

Access to Justice: An Issue for Women

Prince Edward Island Advisory Council on the Status of Women – November 2011

What makes access to justice for family law an issue that matters to Prince Edward Island women?

Evidence shows disparity between women and men. According to recent figures published in *Women in PEI: A Statistical Profile 2010*, on Prince Edward Island women make up

- more than 67% of referrals to Victim Services
- 75% of family and civil law legal aid recipients
- 21% of criminal law legal aid recipients
- almost all recipients of support payments through Maintenance Enforcement (*where gender of recipients is known*)
- at least 95% of recipients of Emergency Protection Orders
- close to 92% of all new clients seeking services from the Rape and Sexual Assault Centre
- all adult clients of Family Violence Prevention Services

Women in PEI are also more likely to have lower incomes, averaging 81.8% of men's income for full-time, full-year work. Income also affects their ability to afford and access legal services.

Many of these statistics show ongoing inequality based on gender. They also give us a window into power and control in relationships. Power and control are at the root of violence against women and affect women's ability to negotiate fair agreements at the end of a relationship. Preventing violence and supporting women's families both require that we support women to peacefully and fairly resolve family legal matters.

The Prince Edward Island Advisory Council on the Status of Women examines the ways that laws and policies affect women and men differently because of the different ways women and men live their lives and act out their roles in society. When we use gender and diversity as lenses on policy, we make better policy that benefits all citizens. Better access to justice for women will mean better access to justice for men, too – especially those who are disadvantaged or who break from gender stereotypes, for instance to care for children.

From the PEI Status of Women *Family Law Policy Guide* (2002)

"Women and children have been supported by legislation and services regarding custody arrangements and support orders. This is of particular importance to women because the mother has typically been awarded custody and the father has typically been given responsibility for paying child/spousal support... Even with legislation behind them and services to support them, women still find it more difficult to end relationships than men do. Experience and research show that, in about one in five situations, the woman will continue to struggle with a former partner as he fails to fulfill his responsibilities to maintain contact with their children and to pay court-mandated support regularly and on time. And, in a worst case scenario, she may have to deal with a hostile former partner who was abusive during the relationship and who continues that abuse after the relationship ends. These are very real and distressing possibilities for any woman contemplating ending a relationship. She needs to know that, if the worst case happens, she has society's support behind her."

Prince Edward Island Women Champions for Civil Legal Aid

"Our message is clear: It is time for all levels of government to begin working together to find solutions to the legal crisis in Canada."

"The time has come to start getting the courts to order governments to provide legal services to the most disadvantaged people in our society."

– Daphne Dumont, QC
Statements made while she was President of the Canadian Bar Association



"Civil legal aid includes both family law, such as child support and custody issues, and poverty law, that is, people who have lost employment or need to obtain disability or income security benefits. This problem [of access] affects all of Canada's low-income population, which often includes women and children, people with disabilities, recent immigrants and Aboriginal peoples. There are all kinds of stories about people having to represent themselves in court because they cannot afford a lawyer and they cannot obtain legal aid... Our current civil legal aid system is a tragedy waiting to happen. It threatens people's rights and undermines the rule of law."

– Sen. Catherine Callbeck
Statement in the Senate November 4, 2010



 **Think Tank
Family Justice**

November 25, 2011, Charlottetown, PEI

Almost every week at the PEI Advisory Council on the Status of Women, women share stories about needing access to legal services for family law. We refer them to programs and services and resources through CLIA, Family Violence Prevention Services, the Rape and Sexual Assault Centre, Victim Services, Maintenance Enforcement, family mediation, or the police. Most callers would benefit from a lawyer's advice, but very few can afford it. The following fictionalized stories mirror the stories we hear.

Kelly's Story: Money Is Gone, But Trouble Is Back

Kelly separated from her husband six years ago. The break-up was messy: they broke up and got back together several times and tried mediation before they decided they needed to legally end their unhealthy relationship. Then things got ugly. He spent \$20,000 on legal fees and she spent \$12,000 to come up with a separation agreement and agreements for child support, custody, and access for their two young children. Kelly feels she gave up a lot in the agreement. She was so tired of fighting and the fight was so expensive, she decided to cut her losses as soon as she was sure she could get full custody of the children. Her savings are gone in lawyers' fees, and she constantly worries about making ends meet for herself and her children. And now, her husband has a new girlfriend and says he wants to take her back to court to get a greater share of custody (and pay a lower rate of child support). Kelly can't afford a lawyer and will have to represent herself while working full-time and taking care of two kids on her own.

Helen's Story: An Older Woman's Choice – Abuse or Poverty

Helen is 56 and lives on a farm. She endured 30 years of emotional abuse and unhappiness in her marriage but stayed for the sake of her son: she wanted him to have a stable family and stable income, and she wanted him to grow up on a farm like she did. Now that her son has left home, her husband's controlling behaviour has gotten worse. She wants to leave, but she would have to leave a paid-for house and her part in the farm. She would have no car and would not be able to continue her seasonal job. She would have to go on social assistance and live hand to mouth. Her income would be low enough to access legal aid, but the priority for aid is for people with children at home in their care, and her son is grown. She doesn't know how she could access enough resources to hire a lawyer. She feels trapped.

Wendy's Story: No Support Payments, Fear of a Fight

When 25-year-old Wendy broke up with her common-law partner, he threatened to hurt her. When she said she wanted to go to court to make their break-up official and to get legal agreements for child support and custody for their baby, he threatened to kill her. She believed him. But she didn't report it to police. She left with the baby. When eventually they went to court, her ex sued for joint custody and got it, but soon he moved to another province. He neither spent time with their child nor kept up his child support payments through Maintenance Enforcement. Wendy doubts she'll ever get the child support or arrears she is owed. At this point, she just wants a Maintenance Enforcement system that has the resources and ability to truly enforce agreements. She has no money, time, or energy to take the issue back to court and worries about what her ex might do or say to get full custody.

Purple Ribbon 2011 Campaign for Access to Justice



This year, the Purple Ribbon Campaign Against Violence is inviting people to take action on access to justice for family law by writing to the PEI provincial government to ask for commitment and action on issues.

Please visit to find

- Background information about access to justice issues
- Templates and ideas for letters to government
- Printable postcards, and more.

Resources from events related to access to justice will be added. Visit the site accessjusticepei.wordpress.com.

Five Points for Reforming Legal Aid



The PEI Advisory Council on the Status of Women supports the Canadian Bar Association's five-point platform on legal aid reform:

- Legal aid should be recognized as an essential public service, like health care.
- Public funding should be confirmed as necessary to ensure access to justice for low-income people.
- Public funding for legal aid must be increased.
- National standards for criminal and civil legal aid coverage and eligibility criteria are required.
- The federal government should reinvigorate its commitment to legal aid.

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