

TWENTY YEARS OF HUMAN RIGHTS SCHOLARSHIP

AND

TEN YEARS OF DEMOCRACY

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Litigation as a Strategy for Protecting Women's Rights

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Evidence Based Advocacy: A Two- Pronged Strategy

The fundamental law in Canada is our constitution, which includes the *Canadian Charter of Rights and Freedoms*.¹ The constitution of Canada is the supreme law of the land and it applies to the parliament and government of Canada as well as to the legislature and government of each province and territory in the federation. Thus, when resources are limited – and for women, they always are - greater systemic changes can be achieved through the two-pronged strategy of evidence-based advocacy: proactive research coupled with constitutional litigation than repetitive case-by-case battles.

A Brief Herstory of LEAF in Canada

The Women’s Legal Education and Action Fund (LEAF) is a national non-profit organization founded on April 17, 1985 to secure constitutional equality rights for Canadian women. These, and other fundamental rights and freedoms, were guaranteed by the *Canadian Charter of Rights and Freedoms*, entrenched within *Canada’s* constitution when it was removed from under Great Britain’s authority or “patriated” in 1982. LEAF grew out of women’s constitutional activism. LEAF’s purpose is to promote equality for women by intervening in carefully selected cases, usually before the Supreme Court of Canada, by making its research, analysis and expertise available in the process of law reform, by taking part in public inquiries and by providing public education on sex equality and multiple forms of discrimination experienced by women and girls in Canada.

In the 1970’s cases brought by women seeking equality protections under the *Canadian Bill of Rights* were all lost. What was missing from the judicial reasoning at that time was gender based analysis of sex equality “under and before the law” - the unjustly disparate impact of laws on women and girls – factoring in their lived reality.

In the early 1980’s, when the new *Constitution Act* and its *Charter of Rights and Freedoms* were being drafted to effect patriation to Canada, American women were losing their battle to include an "Equal Rights Amendment (ERA)" in their constitution. Canadian women

¹ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B of the Canada Act 1982 (UK), c.11

remembered their losses in court and lobbied hard for a *Charter* that would include strong equality guarantees for women and girls. An unprecedented women's grass roots movement developed, led by a spontaneously formed coalition known as the *Ad Hoc Committee of Canadian Women on the Constitution*, to push for amendments they presented to government following a national gathering of more than a thousand women who had converged, uninvited, on the nation's capital. The founding mothers of LEAF had been active in this battle and they knew that true equality in Canadian society could not be achieved through constitutional amendments alone. Those were just words in a new law. If those words were to have any positive impact on the day-to-day lives of females in Canada, they had to be interpreted to mean more than the formal equality of the American notion of "same equals equal". The women who founded LEAF concluded that the feminine reality had to be presented where decisions and attitudes on equality were developed, before old judicial interpretations calcified around the new words. Using the NAACP litigation strategies developed by Thurgood Marshall as a model, the "LEAF mothers" determined that an independent litigation fund supported by volunteers and staff with specialized skills would be essential to actually obtaining any of the equal protections and benefits promised by the new constitution.

Setting up LEAF was the second part in what has been termed the women's "microconstitutional campaign for substantive equality."² The two-pronged strategy of evidence based advocacy (research and litigation) developed by the informal network of women constitutional activists – not all lawyers – was underway when the National Association of Women and the Law (NAWL) founded the *Canadian Journal of Women and the Law* and the first textbook on equality rights was published in the same year that LEAF was launched.³

LEAF and High Impact Litigation

In his opening address to this conference, Professor Dugard referred to the need for continued vigilance on the part of civil society. The litigation record of LEAF provides a

² Christopher P. Manfredi, *Feminist Activism in the Supreme Court: Legal Mobilization and the Women's Legal Education and Action Fund* (Vancouver: UBC Press, 2004) at 49.

³ Anne Bayefsky and Mary Eberts, eds., *Equality Rights and the Canadian Charter of Rights and Freedoms*, (Toronto: Carswell) 1985

testament to this need. Late twentieth-century feminism in Canada has been described as the "organized pursuit of women's social, political and economic equality."⁴

There are two sections in the Charter that are principally relied upon by LEAF. As discussed later, Aboriginal women's rights are specifically (but ineffectively) addressed outside the Charter, in s.35 of the *Constitution Act*. Section 15 of the Charter guarantees

that every individual is equal before the law, and has the right to the equal protection and equal benefits of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age, mental or physical disability.

