

Transcript
Gender Justice Now – Women’s Legal Education and Action Fund (LEAF) Symposium
Panel: Opportunities Moving Forward

>>KAT: Welcome Gender Justice Now participants, and welcome to everyone joining us on YouTube. My name is Kat Owens and I'm the Project Director for the Feminist Strategic Litigation project at the Women's Legal Education and Action Fund, also known as LEAF. I am delighted to welcome you today to this panel on opportunities and challenges for using law to advance gender justice in the current moment.

Before I turn it over to Cee Strauss, moderator for the panel, three quick housekeeping items. First, captioning for this event is available in English and in French. English captions will be seen embedded on the video through your YouTube. For French captions, please use the link e-mailed to you, along with a link to the YouTube stream, or the link that will drop into the YouTube chat right now.

Second, the panel will be recorded and we will share the link with you after the event. We will also be making available a recording that has French interpretation -- French interpretation accompanying it.

Finally, we will share a link in the YouTube chat right now which has biographies of all of our speakers in English and in French and which also contains a link to a report written by Fay Faraday, one of our panelists, on the evolution of the Canadian legal landscape for equality rights litigation. It's a great and important read and I'd highly recommend checking it out.

I would now like to welcome Cee Strauss, one of LEAF's fantastic staff lawyers. For more information on Cee, take a look at their bio shared with you previously or at the document in the YouTube chat now. Cee, welcome and thank you for moderating our panel today.

>> CEE: Thanks so much, Kat. Good Afternoon, everyone. As Kat said, my name is Cee Strauss and I am a staff lawyer here at LEAF National. It's an honor to moderate the third of this impactful series on gender justice and the law. For those of you attending the symposium as a whole, it has been three days full of critical reflection and learning about the needs of women and gender diverse people.

Speaks in French [Hello all. As Kat said, I am Cee Strauss, one of the staff lawyers at LEAF. It is an honour to participate in this panel and to be in the presence of these brilliant feminist thinkers and activists. This session will be in English. Thank you very much to the interpreters who are translating the panel into French.]

>> Because this panel is being interpreted, I will do my best to speak slowly and I encourage the panelists to do the same. I am speaking to you from unceded Indigenous lands. The

Kanien'kehá:ka Nation is recognized as the custodians of the lands on which I am located and the waters that surround me today. Tiohtià:ke/Montreal is historically known as the gathering place for many First Nations. This includes the Kanien'kehá:ka of the Haudenosaunee Confederacy, the Huron/Wendat, the Abenaki, and the Anishinaageb. Tiohtià:ke is an abbreviation of Teionihiohtiaá:kon which loosely translates as "where the group divided/parted ways." Since time immemorial, Tiohtià:ke has been a natural stopping point for Indigenous travelers.

This afternoon as a guest and settler, I am grateful for this gathering place. While our gathering might seem disconnected from territory because of the medium we're using, we, of course, know the technology itself is material. The data that we use in streaming services like Zoom and YouTube does not actually live in clouds. It lives on land. Our data use requires endless stacks of servers handling many terabytes (thousands of digital bites of digital traffic). These tens of thousands of servers are hosted in data centers, each often bigger than a football field. Montreal currently has between 31 and 40 data centers, as Hydro-Quebec and the Government of Quebec much Montreal as a premier location for data centers, promoting clean hydroelectric energy and cold climate. A cold climate is important for the location of data centers on our warming planet. All of those serviced together get hot as they work around the clock to keep us connected, informed, and entertained.

I am grateful for our ability to gather today. I am also mindful of our use of space and land as we work toward gender equality.

LEAF has recently completed a visioning process that culminated in a five-year strategic plan. Our first commitment in our strategic plan is "prioritizing reconciliation and working to decolonize Canada's legal and social systems." LEAF's fight for equality is only possible when we acknowledge and reckon with our colonial legacies. We have a responsibility to work towards decolonization, address the harms of colonialism and ally with Indigenous people in our work.

The final report of the national Inquiry into Missing and Murdered Indigenous Women and Girls states in its principles of change that the fulfillment of the Calls for Justice requires a decolonizing approach. This approach, the report tells us, "is a way of doing things differently. It challenges the colonial influence under which we live by making space for Indigenous perspectives that are often cast aside. It involves recognizing inherent rights through the principle that Indigenous peoples have the right to govern themselves with respect to their special relationship to the land." That was a quote.

If LEAF wishes to prioritize reconciliation and work toward the decolonization of Canada's legal and social systems, as appears in our strategic plan, we must remember that nothing is disconnected from land. This is something that many of the panelists from yesterday's panel, The Legal system and Justice for Indigenous Women, Girls, and 2SLGBTQQIA Persons reminded

us. All jurisdictional and governance rights flow from land rights. We must learn about a different conversation happening around consent – Indigenous consent. Indigenous consent has been described as the ability to determine what happens on one's land.

As we move into today's panel, a space to discuss opportunities and challenges for using the law to advance gender justice, I hope that we can continue to center the perspectives and world views of those we say we are fighting for.

This panel is entitled Opportunities for Moving Forward. As I mentioned, it is a space to discuss opportunities and challenges for using the law to advance Gender Justice Now the current moment and moving forward. In order to think about the current moment and future opportunities I will first encourage the panelists to look to the past, to look at how law has been used this the past to advance the equality rights of women. This is because as Fay wrote in her paper, present and future work requires institutional memory. Lessons from past experiences help to inform current and future strategies. As a whole, this panel is an opportunity to discuss how feminist litigation fits into systems change, to critically reflect on questions of accountability and credibility in doing the work of gender justice. And to provide visions for the future.

