



Department of Justice
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GENDER EQUALITY IN THE CANADIAN JUSTICE SYSTEM

Summary Document and Proposals for Action

**Federal/Provincial/Territorial
Working Group of Attorneys General Officials
on
Gender Equality in the Canadian Justice System**

Canada

GENDER EQUALITY IN THE CANADIAN JUSTICE SYSTEM
SUMMARY DOCUMENT

Federal/Provincial/Territorial
Working Group of Attorneys General Officials
on
Gender Equality in the Canadian Justice System

April 1992

The opinions expressed in this document are those of the individual members of the Working Group and are not to be taken as representative of the position of the Government of Canada, or any Province or Territory

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INTRODUCTION

Contents and Purpose of This Summary Document

The major portion of this Summary Document consists of summaries of the six background papers prepared by the Working Group.

The Summary Document also describes the events leading to the formation of the Federal/Provincial/Territorial Working Group of Attorney General Officials on Gender Equality in the Canadian Justice System, and some of the key elements in the process followed by the Working Group.

The opinions expressed in this Document are those of the individual members of the Working Group and are not to be taken as representative of the position of the Government of Canada, or any Province or Territory.

Establishment of a Working Group

On February 8, 1990, the Honourable Madam Justice Bertha Wilson speaking at the Osgoode Hall Law School, York University, added her voice to the growing concern about gender bias¹ in the Canadian justice system. With respect to some areas of the law she remarked:

"... I think that a distinctly male perspective is clearly discernible and has resulted in legal principles that are not fundamentally sound and should be revisited as and when the opportunity presents itself."

¹ For the purposes of this Summary Document and the background papers, the following definition of "gender bias" has been used:

"attitudes and behaviours based on sex stereotypes, the perceived relative worth of women and men, and myths and misconceptions about the economic and social problems encountered by both sexes. It is reflected in attitudes and behaviour toward women and men which are based on stereotypical beliefs about the nature and roles of the sexes, rather than upon independent valuation of individual ability, life experience and aspirations." (Lynn Hecht Schafran, "Establishing a Gender Bias Task Force" *Laws and Inequality*, Vol. 4, p.103)

These attitudes and behaviours may be expressed not only through individual behaviour but also in policies, laws and institutions.

By speaking out, Madam Justice Wilson helped to focus the attention of the Canadian justice system, and of Canadian society in general, on the clear evidence that women are not treated equally in the justice system.

The problem of gender bias and other gender-based unfairness cannot be denied. Lynn Smith, now Dean of Law at the University of British Columbia, stated the problem with clarity in an article entitled "A System That's Changing", which appeared in *Legal Perspectives* (British Columbia Legal Services Society School Program, Volume 15, Number 2, December 1990):

"The roots of today's legal system are male roots. Developed at a time when women could not vote, hold office, practise law or sit on juries, the law was designed to protect the interests defined as important by men and to fit the realities of men's lives. To the extent that the law took women into account at all, it did so from a male perspective."

At the Provincial/Territorial Conference of Attorneys General at Niagara-on-the-Lake, Ontario on June 13 and 14, 1990, the Honourable James E. Lockyer, Q.C., Attorney General of New Brunswick at that time, addressed Ministers on the subject of "Women in the Justice System". He spoke of the particular responsibility of Attorneys General, in relation to the justice system, "to take such reasonable steps as are within our power to identify and ameliorate occurrences of gender bias".

The Attorneys General then resolved that:

1. A working group of senior officials chaired by New Brunswick be established to prepare proposals to be placed before the Attorneys General at their next meeting as to how the cause of gender equality in the Canadian justice system can best be promoted and;
2. An invitation be extended to the Minister of Justice for Canada to participate.

The Honourable Kim Campbell, Q.C., the Federal Attorney General and Minister of Justice, accepted the invitation to participate.

Both Territories, the Federal Government and all Provinces except Quebec designated officials to participate in the Working Group.

Scope of the Work

At the outset, the Working Group divided its work into six subject areas, with primary responsibility for each area falling to two jurisdictions. The subject areas are as follows:

1. Access to Justice for Women (Canada and New Brunswick)

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2. Justice System Response to Violence Against Women
Part I: Non-specific Violence, Pornography and Prostitution (Manitoba)
Part II: Wife Assault² and Sexual Assault (British Columbia)
 3. Gender Bias in the Courts (Ontario and the Northwest Territories)
 4. Justice System Response to Women in Conflict with the Law (Nova Scotia and Yukon)
 5. Substantive Law Bias Against Women (Saskatchewan and Prince Edward Island)
 6. Women Working in the Justice System (Alberta and Newfoundland/Labrador)

Background discussion papers have been prepared in each of the six subject areas.

The Working Group has concentrated its efforts on those parts of the justice system over which the Attorneys General have legal and operational responsibility. Although issues in the areas of policing and corrections have arisen in the course of the work, they have not been dealt with in a comprehensive manner. In addition, the Working Group has not dealt with tribunals other than courts.

The Working Group has attempted to present, through the six background papers, a broad discussion of issues of gender bias and other gender-based inequities and barriers in the Canadian justice system. The subject areas of the six background papers are not distinct and self-contained. For example, issues of substantive law cannot be entirely separated from consideration of the justice system response to violence against women nor from access to justice for women. There are, therefore, unavoidable overlaps in the background papers. At the same time, an issue may be dealt with only in part in one background paper, with other aspects of the issue being dealt with in another background paper.

Each of the background papers has been the subject of review and extensive discussion by all members of the Working Group. Nevertheless, each paper is, ultimately, the product of the

² The term "wife assault", for the purposes of this Summary Document and the background papers, has been defined as follows:

"physical assault or the threat of physical assault of women by men with whom they have, or have had an intimate relationship, whether or not they are legally married, or living together, or dating at the time of the assault or threat".

jurisdictions with primary responsibility for the subject area of the paper. The content and opinions expressed in the background papers do not necessarily have the unanimous support of all Working Group members, nor are they to be taken as representative of the position of the authors' respective governments.

National Symposium on Women, Law and the Administration of Justice

As part of the Department of Justice Canada contribution to this initiative, the Honourable Kim Campbell, Q.C., sponsored, in Vancouver in June, 1991, a National Symposium on Women, Law and the Administration of Justice. The Symposium was aimed at developing recommendations for action directed at promoting gender equality in the Canadian justice system. The recommendations and proceedings of the Symposium are the subject of separate reports to be released by the Department of Justice Canada. The recommendations were referred to the Working Group of Attorney General Officials for consideration in the course of their work.

Assistance of Other Officials

Throughout the course of the project, Status of Women officials in the various jurisdictions have made valuable contributions to the work of the Group. In addition, in some jurisdictions local committees of officials from both Status of Women and other ministries have provided valuable assistance.

Preliminary Report of the Working Group

The Working Group of Attorney General Officials presented preliminary background papers and preliminary proposals to the Attorneys General at their annual meeting in Yellowknife in September, 1991. Because of the preliminary nature of those papers and proposals, and because the Working Group did not at that time have available to it the recommendations coming from the National Symposium on Women, Law and the Administration of Justice, the preliminary background papers and preliminary proposals were not made public. The Attorneys General extended the mandate of the Working Group for an additional six months, with New Brunswick and Canada as co-chairs, to enable the Group to consider the Symposium recommendations in completing their work on gender equality.

At the annual meeting in Yellowknife the Attorneys General adopted a statement of commitment on gender equality in the Canadian justice system. That statement is included as Annex A of this Summary Document.

Commitment to the Goal of Gender Equality

The fundamental purpose of a commitment to the goal of gender equality in the Canadian justice system is to achieve justice - just laws justly applied - through the elimination of gender bias and other gender-based inequities and barriers that exist in the justice system and

that result in the unfair treatment of individuals or classes based on their sex. And in this context, "justice" and "equality" mean "substantive" justice and "substantive" equality as opposed to justice and equality based on a "sameness" or "similarly situated" test.

The Diversity of Women

The main focus of the Working Group has been gender equality and the elimination of gender bias and other gender-based inequities and barriers from the Canadian justice system. However, inherent in such a focus is the danger of overlooking the diversity of women and the diversity of their experiences of inequity.

The compounded inequity experienced by Aboriginal women, women who are members of racial or cultural minorities, and women who are immigrants, poor, young, old, disabled, lesbian or in conflict with the law, has been noted in the background papers.

The factors of race, culture, Aboriginal status, immigrant status, poverty, age, ability, sexual identity and offender status must be a central consideration to any attempt to rid the justice system of bias and inequities. To fail to account for the diversity of women is to treat race, culture, Aboriginal status, immigrant status, poverty, age, ability, sexual identity and offender status as "add-ons" to a central "normal" experience.

Therefore, any action taken to eliminate gender bias and other gender-based inequities or barriers from the Canadian justice system should take into account all sources of inequity experienced by women. It will also be of utmost importance to involve in the decision-making process women who will be affected by the action to ensure their particular needs are well understood and that any corrective action is indeed appropriate.

ACCESS TO JUSTICE FOR WOMEN

Introduction

While the work, as a whole, of the Federal/Provincial/Territorial Working Group of Attorney General Officials on Gender Equality in the Canadian Justice System addresses the fundamental and all-encompassing issue of access to justice for women, the background paper on Access to Justice for Women focuses on the more narrow issue of access to the justice delivery system.

Women face gender bias and other gender-based inequities and barriers in using the justice delivery system in the pursuit of dispute resolution, redress of injury and enforcement of rights.

In addition to the matters considered in the background paper, class actions, standing, limitation periods and paralegals were identified as being relevant in consideration of access to the justice delivery system. However, work in these areas was not completed.

Court Structure

Many factors in relation to court structure affect women's access to the justice delivery system. These factors include the complexity and inefficiency of present court structures; the unavailability of related services (such as legal aid and counselling) in close proximity to the court; inordinate delays; the formality of court procedures; and the inaccessibility and inadequacy of physical facilities (for example: the lack of easy access for those with physical disabilities, the lack of secure waiting areas for victims where they will not be exposed to threats and intimidation by offenders, the lack of services for those with special communication needs, and the geographical distance, in some cases, of court facilities from those who use them).

Numerous projects are under way, or have recently been completed, in Canada in relation to court structure. They deal with a wide range of issues, including court unification.

Consideration of the particular needs of women, and the identification and elimination of, or avoidance of, systemic bias against women are essential elements of any review or reform of court structure.

Language of the Law

Acts and regulations and other legal documents must be understandable by those who are affected by them and are required to comply with them.

Written law and other legal documents have come under severe criticism in recent years because of their complexity. For women, who make up the majority of the poor in Canada,

and who therefore have less access to legal counsel to interpret written law and other legal documents for them, the problem is even more serious. In addition, particular challenges are faced, for example, by those whose language is neither English or French, those who have vision impairments, and those who are unable to read.

The need for all written law and other legal documents to be expressed in accordance with clear-language techniques, and to be accessible to those with special needs, has been identified.

In addition, the predominately male-centred language found in written law and other legal documents reflects a clear gender bias against women. There is good reason to believe that specific reference only to males in laws and legal documents contributes to the devaluation of women in society.

Recognition of the constitutional right of women to equality before and under the law, and to equal benefit of the law without discrimination, requires that written law and other legal documents, when directed to both women and men, refer explicitly to women as well as to men.

Public Legal Education and Information

Without knowledge of their existing rights and duties under the law, the legal system and its remedies are effectively closed to citizens. For women, this situation is exacerbated by their generally lower economic status.

Public legal education and information programs can assist women to participate in a meaningful way in the Canadian justice system.

Victim/Witness Services

The victimization of women is an equality issue.

The high incidence of violence against women brings women in contact with the justice system as victims and witnesses. Court attendance and participation are often traumatic for these women. Because the material and emotional costs that arise from the victim's contact with the criminal justice system can result in a secondary victimization, assistance to these women as they are involved in the justice system is of greater importance.

Victim/witness assistance programs exist across the country but they vary in their extent and availability.

Criminal Code provisions have made it possible to introduce into the sentencing process a statement of the impact of the crime on the victim. However, these provisions are not in

force in all jurisdictions, and their implementation and impact and in other jurisdictions continue to be monitored.

Native Courtworker Programs

Studies indicate that Aboriginal people are disproportionately represented as offenders in the criminal justice system. The treatment of Aboriginal women in the justice system as offenders, victims and witnesses must be addressed to ensure their equitable treatment in all facets of the justice system.

