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National Association of Women and The Law
Association nationale de la femme et le droit

October, 1986
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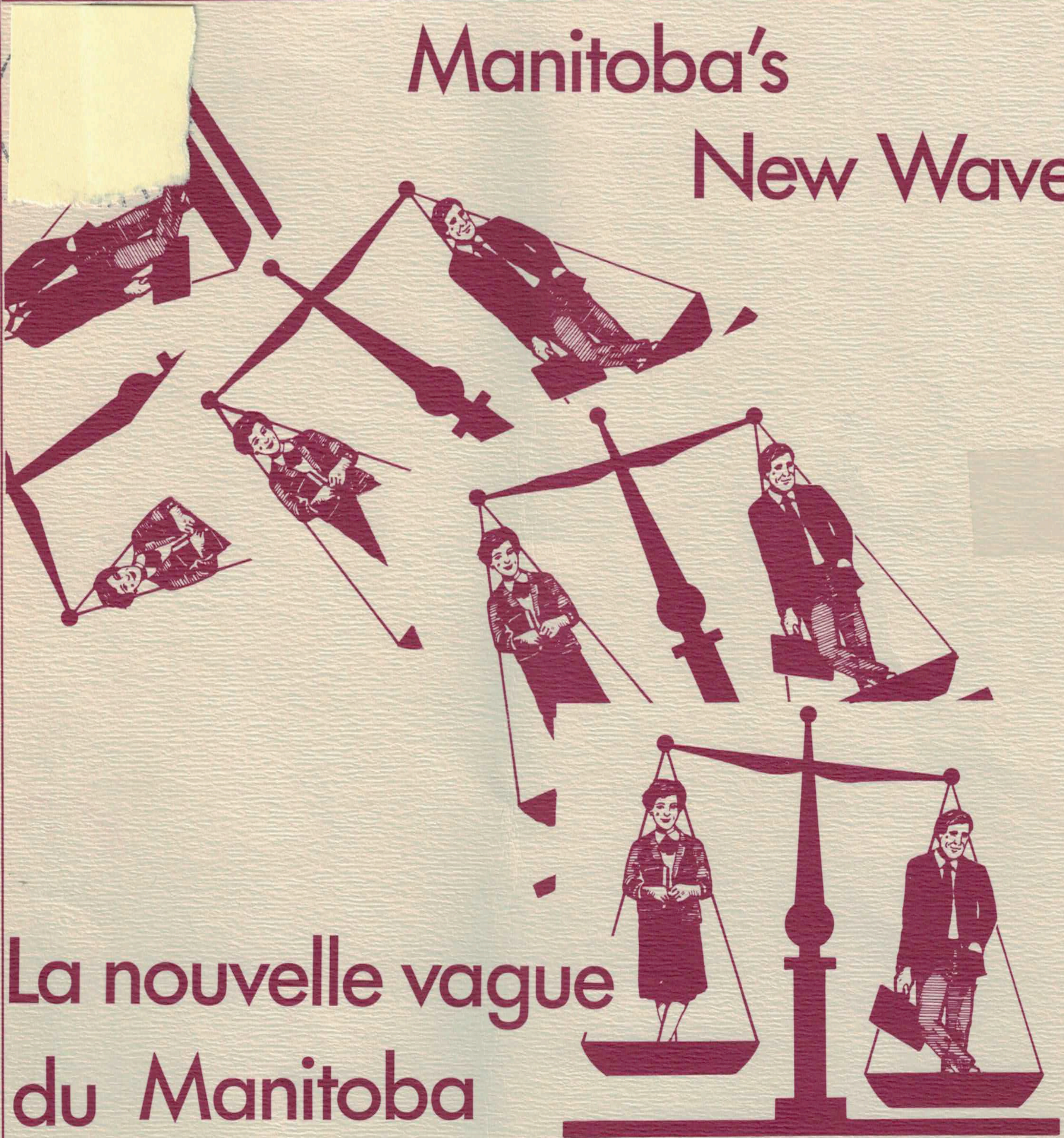
Manitoba's New Wave



La nouvelle vague du Manitoba

From the Editor

Dear Editor:

The Canadian Bar Association held its Annual Conference in Edmonton from August 17th to 21st, 1986. Approximately 2,000 members attended and media coverage of the event was good. Nevertheless, I noted that few women participated as panelists or moderators. Of the 139 names in the brochure, I counted only 8 women.

The quality of all panelists appeared excellent, however, the percentage of women was low. At a time when women in law are increasing in numbers (15-20% of the Bar is composed of women) the activities of the Bar should reflect this.

The low rate of participation of women at the conference seems to underline the fact that despite our increasing numbers in the profession, we continue to have little impact and remain virtually invisible.

Sincerely, Nadine McDonnell

Readers who replied to our questionnaire concerning the *Newsletter* seem to like the new format. Comments regarding content included wanting to see more of "recent Supreme Court decisions on women's concerns" and more reports of "recent studies and research."

People particularly like the *Newsletter* for "keeping me up-to-date on issues" and for its "variété; clarté de langage."

It seems that most people use the *Newsletter* for updates on legal affairs and NAWL activities.

Your suggestions are helpful and welcome, and it is always encouraging to hear you think the newsletter is "good," and even "great."

The NAWL Newsletter is a bilingual publication which is published three or four times yearly. Its responsibility lies with Fran Watters and it is edited and laid out in Vancouver with the assistance of the Editorial Board.

Your contributions and comments are always welcome. The Editor retains the discretion to withhold publication of submissions and edit those that are accepted. However, a rejection may be appealed to the National Steering Committee.

We are delighted that people want to reproduce articles from this Newsletter. All we ask is that you give NAWL credit. It would be an added bonus if you would send a note or a copy of your publication to the NAWL office to let us know how the word is spreading.

Articles in the Newsletter are presented to generate discussion and do not necessarily correspond exactly with NAWL policy.

The deadline for the next issue of the *Newsletter* is November 14.

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NSC Report

La Revue juridique

par Phyllis MacRae

The next issue of *The Canadian Journal of Women and The Law,* devoted to the theme of 'Women and Reproduction' is due for publication in September. Included are articles on feminist and non-feminist approaches to reproductive ethics, the conflict between fetal and maternal rights, the legal obligations of pharmaceutical manufacturers, the protection of workers from reproductive hazards in the workplace as well as case comments and book reviews of current interest. Upcoming publications are volume II, number 1, dealing with legal education, feminist theory, female offenders and joint custody and volume II, number 2, a theme issue on 'Women and Work.'

En décembre 1985, la Revue Juridique *La femme et le droit* a publié son premier numéro, dont le thème est 'La femme et l'égalité.' La Revue est publiée par l'ANFD et dirigée par un comité de rédaction indépendant. Les co-éditrices sont les professeurs Edith Deleury, à l'Université Laval et Kathleen A. Lahey, à l'Université de Windsor, Ontario. Le bureau d'administration de la Revue se situe à Ottawa.

Le deuxième numéro, 'La femme et la reproduction' paraîtra en septembre. Il y aura des articles analysant les approches féministes et non-féministes à l'éthique de la reproduction, le conflit entre les droits du fétus et ceux de la mère, les obligations légales du fabricants de produits pharmaceutiques et la protection des travailleurs et travailleuses des conditions qui risquent d'affecter leur reproduction. Il y aura aussi des commentaires juridiques et des recensions.

Le volume 2, numéro 1 adressera des questions telles que l'éducation juridique, la théorie féministe, les délinquantes et la garde conjointe. Le volume 2, numéro 2 aura le thème 'La femme et le travail.'

Nous avons maintenant environ 500 abonnements. Nous aimerions, néanmoins, plus de souscriptions institutionnelles de la part des bibliothèques de droits, des organisations et des cabinets d'avocat(e)s. Les contributions seront publiée dans leur langue originale accompagné d'un résumé dans l'autre langue.

Les tarifs d'abonnements sont $60.00 pour les institutions, $35.00 pour les individus, $25.00 pour les membres de l'ANFD et $20.00 pour les étudiant(e)s et ceux à faible revenu. Un numéro particulier serait disponible à demi prix du tarif d'abonnement.

Vous devez envoyer vos demandes d'abonnement à cette adresse:

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323 Chapel
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Veuillez vous addressé aux co-éditrices concernant les contributions pour la Revue:

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New faces at the NAWL Office

The National Steering Committee of NAWL is pleased to announce the appointment of ***Pauline Hince*** to the position of Executive Director. Pauline is originally from St. Boniface, Manitoba. She has been involved either as a volunteer or professionally in women's issues in the three Prairie provinces, in Ontario, in Quebec, and in New Brunswick. She brings to this position considerable hands-on experience in management, development education programs, fundraising and public relations.

We are also pleased to welcome our new secretary, ***Karen Cartier.*** Karen started work with NAWL on July 1, 1986. She was formerly Library Assistant at the firm of Macleod Dixon in Calgary, although she hails from Wakefield, just outside Ottawa.

Lobbying

by Louise Lamb

Joint Custody/Mandatory Mediation

For an in depth account of NAWL's participation in an important feminist conference on these issues, see the article on page 5. NAWL is a founding member of the new Politics of Custody Coalition. For a "primer" on joint-custody, send for NAWL's brief on the subject, available from the NAWL office.

The Parliamentary Task Force on Childcare

Lobbyist Louise Lamb and former N.S.C. member Mona Brown presented an extensive brief at the Task Force hearings in Winnipeg. Copies of the brief (in English and French) are available through the NAWL office. Our brief points out that without significant and sweeping initiatives to create adequate child care services, Canadian women will be denied the Charter's guarantee of equality. NAWL emphasizes that it is better child care facilities and parental leave legislation that will secure true "co-parenting," not misguided initiatives in custody/mediation legislation.

The Canadian Human Rights Act

N.S.C. member Helena Orton attended a dialogue on amendments to the Act, and presented a brief on NAWL's behalf. The brief will be available shortly from the NAWL office.

Pornography/Child Abuse—Bills C-113, C-114

NAWL is working on a response to both of these Bills and hopes to have our comments to the new Minister of Justice before legislation is re-introduced.

Table of Contents

From the Editor 2
NSC Report 3
NAWL Audit 4
Custody 5
Avortement et legislation 6
Conference '87 7
Shorts 9
American Update ... 10
Divorce 11
Manitoba's New Wave 12
La nouvelle vague du Manitoba 12
Equality in the Courts 17
Copyright 19
Sisters-in-law 20
Pornography and child abuse 22
LEAF Update 23

NAWL Audit

NAWL Financial Statements – October 1, 1985–March 31, 1986

As a result of a restructuring of our financial year, we once again present you with an audited statement of NAWL's finances. Please note that this particular statement is only for a 6 month period.

The news on NAWL's financial picture continues to improve. Our books are balanced and we even show a modest surplus. At the same time, we have finally received word from Secretary of State, Women's Program on next year's funding. We hope now to be able to redirect much of the energy which has, over the past one and a half years, gone into accounting and book-keeping into new and interesting NAWL projects.

Any comments and questions should be addressed to Dianne Young, N.S.C. member responsible for finances and the office.

Auditor's Report

TO: The Members of the National
Association of Women and the Law

I have examined the statement of revenue and disbursements for the year ended March 31, 1986. My examination was made in accordance with generally accepted auditing standards, and accordingly included such tests and other procedures as I considered appropriate in the circumstances.

In my opinion the statement of recorded receipts and disbursements presents fairly the results of operations of the Association for the year ended March 31, 1986, in accordance with the accounting principles explained in Note 1.

Jane Pope, C.A.
June 18, 1986

Notes to the Financial Statements

1. *Accounting Policies*
   a) Accrual basis: The expenses and revenue of the association are maintained on the accrual basis for the 1986 year.

   b) Fixed Assets: All fixed assets (consisting mainly of office furniture and equipment) are expenses when purchased.

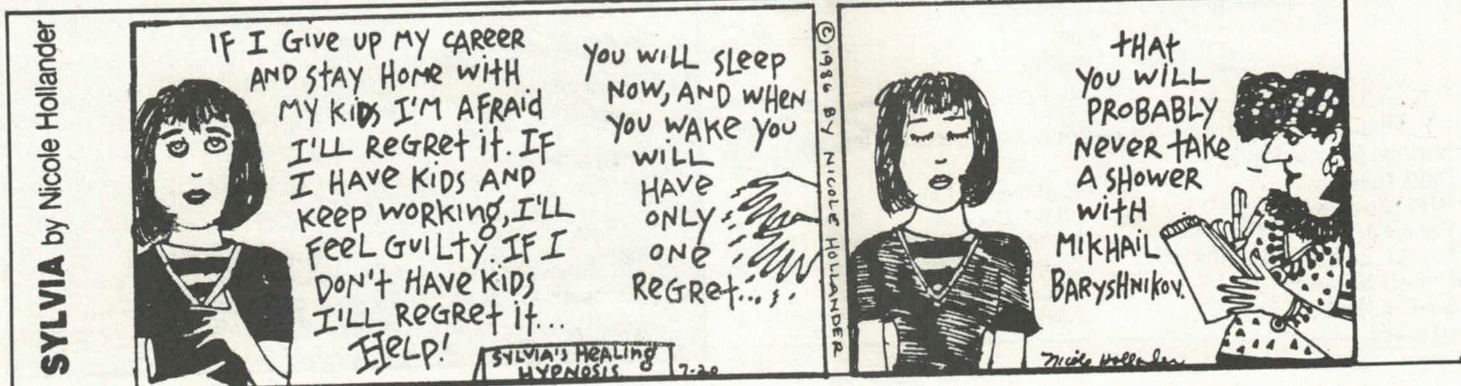
2. *There are no comparative figures as the statements are for a six month period. The previous statements represent the period October 1, 1984 to September 30, 1985.*

BALANCE SHEET
March 31, 1986

ASSETS:			
Cash in Bank		$55,319	
Cash in bank—CJWL		853	
Trust Account		1,561	
TOTAL ASSETS			$57,733
LIABILITIES AND MEMBERS EQUITY			
Accounts Payable			
Accrued Expenses		$ 8,993	
Accumulated Surplus			
Opening Balance	$52,175		
Prior Period Adjustment	(9,408)		
1986 Surplus	5,973	$48,740	
TOTAL LIABILITIES AND ASSETS			$57,733

INCOME STATEMENT
For the year ended March 31, 1986

REVENUE		
Government Grants		
—sustaining	$61,763	
—projects	8,000	
Memberships	7,044	
Publications	1,427	
Journal (CJWL)	38,366	
Misc.	1,117	
Total Revenue		$117,717
EXPENSES:		
Journal (CJWL)	$44,426	
Salaries	20,689	
Newsletter	6,548	
Steering Committee	4,807	
Membership Development	4,404	
Office	4,597	
Rent	3,900	
Postage & Shipping	1,118	
Telephone	5,712	
Professional Fees	2,452	
Advocacy	5,933	
Projects	6,843	
Misc.	315	
Total Expenses		$111,744
SURPLUS		$5,973



Dalkon Shield

Les femmes canadiennes n'ont pas réussi à obtenir une prolongation au-delà du 30 avril 1986 de l'échéance fixée pour les réclamations non réglées au sujet de stérilet Dalkon Shield. Le stérilet, fabriqué par A.H. Robins, a été relié à des salpingites aiguës et à la stérilité. Plus de 350 000 réclamations ont été déposées contre la compagnie, dont 4 000 d'origine canadienne. La décision a été portée en appel.

by Catherine Hagen

Over 350,000 women have now filed claims against American Company A.H. Robins for damages suffered from use of the Dalkon Shield.

