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# FIFTY YEARS OF SUBSTANTIVE EQUALITY FOR WOMEN: CHRONICLING THE LEGACY OF THE NATIONAL ASSOCIATION OF WOMEN AND THE LAW (NAWL)

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## *Abstract*

The National Association of Women and the Law (NAWL) formed in 1974 as a network of women legal professionals dedicated to research, education, and women's rights advocacy. This article uses historical records from the Women's Archives at the University of Ottawa Library to highlight the impact and power of feminist law reform and to emphasize NAWL's ongoing relevance. We will analyze NAWL's interventions in important areas of law that deeply impact women's substantive equality: labour and economic justice, violence against women, and constitutional law. First, we narrate how NAWL fought for pay equity and economic justice, and against the legal devaluation of women's work. Then, we examine NAWL's struggle against biased and prejudicial legislation, especially in cases involving violence against women. Finally, we recount NAWL's influence on sections 15 and 28 of the *Canadian Charter of Rights and Freedoms*. Ultimately, we conclude that despite NAWL's early successes, feminist law reform remains an ongoing project crucial to promoting women's substantive equality and ensuring rights and protections for the most vulnerable.

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## I INTRODUCTION: A VISION FOR WOMEN'S EQUALITY

On March 14, 1974, women from the University of Windsor Faculty of Law made history by convening Canada's first-ever National Conference on the Law and Women. Women students in the faculty sought to highlight the law's infringement of women's rights and illuminate gender discrimination in Canadian courts. In an introductory statement for the conference, coordinator Gabriella Lang outlined its aims and motives, noting that treatment of the subject would be "exploratory, educational, and consciousness-raising."<sup>1</sup> In referencing "consciousness-raising," Lang's opening remarks made use of activist terminology popularized by US feminists in the late 1960s to describe the analysis and understanding of patriarchy through the sharing and politicizing of personal experiences. Lang thus underscored the conference's role not only as a networking space for women lawyers and legal professionals, but also as a feminist call to action aimed at rectifying the economically and socially inferior status of women in Canadian society—a status that, Lang claimed, "is not only reflected in the laws of this country but is preserved by them."<sup>2</sup>

Prior to convening, conference organizers had been galvanized by the Supreme Court of Canada's controversial *Murdoch v Murdoch* decision in 1973.<sup>3</sup> In this marital property case, on appeal from the Supreme Court of Alberta, Irene Murdoch claimed half the interest in her husband's land following the breakdown of their marriage because of domestic violence. Irene Murdoch had worked for years on the family cattle ranch, often managing the ranch while her husband was away for months at a time. Her work involved "haying, raking, swathing, moving, driving trucks and tractors and teams" and performing other forms of hard farm labour.<sup>4</sup> The Supreme Court's decision shocked the public when four of five justices dismissed her claim, stating that "her labour in the fields merely amounted to the work expected of any ranch wife."<sup>5</sup> For many in the women's liberation movement, this case represented the law's extreme devaluation of women's labour and demonstrated the extent to which long-standing, discriminatory assumptions about gender roles had shaped the judiciary at every level. When asked by male panellist Sydney Robins, who advocated patience in achieving equality for women in law, "What more do you want?" the group of 300 female law students shouted back "ACTION!"<sup>6</sup>

The National Association of Women and the Law (NAWL) formed out of an ad hoc luncheon at the Windsor conference and grew into a network of women legal professionals dedicated to research, education, and action. The organization's early objectives, summarized here by cofounder Shirley Greenberg, remain in effect today: "Briefly, we would devote ourselves to improvement of women's status, using whatever professional talents we could,

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<sup>1</sup> Gabriella Lang, "Introduction," paper delivered at the National Conference on the Law and Women (Windsor ON, 14-16 March 1974), box 9, file 11, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Murdoch v Murdoch*, 1973 CanLII 193 (SCC) [*Murdoch*].

<sup>4</sup> Julien D Payne & Terrance J Wueter, "Presentation at the National Conference on the Law and Women" (Windsor ON, 14-16 March 1974), box 9, file 11, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

<sup>5</sup> *Ibid.*

<sup>6</sup> Kathleen Rex, "Law Society Opposes Sex Bias in Articling Jobs," *Globe and Mail* (18 March 1974), box 9, file 11, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

but also involving the community at all levels.”<sup>7</sup> Considering the present rise of politically regressive movements in Canada and elsewhere, NAWL remains a crucial fortification against forces that seek our return to an era of social and economic dependence on men. In what follows, we use historical records from the Women’s Archives at the University of Ottawa Library to highlight the impact and power of feminist law reform and to emphasize NAWL’s ongoing relevance in 2026.

NAWL hosted their first official conference the following year. Although 1975 had been dubbed International Women’s Year, the continued discrimination of women under Canadian law served to bolster NAWL’s claim that the country’s commitment to women’s equality was largely superficial. Themed around “Women and Work,” NAWL’s inaugural conference not only outlined and critiqued laws that functioned to preserve women’s inferior economic status, but also defined and ratified a multitude of resolutions that gave form and shape to the organization.<sup>8</sup>

Resolutions passed at the 1975 “Women and Work” conference included a philosophy of solidarity with all working women; the creation of a constitution to serve as a model and guide for women seeking to organize trade unions; a strategy for implementing better equal pay laws; endorsement of affirmative action; advocacy for full rights and protections for domestic and part-time workers; affirmation of the right for legal secretaries to organize and bargain collectively; improvement of existing human rights legislation; support for the rights of Métis and non-status Indigenous women; commitment to study the issues faced by immigrant women workers; demands for legal equality in marriage and recognition of housewives’ economic contributions; endorsement of free, government-funded childcare; recognition of abortion as the “inalienable right of all women”; and insistence that a complainant’s sexual history be inadmissible in assessing credibility during sexual offence trials.<sup>9</sup> Furthermore, the women of NAWL outlined their intention to form a national network with an emphasis on local organization by forming caucuses in the law schools of each province, which they accomplished before adopting their official constitution in 1977.<sup>10</sup>

In her introduction to the “Women and Work” conference, NAWL cofounder Lynn Kaye emphasized the organization’s role within the wider women’s liberation movement: “The task seems obvious,” she stated, “to translate the ideas and aspirations of the movement into language which can be transformed into legislation, and to organize to get legislation that can affect change.”<sup>11</sup> To this day, NAWL’s core mandate of systemic change has enabled the organization to spearhead widespread social and legislative transformation despite scarce resources. Although the organization was defunded by Stephen Harper’s federal government in 2006, leading to a decade of reduced activity and without paid staff, since 2017 the organization was re-funded and reconstructed around its original mandate.

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7. Shirley Greenberg, “Saving Our History” (1977), box 9, file 19, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa [Greenberg, “Saving Our History”].

8. National Association of Women and the Law, *Women and Work Conference Program* (Winnipeg MB, 30 January–2 February 1975), box 9, file 12, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

9. *Ibid.*

10. Greenberg, “Saving Our History,” *supra* note 7.

11. Lynn Kaye, “Introduction,” *Women and Work Conference Program* (Winnipeg MB, 30 January–2 February 1975), box 9, file 12, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

Since its formation by University of Ottawa law students Shirley Greenberg, Lynn Kaye, and Peggy Mason following Windsor's 1974 "Women and the Law" conference, NAWL has advocated tirelessly for dismantling legal barriers to women's equality. According to Greenberg, "no group ever before" had been "formed specifically to deal with the legal aspects of women's existence."<sup>12</sup> After their founding conference on "Women and Work" in 1975, NAWL would go on to effect positive legislative change in many areas of "women's existence," helping to transform the Canadian judicial system and its treatment of women as legal subjects.

This article analyzes NAWL's interventions in important areas of law that deeply impact women's substantive equality: labour and economic justice, violence against women, and constitutional law. NAWL has worked in several additional areas of the law (e.g., marriage equality and Indigenous women's rights); however, labour law is of particular interest given that NAWL's earliest writing emphasized economic justice as the central tenet of women's liberation. Likewise, NAWL's work in criminal law warrants further analysis given how legislation historically treats gender-based violence differently from other crimes through consolidated cultural assumptions about male dominance. We also examine how the *Charter of Rights and Freedoms*, which should in theory protect women from biased interpretations of the law in all areas, remains an unrealized dream for NAWL and other feminist legal reformers. In Section II, we narrate how NAWL fought for pay equity and economic justice, and against the legal devaluation of women's work. Then, in Section III, we examine NAWL's struggle against biased and prejudicial legislation, especially in cases involving violence against women. Finally, Section IV recounts NAWL's influence on sections 15 and 28 of the Charter. Ultimately, we conclude that feminist law reform remains an ongoing project crucial to promoting women's substantive equality and ensuring rights and protections for the most vulnerable.

