

**SELF-DEFENCE IN CRIMINAL LAW AND RELATED ASPECTS OF
THE ADMINISTRATION OF CRIMINAL JUSTICE:
AN EQUALITY RIGHTS PERSPECTIVE**

**REPORT ON THE LEAF CONSULTATION
ON SELF-DEFENCE**

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	Page:
Table of Contents	i
Executive Summary	1
Introduction:	
i. The Women's Legal Education and Action Fund (LEAF)	2
ii. LEAF's expertise and experience with reform of the criminal law to implement principles of equality, liberty, and human rights in a social context of diversity and inequality	2
iii. The objective of the consultation on the law of self-defence	2
iv. The relation of this consultation to other projects recently undertaken by LEAF	3
v. The purpose of the background discussion paper on self-defence	5
Section 1: The Consultation on Self-defence in Overview	5
i. Time, place, and participants	5
ii. Summary of conclusions	5
Section 2: Legal Aid and Access to Justice	6
Section 3: Law Reform and Self-defence	7
i. Justification and excuse	8
ii. Mental element	9
iii. Duty to retreat	9
iv. Abolition of plea-bargaining	9
v. Mandatory minimum sentences; provocation	9
Section 4: Strategies for Action	9
Appendix I. Self-Defence in Criminal Law and Related Aspects of the Administration of Criminal Justice: A Preliminary Outline of the Issues from an Equality Rights Perspective," prepared for LEAF by Lucinda Vandervort as a Background Discussion Paper, 2001	
Appendix II. Consultation Agenda	

Self-Defence in Criminal Law and Related Aspects of the Administration of Criminal Justice: An Equality Rights Perspective

Report on the November 17, 2001 LEAF Consultation on Self-Defence

Executive Summary:

The LEAF national consultation on the defence of self-defence, held in November 2001, examined this defence within the context of substantive equality principles. The impact of government policy and practice on women's experiences with violence, with the criminal justice system, and with the criminal defence of self-defence, were reviewed. Participants at the consultation concluded that egalitarian principles remain unfulfilled in all aspects of state action in relation to violence by and against women. The participants identified the current degendering of the criminal justice system as a major problem at every level of law, from investigation and charging to sentencing and incarceration. Such an approach is contrary to a substantive equality analysis. Women in Canada do not enjoy substantively equal legal protection of their lives, liberty, or personal security by the state.

While this conclusion pertains to the majority of women in Canada from all sectors and groups in society, the deficiencies are most marked in their adverse impact on poor and racialized women, including Aboriginal women, women from immigrant communities, women with disabilities and single and sole-support women with children. Poverty and the social conditions associated with poverty, classism, racism, ablism and misogyny, lack of access to effective legal services to enforce entitlements and to obtain meaningful protection from violence or to mount a fair and timely defence against criminal charges or resolve related family law issues, and the absence of appropriate social services and economic support programs for those who seek to reconstruct their lives free from violence and threats of violence, were all identified as significant factors in exacerbating and perpetuating violence against women in Canada.

The participants at the consultation were unanimous in their view that problems arise more in the application of the law of self defence than in its wording. Other related matters, such as police charging practices and lack of funding and support for women's services and for legal aid are presently of much greater concern and more in need of immediate attention than technical reform of the *Criminal Code* provisions relating to self defence.

The participants felt strongly that Government must address these matters and must do so in consultation with affected women and service providers to ensure that state action is constructive rather than destructive in its ultimate impact on women who are members of the diverse communities within contemporary Canadian society. Significant public resources are required and should be committed to legal aid, research (especially community based research), program development and delivery, and multi-faceted political and educational initiatives directed at the general public, women, and personnel working in the criminal justice and social services sectors at all levels.