The Dalkon Shield is an intrauterine device, marketed by the pharmaceutical producer A.H. Robins Company of Richmond, Virginia between January 1971 and early 1975. Used by an estimated 4.5 million women worldwide and by approximately 100,000 in Canada, the Shield was withdrawn from use in the U.S. in 1974, when it was linked to pelvic inflammatory disease and infertility.

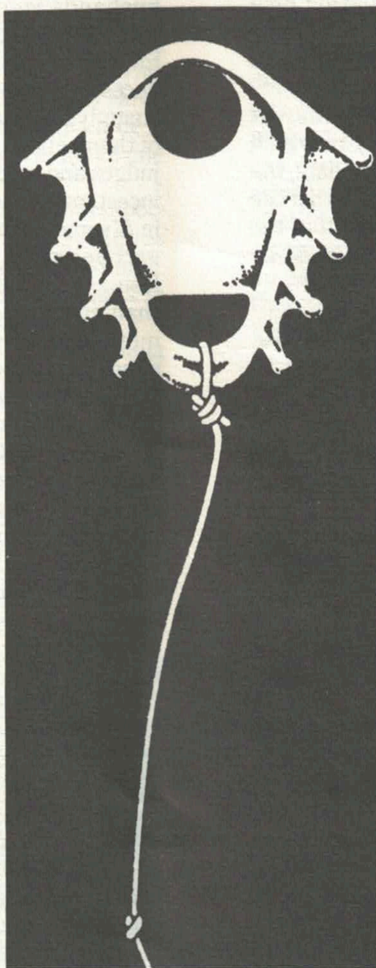
The first law suit was filed against the Company in 1972 and since then the number of litigants has increased dramatically. In an effort to limit potential claims, A.H. Robins filed for financial reorganization under Chapter 11 of the U.S. Bankruptcy Code in 1985. A deadline of April 30, 1986 was set for all outstanding claims. This action effectively freezes all claims against the company, including those of Dalkon Shield litigants, until reorganization under the Code is complete and a plan to pay creditors is approved by the Courts.

In a useful survey of the case, American writer Emily Couric[1] quotes David Schiller, an assistant U.S. attorney, as suggesting that it is probably the most significant bankruptcy case in this decade: first, because of the huge tort problem the case poses and second because the bankruptcy system and the integrity of the court system are being questioned by people who see the process as dishonest.

Deadline Extension Denied

In June, the Winnipeg Women's Health Collective applied, on behalf of Canadian women, to extend the April 30th deadline. The extension was denied, despite the fact that A.H. Robins spent approximately $3 million to advertise the deadline in the U.S., and only $17,373.57 in Canada. The American Judge determined that women outside the U.S. received adequate notice of the litigation and the Company's advertising was sufficient.

The decision is presently being jointly appealed by the Winnipeg Women's Health Clinic and the Vancouver Women's Health Collective, on the grounds that women not aware of the deadline before April 30th will be denied natural justice. The groups are represented by U.S. attorney, Robert E. Manchester.



In light of the appeal, Carey Linde, a Vancouver lawyer representing a number of Dalkon Shield litigants, encourages women claimants who have not yet filed, to see a lawyer, swear an affidavit that they were unaware of the deadline, and file a claim. Even if the appeal is denied, Couric suggests that under U.S. bankruptcy law, post-deadline claims will be maintained if a litigant swears an affidavit that she did not know of the deadline.

At present, Linde estimates there are 350,000 claims filed world-wide. Approximately 4,000 of these have been filed in Canada, and perhaps one half of these originate in B.C. It is unknown how many women missed the April 30th deadline, however, Couric states that the Clerk's office of the bankruptcy court in Richmond is holding more than 20,000 late arrivals.

Case Poses Legal Problems

In her article, Couric outlines some of the legal problems the case raises, such as who should represent the Dalkon Shield claimants and what legal tactics would best serve them. Couric found that lawyers representing claimants are divided in their opinion of how best to handle the litigation. Those lawyers who have successfully litigated claims on a case by case basis prefer to continue in that manner. A second group argues that a claimants' fund would compensate more victims than jury awards in individual trials, and favours seeking a group settlement through alternate dispute resolution. This second faction is concerned that lawyers, overburdened with cases, may accept inadequate offers, or that conflicts may arise within their caseloads around a point of law that would help one group of clients but adversely affect another.

One of the many unanswered questions facing litigants is the standard of proof required by the Court. Linde suggests that at the very least claimants will need to produce medical records proving they had a Dalkon Shield inserted and removed. However, the Court could adopt a higher standard and require an affidavit from the claimant's doctor stating the date of insertion, removal and resulting damage. If the higher standard is adopted, Linde fears it could disqualify one third to one half of the claimants because of doctors' reluctance to swear such an affidavit.

Successful claimants are not assured that they will receive full compensation. Couric states that by August of last year, A.H. Robins' insurer had already paid $530 million in damages in about 9,450 cases. Linde estimates that there is 1.5 billion available, of which .5 billion has already been spent.

1. Emily Couric, "The A.H. Robins Saga," *American Bar Association Journal, The Lawyer's Magazine* 72 (July 1, 1986): 56–60.

Catherine Hagen is a recent graduate of the U.B.C. Faculty of Law and is currently working as assistant editor of The Newsletter.

Custody Reform

by Louise Lamb

Un mouvement en faveur de la garde conjointe obligatoire et la médiation obligatoire balaie l'Amérique du Nord et l'Europe, attisé par les groupes en faveur des "droits des pères" et ceux qui voient la médiation comme une panacée pour apaiser l'acrimonie du divorce. D'après une récente conférence canado-américaine dont le thème était "The Politics of Custody," cette initiative présente une menace fondamentale pour l'autonomie des femmes divorcées et de leurs enfants.

Involuntary joint custody and mandatory mediation pose a fundamental threat to the autonomy of divorced women and to the welfare of children. This is the consensus of a diverse group of women—lawyers, anthropologists, social scientists and historians—who gathered at a recent 3 day Canada-U.S. conference on "the politics of custody" at the University of Windsor.

The move to mandatory joint custody and compulsory mediation is sweeping North America and Europe, fuelled by "fathers' rights" groups and those who see mediation as a panacea for the acrimony of divorce. The latter group sees the acrimony of divorce as a product of the legal system itself, not of relationships within the family.

Papers presented at the conference provide a feminist critique of these movements—they explore the way in which fathers' rights lobbyists have manipulated social science data, the legal process and the popular media to advance the belief that the father-child relationship is so fundamentally important that the best interests of the child and the rights of mothers should be subordinated to it.

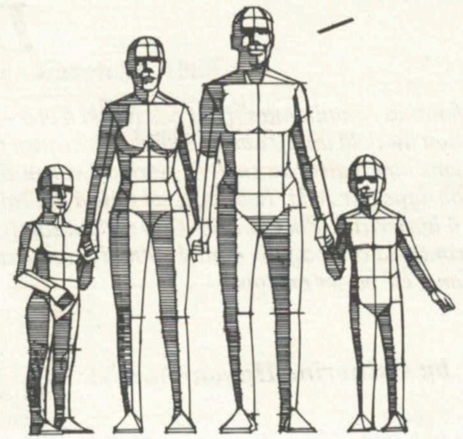
Legislators Ignore "Typical" Motherly Behavior

How have fathers' rights groups gained the ear of legislators, the media and some judges? They have become adept at appropriating the language of feminism and the notion of children's rights to fuel the equality backlash. With only a superficial understanding of equality, legislators are persuaded that "equality" requires them to ignore "typically" motherly behaviours in formulating custody rules. They believe that stressing such behaviour "unfairly" favors women. When those behaviours include nurturing and day to day commitment to child care, feminists should worry that "the baby is being thrown out with the bath water!"

Louise Lamb, NAWL's lobbyist and conference speaker, points out that the new *Divorce Act, 1985* is a case in point. Fathers' rights groups did not get a presumption of joint custody but they did make several significant gains, including section 16(9) (the so-called "friendly-parent"rule). That section sets one factor apart from, and impliedly above the "best interests" test, as no other specific component of the test is mentioned. That factor is the willingness of the parent seeking custody to facilitate contact with the other parent.

NAWL argued, at the time, that past commitment to daily nurturing of the child is at least as important, but that plea fell on deaf ears. Thus, the *Act* implies that the impact of the non-physical custodian parent is more important than that of the parent who lives with and cares for the children on a daily basis—a result that is entirely in keeping with "fatherhood mythology". Such so-called "reforms" devalue the nurturing component of parenthood because it has traditionally been provided by women and elevates the biological component.

The joint custody movement is not about sharing the physical or emotional burdens of childcare, it is about power and control. Most members of fathers' organizations don't want their children to live with them, they want to be involved in decision making, and legislators see joint legal custody as an innocuous concession to "parental equality."



"Friendly Parent" Rule Puts Women at Risk

Women have good reason to resist joint custody. It gives ex-husbands veto power over fundamental decisions affecting women's capacity to earn a living and establish an independent life—where to live, what day-care to use, etc. Women are not necessarily seen as having a "good enough" reason to resist joint custody even when there is physical, emotional or sexual abuse of themselves or the children. Notwithstanding that lawmakers, judges and mediators are willing to admit that wife battering and incest may affect many families, women who raise such concerns in divorce or mediation proceedings are seen as vindictive and uncooperative. The "friendly parent" rule puts them at risk of losing their children to the abuser. What could be "unfriendlier" than accusing one's spouse of such acts? The fathers' rights movement is now organizing to convince legislators that they need "protection" from unfounded accusations of sexual abuse by ex-wives and children.

Such "blaming the victim" tactics seem to enjoy some success: the "Canadian Council for Co-Parenting" (a fathers' rights group) distributes literature that features a news item about a Vancouver father who held his 2 year old son by the heels from a third story window and threatened to slit his throat. The Council notes that the man had just lost a custody fight. It advised the Parliamentary Committee on Bill C-47 (Divorce) that measures to endorse "co-parenting" (ie: joint custody) would put an end to the violence that such men are driven to when unreasonably deprived of their children.

Mandatory mediation is also deeply affected by the "power politics" of the family, although it is based upon the assumption that disputants have relative equality. It has the potential to subordinate the needs of children to the desire for parental compromise, because many mediators are uncritically committed to the idea that joint custody is in everyone's best interests.

The Conference closed with a call to action: feminists must organize to bring their concerns about the joint custody/mandatory mediation movement to public attention. To this end, the Conference papers are to be published, and participants have formed an organization to carry on the work. For further information about The Politics of Custody Coalition, or the Conference, contact Louise Lamb at 1700-360 Main St. Winnipeg, Manitoba R3C 3Z3, Telephone: (204) 956-2970.

Louise Lamb is the NSC member responsible for lobbying.

Legislation et Avortement

par Danielle Blondin et Suzanne Guèvremont

Two third year law students at the University of Montreal have recently completed a study of procedures surrounding abortion requests in France. Reports from the French National Institute for Demographic Studies indicate that the 1975 amendments relating to abortion did not provoke the recent drop in fertility, as there has been a decline in the fertility rate in Europe since 1965. Nevertheless, the number of clandestine abortions is considerable, influenced, no doubt, by the administrative requirements imposed by law. The effectiveness of the law depends to a large degree on the accessibility of centres providing abortions. This structure seems to be under attack. The French government has abolished the Ministry for the Condition of Women which was an important source of communication and information, and the French Movement for Family Planning in Paris has had its budget reduced.

Projet de stage thématique présenté à l'Office franco-québécois pour la jeunesse.

Le stage préparé par deux étudiantes de 3ième année en droit de l'Université de Montréal, avait une durée de trois semaines, soit du 14 mai au 4 juin. Il s'agissait d'un stage d'exploration qui consistait à vérifier l'application des procédures entourant une demande d'IVG.

Tout comme la loi canadienne, l'article 317 du Code pénal français prohibe la pratique des IVG, à moins de se retrouver dans les conditions édictées à l'article L-162 du Code de la santé publique qui permet l'avortement si celui-ci est exécuté en-de là de 10 semaines après consultation avec un médecin et après une visite à un centre de planification familiale.

Nous avons rencontré des coordonnatrices travaillant respectivement: à l'Institut national des études démographiques (INED), au siège social et au centre de documentation du Mouvement français pour le planning familial (MFPF) à Paris, à la Ligue des droits des femmes et au MFPF de Montpellier.

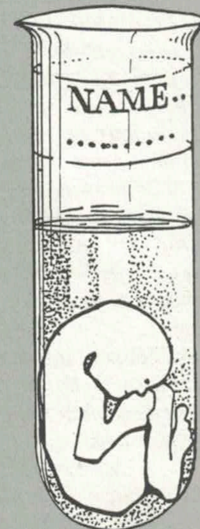
L'INED doit remettre un rapport annuel au Ministre de la santé sur la situation démographique en France dans le cadre duquel il analyse les statistiques concernant les taux d'IVG pratiqués dans les hôpitaux publics et les cliniques privées. Les rapports dénotent que la baisse de fécondité que l'on retrouve depuis 1965 dans les pays occidentaux précède les lois permettant l'avortement. De plus, leurs évolutions demeurent indépendantes, c'est-à-dire que l'avènement de la Loi Veil en France en 1975 n'a pas provoqué une accélération de la baisse de fécondité. Enfin le nombre d'avortements clandestins a considérablement diminué pour se stabiliser depuis les cinq dernières années.

Cependant les rencontres tenues aux MFPF de Paris et plus particulièrement celui de Montpellier, nous ont démontré que les taux d'avortements clandestins pouvaient se maintenir grâce à une pratique qui contourne les exigences administratives imposées par la loi. A cet effet le délai de 10 semaines est incompatible avec les délais nécessaires pour prendre les consultations. Le MFPF recommande plutôt un délai de viabilité correspondant à six mois environ. De plus, l'efficacité dans l'application de la loi dépend en grande partie de l'accessibilité aux centres pratiquant des IVG. On ne retrouve pas les mêmes lacunes en régions périphériques, chaque département étant autonome et possédant ses propres services. Néanmoins la structure sous-jacente semble être sérieusement attaquée. Le gouvernement français a aboli le Ministère de la condition féminine qui était une source de communication et d'information importante. Les budgets alloués au MFPF ont tendance à diminuer et on remet en question l'opportunité du remboursement des coûts inhérents à un IVG. Enfin selon la Ligue des droits des femmes et du MFPF, le noeud de problème demeure l'article 317 du Code pénal qui laisse la porte ouverte à ceux qui veulent retirer le droit à l'avortement. A cet égard nouveaux enjeux se présenteront avec la venue de techniques médicales plus sophistiquées.

