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Ms. Yasmin Ratansi

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●(1105)

[*English*]

The Vice-Chair (Mrs. Irene Mathyssen (London—Fanshawe, NDP)): I call the meeting to order.

I want to welcome everyone here and thank in advance all of our witnesses for being here today on short notice. We're quite anxious to hear from you.

Everyone has five minutes, so I think we will proceed as the list indicates and begin with Ms. Shelagh Day from the Canadian Feminist Alliance for International Action.

Ms. Shelagh Day (Chair, Human Rights Committee, Canadian Feminist Alliance for International Action): Thank you very much. I'm very pleased to be here today.

I want to start by saying that the court challenges program is one of Canada's most important access-to-justice programs. The equality rights side of the program was added in 1985 when section 15 came into force and John Crosbie was the Minister of Justice.

It's essential to the rule of law in Canada that the law be accessible to everyone. The rule of law means a number of things. It means that the law should apply and be accessible to rich and poor people alike. I think our Constitution says that our country is founded on that principle, and that's a very basic principle of equality. It cannot be given reality in circumstances in which people who do not have means do not have rights.

By de-funding the court challenges program, we have essentially made equality rights in Canada exist only for the rich. People who are disadvantaged in this country, women among them, now do not have access to the constitutional rights we fought so hard to get in 1982 and were so proud of when they were put into the Constitution.

I remember that time well. After the struggles of women to be involved in getting new language into the Constitution, we then went forward to John Crosbie and said that now we that have the language, we have to have access to the use of it. That was the moment at which an existing program turned into the court challenges program, with equality rights funding as well as funding for challenges from linguistic minorities.

Canada says, when it goes to the United Nations to talk to the United Nations about its compliance with international human rights treaties, that the court challenges program is part of the machinery through which Canada fulfills its commitments internationally.

The court challenges program has been recognized repeatedly by international treaty bodies as a mainstay, a central component of

Canada's human rights machinery, and a way in which we comply with those international human rights commitments.

It's been recognized by the Committee on Economic, Social and Cultural Rights in 1998 and 2006, by the Committee on the Elimination of Discrimination Against Women in 2003, and by the Human Rights Committee in 2005. In all those circumstances, what the committees were saying to Canada about the court challenges program was that this was a wonderful program that should have been extended to apply to not only federal laws and policies but also to provincial laws and policies, so that people anywhere in the country dealing with any law or policy at any level should be able to access their rights.

I point out to you that in 2007 the Committee on the Elimination of Racial Discrimination reviewed Canada after the court challenges program had been de-funded. That committee said to Canada, "The Committee recommends that the State party"—that's Canada—"take the necessary measures to ensure access to justice for all persons within its jurisdiction without discrimination. In this connection, the Committee urges the State party to reinstate the Court Challenges Program...as a matter of priority." In other words, in the latest review by United Nations treaty bodies, Canada has been found wanting for having de-funded the court challenges program.

The court challenges program has funded extraordinarily important cases and interventions for women over the last two decades. I will just mention these and hope we will be able to go into them in more detail. Among these are Canadian Newspapers; the Butler case, which had to do with obscenity laws; Mills, which had to do with rape shield laws and whether the accused in rape cases could get access to women's counselling records; O'Connor, which was the case against Bishop O'Connor, which did the same thing; Gosselin, which had to do with welfare law in Quebec; Lesiuk, which had to do with employment insurance law; and now the most important one, McIvor v. Canada.

●(1110)

We're very fortunate today to have Sharon McIvor with us to actually make comments and explain that case to us. A lot of people think the McIvor case is one of the most important sex equality cases of the last two decades. It has been funded by the court challenges program up until now; now there is no more funding for it to continue.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you very much.

Next, we're hearing from Carmela Hutchison.

Ms. Carmela Hutchison (President, DisAbled Women's Network of Canada): Thank you.

We wish to thank the Government of Canada for seeking our input on the future of this important initiative for Canadians and for disabled women. We wish to also thank the Algonquin people for sharing their traditional lands with us, and we thank the Creator for this opportunity to speak with you, in the hope that the Canadian government will restore the court challenges program, and even enhance it, to demonstrate both to its citizens and the world Canada's commitment of access to equality and human rights.

DAWN Canada is a national organization whose mission is to end the poverty, isolation, discrimination, and violence experienced by women with disabilities. DAWN began in 1985, and its incorporation was granted in 1992.

Because I know we only have five minutes, I'm going to go straight to the impacts of the closure and to the recommendations, and then I'll come back for whatever time is left.

The equality interests of women with disabilities continue to be underrepresented—or in many cases non-existent—in the development of government policy and program delivery. Likewise, there are very few equality test cases that deal with the many levels of discrimination experienced by women with disabilities. Therefore, DAWN Canada and its affiliates must continue to use every opportunity to continue to seek equality rights for women with disabilities.

The court challenges program provides funding for equality-seeking groups to meet and explore what issues might be tested in the courts; to develop tools to help people understand their charter rights; and to take cases to court on the grounds that a particular law or policy practice discriminates against women with disabilities. Potential impacts of the closure are that Canada would not be in compliance with its federal government obligation, under section 15 of the Charter of Rights and Freedoms, to promote and protect the equality rights of disadvantaged persons in Canada. DAWN is puzzled as to why the Canadian government would want to weaken access to rights protection when it observes that our government frequently calls on other nations to enhance human rights protections for their citizens.

Though the court challenges program has been pointed to in part as a means of compliance with international human rights committees, there is no indication of how we might continue such compliance in the absence of the court challenges program. Will this measure send a message to our international partners that we in Canada no longer care and, worse, also send a message at home and abroad that continued discrimination might be acceptable?

The costs of legal challenges are impossible for the average citizen, let alone disabled women. Disabled women, as an additionally disadvantaged group, should have additional help and protections for their charter rights and their ability to pursue them. Closure of the court challenges program will put any hope of this protection out of their reach. I refer you to DAWN Canada's presentation to you on May 3, 2007, on the economic security of women, for a detailed description of the poverty we live in.

There has been growing concern over the increase in the number of self-represented cases as people have had to resort to taking on their own legal work in order to pursue their rights. A further

increase in this process may be a result of the closure of the court challenges program. Court challenges programs were successful in nine out of the twelve cases DAWN has participated in, suggesting that this program was meaningful and relevant for assisting disabled women to achieve justice in policies that had unintended negative consequences for their lives. A list of these, along with a summation of them, will be submitted with the written report that follows this oral submission. We respectfully recommend the reinstatement and enhancement of the court challenges program.

Government also needs to reclaim its legislative powers. Rights protection bodies, like the appeals tribunals and ombudsmen of government, need to have the ability and power to compel equality rights. Make legal aid widely available to impoverished people in pursuit of their rights, and provide funded programs for people to assist them with their applications for programs. The inability to perform this task, either by them or the professionals required to provide supportive documentation, is inadequate to uphold legitimate requests, and this then results in needless repetition and appeal processes.

Thank you.

•(1115)

The Vice-Chair (Mrs. Irene Mathyssen): Thank you, Ms. Hutchison. You came in right on time. That's wonderful.

Now the National Association of Women and the Law, and we welcome Martha Jackman.

Ms. Martha Jackman (Member, National Steering Committee, National Association of Women and the Law): Thanks very much to the committee for the invitation.

The National Association of Women and the Law, NAWL, is a non-profit organization that has been working to improve the legal status of women in Canada through legal education, research, and law reform advocacy since 1974.