INTRODUCTION

i. **The Women's Legal Education and Action Fund (LEAF)**

The Women's Legal Education and Action Fund (LEAF) is a national organization founded in 1985 to promote the equality rights of all women in Canada by asserting the constitutional guarantees for equality in the *Charter of Rights and Freedoms*. LEAF pursues this mandate through litigation in the courts, public education, and by making its research and legal analysis available to governments, community groups and others interested in the process of law reform.

ii. **LEAF's expertise and experience with reform of the criminal law to implement principles of equality, liberty, and human rights in a social context of diversity and inequality.**

LEAF has developed expertise in analysis of the meaning and implications of the law of equality and human rights for legal issues involving women, violence, and coercion, in both criminal and non-criminal law contexts. Many of the court cases in which LEAF has intervened or has been a sponsor have involved violence and coercion of one or more types against women. In these cases LEAF has analyzed women's experiences of violence in Canadian society and presented arguments about the impact of the law, the legal process, and the action or inaction of state agents, on women's equality rights.¹ The expertise developed through LEAF's work on these cases and through its involvement in the law reform process² has led LEAF to develop processes and resources designed to address the challenge of pursuing our mandate in relation to all women in Canada across the similarities and distinctions of circumstance and culture that are found in Canadian society. LEAF employs these processes and resources with diligence to ensure that LEAF's participation in both litigation and law reform is broadly based and informed.

¹ A representative selection of these cases includes *Attorney-General of Canada v. Canadian Newspapers Company Limited* (1988) S.C.C.; *Janzen and Govereau v. Platy Enterprises* (1989) S.C.C.; *Jane Doe v. The Board of Commissioners of Police for the Municipality of Metropolitan Toronto et al* (1990) (Ont. Div. Ct.); *R. v. Seaboyer* (1991) S.C.C.; *Norberg v. Wynrib* (1991) S.C.C.; *Butler v. The Queen* (1992) S.C.C.; *R. v. O'Connor* (1995) S.C.C.; *Darrach v. The Queen* (2000) S.C.C.; *Shearing v. The Queen* (2002) S.C.C.; and *L.C. v. Mills* (1999) 2 S.C.R. 688

² In exercise of its mandate to promote women's equality rights through participation in law reform LEAF has made submissions to governmental departments, legislative bodies, and independent commissions dealing with constitutional reform, the criminal justice system, sexual assault legislation, and human rights legislation.

iii. The relation of this consultation to other projects recently undertaken by LEAF

The impetus for this consultation lay in the opportunity presented by law reform initiatives taken by the Department of Justice (Canada) following the 1990 Supreme Court of Canada decision *R v. Lavallee*³ which addressed the application of the defence of self defence to women who kill their abusive partners. Justice Lynn Ratushny was commissioned by the federal government to review the cases of women who were convicted of homicide for killing violent male partners, in light of the *Lavallee* decision. Justice Ratushny's Final Report of the Self-Defence Review made broad and extensive recommendations relating to the law of self defence. Following up on this report, the Department of Justice initiated a long term law reform consultation process with the issuing of its own Consultation Paper containing its own series of proposals. This paper was entitled "Reforming Criminal Code Defences: Provocation, Self-Defence and Defence of Property. "

In late 1998 the National Legal Committee of LEAF (the NLC) initiated a process to prepare submissions to the Department of Justice on the proposed reforms. In the summer of 1999 the NLC issued a background discussion paper on the defence of provocation and related sentencing issues and conducted a national consultation on the topic. The Court Challenges Program provided funding assistance for the project. Slightly earlier in the summer, the Canadian Association of Elizabeth Fry Societies (CAEFS) held a national consultation on self defence and provocation. Members of LEAF participated in the CAEFS consultation and vice versa, with the intention that the work of the two organizations inform and build on each other. LEAF submitted a report (December 1999) on the LEAF consultation to the Court Challenges Program and a brief (December 2000) on the defence of provocation and related sentencing issues to the Federal Department of Justice.

Because the defences of provocation and self-defence involve some issues in common, and some issues in which the approach taken to either defence may have implications for the approach taken to the other defence, the intention was that the consultation on self-defence would build on the work already done in these areas by LEAF and CAEFS and other organizations such as the National Association of Women and the Law (NAWL). Accordingly, LEAF did not, in the course of the self defence consultation, specifically direct attention to the sentencing issues common to the two defences that had been dealt with at length in the earlier provocation consultation and report. However, the grave significance of mandatory minimum sentences for women charged with homicide was strongly reiterated and LEAF's earlier position and recommendations for the abolition of these mandatory minimum sentences were affirmed at the self-defence consultation.

