



POLICY GUIDE

Family Law

Prince Edward Island Advisory Council on the Status of Women
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At Issue ...

During adulthood, individuals usually commit to sharing their lives with another adult partner. Such agreements - made between a married man and woman, an unmarried man and woman, or two individuals of the same sex - unite couples in an intimate and economic collaboration that may, one day, cease to serve the interests of either or both of the partners. The Advisory Council on the Status of Women is concerned about inequities in family law that make it more difficult for women to dissolve such partnerships and to restructure any ensuing monetary and/or parenting relationship while, at the same time, maintaining personal safety and financial security.

The Advisory Council understands that provincial and federal governments share jurisdiction over family law. Prince Edward Island's *Family Law Act* legislates the division of property between married persons who separate, along with child/spousal support and custody/access provisions for separating couples, both married and common-law. The federal *Divorce Act* enables divorces and legislates child/spousal support and custody/access provisions for divorcing couples. Neither government has involved itself in the dissolution and restructuring of same-sex partnerships, except in child custody matters. Two provinces, Quebec and Nova Scotia, provide for the official registration and termination of domestic partnerships between unmarried people, including gay and lesbian couples.

In typical divorce scenarios, each partner usually consults a lawyer upon separating and then, through negotiation and/or mediation, the couple works to develop a legal agreement that outlines division of assets, custody and maintenance of any children, and any spousal support. Then, application is made to the PEI Supreme Court for an order that outlines the terms of the separation. Such an order usually repeats the terms of the couple's agreement. When couples cannot reach agreement, litigation occurs, and a judge renders a decision on the matter. After the couple lives separate and apart for one year, the PEI Supreme Court can issue a certificate of divorce and the marriage ends. Typical common-law scenarios follow a similar pattern, except that partners do not require a certificate of divorce.

At Issue (continued)

In any scenario, support refers to money paid by one partner to another partner. Child support is for expenses related to children's care. Spousal support is to ensure that both partners maintain economic parity after the relationship ends. When a support agreement has been registered at the Maintenance Enforcement Office, recipients can apply to use that office's resources to enforce payments not provided voluntarily.

Generally speaking, having custody means possessing the legal authority to make decisions regarding children's care. Typically, one parent, the custodial one, manages the daily care of the children and makes major decisions while the access parent has regularly scheduled opportunities to interact with the children. Joint custody generally means that the two parents maintain legal responsibility for decision-making regarding their children's care. Exact living arrangements, schedules, decision-making processes, and financial contributions vary with each family in both single and joint custody scenarios.

Over the past number of years, family law reform has given women increased legal support for their choices. However, family law requires continued reform at the federal and provincial levels so that women can choose to end relationships, divide assets, establish custody arrangements, and generate support payments without facing consequences that are far more severe than those experienced by men.

Our Analysis ...

The Island's *Family Law Act* requires amendments to correct its inherent inequities. While providing for equal property division between separating spouses who were legally married, it fails to legislate the same division between common-law spouses. And, by defining spouse as being "either of a man and woman," it eliminates same-sex partners from its provisions. These inequities likely violate the *Canadian Charter of Rights and Freedoms*. For example, in a recent Nova Scotia case, the Court of Appeal found that its provincial legislation, similar to our own, violated the *Charter* equality guarantee because it "perpetuated the view that unmarried partners are less worthy of recognition or value." Here on the Island, although a common-law partner can apply to the court for another ruling, the person whose name is on the deed or receipt, typically a man, may be the only person entitled to the property. Thus, women in common-law partnerships carry an increased legal burden for obtaining an equitable property settlement. And, same sex couples receive no legal protection at all.

Except in situations involving dependents, a domestic contract can override our *Family Law Act* and the rights entrenched in it. Such agreements are private so nobody knows how often they are used. And, nobody knows whether women, typically the ones asked to sign such contracts, had access to independent counsel to ensure full understanding and equal negotiation. Legislative safeguards around access to independent counsel are required to ensure that women can enter into such contracts with full knowledge and consent and that they can challenge them afterwards.

