

Question:

Why are you addressing this issue? Haven't women got the same legal rights as men when it comes to ending relationships?

Answer:

Yes, a woman has the same right as a man to end a relationship. But, that's not the issue. The issue is whether or not, practically speaking, a woman can end a relationship without experiencing a disproportionately negative impact on her relationship with her children, her standard of living, her freedom, and her safety. In other words, does family law support both partners equally in their decisions by addressing the realities of women's lives as compared to men's lives?

Question:

What sort of "realities" are you referring to?

Answer:

Here is an outline of some basic realities that women must consider when they contemplate ending an intimate relationship: On the plus side, the law can enforce maintenance payments and, if she was legally married, it protects her right to an equitable division of assets. On the negative side, she will likely end up poorer and almost solely responsible for her children's care with less money to provide it. About 20% of the time, she will be facing a high-conflict or violent struggle over property/custody/support issues. And, through a variety of subtle and not-so-subtle pressures, she may believe that she must "cooperate" with the former partner in order to leave the relationship as quickly and as safely as possible. Typically having fewer resources at her disposal, she faces the prospect that her male partner can use the legal processes and services to his best advantage over a longer period of time.

Question:

Aren't you exaggerating the difficulties?

Answer:

No. If partners were living in a state of equality before the separation with an equal and

sincere valuing of each other's contributions, then it's likely that they will be able to come up with a mutually satisfactory agreement. If not, then the process will be difficult. We know from looking at studies regarding Island women's unpaid contributions through domestic labour and childcare that they are still doing the bulk of the work at home but not receiving compensation for it. We also know that, more often than not, Island women work at lower-paying or part-time work as compared to male partners. These factors in themselves constitute potential inequalities that will surely influence the separation process.

Question:

If these are the realities, then is there any solution?

Answer:

There's no real "solution" except true equality and respect between both genders and that cannot be legislated. But, the law and its related services can look at the current situation and build in the supports that are necessary to level things out between the genders. For example, here on Prince Edward Island, income-eligible people, mostly women, do not have access to fast, fair, and effective legal aid representation to work out separation agreements that protect their rights. At the same time, income-eligible people who are charged with criminal offenses, mostly men, always have access to legal aid services to protect their rights. Yes, we believe in having criminal legal aid. Indeed, we would not want to live in a society without it. But, we think that civil legal aid is as much of a necessity and, as women's advocates, we must insist upon it when we consider that the vast majority of those who initiate civil cases are women.

Question:

Wouldn't such a system be too costly?

Answer:

Yes, such a system would likely be costly. That's why the provinces and the federal government must demonstrate their support for all equality rights explicit in the *Canadian Charter of Rights and Freedoms* by cost-sharing both branches of legal aid. At present, the Canadian Health and Social Transfer agreement provides for cost-sharing of criminal legal aid but the provinces must pick up the cost of civil legal aid programs. Obviously, this situation leads to great discrepancies across the country with Prince Edward Island's

lowest per capita expenditure reflected in its limited service. Other Canadian women are aghast when they learn that PEI women can access service only when they are in immediate danger and that service is restricted to a certain number of hours, regardless of the case's complexity. They point out that Newfoundland, another Canadian jurisdiction with limited resources, operates an extensive legal aid program that includes work on separations that do not involve violence.

Question:

What have women's groups been doing to promote the case for civil legal aid?

Answer:

Here on the Island, a coalition of women's groups has been working for the past two years to document, highlight, and work cooperatively with government on this issue. The coalition has already published two reports, one providing first-person accounts of women's encounters with the province's legal aid system and the other providing a comparative analysis of family legal aid across the country. As well, the coalition organized a major conference last March called "*Designing Family Law Futures: A Dialogue on Needs, Challenges, and Best Practices.*" The coalition is moving into a new phase of work right now, continuing to press the need for women's access to basic legal services. In addition to these efforts, Island lawyer Daphne Dumont spent a good deal of her recent one-year term as president of the Canadian Bar Association advocating for legal aid access. This issue is alive and very much on the minds of Island women.

Question:

How has the Province responded?

Answer:

Government representatives, including the Island's Attorney General, participated in the legal aid conference held in March, 2001. On that occasion and at a follow-up session, women received some information regarding work being conducted in the province on a family law strategy that may include an expansion of the current legal aid program to include more family law cases. As we understand this strategy, it will work to amalgamate and coordinate various related services so that clients will have one point of access. We believe that this is a step in the right direction and look forward to hearing about a financial commitment towards this process as we are concerned that the current environment of fiscal restraint may inhibit new spending. We would also like to be assured that this

strategy does not favour any one particular means or type of settlement. Rather, it should provide service on an individualized, case-by-case basis. We also understand that the current legal aid funding agreement will soon be renegotiated and we look forward to a fairer system of cost-sharing for criminal and civil legal aid programs.