³ *R. v. Lavallee* (1990) 1 S.C.R. 852.

iv. The objective of the consultation on the law of self-defence

This national consultation was organized and directed by the Violence Sub-Committee of the NLC, with financial support from the Court Challenges Program. The central focus of the consultation was on the law of self-defence and related issues and the impact of that law on the equality rights of women in Canada. The objective of the consultation was to ensure that any policies on self-defence and related issues affecting the administration of criminal justice and access to justice that are developed by LEAF are informed by the experience and considered views of a broad diversity of women in Canada.

In order to provide background information and outline some of the key issues for the purpose of the consultation, LEAF commissioned Lucinda Vandervort to prepare a discussion paper on self defence. This paper was distributed in advance to all of the consultation invitees. The paper discusses in detail the concerns and problems with the current wording and application of the defence of self defence, as well as the social, political and legal contexts within which these take place.

Briefly stated, the leading concerns raised to date by women about the law of self-defence, are:

- (1) that the defence may be too narrow in that it does not encompass all persons and interests that women should be permitted by law to protect through the use of force, even lethal force; and
- (2) that the interpretation and application of the law of self-defence continue to be affected by gender bias as well as by other forms of social and cultural bias that are based in part on prejudice and in part on the absence of a common or shared social experience.

The discussion paper raises fundamental concerns relating to the Government's incremental, piecemeal approach to law reform that leaves the criminal justice system largely intact and unquestioned. The paper argues that the pressing need is for fundamental and far-reaching reform, premised on a re-imagining and re-creation of the legal system and criminal justice process in egalitarian terms. The self defence consultation was designed to begin discussion and strategy on these larger, more complex and deep rooted issues, as well as to provide LEAF with specific insight and direction on potential reforms to the law of self defence. The consultation agenda is attached as Appendix II.

Section 1. The Consultation on Self-Defence in Overview

i. Time, place and participants.

The self-defence consultation was originally scheduled for September 15, 2001. However, disruptions in air travel following the events of September 11 necessitated the rescheduling of the consultation. As a consequence of the rescheduling some individuals who had originally planned to attend were regrettably unavailable, while others who had previously not been available were able to attend.

The consultation was rescheduled to November 17, 2001 and took place from 9 a.m. to 5 p.m. in Falconer Hall, University of Toronto. The participants brought to the consultation process diverse and extensive experience as activists, service-providers, litigators, policy consultants, and theorists to the consultation. Present at the consultation were: Kerri Froc (LEAF) and Diana Majury (LEAF) (as co-chairs at the consultation), Andrée Côté (NAWL), Anne Derrick (Criminal Law Practitioner), Doreen Demas (DAWN Canada), Mary Lou Fassel (Barbra Schlifer Clinic), Sondra Gibbons (LEAF), Vivian Green (Metro Women Abuse Counsel), Corinna Hayward (Policy Analyst, Aboriginal Corrections Division - Solicitor General's Office), Donna Johnson (Abused Women's Advocate and Education Consultatnt), Lee Lakeman (Canadian Association of Sexual Assault Centres), Natalie Madore (Family Law Lawyer), Bonnie Missens (Criminal Law - Treaty Land Entitlement Practitioner and Board Member of the Indigenous Bar Associaion), Martha Shaffer (Faculty of Law, University of Toronto), Elizabeth Sheehy (Faculty of Law, University of Ottawa), Dianne Martin (Osgoode Hall Law School, York University), Eileen Morrow (Ontario Association of Interval & Transition Houses – OAITH), Elizabeth Thomas (Practitioner) and Lucinda Vandervort (LEAF). Christine Boyle (Faculty of Law, University of British Columbia) was unable to attend but submitted written comments which were distributed to participants and invitees prior to the meeting and were discussed at the meeting. As with all of the participants, Professor Boyle's comments have been integrated into this report.

ii. Overview

The vital importance of LEAF engaging in ongoing and broad consultation was emphasized by all of the participants. The explicit direction given to LEAF was that its positions need to be firmly grounded in and reflective of the experience of front line activists in the women's movement. Issues were raised in this context about the need for groups and individuals to share the work load and to support and benefit from, and avoid duplication of, each other's work. In this regard, specific concerns were expressed about the lack of acknowledgment, in the consultation discussion paper and materials, to the extensive work that CAEFS has done on this issue. There was strong affirmation of support for the submissions made by CAEFS to the Department of Justice on the

issues of self defence and provocation, in conjunction with recognition and appreciation of CAEFS's leadership and proven track record on these and other issues.