Our Analysis (continued)

The *Family Law Act* encourages mediation as a means to establish the terms of a couple's separation. At present, there are no provincial standards or certifications for mediators. Anyone may offer this service to separating couples. That is a concern, especially when one considers recently published research revealing that experienced, practicing mediators do not articulate a common definition, purpose, or methodology. The Province needs to be explicit about professional requirements.

The Province's *Probate Act* legislates the disbursement of property when an individual dies without leaving a legal will. Family lawyers report that some people falsely presume that, because the *Family Law Act* allows for equal property division upon separation, a similar principle applies after death. In fact, the *Probate Act* requires the deceased person's spouse to split property with any children. Also, unless a will exists to state otherwise or the division of property has already occurred, if a person has left the deceased spouse and lives with someone else, that person is not legally entitled to any property. A spouse or child can apply to the PEI Supreme Court for another allocation of benefits under the *Dependents of Deceased Persons Relief Act* but that action is an additional legal burden that could be avoided through more appropriate probate legislation. Overall, the *Probate Act* requires re-examination so that the principle of true economic partnership between spouses established in the *Family Law Act* is upheld in death as well as in life.

The *Civil Service Superannuation Act* and the *Teachers' Superannuation Act* outline pension entitlements for provincial government employees. Both pieces of legislation require review to establish a definition of spouse to include common-law and same-sex partners and to ensure that pension benefits are divided equally like any other property.

Recent amendments to the Province's *Maintenance Enforcement Act* have given this collection program increased authority to enforce child/spousal support payments. As well, the Canadian Ministers of Justice have adopted an inter-jurisdictional protocol for cross-province collection. These are positive steps but Island women wonder whether the program exercises its full authority. Have any persistent defaulters been jailed? Have employers who fail to garnish wages been fined? They also wonder if the program has sufficient resources. They feel that they must bear the burden of ensuring that the office pursues their claim and they have concerns about timely responses. This is likely an appropriate time to review the program and assess its capability to carry out the mandate.

The Department of Health and Social Services operates a related program called the *Family Support Orders Program*. When a person applies for welfare assistance or a daycare subsidy and reveals that he or she has an ex-spouse who is not paying legally mandated support, the intake worker automatically forwards the file to this program. Staff lawyers meet with the applicant and decide whether or not to locate the ex-spouse and enforce the payment. They may also prepare a custody agreement. Through this process, the applicant may be forced to resume an unwanted and potentially dangerous connection with a former partner. And, even if the former partner was not abusive, women may fear harassment over money issues.

Here on Prince Edward Island ...

1978

Province proclaims *Family Law Reform Act*. Establishes law regarding asset division, support obligations, home ownership, and domestic contracts based on the principle that "*marriage is a partnership of equals with each partner entitled to an equitable division of assets and each having equal responsibilities for supporting dependent family members.*" Makes distinction between family assets and business assets.

1980

Legal aid services expanded to family cases.

1986

Government of Canada proclaims new *Divorce Act*. Divorces awarded on "no-fault" basis after one year's separation. Custody decisions based on "*the best interests of the child.*"

1988

Province proclaims *Custody Jurisdiction and Enforcement Act* to enforce custody and access orders, including those from outside the province.

1990

The provincial Legislative Committee on Family Law Reform conducts public hearings. **ACSW makes presentation.**

1991

Province publishes the *White Paper on Family Law Reform* and forms a special committee to work on its recommendations. **ACSW contributes to the committee.** For financial reasons, Legal Aid begins to restrict the provision of family law services.