For all those who are wondering what I mean when we say feminist strategic litigation, my coworkers, Kat Owens and Nicole Biros-Bolton have designed a fact sheet explaining the concept. It is in the materials on Google drive for today's panel, and Kat has just dropped it in the Zoom, and I imagine April has dropped it in the YouTube chat. Feminist strategic litigation, as it says in the fact sheet, is feminist lawyering on feminist issues with feminist goals. This can look like many different things. Feminist lawyering can be: presenting arguments grounded in an analysis of power; it can be bringing in a variety of voices to help shape a case, it can be listening to the client's story and elevating it before the Court. Feminist issues reflect the existence of institutionalized sexism or patriarchy, and feminist strategic litigation challenges that sexism or patriarchy. An intersectional approach to feminist strategic litigation means that feminist issues must also be informed by the interactions between other oppressive structures, including classism, racism, colonialism, ableism, heterosexism, transphobia, and others, and it must look to challenge those structures. As for feminist goals, specific goals may differ case by case, but their broader aim should include working to end systemic sexism, patriarchy, and other oppressive structures.

The three panelists gathered today to address the opportunities of feminist strategic litigation could not be better placed to do so. I will provide brief bios of our three speakers right now, but there is a link to the full bios in the YouTube chat and in the symposium agenda.

Raji Mangat is the Executive Director of West Coast LEAF, a B.C.-based non-profit organization working to achieve gender justice through law reform, litigation, and public legal

education. Prior to taking on her current role, Raji was the Director of Litigation at West Coast LEAF.

Megan Stevens is the Executive Director and General Counsel at LEAF, where she is responsible for overseeing LEAF's legal activities and daily operations. She spent more than a decade working in appellate litigation as Crown Counsel.

Finally, Fay Faraday is a nationally recognized social justice lawyer, strategic advisor, policy consultant, and academic whose work focuses on constitutional law, Human Rights, and labor law. Fay has litigated many leading Human Rights and constitutional cases at the Supreme Court of Canada. Welcome to all three of you.

Based on her years of experience doing feminist strategic litigation, Fay has written an excellent brief that Kat has already mentioned for this panel that I, too, encourage you all to read. It's entitled *Feminist Equality Rights Litigation: Evolution of the Canadian Legal Landscape*. In her brief, Fay examines the last 35 years of feminist litigation, in particular as it relates to section 15 of the Charter of Rights and Freedoms. She discusses successes and losses, opportunities for future action, legal and political resistance to feminist litigation, legal procedure, and how it affects litigation strategy, and finally, as Fay puts it, the perpetual concern about resources.

I personally really appreciated reading Fay's brief and learned a lot. It is also a perfect jumping off point for our discussion today as Fay reflects on LEAF's work, both past and present, and looks to where it needs to be going.

So in this discussion, I will begin the first two rounds by first asking Fay about the ideas, some of the ideas that she raises in her paper and then asking Raji and Megan to respond to those ideas. I will leave hopefully a good amount of time for Q&A, so please put your questions in either chat at any time.

And I'm getting a note. Oh, okay. Great. Yes. And so hopefully I have been speaking slowly and I will once again remind the panelists to please do so. Thank you.

So we discussed theory of change, theories of change at the symposium yesterday. For those who attended yesterday, you will have been part of those discussions, but both for those who weren't there yesterday and even those who were, I'm wondering, Fay, you spent a significant part of your paper mapping out LEAF's theory of change. What exactly is a theory of change and why do you think it's important to consciously develop one?

>> FAY: Thanks, Cee. A theory of change is really quite simply setting out a map of what you think are the elements that create change in a system. And feminist litigation is all about creating changes in the legal system, but also making real change in the lives of women and gender-

diverse people. So it's important to be able to articulate exactly what you think that process of change is so that there is a template that you can go back to to evaluate whether your strategies are actually followed or engaging at the points that you think they should be in order to make social change and also to evaluate where the gaps are, if there are places where change isn't happening. Is it because you are selecting activities that don't actually promote how you think change happens? Or is it because your theory of change doesn't actually reflect the experience that you've acquired over the years of doing the work?

And when I looked at LEAF's history and its engagement in feminist litigation, a theory of change emerges which I don't think has ever been fully articulated, but I think is important to articulate if we're to assess where we're at in this historical moment.

With any theory of change, there are a lot of assumptions that are made and spelling those out is important. The very first element of the theory of change I see at LEAF is, first of all, that law can be an effective tool for egalitarian social change, and that assumes that one can identify cases that will have the potential to break new legal ground or establish legal precedent that will affect women's collective interests.

The second step in the theory of change is that feminists have the capacity to develop fundamental principles of law and legal analysis that can effectively communicate and be responsive to what an experience of equality looks like from the perspective of women who experience discrimination.

From there, there's the assumption that those legal principles can be recognized and adopted by judges and that effective remedies can be given. So embedded in that is the assumption that those legal principles will be recognized as a legitimate part of the existing legal system so that they're not so far removed that they're considered alien for the process; that they allow for incremental change.

It also seems that those legal principles will be applied and enforced.

Beyond that, there is the next level of the theory, which is that broader social change will happen beyond an individual case, because those legal principles are accepted in society and become a basis for further political action. So that, again, assumes that society listens to what courts say and that politician and his other policy-makers are influenced by court decisions.

And then there's the final part of the theory is that this will allow for incremental expansion of feminist legal principles as judges build a body of law that reflects them, they'll be able to take it further. So that puts a lot of focus on what the law can do, but a piece that I see that's missing from LEAF's theory of change is how that relates, how LEAF's role as an organization that's committed to litigation, relates to -- litigation, relates to broader feminist movements and

feminist struggles. How does LEAF see itself in relation to broader feminist movements? How is LEAF accountable to broader feminist movements? And how do we ensure in order to achieve -- and how do we ensure in order to achieve change, that it's credible in the work that it does. So I think that that is, in a nutshell, how a theory of change can help us think about the strategic choices that we're making.