Criminal Injuries Compensation

Access to the justice delivery system in pursuit of compensation for injuries from violence against women is of particular importance to women. A female victim of criminal assault may seek compensation for her injuries through a civil action in tort, through *Criminal Code* provisions that contemplate restitution orders as part of the sentencing process, or through the various provincial and territorial compensation programs for victims of crime. All of these routes have significant shortcomings for women.

Legal Aid

Women's limited financial means directly affect their ability to access the justice system with respect to securing legal representation. Traditional legal aid programs must be reviewed to ensure equal access to legal aid resources for women in civil law matters and in criminal law matters, including representation as offenders and as victims of crime.

Intervenor Status

Women require independent funding to enable them to exercise the equality rights guaranteed to them under the *Canadian Charter of Rights and Freedoms* and other federal, provincial and territorial legislation by challenging governments' legislation, policies and practices through test case litigation.

Family Orders and Agreements

In order to be able to enjoy the rights and entitlements secured for women in family orders and agreements, women must have the means to enforce them. This requires government assistance in the form of funding of enforcement proceedings and in the form of access to government resources, including access to government information banks and processes to facilitate enforcement.

Participation in the Justice System as Professionals

The justice system is comprised primarily of male officials, whether judges, lawyers, court officers or law professors. The predominant male perspective will continue to prevail unless women are granted equal access to the opportunities and resources to fully participate in the justice system as professionals.

Alternative Dispute Resolution

The current flux of court reform in the country suggests a general dissatisfaction with adjudication as the most preferable method of dispute resolution for all disputes and, more specifically, raises questions regarding the ability of the adjudicative process to address the particular needs and concerns of women.

Several alternative methods of dispute resolution are available to women but there is considerable uncertainty as to whether these methods are better able to ensure equal access to justice for women. It is essential to further examine the various alternatives and to ensure that women always have the right to choose the method of dispute resolution which best meets their particular needs.

JUSTICE SYSTEM RESPONSE TO VIOLENCE AGAINST WOMEN -

PART I: NON-SPECIFIC VIOLENCE, PORNOGRAPHY AND PROSTITUTION

Violence against women has been traditionally addressed by a wide range of responses, marked by complacency on the one hand, and denunciation of behaviour on the other. The phenomenon must be addressed not only through penal legislation, but education, health and social service policy approaches must be considered to deal with the problem effectively. Punitive sanctions are a rough and inefficient way to correct or shape behaviour, and in any event, form only part of a justice response to violence against women.

The Lake Louise Declaration has explicitly recognized the essential inequality of women, as long as violence or the threat of violence is a reality of their lives. It is time to move past acknowledgement, into action.

The first step to a justice response to the phenomenon of violence against women, is to accept that all women are subjected, daily, to non-specific modes of aggression in almost every form of commercial and other popular forms of expression. The mind-set which this approach to marketing and consumerism promotes is that it is attractive, desirable, sexy and right to possess women, who are almost invariably portrayed in conjunction with other glittery objects, or in some subordinate or diminished pose. The use of sexuality to sell products and set social standards works a profound injustice, and that must be recognized.

There is no greater example of the phenomenon of woman-as-object, than in pornography. Here again, the insult and injury to women has profound linkages with sexual dysfunction, objectification, hatred, and violence. Aggression against women occurs on a spectrum of activity which moves from non-specific to specific; from a simple advertisement for automobiles or beer in association with the barely-clad women, to murder. The state of mind of the aggressor is only a question of degree.

Pornography must necessarily be regulated with an eye to the *Charter* protections in respect of freedom of expression. However, that can be accomplished by careful drafting of legislation which would distinguish "erotica" from "pornography".

Prostitute women continues the psychology of women as commodity. Perpetuation of the male myth of "right of access" means that women continue to experience violence through abuse, disease and death. Traditionally, it has been the prostitute who has been prosecuted; their customers have been protected. Prostitutes, mostly women, are a constituency without power or voice in the justice system.

The justice system must take account of the realities of the lives of all women, in a world still very much dominated by male perspectives.

JUSTICE SYSTEM RESPONSE TO VIOLENCE AGAINST WOMEN - PART II: WIFE ASSAULT AND SEXUAL ASSAULT

Scope of Report

This paper examines biases in our criminal justice system's response to wife assault and adult sexual assault cases. The discussion does not deal comprehensively with police practices, since they are handled by Solicitors General in many jurisdictions. Nevertheless, a coordinated interministerial approach to the problems of gender bias and violence against women is advocated.

Why Examine Wife Assault and Sexual Assault as Examples of Bias in the Justice System?

In Canada, approximately 90 per cent of sexual assault victims are female; 99 per cent of offenders are male. Women account for 80 to 90 per cent of victims of inter-spousal violence; 89 per cent of offenders are male. The less power a woman has due to social or physical characteristics, the more likely she is to experience gender-based violence.

In 1990 in Canada, over half of female victims of violent crime were victims of someone with whom they shared a domestic relationship. An estimated 50 per cent of the women murdered in Canada are killed by husbands or boyfriends.

Consequences of gender-based violence are well documented. Victims suffer higher suicide rates, physical injury in 60 per cent of cases, and greater reliance on sedatives and sleeping pills. Children of domestic violence victims can be dramatically affected. Modeled in families, violence against women can spread from one generation to the next and out into the community.

Gender-based violence affects not only victims, but all women; their dress, their modes of transport, their social contacts, and their choice of jobs and activities. It affects their families, including male children who model adult males, and it affects their communities. Ultimately, gender-based violence affects the whole of society.

Redefining Discretion: Policies and Legislation

Discretion in decision-making enables our justice system to respond to individual cases, while at the same time fairly enforcing or interpreting rules applicable to all. If individual discretion by police, prosecutors, and judges is clouded by sex-role stereotyping, biased decisions result.

Redefining Discretion: Wife Assault

All jurisdictions now have wife assault policies designed to encourage charging and to improve monitoring of cases. When consistently implemented, the policies have raised charging rates and reduced violence, particularly when applied in conjunction with improved services for assaulted women. However, implementation of the policies is not consistent within or across jurisdictions. Training and mechanisms to ensure police and crown accountability have been suggested as means of enhancing effectiveness of the policies.

Redefining Discretion: Adult Sexual Assault

Until 1983, Canadian rape laws incorporated biased views which devalued the credibility of sexually assaulted women, and presumed sexually active women were more likely to consent to sex in any situation. Low reporting, charge and conviction rates, as well as victim harassment were associated with the old rape laws.

1983 amendments to the *Criminal Code* specifically abolished some rules that supported these myths, but their intent has been undermined by the persistence of some courts to place importance on extra proofs in sexual assault cases. Some courts continue to link victims' sexual history to their overall credibility and the likelihood of their consenting to any sex. Recently, the Supreme Court of Canada struck down most of the 1983 "rape shield" provisions, which limited introduction of a victim's sexual history.

New amendments to the *Criminal Code* were tabled in December, 1991 to replace the rape shield laws. The sections propose guidelines to protect complainants from use of irrelevant sexual history evidence, but judges will retain substantial discretion as to whether the evidence will be admitted. For the first time, the sections include a definition of consent.

Sexual assault is still under reported; victims fear the system is biased against them. Founding, charging and conviction rates remain low. There is unwarranted variation in the sentences imposed for sexual assaults.

Standardized record keeping practices would enhance national data on incidence, charging practices, reasons for stay or dismissal and sentencing patterns. Increased accountability of police, prosecutors and judges is an important dimension of ensuring appropriate charging, conviction and sentencing. Education of judges and prosecutors is viewed by many as a critical step in alerting the court to gender bias and ensuring that the intent of the new legislation is upheld.

The Diversity of Women: Effect of Interacting Factors

Women in Canada come from diverse backgrounds not necessarily reflecting the dominant white, middle aged, middle class, urban, able-bodied society. The experience of gender-based violence is different, depending on the interaction of various social and physical

factors. The less power a woman has due to social and physical characteristics, the more likely she is to experience gender-based violence. Groups particularly vulnerable to gender-based violence are women of Aboriginal origin, immigrant women, women of colour, women with disabilities, and women vulnerable by reason of their youth or age. More information and innovative strategies are recognized as needed in this area.

Training/Public Education

Training about the nature and prevalence of gender bias and its effects on the application of sexual and wife assault laws and policies has been consistently cited as a means of enhancing impartial decision-making at all levels of the justice system. Greater public education emphasizing that assaults against women are serious crimes against individuals and society is an important component improving the prevention and reporting of wife assault and sexual assault.

Victims' Services and Coordination: Wife Assault and Adult Sexual Assault

Women generally encounter violence in the context of intimate ongoing relationships. Women's reluctance to seek help from police stems from the stigma still attached to sexual and wife assault, and from economic dependence on, or fear of revenge from their attackers. These factors distinguish women from most male crime victims. These women victims have special service needs requiring a broad range of strategies and services suited to their unique needs. Funding has not kept pace with demand for such services.

Victim assistance programs which support and provide information throughout the legal process have proven to encourage victim cooperation with the justice system. The coordination of these programs with other services supporting assaulted women has been recognized as central to effective responses.

Violence against women is a complex social problem requiring a multifaceted response. A coordinated approach by government ministries, the community, labour and the corporate sector will ultimately support the elimination of attacks against women and the biases that reinforce them.

GENDER BIAS IN THE COURTS

PART I

Introduction

The issue of gender bias in Canadian courtrooms has recently been recognized with unprecedented profile and legitimacy by Madam Justice Bertha Wilson, who stated that there is overwhelming evidence that "gender based myths, biases and stereotypes are deeply embedded in the attitude of many male judges, as well as in the law itself". The existence of gender bias in our courts and tribunals puts in issue the integrity of the justice system, and causes real hardship for women who come into contact with that system. The traditional view of the justice system as objective, neutral and free from bias is coming under increasing public scrutiny, and the issue of systemic racial bias in the justice system has been the subject of recent public inquiries. Indeed, the effects of gender bias are more deeply felt by women who are most marginalized by our society, including women of colour, Aboriginal women, poor women, lesbian women and disabled women.

The Terminology: What is "Gender-Based Discrimination"?

The term "gender bias" is used in Part I of this paper to identify the barriers in the courts which have an adverse impact on women, attitudes and behaviours in the courts which are based on stereotypical beliefs about the nature and roles of the sexes, myths and misconceptions about the economic and social problems encountered by women, and the treatment of real differences between men and women in a manner which disadvantages women, by ignoring or devaluing the female difference. Gender bias links the individual biased behaviour to its systemic origins. The term "gender equality" is a statement of the positive goal sought to be achieved once the gender bias in the system has been identified.

Gender Bias: Challenging Principles of Judicial Neutrality

Judges have traditionally viewed themselves as bias-free, impartial and objective, reflecting the values of the justice system as a whole. This ideal of a purely objective judiciary has recently come under scrutiny. Some have suggested that it is preferable for judges to recognize the biases and prejudices that they may hold, so that through education and awareness they may be better able to overcome their biases and meet the judicial ideal of independence and impartiality.

The Myths, Stereotypes and Biases

The fields of family law and criminal law are replete with gender myths, biases and stereotypes, probably because the courts in those cases are called upon to make determinations about family roles, the economic status of spouses, female sexuality and violence against women. In criminal law, the myths include:

-
- * sexual assault and wife abuse are not widespread
 - * women are to blame if they have been drinking, used drugs or have put themselves in "vulnerable" situations
 - * in wife assault, the woman was not as badly beaten as she claims, or she would have left, or else she must have enjoyed it
 - * most sexual assaults are committed by strangers against white able-bodied women
 - * women often fabricate stories about being sexually assaulted
 - * women who are assaulted should scream, struggle and report immediately
 - * a sexual assault is not as serious where there is no penetration
 - * incest can be the act of a loving parent gone awry
 - * rapists are sick and deviant individuals

In family law, the myths include:

- * all women are able to become self-sufficient in the work force within a reasonable time after the end of the marriage
- * current levels of spousal and child support are adequate
- * domestic contracts between spouses are freely negotiated like any commercial contract
- * a stay-at-home mother is best for the children

Incidents in the Court

There have recently been a number of incidents in the courts and statements by judges and lawyers that have received wide public attention as displaying gender bias. While there is no indication of how widely the attitudes underlying such comments are held by other members of the judiciary and the bar, they may nevertheless be seen as examples of the myths, biases and stereotypes discussed above. They also have helped to shape public perceptions of the nature and extent of the issue of gender bias in the courts.