Ce stage d'exploration complétera notre étude comparative des législations françaises et candiennes concernant l'avortement. Le rapport du stage sera soumis à l'OFQJ au mois d'octobre.

Danielle Blondin et Suzanne Guèvremont sont des étudiantes en troisième annee de droit à l'Université de Montréal.

The Montreal Caucus proposes to discuss the issues of in vitro *fertilization, sexual harassment in the workplace and pornography during the 86–87 academic year. They are also working on an annotated bibliography concerning Family and Employment law, covering jurisprudential and government publications.*



Au Québec, le Comité de l'Université de Montréal prepose, comme activités pour l'année scolaire 86-87, une series de conferences sur les sujets divers concernant les femmes et le droit.

Ces conferences auront pour sujets le statut juridique des embryons fecondés *in vitro,* le harcelement sexual au travail, les femmes et le lobbying prestations compensatoires, la pornographie et la loi Crosbie et l'entraide judiciaire France-Québec quant à l'execution des ordonnances de pensions alimentaires et les droits de garde et visite.

Le coup d'envoi sera un vin fromage ayant place le 4 septembre à 7 heure au salon de professeur.

Finale, vous informez au bibliographie annotée regroupant la doctrine et les publications gouvernementales (Canada-Québec) et concernant la droit la famille et du travail sera terminé le mois d'Octobre 1986.

Conference '87: Equality and the Law

It's that time again! Time to educate ourselves, to lobby for change, to reminisce with old friends and to make new ones. Time to gain strength, to replenish our enthusiasm and to reach down for new ideas and new energy. Time to reflect on what we've accomplished over the past two years and time to plan for the next two. Yes, folks, it's...Conference time again.!

This conference sees NAWL returning to Winnipeg, our "founding City", 13 years after our first conference there as an association. In 1975, we concentrated on creating a national association for women and the law, the first of its kind. This time, we will look at the *Charter's* guarantee of equality, not just in terms of the law, but also in terms of our own working lives.

Conférence de la Femme et le Droit

L'Association du Manitoba de la femme et le droit parraine la septième Conférence biennale de l'Association nationale de la femme et le droit. La conférence aura lieu du 19 au 22 février 1987 au Holiday Inn Downtown. Le thème de la conférence est le suivant: "L'égalité, selon l'article 15 de la Charte des droits, dans le système de justice pénale et sur la marché du travail: fait ou mythe?" À l'ordre du jour, on trouve des tables rondes, un banquet et un conférencier de marque, de même deux jours et demi d'ateliers. Voici quel ques-uns des sujets qui seront abordés: les rétroactions à la Charte; une approche féministe à la pratique quotidienne du droit criminel; l'utilisation de statistiques dans les causes reliées à la Charte; l'égalité au sein de Barreau; et des stratégies personnelles pour s'en tirer—variations sur l'exercice du droit.

La brochure sur la conférence vous fournira tous les renseignements au sujet de l'ordre du jour, des frais, etc. Elle sera disponible au début de septembre. Pour des renseignements, veuillez communiquer avec:

Ms Laurie P. Allen
Coordonnatrice de la conférence
201–303 Osborne Street
Winnipeg, Manitoba R3L 1Y5
Téléphone: (204) 284-8683

Our seventh biennial Conference will be held February 19th to 22nd, 1987, at Winnipeg's Downtown Holiday Inn. The theme of the Conference is:

Section 15 Equality
in the Criminal Justice System
and the Workplace:
Fact or Fantasy?

Registration and a reception will open the conference on Thursday, February 19th, 1987. The opening panel on Friday will debate the use of special versus equal treatment models. Friday's workshops will focus on **equality issues in the criminal law.** The workshops, offered twice, are:

1. Current Canadian Law on Abortion
2. Abortion in North America
3. The *Charter* Backlash
4. Defences for Women
5. Prostitution
6. Female Offenders and Equality
7. A Feminist Approach to Criminal Law Practice
8. Pornography
9. *The Young Offenders Act.*

Friday evening features a reception and banquet with a keynote speaker.

On Saturday, February 21st, the workshops again run twice, focusing on **equality in the workplace.** The workshops are:

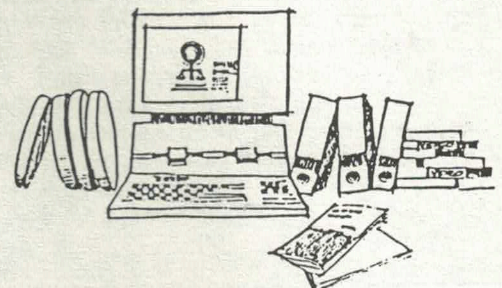
1. Putting the Feminist Agenda before the Bench
2. Pregnancy: Sex Related Discrimination?
3. Day Care and Parental Leave
4. Domestic Workers
5. Pay Equity in the Private Sector
6. LEAF Report
7. Affirmative Action
8. Evidence and *Charter* Cases
9. Working Women and Custody

After the workshops on Saturday morning, the plenary session will consider proposed resolutions and elect the new National Steering Committee. Please check the memo for technical requirements for voting and submitting resolutions.

On Sunday, February 22nd, the last day of the Conference, a panel session will discuss the topic, **Equality in the Legal Profession.** Several workshops will follow, running concurrently, each examining the theme of **Personal Strategies for Coping: Variations on a Law Practice: Superwoman.**

The Conference office has been swamped with excellent ideas for workshop topics and suggestions for speakers. We are quite excited by the way the Conference is coming together. The Conference brochure will be out in late September. For further information, or to ensure that you receive a brochure, please contact:

Laurie P. Allen, Conference Co-Ordinator
201, 110 Osborne Street
Winnipeg, Manitoba
R3L 1Y5
Telephone: (204) 284-8683



Interested in the NSC?

by Louise Lamb

Vous êtes curieuse au sujet du processus de démarchage (lobbying) et du processus législatif? L'avenir de l'ANFD vous intéresse? Vous avez envie de jouer un rôle? Alors songez à poser votre candidature à un poste au Comité directeur national de l'ANFD, à la prochaine conférence de l'ANFD en février!

Intrigued with the process of lobbying and law-making? Concerned about NAWL's future? Interested in getting involved? Then consider running for a position on NAWL's National Steering Committee.

In February, at our next NAWL Conference, members will elect a new NSC to administer the affairs of the Association for the next two years. Responsibilities include lobbying, editing the *Newsletter,* supervising research, finances, supervising the office, liaising with the editorial board of the *Journal* or liaising with local caucuses. The NSC meets three to four times a year in various cities across Canada and occasionally has the chance to send delegates to international and local conferences.

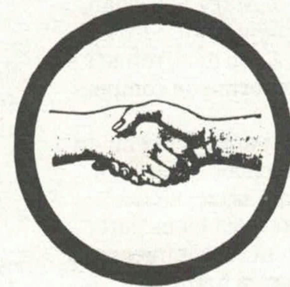
NAWL has never required the energetic commitment of its members more than it does now. Charter implementation is a two-edged sword. If feminists from the legal community do not articulate their vision of equality, the concept will be readily subverted by those who appropriate the language of equality to advance profoundly anti-women concepts. Family law is an excellent case in point. (See my article on page 5 of this issue.)

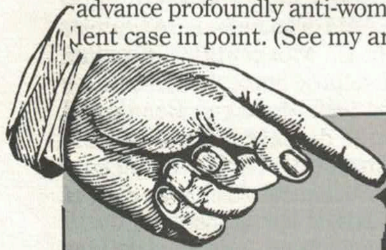
Don't mistake me: I intend to run for the NSC again in 1987, as do many of my colleagues. However, some of us who have served 2 terms cannot, and NAWL always needs fresh ideas and new energy. The work is time consuming, but invigorating; challenging, but interesting.

In my two years on the NSC, I've had the opportunity to join in international feminist dialogue—in November I attended an international conference on women and law held in Pakistan and I've just returned from an American/Canadian conference on custody. I've also had the chance to better understand the political process through NAWL's lobbying activities. I also consider the opportunity to meet and work closely with feminist lawyers and law students across the country not the least of the bonuses of NSC membership. All of these activities have enhanced my professional standing and broadened my appreciation of the universality of feminist concerns.

In short, this is an opportunity not to be missed. Please join us!

Louise Lamb is the NSC member responsible for lobbying.





memo:

Members and conference delegates are reminded of the following Conference procedures:

Eligibility to Vote

To be eligible to vote at the Conference in February, you must:

1. Present NAWL Members
   (a) be a member in good standing in the present fiscal year (October 1, 1985-September 30, 1986); and
   (b) have renewed your membership anytime before the date of the Conference.

2. New or Lapsed Members
   If you do not have a valid membership for the preceding fiscal year, you must be a member in good standing for three months prior to the Conference. This means you must apply for membership before November 19, 1986.

Voting

Each member of NAWL who is eligible to vote is entitled to one vote.

Proxies

Those members eligible to vote who are unable to attend may give written authorization to a delegate to vote as their proxy.

Bourinot's Rules of Order

Bourinot's Rules of Order are used at NAWL Conferences.

Resolutions

1. Resolutions must be submitted to the Conference Resolutions Committee on or before December 19, 1986, c/o Gretchen Pohlkamp, N.S.C. member:
   Dalhousie Legal Aid
   5557 Cunard Street
   Halifax, N.S.
   B3K 1C5

2. Workshop Resolutions: will be accepted from the Conference Workshops, subject to review and acceptance by the Conference Priorities Committee.

3. Emergency Resolutions: resolutions of an urgent and topical nature (ie: that could not be forseen prior to the resolution deadline), may be accepted subject to time restrictions as well as review and acceptance by the Priorities Committee.

4. All resolutions must be moved and seconded by members in good standing and presented to the Priorities Committee for review and acceptance.

5. No motions (other than amendments to the main motion) will be accepted from the floor of the Plenary.

National Steering Committee

Elections for the N.S.C. will be held at the Conference. Seven positions are available and include at least one representative from B.C.; the Prairie provinces; Ontario; Quebec; and the Maritimes; as well as 2 members-at-large. Two of the seven must be persons working within or governed by *le droit civil.*

Any member in good standing is eligible to run.

Further Details

Membership cards and receipts will be available to be picked up at the Conference. The NAWL Constitution and By-Laws will be available upon request.

Shorts

by Jennifer Conkie

Le partage des biens

La Cour Suprême du Canada a émis un premier jugement sur le partage des biens lesquels ont été conservés mais non accrus pendant une union de fait. M. Sorochan, fermier de l'Alberta, doit donner à sa concubine un tiers de sa ferme de trois quarts de section et un paiement forfaitaire en reconnaissance du labeur non rémunéré qu'elle a accompli pendant 42 ans. Le Juge en chef Dickson a dit que Mary Sorochan pouvait raisonnablement s'attendre à quelques avantages: à son avis, refuser à Mary Sorochan toute forme de compensation serait injuste.

Ce jugement vient appuyer celui du procès et annule la décision de la Cour d'appel de l'Alberta qui octroyait à M. Sorochan le droit à tous les biens parce qu'il les possédait avant de commencer à vivre en commun avec sa femme en 1940.

Discrimination à Manitoba

Jusqu'où les mesures anti-discriminatoires peuvent-elles aller? Est-ce que les gouvernements provinciaux devraient se retirer des marchés avec les pays étrangers s'il y a des parties qui font preuve de discrimination dans ces pays?

Dans un cas particulier, on dit que les femmes et les Juifs ne peuvent pas travailler dans le secteur des exportations du Manitoba Telephone System à cause de ses relations avec la société Datacom d'Arabie saoudite. Le Premier ministre Pawley a déclaré que la question peut être soumise à la Commission des droits de la personne du Manitoba seulement si une victime de discrimination porte plainte.

Le gouvernement du Manitoba a toutefois annoncé qu'il prend des mesures pour présenter une nouvelle législation qui veillerait à ce que les entreprises qui travaillent à l'extérieur du Manitoba soient assujetties aux dispositions de la législation provinciale en matière de droits de la personne.

Human Rights in P.E.I.

Gladys Kickhem was the highest scoring applicant for a job with the Charlottetown Police Department, but a man was hired instead of her. The P.E.I. Human Rights Commission ruled in her favour, but she still could not get the job. It took a further Commission of Inquiry, which ruled that Ms. Kickhem be offered a job and $10,000 in damages, for the job offer to be made, Ms. Kickhem accepted.

Victims of Violence

"Only 1 in 50 victims of violence receives any form of compensation from the state. Only one Canadian community in 100 has practical and emotional assistance organized for victims of common crimes. One in 25 has a rape crisis centre or shelter for battered wives."

So writes Professor Waller of the University of Ottawa, who is calling for services to help the victims of crimes recover and reparation from offenders to victims to be made higher priorities by governments.

A new Manitoba Bill, Justice for Victims of Crime, has been introduced and is the first attempt to implement the 1985 United Nations resolution law on victim rights. The Bill will set up a permanent committee with teachers to promote victim rights. Two victims will be on the committee and the victim assistance fund will be available to support counselling and compensation.

from The Globe and Mail, 5.8.1986

A Montréal...

Pour la première fois au Québec depuis les trois procès du Dr Henri Morgentaler, dans les années 70, une accusation d'avoir provoqué un avortement illégal a été portée contre un médecin de la métropole.

Le Dr Yvan Machabée devra se présenter devant la Cour des sessions de la paix le 28 août, pour annoncer s'il plaidera coupable ou non à l'accusation d'avoir avorté une jeune fille mineure, le 5 novembre 1982, dans sa clinique privée, située au 3871 de la rue Bélanger, à Montréal.

L'accusation a été porté après que le juge Jacques Lessard, de la Cour des sessions, eut entendu une plainte privée de l'ancien boxeur Reggie Chartrand qui, depuis 10 ans, mène tambour battant une bataille "pour la vie".

La procédure s'est déroulée à huis clos le 12 mai dernier. Le juge Lessard a entendu plusieurs témoignages et par la suite a accepté de traduire le médecin devant les tribunaux.

On sait que Chartrand avait tenté, sans succès, l'été dernier de faire traduire en justice le Dr Morgentaler. L'ancien boxeur avait déposé deux plaintes privées contre le médecin de la rue Beaugrand devant le juge de paix Michel Breton. Plusieurs témoins, dont le Dr Morgentaler lui-même, furent entendus à huis clos; et après avoir étudié les dépositions, le 12 mars dernier, le juge devait rejeter les plaintes, non sans avoir qualifié "frivole et vexatoire" la preuve à charge présentée par Chartrand.

Extrait de La Presse, 9.7.1986

Pornography in B.C.