1992

Province forms Maintenance Enforcement Review Committee. **ACSW works on committee.**

1994

Maintenance Enforcement Office gains increased authority to obtain support payments. Justice Kenneth MacDonald renders a decision regarding division of property that includes a commentary regarding family law and women's unpaid contributions. Province begins *Family Support Orders Program* pilot project to ensure that social services recipients receive court ordered support. **ACSW supports Justice MacDonald's statements. ACSW serves on Planning Committee for CLIA Project on public education regarding family law.**

1995

Each province must pay for all civil legal aid, including family law. Province proclaims new *Family Law Act*. Establishes new law regarding the division of assets between legally married persons. Allows separating couples to use mediation services. Establishes law for child and spousal support in legal marriages and common law partnerships. Allows a person to apply for a restraining order in abusive situations. **ACSW hosts press conference to respond to new Act. Supports reforms and suggests additional ones. Upon request, ACSW provides suggestions to Province regarding a family law public awareness campaign.**

1997

Government of Canada proclaims *Bill C-41*. Contains child support guidelines, enhanced enforcement, and new tax rules. PEI Supreme Court adopts child support guidelines.

1998

Special Joint Committee of the Senate and the House of Commons on Child Custody and Access holds nationwide hearings. **ACSW presents a brief to the committee and expresses concern in Atlantic Canada Advisory Councils Joint Response to the Report of the Parliamentary Committee on Child Custody and Access.**

2001-2002

Province drafting a family law strategy. Women's Coalition conducts research project and sponsors conference on family law and legal aid reform. Justice Canada conducting consultation on custody, access, and child support. **ACSW meets to discuss the provincial strategy, attends conference, and participates in federal consultation. ACSW releases "Moving On," a comprehensive guide for women leaving relationships.**

Here on Prince Edward Island (continued)

Legal Aid on PEI

Potential clients undergo a flexible means test to determine their eligibility for service. Staff lawyers provide 90% of the criminal legal aid services and 62% of the family legal aid services. Additional service is provided by private members of the PEI Law Society and paid for by the Legal Aid Program or, in family cases, the Law Foundation Project. There is a set hourly rate and a price ceiling for private service.

Top priority is given to cases where the emotional and physical safety of those involved is in danger. Additional priority is given to applicants with children. Of all new cases opened in 1998-99, 67% were by women.

Mediation on PEI

Family Court Services offers a voluntary, free service to mediate custody and visitation rights only. Private mediators are available at various rates of pay to work out all issues. Both parties must agree to utilize the services of one mediator.

UPEI's Centre for Conflict Resolution offers a certificate program in mediation that graduated its first students in 2000.

Across Canada ...

A Snapshot of the 21st Century Canadian Family (Vanier Institute of the Family, 2001)

- One in eight families have a father who works and a mother who stays home to keep house and care for the children.
- In most families, both parents have to work because it usually takes two incomes to avoid poverty.
- There are fourteen times as many divorced Canadians now as there were thirty years ago.
- Up to 40% of today's marriages end in divorce.
- Half the couples that separate have children.
- There is one common-law couple for every eight married couples. Common-law couples are increasing faster than married ones and separate at a higher rate.
- More than 41% of common-law couples have children in the home.
- One child in five grows up in a family headed by a single parent, usually the mother.
- 58% of divorced women and 71% of separated women with custody of their children live below the poverty line.
- 9% of divorced men and 30% of separated men without custody of their children have income below the poverty line.
- 29% of all Canadian women formally report physical or sexual violence at the hands of a marital partner (common-law unions included). For 10% of these women, the violence was so severe they expressed fear for their personal safety and their lives.
- Almost one woman in three is at some point the victim of a physical or sexual assault by a partner or a former partner.

Our Analysis (continued)

With or without equity-oriented legislation, women need help in accessing the justice system. The 1993 Working Group of the Attorney General concluded, “Current legal aid schemes across the country have failed to provide women with adequate justice.” Things have gotten worse since then. In 1995, the federal government reorganized its funding mechanisms and, now, although criminal legal aid continues to be cost-shared, the Province must fund family cases. A 1997 national legal aid review revealed that the Island has the lowest per capita expenditure for its legal aid program. The PEI Law Foundation has provided some relief with a program that provides limited payment for private counsel in specified family cases. The Province has provided some additional funds, but it remains true that not all income-eligible Island women are able to assert their rights. And, those who do receive the required service have difficulty obtaining it in a timely manner.