Education of Judges, Lawyers and Law Students

Educating judges is a sensitive issue, both because the need for education suggests a failure on the part of judges to live up to the judicial ideal, and because education has been seen to be a challenge to the principles of judicial independence.

Nevertheless, some guidelines have emerged for the successful education of judges about gender bias. In the past few years, the Canadian judiciary has begun to educate itself on gender equality issues, and has developed programs on gender bias, particularly in the criminal law area. These programs continue to be met with some resistance by a minority of judges.

Law schools in Canada have been embroiled in the controversy of gender bias in programs, policies and curricula for several years. Incidents of gender inequality in law schools have been publicized, and some law schools have struck committees which have found systemic discrimination against female students and faculty. If there are to be lasting inroads against gender bias in the courts and the legal system, they must be initiated and promoted in the environment in which future lawyers are educated. Most law schools now offer courses on gender equality issues, and some have begun to consider implementing other steps to combat gender bias within the schools, and to remove barriers to the equal access of all women, including women who are primary caregivers, to law schools.

Provincial law societies are responsible for regulating the legal profession, and some of them have formed subcommittees to consider issues relating to women in the profession. Female articling students and lawyers have reported inappropriate conduct on the part of male lawyers displaying gender bias. Law societies are in a position to educate lawyers about gender issues and to proscribe gender biased conduct by lawyers through the Codes of Conduct in the different provinces.

PART II

Introduction

Women make up only ten per cent of judges appointed by the federal, provincial and territorial governments. In an examination of gender equality in the justice system this low proportion raises questions. One objective of having more women on the bench is the equitable representation of women. As well, women judges can contribute to the bench an insight into the unique perspectives of women and the difficulties encountered by women in society.

Judicial Appointments

A review of legislation and practice across Canada reveals a significant divergence from jurisdiction to jurisdiction in the selection/appointment processes.

In looking to increasing the proportion of women on the bench, consideration has to be given to many aspects of each process. A public commitment to increase the representation of women on the bench has been successful in at least one jurisdiction. Advertisement and recruitment has also worked in some jurisdictions to increase the pool of female applicants. The involvement of more women in the selection/appointment process cannot guarantee the appointment of more women to the bench but it can be a means of promoting that objective. The sensitization of those responsible for the selection and appointment processes, about gender issues, is an area for study. Selection criteria and qualities which have traditionally been sought in candidates require examination for gender bias and re-evaluation.

Judicial Discipline

The disciplinary process also varies from jurisdiction to jurisdiction, though in most there is a judicial council which receives complaints and some mechanism for a formal inquiry.

For women dealing with the justice system, who have a gender related complaint to make against a judge, the complaint process does not always seem accessible. To date there have been very few recorded gender related complaints made to the provincial and territorial judicial councils. This may be a result of very little information being available on the disciplinary process, which is highly confidential in some jurisdictions.

Areas which could be examined to determine whether they may have some impact on gender equality include the disciplinary process itself, the definition of behaviour or conduct which constitutes grounds for disciplinary sanction, forms of sanction short of removal which could be imposed by a Chief Judge, Judicial Council or Board of Inquiry, and the extent of information which can be made available to the public on complaints and disciplinary proceedings.

Conclusion

The independence of the judiciary is a basic tenet of our society. Within this principle, legislators have a certain amount of flexibility to design appropriate processes for judicial appointments and discipline. Effective reforms should be accomplished through close consultation with the judiciary.

WOMEN IN CONFLICT WITH THE LAW

Introduction

This paper deals with the general topic of gender bias in the Canadian justice system with respect to the specific situation of women in conflict with the law. The paper attempts to deal with women as they go through the court system from the time charges are laid against them to the completion of sentence. However, because the areas of policing and corrections do not fall within the jurisdiction of some Attorneys General or Justice departments, the attention given to those areas has been necessarily limited.

The focus is the plight of Canadian women who come in conflict with the law and the particular impact on them of our justice system.

Background of Women in Conflict with the Law

Women come into conflict with the law from a wide variety of backgrounds and in numbers which have increased substantially in recent years, especially with respect to the involvement of young women or girls. Still women remain a small percentage of the overall offender population with 1989-90 statistics indicating they made up approximately 7 per cent of the total inmate population in Canada. Of these, a disproportionately high number were Aboriginal women. Women represented 15 per cent of adults charged with offences in 1989-90.

Additionally Disadvantaged Women

Many of the women who come into conflict with the law in Canada suffer further discrimination in addition to that arising from their gender, because of circumstances such as their status as Aboriginal women, women with physical or mental disabilities, young offenders, immigrant women, poor women and so on.

Improving the situation for Aboriginal women in conflict with the law may require a dramatically different approach than for other groups of women who come into contact with the justice system. Initiatives are now underway across Canada with respect to Aboriginal justice and self-government which will surely include and address the needs of Aboriginal women. It was evident at the National Symposium on Women, Law and the Administration of Justice which was held in Vancouver in June, 1991 that many Aboriginal women regard the Canadian justice system as being foreign and oppressive to them and would prefer to see a separate Native justice system based on their traditions and beliefs, including healing and reconciliation. In the meantime, however, so long as the present criminal justice system continues to administer to Aboriginal people, their participation and suggestions must be sought in order to improve the fairness of that structure and to particularly address and attempt to eliminate the discrimination within discrimination suffered by Aboriginal women in the system.

Criminal Court Structure

The phrase "women in conflict with the law" rather than "female offender" is preferable because it refers not only to women who are charged with offences or convicted of them but also to those found not guilty or discharged after facing criminal charges. In considering changes to the structure of the criminal courts, it is essential that the existence of systemic discrimination against women and other groups be taken into account in order that any structural changes do not perpetuate discrimination.

"Female" Crimes

Female offenders or women in conflict with the law do not conform to the criminal stereotype which is based on crimes normally committed by males. Generally, females commit much less crime and much less serious crime than males.

While women are under-represented, as opposed to men who come in conflict with the law, Aboriginal people generally are over-represented among those charged with offences in Canada and Aboriginal women represent a disproportionately high percentage of incarcerated women. It is hoped that the various initiatives on Aboriginal justice presently being undertaken across Canada will help to address this concern.

With respect to women charged with crimes of violence, a great step forward in understanding the victimization of women has been taken as a result of the decision of the Supreme Court of Canada in the *Lavallee* case. This decision upheld the jury acquittal of a battered woman tried for killing her common-law spouse and upheld the admission of expert evidence on the battered woman syndrome to help establish that the woman was acting in self defence.

There is increasing awareness and increasing evidence to document the impact of domestic violence on the lives of women and there is also no doubt that many, if not most, of the crimes of violence committed by women occur as a result of domestic violence situations. There is evidence that tighter gun controls do bring about an overall reduction in the number of violent crimes and deaths, although men remain more likely than women to commit homicide by shooting.

Drugs also play a very significant part in crimes committed by women and 1989 statistics indicate that a greater percentage of women than men are serving federal time for drug-related offences such as cocaine offences. Alcohol or drug abuse problems lead many women to become involved in crime and subsequently incarcerated. Alcohol and drug treatment facilities available for incarcerated female offenders are often inadequate or inappropriate.

Prostitution/solicitation is the only so-called area of "crime" in Canada where the numbers of persons charged include significantly greater numbers of females than males. Child sexual

abuse has been found by some studies to be a major contributing cause of prostitution as well as other female involvement in crime. The dangers inherent in the street lifestyle many prostitutes are forced to lead raise the question of how to deal with prostitution and whether its continued criminalization can be justified.

Minor offences such as shoplifting also involve disproportionate numbers of female offenders. In fact, the number of women charged with property offences increased tenfold between 1962 and 1980. In 1989, women represented 23 per cent of all adults charged with property offences. Most of the property crime charges laid against women are for shoplifting. Fraud, including passing bad cheques and fraudulent use of credit cards, also involves increased numbers of women (27 per cent of the total number of adults charged with fraud offences in 1987).

Sentencing

Canada has one of the highest incarceration rates in the western world. Nevertheless the number of female offenders incarcerated remains a small portion of the total number. In 1989-90, statistics indicate that 8 per cent of those admitted to provincial institutions and 3 per cent of those admitted to federal institutions, were female. Women made up 17 per cent of adults placed on probation in 1989-90.

Sentencing principles and practices may need to be dramatically rethought with respect to female offenders in light of their different profile and needs. Non-incarcerative solutions such as increased diversion services and community alternatives are preferable. It is clear that incarceration should be used only as a last resort. Particular suggestions for the female offender include providing child care for mothers doing community service or completing fine option programs and the creation of counselling programs that are tailored to the types of problems most often experienced by female offenders such as "shoplifting" and alcohol and drug programs.

Assaults/Warrants

Women as victims who are subpoenaed to give evidence in assault cases frequently face criminal charges themselves if they fail to appear. As a result, assault victims are often effectively revictimized by the justice system processes.

Crime Prevention Programs for Women

Existing programs are generally based on male models and directed at the great majority of offenders who are male, rather than addressing the special needs of females.

Inter-agency Co-ordination and Communication

In order to provide for improved delivery of services to assist women who come into conflict with the law, it is essential that there be effective inter-agency co-ordination, co-operation and communication.

SUBSTANTIVE LAW BIAS AGAINST WOMEN

This paper analyzes existing law and practice using a standard of broadly conceived "equality" as applied to: legislation and systemic and formal or overt discrimination; personal integrity protection for women; the civil law regarding personal injury actions; and specific problem areas in family and criminal law.

Given the scope of topic, the paper serves only as an introduction to the analysis of gender equality in the substantive law. The paper deals with areas of the law within the direct mandates of Attorneys General and reviews some areas where the Attorneys General, as legal advisor to the Crown, have indirect responsibility.

1. The following Charter Equality and Human Rights Issues are discussed:

- the benefits of and need for courts to hear from women's advocates as intervenors or initiators in Charter or human rights litigation involving issues having a direct impact on the lives of women;
- the identification of and mechanisms to remedy existing formal and systemic discrimination against women in legislation, or substantive inequality resulting from legislation. As formal discrimination is more easily identified and remedied, the paper concentrates on examples of alleged systemic discrimination under or substantive inequality resulting from: employment/labour law (shortcomings in labour standards law, pay equity legislation, limitation of training programs for immigrant women, etc.); taxation (differentiations between taxing of individuals, marital relationships and other family units, taxation of support payments, exemptions for child care expenses, the effects of sales taxes on women, and problems with pensions and benefits for women); evidence law (competency and compellability of spouses); limitations of actions legislation in the context of sexual or physical assault suits brought by women; criminal injuries compensation legislation treatment of battered spouses; and status and matrimonial property issues for aboriginal women; and
- the perceived limitations of existing human rights legislation to deal with systemic discrimination because of its individual complaint driven mechanisms, to allow for appropriate assessment and awards of damages for sexual harassment, and the restricted categories of discrimination.

2. The following Charter and Security of the Person Issues are discussed:

- Attorneys' General legal responsibility for certain mentally disabled persons and past decisions on non-therapeutic medical services for mentally disabled women;
- the dilemmas raised by reproductive technology for women and society; and

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- the extent to which third party claims and women's interests have come into conflict over women's bodily integrity.
3. The following Tort Law - Personal Injuries Actions Issues are discussed:
- the confusion in the caselaw regarding the test for awarding damages is reviewed along with the undervaluation and differential treatment of women in damage assessment;
 - the continued existence, in some jurisdictions, of the *action per quod consortium amisit*, which allows a husband or child to claim damages for loss of a mother/wife; and
 - the increasing resort of female plaintiffs to civil action in cases involving sexual assault and the limits applied to such litigation.
4. The following Family Law Issues are discussed:
- the current basis of matrimonial property regimes and the difficulties encountered in dealing with pensions under such schemes;
 - the limited protection provided to common law spouses;
 - the current approaches and "myths" influencing the courts regarding mother's and father's roles in custody/access situations are explored including the influence of "traditional" expectations regarding family roles, the problems generated by the "friendly parent" rule, constraints on custodial parent mobility, and options for reform such as the primary caregiver approach; and
 - current maintenance problems for spouses and children, such as problems of enforcement, inconsistency between provincial and federal legislation, problems in the level of support and the criteria for the awarding of support, and inconsistency in variation practice.
5. The following Substantive Criminal Law Issues are discussed:
- the laws which directly impact on the protection of women from violence, such as the law regarding assault, sexual assault, peace bonds and judicial interim release are reviewed and considerations regarding expanding police release powers for arrest to include release on conditions; the development of alternatives to the peace bond process; the consideration of psychological and emotional injury in assault and sexual assault cases; sexual assault issues such as sentencing practice, and
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legislative treatment of recent complaint, corroboration, cross-examination of the complainant, publication of complainant identity, and defences;

- the inadequacy of laws which indirectly impact on the protection of women from violence or harm, such as pornography and hate literature;
- the laws which specifically criminalize women's behaviour, such as abortion, infanticide, failing to obtain assistance in childbirth, and soliciting; and
- the limitations of the law of evidence, such as the rules concerning competence and compellability, and the level of acceptance of women's defences such as battered wife and pre-menstrual syndromes.