## II ECONOMIC JUSTICE AND "WOMEN'S WORK"

Cofounder Lynn Kaye's address to the inaugural conference on "Women and Work" reflected NAWL's understanding that legal reforms for women, until that point, had largely benefited upper- or middle-class white women and neglected to address issues for those who were marginalized in multiple ways or did not own property. As she explained, the last major legislative change to fundamentally alter the status of women had occurred nearly 100 years previously, when the *Married Women's Property Act* was enacted in the late nineteenth century. This *Act*, though crucial to women's suffrage and the recognition of women as full citizens, "was really enacted for the benefit of propertied women."<sup>13</sup>

According to Kaye, while the 1970s saw more women than ever participating in the paid labour force, "the wage differentials between male and female workers" had increased and "the female labour force" had "become concentrated in single occupational categories."<sup>14</sup> Therefore, Kaye argued,

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<sup>12</sup> Shirley Greenberg, "Why Bother?" Draft article (February 1977), box 9, file 19, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa [Greenberg, "Why Bother?"].

<sup>13</sup> Lynn Kaye, "Herstory: Women, Their Work, and the Law" (30 January–2 February 1975), online (pdf): <<https://nawl.ca/wp-content/uploads/1975/01/WomenandWork.pdf>>.

<sup>14</sup> *Ibid* at 3.

our demands should address the social issue at the time. If there are no men in a certain job category, then equal pay for equal work is an irrelevant demand. It is the undervalued nature of women's work that is the basic social problem. We should be careful to distinguish the social and legal issues with a view to formulating the best policy to benefit the largest number of women.<sup>15</sup>

Recognizing "the undervalued nature of women's work" as "the basic social problem" meant that NAWL did not limit the scope of their law reform efforts to work performed outside the home. Their concerns with domestic labour reflected the importance of the *Murdoch* family law case for feminist organizing in Canada.<sup>16</sup> For the women's legal reform movement, the *Murdoch* decision represented discriminatory standards set by decades of Canadian law.<sup>17</sup> More specifically, separate property regimes established by the *Married Women's Property Act* in 1882 positioned husband and wife in a master-servant relationship and affirmed the husband's implied legal ownership over his wife's capacity to labour.<sup>18</sup> *Murdoch* denied the economic value of women's work, which historically freed husbands from domestic responsibility and allowed men, as a group, to invest more time and energy in money-making ventures. Per Justice Bora Laskin's dissenting argument, "the wife has . . . established a right to an interest which it would be inequitable to deny and which, if denied, would result in the unjust enrichment of her husband."<sup>19</sup> In Justice Laskin's view, the court's denial of Irene Murdoch's claim thus equated her "strenuous labours" with "mere housekeeping chores."<sup>20</sup> Significantly, however, Justice Laskin's opinion was based on Irene Murdoch's extensive non-domestic labour, and his dissent reiterated that domestic work did not entitle wives to common matrimonial property,<sup>21</sup> illustrating NAWL's concerns about the devaluation of women's work when considered as a wife's "normal" duties.

Throughout the 1970s, status of women organizations across Canada educated women about their legal rights (or lack thereof) with reference to *Murdoch*. Knowledge and advocacy by NAWL members supported provincial campaigns for reform, and members submitted briefs to legislative bodies and assessed proposed legislation at their annual conferences. At NAWL's conferences, women law students built their skills in debating, organizing, and public speaking;

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<sup>15.</sup> *Ibid.*

<sup>16.</sup> *Murdoch*, *supra* note 3.

<sup>17.</sup> See Lori Chambers, "Women's Labour, Relationship Breakdown, and Ownership of the Family Farm" (2010) 25:1 CJLS 75 [Chambers]; Mysty S Clapton, "*Murdoch v Murdoch*: The Organizing Narrative of Matrimonial Property Law Reform" (2008) 20:2 CJWL 197 at 204 [Clapton].

<sup>18.</sup> Clapton, *ibid* at 211–12; Constance Backhouse, "Married Women's Property Law in Nineteenth Century Canada" (1988) 6 L & Hist Rev 211; Constance Backhouse, "Pure Patriarchy: Nineteenth Century Canadian Marriage" (1986) 31 McGill LJ 264.

<sup>19.</sup> *Murdoch*, *supra* note 3 at 457.

<sup>20.</sup> *Ibid.*

<sup>21.</sup> Clapton, *supra* note 17 at 202; Chambers, *supra* note 17 at 82–83. Clapton explores how Canadian feminists turned the *Murdoch* case into a narrative about domestic labour. Chambers argues that the women's movement largely ignored Irene Murdoch's specificity as a farm woman. Thus, while women's organizations used the case to agitate for equitable matrimonial property laws, farm women remain marginalized by laws governing division of the family farm enterprise. See Barbara Heather et al, "Women's Gendered Identities and the Restructuring of Rural Alberta" (2005) 45:1 Sociologia Ruralis; and Parvin Ghorayshi, "The Indispensable Nature of Wives' Work for the Family Farm Enterprise" (1989) 26:4 Can Rev Sociology & Anthropology.

exchanged information with women lawyers in different parts of the country; and created productive environments for drafting policy. At the same time, NAWL's provincial chapters functioned as community resources: members mobilized their legal knowledge through speakers' bureaus, writing and distributing pamphlets on women and the law, sponsoring public workshops, and organizing legal aid clinics for women.<sup>22</sup> In Ontario, NAWL members at the University of Ottawa Law School spent long nights of intense effort rewriting the proposed *Family Law Reform Act* ahead of hearings by the Committee on the Administration of Justice at the Toronto legislature in December 1976.<sup>23</sup> "It was evident," reported Greenberg, "that our contribution introduced new material that members of the Justice Committee had not before considered."<sup>24</sup>

Alongside the Canadian Advisory Council for the Status of Women (CACSW), NAWL advocated for the legal definition of marriage as an equal economic partnership, and for family law provisions that would codify this concept through equal sharing of accumulated assets upon marriage breakdown. NAWL's Manitoba chapter was the first to report on the introduction of significant reforms in 1977,<sup>25</sup> when the provincial NDP government determined that all property acquired during marriage or with marriage in mind should be shared equally upon separation, with some exceptions.<sup>26</sup> Although these reforms were scrapped with the transition from NDP to Conservative government later that year, feminist lawyers, including NAWL's Manitoba chapter, had laid a roadmap for other provinces to follow over the coming years.<sup>27</sup> In the late 1970s, provinces including Ontario, Manitoba, Saskatchewan, and Alberta introduced or passed legislation adopting a standard matrimonial regime of deferred sharing upon marriage breakdown. In Manitoba, another version of the *Marital Property Act* was assented to on July 20, 1978.<sup>28</sup> The *Act* recognized domestic labour by determining that each spouse is responsible for supporting the other either by providing financial support, looking after the home and family, or a combination of both, and giving spouses the right to "have their assets divided equally" upon separation.<sup>29</sup>

From the 1970s onward, NAWL maintained its focus on women's economic liberation in work and marriage, convening numerous conferences and public education workshops on

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<sup>22</sup> Greenberg, "Why Bother?" *supra* note 12.

<sup>23</sup> Shirley Greenberg, "Making Our Mark on New Legislation" (February 1977), box 9, file 19, NAWL fonds (10-036) Archives and Special Collections, University of Ottawa.

<sup>24</sup> *Ibid.*

<sup>25</sup> Alice Steinbart, "A Hindsight View on Changing Family Law," *Newsletter of the National Association of Women and the Law* (December 1977) at 14–17.

<sup>26</sup> Alice Steinbart & the Manitoba Caucus, "Reports on Family Law Reform," *Newsletter of the National Association of Women and the Law* (June 1977) at 2–4.

<sup>27</sup> Cameron Harvey, "Manitoba Family Law Reform Legislation and Succession" (1979) 9 Man LJ 247; *The Family Law Reform Act*, 1978, SO 1978, c 2; *The Matrimonial Property Act*, SA 1978, c 22; *The Matrimonial Property Act*, SS 1979, c M-6.1.

