is to establish the correct response to a call: that is, to ensure it gets an appropriate response from the fire department, the police, or an ambulance. In each site we examined, different players were responsible for the running of 911—police, fire department, the province, or a corporation. There is no consistent gender analysis, and no training on violence against women, and/or to assessing women's safety. There is no notable difference in the training or procedures, regardless of who is in charge. The Canadian public gets much of its expectations these days from American television. They think 911 operators have a lot of control and access to emergency staff. Commonly, the 911 operator is instead working in a call centre atmosphere and being supervised by police. There are standards such as goals for the length of time it would take to handle each call such as, "average 40 seconds, goal 35," which apply for all calls, with no indication of when extra time and attention should be given.

Currently, there is a fiction consistent with television that operating the 911 system is overseeing police response in that it will record all the incoming calls and record the assignment of the call. This is not true. And the chances of using what systems exist to hold police accountable is laughable. Even with concerted efforts we had a very hard time securing the basic policy and procedures, much less directions to make any record of any call. The 911 personnel and systems often understand themselves to be contracted and managed by the police, and in small places, even feel personal loyalty to "our members" meaning the police.

The procedures recommended to the operators indicate no relation to the criminal code. This undermines the potential assessment of which law, and also which policy the police should be following. Wife assault and battering, up to attempted murder, is referred to as "domestic" in every case. It seems to us that if there is no relating to the criminal code, and no relating to gender, there will be no relating to the Charter either. There is no revealed reference to criminal code and no revealed priority placed in relation to the particular offence or crime. We saw no other method of identifying the particular danger to women.

We certainly imagined that there would have been some safety assessments, including asking if the attacker is still present, asking whether he had access to weapons, whether he is an ex-husband or boyfriend and so on. We know women sometimes say these things voluntarily, but we were looking for acknowledgment that the likely danger for women is different from an ex-husband with a gun than even from a balcony rapist

working a neighbourhood for unlocked or easy to pick doors. We found no such incorporation of the common knowledge of the dangerous situations for women. Some policies refer to "domestics" as "dangerous for the responding member" meaning the officers coming to investigate, but there is no equivalent caution about the increased danger to the battered woman to whom they are responding.

There is a Canadian Supreme Court Case, *R. v. Godoy SCC 1999* about police responding to abandoned 911 calls. It is referenced in the E Division RCMP policy. It contains understandings, which could and should be generalized to all calls responding to violence against women. In the specific *Godoy* case, the woman called 911, but the call was not completed. In Ontario, these calls are given "priority two" and the police are also to get back up to respond. Four officers arrived at the door. The attacker answered, refused to let them in. The police went in and found the woman with a swelling on her head. She informed them her husband had hit her. The police arrested him and charged him with assault and resisting arrest.

The trial judge dismissed the case, because firstly, the woman denied in court that he hit her, and secondly, the police entered the premises against the wishes of the accused. The Crown appealed, and the Ontario Court of Appeal ordered a new trial. The Supreme Court did also. The Supreme Court decision lays out police responsibilities, and specifically names expectations of police response to "spousal abuse," in relation to the Charter. They say the police have more obligations to see to the dignity, integrity, and autonomy of the 911 callers than they do to the attacker's dignity (of not having the police in his home). They discuss:

> Further, the courts, legislators, police, and social service workers have all engaged in a serious and important campaign to educate themselves and the public on the nature and prevalence of domestic violence. One of the hallmarks of this crime is its private nature. Familial abuse occurs within the supposed sanctity of the home. While there is no question that one's privacy at home is a value to be preserved and promoted, privacy cannot trump the safety of all members of the household. If our society is to provide an effective means of dealing with domestic violence, it must have a form of crisis response. The 911 systems provide such a response. Given the wealth of experience the police have in such matters, it is unthinkable that they would take the word of the person who answers the door without further investigation. Without making any comment on the specific facts of this case, it takes only a modicum of common sense to realize that if a person is unable to speak to a 911 dispatcher when making a call, he or she may likewise be unable to answer the door when help arrives. Should the police then take the word of the person who does answer the door, who might well be an abuser and who, if so, would no doubt pronounce that all is well inside? I think not.[1]

> Thus in my view, the importance of the police duty to protect life warrants and justifies a forced entry into a dwelling in order to ascertain the health and safety of a 911 caller. The public interest in maintaining an effective emergency response system is obvious and significant enough to merit some intrusion on a resident's privacy interest. However, I emphasize that the intrusion must be limited to the protection of life and safety. The police have authority to investigate the 911 calls, and, in particular, to locate the caller and determine his or her reasons for making the call and provide such assistance as may be required. The police authority for being on private property in response to a 911 call ends there. They do not have further permission to search premises or otherwise intrude on a resident's privacy or property. In *Dedman, supra*, at p. 35, Le Dain, J. stated that the interference with liberty must be necessary for carrying out the police duty and it must be...[2]

The charge against Godoy for the attack on his wife was dismissed—the Crown appealed on the resisting arrest and assault of an officer charge only. This is the charge the Supreme Court ultimately sent back to be re-tried. The Crown clearly put the injury to the officer, the resisting arrest, ahead of the assault on the wife, and did not enter any arguments into the appeal about why the charge for the assault on the wife should not proceed without her. They have a police witness to the injury and what she said on the scene, probably her original statement. There was no consideration by the Crown of her Charter Rights.

