ment for companies to disclose how their nominating committees consider diversity in identifying board nominees.

In Canada, 21 of the top 1,000 companies have female CEOs—representing two percent. In the U.S., three percent of the top 1,000 companies have female chief executive officers.

INFANTICIDE DEFENCE DEFENDED

In the fall, LEAF intervened in an appeal court trial to offer its feminist perspective on the ongoing relevance and importance of infanticide as a homicide offence that is separate and distinct from murder.

In the past few years, LEAF says, there has been "an emerging trend of the Crown charging women who have killed their newly born children with murder as opposed to infanticide. The result is that these women face life imprisonment with no eligibility for parole," says LEAF legal director Joanna Birenbaum.

LEAF points out that the offence of infanticide, which carries a maximum sentence of five years imprisonment, "is intended to account for the complex and gendered social, economic, psychological and medical context in which the offence occurs."

Birenbaum says those who commit infanticide tend to be young, poor, socially isolated and without adequate social and economic supports to cope with childbirth or caring for a child. They have often experienced sexual or other abuse and have often denied the pregnancy to others, and even to themselves. Additionally, many of these women "have given birth alone, and commit the offence in a state of panic, intense pain, shock, disassociation, exhaustion and alienation."

"The offence of infanticide is treated differently in law than murder because of the many overlapping social, cultural, psychological and medical factors which may affect the state of mind of accused women following childbirth," she adds. "It is a very serious crime, but it is a crime which recognizes the reduced culpability of women whose minds are disturbed due to the interaction of these complex factors related to childbirth."

Infanticide applies only to women who have recently given birth. LEAF's factum argues that where the elements of infanticide are present, the infanticide offence should be available to women, regardless of whether the Crown seeks murder charges.

analysis

PROGRESS ON EQUALITY STALLED

BY SHELAGH DAY

When Section 15 of the Canadian Charter of Rights and Freedoms came into force 25 years ago, no one imagined that governments would become major obstructers to the promise of equality enshrined in the Constitution. Yet that is what has happened.

Women were excited and hopeful in the early 1980s when they fought for strong language in the equality provisions in the Charter in Section 15. They argued from the outset for a substantive version of equality, that is, for equality in the substance or content of the law, for a version of equality capable of addressing and transforming the real conditions of inequality that women face, including economic inequality. If the right to equality was given a substantive interpretation, it would help women to us address the deeply rooted social inequalities that affect them because of sex, race, colour and disability.

So when Section 15 came into force in 1985, with its new guarantees of equality before and under the law, and equal benefit and equal protection under the law, women expected, in the words of constitutional scholar Melina Buckley, the development of a governmental "ethos of equality."

However, when we now ask whether Canada's Section 15 has moved governments to design policies and allocate resources in ways that advance substantive equality, the answer has to be no. Basic programs and protections that should be firmly in place in a constitutional democracy committed to women's equality are absent, partial or shaky. These include equal pay for work of equal value, a national child care program, adequate civil legal aid, reliable police protection from male violence, adequate income assistance and housing, and concerted strategies to move Aboriginal women and girls out of entrenched disadvantage. Many essential programs and services have been weakened by years of government restructuring, cuts and privatization.

Turning the equality promise into reality would require deliberate action and spending by governments, not withdrawal and deference to the market. Moving towards a more equal society would require setting goals and allocating resources to achieve them. But this has not happened.

Studies by the Standing Committee on the Status of Women and by Auditor-General Sheila Fraser have said that Canada has no working gender machinery. There have been no plans, or paper plans with no resources behind them. The result is that conditions, particularly for the poorest women, have worsened since 1985.

Cuts to essential programs and services are not the only way that equality has been undermined by governments. Equality rights expert Gwen Brodsky notes in her contribution to the book *Poverty: Rights, Social Citizenship and Legal Activism*, that in some cases, attorneys general have argued for interpretations of Section 15 that drain it of substantive content and, in particular, of any capacity to deal with women's material conditions.

Provincial and federal governments have argued in Charter cases that the right to equality does not impose any obligations on governments to redress social inequality or to alleviate conditions of poverty. They have also argued that courts cannot review government decisions about the allocation of resources.