>> CEE: Thanks so much, Fay, for explaining all of that and for kind of very clearly running through what you take the time to lay out in your paper. And yes, I think what's really interesting and important is getting to the base assumptions or the assumption might be underlying that, and I agree that's what's so interesting and important about actually articulating a theory of change. I'm wondering now from Raji and Megan sort of what went through your minds when you were reading and now listening to Fay's description of LEAF's theory of change? How did it resonate? And it's a segue into a question, a broader question, which I'll ask to Raji first, how does West Coast LEAF, as an organization, believe that social change happens and where does feminist litigation fit into that?

>> RAJI: Thank you so much, Cee. Thanks to Fay, also, for putting together such a wonderful brief for the symposium and for this panel in it particular. Before I start, I'll just acknowledge that I'm joining you from the stolen lands of the Coast Salish people, specifically the Musqueam, Squamish, and Tsleil-Waututh Nations. I'm very grateful for the Stewardship of those peoples over this land from time immemorial. I just really like to center myself where I am and really appreciated your remarks, Cee, about doing that and understanding that technology is also occupying space and that land is connected to the way that we're convening today, too. So as I was reading Fay's brief, a lot of things went through my mind, one of which is that Fay's analysis could be equally applicable to West Coast LEAF, that the two organizations share kind of a common origin story and kind of developed out of a common or, you know, the same moment in terms of rights recognition, as well as seeing the role of the law in making that change happen. So it's sort of -- if I plunk in West Coast LEAF to where Fay has written LEAF, I think a lot of this still very much holds true, and we've also struggled quite a bit with that latter piece that Fay spoke about, how to articulate a theory of change that is, also, accountable and that you can evaluate and you can look back and see what change has been possible? Where have there been sticking points? Where has this theory not taken us? And from my perspective, you know, the importance of identifying a theory of change is so clear when we think about what happens when we don't have one. When we don't have one, you know, we might be busily sort of at work paving a road, but we don't have a destination, so we're just kind of doing the things, finding the cases, doing the interventions, not really sure where we're trying to go with it in a global sense.

On the other hand, if it we have a really strong idea of where we want to go, but no map of how we're going to get there, that, too, can be very deeply unsatisfying and can also make that vision feel really out of reach and sometimes futile and can actually help, you know, force people to

feel kind of less agency than they actually have.

So for us, I think what's shifted in this moment is recognizing that while we've committed to the law as a site of social change, we know it's not the only site and we know it's not even the most significant site. And many times, it can be very, very fraught to be engaging in that as your strategy, engaging in litigation as your strategy.

So for us at West Coast LEAF, when I think of social change, I kind of think of our value-add, if I could put it that way, to the broader kind of feminist movement in Canada and the work that many, many, many people are doing across the country. Our value-add is providing sort of a lens on where the law is implicated in the experiences of oppression that people are having. And the law is often very much the site of that oppression, and there's sort of an inherent tension and a struggle there that I think several other panelists have spoken about over the past two days. It's just, you know, the idea, I believe it was the very first panel, of kind of can we use the master's tools to dismantle the master's system, let's say, and so that's a tension that's very much alive in West Coast LEAF's work right now, but we've still kind of -- mandate is one that's steeped in legal change and in the law as a site of this change, and so for us, I've been thinking about, you know, that this is a really long game. It's a very relational game. It's collaborative. It's iterative. And I think that fitting feminist litigation in there is we have maybe an outsized sense of what space litigation, as a vehicle, should be occupying. We've often parked it at West Coast LEAF right in the middle of our garage, and that has pushed all the other vehicles to the edges and sometimes we lose sight of those other vehicles. so-so for me, this social change happening within an organization like West Coast LEAF has to be opening the space and letting other strategies and recognizing that our role is going to be that of looking to the law as a place to support the broader movement, the change that others are seeking. How do we support that with this as kind of our contribution.

>> CEE: Thanks so much, Raji. That was clearly doing a lot of thinking over there and I really appreciated your reflection on that.

Megan, as you read and listened to Fay's description of LEAF's theory of change, what came to mind for you and how does LEAF as an organization believe that social change happens and where does feminist litigation fit into that?

>> MEGAN: Okay. So thanks, also, for Cee doing a fantastic job introducing this subject. I really feel very lucky to be on this panel with all of the fabulous people who are part of it. Thinking about these difficult and challenging issues.

Fay's paper was fantastic. I think she's done an excellent job unpacking LEAF's theory of change, and I'm not going to disagree, really, with her characterization of that. She is far wiser than I am. What I would say is that as much like West Coast LEAF, we were started with an eye

to how we can use the law to advance gender equality in this country. On the first day I spoke about how we came into being on the same day Section 15 of the Charter came into being with an eye to thinking about how there is a need to have the voices of feminists in courtrooms advancing perspectives about what that would mean and how the law should be interpreted. In part as a reaction to the many messes that have preexisted the arrival of the Charter and Section 15, really flawed interpretations, a really formal approach to equality that happened under the Bill of Rights. So you know, it's hard as an organization where the very first name in your acronym title is legal to try and suggest that we are not about using the law. We are a legal organization and we do see the law as a tool that can help address systemic inequalities.

I think what we recognize, however, is that the law is a really imperfect tool, as I think Raji has pointed out. And not only that. It's not the only tool. So it has a role to play, but it's not the only role. And you know, it is something, as Raji said, that we are grappling with, because we see this real tension in seeking to use the law to address systemic inequalities, but the law itself is rooted in those oppressive and colonial legacies. When we know the law, prioritizes the needs and voices of the privileged. When the common law tradition in which we work in and which the whole country works in, particularly in the context of constitutional litigation, even in Quebec, that emerges through the common law, it's an inherently conservative model. Right? It's not open to bigger dramatic change. The common law, they like to follow precedents, that really only leaves space for incremental change.

And even in a constitutional democracy where the judiciary is authorized to review government action to ensure compliance with the Constitution and the Charter, all of the people sitting on the bench are trained in the legal systems that are really not open to thinking about significant social change or the redistribution of power.