Concerns were also raised about the technical language and arguments used in the discussion paper such that the document was difficult to understand for those without legal training. LEAF was advised to address this shortcoming in future documents intended for distribution among women's groups.

The introductory remarks by participants demonstrated that they shared grave concerns about the inadequate and shrinking resources available for legal services for abused women and about the lack of meaningful social and economic assistance in dealing with violence. These cutbacks are having a devastating adverse impact on women and children. These matters and the related issues proved to be a focal point of the consultation because they have a central bearing on the practical effects of all aspects of the law of self-defence. The general view at the consultation was that legal and social resources to assist women who are subjected to violence are wholly inadequate. This, together with ineffective and often hostile action by police and others in the criminal justice system in response to the often desperate life circumstances of women (including women responsible for children), were held to constitute the most pressing problems for women who are forced to resort to violence or experience violence directed against themselves or others. In addition, many participants indicated that they perceived official conduct by police, prosecutors, etc., in response to violence by and against women, to be consistent with a systemic and societal backlash against women who seek assistance from the police and women who use force to defend themselves and their dependents from violence or the threat of violence.

The substantive law of self-defence, as such, was not identified by participants as a significant source of problems for women. The majority of the participants in the consultation did not consider reform of the substantive law of self-defence to be a priority. Indeed, there appeared to be some apprehension that reform could result in a law of self-defence less likely to be interpreted in a manner consistent with equality rights than many participants believe the present law is, or is at least capable of. There was broad support for the view that law reform on the specific issue of self defence would be a frivolous and largely non-productive exercise under present conditions.

The following issues were identified as currently more pressing problems for women dealing with violence than the law of self defence:

- Lack of legal aid
- Improper police practices, such as threatening women with counter charges and charging the abused women and not their abuser
- The negative impact of mandatory minimum sentences that effectively eliminate women's choices
- The pathologising of women through such concepts as "battered women syndrome"
- Extremely high rates of incarceration of Aboriginal women

- Appropriation of violence against women by the law and order agenda
- Abused women's lack of knowledge of the law of self defence and related legal matters
- Women's lack of access to lawyers who are knowledgeable about and sensitive to issues of violence against women
- The problematic interrelationship between criminal law and family law
- The degendering of the criminal justice system.

Discussion at the consultation was wide-ranging. The participants identified numerous connections among the diverse elements of the problems and potential solutions related to violence. This report organizes the leading issues discussed under three general headings below: access to justice and legal aid; law reform and self-defence; and strategies for action. No "formal" recommendations, as such, were adopted at the consultation, however a number of potential initiatives or priorities for action were identified and discussed. The proposals that received significant support from those present are reported below in section 4 under "strategies for action. "

Section 2. Access to Justice and Legal Aid

The lack of adequate legal aid services for women is a problem that has reached crisis proportions in Canada. This crisis has a dramatic impact on most of the women who are trying to address violence or threats of violence in their lives. The concerns here relate to the severe shortage of skilled and knowledgeable lawyers, as well as to the inadequacy of legal aid coverage for the type and extent of legal services these women need. These access issues are exacerbated when the woman being subjected to violence has a disability or is Aboriginal or racialized or the violence is occurring between lesbians.

Although poverty is an overriding concern in this area, the notion that only "impoverished" women are affected by the unavailability of adequate legal aid services is false. Few women confronted with violence-related issues can afford to purchase the legal services they require. Moreover, the specific legal expertise and experience required to intervene effectively to prevent violence often requires skills and knowledge in the areas of family law, poverty law, and criminal law. Lawyers in private practice will not necessarily have the legal, social and cultural knowledge or the skill, experience and sensitivity in all the areas required to provide effective representation, even for those few clients who can afford to retain them. Clinics that possess the necessary expertise plus a mandate to provide the comprehensive pro-active representation these matters require are few and far between. One consequence, a grave one, is that preventative legal action that could be initiated to resolve or avoid potentially explosive and sometimes deadly family problems and interpersonal conflicts is not available to women.