My name is Professor Martha Jackman. I am a professor of constitutional law at the University of Ottawa and a member of the national steering committee of NAWL.

As you know, the Status of Women Canada's women's program experienced some changes to its funding criteria whereby advocating for equality is no longer fundable, and as a result, the National Association of Women and the Law in September became effectively de-funded and had to lay off its paid staff and close its national office.

We have now become, once again, a volunteer organization, which is why I am here. Our ability to respond to requests such as this one obviously has been greatly compromised by these funding cuts.

In my view, it's necessary to understand why the court challenges program was cut in order to understand the significance of these cuts and the impact on women in particular.

Why was the CCP cut? In September 2006, then Treasury Board President John Baird explained, “I just don’t think it made sense for the government to subsidize lawyers to challenge the government’s own laws in court”. I’d like to take a couple of minutes to examine the underlying premise of this statement, which I take to reflect the government’s position.

First is the idea that it doesn’t make sense. It may not make sense from a Conservative ideological position to maintain the court challenges program, and it’s hard to ignore the fact that close Conservative political advisers, including the Prime Minister’s own chief of staff, Ian Brodie, wrote a book in 2002 entitled *Friends of the Court: The Privileging of Interest Group Litigants in Canada*. He was particularly critical of the influence of women’s groups and feminist organizations in charter litigation funded by court challenges.

Conservative Party insider Tom Flanagan was interviewed by *The House* on September 22, 2007. He actually called the cuts both to court challenges and to Status of Women Canada “a nice step” in the government’s plan to gradually cut off women’s organizations’ access to the Canadian government.

The cut to the court challenges program is hard to understand if one lacks a basic understanding of the role of constitutional rights within a parliamentary democracy; that is, the democracy-reinforcing role of rights, the fact that Canada’s parliamentary democracy is infused by charter equality values like equality, and that constitutional rights provide an important accountability mechanism within our constitutional democratic system. Constitutional rights protect minorities from majorities.

It doesn’t make sense if one fails to understand that the charter is not at odds with Canadian parliamentary democracy. Charter rights, including women’s equality rights in particular, do not undermine Canadian parliamentary democracy. Rather, charter rights reinforce and protect not only the rights of individual women but constitutional democracy itself.

It doesn’t make sense for the government to subsidize if you ignore the fact that the government subsidizes numerous litigation-related activities in Canada, some of them directly—for example, legal aid and representation before the numerous public inquiries that seem to always be going on in Canada—but more importantly, indirectly through tax spending.

I will give only two examples of the indirect funding to constitutional litigation that continues unabated after the repeal of the court challenges program. One is litigation of the type that the tobacco companies have engaged in over the past ten years to have Canada’s anti-smoking laws struck down. This litigation is subsidized by Canadian taxpayers and the Government of Canada through the tax spending that occurs, as this is a deductible business expense.

I would also like to draw your attention to the activities of the Canadian Constitution Foundation, which is attempting, as we speak, to strike down the single-tier medicare system in Canada, and it does this with the benefit of its charitable tax status—so again, an indirect Government of Canada subsidy to charter litigation, perhaps not of the type that we here would support.

• (1120)

It doesn’t make sense for the government to subsidize lawyers if you ignore the fact that court-challenges-funded charter litigation is highly accountable. It’s done pro bono or is heavily subsidized by these selfsame lawyers. And in many cases it’s directly undertaken by women’s and other equality-seeking organizations. This is not the stereotype of the greedy, selfish lawyer out for individual gain.

It doesn’t make sense for the government to subsidize lawyers to challenge the government’s own laws, according to Minister Baird. Now, we all know that the Government of Canada has, from time to time, enacted unconstitutional laws. And it’s absurd to suggest, as Minister Baird has done, that the government itself can ensure against this. There needs to be an accountability mechanism for challenges to unconstitutional federal legislation: not only government action, but more importantly government inaction. Much of the charter litigation undertaken by women’s groups is not to challenge unconstitutional laws, but to challenge inaction in areas of violence, racism, poverty, child care, and employment equity, among others.

There are no avenues for women to call governments to account for this unconstitutional inaction at the moment, and the lack of avenues for challenging unconstitutional state inaction has been further exacerbated by cuts not only to court challenges but also to Status of Women of Canada. I think Flanagan’s interview on *The House* makes it clear that he, at least, understood this.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you, Professor Jackman. I hate to cut you off, but we are at the end of your time.

Ms. Martha Jackman: If you permit me to, I’ll take 30 seconds just to conclude.

The Vice-Chair (Mrs. Irene Mathyssen): Okay.

Ms. Martha Jackman: What have women lost with the repeal of the court challenges program? Women have lost a key equality rights accountability mechanism that’s fundamentally necessary within our parliamentary democracy. The need for the court challenges program may well have been unclear to Minister Baird. The advantages of cutting the program, in terms of its impact on women in particular, are clear from Mr. Brodie’s book and Mr. Flanagan’s comments. It’s profoundly clear to NAWL and the other women’s organizations here today, and for the sake of our constitutional democracy I hope it is equally clear to you, our elected members of the federal Parliament.

Thank you.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you, Professor Jackman.

We’ll now hear from Gwendolyn Landolt, please.

Ms. Gwendolyn Landolt (National Vice-President, REAL Women of Canada): Thank you very much, Madam Chairman.

The court challenges program is an example of government corruption and taxpayer abuse. This conclusion is based on the fact that the program, although entirely funded by the taxpayer, was unaccountable to the public for its financial and other decisions because it is not subject to the Access to Information Act and did not report to Parliament. As a result, the directors of the program used it to promote an ideological, left-wing agenda to the detriment of all those holding a different perspective.

REAL Women of Canada, for example, was refused funding by the CCP on three separate occasions because our organization did not fit into the ideological views of the program.

The mandate of the program was to assist disadvantaged groups in cases that had legal merit and promoted equality rights. Unfortunately, none of these expressions were defined, and this enabled the CCP to interpret them in a subjective and undemocratic manner to promote a left-wing agenda. For example, applying their own unique interpretation of disadvantaged groups and individuals, they gave grants to many financially well-off and left-wing individuals and organizations.

I know the CPP has included women as a so-called disadvantaged group in Canada. There is serious disagreement, however, that all women are disadvantaged. Most of us are not. Most of us Canadian women are independent, capable, industrious, and perfectly capable of participating in the economic, social, and cultural life of the country by way of our own initiative. Some women are disadvantaged, but not women as a whole, and it was arrogant, totally arrogant, of the program in the past to fund only the narrow views of feminists, who do not reflect the views of Canadian women. They only reflect the views of the special interest group of feminists, and no one else.

In fact, the court challenges program, under the guise of promoting women's interests, has not promoted anything but the feminist ideology by the courts. LEAF, for example, which is the political arm of the feminist movement, has been granted over \$2 million by the women's program at Secretary of State since its inception, and a further \$1 million from the former Ontario Attorney General, Ian Scott. Yet LEAF received funding in 140 court cases, not to represent women but only to represent the feminist agenda.

Also, we know it has very heavily funded the homosexual same-sex marriage, and all sorts of their own legal litigation. For example, *Capital Xtra*, a homosexual newspaper, in their October 19, 2006 issue, said: "No group has benefited more from court challenges funding than the queer community." In the same issue it said: "Money from the court challenges program helped Egale", which is a homosexual group, "win equal marriage rights through the courts in B.C., Ontario, and Quebec."