WOMEN WORKING IN THE JUSTICE SYSTEM

Introduction

In recent years there has been an increasing focus on improving the way in which the justice system deals with women. Much discussion has taken place on the importance of bringing women's specific views and experiences to the administration of justice. The status of women who work within the justice system is an important factor to consider in any such discussion. Both the extent and level of representation of women working in the justice system have a significant impact upon the achievement of gender equality.

In the background paper on Women Working in the Justice System, those components of the justice system involving the legal practitioners (prosecutors, defence counsel, legislative counsel, civil lawyers), court employees, maintenance enforcement employees and public trustee employees have been examined. The paper does not deal with women working in the areas of policing or corrections, although these are significant components of the justice system. The background paper dealing with Gender Bias in the Courts deals with the representation of women in the judiciary and programs designed to deal with gender equality problems at the judicial level.

Women working in the justice system, as women in all spheres of society, face barriers to advancement and thus to the achievement of full and equal representation. The justice system and the legal profession in particular have unique features which pose special barriers to women.

Issues

In analyzing the status of women working in the justice system, the report focuses upon the following issues:

1. Women in private practice.
2. Women in faculties of law.
3. Women in justice departments.
4. Education and training initiatives relating to gender sensitivity for individuals working within the justice system.
5. Programs supportive of women working in the justice system.

Findings

1. Women in the legal profession:

While there has been tremendous growth in the size of the legal profession during the last few decades, it is only in recent years that women have entered the profession in sizable numbers. The percentage of women lawyers in both private and public practice is well below the percentage of women in the general population. The percentage of women partners in legal firms is significantly lower in proportion to men partners than the ratio of women to men in private practice. This may be partially attributed to the relative youth of women in the legal profession.

2. Women in faculties of law:

Despite the fact that enrolment of women in faculties of law has increased significantly during the last decade and the number of women students in many instances is rapidly approaching the number of men students, there is still limited representation of women in faculty positions.

Curricula for various law faculties contain few, if any courses relating to social justice and equality or feminist theory.

In spite of the significant number of women students in today's faculties of law, there is still a disturbing level of anti-feminism and insensitivity of women's issues and rights.

3. Women working in justice departments across Canada:

Outside of the legal profession, the ratio of women employed in comparison to men in the justice system is significantly higher than the ratio of women to men in the general population. Nevertheless, the ratio of women to men in management and senior management positions in the justice system is significantly lower than the ratio between women and men employed in the justice system and in the general population. While women are represented in small numbers at the executive management committee level in some jurisdictions, their representation is non-existent in other jurisdictions. Representation of women at the next level below executive committee is significantly greater.

This lack of representation undoubtedly has a significant bearing on the degree to which women are able to influence policy and program.

4. Education and training initiatives relating to gender sensitivity for individuals working within the justice system:

With the growth in interest and concern by the general population regarding the question of gender equality in the justice system, the legal profession and judiciary are becoming more aware of the need for education in this area. In recent years, those responsible for continuing legal education have begun to develop and offer programs relating to women and women's issues in the justice system. A number of excellent programs have been developed by those involved in judicial education.

5. Programs supportive of women working within justice departments:

While there are a wide variety of programs supportive to career opportunity and development for women in various jurisdictions across the country, there are very few programs targeted specifically for women in the justice system and the success of all such programs has yet to be determined. There do not appear to be any specific programs to increase the representation of women at the policy and program establishment level.

ANNEX A

ATTORNEYS GENERAL STATEMENT OF COMMITMENT ON GENDER EQUALITY

September, 1991

Attorneys General commit themselves in principle to adopt the following Statement of Commitment:

Attorneys General recognize that gender equality is a fundamental principle of the administration of justice and commit themselves to

- I. Eliminating gender-based discrimination in the justice system; and
- II. Implementing corrective actions and other strategies to achieve gender equality in the justice system.

Attorneys General recognize that all women do not experience the world in the same way, and that the complex interaction of issues which affect aboriginal women, women who are members of racial minorities and others, such as women with disabilities, must be explored in order to fully address gender-based inequalities in the justice system.

Attorneys General agreed that:

- a) The justice system should consistently provide equal access to justice for women;
- b) Legal theory, common-law, and statute law must be developed equally from both the male and female perspective;
- c) Myths and stereotypes about women and their roles as litigants, accused, witnesses, and lawyers must not be present in the justice system;
- d) The justice system must take into account the disadvantages which women in conflict with the law have experienced as women;
- e) Women working in the justice system must have the opportunity to participate fully as equals.

This is based on the recognition by Attorneys General that men's and women's experiences are different and that both experiences must be recognized as equally valid and credible.

Attorneys General commit themselves in principle to:

1. Ensure that all those who work in the justice system are sensitive to gender equity and the impact gender bias has in the system.
2. Take measures to ensure that the needs of women as litigants, victims and witnesses are met.
3. Promote the awareness of public legal education programs, and in particular those programs that enhance women's access to the justice system.
4. Support and encourage the Canadian Centre for Justice Statistics in its continued development of a national data base which will allow the tracking of wife assault, sexual assault and spousal homicide from the time of the initial report of the incident to police to its ultimate disposition.
5. Facilitate the equitable representation of women in the justice system with particular emphasis on women in decision-making and policy-making roles.

**PROPOSALS FOR ACTION BY ATTORNEYS GENERAL
TO PROMOTE GENDER EQUALITY IN
THE CANADIAN JUSTICE SYSTEM**

Federal/Provincial/Territorial
Working Group of Attorneys General Officials
on
Gender Equality in the Canadian Justice System

April 1992

The opinions expressed in this document are those of the individual members of the Working Group and are not to be taken as representative of the position of the Government of Canada, or any Province or Territory

FOREWORD

The proposals submitted for the consideration of Attorneys General have been organized into two groups:

° **Proposals for Immediate Action by Attorneys General**

These proposals fall within the mandate of the Attorneys General and are submitted by the Working Group as being appropriate for immediate action.

° **Proposals for Further Study, Elaboration or Referral by Attorneys General**

Proposals in this category are of several types:

- those that fall within the mandate of Attorneys General but require further study or elaboration;
- those that fall within areas of shared jurisdiction and thus require cooperation and collaboration of Attorneys General and other Ministers;
- those that fall within the mandate of government Ministers other than Attorneys General and should be referred for their consideration; and,
- those that fall outside the mandate of government and should be referred to appropriate organizations.

In all cases, the proposals have been suggested in light of the discussion of issues which appears in one or more of the background papers. These papers were, in turn, written in the knowledge that the areas of focus were neither discrete nor easily separable and moreover, that neither the six areas, nor the group's analysis of them, was exhaustive. The seeming duplication and overlap which is apparent in the papers, and possibly in the proposals, flows from the interconnectedness of the effects of gender bias in the justice system.

The proposals suggested by the Working Group to address gender bias in the justice system seek to respond to a complex set of inter-related factors. Taken singly, these proposals may seem inconsequential, however, taken as a whole, they represent an important step towards the elimination of gender based inequities in law and the administration of justice in Canada. All proposals put forward have the support of all working group members. Various other proposals were suggested by one or more members of the working group but did not receive unanimous support.

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ATTACHMENTS

Lake Louise Declaration on Violence Against Women

Building Blocks: Framework for a National Strategy on Violence Against Women

PART I - PROPOSALS FOR IMMEDIATE ACTION BY ATTORNEYS GENERAL

ACCESS TO JUSTICE FOR WOMEN

COURT STRUCTURE

It is proposed that Attorneys General:

- 1.1 When reviewing court structures and when proposing and implementing changes to court structures, ensure that the needs of women are met, that any existing or possible gender-based inequities or barriers are eliminated or avoided, and that systemic gender bias is not a product of the changes.
- 1.2 Ensure the reasonable availability of interpretive services for women who do not speak English or French or who have speech or hearing disabilities.

LANGUAGE OF THE LAW

Clear Language in Written Law and in Other Legal Documents

It is proposed that Attorneys General:

- 1.3 Direct that all new statutes and regulations within their jurisdictions be drafted in accordance with clear-language legislative drafting techniques.
- 1.4 Establish a plan, including target dates, under which all existing statutes and regulations within their jurisdictions will be reviewed and, as necessary, redrafted in accordance with clear-language legislative drafting techniques.
- 1.5 Ask the Uniform Law Conference of Canada to prepare a style manual of clear-language legislative drafting techniques, in both official languages:
 - (i) that will include guidance on such matters as the assessment of the needs of target audiences, the use of clear language and sentence structure, the organization and design of statutes and regulations for easier reading and understanding, the use of print size and style to facilitate reading and understanding, and the use of headings, tables of contents, indexes and explanatory guides, and

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- (ii) that can also serve as a guide for the preparation of other legal documents such as forms and contracts.

Gender in Written Law and in Other Legal Documents

It is proposed that Attorneys General:

- 1.6 Direct that all new statutes and regulations within their jurisdictions be drafted to explicitly include women when the statutes and regulations apply to both women and men.
- 1.7 Establish a plan, including target dates, under which all existing statutes and regulations within their jurisdictions will be reviewed and, as necessary, redrafted to explicitly include women when the statutes and regulations apply to both women and men.
- 1.8 Ask the Uniform Law Conference of Canada to prepare guidelines for the drafting, in both official languages, of statutes and regulations that explicitly include women when the statutes and regulations apply to both women and men.

PUBLIC LEGAL EDUCATION AND INFORMATION

It is proposed that Attorneys General:

- 1.9 Promote awareness of public legal education and information programs, and in particular those programs that enhance women's access to the justice system.
- 1.10 Promote improved distribution of public legal education and information materials across jurisdictions.

VICTIM/WITNESS SERVICES

It is proposed that Attorneys General:

- 1.11 Monitor the implementation of the victim impact statement provisions of the *Criminal Code* for their impact on the victim and the sentencing process.
- 1.12 Establish and maintain, or encourage the establishment and maintenance of victim/witness assistance programs in their jurisdictions, including programs which respond to the needs of women who are discriminated against on the basis of factors in addition to gender.

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- 1.13 Ensure that victims of crime are made aware of and provided assistance in accessing victim/witness assistance programs.

CRIMINAL INJURIES COMPENSATION

It is proposed that Attorneys General:

- 1.14 Undertake, or encourage the undertaking of a comprehensive review of criminal injuries compensation legislation and programs to determine if they are an effective method of providing compensation for criminal injuries, particularly those experienced by women, or whether other mechanisms would be more effective. In reviewing the criminal injuries compensation legislation and programs, particular attention should be paid to:
- (a) monitoring decisions under criminal injuries compensation legislation to determine if the treatment of women is consistent with principles of gender equality;
 - (b) identifying legislative provisions or practices that have the effect of limiting compensation for female victims of crime, including:
 - (i) provisions that limit the period of time within which applications for compensation may be made,
 - (ii) provisions that limit the type of harm covered, and
 - (iii) provisions that limit compensation on the basis that the offender may benefit,

with a view to ensuring that compensation is paid in appropriate cases.

NATIVE COURTWORKER PROGRAMS

It is proposed that Attorneys General

- 1.15 Cooperate in a fundamental review of native courtworker programs where they exist and ensure that this review addresses the following issues:
- the effectiveness of the current programs in meeting the needs of aboriginal women in conflict with the law?

