



# LawFemme CFLS News

Volume 3, Issue 1

November 13, 2003

CHECK OUT OUR UPDATED WEBSITE! <http://faculty.law.ubc.ca/cfls>

## In This Issue

Poverty & Human Rights Project: Access to SUFA	1, 4-5, 7, 12-13
Pivot: Sex Trade Workers' Access to Federal Hearings	2-3, 10
MAWL on Provincial Property Division Laws	6
Submission to Federal Finance Committee	8-9
CFLS Speakers Series	9
Mu Sochua's Visit to UBC	11
FAFIA on Human Rights	14
Vancouver City Council and Welfare Laws	15

### LAWFEMME IS:

#### Editors

Kat Kinch

Kerry Lynn Okita

#### Editing Professor

Susan B. Boyd

#### CFLS Steering Committee

Susan B. Boyd, Director

Catherine Dauvergne

Annie Rochette

Margot Young

Fiona Kelly

Agnes Huang

Kat Kinch

## THEME ISSUE:

### LAW REFORM, FEMINIST-STYLE

Legal education, more often than not, is based on reading the decisions of judges, learning the ratio, understanding the reasoning. The boundaries of a feminist's legal education, however, extend to other terrains. My greatest learning curve in the last year has been in the area of law reform. I've had the good fortune to be surrounded by powerful scholars and activists who have visions of what our laws could be. I have enormous respect for these mentors, especially for their skilled articulation of the legal issues and public obligations to women, and for their tough refutations of tired government excuses. I've also been able to work with women affected by criminal laws, social service legislation, and neo-liberal trends in public policy. These women have become scholars and activists in their own right, driven by their experiences, their frustrations and their need to stand up for law reform in their own interest. These women, many of whom are marginalized and living in poverty, have a special role to play in feminist law reform: they are challengers of traditional political processes and conventional ways of exercising one's social citizenship. Will a shift in the process result in a shift in the focus of Canadian laws? It's an exciting question. It's an exciting time. And for me, it's been a very exciting legal education. — Kat Kinch, Law III.

### IMPROVING ACCESS TO THE SOCIAL UNION FOR ALL CANADIANS

By: The Poverty and Human Rights Project

*The Poverty and Human Rights Project is a non-profit research and public education centre committed to promoting recognition and realization of rights to social and economic security. The Project Directors are Gwen Brodsky and Shelagh Day. The financial support of the Law Foundation of British Columbia is gratefully acknowledged.*

The subject matter of the Social Union Framework Agreement (SUFA) is of crucial, even constitutional, importance to all Canadians (Note 1). The Poverty and Human Rights Project supports the Social Union Framework Agreement, viewing

it as, potentially, a central vehicle for governing social program design and administration in Canada, and a vehicle for giving effect to Canada's rights commitments.

However, we have serious concerns that SUFA has not, to date, been implemented in a way that improves social conditions and social protections for Canadians, or provides meaningful dialogue between citizens and governments about the social union. The current situation of the poorest and most vulnerable people in B.C. reveals the harm of this failure.

The purpose of this piece is to examine the promise that the SUFA holds out to Canadians, and to recommend steps that will improve SUFA's usefulness and effectiveness. The SUFA must also be a vehicle for genuine citizen engagement with all levels of government about social programs and outcomes. Mechanisms for citizen engagement must ensure that the most politically marginalized people in Canada can participate in designing standards for the social union that reflect Can-

Continued on page 4

## BREAKING DOWN BARRIERS: TAKING STEPS TO IMPROVE SEX TRADE WORKERS' ACCESS TO PARLIAMENTARY HEARINGS

### Pivot Legal Society Sex Trade Work Committee

#### Submission to the Subcommittee on Solicitation Laws (of the Standing Committee on Justice and Human Rights)

##### Introduction

This spring, a new project was launched by a group of women activists in Vancouver.

Libby Davies, MP, succeeded in passing a motion to form a Parliamentary Committee to review sex trade legislation. She asked "that a special committee of the House be appointed to review the solicitation laws in order to improve the safety of sex-trade workers and communities overall, and to recommend changes that will reduce the exploitation and violence against sex-trade workers." (Hansard, Monday November 18, 2002) The Subcommittee on Solicitation Laws, of the Standing Committee on Justice and Human Rights was formed.

In the context of the gruesome evidence that continued to surface about the missing women of Vancouver, and with the continued silencing of sex trade workers still struggling for their own survival in a situation of ongoing violence, criminalization and diminished social services, the Pivot Legal Society Sex Trade Work Committee (STWC) began an initiative to bring the voices of marginalized women to an important political process.

In the interest of ensuring the voices of women in the sex trade were heard by the Parliamentary Committee, the STWC implemented two parallel projects. The Accessibility Project was formed to determine how and where the hearings could be held in Vancouver to maximize the possibility of participation by sex trade workers. The Affidavit Project was created to obtain and record sex trade workers' experienced-based opinions on the criminal laws' effect on their safety, work, health, dignity and livelihood. This project could not have happened as quickly or as comprehensively without the financial assistance of the Law Foundation of British Columbia, a grant that is gratefully acknowledged by the STWC.

In determining how the STWC would proceed with these projects, it was established that the primary goal was not to form a position for Pivot or the committee to endorse, but to ascertain the position of sex trade workers, currently or formerly in the sex trade, on the criminal laws affecting them. In order to best gain their opinions, experiences, and impressions on the communicating, bawdy house and procuring laws, sex trade workers were treated as expert witnesses. This included compensating sex workers for their time, and including information about their qualifications as experts in their affidavits. Those expert opinions will now be conveyed by Pivot to the Parliamentary Committee.

100 affidavits were obtained overwhelmingly from women (about 10% were from men) in the survival sex trade: sex work done to meet basic needs by someone with few or no other options to obtain an adequate income. Confidentiality was protected by blacking out the identifying information after the affidavit had been sworn or affirmed. That affidavit was then attached as an exhibit

to a volunteer's affidavit, who swore or affirmed that the affiant had attended the session and gave an affidavit. This process is called double-swearing. Not every affidavit was anonymous— some affiants considered it very important to put their name to their experiences.

The message in these affidavits is a powerful one, and the hope is that the expert opinions of the sex trade workers on the criminal laws affecting them will be heard and given the weight they deserve by the committee.

On October 24, 2003, Pivot learned that, due to budget allocation, the Parliamentary Subcommittee has determined that they will not be travelling to Vancouver. Rather, they will convene only in Ottawa.

The STWC, however, is determined that the work done to encourage Parliament to provide an accessible venue will not be in vain, and is continuing to push the Subcommittee to find their way to Vancouver. Now that Parliament has prorogued, a lobbying effort will be necessary to ensure that the Subcommittee continues. Pivot invites you to encourage the Subcommittee to hold hearings in Vancouver, as a matter of respect for the missing women and the sex trade workers who continue to work for their own survival:

#### Information on the Subcommittee on the Solicitation Laws (of the Standing Committee on Justice and Human Rights):

Chair: Hedy Fry

Vice-Chairs: Libby Davies and Paddy Torsney

Members: Chuck Cadman, Inky Mark, Richard Marceau

Clerk of the Committee: Jean-Philippe Brochu

House of Commons, 621 Wellington Building

Ottawa, Ontario

K1A 1A6

Telephone: (613) 995-6119

Fax: (613) 995-2106

Email: [brochj@parl.gc.ca](mailto:brochj@parl.gc.ca)

Website: [http://www.parl.gc.ca/InfoCom/CommitteeMain.asp?](http://www.parl.gc.ca/InfoCom/CommitteeMain.asp?Language=E&CommitteeID=4233&Joint=0)

Language=E&CommitteeID=4233&Joint=0



#### Pivot's Submission on Accessibility

Pivot Legal Society will be making submissions to the Standing Committee on Justice and Human Rights' Subcommittee on the Solicitation Laws [hereinafter the Subcommittee]. Our legal analysis of the current laws is informed by affidavits sworn by sex trade workers concerning their opinions of, and experiences under, the current legislative framework. We believe it is imperative that sex trade workers be encouraged to speak directly at the Subcommittee's hearings.

Sex trade workers from Vancouver's Downtown Eastside are among the most marginalized people in Canadian society. Their status, which is directly linked to their stigmatization and criminalization, means that creating a real opportunity for them to participate as witnesses or audience members poses significant challenges.