Brian Smith has introduced a Bill that bans child pornography, bestiality, incest and violent, coercive sex, and requires videos to be classified and licensed. The *Motion Picture Act* is an attempt to keep adult entertainment out of the hands of minors.

The Bill introduces a licensing system requiring retailers to pay about $100 a year and submit copies of all tapes to be sold or rented to the Film Classification Branch of the Ministry. The B.C. Civil Liberties Association has charged that the Bill is too broadly worded and could constitute censorship. The Vancouver Coalition against Pornography says the new Act has been worth the wait. It is expected to come into force no later than January 1st, 1987.

American Update

by Jennifer Conkie

Une série de jugements de la Cour Suprême des États-Unis et le rapport final de la Commission sur la pornographie parrainée par le Procureur général Edwin Meese annonce une nouvelle ère de conservatisme prononcé aux États-Unis. La Commission sur l'obscénité et la pornographie a affirmé dans son rapport qu'il y a un lien entre la pornographie violente et le comportement agressif envers les femmes et que cela conduit à une plus grande acceptation du mythe du viol. Un autre jugement a entériné le droit de la Georgie à déclarer la sodomie comme un crime, ce qui donne à nouveau aux États la liberté de réglementer les comportements sexuels qui leur semblent anormaux.

A series of United States Supreme Court decisions and the final report of Attorney-General Edwin Meese's Commission on Pornography herald a strong new conservatism in the United States.

The cover story of *Time* magazine, July 21, 1986, goes so far as to call it "a new moral militancy."

In New York, the Supreme Court upheld a public health nuisance law that would permit officials in Buffalo to close an adult book store for one year because of solicitation for prostitution on the premises. Another decision narrowly interpreted the First Amendment in a case involving the suspension of a student who gave a speech coloured by sexual innuendo. A ruling from the Justice Department allows businesses to discriminate against workers with AIDS if there is a reasonable fear that the health of other employees would be jeopardized.

Pornography Commission Reports

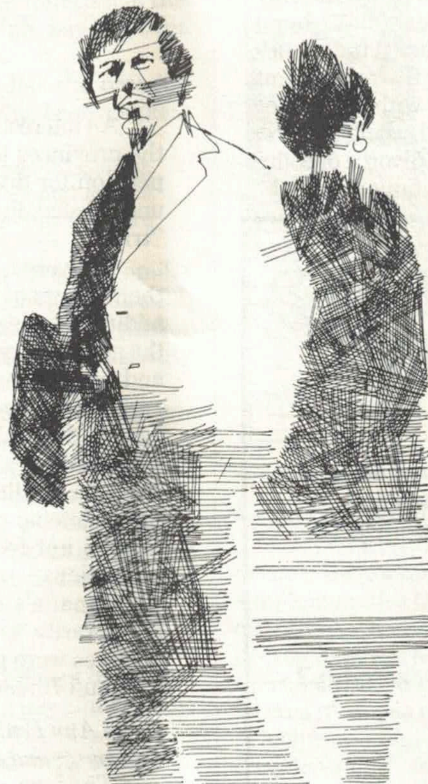
The Commission on Pornography has issued a two-volume, 1960-page report after hearing testimony in half a dozen cities and doing extensive research.

The results are in strong opposition to those of the 1970 report of the President's Commission on Obscenity and Pornography (which analysis, the new report claims, is "starkly obsolete"). The report states that there is a link between violent pornography and aggressive behaviour toward women and that it leads to greater acceptance of the rape myth. The panel rejected any expanded legal definition of obscenity, but did call for new laws to make it easier to seize the assets of those involved in the pornography trade.

Critics have labelled the Commissioners "quintessential censors," noting that 6 of the 11 were already committed to stamping out pornography before the hearings began. Guidelines for citizens' actions, running to 37 pages in the report, have been criticized as indirectly amounting to censorship.

Geoffrey Stone, a legal scholar, says: "to the extent the report directs private citizens to protest against constitutionally protected acts, there are serious First Amendment problems. The government has no business encouraging people to do things that it can't do." Christie Hefner says the report condemns everything that has a sexual content.

Catharine MacKinnon is positive about the effect of the Commission: "Women actually succeeded in convincing a national governmental body of a truth that women have long known: pornography harms women and children." On the other hand, ACLU Attorney Nan Hunter said: "Protectionist attitudes ultimately hurt women."



Homosexuality Criminalized

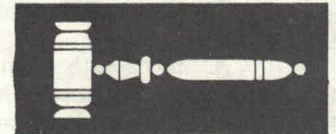
A key Supreme Court decision gives the states a renewed license to regulate sexual conduct that they deem deviant. In a 5 to 4 ruling endorsing Georgia's rights to declare sodomy a crime, the court crudely rejects as "facetious" the argument that such a law invades privacy and strikes at deeply personal, basic liberties.

Justice Blackmun wrote in his dissent that the disapproval of homosexuality cannot justify "invading the houses, hearts and minds of citizens who choose to lead their lives differently...no matter how uncomfortable a certain group may make the majority of this court."

Homosexual groups across the nation have declared this decision a major disaster.

Jennifer Conkie is an articled student with the Vancouver firm of Owen, Bird.

Choice in America



In a major defeat for the Reagan Administration, the U.S. Supreme Court has reaffirmed its historic 1973 decision legalizing abortions and struck down a state law that placed tough restrictions on the operation.

The 5-4 ruling was a major setback for both the Administration and anti-abortion groups, which had urged the high court to overturn the ruling giving women a constitutional right to abortions.

Mr. Justice Harry Blackmun, author of both the 1973 and 1986 judgments, wrote, "Few decisions are more personal and intimate, more properly private or more basic to individual dignity and autonomy than a woman's decision...whether to end her pregnancy."

"A woman's right to make that choice freely is fundamental. Any other result, in our view, would protect inadequately a central part of the sphere of liberty that our law guarantees equally to all."

from The Globe and Mail, 12.6. 1986

Canada's New Divorce Act

by Lauri Ann Fenlon

La nouvelle législation concernant le divorce qui est entrée en vigueur le 1er juin 1986 rend le divorce plus rapide et plus économique. Les couples peuvent maintenant obtenir un divorce sans égard à la responsabilité après seulement une année de séparation ou plus tôt, s'il y a eu adultère, ou encore cruauté mentale ou physique.

The new *Divorce Act, 1985* came into effect on June 1, 1986. It will not lessen the pain of divorce, but it will cut down on the time, expense and red tape.

Jurisdiction over divorce proceedings has been simplified by the *Divorce Act, 1985*. In place of the complicated requirements of domicile and residence set out in ss. 5 and 6 of the 1968 *Divorce Act*, s. 3.(1) of the new *Act* provides that the Court has jurisdiction if either spouse has been resident in the province for one year immediately preceding the issuance of the Petition for Divorce.

One of the most significant changes brought about by the *Act* is the reduction in the qualifying period spouses must live separate and apart to obtain a "no fault" divorce. While the old *Act* called for a three year separation, the new *Act* makes divorce available after a one year separation. Further, it is no longer necessary for the entire waiting period to pass before divorce proceedings can be commenced. Couples can file for divorce the day they separate providing they are not living together when the Petition is issued.

Section 8(3) permits spouses to resume cohabitation for the purpose of attempting reconciliation for periods totalling 90 days without interrupting the running of the one year period.

The procedure for obtaining a divorce has been simplified as well. The decree of divorce will no longer be issued as a Decree Nisi followed by a Decree Absolute three months later. Under s. 12 the divorce will take effect 31 days after the day on which the Court pronounces judgment unless an appeal is pending. The Court has the discretion to abbreviate the 31 day period in special circumstances.

The new *Act* indicates that marriage break down is the only ground for divorce. However, the fault criteria have been preserved: marriage break down can be established if the parties have lived separate and apart for one year, or if the respondent has committed adultery, or treated the petitioner with physical or mental cruelty. The retention of the adultery and cruelty criteria for marriage break down means that the bars to divorce of collusion, condonation, and connivance have been retained as well.

An interesting procedural development in the new *Act* allows the provinces to establish rules permitting the disposition of a petition for divorce without an oral hearing. In the past even uncontested divorces have involved robing for a five to ten minute "trial".

Lawyers continue to be required by the new *Act* to inform their clients of marriage counselling and guidance facilities. In addition, lawyers are now required to discuss with their clients the advisability of using mediation services to negotiate custody and support matters.

Maintenance available under the new *Act* has been altered to permit the making of orders for support for a limited period. Under the old *Act*, support payments could be terminated only upon the application of the spouse who wished to put an end to the maintenance payments. Under the new *Act*, spousal misconduct is not to be taken into account in assessing support obligations.

Canada's divorce rate is expected to increase, at least temporarily, as a result of the new legislation. A total of 65,172 divorces were granted in 1984, down from 68,567 the previous year and 70,436 in 1982, according to Statistics Canada.

Lauri Ann Fenlon is with the law firm of Russell and DuMoulin in Vancouver and a member of The Vancouver Association of Women and The Law.

It's that time

again...

Autumn means falling leaves, cooler evenings and renewing your* NAWL *membership!

Why not renew today?

The New Wave:

Manitoba's New Pay Equity Laws

by Shona Moore

Graphics by Margaret Bootsma

Over one year ago, the Manitoba Legislature enacted *The Pay Equity Act,* S.M. 1985, c.21 (P13), which remains today the most progressive pay equity legislation in the country. Together with Ontario's *Public Service Pay Equity Act, 1986* (for comment see NAWL *Newsletter,* June 1986), the Manitoba *Act* is the leading edge of a new wave of "pay equity legislation" and is a legislative recognition that there can be no tolerance of discrimination between men and women in the work place. This pay equity legislative response reflects a long overdue realization that existing equal pay for equal work legislation, in force in all provinces and territories in Canada, has not been effective in establishing equality of opportunity and equality of treatment between men and women in the work place.

Present Laws Perform Poorly

The poor performance of "equal pay" legislation has flowed from the fact that many women simply perform different work than men, thereby making such legislation's basis for comparison irrelevant. Although the inadequacies of traditional anti-discrimination provisions are evident, the legislatures have not responded. In 1972, Canada ratified the principle of "equal pay for work of equal value," as adopted by the International Labour Organization Convention 100 in 1952. However, if the extent to which the ILO "equal value" principle has been reflected in this country's statutes is any measure, that principle has not been widely accepted in Canada.

Only in the *Canada Human Rights Code* has the broadly-defined notion of equal pay for work of equal value been adopted. Section 11 of the *Code* provides:

> "11(1) It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value."

Elsewhere in Canada, provinces have enacted provisions similar to British Columbia's *Human Rights Act,* (1984) SBC, c.22, Section 7, which requires equal pay for substantially similar work, that is, work requiring equal skills, effort, responsibility and working conditions.

Even the federal "equal pay for equal value" legislation has an unsatisfactory enforcement history. The poor performance of the *Canadian Human Rights Code* in this area stands as a reminder to women that it is never enough to obtain appropriate protections against unfair treatment in the work place on the face of legislation. If the law is to touch the lives of women in the work place, principles enshrined in the statute must be the object of vigorous enforcement.

Manitoba Act Significant Departure

The Manitoba *Pay Equity Act* marks a significant departure from existing equal pay legislation by requiring pay equity in the work place which specifically means:

"compensation practice which is based primarily on the

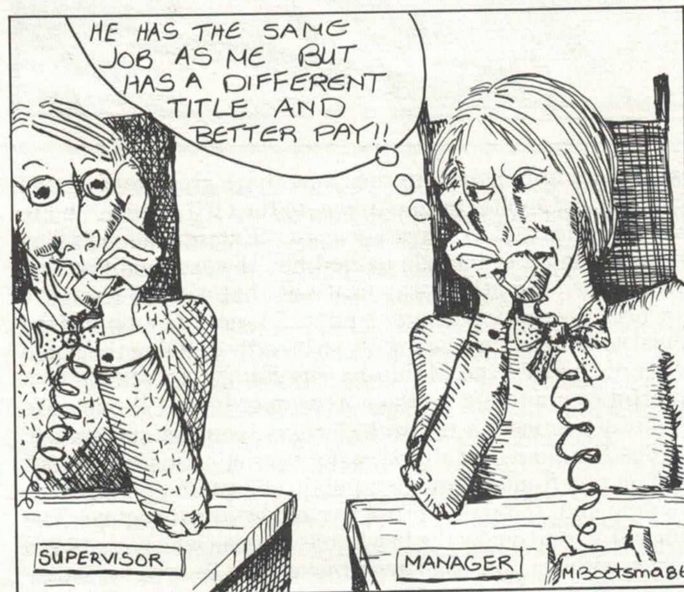
cont. on page 13

La nouvelle vague:

La nouvelle législation Manitobaine en matière d'équité salariale

par Shona Moore **dessins par Margaret Bootsma**

Il y a plus d'un an, la Législature du Manitoba a adopté le *Pay Equity Act,* S.M. 1985, c. 21 (P13), laquelle est encore aujourd'hui la législation la plus progressive au pays en matière d'équité salariale. Avec le *Public Service Pay Equity Act, 1986* de l'Ontario (voir le *Bulletin* de l'ANFD de juin 1986), la Loi du Manitoba est à l'avant-garde d'une nouvelle vague de législation en matière d'équité salariale et constitue une reconnaissance législative du fait qu'aucune discrimination ne peut être tolérée dans le milieu d'un travail entre les hommes et les femmes. Ces nouvelles mesures législatives découlent du fait qu'on s'est enfin rendu compte que la législation actuelle concernant le salaire égal pour un travail égal, qui est vigueur dans toutes les provinces et territoires du Canada, n'a pas été efficace pour donner l'égalité des chances et l'égalité de traitement aux hommes et aux femmes dans le milieu de travail.



Les lois actuelles sont peu efficaces

Le peu d'efficacité des lois en matière d'équité salariale découle du fait que plusieurs femmes accomplissent tout simplement des tâches différentes de celles des hommes, ce qui rend ainsi inapplicable les éléments de comparaison prévus dans ces lois. Même si les insuffisances des dispositions anti-discriminatoires classiques sont évidentes, les législatures n'ont pas réagit. En 1972, le Canada a ratifié le principe de "l'égalité de la rémunération pour un travail d'égale valeur" adopté dans la Convention 100 de l'Organisa-

cont. p. 13

The New Wave cont.

relative value of the work performed, irrespective of the gender of employees, and by including a requirement that no employer shall establish or maintain a difference between the wages paid to male and female employees,...who are performing work of equal or comparable value."

"Value" is defined as a composite of the skill, effort and responsibility normally required in the performance of the worker and conditions under which the worker performs. More importantly, though, the legislation in a large part is devoted to putting in place pro-active education and enforcement programs.