<sup>28</sup> The Manitoba Conservative government's *Matrimonial Property Act* differed from previous NDP legislation by expanding the scope of judicial discretion for splitting assets. See "Summary of Current and Proposed Provincial Matrimonial Property Law in Canada," Women and Property: Third Biennial Conference of the National Association of Women and the Law" (Calgary AB, 22–25 February 1979), box 2, file 4, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

<sup>29</sup> *The Family Property Act*, CCSM c F25, s 13 [originally *The Marital Property Act*, SM 1978, c 24 (M45), s 12].

affirmative action, women and credit, parental benefits and childcare, women and property, women in the workforce, domestic workers, income tax, and women on welfare. At a public workshop in 1975, NAWL cofounder Peggy Mason emphasized that “economic liberation has got to be the core of the women’s liberation movement.”<sup>30</sup> Similarly, NAWL’s early focus on labour and family law reflected Shirley Greenberg’s 1975 assertion that the most important legal areas for women were marriage laws that regulated the relationship between husband and wife and employment laws that regulated the relationship between employer and employee.<sup>31</sup>

According to pioneering lawyer Eileen Mitchell Thomas, panellist at the Windsor Women and the Law conference of 1974, although women had been entering the legal profession since the late 1800s,<sup>32</sup> Canadian courts still frequently sanctioned discrimination against women.<sup>33</sup> As an example, Thomas cited the 1968 wage discrimination case *Beckett v City of Sault Ste Marie Police Commissioners et al*, during which a judge of the Supreme Court of Ontario ruled that “[the plaintiff] is not being discriminated against by the fact that she received a different wage, different from male constables, for the fact of difference is in accordance with every rule of economics, civilization, family life, and common sense.”<sup>34</sup> According to Thomas, such rulings evidenced how the courts upheld male dominance and kept women economically dependent on men.<sup>35</sup>

In 1977, the *Canadian Human Rights Act* made it illegal to maintain wage differences between male and female employees who performed substantially similar work of “equal value” in the same establishment.<sup>36</sup> However, NAWL noted that its complaint-based approach proved “ineffective and inaccessible for the majority of women in Canada” because “its ambiguous terminology, unspecified methodology and lack of enforcement mechanisms” created “extensive delays, unacceptably long waits for wage adjustments and, in many cases, a complete lack of alternatives for women with pay equity complaints.”<sup>37</sup> Moreover, the open-ended designation of “equal value” failed to address the social devaluation of jobs that were considered “women’s work.” For these reasons, NAWL advocated for a proactive as opposed to complaints-based approach to pay equity. Proactive legislation would address issues of

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<sup>30</sup> Peggy Mason, quoted in Claudia Baskerville, “Laws ‘with Teeth’ Goal of Women,” *Ottawa Journal* (29 September 1975), box 1, file 9, Shirley E Greenberg fonds (10-185), Archives and Special Collections, University of Ottawa [Mason].

<sup>31</sup> Shirley Greenberg, “Why Does Sex Discrimination Persist?” NAWL Booklet (1975), box 1, file 2, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

<sup>32</sup> See Constance Backhouse, *Two Firsts: Bertha Wilson and Claire L’Heureux-Dubé at the Supreme Court of Canada* (Toronto: Second Story Press, 2019); Mary Jane Mossman, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (Portland, OR: Hart Publishing, 2006); Mary Jane Mossman, *Quiet Rebels: A History of Ontario Women Lawyers* (Waterloo: Wilfrid Laurier University Press, 2024).

<sup>33</sup> *Conference Program*, National Conference on the Law and Women (Windsor ON, 14–16 March 1974), NAWL fonds (10-036), Archives and Special Collections, University of Ottawa [*Conference Program*].

<sup>34</sup> Eileen Mitchell Thomas, “Sisters-in-Law,” Presentation at The National Conference on the Law and Women (Windsor ON, 14–16 March 1974), box 9, file 11, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

<sup>35</sup> *Conference Program*, *supra* note 33.

<sup>36</sup> *Canadian Human Rights Act*, RSC 1985, c H-6, s 11(1).

<sup>37</sup> National Association of Women and the Law, “Summary of NAWL Recommendations to the Pay Equity Task Force” (December 2002), online (pdf): <<https://nawl.ca/pay-equity>>.

wage discrimination before they arose as opposed to requiring workers to pursue lengthy legal proceedings.

In their 1980 submission to the Standing General Government Committee of the Legislature of Ontario Concerning Bill 3—*An Act to Amend the Employment Standards Act*, NAWL's Osgoode Law School caucus highlighted substantial gaps in the proposed equal pay legislation: "The requirement that men and women be paid equally for substantially the same kind of work cannot possibly assist the vast number of women who are employed in female job ghettos" given that "there are no men working in substantially similar jobs to whom their work can be compared."<sup>38</sup> As such, women workers had "no protection under the present provisions even though their work may require substantially the same skill, effort, and responsibility as a higher paid but dissimilar male dominated job."<sup>39</sup> Across the country, NAWL pushed for reforms that were eventually enacted federally under the *Canadian Human Rights Act* by the *Equal Wage Guidelines* of 1986.<sup>40</sup> These regulations defined four factors to assess "work of equal value" performed by employees in dissimilar jobs: skill, effort, responsibility, and working conditions.<sup>41</sup>

Throughout the early 2000s, NAWL continued to push for proactive legislation at the federal level and advocated that government policy should acknowledge "the specific problems faced by visible minorities and by persons who are differently abled" and "make pay equity procedures accessible to non-unionized women, as well as part-time, casual, seasonal and contractual workers."<sup>42</sup> The nationwide *Pay Equity Act* came into force in 2021, forty-six years after NAWL's "Women and Work" conference identified the need for proactive pay equity legislation. In many ways, NAWL's 1975 conference paved the way for these reforms by convening to discuss labour and human rights law from the perspective of women workers.<sup>43</sup> NAWL's mandate to study law from women's viewpoint, with an eye toward removing discriminatory legislation and practices, was at that time a new and unique addition not only to the women's movement but also to the legal profession itself.<sup>44</sup>

NAWL were trailblazers in this regard, given that the first national, interdisciplinary conference on the relationship between judicial neutrality and gender equality was not held until May 1986.<sup>45</sup> As Greenberg argued in 1977, bias not only stems from judicial behaviour but is also "built into the law—a result of centuries of oppression of women and confinement

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<sup>38</sup> Osgoode Hall Caucus, "Brief for Submission to the Standing General Government Committee of the Legislature of Ontario Concerning Bill 3—An Act to Amend the Employment Standards Act," *Newsletter of the National Association of Women and the Law* 3:4 (1980) 11.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Equal Wages Guidelines*, SOR/86-1082.

<sup>41</sup> While this legislation only applies to federally regulated employers, provinces such as Quebec (*Pay Equity Act*, CQLR c E-12.001) and Ontario (*Pay Equity Act*, RSO 1990, c P.7) later also adopted proactive pay equity statutes.

<sup>42</sup> Louise Aucion, "Pay Equity: Required Changes in Federal Jurisdictions" (16 October 2002), online: <<https://nawl.ca/pay-equity-required-changes-in-federal-jurisdictions/>>.

<sup>43</sup> *Pay Equity Act*, SC 2018, c 27.

<sup>44</sup> Greenberg, "Why Bother?" *supra* note 12.