Question:

Why should government be so involved in what surely are private family matters?

Answer:

If partners are able to work things out fairly and equitably between themselves, then government has no role except to provide the necessary legal processes and structures. But, when inequality exists, government must take an authoritative role to support the partner who is in a weaker position. Otherwise, Canadians are not being fully supported in the right to equality guaranteed in the *Canadian Charter of Rights and Freedoms*. Thus, this becomes a justice issue of concern to all members of our society.

Question:

Aren't women working against their own interests by separating and divorcing?

Answer:

Certainly, when you look at the financial data, you would wonder why any woman would want to try and live outside her relationship. It can be a tough go! That tells us that women must have very serious and deep concerns about the quality of their relationships to make a decision that will almost certainly lead to financial hardship. Nobody but the woman herself can make such a judgment and, as a society, we must be prepared to support her decision.

Question:

Do women's groups have an "anti-family" or "anti-men" bias in these matters?

Answer:

No. We have a pro-woman bias. We know what women's lives are like. We know that financial and legal structures tend to support men's interests. We know that women do not approach separation lightly and that they need support for their decisions.

Question:

What about men's rights?

Answer:

Yes, of course, men are entitled to their rights. Anything else would be unjust. We are just saying that we need to be sure that our laws and systems treat women and men fairly, that we don't operate in an unrealistic, gender-blind manner on the pretext that there are no power imbalances between men and women.

Question:

What about the children? Who is protecting their rights?

Answer:

Parents are responsible for their children and, of course, society must take an authoritative role when parents don't fulfill that responsibility. We support the idea of a child advocate to protect children's interests in family cases that cannot be settled between the two partners. We have heard great things about a parenting course being offered here in the province to help separating couples parent from two homes. We believe in the principle of the "child's best interests" when it comes to decision-making regarding custody and access. But, we caution against a wholesale crusade for "children's rights," remembering that children do not exist as independent entities. They are always under someone's care and that person is most likely their mother. By supporting women's interests, society supports children's rights to safety and security.

Question:

You keep referring to heterosexual partners. What about same-sex unions?

Answer:

We believe that a partnership is a partnership, no matter what its composition. And, each partner is entitled to the protection of the law if the relationship ends. Right now, though, our province acts as if same-sex partnerships don't exist and certain pieces of legislation like the *Family Law Act* define "spouse" in a manner that excludes same-sex couples. Thus, same-sex couples are the victims of discrimination as they must work out the terms of their separation with no legal protection. Governments appear reluctant to "legitimize"

such unions, thereby passing a moral judgment that homosexual unions are less worthy than heterosexual ones.

Question:

What are the major family law issues that concern women right now?

Answer:

Here on the Island, women have expressed several specific concerns. Women using the *Maintenance Enforcement Program* wonder about its effectiveness and have requested a thorough review. Women in common-law partnerships are looking for changes to the *Family Law Act* so that they are just as entitled to an equitable property division as legally married women. Women in high conflict and violent situations feel betrayed by a system that undermines their legal rights by steering them towards mediation with abusive former partners. Overall, women point out the need for thorough training of all legal personnel in the dynamics and after-effects of family violence.

Island women have been in contact with their federal representatives regarding possible amendments to the *Divorce Act*. They participated in consultations in June 2001, and are concerned that Canada may be heading in the direction of other jurisdictions which have favoured the idea of a presumption towards “joint custody.” Women believe in the idea of collaborative parenting but do not think it is the government’s place to force it upon families. Rather, government should use the force of the law to protect the rights of those who are unable to negotiate them with a former partner.

Question:

Given these issues, are women frustrated with the family law system?

Answers:

Many women who are in contact with the Advisory Council office as they work to end their relationships have expressed considerable frustration with the law and the legal system. They find that, in a time of considerable personal crisis, they are faced with a rigid system strewn with a myriad of written and unwritten codes that are incomprehensible to an outsider. They stress the need for legal counsel who can serve as knowledgeable and strong individual advocates within this foreign system. Overall, they believe that, with such representation, they can attain a fair settlement for themselves and their children and move on to a healthier stage of life. They do not want to be asked to “cooperate” or “settle.” They want fairness and, right now, that is not guaranteed to them.