The purpose of s. 15 is to give effect to Canada's commitment to the equal worth and dignity of all persons and to rectify and prevent discrimination against members of groups suffering social, political and legal disadvantage in society.⁵ Section 28 is the sex equality guarantee added at the very end of the constitution building process, which states

Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

Canada is a federation and as the new constitution was being declared, provincial governments quickly joined the federal government in placing a three year moratorium on only one section of the *Charter* – s.15 equality rights – on the premise that they needed the time to “clean up” laws. During this forced hiatus, women constitutional activists did their own statute audits and found that governments were prepared to make alarmingly modest efforts, limited mostly to *prima facie* discrimination. This growing realization galvanized the informal national network and the moratorium period was used to build LEAF as an independent NGO with the capacity to focus on systemic change through litigation,

LEAF was officially founded on the same day that the moratorium ended; launching three successful constitutional challenges on the very day that s.15 was activated – April 17, 1985, now known in Canada as “Equality Day.” Since then, LEAF has worked to advance women's equality through interventions in cases that raise critical issues affecting women and girls. LEAF provides expert equality analysis in the process of changing laws and practices that obstruct equality and strengthening laws and practices that promote equality. LEAF has played an important role in ensuring that equality is interpreted by the courts through a "gender impact

⁴ Susan D. Phillips, 1991 *Canadian Journal of Political Science* 24:763 at 765

⁵ *Eldridge v. B.C. (Attorney General)*, [1997] 3 S.C.R. 624 at 667

lens" even when the case has not focused on women. In 1989, the Supreme Court decision in the *Andrews*⁶ case dealt with the *Charter's* section 15 "equality provision", ruling that the purpose of the equality rights section of the *Charter* is to benefit those who have been historically disadvantaged, thus preventing arguments of reverse discrimination from those who have traditionally benefited from legislation developed by privileged classes. Judges at every level of the legal system have adopted many of the arguments made by LEAF counsel.

To date LEAF has participated in more than 140 cases, covering a wide range of issues including sexual harassment, pregnancy discrimination, unfair hiring practices, violence against women (including harm based analysis of pornography), sex bias in welfare regulations and employment standards, pension inequities and reproductive freedom. LEAF cases are selected following the National Litigation Strategy. LEAF provides legal expertise in analyzing and articulating the relationships between the root causes of systemic inequality of women and laws or legal practices that reflect, reinforce and normalize inequality. LEAF works in coalition with other national and local organizations possessing distinctive expertise in understanding how women's social, economic and political inequality translates into unequal and unfair results.

Judicial / Parliamentary Dialogue in Canada

The most thorough documentation of LEAF's role in this organized pursuit can be found in Christopher Manfredi's new book, *Feminist Activism in the Supreme Court*, subtitled *Legal Mobilization and the Women's Legal Education and Action Fund* with 21 tables of analysis that provide a compelling collage of the indisputable impact of LEAF.⁷ Almost half of these tables relate to sexual assault or abortion. It was our beloved Canadian feminist journalist, Michele Landsberg, who first pointed out to me, in LEAF's first decade, that a pattern was emerging in the cases - a pattern that revealed how male sexual privilege was embedded in the legal system – as a foreshadow of how sexual subjugation of women's bodies would be the primary battleground of our lives. Listening to the health critic for the neo Conservative Party tell women in Canada in last week's election that they need a third party to decide if they can have the legal health procedure known as an abortion made me recall Michele's prediction. These issues of women's right to make choices and to enjoy security of the person have been the platform on

⁶ *Andrews v. Law Society of British Columbia* [1989] 1S.C.R. 143

⁷ Manfredi, *supra* note 2

which a parliamentary / judicial seesaw has been built, case-by-case, law-by-law. For example, the Supreme Court's decision in *Seaboyer* (1991)⁸ known as the 'rape shield' case that LEAF 'lost' in court paved the way for subsequent pro-victim legal amendments by Parliament, *O'Connor* (1995)⁹ challenging the evidence disclosure privilege claimed by defence counsel for the Catholic priest who sexually assaulted Aboriginal women who had been under his authority in residential school and as employer, *Ewanchuk* (1999)¹⁰ which generated the 'no means no' legislation on sexual assault out of the way that an Alberta appeal court judge (ironically, the grandson of legendary 20th century suffragette, Nellie McClung) was overruled by a stinging opinion penned by Justice L'Heureux-Dubé.¹¹ When examining the Supreme Court decisions in the parliamentary / judicial seesaw, in motion for 19 years already, we get to the successful LEAF intervention arguments in *Darrach* (2000)¹² -- the most recent challenge to 'rape shield' provisions in the Criminal Code. In all these criminal cases related to aspects of sexual assault, women's constitutional equality rights figured prominently and although the existing legal protections for victims of sexualized violence have been found to be constitutionally sound, the bilateral dynamic between legislators and adjudicators – often described by the Court as a “dialogue” - can be seen in full swing. The various 'sides' have different perceptions of fundamental rights in the Charter, but all sides have passionately engaged the criminal legal system in these cases. It has been an exhilarating and exhausting period of steps forward and steps back, but, more often than not, LEAF arguments have had real impact in broadening the Court's – and Parliament's - perspectives on just whose 'rights and freedoms' are at stake in sexual assault cases and what constitutes a truly “fair trial”. But this looks to be in the process of changing and new, yet to be announced appointments to the Supreme Court are likely to influence trends significantly.