<sup>45</sup> This conference convened judges, academics, practising lawyers, and experts in anthropology, political science, sociology, and social welfare to discuss gender bias and judicial behaviour. See Bertha Wilson, "Will Women Judges Really Make a Difference?" (1990) 28:3 Osgoode Hall LJ 507 at 516 [Wilson].

to domesticity and a generally restricted life.”<sup>46</sup> Throughout their history, NAWL identified countless judicial decisions based on sexist biases and assumptions. Yet members of the judiciary and politicians resisted recognizing these biases in the law. In a piece of internal correspondence written on March 5, 1992, NAWL’s Manitoba chapter even reported that they were “unofficially” told by the Manitoba selection committee for judicial appointments “that significant involvement in the women’s movement is likely to disqualify one on the basis that one is likely biased in favour of women.”<sup>47</sup> Throughout this period, NAWL demonstrated how patriarchal legal traditions had inundated Canadian courts with anti-women prejudice and chauvinism. Per Bertha Wilson, Canada’s first woman justice on the Supreme Court, such biases were particularly evident in family law (as discussed above) and in criminal law, especially in cases of sexual violence.<sup>48</sup>

### III VIOLENCE AGAINST WOMEN AND STEREOTYPES IN COURT

The social perception of women judges, and especially feminist judges, as biased, unintelligent, and radical becomes strikingly obvious in analysis of public discourse surrounding the 1999 Supreme Court case *R v Ewanchuk*.<sup>49</sup> Writing of anti-feminist backlash against Justice Claire L’Heureux-Dubé, political scientist Joanne Wright argues that Canadian society at this time was “so skeptical of feminism that the assertion that basic liberal principles should apply to women [was] equated with radicalism.”<sup>50</sup> In this case, Justice L’Heureux-Dubé wrote a decision that noted the trial judge promulgated dangerous myths about women’s sexuality by relying on the principle of “implied consent,” which did not exist in Canadian law following *Criminal Code* reforms of 1992. Justice L’Heureux-Dubé stated plainly that consent could not be inferred from the 17-year-old complainant’s past sexual behaviour or from the way she was dressed, especially considering she repeatedly stated the words “no” and “stop.” Nevertheless, as the second woman ever appointed to the Supreme Court of Canada, her decision launched an “extreme and unprecedented” public furor against perceived feminist influence over the court.<sup>51</sup> This backlash demonstrates that NAWL was far ahead of public opinion and the majority of legal professionals in their mandate to assess the *Criminal Code*’s impact on women’s bodily autonomy.

In the 1980s and 1990s, NAWL was actively involved in important reforms of the *Criminal Code* to protect women from sexual violence and domestic abuse. Before 1983, the marital rape exemption, the requirement of corroboration (having additional witnesses other than the victim), and the recent complaint doctrine (which presumed that a late disclosure was false)

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<sup>46</sup> Greenberg, “Why Bother?” *supra* note 12.

<sup>47</sup> Manitoba Association of Women and the Law, Correspondence to the National Office (5 March 1992), box 58, file 14, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

<sup>48</sup> Wilson, *supra* note 45 at 512–15.

<sup>49</sup> 1999 CanLII 711 (SCC). See Joanne Wright, “Consent and Sexual Violence in Canadian Public Discourse: Reflections on *Ewanchuk*” (2001) 16:2 CJLS 173 [Wright]; Constance Backhouse, “The Chilly Climate for Women Judges: Reflections from the Backlash on the *Ewanchuk* Case” (2003) 15:1 CJWL 167 [Backhouse (2003)].

<sup>50</sup> Wright, *ibid* at 194.

<sup>51</sup> Backhouse (2003), *supra* note 49 at 167.

either denied women the right to their own bodies or denied their credibility as witnesses to the sexual crimes committed against them.<sup>52</sup> Improving the laws regarding sexual violence—particularly prohibiting the defence from making use of a victim’s prior sexual history with “rape shield” legislation—had been part of NAWL’s mandate since its founding conference. Through research, writing, lobbying, passing resolutions, submitting briefs to legislative bodies, drafting proposed legislation, and public education, NAWL drew increased attention to legal mechanisms that permitted or excused men’s violence against women. Such mechanisms also included implied consent (at issue in the *Ewanchuk* case) and the defence of provocation.

In the fall of 1981, NAWL authored a brief entitled “A New Image for Sexual Offences in the Criminal Code.”<sup>53</sup> Written by fifteen members of NAWL, this brief included their largely positive response to the establishment of new sexual assault provisions in Bill C-53—*Protection of children, evidentiary and procedural reforms, and prostitution*.<sup>54</sup> On August 4, 1982, the House of Commons adopted Bill C-127—*An Act to Amend the Criminal Code in relation to sexual offences and other offences against the person*, which contained the provisions on sexual assault originally introduced in Bill C-53. In addition to repealing the marital rape exemption (the most politically controversial aspect of sexual assault reform, according to NAWL), this legislation reclassified rape and indecent assault into three new offences: sexual assault; sexual assault with a weapon, threats to a third party, or causing bodily harm; and aggravated sexual assault.<sup>55</sup> Demonstrating the organization’s political influence, these new offences were nearly identical to the resolutions on sexual assault passed by NAWL’s 1979 conference three years earlier.<sup>56</sup> Unlike the former offence of “rape,” which was based on penetration, the new sexual assault offences were differentiated based on the degree of risk and the use or threat of violence.<sup>57</sup> As NAWL explained, “the new offences

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<sup>52.</sup> *Criminal Code*, RSC 1970, c C-34, s 139 [*Criminal Code*]. For 1982–83 amendments, see *An Act to amend the Criminal Code in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof*, SC 1980-83, c 125, s 5. For a review of the reforms of 1983. See Maria Los, “The Struggle to Redefine Rape in the Early 1980s” in Julian V Roberts & Renate M Mohr, eds, *Confronting Sexual Assault: A Decade of Legal and Social Change* (Toronto:University of Toronto Press, 1994).

<sup>53.</sup> Shirley Greenberg et al, *A New Image for Sexual Offences in the Criminal Code: A Brief in Response to Bill C-53* (October 1981), online: <<https://nawl.ca/a-new-image-for-sexual-offences-in-the-criminal-code-a-brief-in-response-to-bill-c-53/>> [Greenberg et al].

<sup>54.</sup> Contributors to this brief are listed in the following order: Shirley Greenberg, Wendy King, Céline Lacerte Lamontagne, Lois Lowenberger, Margaret Mason, Mary-Anne Nixon, Stuart Russell, Vicki Schmolka, Gwen Brodsky, Mona Brown, Monique Charlebois, Nancy Doray-Bolton, Cynthia Hastings-Zinck, Lois Hoegg, and Tamra Thomson.

<sup>55.</sup> See Peggy Mason, “Sexual Assault Bill Disappears (Again),” *Newsletter of the National Association of Women and the Law* 3.3 (January 1980) at 21–22; Monique Charlebois, “Comments of the National Association of Women and the Law on Bill C-127,” *Newsletter of the National Association of Women and the Law* 4.4 (November 1982) at 9–12 [Charlebois]. Legal scholars note that significant challenges remain for the prosecution of marital rape. See Ruthy Lazar, “Negotiating Sex: The Legal Construct of Consent in Cases of Wife Rape in Ontario, Canada” (2010) 22:2 CJWL 329 at 333.

<sup>56.</sup> Greenberg et al, *supra* note 53 at 3 (“1979 National Association of Women and the Law Resolutions on Sexual Assault”).

<sup>57.</sup> Sample letter to Minister of Justice Jean Chrétien, *Newsletter of the National Association of Women and the Law* 4.1 (August 1981) 20.

properly emphasize the violent nature of the crimes, as opposed to the sexual aspects.”<sup>58</sup> Additionally, the bill enacted a prohibition on inferring consent from lack of resistance.

For NAWL, however, this legislation did not go far enough as it did not preclude the use of a complainant’s sexual history by the defence. NAWL argued that “evidence of past sexual conduct with a person other than the accused . . . is totally irrelevant to a complainant’s credibility and should be inadmissible, as it is an extension of a presumption that ‘loose women lie.’”<sup>59</sup> NAWL consistently advocated the necessity of rape shield legislation to ensure that evidence of a complainant’s past sexual history with a person other than the accused could never be brought before the court. Per NAWL, such evidence was often deployed in an irrelevant and prejudicial manner, through “fishing expeditions” in preliminary examinations and subsequent attacks on the complainant’s credibility.<sup>60</sup> NAWL and other women’s groups successfully lobbied then Justice Minister Kim Campbell for rape shield legislation with the passing of Bill C-49—*An Act to amend the Criminal Code (sexual assault)* in 1992, which protects sexual assault complainants from cross-examination regarding their past sexual behaviour.<sup>61</sup> With these 1983 and 1992 reforms, Canada’s positive conception of consent and increased protections for complainants became “the envy of rape reformers in other countries.”<sup>62</sup>

As the 1999 *Ewanchuk* case and backlash demonstrates, however, significant work remained to be done. Following rape shield reforms of 1992, NAWL advocated for further protections against what they had defined in 1975 as “an aggressive practice of seeking private, personal records of complainants in sexual assault trials” to be viewed by the defence counsel and the accused himself. These included medical records, psychiatric records, past disciplinary records (such as those obtained through schooling), personal diaries, and the notes written by counsellors at rape crisis centres.<sup>63</sup> NAWL was particularly appalled by the 1995 Supreme Court Decision in *O’Connor v The Queen*, which set a precedent for the easy retrieval of complainants’ personal information.<sup>64</sup> In *O’Connor*, on appeal from the Court of Appeal of British Columbia, the four complainants were Indigenous women who attended a residential school in which the accused was their priest, principal, and eventually their employer. At trial, O’Connor’s defence counsel had obtained a pretrial order requiring the Crown to disclose complainants’ “entire medical, counselling and school records.”<sup>65</sup> The trial judge had ordered a stay of proceedings when the Crown failed to disclose a portion of the requested information.