To address some of these challenges, Pivot conducted a survey for sex trade workers in the Downtown Eastside in order to gather information about the type of environment sex trade workers would regard as comfortable and safe. There were 61 respondents (51 women including transgendered women and 10 men) who are currently working or formerly worked in the sex trade.

A subsequent focus group was conducted to explore some of the survey results and to gather feedback about the Subcommittee's proposed on-site visits.

The goal was to collect information to aid the Subcommittee to encourage the fullest possible participation of sex trade workers in the hearings and to ensure that the Subcommittee receives their input into how to best conduct their on-site research.

The following summary of our findings and recommendations is followed by the detailed responses from the questionnaire and focus group.

### **Accessibility of Parliamentary Hearings on Sex Work**

#### **Desire to Participate**

Ninety percent of the survey respondents indicated they would be interested in presenting to the Subcommittee if the setting was safe and comfortable.

Respondents expressed willingness to travel outside the Downtown Eastside if necessary (74%). It should be noted, however, that this would place an economic burden on them.

#### **Location and Time**

There were many different suggestions as to where the hearings should be held. Many respondents suggested organizations in the Downtown Eastside with which they are familiar and would feel safe in, especially women-only spaces.

Focus group participants further identified that hearings and meetings should be scheduled for later in the afternoon in consideration of their work schedules.

#### **Panel Constitution**

Seventy-nine percent of survey respondents reported they would be comfortable talking to a panel of up to six Subcommittee members. A few respondents would prefer less than six, while others were willing to speaking to as many people as necessary in order to be heard. Overall, it was not indicated that respondents felt it necessary to speak to women only, though some did indicate that they would feel more comfortable speaking to women only.

#### **Presentation Protocol**

Focus group participants wanted assurances they would have a decent amount of time to speak to the Subcommittee (10 minutes), and that they would not be interrupted by questions. They also expressed concerns about being "judged" by the members of the panel.

#### **Media and Privacy**

Although most respondents (75%) expressed comfort with speaking to the Subcommittee if others were present in the room, 66% preferred a more private situation without media and the public present.

Eighty-three percent indicated it would be acceptable if the hearings were taped, but qualified this by listing a variety of conditions under which it would be acceptable.

The predominant concerns were related to:

- a) Privacy of their person (name, face);
- b) A desire that the information would be presented fully and in context; and
- c) A desire to be informed in advance if the hearings were being taped.

Respondents expressed mixed comfort levels about talking in front of media and its presence when presenters were entering and leaving the hearings.

Many respondents expressed concern with respect to their names and faces being shown to the public through the media. This was attributed, in part, to a desire for some level of anonymity, should friends, family, or government agencies (for example, child protection authorities) see these images. The focus group participants elaborated on their concerns about privacy and the possible repercussions of speaking publicly such as getting evicted from their homes or losing access to social assistance.

#### **Advocacy and Support**

The vast majority (88%) of respondents wanted support if they were going to present to the Subcommittee. Many identified the need for moral support and the presence of friends and family. Many also identified the need for advocacy in the form of legal advice, as well as support from the service providers with which they are most familiar. Specific concerns included presentation preparation and having a pamphlet with the information they needed in advance of the hearings and availability of counseling services afterwards.

#### **Security**

Respondents indicated the need for security as they arrive at and leave the hearings, but also feared being harassed by police or other authorities. Focus group participants stated they would much prefer peer security and did not want a private security service to be hired. They were also in strong consensus that if any police officers are going to be present at the hearings, there should be an effort to ensure that these are officers who have a positive rapport with the women and with whom the women are comfortable (Dave Dickson, a Vancouver Police Department officer, was specifically named).

#### **Environment**

Description of what survey respondents considered to be a safe and comfortable environment for the hearings varied. Many of the above themes were reiterated and other suggestions about atmosphere and room arrangement were provided. It was suggested that sex trade workers be able to videotape their presentations in a "speaker's corner" scenario to be submitted to the Subcommittee.

The focus group participants also identified the necessity for respectful language in order to create a safe environment.

#### **On-site Visits**

Focus group members responded favourably to the idea of on-site visits. They saw them as an opportunity to create an understanding

Continued on p. 10

## Citizenship Engagement in SUFA— continued

ada's rights obligations to them.

### Introduction: The Social Union

Over the past 50 years Canada has made commitments to ensure that everyone has access to certain kinds of benefits and protections by virtue of their membership in society. The 'social union' refers to that commitment, namely, that Canadians will take care of each other, and that they will share resources in order to do so. There is more that unifies Canadians than living within national borders and sharing political institutions. We also share social values. Everyone needs adequate food, clothing, and housing; fair, safe and non-discriminatory conditions of work; access to education; a degree of income security throughout his or her lifetime; and health care, including protection from environmental causes of ill health. Canadians have accepted that there is a collective responsibility to create a society in which these are entitlements, provided, not as a matter of charity, but as inci-

dents of social citizenship.

Evidence of this commitment can be seen in the fact that Canada has constructed a social safety net of programs and protections, established rights to social assistance for persons in need, ratified the *International Covenant on Economic, Social, and Cultural Rights (ICESCR)* (Note 2), and made an express commitment in the Constitution (Note 3) to provide essential public services of reasonable quality to all Canadians.

The SUFA itself includes a succinct statement of the values of our social union:

Canada's social union should reflect and give expression to the fundamental values of Canadians – equality, respect for diversity, fairness, individual dignity and responsibility, and mutual aid and our responsibilities for one another.

Further, the SUFA states that governments intend to meet the needs of Canadians by: 1) ensuring "access for all Canadians, wherever they live or move in Canada, to essential social programs and services of reasonably comparable quality;" 2) providing "appropriate assistance to those in need;" 3) respecting "the principles of medicare;" and 4) promoting "the full and active participation of all Canadians in Canada's social and economic life."

SUFA's language is sufficiently broad to make it an obvious vehicle for negotiating and maintaining intergovernmental arrangements regarding all social programs and social protections, including those related to employment.

### Obligations Under SUFA

When considering the content

of Canada's social union, current social programs and the text of the SUFA are not the only sources of information. SUFA is located within a larger legal and political framework of governmental obligations to its citizenry. What are those obligations?

As we have already noted, section 36 of the Constitution is pertinent. It states that "... Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to promoting equal opportunities for the well-being of all Canadians... and providing essential public services of reasonable quality to all Canadians."

We note that s. 36 refers to "essential services of reasonable quality" rather than "essential services of reasonably comparable quality" as the SUFA does. Because s. 36 of the Constitution is a more authoritative statement of the social union commitment than the SUFA, we prefer its articulation of the compact.

The substantive content of the social union must be informed by the values of equality and security of the person which are embodied in ss. 15 and 7 of the *Charter*, and in international human rights treaties to which Canada is a signatory.

During the same fifty year period in which Canada developed its social safety net, it simultaneously developed a framework of human rights commitments – statutory, constitutional and international. Central to this framework is a commitment to equality.

By now, Canadians have a sophisticated analysis of what the commitment to equality entails:

Inequality is not just an individual phenomenon. Rather, it is disproportionately experienced by groups in the society that are vulnerable to marginalization and discrimination, in particular, Aboriginal people, women, people with disabilities, and people of colour.

Deeply rooted social inequality of these groups cannot be resolved merely by enacting laws that are non-discriminatory on their face. It goes without saying that social programs and services must not discriminate in their design or delivery. However, this is only one aspect of what the right to equality encompasses.

To give life to *Charter* rights to equality and security of the person, governments must be understood to have positive obligations to ensure that benefits and protections are provided that will ameliorate the disadvantage of vulnerable groups, and ensure that everyone has an adequate standard of living.

Canada's social programs are a central means of meeting the goal of substantive equality and security of the person for all Canadians, because it is through social programs that governments can address and ameliorate the inequality of disadvantaged individuals and groups, and protect basic social and economic security.

This understanding of the positive governmental obligations that flow from *Charter* rights to equality and security of the person is reinforced by the *In-*

"There is more that unifies Canadians than living within national borders and sharing political institutions."