⁸ *R. v. Seaboyer*, [1991] 2 S.C.R.577

⁹ *R. v. O'Connor* [1995] 4 S.C.R. 411

¹⁰ *R v. Ewanchuk* [1999] 1 S.C.R. 330

¹¹ One of the "Famous Five" Canadian feminists, represented before the Judicial Committee of the Privy Council in England by renowned Canadian lawyer (and later judge), Newton Rowell, in their challenge of the Canadian courts through the Reference as to the Meaning of the Word 'Persons' in Section 24 of the British North America Act, 1967, [1928] S.C.R. 276, rev'd *Edwards v. Canada (A.G.)*, [1930] A.C. 124 (P.C) This judgment has become known generally as the 'Persons Case' and on October 18, 1929, the Law Lords of the British Privy Council released their positive response to Mr. Rowell's arguments. For different perspectives on this historic case, see also: D. Bright, "The Other Woman: Lizzie Cyr and the Origins of the 'Persons Case'" (1998) 13(2) *Can. J. of Law & Soc.* 99; and K. Lahey, "Legal 'Persons' and the Charter of Rights: Gender, Race and Sexuality in Canada" (1998) 77(3) *Canadian Bar Rev.* 402.

¹² *R. v. Darrach* [2000] 2 S.C.R. 443

Disturbing Trends

When compared to the Canadian Charter-based jurisprudence, the explicit reference to “dignity” in the South African constitution makes it much easier to trace and understand the emphasis in your jurisprudence.

Everyone has inherent dignity and the right to have their dignity respected and protected. [Section 10]

The Hon. Justice Albie Sachs of your Constitutional Court observed a certain congruence in the South African and Canadian approaches to dignity as a defining aspect of equality, noting that the one-woman dissent of now retired Justice Claire L'Heureux-Dubé in the 1995 decision of the Supreme Court of Canada in *Egan v. Canada*¹³ captured the underlying thrust of your equality doctrine.

But a recent LEAF “loss” in *Law v. Canada* under a unanimous Court has prompted wary concern about how the judicial notion of “dignity” may actually diminish genuine access to “equality”.¹⁴ Nancy Law was a thirty year old widow in financial crisis denied Canada Pension Plan survivor benefits that would have automatically flowed if only she had been forty-five. Ms. Law claimed a social safety benefit that was not constitutionally guaranteed, but neither was Mr. Andrews’ 1989 claim for admission to practise as a lawyer in British Columbia when he was not a Canadian citizen. The law denying the pension discriminated against Ms. Law on the basis of her age, with the 1960’s stereotype of employable young widows likely to remarry embedded within the law.

With this decision and others that have recently followed, it looks to me like the equality platform slowly, carefully built through evidence based advocacy over the past twenty years, with each LEAF win like a brick (admittedly, some have crumbled) in the foundation, is getting harder to reach. Professor Beverly Baines has warned that the Court’s unusually unanimous decision in *Law*, crafted by now retired Justice Iacobucci, has created additional barriers through which equality seeking litigants must now pass because “contextual factors” from Justice Iacobucci’s complex *Law* test have had the effect of narrowing the range of issues and grounds

¹³ {1995} 2 S.C.R. 513 as referred to in his article “Equality Jurisprudence: the Origin of Doctrine in the South African Constitutional Court” *Review of Constitutional Studies*, Vol. 5 No.1, 75-103 at 84.