Taken as a whole, the Manitoba scheme is much superior to that recently adopted in Ontario. Whereas the Ontario scheme

restricts its application to the immediate civil service, the Manitoba *Act* applies to the Crown, to the civil service, and to Crown entities and external agencies. "External agencies" is defined broadly to include named health care facilities and universities, and other organizations that receive from the Provincial Government money equal to 50 percent or more of the annual revenue of the agency. By so broadly defining the application of the *Act*, the Manitoba *Pay Equity Act* stands as a powerful commitment by the government in that Province to equality of treatment in the work place between men and women.

The *Pay Equity Act* attacks wage discrimination in the work place on two fronts: through a public education and research program; and, through a pro-active enforcement regime. The former is carried out by the Pay Equity Bureau which exists as a division within a provincial department. The Bureau's mandate includes monitoring the progress of public sector employers in the implementation of pay equity schemes. Its director is required to report to the minister at least once each year by way of a detailed report setting out progress in the implementation of pay equity. That report is to be tabled in the Legislature. The publicity which attaches to the minister's duty to table a report is, itself, a powerful tool for the elimination of discriminatory practices.

The Bureau is also a source of valuable research. It is charged with the responsibility of preparing or maintaining statistics related to the implementation of pay equity. Thus, the Bureau is, potentially, a useful source of hard data concerning the "before" and "after" status of women in the work place.

cont. on page 14

La nouvelle vague cont.

tion internationale du travail en 1952. Toutefois, si l'on s'en tient à l'ampleur avec laquelle le principe d'"égale valeur" de l'OIT a été pris en compte dans les lois canadiennes, ce principe n'a pas été largement reconnu au Canada.

C'est seulement dans le *Code des droits de la personne du Canada* que la notion vaguement définie de salaire égal pour un travail de valeur égale a été adoptée. L'article 11 du *Code* stipule:

> "11(1) Constitue un acte discriminatoire le fait pour l'employeur d'instaurer ou de pratiquer la disparité salariale entre les hommes et les femmes qui exécutent, dans le même établissement, des fonctions équivalentes.

Ailleurs au Canada, les provinces ont adopté des dispositions semblables à la Loi sur les droits de la personne de la Colombie-Britannique (SBC, 1984, chap. 22, article 7) laquelle exige un salaire égal pour un travail sensiblement le même, c'est-à-dire un travail supposant une compétence, des efforts, des responsabilités et des conditions de travail égaux.

Même la législation fédérale concernant "un salaire égal pour une valeur égale" n'a pas été appliquée de façon satisfaisante. L'insuccès notoire du *Code canadien des droits de la personne* à cet égard doit rappeler aux femmes qu'il ne suffit pas de faire inscrire dans la loi des dispositions contre le traitement injuste dans le milieu de travail. Si la législation doit avoir une incidence sur la vie des femmes dans le milieu de travail, les principes enchâssés dans la loi doivent faire l'objet d'une application vigoureuse.

L'originalité de la loi manitobaine

Le *Pay Equity Act* du Manitoba se démarque sensiblement de la législation actuelle en matière d'équité salariale en exigeant l'équité salariale dans le milieu de travail et en lui attribuant la définition suivante:

> "rémunération fondée principalement sur la valeur relative du travail accompli, sans égard au sexe des employés, aucun employeur ne devant établir ou maintenir un écart entre le salaire payé aux employés masculins et aux employés féminins,...qui accomplissent un travail de valeur égale ou comparable."

Le mot "valeur" est défini comme étant un amalgame des compétences, des efforts et des responsabilités normalement exigés d'un travailleur ou d'une travailleuse dans l'exécution de ses tâches, ainsi que des conditions en vertu desquelles le travailleur ou la travailleuse doit les accomplir. Il est cependant plus important de noter que la loi vise surtout à mettre en oeuvre des programmes pro-actifs d'éducation et d'exécution.

Dans son ensemble, la législation manitobaine est très supérieure à celle qui a récemment été adoptée en Ontario. Tandis que l'Ontario restreint l'application de sa loi à sa fonction publique immédiate, la loi manitobaine s'applique à la Couronne, à la Fonction publique, ainsi qu'aux institutions de la Couronne et aux organismes extérieurs. Les "organismes extérieurs" comprennent de façon générale les services de santé et les universités désignés, ainsi que d'autres organismes qui reçoivent du gouvernement provincial des fonds équivalant à 50 pour cent ou plus du revenu annuel de l'organisme. En élargissant ainsi l'application de la Loi, le gouvernement du Manitoba s'engage de façon éloquente à assurer dans cette province l'égalité de traitement entre les hommes et les femmes dans le milieu de travail.

Le *Pay Equity Act* combat la discrimination salariale dans le milieu de travail sous deux aspects: par l'entremise d'un programme de recherche et d'éducation populaire, et grâce à un régime pro-actif d'application. Dans ce dernier cas, la tâche revient au *Pay Equity Bureau,* lequel constitue une division d'un ministère provincial. Le Bureau veille en particulier à

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The legislation incorporates the usual protections to employers and employees. A ceiling of one percent of the total payroll of the employer is the amount to be paid in any twelve-month period as a result of pay equity wage adjustments. Employees are protected against placement on a lower step on a schedule or grade of pay which has been adjusted upwards in order to implement pay equity, and against any reduction in wages in order to implement a pay equity policy.

The second focus of the legislation is the implementation and enforcement of pay equity in regulated work places. The legislation establishes two similar programs of implementation: one program in the civil service and a second in the Crown entities and external agencies sector. In both sectors, the legislation imposes a duty on all bargaining agents working under the legislation to bargain in good faith making "every reasonable effort to reach agreement...respecting the implementation of pay equity."

Civil Service Program

In the civil service, the parties are required to reach an agreement respecting the implementation of pay equity no later than June 30, 1986. By this date, an agreement must be reached on the development or selection and application of "a single gender-neutral job evaluation system, to all female-dominated and male-dominated classes in the civil service."

Two significant strengths of the Manitoba *Act* are first, that a realistic one-year period is established to develop the equivalent of a pay equity plan and that, second, a plan is required to be negotiated jointly by management and labour.

Once a job evaluation system and the range of its application have been negotiated, the next deadline imposed in the civil service sector by the legislation is September 30, 1987. By that date the government and bargaining agents are required to agree on the "quantum, allocation and orderly implementation of pay equity wage adjustments required" by the *Act*. Progress in collective bargaining must be reported to the Bureau director and where the parties fail to agree by the time limits set out in the legislation, either the government or the Manitoba Government Employees Association may refer the matter to arbitration.

The arbitrator hearing a matter referred under the *Pay Equity Act* is empowered to rectify the matter in dispute and may, among other things, make an order "settling the provisions of the agreement" required to have been concluded by the legislation. The arbitrator is also empowered to make an order fixing the quantum and allocation of wage adjustments required to be made under the *Act* and may make an order providing for the orderly implementation of those adjustments over a four-year period.

Public Sector Programs

In the "Crown entities and external agencies" sector (the "public sector"), a similar procedure for implementation has been adopted. The entity or agency is required to meet and confer with the affected bargaining agents, and to disclose all information in their possession or control relevant to the implementation of pay equity.

As in the civil service sector, the parties are required to make every reasonable effort to reach agreement respecting the implementation of pay equity. Similar two-staged time limits are imposed on the public sector with the exception that the time limits are one year later in time. Thus, in the public sector, agreement is to be reached by June 30, 1987 concerning the development or selection and application of a single gender-neutral job evaluation system and the fixing of the classes to which the required job evaluation system shall be applied. Agreement respecting the quantum, allocation and orderly implementation of pay equity is required by September 30, 1988. The public sector is similarly required to report to the Pay Equity Bureau with a copy of the agreements reached.

One difference between the two sectors is that where a Crown entity or external agency fails to reach an agreement

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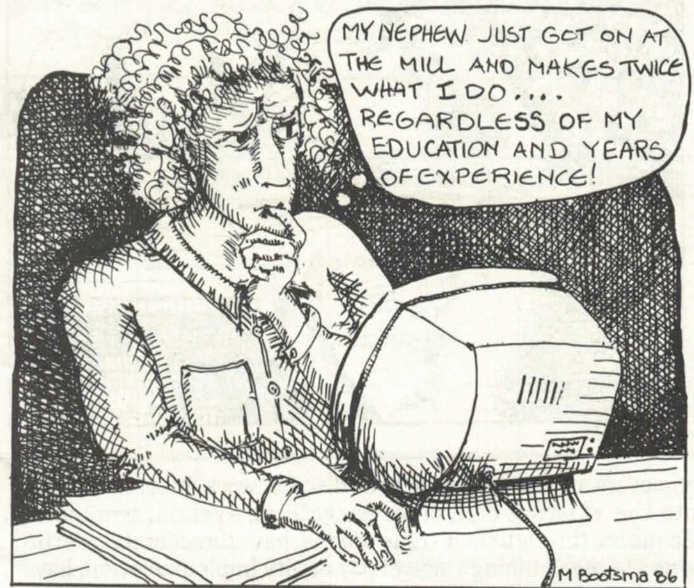
mesurer le progrès des employeurs du secteur public dans la mise en oeuvre des régimes d'équité salariale. Son directeur doit rendre compte au ministre au moins une fois par année en présentant un rapport détaillé qui fait état des progrès dans la mise en oeuvre de l'équité salariale. Ce rapport doit être déposé à la Législature. La publicité qui entoure la responsabilité du ministre de déposer un rapport est en elle-même un puissant moyen d'éliminer les pratiques discriminatoires.

Le Bureau entreprend aussi des recherches très valables. Il est chargé de compiler des statistiques concernant la mise en oeuvre de l'équité salariale. Le Bureau peut ainsi constituer une source utile de données brutes permettant d'évaluer le statut des femmes en milieu de travail avant et après l'adoption de la loi.

La loi comprend les dispositions protectrices habituelles pour les employeurs et les employés. Un plafond de 1% du



budget salarial total de l'employeur est fixé pour toute période de 12 mois où un rajustement doit se faire en matière d'équité salariale. Les employés sont protégés contre le fait d'être situés à un niveau inférieur d'une échelle salariale qui a été rajustée à la hausse en vue de mettre en oeuvre l'équité salariale et contre toute réduction de salaire dans le cadre de la mise en oeuvre d'un régime d'équité salariale.

La loi met également l'accent sur la mise en oeuvre et l'exécution des dispositions en matière d'équité salariale dans les milieux de travail réglementés. La loi établit deux programmes semblables de mise en oeuvre: l'un dans la fonction publique et l'autre dans les institutions de la Couronne ainsi que les organismes extérieurs. Dans les deux secteurs, la loi impose à tous les agents négociateurs assujettis à la loi de négocier de bonne foi et de faire tout effort raisonnable pour en arriver à un accord en s'assurant de la mise en oeuvre de l'équité salariale.

Programme de la fonction publique

Dans la fonction publique, les parties doivent s'entendre sur la mise en oeuvre de l'équité salariale au plus tard le 30 juin 1986. À cette date, il doit y avoir eu entente sur l'élaboration ou la sélection, ainsi que sur la mise en oeuvre d'un système d'évaluation des emplois unique et neutre (sans égard au sexe) pour toutes les catégories d'emplois dominées par les femmes et dominées par les hommes dans la fonction publique.

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within the time limits required by the legislation, the matters are referred to the Manitoba Labour Board, rather than to an arbitrator, to make the appropriate orders under the *Pay Equity Act.*

Manitoba's Approach Has Strengths

A significant strength of the Manitoba approach to pay equity implementation is that it has grafted itself onto the existing system of collective bargaining and leaves to employers and trade unions the negotiation of appropriate and effective remedies to wage discrimination which reflect the needs of the

employers and employees in each discrete work force. By linking into the existing collective bargaining system, women in Manitoba, through their trade unions, have direct and powerful access to the planning stage of pay equity implementation, have important input into the development of the job evaluation systems to be used to make the crucial comparisons and, thus, have a powerful influence on the way in which wages will be adjusted in order to comply with the legislation. This input is essential from the point of view of women in the work place since significant practical differences flow from a wide variety of factors, only one of which might be whether wage adjustments take the form of across-the-board settlement or front-end loading provisions.

The emphasis in the Manitoba legislation is to encourage the parties in the work place to find their own solutions to a serious social problem. Failing agreement, effective adjudication is provided by way of arbitration or before the Manitoba Labour Relations Board. Both private arbitrators and the Board have jurisdiction to provide effective remedies if the parties fail to agree, and indeed, to make the very agreements required by the *Act.*

In Ontario, similar legislation fails to give the Commission power to sanction employers, to compel employers to implement pay equity plans, or to make wage adjustments. Without the teeth of strong remedial powers, the Ontario legislation can be expected to be completely ineffective to effect any significant change in the lives of working women in the work place. It is on this point alone that the Manitoba scheme is to be preferred and to be used as a model for lobbying for future pay equity gains elsewhere in Canada.

Shona Moore has recently completed a term as Vice-chairman with the B.C. Labour Relations Board. She is now associate counsel with the Vancouver firm of Shortt & Co., acting on behalf of trade unions.

La Loi manitobaine a deux caractéristiques importantes: en premier lieu, une période réaliste d'une année est fixée pour l'élaboration de l'équivalent d'un plan en matière d'équité salariale; en deuxième lieu, le plan doit être négocié conjointement par la gestion et les travailleurs.

Une fois qu'un système d'évaluation des emplois et sa portée d'application ont été négociés, la prochaine échéance imposée au secteur de la fonction publique par la loi est le 30 septembre 1987. Le gouvernement et les agents négociateurs doivent avant cette date s'être entendus sur le rajustement salarial nécessaire pour respecter l'équité salariale et notamment sur les montants, leur répartition et leur versement. Il faut informer le directeur du Bureau de l'avancement des négociations collectives et si les parties ne réussissent pas à s'entendre avant l'échéance fixée par la loi, soit le gouvernement, soit l'Association des employés du gouvernement du Manitoba, peuvent s'en remettre à l'arbitrage.

L'arbitre qui entend une question qui lui est renvoyée en vertu du *Pay Equity Act* a le pouvoir de régler le litige et il peut notamment émettre une ordonnance décrétant les dispositions de l'entente que la loi exige de conclure.

L'arbitre a aussi le pouvoir d'émettre une ordonnance établissant les montants et la répartition du rajustement salarial nécessaire en vertu de la loi et peut émettre une ordonnance stipulant la mise en oeuvre ordonnée de ce rajustement sur une période de quatre ans.

Programmes du secteur public

Dans les institutions de la Couronne et les organismes extérieurs (le "secteur public"), une procédure semblable de mise en oeuvre a été adoptée. L'institution ou l'organisme doit se réunir avec les agents négociateurs intéressés et leur faire part de tous les renseignements qui sont en leur possession ou qui leur sont accessibles au sujet de la mise en oeuvre de l'équité salariale.