The CPP has a bias toward feminist, homosexual, left-wing organizations, and we have to ask why. Why? Because we have found in examining it that it is an organization that is organized by the few for the advantage of only a few. In fact, the court challenges program is not a group of anything, but a network of so-called independent groups operating under a different name but with most of its leaders and spokespersons being interchangeable.

For example, Shelagh Day, who spoke here today, was chairperson of the equality panel of the court challenges program. She is one of the founders of LEAF. She is a former national vice-president of the National Action Committee on the Status of Women. She represented and headed the lesbian caucus at the Beijing Conference. She does not represent women. She represents a feminist, lesbian agenda. That is her business, but not on the taxpayer's dollar. Miss Day is now on the steering committee of the Canadian Feminist Alliance for International Action.

• (1125)

We find that the executive director of NAWL, Andrée Côté, was chairman of the court challenges program. We find the DisAbled Women's Network, which consists of a group of interchangeable feminist member organizations, includes the National Association of Women and the Law. In fact, there is a small, select group that operated the court challenges program to their own benefit and to suit their own ideology.

The program funded by the Canadian taxpayer, which was established to support equality and non-discrimination—

The Vice-Chair (Mrs. Irene Mathyssen): Could you wind up soon?

Ms. Gwendolyn Landolt: I'll just be a second, thanks.

The program has done nothing but support left-wing radical advocacy groups. It has done a great disservice to the democratic system and has served to ignominiously betray the Canadian taxpayer.

Thank you.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you very much, Ms. Landolt.

Now we are going to hear from LEAF and Ms. Doris Buss.

• (1130)

Ms. Doris Buss (Chair, Law Program Committee, Women's Legal Education and Action Fund): Thank you very much.

My name is Doris Buss. I'm a professor of law at Carleton University, and I'm the chair of the law program committee at LEAF.

As many of you will know, LEAF is an organization that brings litigation, education, and some law reform work to advance equality for all women. LEAF has been active since 1985. It has been involved in over 140 equality-rights-related decisions that have touched on the areas of sexual violence, pay inequity, social and economic rights, spousal and child support, reproductive freedom, and access to justice, just to name a few.

In LEAF's view, the court challenges program was a relatively inexpensive program, at just under \$3 million a year, and yet it was highly effective. It breathed life into the inert language of the Canadian Charter of Rights and Freedoms. In Canada, as you all know, bringing court challenges is the principal means by which ordinary Canadians can challenge government action that infringes on their human rights. Dismantling the court challenges program has undermined the fragile system by which access to that simple remedy was made available to ordinary Canadians.

The high cost of charter litigation has the greatest and most deleterious impact on those Canadians with the least access to funds—namely, minority and aboriginal women. For Canadians at the lowest income levels, disproportionately represented by women, access to courts is an impossibility. The research available shows that where public funds supporting access to courts are cut, it is women, and minority women in particular, who are disproportionately impacted.

While the CCP was one of only several avenues by which the high costs of charter litigation could be somewhat ameliorated, the defunding of CCP in particular is having a serious consequence for ordinary Canadians looking for remedies when their rights are violated.

The de-funding of CCP has a very human face. Organizations such as LEAF find themselves unable to take on meritorious cases of individuals whose rights are being infringed by the actions of the Government of Canada but who, often because of a history of discrimination, do not have the funds necessary to challenge those actions.

The case of Sharon McIvor, who we're very fortunate to have with us today, is an example of just this sort of problem. As Ms. McIvor will explain in more detail, her case challenges the definition of "Indian" under The Indian Act, and it was initially funded by the court challenges program. The British Columbia Supreme Court has upheld her claim. It has found that her rights and her son's rights were violated. The Government of Canada is appealing that case, and now Ms. McIvor and her son have to come up with the funds, absent the CCP, in order to face the appeal by the Government of Canada.

The implications are dire for human rights in Canada if applicants like Ms. McIvor, whose rights have clearly been violated, are blocked from realizing those rights by a lack of funds. In effect, we would be left with a situation in which human rights abuses would be allowed to continue and fester perversely in those situations where they impact on society's poor and marginal members.

The court challenges program was not the be-all and end-all. It did not provide entire funding for cases, but it was substantially and symbolically important as an avenue for individuals to access their

rights. It was thus part of a constellation of instruments by which the Government of Canada ensured a minimum level of access to justice for all Canadians, not just the privileged few.

The equality rights of women, and hence of all Canadians, were significantly enhanced by the CCP. Because of funding received through CCP, organizations like LEAF were able to bring cases for Canadians on a range of issues. We were able to work to uphold the rights of pregnant women. We were able to work to ensure that trials for rape would be fair and would not rely on harmful stereotypes about women's sexuality, that women would be treated fairly in divorce proceedings and settlements, that defendants in rape cases would not be allowed to troll through the private documents of victims, and so on. These are ordinary Canadians; they are not special interest groups. We don't know what their political leanings are. These are women who have been subject to sexual violence, and they deserve to have their rights upheld.

• (1135)

The CCP was one means by which, however partially, the democratic deficit in Canada could be addressed. It is not counterintuitive for a government to fund the means by which the most marginal members of society may seek to challenge the sometimes hidden barriers to their full inclusion. Indeed, it's essential in a parliamentary democracy like ours, where full democratic accountability is realized through the separation of the different arms of governance. We are facing a time when the Government of Canada is realizing a budget surplus of just under \$14 billion and the government has cut \$2.85 million from this one avenue that would allow ordinary Canadians to access their rights.

Thank you.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you very much, Professor Buss.

Now we're privileged to welcome Sharon McIvor and Elizabeth Atcheson. You have five minutes.

Ms. Elizabeth Atcheson (Lawyer, As an Individual): Thank you. My name is Elizabeth Atcheson.

I'd like to make three points about the broader context relevant to consideration of the court challenges program. It has been a modest but important and uniquely Canadian portage between some very challenging spaces for women and girls: public policy, the courts, and the private sector.

Primary responsibility for improving equality for women rests first with the Government of Canada, in the case of our international commitments, and with all governments, in the case of our constitutional standards. It is ironic that Canada's signing of the Beijing Declaration in 1995 marks the peak of public commitment to reducing women's inequality.

Whatever gender-management system we had has been dismantled by successive governments. As this committee has observed, newer processes such as gender-based analysis have been paid lip service over more than a decade.

Despite our capacity as a nation, Canada does not have a thorough and precise gender action plan with specific goals and demonstrable outcomes in such areas as women's economic security and prosperity or women's safety and health that takes into account our diverse situations. The argument that the state should not be funding challenges to its own decisions lacks legitimacy if the state chooses to ignore or avoid its commitments.

Second, the more scope the courts have to decide matters that touch on public policy for identifiable groups, the greater the access to courts should be for those groups. We spend considerable amounts of public resources on ensuring that people and organizations in Canada have access to various parts of the government, including parliamentarians.

Today is an example of that. All the things that work for other parts of the government do not work for courts. We cannot send an unstamped letter to the court. We cannot pick up a telephone and call a judge or come to a courtroom like a constituency office for a talk. We cannot utilize Service Canada. It takes specialized skills and dollars for disbursements. If we want people living in Canada to have confidence in matters that are important to them in their day-to-day lives, and to have confidence that those things will be considered in all venues, then they have to feel that they have access.

There is value in diverse public engagement in our fundamental institutions. This is just a quick quote from Louise Arbour in April of this year:

Central to the position of the Charter in Canadian federalism is the idea that...the greatest protection for individual rights...comes in large, pluralistic environments. Conversely, the greater danger comes from small, homogeneous communities who lack the imagination and the means to deal effectively with competing individual claims from within, specially the claims that question the apparent homogeneity.