Overall, the case presents us with some hope. The Supreme Court has mandated the police to enter premises on reasonable grounds in order to assess the safety and liberty of 911 callers. But once again, we are in the position of hoping that power is used to protect women. The decision provides women with some expectation that their Charter Rights will be seen if the batterer disconnects her phone call. Surely they could be seen in other circumstances before she is at risk of death. The willingness to pursue men who challenge the police or the court directly is not new. But it is difficult for women to direct their anger at the authorities. And it is humiliating to women to experience that the system responds much more aggressively when abusive men hit a police officer or defy a court order than when they hit women and children. Sometimes it is deadly.

With the Supreme Court clearly stating that the emergency response systems are in place to secure the 911 callers, and this is since 1999, there seem some grounds for transforming the 911 policy training and procedures Canada-wide towards a policy, which better directs the dispatchers to this priority.

A Document Review: Police

What we get at this level is contradictions. There are violence policies in every outreach of Canada, though less about handling sexual assault than policies about handling battering. There are gender specific references but not consistently. There are still many hidden

gender references (persistently degendering) as though either police forces don't know it is men who batter and rape and women who are on the receiving end or they don't know it is legal to say so. Surely they can no longer be worried that too many men will be arrested or that the lone woman attacker will be ignored. There are many women who have negative judgments about the police handling of their cases, but even more often women are scared, frustrated, incensed, defeated.

Women across Canada tell us that they want certain police responses. We have passed that on to policy writers and police educators. We were looking for a reflection of that learning in the documents directing police at the beginning of this next century. We expected to see directions that we have long sought:

- To inform women of what to expect at each stage of the process;
- To make women officers available whenever possible;
- To give information to women in a timely manner with respectful delivery;
- To refrain from sexist comments;
- To refer without disrespect to women's equality-seeking advocates and services;
- To advise women of the difference between a police-based victim assistance worker and an independent advocate;
- To protect and observe women's privacy;
- To tell the legal truth, not their personal opinion of the merits of a law;
- To have a kind and helpful manner;
- To give immediate and enduring protection of the community through the state from the attacker and from reprisals;
- To collect and take women's evidence and include all the possible evidence in photos, statements, forensics, witness statements into a formal active police file;
- To record the case properly and to recommend to crown promptly;
- To act themselves, based on that evidence;
- To act based on women's rights so that women are safer and men are held accountable for their violence and for their defiance of the law's acceptance of women's equality and the law's controls on violence.

This is the kind of policy in which women could see their right to equality with the attacker, the members of her community, and the policeman taking her statement. On the whole, this is what police policy promises:

- To take her statement;
- To investigate fully: gather evidence, secure the scene, interview potential witnesses;
- To refer to victim's services (usually police-based) and sometimes community agencies (occasionally identifiably feminist);

- Sometimes they are told to take violence against women calls as seriously as any other crime;
- Sometimes they are told to fill out a VICLAS booklet on all Sexual Assault Reports, whether charges are laid or not;
- Sometimes they are to have a supervising officer sign off on the report to crown counsel when recommending or not recommending charges;
- Sometimes they are to liaise with the community groups that work with battered women to provide information and assistance (not to get information or assistance);
- To consider their own safety when responding to "domestic violence" calls;
- To not ask victims if they want charges laid;
- Sometimes to secure medical attention in the immediate emergency after the attack.

We saw neither mention of women's Charter rights nor any attempt to state those rights or to enumerate the usual manner in which police have failed to uphold those rights. No understanding of women's rights was embodied in the policy.

Police providing information, in and of itself, does not secure women's Charter rights. But it is a vital part of women being able to protect their own rights of safety and security. To know what the police will and will not do is terribly important. Giving women copies of their protection orders as per policy, and arresting on the breaches of those orders, as per policy, gets us closer to this aim.[3] The police continue to refuse this basic request to tell us what is going on. As suggested under the Crown section, the police behaviour about handling information and response to women's requests and frequently advocates' demands seems to be about maintaining the mystery of the investigation. At this initial stage, police often "explain" that the needs of a conviction require that they refuse to inform women of the details of the process.

In response to the police refusal to co-operate with women victims of crime, governments created victim's services across North America. The clamour of women was behind the installation of volunteer services at police and crown level. Of course, so was the plan to eliminate the free standing advocacy centres that women had created for us. The job of the victim assistance offices too often seems to be to placate women by doing the things the police refused to do. She may not get a woman officer, but she will get a woman who will treat her kindly. She may not get a copy of her statement, but she has someone to call and complain to when she is dissatisfied. The victim's services worker duly writes these things into the file, which become part of the investigative file, and the investigating officer is saved from the urgency and insistence of the woman. He does not have to examine his methods to ensure he is following policy. He is left to "do his job," which apparently does not include respect for, or cooperation with, or accountability to the woman attacked, in any policy across the country.