<sup>58</sup> Charlebois, *supra* note 55 at 9.

<sup>59</sup> *Ibid* at 11.

<sup>60</sup> In their 1981 brief *A New Image for Sexual Offences in the Criminal Code*, NAWL cites *Forsythe v R*, 1980 CanLII 15 (SCC), in which the Supreme Court permitted use of a complainant’s past sexual history to attack her credibility. See Greenberg et al, *supra* note 53 at 32–33.

<sup>61</sup> *An Act to amend the Criminal Code (sexual assault)*, SC 1992, c 38; Rosemary Cairns Way, “Bill C-49 and the Politics of Constitutionalized Fault” (1993) 42 UNB LJ 325.

<sup>62</sup> Wright, *supra* note 49 at 186. See also Nicola Lacey, *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (Oxford: Hart Publishing, 1998) 121; and Simon Bronniti, “The Direction of Rape Law in Australia: Toward A Positive Consent Standard” (1994) 18:5 Crim LJ 249 at 251–53.

<sup>63</sup> National Association of Women and the Law, “Notes on Resolutions Passed in Discussion Workshop” (January 1975), box 2, file 2, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

<sup>64</sup> *R v O’Connor*, 1995 CanLII 51 (SCC).

<sup>65</sup> *Ibid*.

While the Court of Appeal had allowed a new trial, the Supreme Court restored the stay of proceedings, meaning that the accused could no longer be tried, and defined broad evidentiary rules for the retrieval of complainants' personal records.

Following *O'Connor*, NAWL published a guide for sexual assault counsellors who were likely to be faced with subpoenas to produce their clients' counselling records. In this guide, University of Manitoba law professor Karen Busby summarized the consequences of *O'Connor* and its broad legal rationale for retrieving complainant records as follows:

According to the Supreme Court of Canada, records may be relevant if they contain or could lead to evidence about: the complainants' credibility at large, motive to fabricate, prior inconsistent statement or lack of corroboration, and recent complaint; inconsistencies on collateral issues; on a therapist's influence or false creation, recovery, hardening or contaminating of the complainant's memory or the decision to bring charges, or, take the defence on a train of inquiry leading to other evidence.<sup>66</sup>

Busby also argued that the court reinforced "discriminatory stereotypes" by subjecting sexual violence complainants' credibility to a degree of scrutiny "unparalleled in any other criminal proceeding."<sup>67</sup> The majority opinion (with Justice L'Heureux-Dubé among those dissenting) refused to consider equality rights at all.<sup>68</sup>

It wasn't just women's equality at stake in *O'Connor*, but also the rights of Indigenous women subjected to decades of genocidal state violence. In response to the *O'Connor* decision, Teresa Nahanee of the Aboriginal Women's Centre emphasized its protection of the accused over and above the right of the victims: "We cannot understand how the Court failed to recognize the inherent offensiveness of records that were produced in an institution dedicated to the annihilation of Aboriginal people. A truly equal justice system would not demand unlimited access to these women's entire life histories as their purchase price for obtaining white justice."<sup>69</sup> NAWL agreed and argued that this "liberalized disclosure regime" not only discouraged women from reporting sexual assault, but also "increased the vulnerability and decreased the protections afforded to those with mental health histories and to those who had been extensively documented by state agencies, including aboriginal women, women living in poverty and women with disabilities."<sup>70</sup> Rape crisis centres and other women's organizations expressed similar concerns throughout the 1980s and 1990s; some rape crisis centres even

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<sup>66</sup> Karen Busby, *Discriminatory Uses of Personal Records in Sexual Violence Cases: Notes for Sexual Assault Counsellors on the Supreme Court of Canada's Decisions in R v O'Connor and LLA v AB* (Ottawa: National Association of Women and the Law, 1996) at 13, online: <<https://nawl.ca/discriminatory-uses-of-personal-records-in-sexual-violence-cases-notes-for-sexual-assault-counsellors-on-the-supreme-court-of-canadas-decisions-in-r-v-oconnor-and-lla-v-ab>>.

<sup>67</sup> *Ibid* at 16.

<sup>68</sup> *Ibid* at 18.

<sup>69</sup> Teresa Nahanee, quoted in NAWL press release, "Supreme Court Dodges the Issues in Records Decisions, Women's Groups Claim" (14 December 1995), box 25, file 6, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa [NAWL (1995)]. See also West Coast Legal Education and Action Fund, "Stay Overturned in Trial of Bishop," *Thriving* (Summer 1994), box 25, file 7, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

<sup>70</sup> NAWL, 1995, *supra* note 69.

engaged in civil disobedience by shredding their clients' confidential files and subsequently faced legal action.<sup>71</sup>

In 1997, Bill C-46—*An Act to amend the Criminal Code (production of records in sexual offence proceedings)* received royal assent and established a strict two-stage procedure for the production of complainants' private records. However, to this day, challenges remain in protecting women's personal records and sexual history from undue scrutiny and stereotypical reasoning by the defence.<sup>72</sup>

Importantly, NAWL's work in fighting sexist myths and stereotypes in criminal law did not stop at legislative reform efforts; it also aimed to reduce instances of sexist judicial behaviour. In the 1980s and 1990s, NAWL collected numerous examples of Canadian judges' biased comments from the bench, which the organization related to a lack of women's representation on the Supreme Court of Canada<sup>73</sup> and throughout the judiciary. Ending this type of biased behaviour would require a three-pronged approach:

- 1) mandatory anti-sexism and anti-racism training; 2) more women being appointed to the bench, which will help to ensure that women who come into contact with the justice system will not be subjected to this type of biased thinking; and 3) comprehensive programming in law schools to ensure this sort of thinking is exposed and challenged.<sup>74</sup>

Despite sustained efforts by NAWL and other human rights groups starting in the early 1980s, there were many who fought against these kinds of reforms on the grounds of judicial independence. As illustrated by the *Ewanchuk* decision and subsequent backlash, discriminatory laws, patriarchal traditions, biased interpretation, and outright sexism from the bench combined to represent the status quo position as a common sense coalition against correspondingly radical feminist reformers.<sup>75</sup>

NAWL's 1990s and early 2000s advocacy against the defence of provocation, section 232 of the *Criminal Code*, exemplifies how discriminatory legislation combines with biased judicial interpretation to effectively legitimize male dominance.<sup>76</sup> Per Andrée Côté, NAWL's director of legislation and legal reform, writing in 1996, the statutory defence of provocation "partially

<sup>71</sup> See Dahlia Relch, "Centre Vows to Protect Client Files," *London Free Press* (10 December 1994), box 25, file 7, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa; and Sean Fine, "Civil Disobedience Backfires for Ontario Rape Crisis Centres," *Globe & Mail* (6 December 1994), box 25, file 7, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

<sup>72</sup> For examples of failed applications of rape shield provisions, see Suzanne Zaccour, "'I'm Telling You, She Likes It Rough': Sexual History Evidence, Consent and the BDSM Defense in Canadian Sexual Assault Trials" (2021) 4 *Child & Family LQ* 347. For more on the state's routine intrusion into complainants' private sexual history, see Elaine Craig, "Irrelevant and Invasive Police Inquisitions into Sexual History of Sexual Assault Complaints" (2025) 51:1 *Queen's LJ* 66; Elaine Craig, "Private Records, Sexual Activity Evidence, and the Charter of Rights and Freedoms" (2021) 58:4 *Alberta L Rev* 773.

<sup>73</sup> National Association of Women and the Law, "Presentation to the Joint Committee on the Constitution" (December 1980), box 1, file 20, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

<sup>74</sup> National Association of Women and the Law, "Response to the Comments of Judge Bienvenue" (1995), box 58, file 13, NAWL fonds (10-036), Archives and Special Collections, University of Ottawa.

<sup>75</sup> Wright, *supra* note 49 at 183–86.