Finally, questions about how to support access to justice for equality for women have to take into account available capacity from all sources. Women and girls face significant challenges in private sector fundraising that have no immediate or easy solution. We cannot easily substitute a private dollar for a public dollar.

Women are the backbone of volunteers in Canada, and all of our organizations run on significant volunteer commitment. That's not enough.

The pool for donations in Canada looks large: \$9 billion 2004. The number of donors, however, is smaller than you might assume. Just over 20% of Canadians provide just over 80% of donations. Most revenues are concentrated among a comparatively small number of large entities. In 2003, 12% of organizations accounted for 89% of total revenues in the not-for-profit sector. That means the

other 88%, which includes all of the organizations that work for women, live on 11%.

Foundations and corporations provide very limited funding to organizations or projects designed to advance or empower women. Best estimates are that only 5% to 10% of foundation and corporate donations in Canada—and it's the same in the U.S.—go directly to women and girls. Donations to universal programs do not necessarily benefit women and girls, and although there is limited research on this point, the research is very clear.

• (1140)

Canada's leadership in both the public and the private sectors is quick to cite human rights and our charter as national strengths and achievements, as distinctly Canadian characteristics. If they value them, they should support them in a manner consistent with the means available to them, just as we do.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you very much, Ms. Atcheson.

Now we go to Ms. McIvor.

Ms. Sharon McIvor (Lawyer, As an Individual): Thank you very much, and thank you to the committee for inviting me to come and speak to you today.

My name is Sharon McIvor. I am a Nlaka'pamux woman from the south-central part of British Columbia. I'm an aboriginal woman, an Indian woman. I am a squaw—one of the women who are probably the least respected, have the least resources, and are the most disadvantaged in our country, one of those women who take their history from the original people of the country.

However, throughout my lifetime I have not had equal access to many things. I've had a lot of discrimination and have been disadvantaged in many ways. I am probably one of the more privileged of the aboriginal women in Canada, because of my place and my space.

The charter in 1985 provided me and my sisters with an opportunity to address some of the historical wrongs that were brought by the Indian Act. It was with absolute glee that I looked at this instrument and thought, "We can do something finally." We have women, aboriginal women—Mary Two-Axe Earley, Jeannette Lavell, Sandra Lovelace—who for many years looked at this piece of legislation that stripped us of our rights because we were women.

When they reinstated some of those rights they did it in such a way that it still diminished us in relation to the men in our communities. I looked at that piece of legislation and I thought, great, Canada has provided us with something that we can take to try to get some kind of fairness.

In addition to that they also provided us with some kind of money, because to take a charter challenge in Canada today, if you don't have \$100,000 in your back pocket, you don't go anywhere. The court challenges program provided half of that, but it was enough, along with the generosity of some lawyers, that we were able to take it forward.

My case is challenging the ongoing discrimination in the Indian Act. I had many conversations with various Ministers of Indian Affairs since 1985 about the unfairness of that, plus the unfairness of the matrimonial property issue. The Ministers of Indian Affairs over the course of the years that I've talked to them told me they would not touch the Indian Act with a ten-foot pole. So we couldn't look at legislative change without going to the courts.

My case started in July 1990. I was finally able to get before the courts in October 2006—16 years later. Throughout that period of time we were fighting against a fully funded government team that worked hard to prevent us from getting into the courtroom. Had I not had the support of the court challenges program and the support of two lawyers who gave freely of time that they will never be reimbursed for, never be paid for, we would not have made it into the courtroom.

As all of you know now, it was successful. Madam Justice Ross said that the Indian Act discriminates against Indian women in that it treats the descendants of Indian women differently from the descendants of Indian men and it unfairly advantages Indian men.

In June that happened. In July the Government of Canada appealed. They appealed the decision even though their own advisers said that it is not a winner, that they are not going to win this one; it is definitely in violation of the charter. But they appealed it.

In August they went to court and asked that Madam Justice Ross's order be stayed. So the decision that gave me victory for myself, my son, and my grandchildren will not be put into place, at least until we get to the B.C. Court of Appeal.

•(1145)

The B.C. Court of Appeal is going to cost about \$120,000. I do not have \$120,000. My family does not have \$120,000. I have no resources.

The Vice-Chair (Mrs. Irene Mathyssen): You have one minute, please.

Ms. Sharon McIvor: I have no resources, and lack of resources means we cannot mount a defence of this excellent decision at the B.C. Court of Appeal.

It seems that the 16 years it took us to get to court, because the government knew it was going to be a loser.... And now they've appealed it and they've stripped from me the access to the resources I might have had to defend my excellent decision. This is a mechanism I cannot overcome. If I cannot mount a defence, the decision will be lost.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you very much.

Thank you to all the witnesses, the presenters today.

We now will go to a round of questioning. This is a seven-minute round. We'll begin with Ms. Neville, please.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Thank you, Madam Chair. I'll be sharing my time with Ms. Minna.

Let me begin by thanking all of you for coming here today and thanking you all for the leadership you take on behalf of Canadian women.

At the risk of singling out anyone, I particularly want to acknowledge Ms. Day for the many roles you have taken and the many times you have spoken out, both before this committee and in other forums on behalf of women across the country, women of all communities.

I'd like to focus my questions on Ms. McIvor's case. What you didn't tell us about was the fact that your inequities came about through the unintended consequences of Bill C-31.

Everyone is very much aware of the situation you find yourself in. Now the government has stayed the decision. They put up the barriers but removed the ability for you to move forward. Could you talk a little bit further about what this means for aboriginal women across the country, the inability to move forward and appeal the decision of the B.C. court?

Ms. Sharon McIvor: Thank you for the question.

It is estimated that approximately 200,000 women and their descendants are in my situation. The fact that the court granted the stay of execution of the order and the fact that if I cannot mount a defence to it means that I and all these others who will benefit from the case will have no benefit. Because if we can't defend it, the government will automatically win.

•(1150)

Hon. Anita Neville: Can you tell us what the benefits will be?

Ms. Sharon McIvor: My benefit, the benefit for my children, is the recognition of belonging to their community. That's probably the core piece of this legislation for this victory.

For years, those of us who have been excluded because of the legislation—not because of the heritage, but because of the legislation—have not been able to fully participate in our communities.

It goes to the heart of who we are, the recognition of who we are. I know that in the Sandra Lovelace case the United Nations said the banishment of women from their communities was contrary to international conventions, because being part of your community and being recognized as part of your community is a right. It's a cultural right. It's a right to be able to reinforce your sense of self. That's the biggest piece.

In addition to that, a lot of women and their descendants live in slums in major cities. They have no access to benefits such as health benefits, education benefits, and dental benefits. Those are their rights. We have a birthright, and that's why I have been fighting for so long. I have that right by virtue of my birth, and they will not be able to access that. It's a total denial of rights.

The government recognizes it. You look at the documents, and they recognize that when they changed the law in 1985 they only did a partial job. It was recognized. Yet they are very reluctant to change it. They won't change it. The case said they should change it. Now they've challenged it and have put up an almost insurmountable barrier for me to continue with this.

Hon. Anita Neville: Does anybody else wish to comment on this case? Anybody else?

Ms. Carmela Hutchison: I'm Carmela Hutchison, with DAWN Canada.

My understanding is also that it's almost genocidal. You can correct me if I'm wrong in my understanding of this, but as subsequent generations continue to lose their status, it will eradicate the entire culture of aboriginal women within the next fifty to a hundred years.

Hon. Anita Neville: Thank you.