So that's a pretty big tension to start out with when we think about our work and the goals that we want to advance. But that being said, when we opt out, when we miss the opportunity to raise these arguments, to bring the perspective of feminists, of women and gender diverse people before the courts, we miss the opportunity to help reshape that law, even if it is in that slow and incremental way, and that, I think, is a real problem. In fact, I think Fay's paper does an excellent job of pointing out just in it relation to Section 15 that those times when LEAF or West Coast LEAF has not been before the Supreme Court and they're playing with Section 15, bad shit happens, pardon my language. It doesn't go down well.

So it is this tension of do we want to use the master's tools? But if we're not there kind of taking a lead role and flagging these arguments and raising these concerns, I worry about what happens to those tools.

But I also think it's important, as Raji pointed out, to note that I don't think LEAF's theory of change is just limited to litigation or even just advocacy before the courts. I do think we're still

rooted in the law when we think of the way we wanted to advance gender equality, but there is a real relationship between what's happening in the courts and then the law reform efforts that we work on and also how we think about partnering with other organizations to try and raise awareness about these issues, whether it's in formal Public Education sessions or getting before the media so that they know about these problems. Who can speak on these different issues is important.

And I do think you spoke briefly, Cee, about how we could speak a little bit about the past so we can look to the future. I think it is important to pause and recognize that there are moments where we have been able to get before the courts and raise arguments and shift perspectives. And I do think feminist litigators have played an important role in helping courts understand and make sense of not only fundamental legal principles that underpin how we understand equality, but also how we understand discrimination and also in shifting that picture for the bench who have long been white and long been very male oriented. The male oriented part has shifted a little bit. The white bit has not, but making them understand how, through the lived experiences of different individuals, how discrimination plays out.

I was recently watching, re-watching one of the documentaries on Ruth Bader Ginsburg, and she was asked how she dealt with the very sexist questions she got when she was advocating for gender equality before the Supreme Court of the United States, and she talked about how she saw her job as being akin to that of a kindergarten teacher, having to teach those who really didn't believe gender discrimination was actually a problem, what it was like.

And her perspective, I think we have to acknowledge, was a limited one. She came from a particular world view. But I still think that there is a key role that we play, and when we can get that perspective heard by the members of the bench, it's an important role. And I think that was something that LEAF tries to do in different ways, West Coast LEAF I know does as well, and it's how we now can work towards perhaps broadening that perspective and ensuring that we are bringing different lived experiences into the Court so they can understand that that's really important. And I'm hoping we can talk more about how we can play that -- do that important work of accountability that Fay spoke about, but I do think where we have run into some of our biggest problems is when we assume we can capture the experiences of all women or all gender diverse people. So I think we need to, in our work, we still have an important role to play, but we need to guard against thinking that we can understand and communicate about the lived experience of all those who experienced gender-based discrimination when the ones who are doing that communicating don't share or fully understand that experience. So I do think we need to really continue to work to find better ways to incorporate a diversity of perspectives in our work.

>> CEE: Thanks, Megan. You are segueing perfectly into our next theme, which we will get to in a minute, but I just wanted to say thank you all for your answers. I really loved your image, Raji,

of parking it. Just maybe not in the middle of the garage. Fay's paper definitely discussed that it wasn't a question of throwing out litigation and never doing it again, but thinking about how and when it's effective. It's not a question of whether, but it's a question of how. And so that was -- so we're talking about the how. That's really what theory of change is about. Right? The how of social change. But it's also about the who, so that's what Megan was starting to refer to.

So the questions of who was involved in it doing this work? To whom are your organizations accountable? Who has a seat at the decision-making tables and how has this changed? So Fay, in your brief, you introduced intersectional feminism. Your two bed rocks of your framework are theory of change and intersectional feminism. So at page 15, you write that intersectional feminism requires a litigation practice that shares power and centers women directly affected by systemic discrimination.

You talk a little bit in your paper about how you envision this happening. I'm wondering if you can tell us here today, can you give an example, either in litigation or gender justice advocacy, more broadly of centering and sharing power?

>> FAY: Yes, I can absolutely. You know, in LEAF's history, LEAF has acknowledged that in its earlier days, its perspectives were very much shaped by middle-class professional women, mostly lawyers. And that not having a diverse group of people at the division making table meant that positions were put forward that weren't always helpful.

One of the things that LEAF has done historically to counteract that is to have legal committees on each case that bring in a broader group of people to help shape the strategy. But when I think about intersectional feminist practice, it's deeper than that. It's actually taking direction from the people with lived experience. And so identifying what matters requires that you take that direction from the people who are directly affected by law themselves, because they really are the experts more than lawyers are about the harms of the law.

One example that I can give you of litigation that has really worked in this way is litigation that I was co-counsel on advocating for the rights -- the right to housing as a Charter right for people who are homeless and precariously housed. And that litigation grew out of very deep, long-term engagement with community groups and individuals and service providers who were either themselves homeless or working with folks who were homeless and precariously housed. And the case emerged out of a reality that engaging with the law was only getting small remedies, micro moments, but wasn't addressing the deeper fundamental problem that the way they've been constructed have actually created homelessness. And the policy choices and funding decisions that have been made by different levels of government actually drive people very predictably out onto the street and into homelessness.

And in order to live, people actually need shelter. That tension between the basic need for shelter and the laws that we have was so dissonant. Folks wanted to address, why do we live in a society

where that basic human need is so far out of reach, and increasingly so? So they wanted to frame a claim to the right to housing as a basic human right. and the question was is there some way to do that in law?

So the entire strategy grew out of brainstorming with people who were homeless, who were precariously housed, and were allies and supporters working with them.

The choice to frame it as that big demand, not a smaller winnable demand, but like let's really talk about what matters was critical. We received a lot of criticism for that, for not going for something smaller.