- what access needs of Aboriginal women, such as the need for public legal education, support services for women victims and witnesses and support services for aboriginal women with respect to civil and family law matters, remain unmet within current native courtworker programs?
- what changes to current programs are required to meet these needs?

LEGAL AID

It is proposed that Attorneys General

1.16 Review and amend, as necessary, legal aid legislation, tariffs, policies and programs to ensure that

- criteria and processes for determination of entitlement and eligibility do not disadvantage women,

- variations in the way legal services are delivered and supported (legal aid clinics, private lawyers, contingency arrangements) do not operate so as to disadvantage women.

INTERVENOR STATUS

It is proposed that Attorneys General

1.17 Review the need for funding programs or other mechanisms to assist women in enforcing, through test case litigation, their equality rights, as guaranteed under all federal and provincial/territorial legislation including the *Canadian Charter of Rights and Freedoms*.

ALTERNATIVE DISPUTE RESOLUTION

It is proposed that Attorneys General

1.18 Review legislation and policies to ensure that participation in any alternative dispute resolution mechanism is voluntary.

JUSTICE SYSTEM RESPONSE TO VIOLENCE AGAINST WOMEN

NON SPECIFIC VIOLENCE

It is proposed that Attorneys General:

- 2.1 Acknowledge that negative portrayal of women in advertising and the popular media contribute to a culture that objectifies women and a society which condones at least some measure of violence against women.

PORNOGRAPHY

It is proposed that Attorneys General:

- 2.2 Accept the principle that there is a link between pornography and other forms of violence against women.
- 2.3 Examine whether other regulations/remedies exist outside the criminal law for the protection of women from the dissemination of pornography.

PROSTITUTION

It is proposed that Attorneys General:

- 2.4 Endorse a policy of equal application of the laws regulating solicitation against customers and vendors of sexual services.

JUSTICE SYSTEM RESPONSE TO WIFE ASSAULT¹ AND SEXUAL ASSAULT

Coordination

It is proposed that Attorneys General:

- 2.5 Endorse the Framework for a National Strategy on Violence Against Women adopted by F/P/T Ministers Responsible for the Status of Women at their June 1991 meeting and the Lake Louise Declaration (attached).

REDEFINING DISCRETION: POLICIES AND PROCEDURES

Crown Contact with Victim

It is proposed that Attorneys General:

- 2.6 Direct prosecutors in their preparation for wife assault or sexual assault cases which proceed to trial, to interview the victim in advance of the trial date, and wherever possible refer her to support services designed to assist her through the process.
- 2.7 Direct that where, in wife assault and sexual assault cases, the victim indicates a desire to withdraw the charge, prosecutors or their delegates, to the extent possible, should meet with the victim and advise her of support services which might assist her during the court process.
- 2.8 Direct prosecutors in wife assault cases to use the subpoena power to summons a victim/witness to court rather than relying on informal notification. [This helps protect the witness when under pressure to stop the prosecution through indicating that she has no choice since she is under subpoena.]
- 2.9 Direct that when considering whether to request issuance of a bench warrant or material witness warrant in wife assault cases, prosecutors should exercise caution given the risk of revictimizing the victim. [In general, greater support to the victim throughout the process should be used as a means to foster greater co-operation and willingness on the part of the victim to provide evidence.]

¹ Wife assault, for the purposes of this paper, is defined as physical assault or the threat of physical assault of women by men with whom they have, or have had an intimate relationship, whether or not they are legally married, or living together, or dating at the time of the assault or threat.

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- 2.10 Develop guidelines for prosecutors in sexual assault cases to identify relevancy, probity and prejudice issues which impact the privacy and security needs of victims and the integrity of the trial process; and to clarify the extent of Crown's obligation to disclose to defence counsel evidence violating such needs. This includes guidelines on obtaining publicity bans.
 - 2.11 Develop or promote the development of procedures to ensure victims of wife assault and sexual assault are informed of complaint options, and remedies other than criminal proceedings.
 - 2.12 To the extent possible, designate special resource prosecutors in Crown Counsel offices to assist and advise all prosecutors on the conduct and handling of wife and sexual assault cases. These resource Crowns should be given additional training on sexual and wife assault.

Judicial Interim Release

It is proposed that Attorneys General:

- 2.13 Direct prosecutors, when showing cause in wife assault cases why a defendant should not be released pending trial, to emphasize the dynamics of abuse, particularly the history of abuse.
- 2.14 Direct that in wife assault cases, prosecutors where appropriate be encouraged to seek non-contact orders as a condition of release on bail.

Sentencing

It is proposed that Attorneys General:

- 2.16 Direct that, in speaking to sentence in sexual and wife assault cases, prosecutors refer to the serious psychological and physical harm that victims can suffer in these cases and address any aggravating factors. Such factors could include a violation of a relationship of trust and, in the case of wife assault, a pattern of chronic abuse and the presence of children with attendant psychological damage to them.

Implementation of Wife Assault Policies

It is proposed that Attorneys General:

- 2.17 Review their wife assault policies to determine the extent to which they have been implemented, the extent to which they reflect current research in the area, and the impact of such policies on reporting patterns and charging practices.

JUSTICE-RELATED VICTIMS' SERVICES

It is proposed that Attorneys General:

- 2.18 Recognize victim support services for assaulted women as an essential part of the criminal justice system and direct that priority be assigned to the funding of victim support services.
- 2.19 Ensure that victim support services are designed to meet the needs of women who may be discriminated against on the basis of factors in addition to gender.

GENDER BIAS IN THE COURTS

JUDICIAL EDUCATION

It is proposed that Attorneys General:

- 3.1 Recommend to judicial education bodies that they continue to develop education programs designed to train the judiciary about gender bias and other equality issues in consultation with and with the direct involvement of those with expertise in and experience working for gender equality, and that such programs include education regarding issues relevant to women who experience discrimination on the basis of factors in addition to gender. The areas covered by such education programs should include:
- (a) sexual assault including the myths and stereotypes around sexual assault, the impact on the victim of testifying at trial and the impact of evidence about the victim's past sexual conduct on the trial process;
 - (b) wife assault including the battered women syndrome;
 - (c) the ways in which physical, sexual, emotional and economic abuse affects women's criminal behaviour;
 - (d) sentencing alternatives for women offenders;
 - (e) the potentially harmful effects of pornography and of negative portrayals of women in the media;
 - (f) the myths and stereotypes surrounding prostitution and the barriers prostitutes face in the justice system, including gaining access to the system;
 - (g) gender bias in substantive law, including family law, criminal law, tax law, evidence law and tort law;
 - (h) particular issues regarding biases against women witnesses;
 - (i) the impact of gender bias on women who work in the justice system.

EDUCATION OF ATTORNEY GENERAL EMPLOYEES

It is proposed that Attorneys General:

- 3.2 Ensure that all those who work for them in the justice system, including prosecutors and court officials, are sensitive to gender equality issues and the impact gender bias has in the system, particularly on women who are discriminated against on the basis of factors in addition to gender.
- 3.3 Require prosecutors to participate in education and training regarding gender equality issues that has been developed in consultation with and with the direct involvement of those with expertise in and experience working for gender equality. Arrangements and accommodations may be required to ensure that prosecutors are able to attend educational programs as part of their work duties. The education should cover the following areas, and should include education regarding issues relevant to women who experience discrimination on the basis of factors in addition to gender:
 - (a) sexual assault including the myths and stereotypes around sexual assault, the impact of testifying at trial on the victim and the impact of evidence about the victim's past sexual conduct on the trial process;
 - (b) wife assault including the battered women syndrome;
 - (c) the ways in which physical, sexual, emotional and economic abuse affects a woman victim's ability or willingness to cooperate with the prosecution, and how such abuse affects women's criminal behaviour;
 - (d) sentencing alternatives for women offenders;
 - (e) the potentially harmful effects of pornography and of negative portrayals of women in the media;
 - (f) the myths and stereotypes surrounding prostitution and barriers prostitutes face in the justice system;
 - (g) particular biases against women witnesses;
 - (h) understanding and treatment of the female witness who cannot or will not testify against an abuser.

APPOINTMENT OF JUDGES

- 3.4 Endorse the principle that the judiciary should be more representative of the population it serves.
- 3.5 Recommend the appointment of more women to the bench.
- 3.6 Commence a dialogue with the judiciary on methods of addressing barriers inherent in the judicial office which may discourage women from the pursuit of a career on the bench.

COMPLAINTS AND DISCIPLINE

- 3.7 In consultation with the judiciary, publish and distribute information on the process for lodging complaints against members of the judiciary.

JUSTICE SYSTEM RESPONSE TO WOMEN IN CONFLICT WITH THE LAW

GENERAL

It is proposed that Attorneys General:

- 4.1 Encourage the implementation of the recommendations from the federal Task Force on Federally Sentenced Women, "Creating Choices", 1990 (e.g. extensive staff training, effective correctional guidelines and programming, substantial staff support mechanisms, functional correctional facility design, location and structure and thoughtful staff selection and hiring process, all geared to the needs of women). Improved services should be extended to female offenders sentenced provincially, territorially as well as federally. Particular attention should be given to improving service delivery to women whose incarceration is for brief periods;
- 4.2 Through consultation with women's advocacy groups on an ongoing basis, ascertain and integrate the concerns and viewpoints of women into the process of sentencing and law reform.

INTER-AGENCY CO-ORDINATION AND COMMUNICATION

It is proposed that Attorneys General:

- 4.3 Develop a process which will ensure proper participation and consultation among the various governmental departments and agencies and those in the private sector which deliver programs and services to women in conflict with the law.

SUBSTANTIVE LAW BIAS AGAINST WOMEN

It is proposed that Attorneys General:

- 5.1 Review and amend, where within the Attorney General's mandate, or encourage ministers responsible to review and amend, human rights legislation from a gender equality perspective. The review should consider the adequacy of the present remedies for systemic discrimination or sexual harassment.
- 5.2 Review the current law, policy and legislation related to the mentally disabled, to identify and address gender equality issues including reproductive health issues. This review should include consideration of legislation or policies on the *parens patriae* role of Attorneys General in interventions on behalf of people with mental disabilities regarding reproductive issues.
- 5.3 Establish a process in consultation with the legal profession, the judiciary, and the community, review and report on options for legislative reform of the personal injuries action area with special regard to systemic gender discrimination issues such as differential treatment in the assessment of damages between male and female plaintiffs or involving deceased males and females, elimination of the action *per quod consortium amisit*, and new areas of personal injury action for women.
- 5.4 Direct the Federal/Provincial/Territorial Family Law Committee to review, consult with experts on family law and gender equality on and recommend to ministers any changes required, to reflect the A.G.'s commitment to gender equality in the following areas of law:
 - a) matrimonial property law
 - b) pension division reform
 - c) custody/access law
 - d) spousal support
 - e) child support
 - f) the rights of common law spouses
- 5.5 Direct the Federal/Provincial/Territorial Committee on Family Law to continue to monitor and consult with experts on family law and gender equality on developments in support/maintenance and custody/access and other enforcement issues and to report to ministers on progress and obstacles to effective enforcement and recommend any changes required, to reflect A.G.'s commitment to gender equality.
- 5.6 Direct the Co-ordinating Committee of Senior Officials (Criminal) to review, consult with experts on criminal law and gender equality and recommend to

ministers any changes required in the *Criminal Code* and criminal justice policies, to reflect Attorneys General commitment to gender equality, with respect to:

- Examine options to enhance or replace the peace bond process such as directing Crown involvement in obtaining peace bonds;
- The feasibility of coverage of intentional inflictions of mental or psychological harm as an offence;
- The appropriateness of a separate wife assault offence with an appropriately severe penalty;
- The appropriateness of making all domestic violence offenses, hybrid offenses;
- The adequacy of intimidation offenses (for example, should there be a new offence of persistently following a person with intent to intimidate);
- The appropriateness of offenses of neglecting to obtain assistance in child-birth, or soliciting;
- The practice, policy and possible defences for dealing with battered women and other victims of violence as witnesses under the contempt law;
- Whether the rules of evidence concerning the incompetence of the spouse as a witness should be abolished;
- The feasibility of treating as aggravating factors for offenses in the *Criminal Code* or through policy the following:
 - a) racism, sexism or other discriminatory factors; or
 - b) breach of trust relationship in sexual or physical assault cases.
- pornography law to:
 - a) Effectively combat the production, distribution, sale, broadcasting and possession of banned materials;
 - b) Determine whether the obscenity provisions of the *Criminal Code* should be separated from the pornography provisions as

the first deals with morals and the second with actual violence or degradation;

- c) Determine whether the reference to "undue exploitation" and the use of the community standard test should be eliminated from the *Criminal Code* as vague and subject to inconsistent interpretation;
 - d) Determine whether anti-pornography legislation and obscenity legislation should be separated in the *Criminal Code* rather than dealt with in the same provision as obscenity deals with morals and public decency while pornography deals with sexual subordination and degradation. This review should include looking at whether the legal sanctions for the activity should be different;
 - e) Determine whether pornography should be defined in legislation and should such definition include sexual violence, degradation, subordination and needless depiction of violence. Definition, however, must specify which distinctions should be made between sexually explicit material which subordinates women, sexually explicit material intended to stimulate or arouse but which is affectionate and consenting, and sexually explicit material intended for educational, scientific or artistic purposes;
 - f) Control the importation of goods, radio, television wave lengths and programming or any other means of marketing pornographic materials into Canada.
- Amendments to hate literature provisions of the *Criminal Code* to include gender as a protected characteristic;
 - Criminalizing the coercion of persons into prostitution and providing appropriately severe penalties;
 - Determining whether or not preliminary hearings as now constituted under the *Criminal Code*, could be eliminated in wife assault and sexual assault cases to alleviate concerns about double victimization of the complainant;
 - Considering how to address the issue of the "honest belief" defence in sexual assault cases.