Related problems were identified within the pre-charge and pre-trial stages of criminal prosecutions involving violence in which the defence of self-defence might be available. Vigorous legal representation must be available for women throughout the pre-trial phase, not merely at trial, and should not be limited to those cases involving the most serious criminal charges and potential penalties. The active presence of counsel at an early stage is often essential in preserving the accused woman's rights, pressing for a thorough investigation of the case by the police, preserving or obtaining crucial defence evidence, and protecting the accused woman's interests in negotiations with the police and prosecutors. Even seemingly minor cases of assault can have lingering negative consequences for accused women and their dependents. A series of apparently minor criminal matters may gravely prejudice an accused woman's future. Yet the predominant pattern in legal aid funding at present is to direct funds toward the cases involving the most serious charges, rather than to cases in which it is questionable whether charges should even be laid. Once again, prevention is not a priority. In both the family and criminal contexts, everyone (that is everyone who survives, and many do not) loses as a consequence of such shortsighted funding allocation priorities: the accused women, the children, the immediate community and society in general.

Backlash and punitive police practices against abused women were one of the major concerns raised at the consultation. Front line workers talked about the alarming increase in the charging of abused women. Women are being charged with serious offences such as aggravated assault, and with multiple charges, even where the aggression by the woman is very mild. Simultaneous charges are not being laid against the male abusers. Crown attorneys are refusing to drop these charges and women are choosing to plea bargain rather than go to trial. Aboriginal women are facing even more severe charges and evidence is not being collected properly in these cases. These charges and convictions are having a devastating impact on mothers, resulting in women losing custody of their children, either to the state or to their abusing partner or other family members. Similar patterns of police aggression against abused women are being seen in sexual assault cases. In both situations, these police practices are having a chilling effect, such that abused women are extremely reluctant to call the police.

The preceding was only a sketch of some of the problems the participants raised with respect to the current deficiencies in the legal services available and the consequences for access to justice. Other leading concerns include:

- Difficulties counsel may have locating (and retaining) the experts required to prepare and present a self-defence case properly.
- Issues relating to the catch 22 of using experts – that is the problems related to who is recognized as an expert (ie not front line workers) and the pathologizing of abused women that results from much expert testimony.
- The impact that the pathologization of abused women has on child custody issues.
- The lack of resources to do the necessary research and case theory development when defence counsel may have only the occasional case involving self-defence.

- The absence of systematic legal support and legal information services for women living outside major centres across Canada, with, at best, less than adequate services in major centres.
- Difficulties in effective communication with immigrant, racialized and Aboriginal women caused by a combination of linguistic and cultural barriers.
- Failure by decision makers to appreciate the potential impact of domestic violence on child development and child welfare.
- The absence of effective legal scrutiny of police and prosecutorial conduct, including the punitive use of counter-charging (for example charging the abused woman either with assault or mischief), investigative choices and reports.
- Federal and provincial governments' non-compliance with international covenants related to basic needs including access to justice.
- The absence of effective political support for funding and programs, including those related to access to justice, to address the needs of persons whose options for avoiding violence and threats of violence against themselves and their children are limited by their social and economic circumstances.

Section 3. Law reform and self-defence.

Reform of the substantive law of self-defence was not regarded as a priority by participants at the consultation. The general view was that the present substantive law of self-defence is not clearly biased against women defendants or otherwise obviously deficient. It was suggested that until issues related to access to justice and the administration of justice are addressed there could be no clear conclusions made about what, if any, changes might be required in the substantive law of self-defence. Discussion about specific aspects of the substantive law of self-defence drew out the following, at times somewhat diverse, views about the defence.