This is more than a money issue. Some legal analysts suggest that the funding inequity is a *Charter* matter as it “withholds or limits access to opportunities, benefits, and advantages available to other members of society.” The current arrangement favours men’s legal problems over those of women. Only 15% of Canadians charged under the *Criminal Code* are women while women initiate 87% of legal aid family cases.

The trouble is that society tends to examine legislation and services to see if they are gender-neutral instead of gender-fair. Aiming for gender-neutrality is not just useless; it is impossible. Women and men lead different lives. They do not arrive at the moment of separation in a state of utter and complete equality. While living with a male partner, the woman still carries an unequal share of domestic labour and childcare, work that utilizes her time and energy and for which she receives no pay. As well, a considerable number of women have already endured violent acts by their partners. Statistics Canada reports that 29% of all Canadian women have been assaulted by a spouse. Women and men do not emerge from the separation process as equals, either. Typically, the woman will have custody of the children, she will be left poorer than the male partner and, in abusive situations, she will likely face escalated levels of violence.

Given these realities, family law analysis must scrutinize two disturbing trends that, on the surface, appear to satisfy the need for equality and neutrality but, upon closer examination, do not necessarily protect individual rights and safety. Over the past number of years, there has been a move towards using mediation as a means to establish separation terms and, at the same time, courts have leaned towards ordering joint custody, a parenting arrangement without a set definition or established boundaries.

Generally speaking, mediation is a process of joint decision-making under the guidance of a third party. Of course, this approach is successful when both parties have equal standing, believe in the process, and desire the best solution for everyone. But, remembering what we know about women’s relatively lower economic status, given the statistic that 70% of women who initiate the separation process list abuse as one factor in their decision, and knowing that women are typically younger than the male partner, how often does such equality, good will, and positive intention actually exist?

Our Analysis (conclusion)

In truth, ending a relationship can be an adversarial situation with major power imbalances. Women need advocates, particularly in situations where there has been abuse. Women emerging from violent relationships typically have low self-esteem, have difficulty expressing themselves, and experience depression. They are not able to participate in and cannot be subjected to a decision-making process with the person who has already demonstrated contempt for her, their children, and the law.

Research provides a mixed picture of mediation results. One study showed that women are less likely to be abused by their former spouses after using mediation rather than negotiation. Another found that the assaults actually increased. One study shows that mediation costs more than lawyer negotiation. Another found the opposite to be true. Given these uncertain outcomes and the potential for victimization, mediation is certainly not a catch-all solution. It is one option that must remain completely voluntary.

Joint custody usually means that both parents maintain legal responsibility for decision-making regarding their children's care. Ideally, yes, women support the concept of collaborative parenting. But, realistically, women know that a court cannot force someone to be a good parent. Numerous studies have shown that, except in situations where the father is the primary caretaker, over time, contact with the father always decreases, no matter what custody arrangement has been ordered. In fact, the majority of separated Canadian women would like their children to see their fathers more often.

Women have reason to be wary of court-ordered joint custody. Early research shows that, typically, the mother remains the primary caretaker but has less decision-making power and less financial support from the former partner than if she was in a typical custody/access arrangement. Furthermore, court-ordered joint custody may force an abused woman to maintain legal ties with her abuser. And, given the high burden of proof required to do otherwise, she may even have to allow unsupervised time with a former partner who abuses her children.

With no evidence to prove that contact with both parents is always the healthiest option and with no available research regarding the long-term effects of joint custody arrangements on the well being of children, women suspect that this trend has more to do with financial and/or power needs than protecting children's interests. Overall, they see that men have greater resources that can enable them to use the legal system to cause difficulty for their former partners, dragging out the separation/divorce process until women feel compelled to settle custody and support matters quickly, if not equitably.