WOMEN WORKING IN THE JUSTICE SYSTEM

WOMEN WORKING IN JUSTICE DEPARTMENTS

It is proposed that Attorneys General:

- 6.1 Facilitate the equitable representation of women in the justice system with particular emphasis on women in decision making and policy making roles.
- 6.2 Ensure that effective sexual harassment policies are in place, that employees are aware of such policies and that they are enforced.
- 6.3 Support and implement effective employment equity programs and establish the necessary systems to monitor and evaluate those programs in their departments to ensure that the programs are responding to the needs of the target groups, particularly women who are discriminated against on the basis of factors in addition to gender.

PART II - PROPOSALS FOR FURTHER STUDY, ELABORATION OR REFERRAL BY ATTORNEYS GENERAL

ACCESS TO JUSTICE FOR WOMEN

COURT STRUCTURE

- 1.19 Develop an action plan to ensure that courts and related facilities are accessible to women with disabilities, including mobility, hearing or vision impairments.
- 1.20 Continue to monitor unified family courts to determine their impact on women and their effectiveness in addressing women's concerns.
- 1.21 Continue to monitor innovative projects like the Family Violence Court in Winnipeg, Manitoba to determine their impact on women and the effectiveness of such projects.

PUBLIC LEGAL EDUCATION AND INFORMATION

- 1.22 Continue to fund or encourage the funding of public legal education and information programs to ensure that the concerns of women are dealt with by the programs.
- 1.23 Encourage the developers of public legal education and information programs to consult with women and women's groups to ensure that women's concerns are addressed.
- 1.24 Encourage the developers of public legal education and information programs to consult with groups with special needs in order that the programs will be more responsive to diverse cultural and language needs of women and more responsive to women with specific communication needs.
- 1.25 Encourage Ministers of Education to develop and promote a curriculum on the Law and the legal system which takes into account concerns of women, including those of women from diverse cultural backgrounds.

NATIVE COURTWORKER PROGRAMS

It is proposed that Attorneys General

- 1.26 Consider the need for and scope of programs to ensure that Aboriginal women receive equitable treatment before the courts.

FAMILY ORDERS AND AGREEMENTS ENFORCEMENT

It is proposed that Attorneys General

- 1.27 Continue to work on inter-jurisdictional and jurisdictional family support legislation and programs to make them more effective.

PROGRAMS TO INCREASE PARTICIPATION OF DISADVANTAGED GROUPS AS JUSTICE PROFESSIONALS

It is proposed that Attorneys General

- 1.28 Undertake or encourage a review of existing programs aimed at the enhancement of legal education opportunities to ensure that application and selection processes for such programs are free from bias and take into account the realities of the lives of women.

ALTERNATIVE DISPUTE RESOLUTION

It is proposed that Attorneys General

- 1.29 Explore and compare the experiences of women in adjudicative and alternative dispute resolution processes with regard to gender equality concerns.

JUSTICE SYSTEM RESPONSE TO VIOLENCE AGAINST WOMEN

NON-SPECIFIC VIOLENCE

- 2.20 Work with appropriate colleagues to develop and implement national standards to eliminate sex-role stereotyping in advertising, enabling each jurisdiction to enact these standards in appropriate legislation to ensure controls are in place. Consumer protection legislation, human rights laws, and/or legislation specifically dealing with advertising as well as the *Broadcasting Act* should be considered for review.

PROSTITUTION

- 2.21 Encourage discussions between appropriate agencies and community groups to determine the extent of abuse of prostitutes by law enforcement officials and barriers faced by prostitutes in gaining access to justice.

JUSTICE SYSTEM RESPONSE TO WIFE ASSAULT AND SEXUAL ASSAULT

Coordination

- 2.22 Support an inter-disciplinary, consultative approach involving police, corrections, other ministries and community groups to achieve a more effective and comprehensive justice system response to violence against women.
- 2.23 Encourage the establishment of local committees which include representatives from the justice system and the community to coordinate local activities and services related to wife assault and sexual assault.

CROWN CONTACT WITH VICTIM

- 2.24 Examine options to enhance or replace the peace bond process, such as directing Crown involvement in obtaining peace bonds. [See also Proposals under Substantive Law Bias Against Women.]
- 2.25 Support greater use by police of section 524 of the *Criminal Code* where an accused is released pending trial in a wife assault case. [Section 524 allows for arrest without warrant where reasonable grounds exist to believe an accused has breached or is about to breach a condition of release.]

SENTENCING

- 2.26 Support and encourage on-going research on sentencing patterns in wife and sexual assault cases across the country and assess the need for sentencing guidelines.
- 2.27 Support and encourage research on community based or other treatment programs, for sexual and wife assault offenders in coordination with other relevant departments. Such research should explore the following issues:
- positive and negative effects on the victim of offender treatment;
 - effectiveness of treatment for the offender;
 - treatment as an aspect of sentencing;
 - particular treatment needs of different cultural groups.

RECORD KEEPING AND RESEARCH

It is proposed that Attorneys General:

- 2.28 Support and encourage the Canadian Centre for Justice Statistics in its continued development of a national database that will allow the tracking of wife assault, sexual assault and spousal homicide cases from the time of initial report to police to ultimate disposition.
- 2.29 Develop appropriate methods to gather information on wife assault and sexual assault cases including: Crown recommendations regarding bail, reasons for not proceeding to trial, any record of plea discussions, contact with victim by Crown prior to trial, referrals made to victim support services and crown recommendations regarding sentence.
- 2.30 Recommend the general social survey conducted by Statistics Canada include questions designed to assess the level of patterns of dating violence.

JUSTICE RELATED VICTIMS' SERVICES

- 2.31 In conjunction with other ministers responsible for victims' services, support the evaluation of existing justice-related victim support services for victims of sexual and wife assault.

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- 2.32 Support the development of public education initiatives to deliver the message that wife assault and sexual assault are serious crimes. This should be done in close consultation with the community in order to meet the needs of the diversity of women who are vulnerable to these crimes.

GENDER BIAS IN THE COURTS

JUDICIAL EDUCATION

- 3.8 Urge judicial councils or other bodies responsible for judicial education to promote gender equality training for all federal, provincial and territorial judges, on a periodic and ongoing basis.

LEGAL EDUCATION FOR LAW STUDENTS

It is proposed that Attorneys General:

- 3.9 Encourage law faculties in their respective jurisdictions to ensure that:
- (a) all women have equal access to the study of law and to consider measures including affirmative action, part time study programs, child care, bursaries and scholarships to achieve equal access;
 - (b) courses are offered which are designed to educate students about gender equality issues and to explore the desirability of making such courses mandatory;
 - (c) all courses at the law faculty are free of gender bias and the curriculum as a whole encompasses the perspectives and experiences of women.

EDUCATING POLICE AND CORRECTIONAL STAFF

It is proposed that Attorneys General:

- 3.10 Urge Solicitors General and other appropriate ministers to ensure that police and correctional staff participate in education and training regarding gender equality issues which have been developed in consultation with and with the direct involvement of those with expertise in and experience working for gender equality. The education should cover the following areas, and should include education regarding issues relevant to women who experience discrimination on the basis of factors in addition to gender:
- (a) sexual assault including the myths and stereotypes around sexual assault, the impact of testifying at trial on the victim and the impact of evidence about the victim's past sexual conduct on the trial process;

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- (b) wife assault including the battered women syndrome and the culpability of abused women in homicide cases;
 - (c) the ways in which physical, sexual, emotional and economic abuse affects a woman victim's ability or willingness to cooperate with the prosecution, and how such abuse affects women's criminal behaviour;
 - (d) sentencing alternatives for women offenders;
 - (e) the potentially harmful effects of pornography and of negative portrayals of women in the media;
 - (f) the myths and stereotypes surrounding prostitution and the barriers prostitutes face in the justice system;
 - (g) particular biases against women witnesses;
 - (h) understanding and treatment of the female witness who cannot or will not testify against an abuser.

EDUCATING LAWYERS

It is proposed that Attorneys General:

- 3.11 Encourage external organizations such as law faculties, centres for continuing legal education and professional associations to develop and deliver programs for lawyers to foster sensitivity to gender equality issues and explore the desirability of making such programs mandatory.

METHODOLOGY

It is proposed that Attorneys General:

- 3.12 Encourage research on appropriate education and training methodologies for all training programs referred to in these proposals.

APPOINTMENT AND DISCIPLINE OF JUDGES

It is proposed that Attorneys General:

Appointment

- 3.13 Identify and implement strategies for achieving a fully representative judiciary.
- 3.14 Develop recruitment strategies, for example utilizing advertisement and communication with organizations, to encourage a larger, more representative pool of female applicants for positions on the bench.
- 3.15 Review selection processes and structures to determine whether they contain systemic barriers to the appointment of women, and develop and publish selection criteria for judicial appointees which are free from gender bias and other forms of systemic discrimination.

Judicial Selection and Appointment Committees

- 3.16 Increase representation of women on committees considering candidates for judicial appointments with the goal of achieving equitable representation.
- 3.17 Encourage provision of training on gender equality issues for members on all committees considering candidates for judicial appointments.

Complaints and Discipline

- 3.18 Discuss with the judiciary and other appropriate bodies the need for further study into the accessibility and adequacy of the complaint and disciplinary process, particularly with regard to complaints involving gender bias issues, including study into the following areas:
 - i) the method of lodging complaints;
 - ii) the authority of chief justices and judges in deciding matters of discipline;
 - iii) the process for determining whether complaints should be pursued through formal disciplinary proceedings;
 - iv) the legislation defining behaviour or conduct which constitutes grounds for disciplinary sanction and its interpretation by courts and boards of inquiry;
 - v) forms of sanction, short of removal, which could be imposed on judges by or on the recommendation of a disciplinary body;
 - vi) the issuance of an annual report by the judicial council; and

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- vii) the extent of information which should be available to the public on complaints and disciplinary proceedings, including the issue of whether "inquiries" into the conduct of judges should be public or private.

- 3.19 Encourage a dialogue within the judiciary on the issue of gender bias which may be experienced by women judges.

Discipline Committees

- 3.20 Promote increased participation by women who are legal professionals and women as laypersons on judicial councils dealing with disciplinary matters so that such committees become more representative of the society they serve.

General

- 3.21 In consultation with the judiciary, review the following areas in relation to the attainment of gender equality:
 - i) the potential for establishing a judicial evaluation process;
 - ii) the progress being made in the establishment and use of judicial codes of ethics; and
 - iii) the possibility of setting up committees or other mechanisms designed to promote communication of community concerns to judicial councils.