Comme dans le secteur de la fonction publique, les parties doivent faire tous les efforts raisonnables pour s'entendre sur la mise en oeuvre de l'équité salariale. Un échéancier semblable en deux étapes est imposé au secteur public, sauf qu'il comporte une année de plus. Par conséquent, dans le secteur public, il doit y avoir entente avant le 30 juin 1987 au sujet de l'élaboration ou de la sélection, ainsi que de l'application d'un systeme d'évaluation des emplois unique et neutre (sans égard au sexe), ainsi que sur l'établissement des catégories auxquelles le système d'évaluation des emplois doit s'appliquer. Il doit y avoir entente sur les montants et leur répartition, de même que sur la mise en oeuvre ordonnée le l'équité salariale, avant le 30 septembre 1988. Le secteur public doit également rendre compte au *Pay Equity Bureau* et fournir une copie des ententes signées.

Il existe cependant une différence entre les deux secteurs: lorsqu'une institution de la Couronne ou un organnisme extérieur ne peut s'entendre dans les limites de temps prescrites par la loi, la question est renvoyée au Conseil des relations de travail du Manitoba plutôt qu'à un arbitre et le Conseil peut émettre les ordonnances pertinentes en vertu de la *Pay Equity Act.*

Les points forts de l'approche manitobaine

L'un des points forts de l'approche manitobaine à la mise en oeuvre de l'équité salariale, c'est que la Législature a greffé cette exigence au système existant de négociation collective et laissé aux employeurs et aux syndicats le soin de négocier des correctifs appropriés et efficaces à la discrimination salariale, de façon à tenir compte des besoins des employeurs et des employés dans chaque groupe de travailleurs. En profitant des mécanismes prévus par le régime actuel de négociation collective, les femmes du Manitoba, par l'entremise de leurs syndicats, peuvent participer directement et avec force à

cont. p. 16

La nouvelle vague cont.

l'étape de planification de la mise en oeuvre de l'équité salariale, peuvent contribuer de façon significative à l'élaboration des systèmes d'évaluation des emplois qui serviront à faire des comparaisons cruciales et auront ainsi une influence considérable sur la façon dont les salaires seront rajustés pour se rendre conformes à la loi. Une telle contribution est essentielle du point de vue des femmes dans le milieu de travail puisque des écarts pratiques significatifs découlent d'une grande variété de facteurs, par exemple du choix entre le fait de faire le rajustement salarial selon un règlement uniforme ou en fonction de certaines catégories ou niveaux.

La législation manitobaine encourage les parties dans le milieu de travail à trouver leurs propres solutions à un problème social grave. Faute d'entente, le litige doit être réglé grâce à l'arbitrage ou devant le Conseil des relations de travail du Manitoba. Les arbitres et le Conseil ont tous deux compétence pour apporter les correctifs nécessaires si les parties ne s'entendent pas et pour établir effectivement les conventions collectives exigées par la Loi.

En Ontario, une loi comparable n'autorise pas la Commission à imposer des sanctions aux employeurs, à obliger les employeurs à mettre en oeuvre des régimes d'équité salariale ou à faire un rajustement salarial. Sans la puissance de sanctions appropriées, la loi ontarienne ne réussira probablement aucunement à produire des changements significatifs dans la vie des travailleuses. C'est en vertu de cette caractéristique seulement que la loi manitobaine doit être préférée et utilisée comme modèle afin d'obtenir des gains ailleurs au Canada en matière d'équité salariale.

Shona Moore a terminé récemment son mandat à titre de vice-présidente du Conseil des relations de travail de la C.-B. Elle est maintenant avocate-conseil associée au sein de l'étude de Shortt & Co., de Vancouver et elle représente les syndicats.

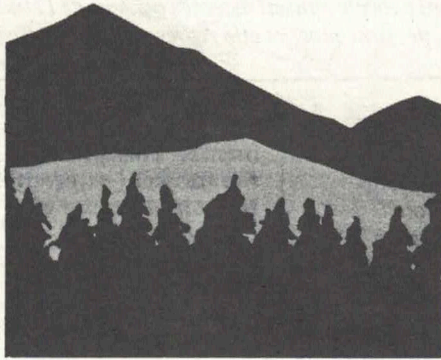
Fall Calendar

1. NAWL ACTIVITIES	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY
NSC MEETING	Winnipeg 12–14		Toronto 14–16			Winnipeg 18–19
NEWSLETTER		Fall Issue Distributed	Nov. 14 Deadline for Submissions		Winter Issue Distributed	
CONFERENCE						Winnipeg 19–21
MEMBERSHIP			Renew before Nov. 19			
UPDATE & REVISION OF NAWL'S POLICIES	Complete revision of resolutions	Distribute resolutions to caucuses			Review of Caucus resolutions	Presentation of resolutions to Conference
ESSAY CONTEST	Reading Committee Selected			Deadline for Submissions Dec. 15		Announce Winner
2. GOVERNMENT ACTIVITIES						
HOUSE RECONVENES		1st of October				
PORNOGRAPHY		New Bill may be announced	(May go to Committee for Hearings)			
FIRST MINISTERS CONFERENCE		20th & 21st	*Agenda includes economic equality of women			
REVIEW OF CANADIAN HUMAN RIGHTS ACT		*Bill expected in fall/winter				
UNEMPLOYMENT INSURANCE FORGET COMMISSION		*Report expected this fall				
SENTENCING COMMISSION		*Report expected this fall				
TASK FORCE ON CHILD CARE	Task Force was Dissolved when House Prorogued	(*Efforts are underway to allow staff to continue the Report)				

Conference Discusses Equality in the Courts

by Monique Charlebois

How do societally induced assumptions on sex, race and age influence judicial decision-making? What steps should be taken to identify and redress the impact of unwarranted stereotypes? These questions were discussed last May at a two-day conference on the Socialization of Judges, in Banff, Alberta. Monique Charlebois and Frances Gordon both attended the Conference and offer the following overviews of the panels they attended.



The Socialization of Judges

Malheureusement, seuls quelques juges ont pu assister à la Conférence. Bien que leur réaction initiale aux présentations ont été réservées, ils avaient endossé, vers la fin de la Conférence, l'idée qu'il y ait des cours sur les préjugés envers l'un ou l'autre sexe.

Unfortunately, despite the topic, only a handful of judges attended the Conference—partly out of apprehension of controversy, partly because publicity about the Conference was circulated rather late to reschedule court hearings. Instead, most of the Conference participants (about 200) were lawyers, academics or government representatives.

Those judges who did attend were consequently already disposed to discussing the issue of gender bias. Despite this good will, the political and communications gulf between the feminist legal community and the judiciary is quite apparent. The presentations were, on the whole, carefully worded and non-confrontational. Still, several were described as 'strident' by judges during casual conversations. By the second day, however, the pleasant setting, constant reinforcement and good will began to have its effect on their interest and understanding of the issues. The ringing endorsement of courses on gender bias given by Mr. Justice Melvin Rothman of the Quebec Court of Appeal ended the Conference on a very positive note.

Equality in Family Court

Professor Freda Steel of the University of Manitoba discussed the impact of three common stereotypes on judicial decisions: 'Eve', the wicked temptress, 'Mary', the saintly mother figure, and, more recently, 'Superwoman', the career single parent who is expected to handle it all with aplomb. She argued that the courts are confusing theoretical equality with reality. No transition phase is allowed between the two.

Jean McBean, an Edmonton family law practitioner, originally began her research for her presentation with the belief that the maternal preference was alive and well, at least in Alberta courts.

Overriding paternal rights and paternal preferences were removed from the law in the late 19th and early 20th centuries. These were replaced by a judicial doctrine which deemed the best interests of a child of tender years to lie with its mother. As recently pointed out by the Alberta Court of Appeal, this view traps women in a particular social role. According to McBean, it also absolves the father from any parenting responsibility, other than (sometimes) a financial one. Finally, it makes suspect any woman who places her child in someone else's custody. Even day care has been looked at with disfavor by certain courts.

In McBean's view, the maternal preference is on its way out, as demonstrated by researchers such as Phyllis Chesler in her recent book *Mothers on Trial.* In a study of "fit mothers", Chesler found that custody was granted to fathers who had, overwhelmingly, no involvement in child care, did not pay child support, battered their wives, and engaged in anti-mother brainwashing campaigns. An unpublished review of Alberta cases also indicates that a sex-neutral standard leads to a paternal preference, because the wrong criteria are applied in custody decisions—mainly economic ones, as well as reparations for perceived past 'discrimination'. Psychological or care-giving factors, past commitments to domestic duties and career sacrifices in favor of child rearing are generally ignored. Ms McBean predicts an increase in mothers losing custody.

Professor Susan Boyd of Carleton University argues that the 'best interests of the child' principle is not really neutral and in fact reflects societal biases. The courts act to reinforce and reproduce various exploitative relationships between the sexes. The existing ideology of motherhood works against women who stray from the traditional stay-at-home model. Fathers who provide even minimal child care receive far greater credit for having done so. Her review of recent cases where mothers lost custody showed that, overall, the courts underestimate the difficulties of reconciling a career and parenting, and look with disfavour on the greater instability and reduced flexibility of mothers reentering the job market. Further, the courts generally assume a much more equal sharing of parental and domestic responsibilities than is actually the case.

As both Boyd and McBean note, their studies cannot be used to predict the probability of mothers or fathers gaining custody in any particular case. However, they are extremely effective in highlighting the impact of social expectations on 'neutral' criteria, and the influence of equality language in the area of family law.

Monique Charlebois lives in Ottawa.

Egalité et les droits de la personne

par Frances Gordon

Shelagh Day, panelist at the Conference, argues that there are strong institutional, governmental and judicial impediments to the achievement of equality under current human rights laws.

Selon Shelagh Day, dans son allocution à la Conférence, la société canadienne applique "un programme d'action bien conçu et raffiné pour les hommes blancs et en bonne santé."

Ms Day, antérieurement de la Commission des droits de la personne de la Saskatchewan et plus récemment du FAEJ, ajoutait que, sans changements radicaux dans l'aménagement social, l'égalité véritable ne sera jamais atteinte.

Obstacles institutionnels

Selon Shelagh Day, notre législation actuelle sur les droits de la personne accorde des droits à l'individu seulement. Un tel régime ne tient pas compte de la nature et de l'étendue des inégalités dans notre société. Le fardeau de la preuve appartient exclusivement à l'individu, qui est souvent le moins en mesure de porter plainte. Le résultat regrettable est que les cas de discrimination, qui ne sont pas portés à l'attention des instances appropriées, sont tenus pour peu nombreux. Comme le dit Ms Day, un régime fondé sur la possibilité de porter plainte suppose que l'égalité est maintenant chose acquise et que ce sont les entorses à cette égalité qui feront l'objet de plaintes et qui seront corrigées.

Car pour qu'il y ait effectivement correction des inégalités, il faut s'écarter du régime fondé sur l'individu pour aller vers des lois et des programmes de nature "évolutive," tels que les programmes obligatoires d'action positive qui portent sur la discrimination systémique ou par catégorie.

En se fondant sur son expérience du régime actuel des droits de la personne, Ms Day estime que les obstacles à l'application efficace de nos lois en matière de droits de la personne sont à la fois structurels et philosophiques. Les commissions des droits de la personne ne reconnaissent ou n'abordent pas facilement les plaintes de nature systémique. Même si les commissions sont habiletées et encouragées à porter plainte elles-mêmes, elles choisissent généralement de ne pas le faire.

Plutôt, Ms Day qualifie les commissions de "courtiers" dans la résolution de litiges individuels et affirme qu'elles ne remplissent même pas cette fonction limitée comme il faut. Les longs délais et les indemnités minimales qui réduisent en quelque sorte la gravité des cas de discrimination ont comme conséquence un manque de respect des lois et des commissions qui sont chargées de les administrer.

Les fantaisies du système politique

C'est toutefois aux gouvernements que Ms Day impute la responsabilité des problèmes actuels d'application. Les gouvernements, dit-elle, limitent l'efficacité de l'application des droits de la personne en restreignant les fonds nécessaires aux commissions. Comme exemple de la basse priorité budgétaire accordée aux droits de la personne, elle signale que la Commission ontarienne des droits de la personne avait, jusqu'à cette année, un budget qui était moindre que celui du gouvernement de l'Ontario pour la gestion des orignaux. Sans financement, les commissions ne peuvent poursuivre des objectifs de recherche et d'éducation, sans parler de leurs tâches fondamentales.

Ms Day accuse aussi les gouvernements de s'ingérer dans le fonctionnement des commissions et de les empêcher d'agir indépendamment et vigoureusement. Les commissions ne pourront bien fonctionner jusqu'à ce qu'on ait établi clairement à qui elles sont imputables.

La neutralité judiciaire n'est pas possible lorsque c'est le patronage qui détermine les nominations aux commissions. Au cours des douze années où elle a travaillé dans le domaine des droits de la personne au Canada, Ms Day s'est rendue compte des conséquences d'un tel patronage.

Elle a aussi vu des gouvernements qui s'ingèrent directement dans l'administration des droits de la personne en refusant de renvoyer des plaintes à l'arbitrage, en censurant des communiqués de presse, en bloquant les fonds pour la publication d'études, en demandant que le personnel soit d'une couleur politique différente de celle du gouvernement défait,...et, dans le cas de la Colombie-Britannique, qui remportent continuellement la palme pour les violations aux droits de la personne, en congédiant toute une commission et son personnel. Le message est clair. Les droits de la personne ne sont pas des valeurs fondamentales permanentes, mais des valeurs qui dépendent des fantaisies du système politique.

Les droits de la personne et les tribunaux

Ms Day signale que le système judiciaire est incapable de s'attaquer aux violations dans l'administration des commissions. Toutefois, les juges ont toujours le loisir d'appliquer la législation en matière de droits de la personne, les traités internationaux et l'article 15 de la Charte, en prenant en compte la nature systémique de la discrimination. Une telle attitude existe dans une certaine mesure. Dans le cas *Heerspink,* les tribunaux ont soutenu que les lois en matière de droits de la personne ont une primauté naturelle et sont les premières lois statutaires. Dans le cas *O'Malley,* le tribunal a décrété qu'il n'était pas nécessaire que la discrimination soit intentionnelle pour être illégale. Ces deux cas indiquent que les juges sont disposés à reconnaître le sentiment populaire qui est à la base de la législation en matière de droits de la personne.

L'obstacle judiciaire qui est peut-être le plus important dans l'atteinte de l'égalité, selon Ms Day, est le fait que les juges se considèrent comme les protecteurs du statu quo et comme les "conservateurs des valeurs permanentes de la société". Le problème est que les juges peuvent s'en remettre trop facilement à l'article 1 de la Charte de façon à réduire la portée de l'article 15, comme l'a fait M. le juge Steele dans le cas *Blainey.*

En terminant, Ms Day incite les juges à travailler avec les personnes favorables à l'égalité, lesquelles ne doivent pas être considérées comme une minorité radicale, mais comme la majorité de la population canadienne.

Frances Gordon est membre du FAEJ sur la Côte Ouest.

Copyright in Canada

by Anne Shields

A woman walks into your office and tells you that she has designed an original piece of needlework which she would like to market.