Ms. Day.

Ms. Shelagh Day: A number of people have commented that this is one of the most important sex equality cases of the last couple of decades.

For aboriginal women, it's clear that this is discrimination that's gone on for a long time, for decades and decades and decades. We've never erased the sex discrimination in the Indian Act. We did it partially in 1985, but poorly.

But it also has implications for all women, because partly what's at stake here is the question of whether women are actually able to convey to their children and grandchildren the status, the personhood—in this case the Indian citizenship—that men are seen to be the holders of, and we've recognized them as the holders of. So it's a huge case in its implications for aboriginal women directly and for all women more indirectly.

The fact that we're in the position now of having to go around with a hat to raise money to support Sharon to go forward, when on the other side the government is using our money to oppose it, is shocking. It's amazing to me that we've come to this particular point. I think we should all be embarrassed.

Hon. Anita Neville: Thank you.

The Vice-Chair (Mrs. Irene Mathyssen): Ms. Landolt.

Ms. Gwendolyn Landolt: I think I should make it clear that most women are perfectly competent of speaking out and it's such an insult to say that women are stupid and we have to have government payouts to succeed.

REAL Women has been in existence for 25 years, paying all of our money ourselves. We have been in the Supreme Court of Canada many, many times. It's because we have the support of our membership.

These radical feminists are a handful of women without membership who have no one to represent them and they have taxpayers' money to use judicial fiat in order to push their own specific agenda. It is truly insulting that they're being funded to present only their special interest views and other women such as REAL Women have funded themselves for 25 years by grassroots

support, which radical feminists obviously don't have, or they could survive like we have.

•(1155)

The Vice-Chair (Mrs. Irene Mathyssen): Thank you very much.

Now, for seven minutes, Madame Deschamps.

[Translation]

Ms. Johanne Deschamps (Laurentides—Labelle, BQ): Thank you, Madam Chair.

I am still shaken from the last comment.

First and foremost, I would like to thank all of our witnesses for having accepted the invitation to appear before the Standing Committee on the Status of Women. I feel it is necessary to hear your testimony. Of all of the presentations, I found those of Ms. McIvor's and Ms. Hutchison particularly moving. I believe that all of your comments portray rather well issues involving minorities.

It could be said that most of you favour the reinstatement of the Court Challenges Program. My Bloc Québécois colleague, Ms. Nicole Demers, and myself are of the same view. The two of us are our party's critics on issues pertaining to the status of women. Last fall and spring, we met with a number of women and human rights groups in Quebec and beyond. We were trying to understand why these groups were calling for the restoration of the Court Challenges Program. We have noticed that there is an entire movement that wants the Conservative government to bring back what it abolished. I am referring not only to the Court Challenges Program, but also to the Women's Program.

At issue are questions involving minorities, and above all, women's equality. I would like you to give us an overview by mentioning some of the most well-known cases in the Court Challenges Program's history. I don't know which of you would be able to do so.

[English]

Ms. Carmela Hutchison: I certainly can from DAWN Canada's perspective.

There are 12 cases that I could find, and I probably will have to look farther afield for more. The very first one was *Regina v. Rosenberg*, in 1998, wherein the court of appeal recognized that a same-sex partner is a legal spouse. That was successful.

Regina v. Latimer was when the Saskatchewan Court of Appeal upheld a mandatory compulsory sentence of second degree murder for Robert Latimer, who killed his handicapped daughter Tracy. That was successful.

Ferrell v. Attorney General was the constitutional challenge to Ontario's repeal of the Employment Equity Act, and that was successful.

Regina v. O'Connor was a criminal case about whether a counsellor for a victim of sexual assault must disclose all counselling records that defence lawyers wished to see. That case was intervened with at the Supreme Court of Canada and was successful.

One of the most famous cases was *Eldridge v. British Columbia* in British Columbia. This was a Charter of Rights and Freedoms case. British Columbia attempted to refuse to pay for medical interpreter services for deaf persons who were needing medical help. There was intervention at the Supreme Court of Canada, and it was successful. I believe that the particular woman needed a caesarean section. She was in the process of giving birth and was denied this assistance.

There was the *British Columbia Government and Services Employees' Union v. the Government of the Province of British Columbia*. That case concerned a physical fitness standard being applied to a female firefighter who was already performing her job, and when she didn't meet the new standard, she lost her job. That was upheld.

There was *Regina v. Ewanchuk*, which was the "no means no" definition of consent in sexual assault, which was successfully upheld.

I think there are two others.

•(1200)

[Translation]

Ms. Johanne Deschamps: Ms. Hutchison, you've sketched a very good picture. For each one of these specific cases, would there have been any way of making modest progress without the Court Challenges Program? Would those people have been heard? I think these cases are incredible. We are talking about rape cases or other cases where it took the program to get the services of a sign-language interpreter for a deaf person. Without this program, what could these people have done?

[English]

Ms. Carmela Hutchison: There would have been no alternative.

The other most famous case, of course, which was just recently decided, concerned VIA Rail, and it applies to all Canadians, both men and women. DAWN Canada was also an intervener in that case. There were rail cars purchased that were completely inaccessible for anyone in a wheelchair who wanted to ride VIA Rail.

The Vice-Chair (Mrs. Irene Mathyssen): I think Ms. Landolt would like to respond.

Ms. Gwendolyn Landolt: I think the point should be made that in nearly all the cases she has cited, the majority of women did not approve of the decisions. REAL Women intervened in many of those cases, and we represent mainstream Canadian women. Because they got funding, they were able to argue their own narrow, radical feminist agenda.

For example, there is employment equity. Most women do not support it. We like equal pay for equal work, but not equal pay for work of equal value. We do not agree with the Ewanchuk decision. For example, she cited the rape cases. We do not agree. So who are they to get funding to represent a special interest group only?

The Vice-Chair (Mrs. Irene Mathyssen): I'm sorry, time is up for this round.

[Translation]

Ms. Johanne Deschamps: I would like to conclude by saying that we, as a society, have the moral duty to take care of and defend our minority groups.

Ms. Landolt, how many active members are there in your group, REAL Women of Canada?

[English]

Ms. Gwendolyn Landolt: We have been in roughly 15 cases, about 13 of them before the Supreme Court of Canada, all paid by our membership, not the government.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you. We must move on. There will be another opportunity.

Ms. Grewal, for seven minutes.

Mrs. Nina Grewal (Fleetwood—Port Kells, CPC): Thank you, Madam Chair.

Thank you, ladies, for your time and your presentations.

I have a series of short questions for you. Have you or your organization ever applied for funding under the court challenges program? Did you ever receiving funding? If so, how many times have you successfully applied for funding? What was the nature of the cases for which you received funding? Besides the court challenges program, what are your other sources of revenue?

Ms. Shelagh Day: Can I make a suggestion about answering that question? That information is actually available. A lot of it's on the record. I'm not sure you're going to get what you want, going organization by organization, when in fact there's a lot of information available.

I might suggest that it's something that could be done better as a follow-up question that organizations could provide an answer to subsequently, if that's what Ms. Grewal wants or that's what the committee wants.

The Vice-Chair (Mrs. Irene Mathyssen): Would that be satisfactory, Ms. Grewal?

Mrs. Nina Grewal: Yes, sure. That's fine.

The Vice-Chair (Mrs. Irene Mathyssen): We would appreciate receiving that information. Thank you.

Ms. Nina Grewal: It is my understanding that the administration of the court challenges program has been dominated by individuals who are also members of the equality-seeking organizations. Ms. Day, for instance, would be a prime example of that.