## The larger legal and political framework in which SUFA is located obligates governments to provide social programs and protections...

ternational Covenant on Economic, Social and Cultural Rights (ICESCR), to which Canada is signatory. The *Charter* guarantees of equality and security of the person are connected to, and their meaning is illuminated by ICESCR rights which include the following: freely chosen work (Article 6); just and favourable conditions of work (Article 7); fair and non-discriminatory wages (Article 7(a)(i) and (ii)); safe and healthy working conditions (Article 7(b)); social security (Article 9); an adequate standard of living, including adequate food, clothing and housing (Article 11); the highest attainable standard of physical and mental health (Article 12); and education (Articles 13 and 14).

The Supreme Court of Canada has held that *Charter* rights must be interpreted in light of Canada's human rights treaty obligations (Note 4). This is a view that the Government of Canada has also espoused. In 1993, the federal government, in response to questions from the UN Committee on Economic, Social and Cultural Rights, which was reviewing Canada's compliance with its obligations under the ICESCR, indicated that section 7 of the *Charter* "ensured that persons were not deprived of the basic necessities of life." (Note 5) Canada reconfirmed this position in 1998, noting that the decisions of the Supreme Court of Canada in *Slaight* (Note 6) and *Irwin Toy v. A.-G. Quebec* (Note 7) confirm that the *Charter* may be interpreted to protect ICESCR rights and that section 7 guarantees that people are not to be deprived of basic necessities (Note 8).

In short, the larger legal and political framework in which SUFA is located obligates governments to provide social programs and protections that have the effect of ensuring that all Canadians have an adequate standard of living, including access to adequate food, clothing, housing, education, health, and just and favourable conditions of freely chosen employment (Note 9).

The SUFA should be understood to be a mechanism not just for agreeing on funding formulas, but also for ensuring that the provision of adequate social programs and protections by all levels of government, is

consistent with Canada's obligations under s. 36 of the Constitution, ss. 15 and 7 of the *Charter*, the ICESCR, and human rights legislation (Note 10).

### SUFA and Citizen Engagement

On its face, the SUFA contemplates not just a more structured interaction between governments – federal, provincial and territorial – but also a fuller interaction between governments and citizens on the matter of social policy. It states that SUFA will ensure "effective mechanisms for Canadians to participate in developing social priorities and reviewing outcomes." Unfortunately, this promise has not been fulfilled.

On the contrary, as was feared by many Canadians at the time of the Charlotte-town round of constitutional talks (Note 11), the creation of this intergovernmental mechanism to deal with social policy has had the effect of removing social program design and implementation from public debate and scrutiny, placing them within the black box of executive federalism, where they are a subject matter for Ministers and officials, not politicians and not the public.

### Political Context

An impediment to the development of real citizen engagement is governments' apparent uneasiness about it. Governments appear reluctant to engage with citizens in any way that might affect their freedom to make decisions according to their own priorities. Consultations have been designed mainly as episodic, one-time-only events, such as public meetings, multi-stakeholder roundtables, and focus groups. As Susan Phillips notes, the problem with the public consultations that both federal and provincial governments hold is that "government usually determines who is invited, there are few opportunities for a real exchange of views and genuine dialogue, and participants receive limited information on how the results are used." (Note 12) At its worst, citizens are being subjected to consultation by 1-800

number, workbook and website. This is a high-tech way for governments to hide from citizens, not a way to engage with them.

In addition, governments have designed consultation procedures which sidestep or silence those who are most critical of them on social policy, often those who represent the most disadvantaged Canadians. This silencing is accomplished by going over the heads of non-governmental organizations to hold "town hall" meetings or focus groups with individuals, by questioning the "legitimacy" of some non-governmental organizations, by cutting funds to voluntary organizations thereby crippling their capacity to participate in consultative processes, and by hand-picking participants at consultations or roundtables. Many voluntary organizations now question whether governments are genuinely interested in hearing what citizens, particularly the most politically marginalized ones, have to say about social policy and social programs.

### i) Citizen Engagement

We have used the term "citizen engagement" in the sense that it is used by Susan Phillips, that is to denote "an interactive, deliberative dialogue between citizens (and/or their organizations) and government officials that contributes meaningfully to specific policy decisions in a transparent and accountable manner." (Note 13) Real citizen engagement, or deliberative democracy, according to Phillips, suggests that not only will participants be engaged in a process of public reasoning about the policies that will govern them, but "the results of the process will be given weight in collective decision making and be used to guide subsequent action." (Note 14) This does not mean that citizens, rather than politicians, will have the final say on policy but rather that processes or mechanisms will be in place so that "the results of such deliberation...[will have] an institutionalized impact on political decision-making." (Note 15)

In our view, only if citizen engagement is given this meaning and is developed fully



**(IN)EQUALITIES IN PROVINCIAL PROPERTY LEGISLATION: A REVIEW OF MAWL'S NEW REPORT**

By Kerry Lynn Okita (Law I)

**Introduction**

The Manitoba Association of Women and the Law (MAWL) recently released a report commenting on current property law's recognition of diverse couples within the province. *The Changing Family: Furthering Equality in Manitoba's Property Legislations* discusses several major inconsistencies within current legislation, resulting in the differential provision of greater protection to the rights of married couples over the rights of same sex or common law couples. The statements in this report are not limited only to Manitoba, but are applicable to Canada generally as a reflection on how the Canadian state interacts with changing Canadian society.

Throughout the report, MAWL encourages both the Government of Canada and the Government of Manitoba to eliminate inequity towards same sex couples and common law couples by reforming legislation. As it presently stands, the system relies on individuals to approach the courts when legislation is either ambiguous or discriminatory. This exclusive remedy is unavailable to most Canadians, as it involves costly litigation. Therefore, MAWL recommends that governments take active steps to ensure that rights are attainable by all citizens. MAWL suggests several amendments to legislation; however, the main focus of this article will be on how current legislation confronts the Supreme Court decisions in *M. v. H.* and *Nova Scotia (AG) v. Walsh*.

**M. v. H.**

The *M. v. H.* decision, which was delivered in May of 1999, stated that Ontario's definition of "spouse" for spousal support claims at the time discriminated against same-sex couples. By drawing a distinction between unmarried, cohabiting couples who were of opposite sexes and those who were of the same sex, legislation was favouring the former and discriminating against the latter contrary to the *Charter of Rights and Freedoms*. This decision was a landmark for same-sex couples and prompted governments across Canada to start reconceptualizing the notion of family in their statutes.

In the particular case of Manitoba, the provincial government proclaimed *The Charter Compliance Act*. This *Act* extended rights to same-sex couples and common law couples, which were previously held exclusively by married couples, by defining the term "common law" as akin to marriage and, in most cases, inclusive of same-sex couples. The amendments, however, remain plagued by significant discrepancies that hinder their efficacy. The main issue confronted is that within the forty-one statutes affected, six different definitions regarding the appropriate time period to gain legal status as a common-law relationship apply. MAWL proposes that legislation be further amended to create consistency among provincial legislation, and also in legislation across Canada.

Another factor discussed within the report is Manitoba's

decision to postpone the property section of *The Charter Compliance Act*, called *The Common-Law Partner's Property and Related Amendments Act*, while awaiting the judgement for the Supreme Court of Canada ruling on *Nova Scotia (AG) v. Walsh*. It was anticipated that the court would follow its ruling in *M. v. H.* and strike down a law regarding the definition of spouse in a piece of Nova Scotia legislation.

**Nova Scotia (AG) v. Walsh**

The Supreme Court majority decision rendered in December of 2002 affirmed the law stating that common-law spouses do not have the same rights to equal division of property after the dissolution of a relationship as married couples. The Supreme Court decided that the exclusive definition of spouse was not discriminatory because it did not infringe the dignity of a common-law spouse nor deny them access to a benefit or advantage available to married persons. This judgment was based on the reasoning that many individuals engage in common law relationships to avoid marriage and the legal obligation associated with it. Marriage was regarded by the court as a contractual commitment of binding economic partnership, while common law relationships were not.

MAWL's recommendations regarding this issue, however, rest with the opinion of Madam Justice L'Heureux-Dubé as expressed in her dissent. In her view, living as a couple typically results in interdependence and a need to redistribute economic resources after the dissolution of a relationship. It has been found that many common law partners falsely assume that they acquire rights of redistribution after a certain period of cohabitation and only learn of the omission once they have been negatively affected by it. Also confronted in the dissenting judgment is the majority concern that individuals might wish to avoid economic obligations by choosing a common law relationship rather than marriage. This issue is addressed by a proposition that legislation include devices to rebut the presumption of equal sharing.

