

Access to Justice and Family Law: A Federal Election Issue

The Facts about the Crisis:

- Fact #1:** Family law issues involve disputes about spousal support, child custody and property division - all issues that have a huge impact on women's equality, safety and families.
- Fact #2:** 5-10% of all family disputes end up in the court system. Of these contested disputes, the majority are identified as being "high conflict" relationships, which can be identified primarily as those involving male violence against women and children. Between 30-60% of all family law cases involve an overlap of family violence and child abuse.
- Fact #3:** 82% of women using the B.C. Supreme Court Self Help Information Centre are seeking help in family law matters. 60% of everyone using the centre do so because they cannot afford a lawyer.
- Fact #4:** Family law is the most frequently cited area of law which self-representing litigants seek assistance. One free legal service provider commented that "family is 70% of our clinic work." In Vancouver the estimate is that 80% of the volume of self-representing litigants at the Supreme Court are in the family law area.
- Fact #5:** Particular communities in BC face "enormous barriers - owing to culture, language, education, poverty or disabilities - in trying to represent themselves at any level of court." As one immigrant and refugee serving advocate has commented: "My clients would not dream of representing themselves. They don't have a basic understanding of our laws and don't know how the court system works. And language is always an issue."

"After I became self-represented I had to draft my own court documents such as the Notices of Motion and Notices of Hearing. I had to do my own research and present my own evidence in the court...Dealing with this case became like a part time job for me because it was taking up so much of my time...This has meant keeping very late hours in order to ensure that my children do not have to deal with what is going on...I lost a job working at a restaurant because I didn't have the time to do both the job and prepare for court appearances." *West Coast LEAF Affidavit Campaign Affiant #17*

Chief Justice of the Supreme Court of Canada, Beverley McLachlin has referred to this reality as an "epidemic of lack of representation" in the courts. The Chief Justice has also referred to access to justice being a "basic right" for Canadians.

Fact #6: Women experiencing domestic violence have indicated that the most useful assistance and support they have utilized in accessing the legal system is the advocacy of domestic violence workers.

Fact #7: Women are less likely to be eligible for the legal aid services they need because it is easier to access criminal legal aid than family legal aid and women simply do not need criminal law legal aid as much as men do (only 20% of those receiving criminal law legal aid are women; more than 65% of those needing family law are women).

- Fact #8:** Without adequate legal representation, women are losing custody of their children, giving up valid legal rights to support, and being victimized by litigation harassment. This is not the result of simple private disputes, but of clear policy choices by the federal and provincial governments.
- Fact #9:** The lack of access to justice has raised many concerns about the state of women's equality in B.C. *Even the United Nations has agreed that the actions of the provincial government may have undermined women's equality and breached Canada's international treaty obligations.*
- Fact #10:** In 1994 the federal government changed the Social Transfer Tax system to provincial governments giving provincial governments control over dollars provided for civil legal aid. The federal government no longer has a way to fulfill its obligations under international, constitutional and the rule of law to provide access to justice to Canadians.

ASK THOSE RUNNING FOR ELECTION:

- 1. What concrete actions will you take to stop the crisis of women representing themselves in important family law court cases?**
- 2. What steps will you take to fight for fully funded family law legal aid that provides accessible and consistent provision of legal aid services to those in need of legal representation in family law matters?**
- 3. How will your party ensure that that the unmet needs of marginalized women in the family law system, i.e. immigrant and refugee women, women experiencing violence, Aboriginal women, women with disabilities, poor women, etc. are met?**
- 4. Will your party support and demand a change in federal-provincial funding arrangements to ensure a national system of civil law legal aid and access to justice for our most vulnerable citizens?**
- 5. What will your party do to increase and reinstate core funding to advocacy programs and women's centre funding to ensure women have the support they need in managing complex family law matters?**
- 6. Will your party commit and take concrete actions to fight for the reinstatement and increased funding to the federal Charter Challenges Program to ensure the promise of the Charter of Rights and Freedoms is a reality for the women of Canada?**

For links and information about these and other women's equality facts, please go to www.westcoastleaf.org.

West Coast LEAF's Family Law Project has been involved in documenting the access to justice issues women have been experiencing and continue to experience since the drastic cuts to legal aid in British Columbia in 2002. Subsequent cuts to advocacy programs and women's centers in this province further increased women's inability to access legal representation for their family law matters.