Am I correct in my understanding, and if so, what impact did that have on the impartiality of this program?

•(1205)

Ms. Shelagh Day: I'd appreciate a chance to answer that, particularly given Ms. Landolt's comments.

I should start by saying that neither "feminist" nor "lesbian" is a bad word in my lexicon, but I sense that they are in Ms. Landolt's. I'm very proud of being a lesbian and very proud of being a feminist. To me, being a feminist means that I believe in the equality of women. I have believed that all of my life, and I've spent a good part of my life working for it.

The record that I have, only part of which Ms. Landolt has given you, is very long in terms of equality rights law, human rights law, working with women's organizations, advancing the equality of women, and I am proud of that record.

I know that one criticism of the court challenges program is that there is somehow a close connection between the groups that have been funded by the program and the structure of the program, and I'd like to answer that, because I think that's the substantive point here.

There is nothing that should be criticized about this. In fact, this is the strength of the court challenges program. In its history, it has had various incarnations. It started out as a program inside government, but when the equality rights section came along and we added that to the program, it was clear that it could not be run by government. It had to be outside. It had to be done independently by a third party, because government couldn't be in the position of deciding who it would give funds to, to challenge its own laws and policies.

So it was clear that it needed to go outside. It went first to the Canadian Council on Social Development, then to the University of Ottawa, to the human rights centre. Then after it had been cancelled by the Conservatives and restored, it was clear that it actually needed to be an independent body of its own. At that time we had a consultation that was presided over by Price Waterhouse. There was a big consultation report. The recommendation made was that there be a collaborative relationship among the groups that need the funding for these challenges; the bar, represented by the Canadian Bar Association; and academia, represented by the council of law deans. That's the structure that was then set up.

It seems to me that, as with every other body we can look to, what you do in a circumstance like this, democratically, is put in charge of a program the people who really have expertise in the area. So you want to people such a program with the people who really know about equality rights law and who really understand what the problems are that need to be addressed. Essentially, that's what's happened with the court challenges program. It is fundamentally premised on a principle that we recognize that there are certain groups in Canada who are still suffering from inequalities of various kinds, and that therefore we need to help them in their advancement to equality, and that they understand best what those particular problems are. So we put in the structure itself the expertise and the knowledge, both legal and from the community perspective. I think it's an extraordinary strength of the program that it is constructed in that way. It is not something to be attacked.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you, Ms. Day.

I know we want to hear from Ms. Landolt, Ms. Atcheson, and Ms. Hutchison, each for a very limited time, please.

Ms. Gwendolyn Landolt: I think a matter should be clarified here. All Canadian women want equality. There are different avenues and different ways to achieve it. But what we have here are the radical feminists deciding what equality is, using the taxpayers' money, and we all have to follow their definition. Ms. Day was the one who defined equality. She put it into one of the government reports. Every woman believes in equality. REAL Women has, as one of its articles of incorporation.... It's in our name—

•(1210)

The Vice-Chair (Mrs. Irene Mathyssen): Thank you.

I would like to hear from Ms. Atcheson and Ms. Hutchison. There is very limited time.

Ms. Gwendolyn Landolt: Okay, sure.

I just want to make it clear that not only some people believe in equality. All women do.

The Vice-Chair (Mrs. Irene Mathyssen): Ms. Atcheson.

Ms. Elizabeth Atcheson: Just very briefly, I believe that under the order of reference that the committee has, it's possible for the committee to separate, perhaps, the principles—many of which we're talking about in terms of access, in terms of how we look at our democracy, how we build our democracy—from, in some ways, the details of the current design of the court challenges program. We are more than 15 years into life with our charter. There's often no harm in taking another look. I don't know whether Pandora was a radical lesbian feminist, and I don't want to open a Pandora's box, but it seems to me that it behooves us to look at the principles that this is intending to achieve. If we have better ways of doing it, if we've learned some things along the way, that's a good thing, and I would urge the committee to do that.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you.

Ms. Hutchison, please.

Ms. Carmela Hutchison: Thank you.

I just want to say that the reason I got involved with DAWN Canada's board is because I have a Pentecostal friend who is quadriplegic, who begged me from a sickbed to please go. When I suggested to her that she might consider the possibility of running for the board, she indicated to me that she was too sick to travel safely because of all of the restrictions and barriers. I know that even my own safety is jeopardized by those restrictions and barriers.

I am a deeply Christian woman. I'm here on my 28th wedding anniversary, with my mother-in-law as my caregiver to assist me, because our family deeply believes very passionately that we must love all people and that it's not our place, but God's place, to make judgments. I'm here also to uphold the rights of a war bride who is currently fighting a hospital system that is trying to send her husband to an early demise. They feel he's going to die anyway, so if it's two weeks sooner, what's the point.

So these are the things.... And I also have served in this government's military. Currently, even though I'm on disability, I pay taxes, and I am the main income earner of my family. So I too am a self-reliant woman and a Christian one.

I would just like to say that you don't represent all the views of mainstream women necessarily.

Thank you.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you very much.

Now I'm going to ask questions on behalf of the NDP caucus. I'll ask the clerk to keep a very close eye.

My first question is a general one, please, to anyone who would like to answer. Does cancellation of the court challenges program contradict our obligations under CEDAW?

Ms. Gwendolyn Landolt: REAL Women is an NGO with consultative status with the Economic and Social Council of the UN. As such, we've attended over 35 UN meetings and we happen to know a great deal about CEDAW.

What happened is at Deep Cove, New York, in December 1996, it was decided by a group of feminists—one of them was from Canada, the University of Toronto—and the heads of the UN sections that they would use CEDAW and all the other reporting groups in order to interpret it according to a radical feminist agenda. And if anybody wants to dispute me, I have a copy of that document.

Since 1996 CEDAW has been promoting an agenda that is not accepted worldwide, and certainly is not accepted by many Canadian women. So anything CEDAW says is not to be taken seriously, because you know, they're reinterpreting all the seven human rights treaties according to their feminist agenda. I wouldn't pay attention to what CEDAW says.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you. Could you forward that document?

Ms. Day.

Ms. Shelagh Day: Article 3 of the convention says that signatories to the convention are to take all appropriate measures to advance the equality of women. That essentially puts an obligation on the Canadian government as a signatory to take proactive measures, to take steps to ensure that women advance to equality. The court challenges program is one of those steps it has taken. Now it has de-funded the program. It's required, under article 2, to have legal measures and mechanisms in place to ensure that women can exercise their rights to equality. Again, the court challenges program is clearly one such measure. The de-funding of the program, then, would contravene that obligation.

I will be most interested when Canada is reviewed again to see what the CCR committee has to say if the de-funding is still in place. I hope it is not.

I'd like to remind the committee, so I'm turning to the Conservative members of the committee to ask them very sincerely to reconsider this de-funding. It's essential to women in Canada that we have access to the exercise of those rights. I want to remind the members that when the program was cancelled before, in 1992 by Kim Campbell, she then reconsidered and changed her mind. She said in 1993 that if the Conservatives were elected they would reinstate the program.

I think that's extraordinarily important, because I think it's fundamental to the exercise of rights in this country.

•(1215)

The Vice-Chair (Mrs. Irene Mathyssen): Thank you.

It's my sense that the court challenges program is unique. Canada was a pioneer in that regard. How is this program viewed by the international community, and have we lost our international reputation in cancelling it?

I'm going to go to Ms. McIvor to answer.