**Conclusion**

The MAWL report suggests that the majority decision in this case does not reflect contemporary society's choices, which statistically show that an increasing number of couples are choosing to enter into common law relationships and in doing so, assume that they will acquire equivalent rights as married couples. MAWL recommends that Manitoba recognize this changing feature of society by immediately proclaiming *The Common-Law Partner's Property and Related Amendments Act*. It also suggests that amendments to legislation be made across Canada to ensure uniformity in the protection of rights of common-law and same sex couples.

The MAWL report makes many powerful arguments, which are substantiated by specific and general recommendations for implementation.

MAWL's report can be found in its entirety at <http://www.nawl.ca/whatsnew.htm>.

The Supreme Court of Canada's decisions in *M. v. H.* and *Nova Scotia (AG) v. Walsh* are available at: <http://www.lexum.umontreal.ca/csc-scc/en/index.html>.

## ACCESS TO SUFA: CONTINUED...

can the SUFA be a modern and useful vehicle for governing the social union.

### *ii) Mechanisms*

Citizen engagement requires the creation of effective mechanisms, as promised in section 3 of SUFA. Mechanisms must be permanent, focussed, inclusive, and transparent. If the dialogue with governments is to be a genuine one, governments cannot select the participants, nor can they be the sole determiners of what will be discussed, or when discussion will occur.

More satisfactory mechanisms must be developed that will involve voluntary organizations knowledgeable about the delivery of social services, about the conditions and needs of particular groups of citizens, and about the social and economic impacts of social programs, in an ongoing deliberative dialogue with governments.

An essential feature of mechanisms for citizen engagement is that they provide greater opportunity for dialogue with elected representatives, not just Ministers and officials. A danger of the SUFA, as we have already pointed out, is that it removes social policy from the realm of open political process, and hides it in the black box of executive federalism. SUFA mechanisms should operate to re-vitalize political process, by creating a more active and involved civil society, and by increasing the involvement of elected representatives, as well as others, with citizens.

### *The B.C. Example*

The impact of there being no "effective mechanisms for Canadians to participate in developing social priorities and reviewing outcomes" is that the most disadvantaged residents in provinces with governments committed to dismantling social protections find themselves alone. There is no effective mechanism for dialogue with their own provincial government, and there is no mechanism for engaging other governments or residents in other provinces in assessing whether the policies of their government meet an accepted standard for the social union as a whole. The most disadvantaged and vulnerable people are isolated and politically abandoned.

In B.C. there is an unparalleled "democratic deficit." In the May 2001 election, the Liberal Party gained 77 of 79 seats. Faced with the implementation of an agenda of drastic cuts to social programs and social protections, which was not announced in the Liberals' pre-election platform, individuals and voluntary organizations have found their efforts to participate in dialogue with government about the harms that are being inflicted, and possible alternative courses of action, stymied. Consultative processes have been truncated and, for those who are most disadvantaged, empty. Those who are troubled and frightened by the cuts and changes, and who express their dissent, have been publicly written off by the government as merely supporters of the New Democratic Party which was roundly defeated.

It is clear from section 3 of the SUFA, with its promise to involve Canadians "in developing social priorities and reviewing outcomes", that Canada has not endorsed a thin version of democracy that begins and ends with casting a ballot once every four or five years. Section 3 takes for granted that democracy requires an ongoing conversation between governments and citizens, particularly when matters as fundamental as the design and effectiveness of social programs and social services, which are essential to well-being, are at stake.

However, currently the SUFA offers nothing to those whose ability to feed and clothe themselves and to keep a roof over their heads is threatened by a provincial government's policies. A provincial government dedicated to dismantling social programs and protections can ignore with impunity those who are directly harmed, as they have little political power or influence. And, in these circumstances, there is no tangible social union, or no effective mechanisms through which to give it reality. The most disadvantaged people can be left alone with a hostile provincial government, with no other place to turn.

### *The Right to Participate: Section 15 and Section 7 Implications*

Article 25 of the *International Covenant on Civil and Political Rights* states that:

Every citizen shall have the right and the opportunity, without... unreasonable restrictions:

To take part in the conduct of public affairs, directly or through freely chosen representatives;

To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors....

Section 3 of the SUFA contemplates a means of fulfilling the right to "take part" in the conduct of public affairs, moving beyond the matters of voting and standing for office. However, the value of equality requires us to question who will actually take part, and with what weight, in non-electoral processes that will guide the development of social policy.

If disadvantaged groups cannot participate, with equal political weight, in these processes, the likelihood of improving the social union as it has to do with their material conditions is minimal. Participation in political decision-making processes is integrally linked to the achievement of material and social equality for those who do not currently enjoy it (Note 16).

The connection between the right to participate and the social and economic advancement of disadvantaged groups has been recognized by both courts and governments.

In *Native Women's Association of Canada v. Canada* the Supreme Court stated that:

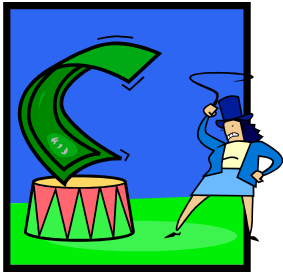
...issues of expression may on occasion be strongly linked to issues of equality. In *Schachter v. Canada*, [1992] 2 S.C.R. 679, the Court said that s. 15 of the *Charter* is indeed a hybrid of positive and negative protection, and that a government may be required to take positive steps to ensure the equality of people or groups who come within the scope of s. 15. It might well be that, in the context of a particular equality claim, those positive steps may involve the provision of means of expression to certain groups or individuals (Note 17).

In 1995 more than 170 governments worldwide adopted *The Report of the Fourth World Conference on Women: Platform for Action* which states that women's participation in decision-making is necessary to the achievement of equality for women.

Women's equal participation in decision-making is not only a de-

## Putting Women's Equality on the Federal Government's Finance Agenda

Submission of Professor Margot Young to the Standing Committee on Finance, October 27, 2003



### Introduction

The federal government, in setting its next budget, must consider and give weight to the following features of its obligations to Canadian women under both the Canadian Constitution and international agreements to which Canada is a signatory:

- (i) Women's equal benefit and protection of the law without discrimination based on sex, race, age and other enumerated and analogous grounds;
- (ii) The federal government's leadership role in ensuring the substantive and equal availability of social programmes across the country.

These policy obligations stem from a number of features of Canada's constitutional and international rights obligations.

### Constitutional Equality Guarantees

Equality is guaranteed by section 15(1) of the *Charter*, in the following terms:

15.(1) Every individual is equal before and under the law and has the right to the equal protection and benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The sex equality guarantees set out under section 15 are reinforced by section 28 of the *Charter*, which states that: "Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons."

Starting with its decision in *Law Society of British Columbia v. Andrews*, the Supreme Court of Canada has interpreted section 15 of the *Charter* as a guarantee of substantive rather than merely formal equality. A substantive conception of equality focuses on the impact of the law or state action in question in light of the actual circumstances of the individual or group whose rights are at issue.

Section 15 also addresses the equality of women who are members of other specifically enumerated groups, or groups analogous to them. Government programmes, or budgetary choices, are therefore reviewable for their discriminatory effects on women who are members of other subordinated minorities, including women who are poor, Aboriginal women, women with disabilities, and women who are elderly.

Sections 15 and 28 together provide direction for the federal government as it sets its budgetary priorities. The government is constitutionally obligated to ensure that its budgetary choices do not discriminate against women, either in form or effect. Moreover, given the substantive content the Supreme Court has consistently stated must be given to section 15 of the *Charter*, these choices must affirmatively recognize and promote equality as an underlying objective of federal spending and programme development.