You know, what's interesting was that the folks who were homeless said that they didn't want monetary remedy. This was not about getting damages, you know? As lawyers, we thought, well, that's something that's available and they said, no, no, no. This is actually about changing the system. We want to change the system. It's not about paying people. And so the entire process was built from the ground up through the voices, through the direction of the people living the life and feeling the sharp end of the law. Every meeting was 30-plus community members discussing the ideas, providing input, identifying evidence that was necessary so that it was as genuinely, authentically representative of their voices and their reality as possible.

And as lawyers, we were there as vehicles to put that image forward, but building litigation in that way is very different from inviting people into a preexisting space and asking for their input. Right? There is a model that's still very much centering the power of law and the power of lawyers.

The other process is about thinking about all the different ways in which people's real lives are affected by law and bringing their lived reality to the center, bringing their voices and power to shape things to the centre. And it created not just a litigation strategy, but a broader community mobilizing and law reform strategy, and along the way, there was constant reiteration of how the claims were shaped and how people were involved. So when there were losses, we did things like host theater, a day of theater of the oppressed where the members of the community who had been involved in the litigation, you know, the theater company would begin the theater showing what had happened, but people could jump in at any point, take over a role, and change the story. Right? So that there is a real possibility for people to rewrite the script and to understand where the moments of change could happen and reclaim the power in that.

And there was a lot of political action. There were a lot of demonstrations. There were a lot of, you know, the guerilla art installations. It was a really multimedia, multi-level strategy, which ultimately, when we lost in the courts, you know, we went to the U.N. and got a very strong U.N. report on Canada's compliance with the Convention on Economic, Social, and Cultural Rights, which supported everything that we asked for in the litigation, and we now had a federal right to

housing or housing strategy, which is anchored in the right to housing, which was a phrase that didn't exist in the lexicon when we began the litigation.

So it's a very different, very holistic approach to understanding all the different places in which the law operates in which litigation is one portion of it, but the way that you work with community requires that legal actors be embedded in movement and have very deep, long-term relationships of trust with people who are living on the sharp end of the law so that instead of coming in with ideas about, oh, a legal theory could change here, what is actually being done is bringing your skills, just one more skill around the table in a movement that is directly responsible to the people with the lived experience.

>> CEE: Thanks, Fay. Such an amazing example, and I think it really speaks to that concept of a slow, iterative, long-game strategy that litigation can so often make seem completely possible.

>> FAY: Just actually one last thing I would add to that. I wasn't counsel for LEAF on that case. I was counsel for the parties. But at the court of appeal, LEAF did intervene and there were 16 different organizations with different perspectives who intervened in support of the claimants. And that was. Also thinks a really interesting experience of how to -- that was, also, a very interesting experience of how to build intervenor and community support in the context of litigation so that not only were the claimants fully represented, but the broad range of folks who are directly affected by the law were also there through these 16 different intervenor organizations. And that was all, again, part of a deeper, long-term community-building movement building strategy.

>> CEE: Thanks for adding that. I wanted to move to Raji and Megan for your thoughts on how to ground feminist litigation in intersectional feminism. I see that we're -- I want to leave a little bit of time for questions, but I think -- so the next question after this one will be, you know, what you think about the future of strategic litigation for your organization, not a small question particularly. Hopefully we can leave some time for questions, as well as answering that. I will ask the question separately for now, and we'll hopefully have all the time, but maybe you can judge your time answering this next question accordingly. So Megan, how does intersectional feminism as a practice shape your organization's work or how do you think it should? It can be descriptive or aspirational. Your response.

>> MEGAN: All right. Thanks, Cee. So I'll be up front. It doesn't work in that really holistic iterative way that Fay spoke about in the context of that right to housing case. That was really driven by the ground up. But I do have some aspirational goals that maybe we can do a better job of harnessing that ground up and hearing from different people at different levels about what the priorities are.

LEAF's work has almost always, as Fay points out in her paper, been about intervention at the

appellate level and even the Supreme Court of Canada. It's a really narrow sphere we're operating in, so that model that Fay talks about I think would be harder to establish without starting at the very beginning of the process to get there, but I think there are ways that we could try to incorporate some of that, and then I hope we will do a better job of doing.

At the outset, I want to say I think that intersectional feminism needs to be central to our work. As I said at the very end of my response to the last thing, we have run into problems where we haven't done that, and I think Arlene Huggins, on Monday night, in the first of our speaker series panels, really said it perfectly when she said we need to make room at the table for a diversity of perspectives and views, and also guard against filtering the world through a particular world view.

So I think what is a current real priority at LEAF is opening up space to center different voices. To make the organization more welcome to go a diversity of perspectives, and really doing that through a couple of different ways.

I wanted to talk briefly, because I think they both speak to accountability about the work of our committees, which LEAF -- sorry, which Fay just briefly mentioned, as well as how we partner with other community organizations in our interventions, and then finally, I wanted to mention the strategic plan that we've put in place for the next five years. And maybe I'll actually start with the strategic plan.

Cee, you mentioned it up front. The board, you know, formally approved the strategic plan that was developed with input from members of the staff, as well as as a result of consultations with people across the country. A number of priorities that were identified for the next five years for LEAF really do speak to the need to improve our work in terms of incorporating different perspectives and different viewpoints. You mention, Cee, the priority of reconciliation of working to decolonize Canada's legal and social system.

