

Good morning, everyone.

My name is Patricia Roy and I am the Chairperson of the Prince Edward Island Advisory Council on the Status of Women. We are a provincial government advisory agency dedicated to equality and to supporting women's full and active participation in social, legal, cultural, economic, and political spheres of life.

I welcome all members of the Island media to today's press conference regarding family law on Prince Edward Island as it pertains to ending and restructuring intimate partnerships.

The Advisory Council has prepared a policy document and you will find a copy in your press kit. This document was produced through a process of staff research and community consultations and it contains research and analysis on many other family law issues, including the use of domestic contracts, professional requirements for practicing mediators, inequities in the Province's *Probate Act*, exclusion of same-sex couples, the operation of the Family Support Orders Program and the Maintenance Enforcement Program, access to legal aid, and trends towards joint custody and mediated settlements.

Patricia MacAulay, Advisory Council Researcher/Policy analyst provided the research and analysis that enabled Council members to create this policy statement and recommendations. She will be available for questions regarding the research findings.

We have also asked Ann Sherman from the Community Legal Information Association to join us today. This organization offers public legal education through a number of programs and services, including a toll-free line that provides answers to general legal questions as well as making referrals to other agencies and professionals. Ann has been on the receiving end of many calls from women seeking information about family law and the family court system. Having spoken with so many Island women about their legal concerns, she is able to share, in general terms the concerns she has heard from them.

There are numerous issues associated with family law but, for today, the Advisory Council has chosen to focus on two particular ones that, judging by the calls we receive, are particularly contentious at the moment. These are common-law status and the element of family violence when ending a relationship. We have included guests who have had personal experiences with these issues.

Sandy Kowalik is an active member of the women's community here on the Island. Last year, she and her common-law partner of twenty years decided to separate. In the course of that separation, Sandy learned that, compared to married partners, common-law couples can expect different treatment from the law.

Janet MacLeod is a survivor of family violence and an advocate for women who are working for a legal end to their violent relationships. She has seen first-hand the difficulties that the law presents to women in such circumstances.

Heidi Rankin, the Director at the Advisory Council on the Status of Women will launch our exciting new publication, **Moving On - A Practical Guide for Women Leaving a Relationship**. It is a practical resource guide that will be of great use to many Island women.

The Advisory Council is well aware that there has been considerable change in family law over the past few years. In this Province, we have seen two pieces of legislation - the *Family Law Reform Act* in 1978 and the *Family Law Act* of 1995 - that have done a lot to establish the principle of true, equal partnership between women and men.

As well, the Province has established and continues to improve legislation and programs to enforce maintenance payments. On the federal level, the 1986 *Divorce Act* was a huge breakthrough as it allowed for “no fault” divorce and custody decisions based on the “best interests of the child.”

Most recently, in 1997, the Government of Canada passed *Bill C-41* which contained child support guidelines, enhanced enforcement, and new tax rules. Certainly, our governments have been busy adjusting to the reality that up to 40% of today’s couples will someday separate and most of these couples will have children.

Changes at the provincial and federal levels have contributed to a woman’s ability to make choices that are right for her. But, we are still not at the point where women are just as able as men to make the decision to end a relationship and, at the same time, maintain their financial security and personal safety. Given certain realities of women’s lives - their role as caretakers, their reduced incomes, and their potential to become victims of family violence - women need support that addresses these realities.

It is clear that the system is still not serving women as well as it could. Every year, the Advisory Council receives calls from Island women regarding every imaginable issue. But, the top concern by far has always been and continues to be family law. The Community Legal Information Association has found that to be true as well, and Ann will now give an overview of what she has learned from her conversations with Island women as they seek to understand and use the law.

The Advisory Council watches what happens in other provinces and, last year, we learned about a Nova Scotia court case that went all the way to that province’s Court of Appeal. That court found that Nova Scotia’s *Matrimonial Property Act*, an act similar to PEI’s *Family Law Act*, violated the *Canadian Charter of Rights and Freedoms* because it discriminated against common-law couples in property settlements.