Although in the rapid exchange of comments at the consultation it was sometimes not possible to clarify points of detail, there appeared to be diverse views about the actual operation of the defence of self-defence based on the experiences of the participants. In particular, it was abundantly clear that many participants firmly believe the letter of the law often has little bearing on how women accused are dealt with in the criminal justice system. Many of the comments made about this issue appeared to reflect participants' experience that regardless of what the law is, in actual practice, women are denied adequate protection and then routinely condemned when they use force in self-defence. This tends to confirm the dominant view emerging from the consultation that the problems with the law of self-defence lie in the administration of criminal justice over-all, not with the substantive law of the defence of self-defence per se.

i. Justification and excuse

In law, "justification" (the understanding that what the accused did is right) is the appropriate and traditional legal rationale for self-defence. In theory, no one requires an "excuse" (what the accused did is wrong but is understandable as human weakness) for the use of force that is reasonably necessary to protect oneself, or others under one's protection, from harm. The use of force under these circumstances is legitimate, not a "crime". However, the concern was raised in the discussion paper and at the consultation that the language and thinking behind the defence of self defence, as it is being applied to abused women who kill their abusers, is shifting to that of excuse, rather than justification. Reliance on a rationale of "excuse" in the application of the defence of self-defence was viewed by most participants as clearly contrary to the long term interests of women defendants who may be acquitted only to find themselves stereotyped and labeled as "unstable" or "crazy". This labeling phenomenon is now all too familiar as a consequence of a decade of Canadian experience with the unwelcome social effect that has followed upon women's reliance on the "battered women's defence" (BWD) as that concept is often widely and incorrectly understood. Successful invocation of the BWD can have devastating long term effects on custody decisions, employment, reputation, etc., based on the negative stereotypes that attach to what is supposed to be a full defence.

It was recognized, however, that accused women, who may be quick to blame themselves and who may not fully understand the social realities underlying the dynamics of battering, often tend to view themselves as "merely" excused. This kind of self blame cannot be allowed to be translated into law as excuse or, even worse, guilt. Participants agreed that "justification" is the only appropriate rationale for the defence of self defence and that any movement in the direction of adopting excuse as the rationale should be strongly resisted. However, concerns were raised that judges would not accept a justification argument, that is – "you can't win the argument that you have the right to break the law in front of a judge." A number of participants, though not all, regarded juries as potentially more receptive than judges to the justification of self-defence for abused women who kill their abusers. An experienced litigator concurred in the view that juries can and do understand a woman's need to act in self-defence. Participants agreed that energy should be expended on improving the jury system and that attempts to reduce or eliminate juries should be actively opposed. All of the participants supported justification as the core legal rationale for self-defence and argued that it must be maintained.

ii. Mental element

In discussions as to the standard that should be applied with respect to the mental element needed to support the defence, there was general reluctance among the participants to move from the modified or hybrid subjective-objective standard currently being applied in the self defence context to the revised subjective standard proposed in the discussion paper. Participants were not convinced that judges would be receptive to, or perhaps even understand, the revised subjective test proposed. The problems

that have been identified with both the objective and the subjective tests were considered to be somewhat offset by the hybrid test.

Concerns relating to the application of a purely subjective test included the following:

- A subjective test focuses on the psychological profile of the woman rather than the objective circumstances and as such pathologizes women.
- That men who kill women would benefit much more from the use of a purely subjective test.
- The objective test is the vehicle through which an equality analysis can be put forward to inform the interpretation of the law of self defence.
- The subjective test would allow racism and sexism to go unchallenged.

Concerns about objective tests were also expressed. Objective tests were described as a potential mechanism to import prejudice into the interpretation of the law. Participants were aware that marginalized people do not generally fare well under an objective standard. They are often seen as lacking credibility; their unfamiliar circumstances are not understood and their actions are therefor not seen as reasonable. However these stereotypes also operate, and in less visible ways, in relation to a subjective test. The participants were of the view that the hybrid standard would be less dangerous for women, and other marginalized groups, than a purely subjective standard. The problem is not seen to be the standard itself but the application of the standard. Education and political activity should focus on the application problems and not on changing the standard.