### International Obligations

Buttressing and informing these constitutional obligations of equality and programme leadership are the obligations found in interna-

tional human rights law. For instance, the *Convention Against All Forms of Discrimination against Women*, to which Canada has been a signatory since 1981, commits all levels of government in Canada to prohibiting discrimination against women "in all its forms", and to taking "all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women." More specifically, Article 3 of the *Convention* states, in general terms, that:

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Among the specific guarantees set out in the *Convention* are the right to equal participation in public and political life and in the formulation of government policy under Article 7; the right to equality in education, career guidance and vocational training under Article 10; and the right to equality in employment, to free choice of employment, and to advanced vocational training and retraining under Article 11(1). Article 11(2)(c) of the *Convention* requires governments:

To encourage the provision of necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.

Canada is also signatory to the Beijing *Platform for Action*. Obligations under this agreement include, in relation to the problem of poverty among women: to "[a]nalyse, from a gender perspective, policies and programmes - including those related to macro-economic stability, structural adjustment, external debt problems, taxation, investments, employment markets and all relevant sectors of the economy - with respect to their impact on poverty, on inequality, and particularly on women"; to "[p]rovide adequate safety nets and strengthen State-based and community based support system, as an integral part of social policy, in order to enable women living in poverty to withstand adverse economic environments"; and to "[i]ntroduce measures to integrate or reintegrate women living in poverty and socially marginalized women into productive employment and the economic mainstream."

In addition to these specific anti-poverty measures, the *Platform for Action* also outlines a series of remedial steps to which Canada and other signatories of the *Beijing Declaration* commit themselves. These commitments include pursuing gender equality in the field of education and training, women's health, the economy, human rights of women, power and decision-making, and institutional mechanisms for the advancement of women.

In order to accomplish these goals it is critical that the government conduct a gender analysis of its proposed budget such that the budget impact on women is known. Such a gender analysis must be used and responded to in order to ensure that the budget



## MAKING FEDERAL FINANCES WORK FOR WOMEN

works in aid of the government's gender equality commitments.

### Section 36 of the Constitution

Section 36(1) of the *Constitution Act, 1982* represents an express commitment by the federal government, in conjunction with the provinces, to promote: "equal opportunities for the well-being of Canadians"; to further "economic development to reduce disparity of opportunities"; and to provide "essential public services of reasonable quality to all Canadians." Thus, the federal government has a constitutional obligation to promote equal opportunities for the welfare of women living in all parts of the country and to provide basic public services of reasonable and comparable quality to all Canadians. Section 36 clearly stipulates a cross-nation net of programmes and services designed to promote individual equality and well-being, rather than the current system of large gaps, discrimination, and inter-provincial disparities. Absent concerted federal financial support for welfare-related programmes and services, the constitutional undertaking established by s. 36(1) is meaningless.

### Recommendations

1. Specific funds must be dedicated to fulfill Canada's obligations to women under its international commitments. Matters which the federal government has jurisdiction over already (either directly or through exercise of its spending power) include legal aid funding, measures to combat violence against women and girls including women's crisis centres and shelters, a national child care programme, social housing, aboriginal women, and funding for constitutional test cases.

2. Exercise of the federal spending power, particularly transfer funds to provincial governments, must have conditions attached to it to ensure national compliance with constitutional and international law obligations and the amelioration of inter-provincial disparity in programme delivery and substance.

3. The federal government must establish a national body to monitor compliance across the nation with such conditions and with constitutional and international obligations.

### Editors's Note

**Equality-seeking groups made women's needs a major agenda item at the Vancouver hearings of the Standing Committee on Finance. Witnesses included:** Janna Cumming (West Coast LEAF); Alice Lee (Vancouver Rape Relief); Cherry Kingsley (International Centre for Combat Exploitation of Children); Lee Lakeman (Canadian Association of Sexual Assault Centres); Diane Tannahill and Chelsea Miller (Early Childhood Educators of British Columbia); Sheila Davidson and Rita Chudnovsky (British Columbia Child Care Advocacy Forum); Jess Hadley (BC PIAC); Kat Kinch (Pivot Legal Society Sex Trade Work Committee); Christina Davidson and Bev Meslo (BC CEDAW Group); Shelagh Day (Canadian Feminist Alliance for International Action); Susan Harney and Sharon Gregson (Coalition of Child Care Advocates of BC).

Committee minutes and evidence are available at: [http://www.parl.gc.ca/infocom/CommitteeMinute.asp?](http://www.parl.gc.ca/infocom/CommitteeMinute.asp?Language=E&Parliament=138&Joint=0&CommitteeID=3266)

[www.parl.gc.ca/infocom/CommitteeMinute.asp?](http://www.parl.gc.ca/infocom/CommitteeMinute.asp?Language=E&Parliament=138&Joint=0&CommitteeID=3266)

[Language=E&Parliament=138&Joint=0&CommitteeID=3266](http://www.parl.gc.ca/infocom/CommitteeMinute.asp?Language=E&Parliament=138&Joint=0&CommitteeID=3266)

## CFLS SPEAKERS SERIES:

### SPRING 2004

#### January 8

Maneesha Deckha, Faculty of Law, University of Victoria

#### January 15

Gayle Horii, Strength in Sisterhood

#### January 22

(to be confirmed)

#### January 29

Dorothy Chunn, Department of Criminology, SFU

#### February 5

Annabel Webb, Justice for Girls

#### February 12

Fiona Raitt, Dundee University

#### February 19

No speaker (Spring Break)

#### February 26

Nitya Iyer, lawyer, Vancouver

#### March 4

Esmeralda Thornhill, Faculty of Law, Dalhousie University

#### March 11

Margot Young, Faculty of Law, UBC

Full topics will be available at <http://faculty.law.ubc.ca/cfls> in the coming weeks.

Lectures are held on Thursdays, beginning at 12:30, in Curtis Law Room 157. Changes are announced on the CFLS email list. To add your name to the list, email: [cfls@law.ubc.ca](mailto:cfls@law.ubc.ca)

## PIVOT SUBMISSION: BREAKING DOWN BARRIERS TO PARLIAMENTARY HEARINGS — CONT.

(continued from p. 3) of their lives. To this end they suggested that the Subcommittee visit all the active areas for prostitution as well as centres providing essential services to sex trade workers living in Vancouver's Downtown Eastside.

They further recommended that Subcommittee members be paired with sex trade workers in order to allow the Parliamentarians to gain first-hand knowledge of and insight into the working conditions and experiences of a sex trade worker in the Downtown Eastside.

Sex trade workers should be compensated for sharing their time and expertise with Subcommittee members. The women brainstormed about how to make the tours most effective. It was suggested that Subcommittee members wear comfortable shoes for walking and standing for long periods of time.

Participants expressed concern that the Subcommittee may recommend that the government cut funding to the organizations that provide sex trade workers with essential services in the event that committee members see something that they disapprove of or do not understand.

It was strongly suggested that meetings with sex trade workers take place in neutral spaces as opposed to service provider centers, which the women indicated were not particularly private or secure from men.

The participants were concerned that media presence would threaten their confidentiality and their business. Focus group participants, like survey respondents, suggested that sex trade workers make a video representing their daily work conditions, which would be informative for the Subcommittee and respectful of sex trade workers' privacy concerns.

**Recommendations:** The following recommendations are based on the results of the survey and focus group conducted by Pivot Legal Society. These recommendations are intended to aid the Subcommittee with the development of a plan for public hearings and on-site visits in Vancouver and to encourage them to consider how to ensure the fullest possible participation of sex trade workers.

1. The Subcommittee should ensure, as a key priority, that the voices of sex trade workers are heard and that they are acknowledged as true experts on this issue. Their participation should be recognized as an act of strength and courage and should be granted the utmost respect and consideration.
2. The hearing should be held in an accessible and safe venue for sex trade workers.
3. The hearings and meetings should be scheduled for later in the afternoon as consideration for work schedules of sex trade workers.
4. Participants should be allocated a reasonable amount of time to speak without interruptions.
5. The hearings should respect sex trade workers' real need for privacy; their identities should be protected in all proceedings, media coverage and recordings of the hearings.
6. The hearings should respect sex trade workers' need for safety particularly with regards to appropriate security.

7. The hearings should accommodate sex trade workers' need for support from family and friends.

8. The Subcommittee should facilitate sex trade workers' access to legal advice, information about the hearings, and counseling services.

9. The hearings should be conducted in a manner that is respectful of sex trade workers and creates a safe environment (i.e. nonjudgmental language).