Ms. Sharon McIvor: I just wanted to say that if you read Canada's report to the CEDAW committee, they've always put the court challenges program forward as one of the measures they have taken to help comply with the obligations they've undertaken.

I know that Canada does hold up the court challenges program as one of the significant measures. If you're looking at the outside community, there have been other countries that have looked at our program to see if it would be suitable for them. So it is a program that is internationally recognized as a very forward step Canada has taken.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you.

Professor Buss.

Ms. Doris Buss: I think it's important to remember that something like the court challenges program fits in with a larger profile that Canada historically has in terms of its role in the international community. I make these comments as a professor of international human rights law, and I say the evidence we have, to date, is that Canada's role in the international community has seriously eroded over the last several years, and it's an important step. When we start to de-fund programs like that, we are feeding into a larger degeneration of our authority to speak and act on the global stage.

I also want to make a comment about the discussion we've had so far. The remit of this committee is to consider how the de-funding of this program has impacted on minority women and aboriginal women, in particular. I want to keep them front and centre because it's the rights of those ordinary Canadians that are very much at stake here.

When we're talking about what are the gains of the CCP, I think we also need to think about what some of the potential losses are that we're going to experience in the future. Some of the major gains we've achieved have been in the areas of sexual violence against women, an area which Canada has been a world leader in combatting.

What we're seeing now is there have been several cases coming up to the lower levels of the court that are attacking the gains we've made in protecting women who are victims of sexual violence from defendants who are seeking to have access to their records, in protecting them from onerous cross-examination. Those gains are very much under attack and we no longer have the funding to protect them.

The Vice-Chair (Mrs. Irene Mathyssen): Professor Jackman, less than a minute, I'm sorry.

Ms. Martha Jackman: I just wanted to make the point that in addition to the CEDAW committee, the UN committees reviewing the International Covenant on Economic, Social and Cultural Rights, as well as the UN committee reviewing the International Covenant on Civil and Political Rights, have also commented favourably on the existence of the court challenges program. So even if you believe that CEDAW is a feminist conspiracy, I don't know if we could tarnish all international human rights with that brush.

•(1220)

The Vice-Chair (Mrs. Irene Mathyssen): Thank you very much.

Ms. Gwendolyn Landolt: I would like to say that in fact all of the committees were involved in that meeting in Deep Cove.

The Vice-Chair (Mrs. Irene Mathyssen): No, I'm sorry, we have to go on to Ms. Minna for five minutes.

Hon. Maria Minna (Beaches—East York, Lib.): I'll split with Mr. Pearson, that's fine.

First of all, thank you for coming.

The cases like "no means no".... I do not want us to lose our way here on the most important things we're addressing today, to some degree, because there are some very fundamental cases. "No means no" is something that went to the Supreme Court. It would not have happened had it not been there, I don't think.

The aboriginal women having to pay into CPP but could not collect went to the Supreme Court. So for them to get their rights, it had to go there.

Even mothers and fathers, in terms of being able to declare their children who were born abroad as citizens.... Fathers could, mothers couldn't. Let's be realistic about some of the fundamental things we've been talking about here.

Having been a minister at the international level, I can tell you that Canada at all international meetings around the world has a tremendous amount of reputation because of this piece. The CEDAW is a major piece of that. That is supported by many countries.

I just want to know what kinds of cases from LEAF are now in the pipeline that you think will be jeopardized as a result of having lost this.

Very quickly, Ms. Buss, from LEAF, and then maybe Ms. Day, so we can go on to my colleague.

Ms. Doris Buss: I probably pre-empted your question a little, but I thought we were running out of time.

We have had some gains in terms of protecting access to third-party records in sexual violence cases. We now find that there are cases coming up through the system in which defendants are challenging and wanting very broad, very unrestrained access to third-party records. That would take us right back to where we were in the 1980s, before we had all of these gains. That's a lot of money spent for not very much.

We could stop those cases now. We could provide the court with effective information to make a reasoned and balanced decision, to have a full and fair hearing, but we're prevented from doing so. There are cases that are very difficult to access. There are cases that are very difficult to research. We can't keep tabs on them all, and very slowly, piece by piece, they're eroding those gains that are so important for protecting anyone who is a victim of violence. That would be one area.

I think another area we're starting to see in Canada is the impact of things like third-country agreements and the position of agricultural workers. All of those are cases in which we are being restricted in our ability to give the court the information it needs to make an authoritative decision.

Mr. Glen Pearson (London North Centre, Lib.): Madam Chair, my question is for Ms. Day.

I was a firefighter for 30 years before I retired to come on to this job a year ago. We fought very hard about 11 or 12 years ago to try to remove the barriers to women becoming firefighters. It was hugely difficult and finally successful.

I also direct a food bank in London and work with other Ontario food banks trying to deal with the barriers to women who are suffering some pretty acute cases of poverty, especially in aboriginal circles, in what they're trying to do. I am very much aware that at all various levels of government, this is a real issue.

I would like to ask you, Ms. Day—because when you were speaking you spoke about provinces and working with the government—could you maybe fill us in a bit on just what some of the provinces are trying to do, how they are seeking to maybe handle some of this if there is a gap because of the lack of the court challenges funding?

Ms. Shelagh Day: I'd say there's a huge gap at the provincial level because of the lack of court challenges funding, and I don't think there's anything that fills it. It has been a concern of everyone in the community. You can go back in the records from the beginning of the court challenges program. Groups and all of us were saying we have to have this applied to provincial laws and policies as well.

One of the reasons we've been saying that is that provincial laws of course deal with social assistance, housing, employment, education, and so many things that are just fundamental. We have the charter rights there, but we actually have no access to using them.

It would be nice if we could say that legal aid somehow has provided a route for people to do that, but in fact when we look across the country it has not, so it hasn't been an alternative route for people at the provincial level. I would say we still have that big gap, and we need not only to have the court challenges program restored but also to have it expanded to provincial jurisdiction, as we have been saying for the last 22 years.

• (1225)

Mr. Glen Pearson: All right. Thank you.

Ms. Martha Jackman: Ontario is one of the few provinces in which the legal aid system has a test case litigation fund, and it's actually increased the pressure on that fund unbearably, because suddenly they have applicants who formerly might have gone to the court challenges program.

Mr. Glen Pearson: Thank you.

The Vice-Chair (Mrs. Irene Mathyssen): Madame Boucher, you have five minutes.

[Translation]

Mrs. Sylvie Boucher (Beauport—Limoilou, CPC): I would like to thank our witnesses for coming to discuss this topic, which can accurately be described as a burning issue, in light of the circumstances. That is the message being heard around the table.

I would like to remind you that this government gave an unprecedented amount of \$15.3 million to the Women's Program, as well as \$29.9 million a year to Status of Women Canada, which is a record.

Ms. Buss, to your knowledge, have other countries, had a program like the Court Challenges Program? If so, were they effective and did they produce concrete results?

[English]

Ms. Doris Buss: I'm not in a very good position to answer that question. Is there anyone else?

[Translation]

Mrs. Sylvie Boucher: Can anyone answer?

[English]

Ms. Elizabeth Atcheson: I can't answer the status part, but I think I can speak to the international part.

Virtually every country that has emerged from whatever kind of government into a democracy—China, eastern Europe, African countries—has come to Canada; they are looking to us for our models and our leadership. So it's not that there are other examples so much as they see us as a model. Many countries have vast constitutional protections but no means to enforce them. They come here to talk to us.

[Translation]

Mrs. Sylvie Boucher: All right.