¹⁴ *La w v. Canada* (Minister of Employment and Immigration) [1999] 1 S.C.R. 497 [hereinafter *Law*]

that the Court will consider sufficiently “relevant” or worthy to consider.¹⁵ In the *Gosselin* split decision, our Chief Justice applied the *Law* test and rather snidely opined the dismissal of a class action on behalf of the majority of young, entrenched unemployed in Quebec.¹⁶ Mary Eberts, a “LEAFmother” and prominent constitutional litigator, noted in a speech to the Ontario Bar Association in 2002 how the post-*Law* trend that is emerging exposes a Canadian Supreme Court, now straining claims through the “equality sieve” of the *Law* test “so that only the most startling deprivations of equality slip through” while at the same time the Court seems less welcoming to public interest interventions.

Issues in cases that LEAF won more than ten years ago are being pushed back onto the judicial agenda. For example, a 1989 test case on pregnancy as a form of illegal sex discrimination¹⁷ was ignored in 2002 by the Federal Court of Appeal when it upheld minimum eligibility provisions that discriminate against women who cannot work full-time, often because of child-rearing or other care-giving responsibilities.¹⁸

The last trend discussed here comes from what is often seen as a “conflict” between individual women’s rights and group or collective rights - first raised by Aboriginal women and their claims to Charter equality protections. These issues arise in the context of First Nations within the Canadian “multination state” described by Canadian scholar Will Kymlicka as an aspect of “multicultural citizenship.”¹⁹ Most recently, similar questions have been raised by the Canadian Council of Muslim Women about the government of Ontario, the application of *sharia* law to them and implications for their rights as citizens of Canada to equal protection and equal benefits under the *Charter*.²⁰

Rights of Collectivities and Women in Canada

Kymlicka’s typology of minority rights included three kinds of “group-differentiated rights”:

1) self-government rights of founding nations within a multination state, 2) polyethnic rights of

¹⁵ Beverly Baines, “Law v. Canada: Formatting Equality” (2000) 11 Const.F.74 at 71-73.

¹⁶ McLachlin CJ: “This is not a case where the complainant group suffered from pre-existing disadvantage and stigmatization.” *Gosselin v. Quebec (Attorney General)* 2002 S.C.C. 84 at para 68.

¹⁷ *Brooks v. Canada Safeway*, [1989] 1S.C.R. 1219

¹⁸ *Lesiuk v. Canada* see www.leaf.ca

¹⁹ Will Kymlicka, *Multicultural Citizenship*. New York: Oxford University Press, 1995 reprinted 2003.

... one state where cultural diversity arises from the incorporation of previously self-governing, territorially concentrated cultures into a larger state. at 6.

²⁰ The author is an advisor to the Council, pro bono.

groups that are not founding nations and 3) special representation rights of groups which can be found within either kind of state.²¹ As to former Prime Minister Trudeau's absolutist statement that "only the individual is the possessor of rights"²² Kymlicka concluded that:

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this rhetoric about individual versus collective rights is unhelpful. We need to distinguish two kinds of claims that an ethnic or national group might make. The first involves the claim of a group against its own members; the second involves the claim of a group against a larger society.²³

The stated purpose of the major constitutional aboriginal rights clause - s.35 - is to protect, through recognition and affirmation in the supreme law of the land, "the existing aboriginal and treaty rights of the aboriginal peoples of Canada" - characterized by the Court as a "promise".²⁴

Aboriginal Women

Negotiations on Aboriginal rights after the Canadian *Constitution* was enacted in 1982 addressed sex equality in subsection (4) of s.35, which echoes the *Charter's* s. 15 equality rights wording and loops back to surround Aboriginal "existing rights" in s. 35 (1).²⁵ Failure to reach agreement on a strengthened sex equality amendment truncated attempts by Aboriginal women to secure explicit legal protection from sex discrimination, should it be perpetuated within their own collectivities. As Canadian constitutional expert Peter Hogg has noted, s.35 is outside the ambit of the *Charter*, and thus not subject to the requirements for infringement justification found in s. 1.²⁶

When the Native Women's Association of Canada (NWAC), as the largest national organization of Aboriginal women, challenged exclusion from the table in the "Canada Round" of

²¹ Kymlicka, Chapter 2 *supra* note 18 at pp 10-34.

²² Pierre E. Trudeau, "The Values of a Just Society" in T. Axworthy, ed., *Towards a Just Society*. Toronto: Viking Press 1990 at 363 as quoted in Kymlicka, *supra* note 18 at 35.

²³ Kymlicka, *Ibid* "The first kind is intended to protect the group from the destabilizing impact of internal dissent (e.g. the decisions of individual member not to follow traditional practices or customs), whereas the second is intended to protect the group from the impact of external decisions (e.g. the economic or political decisions of the larger society." at 35.