10. The Subcommittee should provide for alternate forms of submissions such as videotape.

11. Subcommittee members should visit all the active areas for sex trade work as well as centers providing essential services to sex trade workers living in Vancouver's Downtown Eastside.

12. Subcommittee members should be paired up with sex trade workers to gain first hand knowledge of and insight into working conditions in the Downtown Eastside.

13. The Subcommittee should compensate sex trade workers for their time and expertise.

14. The Subcommittee should provide assurances that it will not recommend cuts in funding to organizations providing sex trade workers with essential services.

15. On-site meetings with sex trade workers should take place in neutral spaces.

16. On-site tours by Subcommittee members should take place without media presence.

17. Subcommittee members should come with open minds be prepared to listen to difficult material.

### **Conclusion**

The Subcommittee reviewing sex trade laws must hear from those who are most affected by and have frontline experience with the laws. Sex trade workers have expertise on the laws are eager to have their voices heard on this topic.

### **For more information, please contact:**

Sex Trade Work Committee, Pivot Legal Society  
Box 4438, STN Terminal, Vancouver, BC, V6B 3Z8  
accessibility@pivotlegal.org, 604.696.1349

**Researchers:** Rielle Capler MHA, Julie Shugarman with Deb, DJ, Lori, Kim, Kat Kinch, Shari, Ondine Snowdon, Lisa Weich

**Author:** Rielle Capler MHA

**Editors:** Mary Childs LL.B, BCL, Karen Mirsky, Katrina Pacey MA, Julie Shugarman

**Special Thanks to:** Women's Information and Safe House, Native Courtworkers and Counseling Association, and the Law Foundation of BC.

## CAMBODIAN WOMEN'S MINISTER VISITS UBC LAW

By Agnes Huang (Law II)

More than 50 students and faculty members from various departments across UBC, as well as members of the diplomatic, judicial and broader communities in Vancouver, attended the Centre for Feminist Legal Studies' first event of the academic year on September 3rd. The guest of the evening was Her Excellency Mu Sochua, the Minister for Women's and Veteran's Affairs in Cambodia.

Minister Mu spoke about "Women's Voices in Nation Building: Lessons Learned from the Cambodian Election in Building Democracy." She gave a dynamic overview of the issues confronting women in Cambodia and the work that she and her party have undertaken to increase women's political participation at all levels.

Mu Sochua returned with her family to Cambodia in 1989. There, she founded the NGO Khemara and was one of the founders of the women's movement in the country. In 1998 as a member of FUNCINPEC, the royalist party, Mu Sochua won the electoral seat in Battambang, in North-West Cambodia, and was appointed the Minister of Women's and Veteran's Affairs in the coalition government.

In her talk, Mu Sochua addressed some of the conditions experienced by women in Cambodia. She spoke about the legal rights and reproductive health of

female factory workers. Over 80% of the 180,000 factory workers in Cambodia are women. Most workers are young and living away from home, and workers in garment factories are often harassed. She also stressed that there are few support networks for women facing domestic violence and sex trafficking. Mu Sochua noted that her ministry was the major catalyst in writing new draft domestic violence laws.

Much of Minister Mu's talk focused on the importance of involving women in the political process. She said that her party continues to create opportunities for women to build up their capacities as leaders and their advocacy skills in protecting the interests and rights of women. She herself has travelled around Cambodia promoting women's political involvement through training, encouragement, publicity campaigns and personal appeals to women. She spoke proudly of

the results of the 2002 Commune Election. In that race, 957 women were elected (and 12,000 women ran as candidates.)



Photo taken by Joyce Rock. From left: Devi Leiper, The Honourable Mu Sochua, Prof. Susan Boyd, Prof. Claire Young, Elin Sigurdson (Law II), Kat Kinch (Law III), and Agnes Huang (Law II).

*The talk by Minister Mu Sochua was sponsored by the Centre for Feminist Legal Studies, the UBC Faculty of Law and the International Centre for Criminal Law Reform.*

## SPECIAL ISSUE of CJWL: In Honour of Former Justice Claire L'Heureux Dubé

In fall 2003, the *Canadian Journal of Women and the Law* will publish as volume 15(1) a special issue focusing on the work of former Supreme Court of Canada Justice, Claire L'Heureux-Dubé. The issue will feature articles and comments by Constance Backhouse, Joan Brockman, Rosemary Cairns Way, Daphne Gilbert, Louise Langevin, Michelle Boivin, Gwen Brodsky, and others. Check out the website of the CJWL at: <http://www.utpjournals.com/jour.ihtml?lp=cjwlsplash.html>.

The CJWL is offering a special discounted student rate for 2003/2004: two issues for only \$20 (GST included). Get the special forms at the Centre for Feminist Legal Studies and make sure to send them in with a copy of your current student ID. Or call 416-667-7810 to order.

**SUFA: “Women’s equal participation in decision-making is not only a demand for simple justice or democracy...”**

mand for simple justice or democracy but can also be seen as a necessary condition for women’s interests to be taken into account. Without the active participation of women and the incorporation of women’s perspective at all levels of decision-making, the goals of equality, development and peace cannot be achieved (Note 18).

Ensuring that disadvantaged groups can participate as equals means more than simply declaring that they have the right to do so. It requires creating the conditions that permit participation on a footing of equality.

This point is eloquently made by British scholar, Anne Phillips in her book *Which Equalities Matter?* (Note 19) She explains that the political equality of all citizens cannot be achieved simply by proclaiming that citizens who are otherwise unequal - socially and economically – are, for political purposes, equal. True political equality cannot be created by mere assertion. Rather, democracies have to establish certain conditions which make it possible for every citizen to participate and be heard as a person of equal worth and influence (Note 20).

Recognizing this leads to the conclusion that section 3 SUFA mechanisms must be designed and operated in such a way as 1) to foster participation as equals by those who are most disadvantaged, and 2) to support the purpose of eliminating the material inequality of the most disadvantaged Canadians. Otherwise, these mechanisms will simply perpetuate the *status quo* of inequality; and they will not be fora in which social programs that will support the well-being of all members of society can be designed or reviewed.

**Recommendations**

Effective mechanisms for Canadians to participate in developing social priorities and reviewing outcomes need to meet certain criteria:

1. Mechanisms must be permanent, stable, inclusive, and transparent. Ad hoc, one-time-only consultation processes with government-selected participants cannot fulfill the goal of improving the social union, or enhancing the participation of Canadians in the development and maintenance of effective social programs.
2. Mechanisms should involve legislators. Each government member of SUFA should establish a legislative committee on the social union with a mandate to examine proposals and outcomes (Note 21). This would enhance transparency, and break SUFA out of the executive federalism box.
3. Some mechanisms must be intergovernmental ones. Section 3 states that “each government... agrees to ...”ensure effective mechanisms...” This suggests that the mechanisms contemplated will operate within each jurisdiction, and will confine citizens to interacting with their provincial government only, or with the federal government only. This will not be adequate. Jurisdiction-confined mechanisms will not permit citizens to interact with all levels of government about the design, implementation and impacts of agreements that are intergovernmental. Citizens are not permitted

**Ensuring that disadvantaged groups can participate as equals means more than simply declaring that they have the right to do so.**

**It requires creating the conditions that permit participation on a footing of equality.**

to be involved in the “union” element of the social union if they are understood to have nothing to say about the relationships among governments and about the priorities and outcomes of social programs and services for the union as a whole.

4. Mechanisms must include a forum for complaints. Section 3 contemplates this, as it states that governments have agreed that there should be appropriate mechanisms “for citizens to ...bring complaints about access and service.” Again, it appears that this mechanism is envisioned as operating inside each jurisdiction with no reference to other governments, even though the actions of other governments may be relevant to the cause of the complaint. In our view, while provincial and territorial mechanisms that can deal with individual complaints are essential to natural justice, there should also be an intergovernmental mechanism that can deal with petitions from individuals or groups regarding systemic problems with respect to access and services (Note 22). Individuals or groups should be able to bring forward complaints alleging that they do not benefit equally from particular programs or services, that the levels of benefits or services are inadequate, or that there is an absence of benefits and services that causes or deepens the social and economic disadvantage of particular groups of Canadians (Note 23). An independent expert body should be authorized to consider whether there has been a failure to meet undertakings or standards, and recommend measures to governments that should be taken to remedy identified failures. An essential feature of this model is that citizens could initiate review of a social program or service.