iii. Duty to retreat

Participants engaged in a wide-ranging discussion of the duty to retreat and concluded that a duty to retreat should not be legislated so as to reverse the decision in *McIntosh* which read the duty to retreat out of the law. The issue is more complex than can be captured by a single rule. The suggestion was made that a duty to retreat should be imposed on people in positions of power such as prison guards and police officers. The view was firmly expressed that women should not be required to leave their homes as this would only generate a further increase in the flood of internal refugees from violence. The alternate view was also expressed that everyone has a moral, though perhaps not legal, duty to retreat if that is what is required to avoid violence. The overall conclusion was that the issue should be left to be addressed by judges on a case by case basis as an aspect of "reasonableness," and that a contextual analysis of the duty should be applied. Participants were nonetheless apprehensive about leaving the assessment to judges given that "reasonableness" tends to be a vehicle to import the decision-makers' personal values and beliefs into the decision. In relation to this point, concerns were raised about judges' inability to understand why women don't leave abusive relationships and about their failure to consider issues of access that affect the

ability of some women with disabilities, as well as some immigrant, racialized and poor women, to retreat.

iv. Abolition of plea-bargaining

Those participants who spoke to this issue expressed strong opposition to the suggestion that plea-bargaining be abolished. They regard plea-bargaining as a clear source of potential benefit to accused women. There are many reasons why a woman may not want to go to trial (to protect her children for example) and she should have the right to make that choice. Questions were raised about how plea bargaining could be made more fair and equitable. The creation of more effective forms of broad police accountability was proposed as a response to the current problems of over-charging and coercive bargaining by police and prosecutors.

v. Mandatory minimum sentences and provocation

The previous recommendations made by LEAF and CAEFS on mandatory minimum sentences and on provocation that were outlined and discussed in their reports on these issues were referred to with approval. See LEAF, *Submission to the Department of Justice on the Reform of the Criminal Code Defence of Provocation and Related Aspects of Sentencing*, December 2000 at <http://www.leaf.ca>; and CAEFS, *Response to the Department of Justice re: Reforming Criminal Code Defences: Provocation, Self-Defence and Defence of Property* at <http://www.elizabethfry.ca>.

Section 4. Strategies for action.

The proposals for strategic action emerging from the consultation are set out below. Due to the time constraints and the wealth of information and ideas exchanged, there was insufficient time available at the consultation to consider issues of design and implementation for these strategies. Each of the proposals set out below, however, is made on the basis of the participants' extensive experience in working with issues related to the impact of violence on women and their children. Each of these proposals merits serious consideration for further development and adoption by service providers, agencies, and grass-roots organizations, as part of a comprehensive program to eliminate interpersonal and institutional violence against women, children and other vulnerable persons in Canadian society.

Seven major strategies are listed with suggestions for specific actions to be taken as means to further the larger goal.

i. Address the problems with legal aid and access to justice noted in section 2 above including priority action to:

- a. Establish adequate funding for legal aid.
- b. Establish adequate funding and support for women's shelters and rape crisis centres, including funding for the education and advocacy work that they do.
- c. Establish mechanisms to provide legal information and information about community services and resources to women and their families, including measures to address the linguistic/cultural barriers that impede effective service delivery.
- d. Include legal resources for early intervention, to prevent violence or a continuation of violence, within legal aid/clinic mandates.
- e. Ensure that legal aid encompasses specialized legal services directed at violence prevention with full capacity to address a range of family law, housing and poverty issues, and the skills to intervene as forcefully as needed to constrain improper/destructive use of discretion by police, prosecutors, and judges. Political support, funding and appropriate hiring and training are needed to combat widespread racism, ablism, homophobia and misogyny in connection with legal work on all of these issues.
- f. Establish a comprehensive clinic-based multi-disciplinary defence system for women charged with violent offences.
- g. In conjunction with the multi-disciplinary defence clinic system, establish a network of community resources for women accused charged with violent offence

ii. Establish a resource clearing house and lawyer referral centre for legal work to:

- a. Ensure that all women charged with violent offences have access to competent counsel.
- b. Facilitate the use of computer resources/web sites to identify, exchange and communicate information.