The case of Newfoundland (Treasury Board) vs. Newfoundland and Labrador Association of Public Employees (NAPE) provides a good example. The government negotiated a series of payments to compensate female health care workers for long-standing discrimination in their pay. But in 1991, the province said it was experiencing a financial crisis and cancelled the $24 million in pay equity adjustments. NAPE challenged the government on the grounds that the cancellation violated Section 15. In response, the province's attorney general argued that government had no obligation to address sex discrimination in wages and that the repeal of a non-obligatory scheme cannot constitute discrimination.

The attorney general of British Columbia then intervened in support, arguing that the courts have no role in reviewing decisions

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about public expenditures. In effect, the consistent position of governments is that the courts cannot enforce a right to substantive equality because that would engage them in commenting on, or interfering with, government decisions about spending.

And the courts have agreed. In fact, although courts have been accused of judicial activism, they have been the most activist in protecting governments from having to deal with the full implications of the rights they enact. Louise Arbour, when she was the United Nations High Commissioner for Human Rights, called the Supreme Court of Canada "timid," and with good reason. The court has been fearful when faced with the remedial consequences of finding violations. And from an apparent desire to deny or narrow the remedy, the court has reasoned backwards, with rights to equality and security of the person thinned out as a result.

In NAPE, the court ruled that canceling pay equity adjustments violated Section 15. But it also determined that the government was entitled to cancel them because the province faced a financial crisis—that is, it was expecting to run a deficit. As feminist scholar Sheila McIntyre has noted, the court tends to defer to governments, even when cost-cutting reallocates social benefits away from disadvantaged groups.

There have certainly been Charter victories in the last 25 years, and some that have set out significant interpretive principles. In Eldridge, for example, the court ruled that governments were obligated to ensure services are provided in a way that takes the needs of disadvantaged groups into account—in this case, the need for a hospital to provide interpreter services for a deaf woman giving birth. In Vriend, an Alberta court ruled that the province's human rights legislation was not compliant with the Charter because it did not include protection from discrimination based on sexual orientation.

Another Charter victory came in the case of Ewanchuk, in which the court rejected the defence of "implied consent" in cases of sexual assault. Falkiner struck down the "spouse in the house" rule in Ontario's welfare legislation, and more recently the court ruled in McIvor vs. Canada that the status registration provisions in the Indian Act discriminate against Aboriginal women and their descendants.

However, in some of these cases, victory was qualified. Ewanchuk prevented a step backwards in sexual assault law. Eldridge was followed by a decision which ruled that governments were not obliged to bring in new programs to ensure equality, only to ensure that existing ones did not discriminate. And the remedy in the original McIvor ruling was narrowed by the B.C. Court of Appeal, allowing the government to continue to deny status to many Aboriginal women and their descendants.

So far, Section 15 has not been the powerful tool that feminists hoped would help shape public policy and spending priorities. Canada's governments have obstructed women's advancement and even diminished women's equality while Section 15 has been in effect. And the Supreme Court has not given Section 15 the forward-looking, steady and tough-minded interpretation that is needed to give full reality to the concept of substantive equality.

There is nothing wrong with the wording of Section 15. But there is something wrong when governments refuse to live up to the Charter's promise of equality and when courts permit government backsliding.

Now, because the cancellation of the Court Challenges Program, women (as well as members of other Charter-identified groups) have no access to the modest funds that were once available to bring forward Section 15 cases. Perhaps the worst irony of this moment, 25 years later, is that we have constitutional rights that we fought for, and helped to shape, but now cannot afford to use. ❁

Shelagh Day is a director of the Poverty and Human Rights Centre in Vancouver.

MAGAZINE RALLIES AFGHAN WOMEN

BY LAURYN OATES

Humira Saqueb started Afghanistan's first women's magazine, Negah-e-Zan *dedicated to women's empowerment, in May. (Photo: Lauryn Oates)*

(KABUL) Transformative change has taken hold of Afghanistan since the ousting of the Taliban in 2001, and, thanks to a new magazine focussed on women's empowerment, women are documenting more of those changes.

Legal reform in the country, which has been characterized by both progress and regress, has seen a gradual, overall improvement. Last year, Afghan women secured domestic abuse legislation under the Elimination of Violence Against Women law. They also managed to win reforms to legislation drafted by the conservative cleric Mohammad Asif Mohseni that would have given Shia husbands power over their wives, including the right to decide whether they work outside the home and how often they must submit to sex. The bill was passed by the lower house of Parliament, the Wolesi Jirga, but only after women, together with supportive MPs, lobbied for amendments.

The development of the Afghan media sector stands out as a particular success story. Independent media outlets have burgeoned. New television and radio