5. Mechanisms must ensure participation by members of disadvantaged groups and their organizations. As Barbara Cameron pointed out in a recent *Globe and Mail* opinion piece, the *status quo* is that consultative processes with governments are dominated by well-funded, elite organizations. While in the past, Canadian governments provided funding to organizations that represent the disadvantaged sector of the society, precisely in order to offset the political influence of the powerful and to broaden democratic participation, in more recent times this funding has dried up or to the extent that there are funds for such organizations “government budgeting ...treats [them] as contractors providing services (such as research or social welfare services) for the government.” (Note 24)

To take seriously the recognition underlying democracy, that all persons have equal worth, and to permit the voices of the politically marginalized to be heard, governments must provide funds to organizations that represent women, low income people, people with disabilities, people of colour, Aboriginal people, single mothers, and others in order to support their right to participate.

**Other Recommendations**

Canadian governments should agree to expand the mandate of the Court Challenges Program and to provide additional funds to the Program. What governments do under the SUFA must comply with the *Charter*. This submission is principally concerned with governments’ responsibilities as legislators and administrators to give concrete reality to those rights through the provision of social programs and social protections, and to provide mechanisms for



## SUFA CONCLUSION:

## SUFA holds out a promise to Canadians... more work needs to be done to fulfill its promise.

democratic participation in the decision-making about them. However, Canadians should be able, when they believe that governments have erred or failed, to challenge a government law or practice by exercising their constitutional rights. This is part of what is required to sustain and improve the social union.

The Court Challenges Program has been invaluable in providing individuals and groups access to modest funds to bring test cases to challenge the constitutionality of federal laws and policies. But the laws and policies that are of most immediate moment for people who are disadvantaged are provincial ones that determine their access to social benefits and supports. Here the Court Challenges Program cannot help them, because it is restricted to providing test case funds to challenges of federal laws and programs. Consequently, they have, in effect, no access to the exercise of their rights.

To improve the social union, Canadian governments should agree to the expansion of the mandate of the Court Challenges Program so that the most vulnerable and politically marginalized groups can exercise their constitutional rights, as they apply to social programs and social services, when and if they need to.

#### Conclusion

The SUFA holds out a promise to Canadians. It recognizes that as Canadians we have shared concerns and responsibilities for each other's well-being. SUFA in its opening paragraph states that the fundamental values of Canadians include "mutual aid and respect for our responsibilities for one another." All levels of government, and all citizens, as taxpayers and as members of a common body politic, are responsible for the well-being of all Canadian residents. A clear purpose of the SUFA is to provide a vehicle that improves our ability to discharge our shared responsibilities for social well-being, both within and across jurisdictional lines.

However, in this first period of the SUFA's life, governments have failed to set standards that Canadians can rely on, and that reflect Canada's rights undertakings. Governments have also failed to establish effective mechanisms for citizen engagement with governments so that they can participate in the improvement of the social union. This is a time when Canadians need the social union more than ever, and need governments to give it tangible reality.

Significant work needs to be done now if the SUFA is to fulfill its promise.

#### Endnotes

1. By using the term "citizen" in this paper we do not intend to make a distinction between those who are legally citizens of Canada and those who are landed immigrants, refugee claimants, or migrant workers. We have used the word "citizen" to evoke a notion of both social belonging and democratic entitlement. We refer to those who are affected by Canadian social policy, and by the effectiveness of Canadian democratic institutions and processes, and who are holders of legitimate expectations about their social inclusion.
2. GA Res. 220A (XXI), 21 UN GAOR, (Supp. No. 16), UN Doc., A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46 [hereinafter *ICESCR*].
3. *Constitution Act, 1982*, s. 36 (1) (c).
4. *Slaight Communications v. Davidson*, [1989] 1 S.C.R. 1038; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at 860-862; *R. v. Ewanchuk*, [1999] 1 S.C.R. 330 per L'Heureux-Dube J. at 365; *United States v. Burns*, [2001] 1 S.C.R. 283.
5. CESCR, *Summary Record of the 5<sup>th</sup> Meeting: Canada*, UN Doc. E/C.12/1993/SR.5,

25 May 1993 at para. 21.

6. *Slaight*, *supra* note 5.

7. *Irwin Toy v. A.-G. Quebec*, [1989] 1 S.C.R. 927.

8. Government of Canada, *Responses to the Supplementary Questions to Canada's Third Report on the International Covenant on Economic, Social and Cultural Rights*, UN Doc. HR/CESCR/NONE/98/8/, October 1998 at 33.

9. A fuller discussion of the jurisprudence on *Charter* rights to equality and security of the person, as well as Canada's international human rights obligations can be found in Gwen Brodsky and Shelagh Day, "Beyond the Social and Economic Rights Debate: Substantive Equality Speaks to Poverty," in *Canadian Journal of Women and the Law, Women and Poverty: The Challenge for Social and Economic Rights*, Volume 14, No. 1, 2002 at 185.

10. Human right legislation prohibits discrimination in employment, the provision of public services, and housing. Québec's human rights legislation also includes explicit social and economic rights protections similar to those contained in the *ICESCR*.

11. See for example Linda Trimble, "Federalism, the Feminization of Poverty and the Constitution", *Conversations Among Friends: Women and Constitutional Reform*, ed. David Schneiderman, (Edmonton, Centre for Constitutional Studies, 1992) at 87.

12. Susan Phillips, "SUFA and Citizen Engagement: Fake or Genuine Masterpiece?", *Policy Matters*, Vol. 2, no. 7, December 2001 at 10.

13. *Ibid.*

14. *Ibid.* at 11.

15. *Ibid.*

16. Another example of the right to participate being considered a part of, and essential to the achievement of, a substantive right can be found in *General Comment 4: The Right to Adequate Housing* adopted by the United Nations Committee on Economic, Social and Cultural Rights, December 13, 1991, contained in document E/1992/23. In that Comment at paragraph 9 the Committee states:

the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights – such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making – is indispensable if the right to adequate housing is to be realized and maintained by all groups in society.

17. *Native Women's Assn. of Canada v. Canada*, [1994] 3 S.C.R. 627 at 655.

18. United Nations, *Report of the Fourth World Conference on Women A/CONF.177/20*, 17 October 1995 at para 181.

19. Anne Phillips, *Which Equalities Matter?* (Cambridge, Polity Press, 1999).

20. *Ibid.* at 129-130.

21. Harvey Lazar, "The Social Union Framework Agreement and the Future of Fiscal Federalism" in *Canada: The State of the Federation 1999/2000*, ed. Harvey Lazar (Montreal and Kingston: McGill-Queen's University Press, 2000) at 109.

22. In *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, the Supreme Court of Canada found that deaf people did not benefit equally from medical services they were not provided with interpreter services so that they could interact with medical personnel, as they needed.

23. Mechanisms for undertaking systemic reviews of the implementation of social rights were proposed in the 1992 *Draft Social Charter*, as well as by scholars and commentators in other contexts. The *Draft Social Charter* proposed two mechanisms: 1) a Social Rights Council to evaluate the extent to which federal and provincial law and practice are in compliance with specified rights; and 2) a Social Rights Tribunal, which would be an independent expert body, authorized to receive petitions from individuals and groups alleging infringements of specified rights. See Joel Bakan and David Schneiderman, *Social Justice and the Constitution* (Ottawa: Carleton University Press, 1992) at 155.

24. Barbara Cameron, "It's not enough, Mr. Martin", *The Globe and Mail*, October 24, 2002 at A19.

# FAFIA

## Holding Governments Accountable for International Human Rights Guarantees

By Kerry Lynn Okita (Law I)

On June 16<sup>th</sup>, 2003, the Canadian Feminist Alliance for International Action (FAFIA) met with Jean Augustine, the Canadian Minister Responsible for the Status of Women, to discuss Canada's compliance with its international human rights obligations to women. FAFIA is an alliance of over 40 women's non-governmental organizations, formed in February 1999. FAFIA is currently run by an interim steering committee of four members present since its inception: Linda Christensen-Ruffman, Shelagh Day, Lise Martin, and Charlotte Thibault.