- c. Monitor and support utilization of the police commission, law society, and judicial council complaint procedures in cases involving violence by and against women.
- iii. Establish a national court-watch program for cases involving violence by and against women to:
 - a. Scrutinize prosecutorial decisions and provide information on court processes generally, including key legal and evidentiary issues and rulings at trial, defence counsel strategy and decision-making.
 - b. To communicate and co-ordinate with legal and political resources at local levels.
 - c. To create and utilize a uniform data collection system for the project to develop a standardized national databank independent of government.
- iv. Establish a national project to monitor exercise of police discretion in cases involving violence by and against women. Issues of charging and counter charging need to be addressed, as well as sexism and racism in the investigation process. Create and utilize a uniform data collection system to develop a standardized national databank independent of government.
- v. Take appropriate action to ensure that performance evaluation of police conduct encompasses pro-equality decision-making; that a review and demerit/dismissal standard is established for police that enforces pro-equality decision-making;
- vi. Establish a national women's anti-violence organization (possibly in affiliation with appropriate international organizations) to:
 - a. Act as an umbrella organization.
 - b. Ensure that all women charged with violent offences are fully and adequately defended.
 - c. Maintain a communications network and web-site (including protected web-pages) to facilitate the sharing of information, resources, and the co-ordination of collective initiatives among grass-roots and national organizations.
 - d. Provide consultation and support for legal education programs for the public, law students, lawyers, corrections personnel, parole boards and

officers, immigration officers and tribunal members, as well as the judiciary. These programs would address violence, gender equality and gender linked violence, strategies to prevent violence, clinic design and services, and the lawyer-client relationship where the client has experienced or used violence in the past or is a member of a racialized, immigrant, or otherwise disadvantaged social group.

- e. Act as a resource for media as well as a resource and sponsor for writers, film-makers, and other creators of cultural material.
- f. Facilitate discussion among interested parties about issues of common interest such as how to organize to achieve common objectives or to share experiences related to specific identifiable goals.
- g. Publish a direct action manual for women in the community who find it necessary to rely on self-help and require legal and non-legal advice about issues that tend to arise in such situations and options/effective strategies for action that may be considered.

vii. Undertake, sponsor or support a collaborative research initiative using multiple sites to audit a minimum of ten self-defence cases in which the accused is a woman, with exhaustive examination from "beginning" to "end", including multiple perspectives (family, criminal, welfare, etc.), to provide detailed documentation on current practices in the criminal justice system/family court/mental health/social services across the country. This would be a university/community network-based initiative. The following potential problems were identified as ones that such an initiative would need to address:

- a. Early case identification would be necessary in order to allow collection of the relevant information before it had been filtered or coloured by subsequent events.
- b. The need for elements of a longitudinal study in many cases.
- c. Research design would be complex. It was noted that research based on a single "interview" tends to be of limited value. A system would need to be established for on-going day to day information sharing to permit appropriate collateral information collection and follow-up. The research designs and data collection methods in this project would need to be coordinated with the complaints, courts, and police monitoring projects (described in items ii, iii and iv above) to ensure that it will be possible to make meaningful comparisons, etc., between relevant portions of the quantitative and qualitative data collected in all three.

In Conclusion

The conclusions reached by the participants at this consultation, all of whom actively work on issues relating to violence against women, and the strategies for action proposed by this group reflect the recognition that violence against women is a deeply entrenched, systemic problem that has negative repercussions for women at every level and in every aspect of the criminal justice system. Such an understanding of the issue is at odds with the Government's ad hoc approach of piecemeal law reform efforts directed at isolated sections of the *Criminal Code*, such as, in relation to this consultation, the defence of self defence. Such efforts are incapable of addressing the more fundamental problems that give rise to the situation of abused women killing their abusive partners. A thorough-going, systemic analysis and overhaul of the criminal justice system are needed if the issue of violence against women and women's resulting violence is to be meaningfully addressed. This is the project that we would encourage the Government to undertake.

LEAF would like to thank all of those who participated in this consultation and who gave so generously of their time and their thinking. The information, insights and analysis brought together at this meeting are invaluable and we appreciate them immensely. The material from this consultation will inform and direct the future work of LEAF as we continue to tackle the pernicious issue of violence against women.

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