A woman comes to you and asks whether she has the right to use the title of a magazine launched a few years ago by her and two friends, now that the partnership has dissolved.

A woman asks whether the magazine to which she has submitted a short story could print the story without acknowledging her authorship or paying her for her efforts.

Your clients are entitled to protection of the results of their creativity and innovation. The law of copyright governs the situations referred to above.

Although our form of competitive economy permits the sharing and development of the ideas of others, there are also common law and statutory protections for original literary, artistic and other works.

Originality is crucial. Just as it is not the idea itself which is protected but the **expression** of that idea, the test for originality depends not on the concept but on the **form** of its expression. Only the author, or in some cases her employer, is entitled to the protection offered by the law.

The author of an original work has, at common law, the right to protect her original works. However, it may be difficult to demonstrate conclusively that her design or product antedated another. For this reason, it is advisable to seek registration pursuant to the *Copyright Act*.

The author of an original work, if she falls within the scope of the *Act*, is given some protection from infringement of copyright. The *Act* provides that "copyright shall subsist in Canada...in every original literary, dramatic and artistic work" if certain criteria are met. In general, copyright lasts for the life of the author plus 50 years.

The author of a work is, in most cases, the first owner of the copyright in that work. Where, however, the author made the work in the course of her employment, the author's employer is the first owner of the copyright, unless they have agreed otherwise.

The *Act* deems there to have been an infringement of copyright if anything that the *Act* gives the owner of the copyright the sole right to do is done without her consent. For example, the owner of a copyright possesses the "sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever".

The application for registration is quite straightforward. The author declares herself to be the owner of copyright in an original literary work, gives its title, declares whether the work has been published and requests registration in her name. The fee is $35.00 for registration and a Certificate of Registration. The application is forwarded to the Commissioner of Patents at the Copyright Office in Ottawa.

Although the Canadian *Copyright Act* does not require that the author do so, it is usually advisable that the author mark all copies of her works with a small "c" in a circle, followed by the date of first publication and the name of the owner of the copyright, for example: © 1986, Joan Smith. (This may be done prior to registration.)

Obtaining registration of copyright is much simpler than obtaining a patent of invention. For a patent to be obtained, in most cases a preliminary patentability search is performed which reveals whether there has been a prior disclosure of the invention. The patent application is extremely detailed and must contain a complete description of the invention, usually drawings of the invention, and claims setting out the scope of the patent sought.

For registration of copyright, it is not necessary to provide a description or drawing of the work for which copyright is claimed. However, because a dispute may later arise, it is advisable for a drawing, sample or model of the design to be kept and made known to someone who can later attest to the date that the work was created.

Copyright does not result in absolute protection. The Act provides that copyright is not infringed by the use of the protected work for private study or research, or for the purposes of criticism, review or summary.

The *Act* provides for both criminal and civil remedies. Some infringements of copyright are offences punishable on summary conviction by a fine and/or imprisonment. The civil remedies include injunction damages and an accounting of any profits made from the infringement of the copyright.

Anne Shields is a lawyer with the Vancouver firm of Mawhinney & Kellough and a member of the Vancouver Association of Women and the Law.

"Sisters-in-law": Sandi Aitken

by Judith Kenacan

This is the first of a series of interviews of women in law in different or unusual practices. If you have any suggestions for future profiles of "sisters-in-law," please let us know.

Sandi Aitken est procureur de la Couronne dans les Territoires du Nord-Ouest. Les sept avocats qui font partie de son bureau couvrent tous les Territoires et desservent environ 50 localités grâce à un tribunal ambulant. Tout le tribunal se déplace ensemble et il peut se rendre dans jusqu'à sept localités au cours d'une semaine.

Moving from Victoria, B.C.'s quaint, temperate capital city, to the Northwest Territories would be quite an adjustment for anyone. In March of this year, while her former fellow Victorians were busily preparing for the city's annual flower count, Sandi Aitken arrived in Yellowknife, population 10,000, to be greeted by a temperature of -43ºC. However, Sandi, now a prosecutor with the government of the Northwest Territories, finds life in the North much to her liking.

There are seven lawyers in Sandi's office and between them they cover the entire Northwest Territories. Needless to say, Sandi travels a great deal—about 50% of her working time is spent away from her home base. Approximately 50 communities are serviced by circuit court and, depending on their size, Court will visit at intervals of one month or longer.

While on circuit, the entire Court travels together: the judge, the court clerk, the court reporter, the prosecutor, the defence counsel and a native court worker. They may visit as many as seven communities in one week, and the court dockets are usually quite full. The result can be an extremely tiring work week.

Court is held anywhere from a room in a church basement to a legion hall. When the court travels to Rankin Inlet, the sole bar is closed to accommodate it! The arrival of court in the smaller communities is quite a major event. All of the children come out to the airport to greet the plane and the "courtroom" is generally packed as everyone gathers to watch the action.

The administrative procedure is vastly different from the courts in the rest of the country and would try the patience of a saint.

Sandi reports that the Court initially goes through the docket quickly to determine who wishes to speak with counsel. Court then adjourns for a few hours to facilitate the interviewing of accused persons and witnesses. Counsel often work through lunch and take only a short break for dinner.

When Court resumes, sentencing and trial dates are dealt with, and then the trials commence. Court sits so infrequently there is an attempt to deal with all matters on that day, and, at times, trials will go to ten or eleven in the evening. It is Sandi's experience that these time constraints lead to a greater degree of cooperation between Crown and defence counsel, and matters are dealt with more expeditiously than in other jurisdictions.

At the end of the day counsel are often up until one in the morning preparing for the next day's work. The next morning the court party is ready for an 8:30 a.m. departure to their next destination and the whole process begins again. Sandi reports that in June she travelled (check your map!) to Grise Ford, Resolute, Cambridge Bay, Holmes, and back to Yellowknife in four days, a considerable distance even in Canadian terms!

A unique cultural factor with respect to practice in these communities is that interpreters are extensively utilized to accommodate the mostly non-English speaking accused persons and witnesses. Added to this is the fact that the Inuit communicate to a great extent by utilizing facial expressions. For instance, a raising of the eyebrows means "yes" while a scrunching of the nose means "no." Sandi tells of an interview with a 15 year old Inuit girl that lasted 45 minutes where only three words were spoken by the girl and the rest of the information was gathered from a reading of her facial expressions.

Many of the offences committed in these small northern communities are alcohol related. There are a great many sexual and spousal assaults as well as break and enter charges. Sentencing can be quite different in the North owing to cultural differences, but when an offender is given a jail sentence they are taken out of the community to the larger centres of Frobisher Bay, Yellowknife or Hay River.

As elsewhere, there is apparently no dearth of lawyers in the Northwest Territories, about 50 in all, but according to Sandi everyone is kept fairly busy.

How does all of this hectic travel affect Sandi and what does life in Yellowknife offer during the non-working hours? Sandi's husband Mark is also a lawyer and he travels a great deal as well. Their time at home together usually coincides only on the weekends when both are usually tired out from all the travel. However, as Sandi philosophically states, "We'll certainly never get bored with each other."

The summer in Yellowknife is beautiful according to Sandi, with 25ºC days that last for 20 hours! Sandi finds that one initially loses a sense of time but this can be a benefit when time is no longer perceived as a constraint on certain activities. One evening she found herself canoeing home from a local lake at midnight having started out at dinnertime.

Sandi has been informed by those in the know that in contrast to the summertime, when everyone spends a lot of time out of doors, the main social activities during the winter months are dinner parties. Apparently it takes a good five minutes to bundle up prior to venturing outside.

All in all, according to Sandi, life in the North sounds very interesting and a move from "Lotus Land" to the North may be just the ticket for those of us with a sense of adventure.

Judith Kenacan is a member of the Vancouver Association of Women and the Law and is a lawyer with the Vancouver firm of Varty & Company.

Sandi Aitken (in her government issue parka) poses with her husband Mark in Yellowknife in -28ºC temperatures.

C.P.P. Amendments

by Helena Orton

Des modifications proposées au Régime de pensions du Canada auront des effets sur le droit des conjoints à un partage des crédits de pension à la suite d'une séparation et modifieront en particulier l'effet d'un accord de séparation sur ce droit. Sous réserve de l'accord des provinces, le project de loi C-116 doit entrer en vigueur le 1er janvier 1987.

Proposed amendments to the *Canada Pension Plan* will affect the entitlement of spouses to a division of Canada Pension Plan credits following separation, and in particular, they will modify the effect of a separation agreement on this right. Bill C-116 moved quickly through Parliament in June of this year and, subject to provincial agreement, is scheduled to be proclaimed in force on January 1, 1987.

Since 1978, the *Act* has allowed for the application by a former spouse for an equal division of the CPP credits accumulated by both spouses while they were married and were cohabiting. The credit splitting scheme was intended to ensure that spouses not in the paid labour force during the marriage, usually women, would share equally in the contributions to the CPP which eventually result in entitlement to a retirement pension and disability and death benefits.

Until 1983, family and constitutional law experts generally believed that a standard waiver of future property claims in a separation agreement would not affect a spouse's right to a division of CPP credits on divorce. The Government of Canada drafted the credit splitting provisions of the Plan to this end, and advised lay persons and lawyers that "a division of credits is not subject to the terms of any other separation or divorce agreement".

It came as an unpleasant surprise to many, not least of all the Government of Canada, when in 1983 the Pension Appeals Board decided in *The Minister of National Health and Welfare* v. *Preece* that a waiver of future property claims amounted to an agreement not to divide CPP credits.

The *Preece* decision created a great injustice. Many women have since been denied a division of CPP credits although they entered separation agreements prior to the *Preece* decision and with the assurance of their lawyers and the Government that their right to a division of pension credits would survive. Significantly, due to a lack of publicity, many spouses have continued to inadvertently sign separation agreements which effect a waiver of rights under the *Act*.

In September of 1984, the Government was still publishing and distributing brochures stating that a separation agreement would not affect rights to credit splitting.

Bill C-116 Expands Rights

Bill C-116 expands the definition of persons eligible to apply for a division of CPP credits to include not only persons whose marriage has been terminated by divorce or annulment, but also married persons who have been separated for one year and persons who have cohabited as husband and wife for one year and separated after January 1, 1987 for a one year period. Check the *Act* for limitation periods. Entitlement to a sharing of Plan benefits by spouses is also expanded. In certain circumstances a "spouse" may apply for a division (assignment) of a payable retirement pension prior to separation.

Despite lobbying by women's groups and Government promises, Bill C-116 fails to include mandatory splitting of CPP credits on separation, which would have permitted division of credits without application and regardless of the terms of any domestic contract. Instead, for spouses entering a marriage contract, cohabitation agreement or separation agreement after June 4, 1986, the right to a division of credits is not affected **unless** the agreement specifies that the parties to the agreement intend that there shall be no division under the *Act* and the applicable provincial law of domestic contracts expressly permits such a waiver. At this time no province has legislation regarding this issue and therefore a post-June 4, 1986 agreement would not affect rights under the *Act*. The same law applies regarding the effect of domestic contracts on the right to an assignment of a payable retirement pension. Given the problems to date, the cautious route will be to expressly permit a division of credits and an assignment of a payable retirement pension in any agreement.

Potential for Relief from *Preece*

For spouses entering a separation agreement prior to June 4, 1986, Bill C-116 *may* provide relief for some persons disentitled to a division of credits as a result of the *Preece* decision. Section 65(4) of the *Act* will provide that if a person is denied a division of CPP credits due to the erroneous advice of the Department of National Health and Welfare, that person shall be placed in the same position she would otherwise have been had the erroneous advice not been given. Unfortunately, what will satisfy the statutory test for relief is unclear and the Minister is given a great deal of discretion in this regard. Worse still, the Department is now questioning whether section 65(4) of the amended *Act* is specific enough to remedy the situation created by the *Preece* decision. A decision as to how section 65(4) will be applied by the Department is expected in the next few weeks.

Where in entering a pre-June 4, 1986 domestic contract, a spouse or lawyer advising a client has relied on the advice of the Government that such a contract would not affect rights under the *Act*, a written statement referring to the erroneous advice should be included in an application by a former spouse for a division of credits following the proclamation of Bill C-116.

Helena Orton is the NSC member in Ottawa.

The federal government's long awaited response to the Fraser Committee Report on Pornography and Prostitution and the Badgley Report on Sexual Offences Against Children was announced on June 10, 1986 when then Justice Minister John Crosbie introduced in the House of Commons two bills dealing with pornography and child sexual abuse.

Bill C-114, which has sparked the most controversy, would amend the *Criminal Code* to prohibit importing, making, printing, publishing, broadcasting, and distributing pornography. The present *Criminal Code* definition of obscenity, criticized for being vague, would be replaced by a more precise definition of "pornography", namely, "any visual matter showing vaginal, anal or oral intercourse, ejaculation, sexually violent behaviour, bestiality, incest, necrophilia, masturbation or other sexual activity".

An accused may put forward a defence of genuine educational or scientific purpose, or artistic merit, but carries the burden of proof. Written material would not be outlawed except for accounts of sexual activities involving children. Simple possession of pornography for private viewing would not be illegal, except possession of child pornography which could bring up to 6 months in jail.

Crosbie is reported to have stated that the Fraser Committee's three-tier approach to pornography offences was rejected because Progressive Conservative caucus members thought it was too liberal. Women's groups and civil liberties associations have criticized the proposed legislation as puritanical, noting that the definition of pornography will effectively censure erotica.

Le projet de loi C-114 amenderait le Code de façon à interdire l'importation, la fabrication et la distribution de matériel pornographiques. La définition actuelle de l'obscénité dans le Code serait remplacé par une définition plus précise de la pornographie, soit la "représentation d'actes sexuels, notamment de rapports sexuels vaginaux, anaux ou oraux, de comportements sexuels violents, d'actes de bestialité, d'inceste, de nécrophilie ou de masturbation ou de scènes d'éjaculation." Le projet de loi C-113 traite de l'abus sexuel des enfants, de la prostitution des enfants et des preuves présentés par les enfants.

Pornography and Sexual Offences

by Nola Silzer

Bill C-113 is generally regarded as a positive measure to strengthen the laws on sexual abuse of children. It would amend the *Criminal Code* by adding three new offences. The offence of sexual interference, prohibiting any person from touching a child under 14 for a sexual purpose, would carry a maximum penalty of 10 years. The offence of invitation to sexual touching directed towards a child under 14 would also attract a maximum sentence of 10 years. The offence of sexual exploitation of a child between the ages of 14 and 18 by any person in a position of trust or authority would have a maximum penalty of 5 years.

The Bill also addresses child prostitution. Rejecting the Badgley Report's recommendation to criminalize juvenile prostitutes, the government proposes that customers of prostitutes under 18 be liable to a maximum sentence of 5 years imprisonment. Persons convicted of living off the avails of juvenile prostitution would be subject to a maximum sentence of 14 years, instead of the current 10 years.