<sup>76</sup> *Criminal Code*, RSC 1985, c C-46, s 232 [*Criminal Code*].

excuses murder committed in a fit of anger, if the accused lost his self-control and if the legal authority is of the opinion that an ‘ordinary man,’ in the same circumstances, would also have been provoked by the victim to the point of losing his self-control and killing his spouse.”<sup>77</sup> Invoked as a means of reducing charges from first- or second-degree murder to the lesser charge of manslaughter, NAWL noted that “provocation bestows on anger a special status in criminal law,” and that “the vast majority of reported cases on provocation, including most of the Supreme Court rulings on provocation concern situations of spousal homicide.”<sup>78</sup>

NAWL found that the defence of provocation had steadily widened in scope throughout the second half of the twentieth century, effectively permitting men’s violent, coercive control over their partners.<sup>79</sup> By way of evidence, NAWL cited a selection of Canadian cases in which provocation was accepted as a legitimate defence for situations involving infidelity, separation, divorce proceedings, and verbal disputes within couples, including *Galgay* (1972),<sup>80</sup> *Carpenter* (1993),<sup>81</sup> *Thibert* (1996),<sup>82</sup> and *Stone* (1999).<sup>83</sup> In their brief on the defence of provocation published in April 2000, NAWL argued that “these cases point to a jurisprudence that considers women’s autonomy—her drive for independence, self-respect, and security—as provocative insults . . . vindicates men’s proprietary interest in their spouses, and legitimates murderous ‘loss of self-control’ as a response to a woman’s attempt to assert her autonomy.”<sup>84</sup>

Indicating a clear gendered bias in the application of this defence, NAWL noted their inability to find cases in which women had successfully used the defence of provocation after killing their abusive spouses, since Canadian law had “narrowly interpreted provocation to consist of a single ‘sudden’ or ‘immediate’ provoking event.”<sup>85</sup> Thus, women who killed to stop the abuse of themselves or their children were not permitted to invoke the defence of provocation.<sup>86</sup> Furthermore, NAWL’s brief criticized homophobic applications of provocation, which reduced sentences for men convicted of killing other men due to perceived homosexual advances. Despite NAWL’s contention that the defence of provocation should be abolished entirely, this defence was only curtailed in 2015 with the passage of Senate Bill S-7, *Zero Tolerance for Barbaric Cultural Practices Act*.<sup>87</sup> Since then, provocation can only be used when

77. Andrée Côté, “Violence conjugale, excuses patriarcales et défense de provocation” (1996) 29:2 *Criminol* 89 at 89.

78. Andrée Côté, Diana Majury & Elizabeth Sheehy, “Stop Excusing Violence Against Women: NAWL’s Position Paper on the Defence of Provocation” (April 2000) at 4–5, online (pdf): <[https://nawl.ca/wp-content/uploads/attachments/Pub\\_Report\\_Provoc00\\_en.pdf](https://nawl.ca/wp-content/uploads/attachments/Pub_Report_Provoc00_en.pdf)> [Côté et al].

79. *Ibid.*

80. *R v Galgay*, 1972 CanLII 590 (ONCA).

81. *R v Carpenter*, 1993 CanLII 8591 (ONCA).

82. *R v Thibert*, 1996 CanLII 249 (SCC).

83. *R v Stone*, 1999 CanLII 688 (SCC); Côté et al, *supra* note 78 at 6–8.

84. *Ibid* at 9.

85. *Ibid.*

86. More recently, Sheehy writes of the difficulty of invoking the defence of provocation for abused women who kill their spouses. She also discusses the merits and drawbacks of abolishment versus using the defence to strengthen protections for these women. See Elizabeth Sheehy, *Defending Battered Women on Trial: Lessons from the Transcripts* (Vancouver: University of British Columbia Press, 2013).

87. *Zero Tolerance for Barbaric Cultural Practices Act*, SC 2015, c 29. Sheehy describes this as a “largely rhetorical piece of legislation” that in addition to amending the defence of provocation, “arguably racializes the practices of polygamy, child and forced marriage, and ‘honour killing’ as ‘foreign,’ originating in the

the provoking conduct would constitute an indictable offence and excludes infidelity and separation as triggers for “provoked” murder.<sup>88</sup>

Across different areas of the law, momentum for feminist law reform increased with the coming into force of the *Canadian Charter of Rights and Freedoms* in 1982. However, the aforementioned Supreme Court cases in criminal law, family law, and equality rights that took place following the Charter’s entrenchment illustrate the complexity of redressing women’s inferior status before the law.

## IV CHARTER RIGHTS FOR WOMEN, THEN AND NOW

In the early 1980s, NAWL was instrumental in shaping sections 15 and 28 of the *Canadian Charter of Rights and Freedoms*.<sup>89</sup> Section 15 of the Charter, titled “Equality Rights,” states that “Every individual is equal before and under the law and has the right to the equal protection and equal 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.”<sup>90</sup> NAWL was one of several women’s organizations that led the onslaught against the first draft of section 15, which many feminist groups viewed as weak and potentially harmful to women given that it merely guaranteed “equality before the law.”<sup>91</sup> NAWL often referenced the Supreme Court cases of *Canada v Lavell* (1973)<sup>92</sup> and *Bliss v Canada* (1978),<sup>93</sup> two sex discrimination lawsuits in which the courts ruled that discriminatory laws did not violate the principle of “equality before the law” as outlined by the *Canadian Bill of Rights*, which was in effect prior to the Charter.<sup>94</sup>

In *Lavell*, Jeannette Vivian Corbiere Lavell (Wikwemikong Band) and Yvonne Bédard (Six Nations of the Grand River) set out to challenge section 12(1)(b) of the *Indian Act*, which held that First Nations women lost their property, status, and treaty rights if they married non-status men.<sup>95</sup> The same was not true for First Nations men, who retained their status following marriage and conferred it onto their non-status wives. In a 5–4 decision written by Justice Roland Ritchie, the Supreme Court ruled that “equality before the law . . . guarantees only equality in the administration and enforcement of a law; it does not stand in

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religious and cultural beliefs of entrants to Canada.” As Sheehy argues, amendments to the defence of provocation were intended to prevent racialized “honour killings” in Canada, even though “not a single successful defence of provocation on these grounds could be identified.” See Kate Fitz-Gibbon & Elizabeth Sheehy, “The Merits of Restricting Provocation to Indictable Offences: A Critical Analysis of Provocation Law Reform in Canada and New South Wales, Australia,” (2019) 31:2 CJWL 197 at 230.

<sup>88</sup>. *Criminal Code*, *supra* note 76, s 232(2); *Zero Tolerance for Barbaric Cultural Practices Act*, *ibid*.

<sup>89</sup>. *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, ss 15, 28 [Charter].

<sup>90</sup>. *Ibid*, s 15.

<sup>91</sup>. Kerri Anne Froc, “The Untapped Power of Section 28 of the Canadian Charter of Rights and Freedoms” (PhD Dissertation, Queen’s University 2015) at 139 [Froc].

<sup>92</sup>. *Attorney General of Canada v Lavell*, 1973 CanLII 175 (SCC) [*Lavell*].

<sup>93</sup>. *Bliss v Attorney General of Canada*, 1978 CanLII 25 (SCC) [*Bliss*].

<sup>94</sup>. Froc, *supra* note 91 at 139.