²⁴ *Reference re Secession of Quebec* [1998] 2 SCR. 217 #82 at 262, "The protection of these rights, so recently and arduously achieved, whether looked at in their own right or as part of the larger concern with minorities, reflects an important underlying value."

²⁵ Section 35 (4), Constitution Act, added by the *Constitution Amendment Proclamation, 1983* "Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) [of s.35] are guaranteed equally to male and female persons"

²⁶ S.1 of the Charter requires that any limits on Charter rights must be "demonstrably justified in a free and democratic society."

constitutional consultations for drafting constitutional amendments in the 1990s, the Court agreed with the Federal Court of Appeal in rejecting NWAC reliance on s. 35(4).²⁷

Reaching for Justice beyond Borders

Well before s. 35 was enacted, the United Nations Human Rights Committee's denunciation Canada's legislated discrimination of Aboriginal women contributed significantly to legislative amendments that ameliorated the injustice.²⁸ Equality-seeking Aboriginal women of the generation that benefited from the time-limited changes to reduce membership exclusion can see how renewed sex discrimination will damage upcoming generations because "reinstates" cannot pass status on, due to the "second-generation cut-off" added to the impugned section.²⁹ Thus, s. 35(4) guarantees have not been of much assistance to Aboriginal women for the past twenty years, prompting them to once again reach beyond Canada for acknowledgement of injustice.³⁰

Muslim Women

For group-differentiated Muslim rights, s. 35 does not apply because the acknowledged First Nations, Aboriginal peoples in Canada occupy a uniquely protected place in Canadian constitutional jurisprudence. The current debate on *sharia* law raises the challenge of balancing

²⁷ *Native Women's Assn. of Canada v. Canada*, [1994] 3 S.C.R. 627 at para LXXVI per Sopinka J." The right of the Aboriginal people of Canada to participate in constitutional discussions does not derive from any existing Aboriginal or treaty right protected under s. 35. Therefore, s. 35(4) of the Constitution Act, 1982, which guarantees Aboriginal and treaty rights referred to in s. 35(1) equally to male and female persons, is of no assistance to the respondents "

²⁸ Section 12 (1) (b) of the federal Indian Act discriminated on the basis of sex against women of Indian status who lost that status upon marriage to a non-Indian, but permitted a status man to extend status to his non-Indian wife, and in turn to their children. Thirty years ago a group of Aboriginal women took their small children, fathered by non-status men, and left the Tobique Reserve in New Brunswick to walk in protest to Ottawa. One of their leaders, Sandra Lovelace, gained international attention when she took their case against s. 12 (1) (b) to the United Nations Human Rights Committee, the appointed body of independent experts that monitors the *International Covenant on Civil and Political Rights*. For more detail, see Bayefsky, Anne, "The Human Rights Committee and the Case of Sandra Lovelace," (1982) *Canadian Yearbook of International Law* at 244. Weaver, Sally, "First Nations Women and Government Policy, 1970-92", Chapter 3 in Sandra Burt et al eds., *Changing Patterns: Women in Canada* (2d ed.) (Toronto: McClelland & Stewart Inc., 1993).

²⁹ *An Act to Amend the Indian Act*, S.C. 1985, c.27 (hereinafter "Bill C-31").

³⁰ The 2003 *Concluding Comments* of the UN monitoring committee responsible for CEDAW – the Convention on the Elimination of all forms of Discrimination Against Women – can be found in full online at www.un.org/womenwatch/daw/cedaw, in which CEDAW Committee members expressed shock about "the persistent and systematic discrimination faced by Aboriginal women in all aspects of their lives."

Muslim women's equality rights with freedom of religion and multicultural protections in the *Charter*.³¹ It was deeply troubling to read a recent "opinion letter" directed to the Canadian Council of Muslim Women from a senior lawyer on behalf of Ontario's Attorney General that referenced "genuine freedom of religion" – not once mentioning women's equality rights. We may well be seeing the early stages of a new constitutional challenge and or question of international law requiring the Court to strike the balance between group-differentiated rights (that are being argued by some Muslim leaders as overriding women's rights) and equality values under the *Charter* with reference to international treaties such as the United Nations *Convention on the Elimination of All Forms of Discrimination against Women*.