The proposed legislation would also amend the *Canada Evidence Act* by repealing the rule for corroborating evidence. Children under 14 would be permitted to appear as witnesses in sexual abuse cases without the need for corroborating evidence. The right to claim spousal immunity would also be repealed, forcing the husband or wife of a person charged with child abuse to testify against his or her spouse. The existing one year limitation on proceedings would be eliminated for all child sexual abuse offences. The Bill would also allow videotape evidence of a complainant under 18 years of age.

The government also announced on June 10, 1986 that it will soon appoint a Special Advisor on Child Sexual Abuse to coordinate child protection measures across the country.

A legislative committee will start reviewing the proposed legislation this fall. It will hear expert testimony and report to Parliament, most likely with recommendations for change.

You may receive detailed explanations of these bills by contacting:

Communications and Public Affairs
Department of Justice
Justice Building
239 Wellington Street
Ottawa K1A 0H8

Once you have studied the proposed laws, let Ottawa know your views. Write to:

The Honourable Ray Hnatyshyn
Minister of Justice
Justice Building
Kent & Wellington Street
Ottawa K1A 0H8
and
The Honourable Barbara McDougall
Minister Responsible for the Status of Women
House of Commons
Wellington Street
Ottawa K1A 0A6

Nola Silzer is a student of law in Ottawa.

LEAF Update

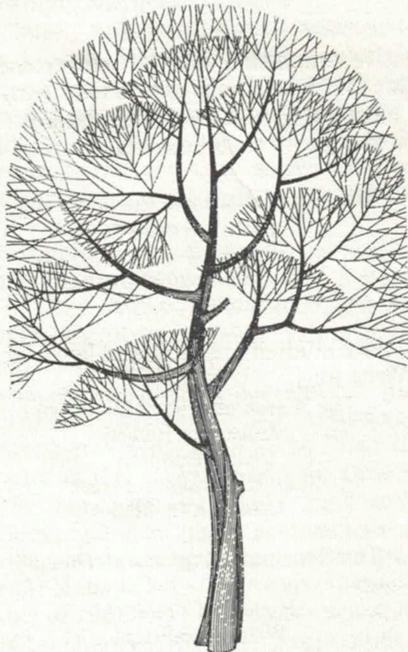
by Gwen Brodsky

Justine Blainey et l'Ontario Hockey Association

Justine Blainey, a twelve year old girl who had been chosen to play on a first-class boy's hockey team in the Metro Toronto Hockey League, was barred from play by the Ontario Hockey Association. With LEAF's support, she brought a court challenge to sub-section 19(2) of the Ontario Human Rights Code, *which specifically excluded sex discrimination in sports from the* Code's *anti-discrimination protections. The court handed down its decision in favour of Blainey and struck down subsection 19(2) of the* Code *on the grounds that it denies women the right to equal benefit and protection of the law as guaranteed by section 15 of the* Charter.

Le 17 avril 1986 marque le premier anniversaire de l'entrée en vigueur de l'article 15 de la *Charte des droits et libertés*. Ce jour-là, la Cour d'appel de l'Ontario a rendu un jugement en faveur de Justine Blainey. Il s'agissait de la première cause relative à l'article 15 concernant l'égalité des sexes à être entendue par une Cour d'appel et d'une victoire marquante pour Justine Blainey et les femmes du Canada. La Cour a déclaré inapplicable le sous-alinéa 19(2) du *Code des droits de la personne de l'Ontario* du fait qu'il nie aux femmes le droits au même bénéfice et à la même protection de la loi comme le garantit l'article 15 de la *Charte*. La Cour a aussi décrété que le sous-alinéa 19(2) est "grossièrement disproportionné par rapport à la fin qu'il prétend viser" et n'est pas conséquent pas justifié conformément à l'article 1 de la *Charte*.

Justine Blainey, jeune fille de 12 ans qui avait été choisie pour jouer au sein d'une équipe de hockey de première classe dans la Ligue de hockey du Toronto métropolitain, s'est vue refuser le droit de jouer par l'Ontario Hockey Association. À cause du sous-alinéa 19(2) du *Code des droits de la personne de l'Ontario*, qui exclut spécifiquement la discrimination sexuelle dans les sports des dispositions anti-discriminatoires du Code, Justine Blainey n'avait aucun recours juridique contre cette discrimination sexuelle flagrante.



Avec l'appui du FAEJ, Justine Blainey a contesté judiciairement le sous-alinéa 19(2) du *Code*. La requête en Cour divisionnaire n'a pas eu de succès. Le juge Steele a établi que, bien que le sous-alinéa 19(2) va à l'encontre du droit à l'égalité, il est raisonnablement justifié en vertu de l'article 1 de la *Charte*. Le jugement de la Cour divisionnaire a été porté en appel devant la Cour d'appel de l'Ontario et le FAEJ a parraniné une intervention de l'Association canadienne pour l'avancement de la femme et le sport. Au nom de cette Association, le FAEJ a présenté des cas de jurisprudence américaine qui ont établi que, à la fois des équipes distinctes de filles et l'accès aux équipes de garçons sont nécessaires pour l'avancement des femmes dans les sports. On a aussi demandé que, pour que satisfaction immédiate soit donnée à Justine Blainey, la *Charte* s'applique directement à l'OHA.

La Cour d'appel n'a pas reconnu l'argument du FAEJ selon lequel la Charte s'applique directement à l'OHA. Même si la Cour n'a pas rejeté l'idée qu'un organisme privé puisse être assujetti à la *Charte* dans l'accomplissement d'une fonction gouvernementale ou en agissant à titre d'organisme gouvernemental, la Cour a établi que les arguments avancés dans cette cause n'étaient pas suffisants pour appuyer une telle conclusion.

La Cour a soutenu que le sous-alinéa 19(2) établit clairement une distinction fondée sur le sexe et qu'il a un effet disparate sur les femmes. Le juge Dubin, dans la décision majoritaire, a affirmé que, à toutes fins utiles, ce sous-alinéa autorise n'importe quel organisme sportif dans la province à poser une affiche portant la mention "interdit aux femmes." Cette reconnaissance juridique de l'applicabilité de la théorie de l'effet disparate dans une cause relevant de l'article 15 est une nouveauté extrêmement intéressante en matière de jurisprudence sur l'égalité des sexes.

Le sous-alinéa 19(2) ayant été déclaré inapplicable, certains organismes sportifs de l'Ontario craignaient l'"intégration obligatoire" des sports féminins. Toutefois, le juge Dubin a ajouté que, même si le sous-alinéa 19(2) du *Code des droits de la personne* est déclaré inconstitutionnel, il ne s'ensuit pas que les sports doivent être intégrés dans la province. Dans le domaine de l'athlétisme, il peut être raisonnable de faire des distinctions lesquelles ont un effet disparate sur les participants, en raison de leur sexe, s'il y a un motif valable de faire une telle distinction. Cette affirmation est également intéressante en matière de jurisprudence touchant l'égalité des sexes parce qu'il peut très bien y avoir des situations où l'égalité des femmes peut mieux être atteinte grâce à des distinctions plutôt qu'à un traitement identique.

La valeur à titre de précédent du cas *Blainey* est rehaussée du fait que le 26 juin 1986 la Cour Suprême du Canada a rejeté la requête de l'OHA d'en appeler de cette décision et a imputé les frais à l'OHA.

L'instructeur et les joueurs de l'équipe de hockey "A" des Canucks d'Étobicoke désirent toujours que Justine se joigne à eux comme joueuse, mais l'OHA ne lui permet pas de jouer. Elle a déposé une plainte à la Commission des droits de la personne de l'Ontario le 20 juin 1986. Vu le jugement de la Cour, la Commission est maintenant habiletée à entendre la plainte.

Support Payments Upheld

La Cour d'appel de la Colombie-Britannique a maintenu la validité du Child Paternity and Support Act *de la C.-B. contre l'argument selon lequel elle est discriminatoire envers les hommes et est par conséquent contraire à la* Charte.

In a judgment dated May 9, 1986, the British Columbia Court of Appeal upheld the validity of the B.C. *Child Paternity and Support Act* against arguments that it discriminates against men and is therefore contrary to the *Charter.* In the case styled *Shewchuk v. Jerry Ricard et al,* Ricard, a male parent who had been sued for support, asked that the statute be struck down as contrary to the guarantees of equality in section 15.

The Act provides that the father of a child born "out of wedlock" may be sued for support for the child at the instigation of the mother, but does not allow a father, who has custody of a child born "out of wedlock" to initiate proceedings against the mother.

There are two dangers arising from legislation like the Act that confer a benefit on women without extending the benefit to men who are similarly situated. The first danger is that the legislation will simply be struck down. The second danger inherent in this type of legislation is less immediate in its effects, but potentially more serious in its long-term consequences. This danger is that the legislation will be upheld as constituting a "special protection" for women, thereby legitimating a theory of special protection that has been relied on in the past to deny women access to traditional male opportunities. The B.C. Supreme Court restored the statute on the basis of the need to "protect" women and on the basis that the statute is not truly discriminatory or, or in any event, that it amounts to an affirmative action programme.

A preferable solution to the equality problem raised by the *Shewchuk* case would be repair of the statute's under-inclusiveness. Although agreeing in their decision to uphold the Act as constitutionally valid, the three-judge Court of Appeal panel issued two sets of reasons for judgment. In his minority judgment, Chief Justice Nemetz found that the Act does not discriminate because it does not have for its "objective a policy

showing partiality or prejudice in the treatment of putative fathers." Nemetz, C.J. found, in the alternative, that the Act is justified either as affirmative action under sub-section 15(2) or as a reasonable limitation under section 1 of the *Charter.*

Writing for the majority, Mr. Justice MacFarlane found that the Act infringes section 15 and is not an affirmative action programme under sub-section 15(2), but is saved by section 1.

In deciding that the discrimination is justified under s.1 of the *Charter,* the Court reasoned that denying a putative father the right to seek a maternity order is not as important as the state objective of establishing paternity, the later being the broad public purpose of the Act. The Court noted that the impact of the inequality on custodial fathers is minimized by the availability of alternative procedures under the *Family Relations Act.* Concerning the fact that state-paid legal counsel is provided to the applicant under the Act thought not under the FRA, the Court made no direct comment, but observed that "legal assistance will, in many cases, be required by the mother, who, by reason of her pregnancy, may have suffered loss of income and extra expenses, and may be unable to afford the cost of application proceedings."

From an equality rights perspective, the results of the Court of Appeal decision in *Shewchuk* are mixed. It would have been helpful had the Court begun to lay the groundwork for the development of Canadian jurisprudence on the remedy of extension. However, as a matter of immediate practical concern to women, it is preferable that the Act has been saved rather than struck down. The Court can be commended for having recognized that equality will not be symmetrical in every case. The reality is that it is mainly women who are in the position of having to seek child support orders and, further, women more often than men lack the financial resources to afford legal counsel,

There is a possibility that *Shewchuk* will be appealed to the Supreme Court of Canada.

cont. on page 25

LEAF Update cont.

Military Wives Organize

Avec l'aide du FAEJ, l'Association des épouses des militaires a contesté le refus du ministère de la Défense nationale de leur garantir les droits démocratiques de réunion et d'association.

LEAF's lawyers in this case, Neil Whitman and Kathy Tobler, of Calgary, have filed suit in the Federal Court of Canada on behalf of OSSOMM and two individual OSSOMM members. At issue in the case are the Queen's Orders and Regulations, which prohibit "political activity" on military bases. In the Fall of 1984 when OSSOMM became formally organized, started a Newsletter and began to organize meetings for women on the base, the base commander at Penhold, Alberta, informed them that their activities were prohibited. They have been prohibited from meeting on the base, delivering a Newsletter, and canvassing door to door for support for a dental plan.

The OSSOMM case has received widespread attention and support. On March 26, 1986, Senator Lorna Marsden made a motion in the Senate urging the Government of Canada to:

> permit freedom of assembly and speech, and such other freedoms guaranteed to all other Canadian citizens, for spouses of members of the Canadian Armed Forces and to amend or repeal all relevant regulations and orders accordingly.

As a result, the Senate appointed a Special Committee on National Defence to consider issues regarding freedom of assembly and speech for spouses of members of the Canadian Armed Forces. On June 12, 1986, LEAF appeared before the Special Senate Committee to outline the Charter aspects of the OSSOMM case. On June 19, 1986, Lucy Richardson and Leslie Taylor appeared before the Senate on behalf of OSSOMM and described to the Committee the circumstances of military life that make the activities of OSSOMM so critical to military families.

The Examinations for Discovery in the OSSOMM case were held on July 10 and 11, 1986, in Calgary, Alberta.

With LEAF'S help, the Organizational Society of Spouses of Military Members (OSSOMM) has challenged the denial by the Department of National Defence of their democratic rights to assemble and associate.

OSSOMM was formed to assist spouses of military personnel, who are mostly women, in achieving basic services of importance to them and their children: a traffic light at a busy corner, better help for battered spouses, French immersion in base schools, a dental plan.

Other LEAF projects include...

- A two-tiered scale of compensation for injured "housewives" and other accident victims in Manitoba's public motor vehicle insurance scheme (Letwyn);
- Exclusion of domestic workers from the protection of employment standards legislation in British Columbia and Ontario;
- Unequal treatment of women in the Federal Penitentiary System;
- Exclusion of unmarried and divorced women from federal spouses allowance and widow's benefits programmes;
- Gender-based naming provisions in New Brunswick's vital statistics legislation;
- Federal prostitution legislation;
- Mandatory retirement policies in Ontario hospitals;
- Eligibility restrictions based on marital status in Ontario's Beginner Farm Assistance Programme.

Gwen Brodsky is the litigation director for LEAF

Home is where the office is...

NAWL's office is located at 323 Chapel Street in Ottawa.

Drop in sometime!

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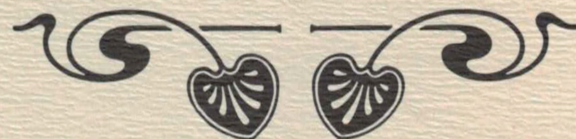

Missing

We have lost contact with the following NAWL members. If you know of their whereabouts, please send their new address or phone number to the NAWL office.

- Judith H. Alexander, Oakville, Ont.
- Sharon Batt, Montreal, Que.
- Catherine Bell, Saskatoon, Sask.
- Deborah Calson, Winnipeg, Man.
- Madeleine Delaney-Leblanc, Moncton, N.B.
- Susan I. Forbes, Vancouver, B.C.
- Norma Graham, Kingston, Ont.
- Judy Kennedy, Lambert, Que.
- Louanne, Labell, Dartmouth, N.S.
- Eva Petras, Montreal, Que.
- Sandra Ranks, Calgary, Alta.
- Cecillia Saunders, Happy Valley, Labrador
- Pamela Slaughter, Calgary, Alta.
- Margot Tubman, Victoria, B.C.
- Elizabeth Wolfe, North York, Ont.

Thanks for your help!

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