JUSTICE SYSTEM RESPONSE TO WOMEN IN CONFLICT WITH THE LAW

GENERAL

- 4.4 Encourage Solicitors General to undertake a review in consultation with all appropriate groups, including Aboriginal, disabled, visible minorities, and offender advocacy groups, in order to improve services for women who come in conflict with the law, both in and out of correctional facilities. Particular focus is necessary to help women deal with backgrounds of violence, child sexual abuse, drug and alcohol addiction and cultural alienation. The following specific actions are recommended:
- a) Ensuring that correctional staff, including probation and parole officers, exercise gender and culturally sensitive skills in case management, referral and advocacy;
 - b) Consulting with women's advocacy groups on an ongoing basis, in order to ascertain and integrate the concerns and viewpoints of women into corrections policies.
- 4.5 Encourage Solicitors General or other appropriate ministers to adopt guidelines to ensure that sentence reports take into account the life situation and history of female offenders, particularly the role of violence and abuse in their lives, so as to assist the court in formulating appropriate rehabilitative options for the offender.

ABORIGINAL WOMEN

It is proposed that Attorneys General:

- 4.6 Encourage Solicitors General to develop and implement specific programs and facilities such as healing lodges to address the needs of Aboriginal women offenders in conjunction with the general initiatives being undertaken on Aboriginal justice; these programs and healing lodges should be designed and operated in consultation with Aboriginal women.

MENTALLY DISORDERED OFFENDERS

It is proposed that Attorneys General:

- 4.7 In cooperation with appropriate ministers, research and take remedial action in relation to women remanded for psychiatric evaluation, found not guilty by reason of mental disorder, women who are initially judged unfit to stand trial who are never subsequently tried, convicted female offenders who require psychiatric care to determine their needs and whether the response to diagnosis and treatment of them by police, corrections and medical personnel and the training of staff dealing with female forensic patients, is appropriate.

YOUNG OFFENDERS

It is proposed that Attorneys General:

- 4.8 Encourage ministers responsible to design and take steps to implement innovative programs to address the sentencing, treatment and rehabilitation needs of female young offenders.
- 4.9 Encourage ministers responsible to research possible sentencing and conviction discrepancies between male and female young offenders and research the causes of female young offending.

"FEMALE" CRIMES

It is proposed that Attorneys General:

- 4.10 In co-operation with relevant ministers, encourage greater public awareness of the influence of physical, sexual, emotional and economic abuse on women in conflict with the law.

HOMICIDE AND THE BATTERED WOMAN SYNDROME

It is proposed that Attorneys General:

- 4.11 In cooperation with relevant ministers, conduct research on the sentencing, incarceration and "rehabilitation" of women convicted of offenses after killing their abusers.

4.12 Encourage appropriate ministers to provide effective counselling for:

- a) female offenders who have been abused; and
- b) female offenders in order to prevent the incidence of self mutilation and suicide among women in prisons.

DRUG RELATED OFFENSES

It is proposed that Attorneys General encourage appropriate ministers to:

- 4.13 Support research into the causes and patterns of women's involvement in alcohol and drug related crimes and their involvement with alcohol and other substance abuse.
- 4.14 Provide appropriate counselling and assistance programs for female offenders involved in alcohol and other substance abuse.

PROSTITUTION

It is proposed that Attorneys General in cooperation with Solicitors General and other appropriate ministers:

- 4.15 Continue to develop and support community-based, integrated and holistic programs to serve those women and girls involved in prostitution and street soliciting who need assistance.

SEXUAL ABUSE AND CRIME

It is proposed that Attorneys General in cooperation with Solicitors General and other appropriate ministers:

- 4.16 Recognizing the prevalence of a history of child sexual abuse among women in conflict with the law, provide counselling and assistance for the victims of abuse.

PROPERTY CRIMES

It is proposed that Attorneys General encourage appropriate ministers to:

- 4.17 Support programs in cooperation with the private sector or otherwise to assist women who have been involved in property crime and prevent or reduce the causes and incidence of property crime among them.

SENTENCING

It is proposed that Attorneys General in co-operation with Solicitors General:

- 4.18 Develop community-based programming alternatives to incarceration such as mediation, pre and post charge diversion and fine option programs for women who shoplift, commit fraud or become involved in property and other crimes.
- 4.19 Ensure that community service and fine option programs are accessible to women with children.

CRIME PREVENTION PROGRAMS FOR WOMEN

It is proposed that Attorneys General support and recommend to other appropriate ministers:

- 4.20 The development of crime prevention programs, with the private sector where appropriate, to prevent women's increasing involvement in crime.
- 4.21 Undertake special initiatives for crime prevention programs for and by Aboriginal women in harmony with the wider initiatives undertaken on Aboriginal justice generally.

SUBSTANTIVE LAW BIAS AGAINST WOMEN

- 5.7 Undertake research or support and encourage research through Law Foundations, Law Schools, Law Societies, Law Reform Commissions or other organizations, by persons with appropriate expertise in gender equality issues, to review the common and statute law of evidence for compliance with principles of gender equality.
- 5.8 Offer to assist appropriate ministers to address the gender equality Charter implications of the following issues:
- The lack of legislative support for working conditions to assist women cope with their dual role in society, i.e., job-sharing, flex-time, parental leave policies;
 - Limited availability of pay equity legislation;
 - The limited protection women have under existing pension regimes.
- 5.9 Offer to assist ministers responsible for taxation to address gender equality Charter implications of the following issues:
- The inconsistencies and disadvantages noted in the treatment of women depending on their characterization as individuals, or members of marital or common-law units under income tax legislation;
 - The limited recognition of child care and other work related expenses for women employed outside the home or pursuing education;
 - The rationale behind the tax treatment of support payments, including limited deductions for legal costs to obtain payments and different treatment of lump sum payments;
 - The differential impact of de-indexation, the federal surtax and reduced tax credits on women;
 - The differential impact of universal sales taxes on women, including the adequacy of current rebate programs.
- 5.10 Following the report of the Royal Commission on New Reproductive Technology, scheduled to report in October 1992, review the need for the development of policies on reproductive technology, including amendments to the *Uniform Child Status Act*, to reflect their commitment to gender equality.

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- 5.11 Establish a process to monitor and to support initiation of litigation designed to achieve gender equality, including the development of rules and practices to ensure representation of gender equality interests by intervenors; or, where the state is involved in litigation, in the positions advanced by the Crown.
- 5.12 Establish a process to review and monitor legislation in each jurisdiction to identify and to eliminate formal and systemic gender discrimination problems, i.e. limitation of actions or crimes compensation legislation limitations.

WOMEN WORKING IN THE JUSTICE SYSTEM

WOMEN IN PRIVATE PRACTICE

It is proposed that Attorneys General:

- 6.4 Encourage the Canadian Bar Association and provincial and territorial law societies in undertaking analyses and assessment of women in the profession and in the establishment of committees to deal with issues facing women as members of the legal profession.
- 6.5 Encourage the Canadian Bar Association and provincial and territorial law societies to promote employment equity guidelines for women in private practice.
- 6.6 Encourage the Canadian Bar Association and provincial and territorial law societies to ensure that effective sexual harassment policies for women in private practice are in place, publicized and enforced.

WOMEN IN FACULTIES OF LAW

It is proposed that Attorneys General:

- 6.7 Encourage faculties in their respective jurisdictions to ensure proportional representation of women on law faculties and to ensure that representation is a reflection of the diversity of the community.
- 6.8 Encourage law faculties in their respective jurisdictions to ensure that all women have equal access to the study of law and to consider measures including affirmative action, part-time study programs, child care, bursaries and scholarships to achieve equal access.
- 6.9 Encourage law faculties to maintain effective sexual harassment policies and ensure that they are publicized and enforced.
- 6.10 Encourage hiring, promotion and admission committees to review and redefine merit criteria so that they are free of systemic gender bias or other discriminatory content, particularly regarding women who are discriminated against on the basis of factors in addition to gender.

IN JUSTICE DEPARTMENTS

- 6.11 Ensure that programs intended to equalize representation of women at all levels of the justice system offer appropriate opportunities for women who are discriminated against on the basis of factors in addition to gender.
- 6.12 Continue to take steps to ensure that compensation and benefits in their departments do not reflect systemic gender bias.
- 6.13 Take an innovative and flexible approach to help employees balance work family responsibilities such as job sharing, work at home, modified work hours, and child care.

ATTACHMENTS

LAKE LOUISE DECLARATION ON VIOLENCE AGAINST WOMEN

BY FEDERAL/PROVINCIAL/TERRITORIAL
MINISTERS RESPONSIBLE FOR
THE STATUS OF WOMEN

We, the Ministers Responsible for the Status of Women in Canada, are committed to achieving full equality for women in all aspects of life. As Canadians, we value the inherent worth and dignity of every individual and we expect all persons to treat one another with respect. Since violence and its threat are depriving many women of their ability to achieve equality, we declare that:

1. Violence against women is a crime and punishable under the law.
2. Women are entitled to live in a safe environment.
3. Offenders must be held accountable for their behavior.
4. The elimination of violence against women requires a response including prevention, public education, services and enforcement of the law.
5. Every individual, community and government in Canada must do everything possible to help the women, children and families affected by violence; we must all work together to achieve a society free from violence.

May 31, 1990
Lake Louise, Alberta



Status of Women
Canada

Condition féminine
Canada

Canada

BUILDING BLOCKS

Framework for a National Strategy on Violence Against Women

**Adopted by
Federal/Provincial/Territorial
Ministers Responsible for the
Status of Women at their
Tenth Annual Conference
St. John's, Newfoundland**

June 1991

BUILDING BLOCKS:
FRAMEWORK FOR A NATIONAL STRATEGY
ON
VIOLENCE AGAINST WOMEN

1.0 INTRODUCTION

Violence and the threat of violence continue to deprive many women of their ability to achieve full equality in Canadian society.

In May 1990 at Lake Louise, Alberta, federal, provincial and territorial Ministers Responsible for the Status of Women issued a declaration on violence against women which recognizes that:

- Violence against women is a crime and punishable under the law.
- Women are entitled to live in a safe environment.
- Offenders must be held accountable for their behaviour.
- The elimination of violence against women requires a response including prevention, public education, services and enforcement of the law.
- Every individual, community and government in Canada must do everything possible to help the women, children and families affected by violence; we must all work together to achieve a society free from violence.

The Ministers agreed to develop and promote strategies to eliminate this violence within their jurisdictions, with a particular focus on education and prevention. The development of such a strategy is predicated on strong partnerships between governments and the community at large.

Through discussion among federal, provincial and territorial representatives, the following plan of action was developed.

2.0 VIOLENCE AGAINST WOMEN

2.1 The Nature and Extent of the Problem

Violence against women is an issue in the headlines every day. It takes a variety of forms including physical assault, sexual assault, psychological abuse and emotional abuse. Perpetrators of this violence can be known to the woman - her husband, friend, acquaintance, brother, uncle, employer - or can be a total stranger. Women are murdered by their husbands or male partners; assaulted by strangers in the street; sexually harassed by their employers or therapists; and disappear from their homes day after day.

Violence against women in Canadian society exists on a continuum which includes sexist jokes, pornography, sexual harassment, wife assault, sexual assault and murder.

It is generally recognized that women's experience of violence is not well captured by existing research. However, the following statistics and research do provide us with some sense of the magnitude of the problem.

- At least one in eight Canadian women is assaulted by her husband or live-in male partner.¹
- One in four women will be sexually assaulted by a man at some point in her life.²
- A recent Gallup Poll indicated that 50 per cent of Canadian women are afraid to go out after dark in their own neighbourhoods.³
- One study indicates that over 50 per cent of Young Offenders charged with crimes against people had been exposed to domestic violence as children.⁴
- A recent study by the Ontario Native Women's Association reported that 80 per cent of Aboriginal women surveyed had been abused or assaulted.⁵
- Research studies indicate that between 68.5 per cent and 83 per cent of sexual assault victims know their abusers.⁶
- One U.S. study found that half of sexual assaults occur to women under age 17.⁷
- Approximately 60 per cent of all rapes take place in private homes.⁸

These figures provide only a snapshot of the extent and nature of the violence women face in our society.

2.2 The Impact of Violence on Women's Equality

The ability of women to achieve social, economic, legal and personal equality is seriously inhibited by the presence of widespread violence against women in Canadian society. It is not merely the incidence of violence against women which limits women's lives, but the fear of violence which affects their daily existence.