International Law and Canadian Women's Rights

Not only Aboriginal women have looked beyond Canada's borders for justice. Canada acceded to *CEDAW* in 1981, just as the *ad hoc* domestic battle, discussed at the beginning of this paper, over women's rights in the new constitution, was being waged. *CEDAW* influenced the wording of changes demanded by Canadian women, due to its positive, proactive stance in Article 2 - obligating state parties to "embody the principle of the equality of men and women in their national constitutions . . . and to ensure, through law and other appropriate means, the practical realization of this principle"

and specifically requiring states to

take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority of the superiority of either of the sexes or on stereotyped roles for men and women.[Article 5]

Lacking the inclusive references found in the South African constitution, Canadian courts generally had not been responsive to international rights arguments made by LEAF or other equality seeking parties, to the point where second-decade LEAF counsel made international law references less often. To date, few judgments of the Court on equality have included

³¹ Section 27: "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians." However, s. 28 reads "Notwithstanding anything in this Charter, all the rights and freedoms referred to in it are guaranteed equally to male and female persons."

reference to an international human rights treaty. Emphasizing “dignity” the Supreme Court’s judgment in *Ewanchuk* took the initiative to link Canadian constitutional guarantees for women’s equality to CEDAW, addressing, in part, the question of “consent” in sexual assault, by noting:

Canada is a party to the *Convention on the Elimination of All Forms of Discrimination against Women*, which requires respect for and observance of the human rights of women. Violence against women is as much a matter of equality as it is an offence against human dignity and a violation of human rights. These human rights are protected by ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms* and their violation constitutes an offence under the assault provisions of s. 265 and under the more specific sexual assault provisions of ss. 271, 272 and 273 of the *Criminal Code*.³²

Indeed, UN monitoring committees of experts have been hearing more often from Canadian civil society as NGOs become increasingly active in using international fora to pressure the Canadian government to uphold its obligations. In 2003, the UN CEDAW Committee noted rising discrimination against women across Canada in a highly critical report, finding that a decade of cuts to social programs harmed women and girls generally, but the most vulnerable women, particularly the poorest women, including Aboriginal women, elderly women, disabled women, single mothers, and women of colour were hit hardest by government policy shifts and programs cuts (led by our current Prime Minister Paul Martin, who was then the budget chief)³³ that kicked in – just as your constitutional democracy was launched in 1994

Conclusion: Effective Evidence Based Advocacy Needs Activism

The Canadian experience indicates that legal remedies are among the most significant means by which the rights of women can be acknowledged and achieved. As my mentor Claire

³² *R v. Ewanchuk* [1999] *supra* note 10 per L’Heureux–Dubé J. Note: LEAF made no reference to CEDAW in its factum for the *Ewanchuk* appeal.

³³ The UN CEDAW Committee reviewed Canada’s 5th Report on its compliance with the Convention, assisted by a thoroughly researched grassroots “alternative” report from FAFIA (Feminist Alliance For International Action in an Internet process initiated by the International Women’s Rights Project that was chaired by Shelagh Day) during its 28th session in January 2003. Canada has been a signatory to the Convention since 1981 (the same year that women’s NGOs, led by the Ad Hoc Committee of Canadian Women on the Constitution, conducted the unprecedented grassroots political fight to strengthen women’s equality rights in the draft Constitution), obligating the federal, provincial and territorial governments to comply with its terms and to report on their compliance every 4 years

L'Heureux-Dubé reminded about a thousand Westcoast LEAF supporters earlier this year in Vancouver, British Columbia:

Constitutional equality must not only lie at the heart of the law;
it must be its very lifeblood.

But progress has been uneven in the face of social and economic setbacks for women in Canada and, unlike South Africa, we lack any constitutionally defined social or economic rights, so the future does not look rosy.³⁴ In closing, let me share the sentiments of my Canadian colleague, Susan Bazilli, co-director of the International Women's Rights Project:

Ultimately, the only way that equality-seeking organizations have won rights for women, and have had issues of violence against women addressed in law, policy, civil society and the courts, has been by combining political organizing strategies with legal and constitutional strategies. ... While work needs to be done on all fronts, activists must not neglect their own constituencies.³⁵

I can only add that, while activism for gender equality must take many forms, including legal and political literacy, research, governance, street-level freedom of expression and, when the impact is likely to be high – litigation - this cannot be a struggle limited by sex segregation.

This is not a battle that women and girls can win alone.

But it is a battle that our global community of human beings cannot afford to lose.

³⁴ Statistics Canada, *Women in Canada: A Statistical Profile, 2001* Online www.statcan.ca

³⁵ "Reflections of a Global Women's Activist", Susan Bazilli, *Human Rights Dialogue*, Carnegie Center, Summer 2000 No. 3. www.cceia.org