Aiming for efficiency and accessibility, the Province is currently reorganizing the way it delivers family law services. The PEI Advisory Council on the Status of Women supports this effort but reminds decision makers that such service must be offered without bias towards any particular method of settlement or any particular type of settlement. Each family is different and their matters must be settled voluntarily on a case-by-case basis with special sensitivity towards the inevitable power imbalances between men and women.

Our Recommendations ...

The PEI Advisory Council on the Status of Women recommends that the Province of Prince Edward Island take these actions:

- 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.
- Amend the *Probate Act* to ensure that it reflects the principle of economic partnership as established in the *Family Law Act*.
- Create legislation that establishes rigorous standards for the mediation profession.
- Conduct a review of the *Maintenance Enforcement Program* to assess and recommend program resources and service improvements.
- Revise the *Family Support Orders Program* so that women with a history of abuse from the non-supporting former partner can opt out of the program without incurring financial penalties.
- 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 for any of them except in cases of family violence where special provisions and procedures 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 professional 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.
- Following changes in legislation or service provision, conduct a comprehensive communications campaign to inform the public regarding the real, practical effects on their partnerships and families.

During the past twenty-five years, women have welcomed the efforts of the federal government and the provinces to develop legislation and services that facilitate the peaceful cessation and the fair restructuring of intimate partnerships. Overall, these reforms have recognized the reality that, because women typically do not have the same economic resources as their male partners and, at the same time, they have primary responsibility for children's care, they do not arrive at the moment of separation in exactly the same position as men. Governments know that, for the sake of equity, women need legislative safeguards and mandated services.

Here on Prince Edward Island, things began to change when the 1978 *Family Law Reform Act* defined marriage as a "partnership of equals," a new principle which removed women from their traditionally subordinate role. However, this legislation did not go so far as to include business assets in its "equitable" division. That only changed in 1995 when the *Family Law Act* rectified the situation. Canada's *Divorce Act*, proclaimed in 1986, was another welcome change. The "no fault" divorce process meant that women did not have to go to court and prove that their partner had caused the marriage to break down nor would they have to appear in court to defend against such a charge.

And, along the way, 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.

Things have not been perfect, though. 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 shows 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.

Lately, women have had to face other, more institutionalized, impediments besides those posed by their former partners. During the 1990s, as provincial governments worked to enforce maintenance payments and as the federal government established new child support guidelines, "father's rights" groups gathered momentum and gained media attention throughout Canada and here in Prince Edward Island, with members protesting that they were being asked to support their former partners and their children without having any care or control of the children.

Of course, custody and support are separate issues. Adults have responsibilities towards their dependant children, no matter what. But, interestingly, since the Government of Canada passed *Bill C-41* in 1997 and linked a percentage of time spent with children with the amount of support required, "joint custody" has begun to look more attractive to non-

custodial Canadian fathers whose support payments decrease considerably at 40% custody. A woman involved in such a scenario is left with exactly the same child rearing expenses while receiving less money to meet them.

This maintenance backlash went public in 1998 when the Special Joint Committee of the Senate and the House of Commons on Child Custody and Access hosted nationwide hearings. Here on Prince Edward Island, individual women participants and women's groups who presented to this committee were shocked at the hostile reception that they received. They still talk in wonder about the committee's anti-woman bias and their overt support of "father's rights." The Committee's report, *For the Sake of the Children*, advocated an assumption towards awarding joint custody and women's groups denounced that notion as being unworkable, unfair, and potentially unsafe.

Now, women anxiously await the results of a nation-wide consultation around possible amendments to the *Divorce Act*, hoping that the federal government holds the position that no one custody or support arrangement is right for all families and fearful that they may be forced into having to prove that joint custody will not work in their situations.