The main issue of the meeting was the response of the Committee on the Elimination of Discrimination Against Women (CEDAW) to the status of women in Canada, which was reviewed in January 2003. The United Nations committee commented on Canada's patchy progress in counteracting discrimination against women and provided recommendations for further improvements.

During the June conference between the Minister and FAFIA, extensive discussions took place on how the Committee recommendations could be effectively implemented by the Canadian government. The process, with five distinct elements, was the result of the meeting discussions and is outlined here.

The first proposition is the establishment of a Cabinet-authorized cross-departmental process leading to an action plan for implementing the Committee recommendations. This process would have three mandates:

1. To implement recommendations within federal jurisdiction;
2. To assume a leadership role with the provinces and territories to ensure their compliance with international human rights commitments to women; and,
3. To address all intergovernmental agreements and fiscal arrangements which affect CEDAW standards and to incorporate human rights standards into their design.

The second proposition is the use of an analytical framework that recognizes the intersection of gender discrimination with other forms of discrimination. This framework would devise appropriate means of implementation that would take into account the ways in which different groups of women from various social locations could be adversely affected by poli-

cies or programs.

The third element recommends the inclusion of women's non-governmental organizations as partners in developing an implementation action plan. Establishing this relationship would utilize the considerable expertise offered by these organizations, which would further enable a more effective plan, as well as recognize the right of women to participate in the decision-making process. FAFIA also agreed to take the lead in organizing this participation.

Fourth, a time frame was also established during the meeting. This time line advises that a process should be in place by January 31, 2004, and that an action plan should be completed and tabled in the House of Commons for parliamentary review no later than January 31, 2005. Both of these approaches would be developed through further discussions between representatives of the Government of Canada and representatives of FAFIA.

Finally, the provision of adequate funding to support the process and the implementation of the CEDAW recommendations are proposed. This funding should include: funds from the current and next federal budget for the implementation of the CEDAW recommendations; funds to support the participation of women's non-governmental organizations in the development of the process, the plan of action, and the monitoring of implementation; funds to support research on the part of women's non-governmental organizations to identify permanent mechanisms for monitoring Canada's compliance with its international human rights commitment to women; and public education regarding Canada's international human rights treaty commitments, and dissemination of the CEDAW findings.

The establishment of an implementation plan featuring these five elements would be a significant accomplishment by the Canadian government and women's NGOs, and the secured support of Minister Augustine is encouraging. The government's full willingness to invest time and money into the project will hopefully follow.

FAFIA's letter to Minister Augustine, CEDAW's concluding observations and NGO submissions to CEDAW from FAFIA and the BC CEDAW Group, is available at <http://www.fafia-afai.org/>.

FAFIA's national symposium will be held in Ottawa, November 14-16, 2003.



## TAKING ON B.C.'S WELFARE LAWS FROM CITY HALL

Provincial welfare laws are being challenged on several fronts. Following BC PIAC's recent announcement of a constitutional challenge on behalf of community anti-poverty groups (including the Poverty and Human Rights Project), Vancouver City Councillor Ellen Woodsworth introduced a motion for the city's opposition of the 2-of-5 rule (described below).

On November 6, 2003, members of UBC's feminist legal community addressed Vancouver City Council's Planning and Environment Committee in support of Councillor Woodsworth's motion. Professor Margot Young, as well as Katrina Pacey (Law III), joined a full afternoon's worth of advocacy groups who invited the City to take a stand against the unprecedented social assistance changes. Councillor Woodsworth's motion, which was passed by the council on the same day, reads as follows:

WHEREAS it is the right and responsibility of City of Vancouver to advocate on behalf of its citizens to other levels of government;

AND WHEREAS unprecedented new provincial laws that limit the time people classified as employable can collect Income Assistance to two of every five years and reduce benefits for families with children by \$100 per month come into effect on April 1, 2003;

AND WHEREAS the Province has failed to provide accurate numbers on Vancouver citizens who will be impacted, but it is estimated that it could be in the thousands;

AND WHEREAS the people who will be impacted are among the poorest and most vulnerable in our society, and are already struggling to deal with the impacts of cuts to other federal and provincial programs and services;

AND WHEREAS non-profit housing societies, the owners of Single Room Accommodation hotels and other businesses have expressed serious concern about their ability to do business if many of their tenants lose their ability to pay rent or have it reduced as a result of these new laws;

AND WHEREAS time limits effectively download provincial responsibility for people in need onto the City of Vancouver and other municipalities;

AND WHEREAS time limits for Income Assistance conflict with the Charter of Rights and Freedoms assurance to equality and life, liberty and security of the person, and are inconsistent with provincial and federal obligations to fulfill the right to an adequate standard of living, including food, clothing and shelter as provided in the International Covenant on Economic, Social and Cultural Rights to which Canada is a signatory;

AND WHEREAS Vancouver's seasonally adjusted unemployment rate stands at 8.4%;

THEREFORE BE IT RESOLVED that the City of Vancouver urges the provincial government to rescind the laws imposing Income Assistance time limits and reducing benefits;

AND BE IT FURTHER RESOLVED that the City of Vancouver write to other BC municipalities through the UBCM, the LMMA and the GVRD urging them to call on the Province to rescind the changes to Income Assistance laws.



Councillor Ellen Woodsworth (left) was elected in 2002, and has a lengthy record of social action. She has fought long and hard for the rights of women, for the gay and lesbian community and for seniors. Among her achievements in this area is a successful campaign for the inclusion of questions about women's unpaid work on the 1996 census making Canada the first country to do so. She chaired the BC Action Canada Network educating people to concerns about the free trade agreements. She led in the formation of Breaking the Silence, a group effort to mobilize a number of Downtown Eastside agencies to work together to stop violence against women. For five years she was chairperson of Bridge Housing Society for Women which provides permanent housing, transition housing and a home for the Downtown Eastside Women's Centre. She has also been active in her community as a long standing member of Strathcona Community Gardens, as the President of Britannia Community Centre, President of South Vancouver Family Place, a member of the board of the Lesbian, Gay, Bisexual, Transgendered "Generations Project" and Reach Community Health Clinic. (Source: Vancouver City Council website: <http://www.city.vancouver.bc.ca/ctyclerk/councillors/woodsworth.htm>)

**NOTE:** For more on BC PIAC's challenge, see [www.povnet.org](http://www.povnet.org), or Agnes Huang's article in the November/December 2003 edition of *The Legal Eye*.

The Agenda and Minutes for the Planning and Environment Committee meeting on November 6 are available at: <http://www.city.vancouver.bc.ca/ctyclerk/cclerk/20031106/pe20031106.htm>.

**University of British Columbia, Faculty of Law**

Centre for Feminist Legal Studies  
Faculty of Law, UBC  
1822 East Mall  
Vancouver, BC V6T 1Z1

Phone: 604-822-6523  
Fax: 604-822-6531  
Email: [cfls@law.ubc.ca](mailto:cfls@law.ubc.ca)  
Web: <http://faculty.law.ubc.ca/cfls>

**Address**



We want to acknowledge the  
Musqueam people, whose traditional  
territory we are on, and thank them  
for allowing us to be here.

**CFLS ADVISORY BOARD**

- Ning Alcuitas-Imperial
- Guimei Bai
- Brenna Bhandar
- Gillian Calder
- Silvia Chejter
- Dorothy Chunn
- Angela P. Harris
- Martha Fineman
- Joanne Fiske
- Reg Graycar
- Didi Herman
- Nitya Iyer
- Saras Jagwanth
- Kiyoko Kinjo
- Ratna Kapur
- Louise Langevin
- Hester Lessard
- Mary Jane Mossman
- Valerie Raoul
- Ruthann Robson
- Ann Scales
- Nan Seuffert
- Madam Justice Lynn Smith
- Kim Stanton

**BECOME A “FRIEND OF THE CENTRE”**

You may become a Friend of the Centre for \$25, which will entitle you to notices of Centre events, copies of our newsletter, and access to the resource centre and library.

Further donations are welcome, and we will send you a tax receipt. Please send your cheque to the Centre and fill out the form below.

**I WANT TO SUPPORT THE CENTRE FOR FEMINIST LEGAL STUDIES**

**NAME:** \_\_\_\_\_

**DONATION:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**RETURN ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

**PHONE:** \_\_\_\_\_

\_\_\_\_\_