<sup>95</sup>. *Indian Act*, RSC 1985, c I-5, s 12.

the way of discriminatory laws being passed.”<sup>96</sup> Similarly, in *Bliss* the court ruled that denying unemployment benefits to pregnant women did not constitute sex discrimination under the *Bill of Rights*. The Supreme Court ruled that the *Unemployment Insurance Act* did not violate the principle of “equality before the law,” given that these sections were “concerned with conditions from which men are excluded.” In his now infamous and oft-quoted ruling, Justice Ritchie wrote that “any inequality between the sexes in this area is not created by legislation but by nature.”<sup>97</sup> For many feminist advocates, these two landmark Supreme Court cases effectively permitted discriminatory laws under the 1960 *Bill of Rights*.<sup>98</sup>

Represented by members Deborah Acheson, Tamra Thompson, Pamela Medjuck, and Monique Charlebois, NAWL opened their presentation to the Joint Committee on the Constitution by stating emphatically that “we cannot and do not endorse the entrenchment of a Charter as poorly articulated and substantively inadequate as this one.”<sup>99</sup> They rejected the section’s original title—“Non-Discrimination Rights”—and argued that section 15 should set an affirmative standard as opposed to one of negation. As Acheson stated during NAWL’s presentation to the Joint Committee, “the value-charged word ‘discrimination’ implies something bad. Much of the discrimination which offends women may be fairly described as paternal benevolence.”<sup>100</sup> NAWL further argued that the phrase “Everyone has the right to equality before the law and to the equal protection of the law” should be changed to include “and equal benefit of the law.”<sup>101</sup>

NAWL also suggested that section 15 should include reference to “marital status, physical or mental disability, political beliefs, sexual orientation, and previous conviction.” If these categories could not be included, NAWL argued that the language of section 15 should be left open-ended, to ensure the Charter could be applied to any form of discrimination. The government revised section 15, citing the influence of women’s groups including NAWL, the National Action Committee on the Status of Women (NAC), and the Canadian Advisory Council on the Status of Women.<sup>102</sup> Significantly, section 15 now guarantees “equal benefit of the law without discrimination” and includes the open-ended language of “analogous grounds,” which has been used to extend the Charter’s protection to 2SLGBTQ+ people, among others. In *Egan v Canada* (1995), for example, the Supreme Court of Canada held that although “sexual orientation” is not listed as a ground for discrimination in section 15, it constitutes an equivalent ground on which claims of discrimination may be based.<sup>103</sup>

Despite changes to the language of section 15, the women of NAWL did not believe it would adequately protect women. They therefore lobbied for a separate “purpose clause” at the

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<sup>96.</sup> *Lavell*, *supra* note 92.

<sup>97.</sup> *Bliss*, *supra* note 93.

<sup>98.</sup> For more on failures of the 1960 *Bill of Rights*, see Mary Eberts, “The Fight for Substantive Equality: Women’s Activism and Section 15 of the Canadian *Charter of Rights and Freedoms*” (2015) 37:2 *Atlantis* 100 at 111 [Eberts].

<sup>99.</sup> Canada, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada*, 32nd Parl, 1st Sess, No 22 (9 December 1980) at 51.

<sup>100.</sup> *Ibid.*

<sup>101.</sup> *Ibid.*

<sup>102.</sup> Eberts, *supra* note 98 at 106.

<sup>103.</sup> *Egan v Canada*, 1995 CanLII 98 (SCC).

start of the Charter to guarantee the equal rights of men and women to all Charter rights.<sup>104</sup> This clause eventually became section 28 of the Charter, which now states: “Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.” After section 33 was added to the draft Charter—the section permitting governments to adopt rights-offending provisions “notwithstanding” certain rights and freedoms—section 28 was revised to read “Notwithstanding anything in this Charter except section 33 . . .” In other words, governments would have been able to derogate from the guarantee of equal rights between women and men. However, sustained advocacy by NAWL and other feminist groups resulted in Parliament and the provinces unanimously agreeing to maintain the original language of section 28, ensuring it was not subject to the section 33 override.<sup>105</sup>

Despite NAWL’s best efforts to secure strong gender equality protections in the Charter, it would take until 2018—31 years after the coming into force of section 15—for women to obtain their first Supreme Court case recognizing a violation of section 15 based on sex discrimination. This legacy seems to confirm NAWL’s initial doubts about the ability of section 15 to truly protect women. At the same time, courts and jurists have often sidelined section 28, relegating it to a historical artifact of little legal value.<sup>106</sup> To date, the litigants in just two cases have been able to successfully claim sex discrimination in *Centrale des syndicats du Québec v Quebec* (2018) and *Fraser v Canada* (2020). In both cases, however, the courts ignored section 28 in their decision and focused largely on section 15.<sup>107</sup>

Today, section 28 of the Charter has returned to the forefront of NAWL’s legislative efforts because of governments’ increased use of section 33, passing legislation notwithstanding fundamental rights. One example is Alberta’s use of the notwithstanding clause to shield anti-trans legislation. The *Protecting Alberta’s Children Statutes Amendment Act, 2025*<sup>108</sup> restricts gender-affirming care, requires parental permission for schools to use young trans students’ preferred names or pronouns, and bans trans women and girls from participating in certain sports.

Another is Bill 21—*An Act respecting the laicity of the state*.<sup>109</sup> Passed by the Quebec government in 2019, Bill 21 prohibits people working in certain professions from wearing religious symbols in the exercise of their functions, including teachers and lawyers employed by the state. The Quebec government passed Bill 21 “notwithstanding sections 2 and 7 to 15” of the Charter to disable sections 2(a) and 15 from rendering the law unconstitutional based

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<sup>104</sup>. Froc, *supra* note 91 at 139–41.

<sup>105</sup>. *Ibid* at 214, 220–21.

<sup>106</sup>. Froc, *supra* note 91 at 277, 369.

<sup>107</sup>. For more on the Supreme Court’s sidelining of s 28, see Beverley Baines, “Section 28 of the Canadian Charter of Rights and Freedoms: A Purposive Interpretation” (2005) 17:1 CJWL 45; Sandra Burt, “The Charter of Rights and the Ad Hoc Lobby: The Limits of Success,” (1988) 14:1 Atlantis 74; Froc, *supra* note 91; Penny Kome, *The Taking of 28: Women Challenge the Constitution* (Toronto: ON: The Women’s Press, 1983); Marilou McPhedran & Michele Landsberg, “The Fight for the Charter,” (2007) 26:2 Can Women’s Studies 80.

<sup>108</sup>. SA 2025, c 24; Government of Alberta, News Release, “Protecting Alberta’s Children Statutes Amendment Act” (18 November 2025), online (pdf): <<https://www.alberta.ca/system/files/jus-protecting-alberta%27s-children-statutes-amendment-act.pdf>>.

<sup>109</sup>. CQLR c L-0.3.

on, respectively, a violation of freedom of religion and a disproportionate discriminatory effect on Muslim women.<sup>110</sup>

Governments' increased use of the section 33 override has rendered NAWL's work to secure a strong section 28, which is not subject to section 33, more relevant than ever. NAWL intervened in the Supreme Court case on the matter, fighting the Quebec government's proposed interpretation of section 28 as purely interpretive and vindicating its feminist framers' intent to ensure strong protections for all women.<sup>111</sup>

## V CONCLUSION: WHERE DO WE GO FROM HERE?

Like many second-wave feminist organizations that coalesced in the late-twentieth century, NAWL had to contend with its own biases and worked toward full inclusion for bisexual women, trans women, and Indigenous, Black, and racialized women in its legislative efforts. For example, in their writing about rape shield legislation for sexual assault victims, NAWL noted that immigrant women, Indigenous women, and women on welfare were particularly susceptible to privacy violations because they are often subject to extensive legal surveillance and record keeping by the state.<sup>112</sup> Before they were defunded by Stephen Harper's federal government in 2006, NAWL fought tirelessly for marriage equality and began learning about the kinds of legislation that affected trans women. While this work led to challenges and heated debate between members, NAWL's archival materials demonstrate that the organization did not shy away from hard conversations required for organizational change.

Throughout their history, NAWL strove to address racial discrimination in the legal profession and the judiciary, often reaffirming their opposition to racial stereotypes that perpetuated myths about violence against women. NAWL's campaigns for criminal law reform attempted to balance their desire for more serious sanctions in sexual violence cases with their understanding that racialized men were often subject to biased proceedings and received the harshest sentences—a tension that exists to this day in the feminist movement, including debates regarding the criminalization of coercive control.<sup>113</sup>

In 2017, NAWL was re-funded by Justin Trudeau's federal government and immediately renewed its efforts for feminist law reform across the country.<sup>114</sup> It would take until 2021—following outcry over a judge who, in 2014, asked a sexual assault victim why she didn't "keep her knees together"—for Canada to legislate that lawyers applying to become Superior Court judges must agree to participate in training on matters related to sexual assault law,

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<sup>110.</sup> *Ibid*, s 30.

<sup>111.</sup> *English Montreal School Board, et al v Attorney General of Quebec et al* (12 August 2025), SCC 41231 (Factum, Attorney General of Quebec at para 216).

<sup>112.</sup> NAWL (1995), *supra* note 69.

<sup>113.</sup> See Constance Backhouse "A Feminist Remedy for Sexual Assault: A Quest for Answers" in Elizabeth Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (Ottawa: University of Ottawa Press, 2012) at 725.