Women are also wary about an assumption that has been creeping into society's consciousness - the belief that going to court to assert your rights is the wrong thing to do. Instead, women face pressure to mediate their settlements. Mediation is fine if it involves two equal partners working out matters under the guidance of a skilled, professional mediator, but it can be damaging when one partner manipulates the process to ensure that the settlement meets their needs. A bias towards mediation could simply be a more subtle form of backlash against women using the power of the law to maintain their rights and the rights of their children.

Conclusion

Here on Prince Edward Island, women face all these issues without the support of an adequately funded legal aid program that would enable all income-eligible women to maintain their economic security and physical safety throughout the separation process. At the same time, women in common-law situations do not have the same property rights as married women and government has not addressed same-sex partnerships at all. Much has been done but more is required to achieve a state of true equity for all Island women. The Province is currently working on new ways to deliver more accessible and appropriate services and Island women look forward to seeing what that will look like in reality.

The Advisory Council on the Status of Women has found certain themes regarding contemporary family life reflected in the most recent Statistics Canada data presented in the publication, *Women in Prince Edward Island, A Statistical Review*. These are:

Most Island families do not conform to an idealized family structure composed of one breadwinner, a homemaker, and a group of children.

- Only one in ten Island families have a father who works and a mother who stays home to keep house and care for the children
- Without women's earnings, three times as many Island husband-wife families would fall below the poverty line
- Approximately one in ten Island children grows up in a family headed by a single parent, usually the mother

Divorce is a common occurrence for adults and children.

- Up to 40% of Canadian marriages end in divorce
- The Island's divorce rate has increased by four times since 1970
- Half of Canada's couples that separate have children

People are opting for common-law partnerships as an alternative to marriage.

- There is one common-law couple for every eight married couples in Canada
- Common-law couples are increasing faster than married ones and separate at a higher rate
- More than 41% of common-law couples have children in the home

Ending a relationship makes women and their children more likely to be poor.

- On PEI, the average annual income of female-headed lone-parent families is \$10,000 less than male-headed lone-parent families and \$20,000 less than husband-wife families

- While female lone parents represent only 11% of families in Prince Edward Island, 40% of all the children living in poverty are in female-headed lone-parent families
- Two-fifths of the Island children who are living in poverty have lone-parent mothers

Many women experience violence within their relationships.

- 51% of Island women aged 16 and over have experienced some type of violence
- 29% of all Canadian women formally report physical or sexual violence at the hands of a marital partner (common-law unions included)
- For 10% of these women, the violence was so severe they expressed fear for their personal safety and their lives
- In Canada, almost one woman in three is at some point the victim of a physical or sexual assault by a partner or a former partner
- The majority of Prince Edward Island's Victim Services cases opened for women were for wife abuse
- In reported abuse cases, most Island women were abused by their husband or ex-boyfriend

In addition, the Advisory Council presents these undeniable realities about women's lives:

In the midst of all these changes in family structures, women remain the primary caretakers of children.

- Regardless of legal custody arrangement, mothers overwhelmingly retain responsibility for children and caregiving as confirmed in four separate studies (Lero & Johnson, 1995; Marck-Gratton & Le Bourdais, 1999; Marshall, 1993a; 1993b; Silver, 2000)

Violence tends to escalate at times of separation.

- Between 1974 and 1992, the rate of women killed by husbands while separated was six times higher than the rate of women killed by husbands while co-residing (Statistics Canada, 1996)

- One-third of children killed, were killed following parental separation (Cooper, 1994)

Women are poorer than men before and after separation.

- Canadian women's incomes remain less than 60% of men's incomes (Statistics Canada, 1995; 2000)
- While there is no large difference between the earnings of single women and single men, married women on Prince Edward Island earn substantially less than married men in all age categories (Statistics Canada, 1993)
- Three years after marital separation, the incomes of Canadian women and children had dropped by at least 30% while, on average, men's incomes more than doubled those of their former wives' incomes (Gorlick, 1995)

For true equity to exist, services and legislation must recognize and respond to the realities of contemporary family life and the realities of women's lives.

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.