This violence affects every aspect of women's lives. How women dress, where they go, with whom they associate, their mode of transportation, are all governed by fear and precaution. Women normalize these precautionary measures to the point that they generally do not recognize the limitations and view them as nothing more than common sense.

Violence against women exacts high human costs in terms of the physical and mental health of women and children. For women, it often results in serious physical injuries, psychological and emotional trauma and death.

- One study in 1981 found that 61 per cent of women surveyed who were assaulted by their husbands were injured in the attack.⁹
- Victims of sexual assault are physically hurt in at least 60 per cent of cases.¹⁰
- Assaulted women also report a higher level of anxiety, somatic complaints and depression than women who are not assaulted.¹¹
- One in five sexual assault victims attempt suicide.¹²
- In another study on suicide, of 225 suicide attempts, 83 per cent were made by abused women.¹³
- Compared to women who have not been abused as adults, 40 per cent more of battered women report use of drugs to sleep and 74 per cent more of battered women report use of drugs to relieve anxiety.¹⁴

Children who witness the assault of their mothers also suffer the consequences. They are at risk of being assaulted themselves, of developing adjustment problems during childhood and adolescence and of adopting and perpetrating this violent behaviour.

- In a recent Toronto study, children were present during 50.4 per cent of wife assault incidents. In 12.3 per cent of these incidents, the children were also physically assaulted.¹⁵
- Children exposed to wife assault have a level of adjustment problems comparable to that of children who are physically abused themselves.¹⁶
- Serious behaviour problems are 17 times higher for boys and 10 times higher for girls who have witnessed battering.¹⁷

Societal acceptance or tolerance of violence against women heightens its impact and insidiousness. Women too often continue to be held responsible for the violence perpetrated against them and as a result are often reluctant to seek assistance.

Further, women from doubly disadvantaged groups, such as low-income women, Aboriginal women, women who speak neither English nor French, immigrant women and women with disabilities have largely been overlooked in the development of services and programs to address the needs of women who have experienced violence in their lives.

Women who have been denied their basic right to security of the person, cannot participate equally in Canadian society.

3.0 THE ELIMINATION OF VIOLENCE AGAINST WOMEN

The elimination of violence against women in Canadian society requires a co-ordinated, multi-faceted approach in order to deal with the attitudes towards violence and the causes and consequences of this violence.

While enhanced criminalization of these acts both deters offenders and sends the message to society that such violence will not be sanctioned, a single focus on enforcement ignores the fact that acts of violence against women remain largely unreported and this offers little support to women in their attempts to deal with the immediate and long-term effects of this violence on their lives.

Thus, an approach based on criminalization needs to be buttressed with the provision of support services to assist women and a broad public education thrust to effect the changes in public attitudes needed to sustain longer term benefits. Effective and appropriate programs for offenders are an important component in the effort to end violence against women.

Aboriginal and certain other communities draw attention to the fact that abusers themselves have often been abused and will continue to abuse until the healing process has begun.

The comprehensive approach articulated below includes initiatives dealing with prevention, law enforcement, services to victims and coordination. It is an approach that must be collaborative, where individuals, communities and governments must work together. Violence against women is everybody's concern and the commitment to eliminate it must come from all sectors of society.

This approach would be based on an evaluation model which, as well as outlining the problem, would identify the causes and factors which contribute to violence against women and would include activities chosen because of the cause-effect relationship between the objective, the activity and the expected results.

3.1 Prevention

Violence against women occurs every day in Canada. Research indicates that the number of women who can expect to experience violence is staggering. Stopping the violence **before** it starts must be a priority in a strategy to free women from violence. One key component of such an effort is public education.

Longstanding public attitudes have viewed violence against women as socially acceptable and less "serious" than other crimes. The victim is often blamed for the violence and excuses are found for the behaviour of the perpetrator. These attitudes both cause and perpetuate further violence.

Public education efforts, including broadly-based mass media campaigns, professional education and the education of children throughout the kindergarten to Grade 12 stream, are required to change negative attitudes and increase awareness of violence against women.

Prevention through public education may be achieved by supporting a range of programs and services including the following:

Schools, Colleges and Universities

- introducing or enhancing school curricula to: foster positive gender roles; teach children non-violent conflict resolution; and provide positive and healthy gender role models.

- assisting colleges and universities in curriculum development on the issues of violence against women to: break down negative stereotypes of women; encourage a greater sensitivity among those training for the human services professions; and foster academic research on the issue.
- adopting comprehensive sexual harassment policies and complaint procedures (see "Public Safety Practices", page 7 for related campus initiatives).

Research

- encouraging research and evaluation in such areas as the nature and incidence of violence against women and the effectiveness of policies, programs and intervention strategies.
- promoting opportunities for information dissemination and support efforts at database development and information collection on the issue of violence against women.
- examining further the links between violence against women and a number of health or social problems experienced by women such as substance abuse, eating disorders, depression.

Broadly-based Public Education

- establishing public education initiatives to foster a clearer understanding of the issue of violence against women. Effective programs might include the production of educational materials, pamphlets, posters, billboards and the use of mass media.
- encouraging and supporting the involvement and commitment of local communities in public education efforts.
- seeking to promote the positive portrayal of women in the media.
- promoting a better understanding of the negative effects of pornography on women in society.
- promoting research efforts aimed at determining public knowledge, awareness, attitudes and behaviours as well as the evaluation of the effectiveness of public education activities.
- seeking to involve a wide range of communities in the development and delivery of public education activities.

Professional Education

- promoting a better understanding of violence against women through training and/or sensitization of those whose responsibilities bring them in contact with women victims. This would include a broad range of service providers in the health, justice, education, social services systems and in a wide range of community-based services. It would also be important to ensure that healers and helpers be given the opportunity to heal themselves when there is need to do so.
- involving a wide range of communities including professional associations, labour and business groups in developing solutions.

Public Safety Practices

- The prevention of public acts of violence requires a variety of approaches and includes such areas as: design/planning, local community participation in crime prevention, public transportation and policing. Examples are:
 - assisting colleges and universities to develop safe and secure campuses for women through initiatives in such areas as design/planning, campus/community participation in crime prevention, public transportation and campus security;
 - undertaking initiatives such as demonstration projects by municipalities and safe city design and reviews of urban planning processes, to provide safe and secure communities for all women to live in.

3.2 Enforcement

Violence against women - including wife assault and sexual assault - is a crime and punishable under the law. Research has demonstrated the effectiveness of using criminal justice intervention in deterring offenders from future violent acts.

- The majority of women who have gone to court report a reduction or termination of violence after court.¹⁸
- Further, when the police rather than the victim lay charges, the probability of new incidents of violence is reduced by half.¹⁹

Enforcement of the criminal nature of violence against women also serves an important public education function. It sends the message to perpetrators and the general public that these incidents are punishable crimes that cannot and will not be tolerated by society.

However, in the past, the justice system's response to crimes of violence against women has been problematic. Traditionally, the justice system's response to sexual assault has been predicated on the erroneous belief that women fabricate stories of sexual assault, which leads to the prosecution of innocent men. Further, wife assault has generally been treated as a family matter between a husband and wife, not as the criminal offence it is. Too, in most cases, women are blamed for the violence they experience; they are viewed as being in some way responsible for the assault against them. Finally, the response of the criminal justice system has often created secondary victimization of women victims.

Improving the capacity of the criminal justice system to investigate and successfully prosecute cases of sexual assault and wife assault and to provide effective correctional programs for offenders may be achieved by supporting such enforcement initiatives as the following:

Police Charging Policies

- in accordance with their jurisdictional responsibilities, establishing, enforcing and monitoring charging policies which require police or other authorities to lay charges in all cases of wife assault where reasonable and probable grounds exist to believe an offence has been committed.
- undertaking a similar enhanced enforcement approach in cases of sexual assault with a particular focus on providing an appropriate and sensitive response to women in all cases of sexual assault, including those where the perpetrator is known to the victim.

Training

- providing training programs for justice professionals including police, Crown Attorneys and correctional staff on the issue of violence against women in order to sensitize them to the unique difficulties involved in handling these cases.
- encouraging the Canadian Judicial Education Centre and comparable provincial bodies responsible for judicial education to include information sessions on violence against women.

Assistance to Victims

- undertaking a review of policing, court and correctional policies and procedures to determine their responsiveness to the needs of victims for support, protection, information and input into the justice system.
- promoting and supporting the establishment of programs designed to provide support services and information to victims/witnesses of wife assault and sexual assault to help them with the special difficulties and pressures they face in the criminal justice system.

Male Offender Programs

- encouraging the development of effective programs for abusive men and sex offenders in communities and/or institutions with the goals of making men accountable for their behaviour and stopping their violence against women.

Research

- encouraging research, data collection and evaluation of these justice initiatives in order to ensure that the justice system is responding appropriately and effectively in cases involving violence against women (including cases of wife assault and sexual assault).

3.3 Services

The provision of adequate support services for assaulted women and their children is necessary to help women to deal successfully with both the immediate crisis and the longer term impact created by the violence perpetrated against them.

With respect to service delivery, it is also important to recognize the diversity across Canada in relation to social, cultural, economic and demographic environments. Disability, language, culture, and geography must not become barriers to service and therefore add unnecessarily to the burden of violence. Consequently, services must be developed in a manner appropriate to the needs of women who speak neither English nor French, Aboriginal women, racial minority and immigrant/refugee women, women with disabilities, older women, low-income women and women in rural and/or remote communities.

Efforts integral to the provision of effective support to victims include the following:

Emergency and Crisis Services

- providing support to Sexual Assault Care Centres and Rape Crisis Centres to assist women in dealing with the immediate effects of a sexual assault including health care needs and crisis counselling.
- supporting shelters designed to provide emergency accommodation and crisis services for battered women and their children.
- ensuring a responsive service on the part of health care providers such as physicians, community health workers, etc.

Support and Training of Staff and Volunteers

- promoting the training of health, education and social services professionals in the issue of violence against women to increase their sensitivity to and understanding of the effects of violence (both wife assault and sexual assault) in women's lives and the lives of their children.
- recognizing that boards of directors of shelters, rape crisis centres/sexual assault centres and other women's crisis services need support to carry out their responsibilities.

Community Counselling Services

- supporting counselling programs in a variety of community settings for clients who identify a history of sexual assault or wife assault.

Housing Initiatives

- encouraging the development of housing initiatives, including the construction of affordable housing and second stage housing, to provide housing options to assaulted women and their children who have left their abusive partners.

3.4 Coordination

The value of coordination within and among the federal, provincial, territorial and local levels in the implementation of initiatives to eliminate violence against women cannot be underestimated. The exchange of information facilitated by multi-level coordination allows for the most efficient and effective use of limited resources in dealing with this complex problem.

Women who have been victimized may have social or health problems or specific housing, vocational or other needs which must be addressed in order to become self-supporting. This requires the participation of a range of community-based services in a coordinated service delivery process.

Professionals, volunteers, community-based groups, government agencies, non-governmental organizations, labour and the corporate sector working together would ensure a concerted and integrated effort.

Examples of coordination include the following:

- encouraging local communities to organize and coordinate local activities and services related to violence against women. Community activities would include liaison with governments, needs identification, program evaluation, analysis of trends, the identification of service gaps, information and resource sharing and public education;
- establishing committees composed of relevant government departments, ministries and/or agencies, to undertake the coordination of policy programs and services related to violence against women within their respective jurisdictions. Activities could include policy development, program development, public education, research and evaluation and information sharing;
- establishing and participating in regular federal, provincial, territorial meetings on the issue of violence against women for the purposes of information-sharing and issue identification.

4.0 CONCLUSION

The human and financial consequences of violence against women are enormous. The long-term impact on women, on society in general and on the economy, of not responding to the needs of female victims of violence - and to their children - can no longer be borne.

Public awareness of the reality of violence against women has been heightened following such stark events as the massacre of 14 women in Montreal and the recent disappearances and murders of women across the country. Women's consciousness of the threat of violence in their everyday lives has also been heightened.

The framework presented here for a National Strategy on Violence Against Women provides for a coordinated approach to this issue. The adoption of this framework will reinforce the federal, provincial and territorial governments' concrete commitment to gender equality by assuring security of the person for women.

The framework for action is a crucial component to the overall effort aimed at eliminating violence against women in Canadian society. If adopted, the measures outlined here will begin to break down a significant barrier to the achievement of equality by the women of Canada.

ENDNOTES

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