<sup>114.</sup> During its decade of defunding, NAWL had to significantly reduce its activities but survived and continued its law reform efforts thanks to dedicated volunteer members of its National Steering Committee: see "Rightfully Hers: Five Decades of Feminist Law Reform in Canada" (March 4, 2024), online: <<https://www.youtube.com/watch?v=7dy0sFUMjGQ&t=401s>>.

systemic racism, and systemic discrimination.<sup>115</sup> Shortly thereafter, in 2023, Canada would see its first female-majority Supreme Court, following Justin Trudeau's appointment of Justice Mary Moreau.<sup>116</sup>

Despite improvements in both the laws regarding violence against women and women's representation on Canadian courts, fighting legally entrenched gendered myths and stereotypes remains at the core of NAWL's work. Throughout the 2020s, NAWL has been engaged in an ambitious campaign to reform family law and protect victims of domestic violence from accusations of "parental alienation." In family court, "parental alienation" is a label used to describe children who reject a parent—often an abusive father—when they are considered to have been influenced to do so by their other parent—often a protective mother.<sup>117</sup> NAWL has denounced the judicial practice of using pseudoscientific concepts such as "parental alienation" to revictimize women and children. Leading a coalition of nearly 300 women's organizations in all provinces and territories, NAWL is calling for amendments to federal and provincial family law legislation to stop this practice, which may result in children attending court-ordered "reunification therapy," being forced to reside with an abusive father, or being banned from all contact with their mother for months or years.<sup>118</sup> NAWL's work led to the introduction of Bill C-223, the *Keeping Children Safe Act*, a private member's bill introduced by Liberal Member of Parliament Lisa Hepfner.<sup>119</sup> NAWL's tireless campaign to stop accusations of parental alienation is a continuation of its 1980s work to remove stereotypical reasoning from sexual assault cases. This campaign shows how myths and stereotypes are still pervasive in cases involving violence against women. It also emphasizes the importance of not relegating work on violence against women to criminal law, when other areas of law—especially family law—deeply affect women's lives and safety.

Today, women's economic security also remains a core focus of NAWL. In 2024, assisted by a working group of representatives from organizations in various equity-seeking communities, NAWL identified income benefits legislation as a key priority to lift women out

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<sup>115</sup>. Ashifa Kassam, "Canada Judge Resigns over 'Keep Your Knees Together' Comment in Rape Trial," *The Guardian* (9 March 2017), online: <<https://www.theguardian.com/world/2017/mar/10/canada-judge-resigns-keep-your-knees-together-comment-rape-trial>>; *An Act to Amend the Judges Act and the Criminal Code*, SC 2021, c 8.

<sup>116</sup>. Peter Zimonjic, "Alberta Francophone to Be Appointed Next Supreme Court Justice," *CBC News* (26 October 2023) online: <<https://www.cbc.ca/news/politics/mary-moreau-supreme-court-1.7008666>>.

<sup>117</sup>. Suzanne Zaccour, "Does Domestic Violence Disappear from Parental Alienation Cases? Five Lessons from Quebec for Judges, Scholars, and Policymakers" (2020) 33:2 Can J Fam L 301 at 357; Elizabeth Sheehy & Susan B Boyd, "Penalizing Women's Fear: Intimate Partner Violence and Parental Alienation in Canadian Child Custody Cases" (2020) 42:1 J Soc Welfare & Fam L 80 at 91; Suzanne Zaccour, "Parental Alienation in Quebec Custody Litigation" (2018) 59:4 C de D 1073 at 1111; Linda C Neilson, *Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?* (Fredericton & Vancouver: Muriel McQueen Fergusson Centre for Family Violence Research & FREDA Centre for Research on Violence Against Women and Children, 2018).

<sup>118</sup>. National Association of Women and the Law, "Stop Parental Alienation Accusations," online: <<https://nawl.ca/stop-parental-alienation-accusations>>; see House of Commons, Standing Committee on the Status of Women, "Coercive Control in Canada" (November 2025) at 22, online (pdf): <<https://www.ourcommons.ca/Content/Committee/451/FEWO/Reports/RP13740927/feworp01/feworp01-e.pdf>>.

<sup>119</sup>. Bill C-223, *An Act to amend the Divorce Act*, 1st Sess, 45th Parl, 2025 (first reading 18 September 2025). At the time of writing, the bill is at consideration in committee in the House of Commons.

of poverty.<sup>120</sup> NAWL's advocacy on the Canada disability benefit highlights how improperly designed regulations prevent women from accessing poverty-relieving measures.<sup>121</sup> For example, NAWL is critical of the choice to tie benefit admissibility to a couple's combined income and tax returns, based on the assumption that couples pool their resources as an economic unit.<sup>122</sup> NAWL argues that this policy provides a further lever of control for violent men—an important consideration given that more than half of disabled women who have been in an intimate relationship have experienced intimate partner violence.<sup>123</sup> NAWL also argues for an increase to the Canada disability benefit, not only because its amount is insufficient to lift Canadians with disabilities out of poverty, but also because economic pressures often keep women trapped in violent relationships.<sup>124</sup>

Alongside Mouvement Action-Chômage and the Women's Legal Education and Action Fund (LEAF), NAWL also advocates against discriminatory rules in the *Employment Insurance Act*. At the time of writing, the law prevents recipients from accumulating more than 50 weeks of benefits, including parental leave. As such, individuals who lose their jobs while on parental leave may be ineligible for regular employment insurance benefits.<sup>125</sup> NAWL thus argues that the *Employment Insurance Act* negatively and disproportionately affects women, who are more likely to take extended parental leave and are at high risk of termination during that period.<sup>126</sup> Recognizing that not all women can or do work throughout their lives, NAWL is also advocating and working in coalition for guaranteed basic income to protect all women from poverty.<sup>127</sup>

Ultimately, the goal of substantive equality for women has yet to be achieved, and women continue to face significant economic disadvantages. In times marked by economic uncertainty and an ideological backlash against women's rights, NAWL and other feminist groups face new hurdles and challenges. The current trade war between the United States and Canada has created a political climate in which strong economic growth is viewed as oppositional to the progressive social programs that predominantly serve women and children. As such, NAWL and other feminist organizations must convince politicians that women are an integral part

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<sup>120</sup>. National Association of Women and the Law, *2024/2025 Annual Report* (Ottawa: National Association of Women and the Law, 2025) [NAWL, *Annual Report*].

<sup>121</sup>. Amanda Therrien, "What Good Is a Social Safety Net That Doesn't Catch You?" *The Hill Times* (7 July 2025), online: <<https://www.hilltimes.com/story/2025/07/07/what-good-is-a-social-safety-net-that-doesnt-catch-you/466240/>>.

<sup>122</sup>. NAWL, *Annual Report*, *supra* note 120.

<sup>123</sup>. Statistics Canada, *Intimate Partner Violence: Experiences of Women with Disabilities in Canada*, 2018, by Laura Savage (Ottawa: Statistics Canada, April 2021), online: <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00006-eng.htm>>.

<sup>124</sup>. National Association of Women and the Law, "Submission for the Pre-Budget Consultations in Advance of the 2025 Federal Budget" (1 August 2024), online (pdf): <<https://www.ourcommons.ca/Content/Committee/441/FINA/Brief/BR13232312/br-external/NationalAssociationOfWomenAndTheLaw-e.pdf>>

<sup>125</sup>. *Employment Insurance Act*, SC 1996, c 23, ss 10(2), 12(6).

<sup>126</sup>. Allison Venditti, "15% of Canadian Mothers Are Laid Off During Maternity Leave: We Have the Data," *Moms at Work* (2 June 2025), online: <<https://thisismomsatwork.com/15-of-canadian-mothers-are-laid-off-during-maternity-leave-we-have-the-data/>>.

<sup>127</sup>. See e.g. National Association of Women and the Law, "In Conversation with NAWL—Dignity, Safety, and a Guaranteed Livable Income" (19 February 2026) online: <<https://nawl.ca/in-conversation-with-nawl-dignity-safety-and-a-guaranteed-livable-income/>>.

of Canada's economic health: A Canada where women are poor and disenfranchised is not a strong economy. To reiterate Peggy Mason's 1975 assertion, "economic liberation has got to be the core of the women's liberation movement."<sup>128</sup> It is likely that this statement will continue to shape NAWL's mandate as it grapples with the needs of increasingly besieged populations, including women, children, and immigrants. NAWL's continued existence is therefore imperative to ensuring that the twentieth-century movement toward women's equality in the family and in society will not be blocked or reversed by discriminatory legislation and policies.

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<sup>128</sup>. Mason, *supra* note 30.