We also have as a priority amplifying the voices of those who experiences gender discrimination by acting with respect to intersectional multi sector knowledge, and we also have, and I think this is really important, deepening and enriching the LEAF network, and that includes our branches that we have across the country, but also the academics, the pro bono litigators, and the community partners that we've worked with. I think that last point is really important to trying to understand on the ground in different spots across this country what matters. Encouraging our branches to really get out, partner with, work with community organizations, people who are there in their communities who are identifying problems so that we know where we need to target our efforts, but all of these priorities identified in the strategic plan are really important, and I see someone has just put into the chat, hey we have access to this 5-year plan document? And I'll pull it up later and send it along. It should be on our website, but because I think it needs to be there for accountability purposes so people know that these really are our priorities, but

they can hold us to account if we're not moving forward on them. And what I would say is that I will put it in the chat for this group, but it will be coming up on -- we're in the middle of redeveloping our website, which is why things are in the state of flux, but I think that is an important document that shouldn't just live on our internal SharePoint drive. It should be out there so that people can look at us and hold us to account to that.

So Fay also mentioned that we tend to work with committees at LEAF. We have this huge -- one of the greatest resources that LEAF has is this incredible network of feminists from across the country, links with different community organizations who help us think through what our priorities are in terms of which cases we should get involved in, as well as law reform strategies, and we have really worked to diversify the membership of our law program committee. It was in a state of renewal late last fall, and it's in a really great spot with people who are coming to us with different perspectives from different lived experiences themselves. But also, once they help identify our priorities, we then, in terms of cases, we work with these case committees to try and get different people around the table to help retype our argument.

We need to do a better job of diversifying those. We have been working to do that, but we also need to recognize, we are trying to incorporate into those committees people who aren't lawyers, people who do work with the communities that are affected by the decisions we intervene in. And when those -- when we have a really diverse perspective on those committees, our arguments are so much better. But that -- we need to recognize that when we invite people who are not legally trained onto those committees, we need to find a way to open up space to actually let them feel like their ideas matter, because it's hard in a room with lawyers and those who are legally trained to sometimes feel comfortable doing that.

So the other thing in terms of the accountability piece, LEAF has not always done the best job recognizing, publicly thanking, and acknowledging all of the work that happens behind the scenes, that goes into our most prominent work, which is probably our interventions. We always have thanked and acknowledged the work of counsel in those cases, but one of the things that we have been trying to do is start to publicly recognize and thank the other people who, behind the scenes, have actually worked to develop those arguments as well. And I think there's an accountability piece there as well in terms of as we put out that information into the world, both in our, you know, news releases about the work that's being done, but also in some of our factums themselves, we're trying to put in a footnote that acknowledges all of the people who are part of the committees. I think as people see a diversity of names, perspectives, and positions of the people who are informing our work, it can also help them feel like maybe that's something they want to do, too, and maybe there is space at the table for them to get involved and included in our work.

So I'm probably going on way too long, and I'm just going to let you move on, Cee. Thank you.

>> CEE: Thanks, Megan. It's important, you know. Fay just talks about this as the feminism of the 21st century and understanding how we're grounding our work in a meaningful type of intersectional feminism, keeping in mind the amazing panel on Monday and ways that you can speak. You can use your words, but it's thinking about the work that you're doing. I think it's great to be having this forum to think about the work that we're doing.

Raji, if you want to, after this, just so you all know, I'm going to ask for a lightning round of your understanding of future strategic, future feminist strategic litigation. Sorry. Going back to it, Raji, how does or should intersectional feminism, as a practice, shape your organization's work?

>> RAJI: Thanks for that, Cee. Yeah, we've been trying to -- we've been trying to use different strategies, because we also recognize at West Coast LEAF that we've historically, you know, come from -- come at the question of social change and feminist legal work from a pretty narrow perspective of lawyers and also not so grounded in community. We've really shifted a lot of the ways that we work to have more community grounding, and I think that for us, that's resulted in a couple of lessons.

Like one is that we can't work with everybody and we can't please everybody. I think historically, we have tried to kind of be there in some way, shape, form, capacity to support kind of all sorts of different activities and work that's, you know -- it comes together and is necessary for reshaping society into the kind of gender just world we want to live in, but I think we realize that we're operating at too general a level there, and so we're going through a process of strategic planning now, so we're maybe a year or two behind you guys at least, but we're starting to do that process now.

And a big part of that is actually going to be drilling down to some of the specific changes that we see as essential and how we get there with community and how -- we're not going in with here's the plan. You're welcome to come along if you wanted. But shaping the plan itself. And so we have started doing that by taking on -- by building bigger, longer projects and making time for relationships. So, like, I can give you a couple of examples. One is that over the past decade or so, we've done, like, a report card, which assesses sort of progress against, like, the -- against CEDAW. How is BC meeting the obligations under CEDAW? And this past year, because we've expanded our mandate to be inclusive of all forms of gender-based marginalization, not simply working to support equality for women, we felt like we didn't do that report card the way that we've always done it. And we're now engaging with communities that we've historically been completely disengaged with, and that we've, I'm sure, alienated. So it's been a process, a really railroad responsibility and humbling learning process, and so for that report card this year, which we made it into a gender equality report card, we went out of our way to find organizations to work with that we'd never worked with before who, you know -- and we had to take -- they had to take a leap of faith, too, to work with us. And so there are, you know -- we worked with an organization in Vancouver, Urban Native Youth Association. That is an organization that has a

significant Two Spirit collective, and we had never really thought about how our work would impact Two Spirit people, how the law impacts Two Spirit people as separate from people who are trans, gender nonbinary or non-conforming, et cetera. We started to think about what would it be like to work with sex workers? We're in the process of sort of coming to some organizational positioning around sex work in feminist advocacy, but in terms of, I know, what are some of the things, especially as Covid is happening, that have particularly impacted this population? And then also, we worked with a grassroots organization that's worked on anti-transantagonism. These were very new relationships and they were bumpy, because they're new. And we're definitely coming at this with -- and those weren't litigation strategies specifically, but it's part of that longer process of relationship building, and kind of like being a little bit vulnerable. Right? to say to community, hey, we haven't been there for you. Like you know, we haven't and we want to do better. Are you willing to invest in working with us? Because it's a big ask, honestly. It's a huge ask.