Of course the victim's services worker cannot provide safety/protection from the attackers—it is the job of police to see to the life, liberty, and security of the person in violence against women. They are meant to be fully investigating for evidence, not for protection worthiness, arresting him in a timely manner, recommending arrest clauses on bail orders, arresting on breaches of bail. The victim's services worker provides the pamphlet describing the criminal law at issue, or Protection Order Registry (B.C.), or the Conditions of Bail. No one in the system is accountable for achieving what the woman can and should expect of the police or the crown.

The victim services worker does not secure the crime scene, collect forensic evidence, take the pictures of the scene, or her body. Too often neither do the police. But for the sake of policy considerations alone, it is important to know that the victim services worker cannot interview witnesses, recommend charges. The police must do that. That is why it is the police to whom women want to talk, to aid in getting that evidence found and recorded, to insist that these things be done in their cases. Victim's Services provides a buffer for police, a "friendly face" to the justice system, and are offered as a panacea to the numbers of dissatisfied and angry women.

If the women persist in trying to get access to the police, the victim assistance workers protect the police. Women are told not to "tell the police how to do their jobs." Or they are instructed that they should "trust" the officer in charge because the victim assistance worker "knows" him. The most blatant cases we have seen include the role played by the victim assistance workers in the Vernon case and in the ongoing case of dead women at the Pickton farm.

In both cases the victim services workers manage the families and communities with "support" while inappropriately shielding police from angry citizens and distressed victim/witnesses. In a meeting with the RCMP victim worker, in front of RCMP officers, we were told that the woman in Vernon made herself vulnerable (to being killed) by being "boldly in her carport." In Coquitlam, at the pig farm, a feminist aboriginal women's group, AWAN, was blocked out of the family contact centre by the police-based victim service worker, Freda Ens, and her boss in the Attorney General Ministry, Susanne Dahlin, according to the AWAN organizer, Fay Blaney.[4] Families, including the Crey family, have complained that they have been denied support services by the same victim services. They were denied access to meetings of the joint families of the dead because they spoke to the press with their concerns about the police investigation.[5] The Crey family and AWAN have provided leadership in the public demand for inquiries into the police activity and inactivity. Feminist anti-violence groups like Vancouver Rape Relief and Women's Shelter have been denied access to information and opportunities to offer assistance on the pretence that race sensitive services were being offered by the state, which required the absence of feminists. The fact that members of the families were already consulting and working with women's groups was over-ridden. Clearly, support

through Victim Services is used as a disguise to block community and women's organizing for better policing. How is this consistent with an understanding of violence against women, including the murder of these women, as a matter of women's equality?

While some of the policies do address particular realities of violence against women, none speak to responding to violence against women as a matter of individual women's Charter/equality rights, or as a matter of the hateful crime, and the terrorizing of women as a community or population.

Many women are aware that various police entities across Canada have loudly stated opposition to the Charter. Individual officers blame not being able to "do anything" on the Charter (because of securing the attacker's Charter rights). Which may help to explain the failure of even the best policies in that while many of these policies seem to promote a high level of police thought and action in each investigation, it is clear from what women tell us that there is systemic and systematic interference with the application of those policies.

There are two quite good policies: the B.C. Attorney General Policy and the RCMP E Division Policy. They expect investigation and procedures to ensure the criminal code is followed. Both provide very detailed step-by-step guidelines for the police, from the minute they respond through the entire investigation process. If every officer followed these guidelines, step by step, there would be more potential for cases to proceed to court and conviction. It would require thoughtful, detailed police work, very carefully done, with attention to detail of all the people involved, and in particular, attention to the woman attacked.

These two documents do provide a standard for investigation of any criminal case in their region, but as they apply the Canada-wide criminal code, they are the standard we want to be able to expect nationwide. CASAC does, however, protest the gender-neutral language that remains in even these policies. The refusal to name the victim as woman will almost always allow for every level of the police to ignore the Charter Rights of the "victims" they are serving and protecting. The degendering of policy regarding violence against women allows for the discretion of the individual officers to take precedence over the policy, over the criminal code, over the Charter.[6] The Ghakal family in Vernon and others across the country paid highly for that failure even though the B.C. AG policy was in place. Bonnie Mooney explains the earlier point that policy is too commonly contradicted in daily practice.

The discretion of the individual RCMP officers is supposed to be limited (in battering cases) with the supervisor's signing off on the check sheets. Embedded in that document is a line of "mandatory checks"—did the investigation include looking for previous complaints?—but then goes on to find out if the success or failure of those past charges are the result of the woman's (here 'victim's') changing of evidence, reluctance, lack of co-operation. These screening options based on ideas about her pervade all of the documents at police and crown level. It is as though they are invited to look for an excuse for the lack of previous convictions and to use that previous failure to excuse a current one and to place the blame for both at the feet of the abused women.