This makes us wonder whether our own provincial legislation is constitutional because it makes no provision for equitable property settlement between common-law spouses. We also wonder about the Province's *Civil Service Superannuation Act* and the *Teachers' Superannuation Act* because these pieces of legislation define spouse in such a way as to exclude common-law spouses.

That lack of legal protection has all kinds of ramifications for women emerging from common-law relationships and Sandy Kowalik has agreed to share her personal experience with us.

The Advisory Council is also interested in what is happening at the federal level in family law reform. The Council has participated in two federal consultations regarding possible changes to Canada's *Divorce Act*. The first consultation took the form of a joint Senate/Parliamentary Committee which held hearings across the country in 1998 and produced a report called *For the Sake of the Children*. This report advocates for joint custody of children.

This is a scenario that would be totally unworkable for women who have endured violent relationships. Women's groups were appalled at the process and the results of the committee's work. The Honourable Anne McLellan, who was federal Minister of Justice at the time heard these concerns. She chose to do further consultation on the issue and those consultations occurred during the spring and summer of 2001.

In all our work, the Advisory Council has continued to caution legislators about making changes that will have an adverse effect on women who are emerging from violent relationships. We believe that legislation should protect the needs of the most vulnerable people, not promote a social agenda.

As the federal government moves towards introducing amendments to the *Divorce Act*, we felt that it was time to hear about the realities of women's experiences as they work towards a legal end to their violent relationships. Janet MacLeod presented to the 1998 Senate/Parliamentary Committee and continues to be an eloquent spokesperson regarding the interaction between women who have been abused by their partners and the legal system.

It is important to stress that the Advisory Council is aware that Janet has presented worst-case scenarios but it is also important to note that Prince Edward Island has a high rate of family violence, as evidenced by the events of the past year or so. Our legislation and systems must be prepared to deal with such scenarios.

And, finally, I will ask Heidi Rankin to speak about the Advisory Council's efforts to provide support to women who are considering an end to an intimate relationship. The Advisory Council has worked hard to produce a resource guide called *Moving On* and Heidi will give some background information.

I hope that Island women will benefit from the information contained in this publication. It is the Advisory Council's way of giving tangible support to women who make the difficult choice to end their relationships.

We are encouraged by the Province's work to implement a Family Law Strategy that will attempt to address many of these issues, especially access to family law legal aid. At present, we are in a desperate situation here on PEI with regard to legal aid services. Only those women who can prove that they are emerging from violent relationships can get access to a very limited service.

Family law legal aid is in crisis across the country. While the federal government cost-shares criminal legal aid (a service used mostly by men), each province must bear the full cost of civil legal aid (a service used most frequently by women.) Some people have suggested that this, too, is a *Charter* issue because it discriminates against women.

We hope that our work on family law issues will encourage the provincial government to carry on in its efforts to address family law issues. We are concerned that these efforts may get lost in the current climate of economic restraint.

Accordingly, we have developed a series of recommendations. Here are a few key ones listed in our policy document:

- Amend the *Family Law Act*. Include people of the same sex in the definition of "spouse." Apply all aspects of the law equally to all spouses, including the division of property for common-law spouses. Provide a vehicle for overriding domestic contracts in specified circumstances. Establish special provisions and procedures for situations involving family violence.
- Work with the federal government so that, if it amends the *Divorce Act*, the legislation will include a range of custody options with no presumption towards any of them except in cases of family violence where special provisions should apply.
- Work with the federal government to initiate a nationally standardized, cost-shared family legal aid program that is available to all income-eligible applicants who require legal representation in matters of property division, child/spousal support, and custody arrangements.
- Establish an agency as a first point of entry for women, men, and children upon the breakdown of the family unit to provide information, assessment, and referrals for legal and non-legal services. Some non-legal services could include distributing self-help kits and enabling supervised custody, along with providing voluntary counseling, mediation, and parenting programs.

- Provide training to agency staff, mediators, lawyers, and judges about the realities of family violence and its after effects.

Overall, we see that a combination of legislative changes accompanied by more suitable programming will help move women forward to a place where they can make equitable choices and attain equitable results.

Thank you for your time and interest.