And we're doing the same kind of thing with a project we're doing around, like, child protection, and in that project, we're sort of going in and working with -- like we see our role as a facilitative role. What are things that community is looking for in terms of how they want to do self-advocacy around their interaction with the child protection system in BC? So we're working with two Indigenous nations or two organizations that serve different Indigenous communities. In Vancouver we've got sort of a working group around lawyers, because there are still some very technical pieces of how the child protection hearing process works that are flawed. And you know, we heard very clearly from community through a law reform project we did that people don't want us to not be lawyers. Like they're not like don't come here and come with hey, I brought a blank piece of paper. Tell me what you need. They want us to be lawyers, but they want the work we're doing to actually respond to what they need. For some people, what they need are lawyers that understand the systems that they're being caught in, and so in BC we've got a very widespread population of folks in rural and remote areas where there aren't a lot of lawyers that have specialized child protection knowledge and are working in isolation, so we were getting calls from lawyers in BC who are like, hey, I usually do family law, but this child protection file is on my desk and I'm having some trouble with how the Ministry is responding or not responding. Do you guys have any resources? And so that was why we thought, hey, lawyers also need to be a part of this project. And then finally, but not lastly, front line service providers. Right? Because they're actually supporting many parents in meetings with social workers and sort of the first -- the emotional and background support of what materials you need to pull together, how you get to the different required workshops and things that the Ministry is making you do. So our focus with this is down the road. Maybe litigation might come from this. Maybe. But for now, it's really that process of, like, learning what is happening for folks in these different communities, but we do have to choose. Right? We don't have the resources to run this project with every community or run this project, even a representative sample of Indigenous nations across BC, because of course they're all very different and have a very unique local context. So I'm hoping this will be a learning process for us, but also will result in concrete

pieces of advocacy work that we can support, whether that's self-advocacy for nations who really want to sort of be able to support one another and others in their community without need to go necessarily come to look at an organization like LEAF or whether that's providing some, like, training and community building for lawyers who are working sometimes in isolation or, like, whether that's helping lawyers and front line service advocates and front line service providers understand that they need to work together, because the end goal may be the same, but sometimes they're sort of operating in, like, a bit of a vacuum. Those are just a couple of examples.

Our recognition was that we weren't doing intersectional feminism in a way that we felt really good about. So we needed to start testing some new strategies. And so, you know, it's still new. I can't say here is like this wonderful experience and here is all the wonderful things that have happened from it, but I think that it has actually really shifted not only how we're perceived, but how we perceive ourselves, and I think that's been really essential from the perspective of staff and board, that this work is still legal work. It's still very important work. But it's work that feels more embedded in what communities actually want from us.

>> CEE: Wow, Raji, thank you for that, for talking about that project. It sounds really incredible and extremely -- and really exciting. So looking forward to hearing more about what, you know, the various things that you learned along the way as it is a not particularly goal-oriented endeavor, but we'll absolutely come out with some definite learning outcomes for all of us doing this work.

I wonder if -- so the idea now was to sort of ask you, and we've been talking about this the entire time, so -- we've gotten some pretty exciting questions, so I want to have some time to get to those. So I'm wondering if, one, and if in one to two minutes, each of you -- I'm going to start with maybe Raji first, but if moving forward, what you think strategic litigation could look like for your organization? And you've already sort of touched on that in the context of this child protection project you're doing. We've been talking about it the whole time. Maybe as a form of almost closing remarks here for all three of you. What do you envision for your organization moving forward?

>>RAJI: We are in the process of determining priorities in the next 3 to 5 years. I think we've kind of come at the question thinking about kind of what's the change we want to see and what form of strategic litigation will get us there? And I think there's a tension, too, because like LEAF, we've also been, you know -- a lot of our litigation experience is as an intervener. We've made conscious efforts to intervene at, like, a trial level or at a Human Rights Tribunal hearing level where we feel like we are able to work a little bit more collaboratively with the interests that are being expressed there to sort of help shape -- we don't typically still get a lot of leeway with the record, let's say, but it feels like sometimes when you're at the appellate level, the frame is already set. And with intervening earlier, we've seen some potential there for us. It's also

different. It's a different way of engaging, but apart from that, we've also gone through this experience right now where we've brought a case forward ourselves, so Fay's experience with the right to housing case is like super interesting to me, because we're right in the middle right now of mapping out the evidence that we're going to need to make our claims viable.

And so we've been trying a few different options around how we want to engage in litigation and where we think -- like what do we think is the best route in the moment? Sometimes you have to be responsive, because you can't control the cases that are moving forward, and so that requires kind of a more traditional intervention approach and appellate level. LEAF are pairing up to do that at the Supreme Court of Canada in a very short period of time, in the *Colucci v. Colucci* case. It's the first time the two organizations have worked together, just the two of us at that kind of work, but in general, I would say, like, strategic litigation for our organization is looking a lot more experimental, if it can put it that way, it feels a little bit scary to say that. I hope board members aren't, like, what? But we're trying new things. We're looking to make new connections and looking to deepen community connections we have and we're trying to build on the work we've done. So the work that I described with the communities of practice project, a lot of that was sourced in the participation we had at the National Inquiry into Missing and Murdered Indigenous Women and Girls, and that grew into a law reform project that was like, hey, what would it look like if BC's child protection system wasn't focused on apprehension, but was focused on prevention and support for families? And then now that's built into this communities of practice project. So a lot of our thinking, I think, we're trying to be longer term thinking in terms of what is available to us and then being responsive, because that's also, as Megan said earlier, the times we're not there, there's a roll back or some kind of derailment of the ability to use the law and the development of legal principles to support this work. So I don't really have a great answer. We're throwing them on the wall and seeing what sticks.

>> CEE: Thanks, Raji.
Megan?

>> MEGAN: Okay. I have about 30 seconds, I think. I would say I don't think we're going to step out of the space of Supreme Court interventions, because I think that will remain an important part of our work. But I recognize that that sometimes does feel reactive and not proactive. I would really like us to do more thinking about how we can get involved in the types of work that is really looking at systemic failings and systemic responses. And I do see that as the work of inquiries, where relevant to gender inequality, as well as the work of some inquests. I think there you are sometimes looking for broader ways to address problems more systematically than what the legal system, in their approach to crafting a really narrow remedy, can do, so I think that that is potentially a space for us to look for. That's my 30 seconds.

>> CEE: Thank you. That was great.
And Fay?

>> FAY: Okay. I'd say that there's four things I want to highlight. One is that in the report I've identified a number of different legal areas where there is room for growth. You can look that up.

The second is a big challenge we have is getting adjudicators to actually believe the lives of people who don't look like them. And so I think building into your strategy, active steps and choices that are aimed towards what you need to do to get judges and adjudicators to understand other people's reality is important. And so looking at other litigation spaces, like inquests or public inquiries and so on is an important thing.

The third is being very attentive to the organized and very well-funded push back against equality rights where intervener organizations have been seeded, Astroturfed, as it were, to push back against equality and to present very libertarian, small government, noninterventionist understandings of equality as everybody fends for yourself.

And finally, I think it's important for LEAF to be thinking about its role in mentoring future generations of feminist litigators, bringing them along in it a way that allows them to build skills, but also being attentive to what kind of skills are needed for different kinds of legal interventions. That's a lot of stuff to work on.

>> CEE: Yeah. Agreed. So we're going to go until 1:20 with this panel, so hopefully everybody is okay with staying a few minutes over time. We got some questions coming in, and so this is a question that you've already kind of taken on, but it is sort of that question about whether it really is possible to do this work at all. So the question is, I was in conversation with an older colleague, a long time feminist activist and scholar on criminal justice. Her take is the system is so inherently flawed and sexist, that any reform will be inevitably flawed. Things like a domestic violence court, heralded as change and reform in practice, make things worse for women and rarely better. I am simplifying. That was the gist of it. Although not the intention, I felt very disheartened and discouraged. Is burn it all down the only solution? I'm not sure if anybody wants to take that on.

>> FAY: I'm happy to take that on. I think legal strategies are never the place where real change happens. Legal -- changes in the law trail social movements. And so real organizing in the streets with people in deep collective action is where the real push for change comes from. I think don't focus -- obviously, you have to be engaged in the legal sphere, because the law is hurting us, whether we're there or not, and it will hurt us more if we're not there. So engagement with law is, in many ways, a defensive strategy. Being attentive to what's possible with law is always important. That's why I think it's so critical that LEAF understand and develop a theory of its relationship with on the ground feminist movements and I very deliberately make that plural, because there are many movements and that accountability and movement building is where real change happens.

>> CEE: Thanks. That's a really helpful framing. We're not going to have time to get to all of the questions, but we really appreciate your participation and your engagement.

I suppose we can go to the next two. This next question, which is -- it's interesting, because it's about private practice. Is there a way you could suggest that we can incorporate intersectional feminism in private practice, specifically I would love to integrate into my practice working to help victims and complainants navigate through the criminal justice system. I'm not sure.

>> FAY: There are all sorts of feminist litigators who do work providing independent legal advice to women who are witnesses in criminal prosecution, and in different provinces, there's actual funding for that work, so I'm not sure where the question is coming from. But I'd encourage you to reach out and research women doing that, would. If you need assistance, get in touch with Cee or I and we can help connect you up.

>> RAJI: The only thing I would add to that, also, is just to think about the way in it which you do your practice of law. It can, itself, there are feminist strategies for how you do your practice of law. And one of the things that I'm affiliated with a legal clinic in BC that does work on family law. One of the things I like to do with the students, because they're law students working in a legal clinic, is really kind of like, in part, like a reflective piece to the practice of law. So that that you're constantly kind of reflecting and learning and making space for that. And then also, how you engage with clients, particularly clients who are probably alienated from the legal system. So that may not be your corporate client, but there may be other clients in your practice. And then I think for us just in terms of how we're litigating this family law, legal aid test case that I alluded to, we've tried to really deliberately have a very supportive structure where it's very non-hierarchical. We're not operating with a lead counsel model for how we're trying to do the work. We've tried to bring different strategies of feminist organizing and feminist litigation into the way we do the work as well. So there are ways to -- you know, I used to be in private practice and not all the cases I worked on were cases that had any kind of connection necessarily to gender equity issues, but I always tried to find a way to bring that angle into what I was doing, and I think we can be very creative in doing that, no matter where we happen to find ourselves practice.

>> CEE: thanks to you both, and thank you, all three of you, for your time and your energy. Your passion is infectious and you've managed to pull together many of the threads from all of the conversations we've been having at the symposium. So thank you.

Thank you to all of you who are attending this panel and for your engagement and questions. Finally, thank you to the Gender Justice Now LEAF team, Kat Owens, April Leather, and Nicole Biros-Bolton, and or incredible NeOlé facilitators for your work on this conference. For those of you attending the symposium, I know that we all have another day of productive learning ahead

of us as we discuss what we need in order to do the work of gender justice and what we can contribute to that work. For those of you leaving us after this panel, thanks so much for attending. Have a great day.

>> KAT: Thank you, Cee, for that excellent moderating, and thank you to our panelists as well. I'm excited to go back and re-watch this and take away from the panel, too. If folks would like to learn more, we encourage you to take a look at Fay's paper on equality rights litigation, which she referenced, and that Executive summary is also available in French. We'll share both a link to the full paper and to the French Executive summary in the YouTube chat now. And you can also visit LEAF's website, www.LEAF.ca to learn more about the work our organization does. And I'd encourage you to check out West Coast LEAF's website as well, www.westcoastleaf.org. Thank you so much for attending today, and enjoy the rest of your day.