[English]

Ms. Gwendolyn Landolt: I'd like to make a comment with regard to the question of equality under the UN treaties. It's how you define it. Obviously there are different definitions. And as I say, the CEDAW document requires an interpretation. That may be their interpretation, but every time the court challenges program has been mentioned in a report to CEDAW, you will note a Liberal government reported it, and they founded that court challenge, not the Conservatives.

[Translation]

Mrs. Sylvie Boucher: That does not answer my question. I would like to ask other questions, please.

Ms. Day, aside from governments, do you have any other sources of funding? Do you carry out any fundraising activities for your respective organizations?

Mrs. Martha Jackman: I would like to answer, Madam Chair. That is a very good question. The National Association of Women and Law lost its funding for promoting women's equality. The association is not eligible to receive new funding from Status of Women, because the criterion was eliminated. The funding was increased but overall, organizations that promote women's equality are no longer eligible.

We are always trying to fund-raise, but, as we have explained, it is not easy to collect funds to promote equality for women and girls. If some think we can solicit charitable donations for this cause on an equal footing with other groups, they misunderstand the importance of the goals of these organizations within Canadian parliamentary democracy.

•(1230)

Mrs. Sylvie Boucher: Before becoming an MP, I worked in the community sector, and we were able to collect money in other ways, for example, through fund-raising campaigns.

Ms. Day, are you able to raise funds other than from governments?

[English]

Ms. Shelagh Day: Let me say first of all about the Canadian Feminist Alliance for International Action, yes, we do get money from other sources. It's not a lot. We're trying to figure out ways to get more money from other sources. As far as I'm concerned, I'm in complete agreement with Professor Jackman. This is not a substitute for money from government to support women's activities.

Part of the understanding we have had with governments is that because women are so under-represented in the formal places of government, we should be able to have some support from the taxpayers to allow us to participate better. And that's what this funding has been about.

But let me say something about this kind of funding in particular. The charitable tax laws currently say that litigation is not a charitable activity. That means under our current tax laws you cannot raise money to support a piece of litigation. So you cannot get a tax receipt if you're raising money for a particular piece of litigation that is not a charitable activity.

When we lose the court challenges program, we cannot go directly, under our current tax laws, to raise money privately with any advantage.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you very much.

We'll go to Madame Thi Lac, please.

[Translation]

Mrs. Ève-Mary Thaï Thi Lac (Saint-Hyacinthe—Bagot, BQ): Thank you very much.

I'm very pleased to meet you today. I've heard many touching things, but I've also heard things that I find terribly shocking.

I am in full agreement with my colleague for Beauport—Limoilou when she talked about the need to promote women. But this is useless if women's groups do not have the funds to defend themselves. There is a serious problem from the outset.

With respect to the specific cases, I know that a number of them were lost individually, but they also became very important cases for the entire community. Thank you.

My question is addressed mainly to Ms. Landolt. When you talk about equality, you must bear in mind that more often than not, women are the victims. We cannot talk about equality when we come to the rescue of victims. And women are victims more often than other social groups.

In addition, when I hear you talk about taxpayers' money, never forget that women make up 52% of the population. They are taxpayers too.

The first question I have for you is the following: Which cases argued under the program do you disagree with? Are they cases involving rape? Are they cases pertaining to promoting the rights of the disabled? What is your definition of feminism?

[English]

Ms. Gwendolyn Landolt: First of all, my definition is what the dictionary says: equality for women socially, economically, and politically. That is understood, and I think most women in Canada would agree with it. But you have a different interpretation from the special interest groups of feminists.

For example, you mentioned the rape shield law. We do not agree with that. We believe that when a man is accused, he should be treated as fairly before the courts as a woman would be. That means that if his sexual history is part of the evidence, why is hers not?

We do not agree with them with regard to third-party records. Why? Because the sexual assault centres are not necessarily accurate about what happened. They should be allowed to disclose their material, in fairness, to a court so there can be a balanced judgment.

[Translation]

Mrs. Ève-Mary Thaï Thi Lac: I am sorry, I would ask that you make your answers brief, as I have several questions to ask.

When you talk about the law, what do you think about protecting women, who are often victims? These programs are there to help women who have been victimized. I've heard you talk about the legal aspect, I would now like to hear you talk about protection. This is another issue that must be discussed regarding the program.

•(1235)

[English]

Ms. Gwendolyn Landolt: Well, number one, not all women are victims. Some women are, whether they're aboriginal women, or whatever. There are exceptions. But the vast majority of women are not victims of the so-called patriarchal society.

Look at the universities. There are more women there than there are men. Fifty-nine percent of the medical school graduates now are women. In law school it is fifty-five percent.

I am a lawyer, and I know that women are not necessarily victims. Some are, and I gave you two examples of them. We do believe that women should be protected from rape. But we object to the sexual assault law because it does not give balance. You have to be fair. You have to be fair in the courts of law and not give the upper hand to one side that is before the court. And that's what's happened with the rape shield law. A woman's sexual history is never disclosed, but the man's is.

[Translation]

Mrs. Ève-Mary Thaï Thi Lac: I would also like to hear the other panellists talk about protection. What does the program do to protect women?

[English]

Ms. Shelagh Day: I think the things that are being mentioned here.... In fact, women made very important interventions to say that what we call rape shield laws were absolutely essential to women being equal in this society.

One of the key cases along this line, which was mentioned very briefly this morning, was the case against Bishop O'Connor. You'll remember Bishop O'Connor in British Columbia, who in fact was a bishop who had been in charge of a residential school. He had sexually abused the girls who were in the residential school. When they made complaints of rape and sexual abuse against him, he wanted to get their records, which, as the person in control of the school, he had controlled.

Women intervened to say that this was not a fair circumstance for the girls who were making the complaints against this very high official who had all his power. They said that if in fact you wanted to protect women properly, you could not allow him, in this circumstance, to have access to the records he was actually involved in creating in the first place and now wanted to use to defend himself. Those were extraordinarily important principles. They still are.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you very much. I'm sorry, we have to move on.

Ms. McIvor, I want to ask you a question. We've heard today that fundraising is the solution to financing these cases. Could you explain why it wasn't an option in your case? And could you elaborate in terms of the fact that you don't seem to be able to proceed? What is your current situation?

Ms. Sharon McIvor: I am a single working mother. I earn a decent living to provide for my family. I have no disposable income whatsoever. I don't belong to an organization that has the capacity to raise money. I come from a background of poverty.

Ms. Landolt, if your organization would like to help me, I would much appreciate it. I'm one of the women in Canada the organizations speak for, but when I went looking for support and for financing, these radical feminists were there and helped out.

It's appalling. I'm sitting here listening to dialogue as if those rights enshrined in the charter mean nothing. You've got a Canadian system that says if there are violations, you can go to court. You can have your day in court, right? What happens if in order to get your day in court you've got to hand over \$50,000? Who has \$50,000? Which Indian woman has \$50,000 that's not spent...? If she had it, she probably wouldn't need that kind of protection.

We have so many women in poverty, who don't have access to money. Our women don't even have access to proper housing, proper medical care, or anything. You're saying the program is gone.

And I see Ms. Landolt aligning herself with our Conservative people, and that's why I'm in tears to think my government will turn its back and say you've got money; you can raise your own money; you don't have to look to the government.

The government put the restrictions in place. It's legislation they've put into place. The government put the charter in place for us to use, but it's useless if we can't get there. It's useless if we don't have the money to get there. Make it free. Provide me with some free legal counsel. Provide me with some free research.

But you can't do that. You're saying we should go and raise our own money.

•(1240)

The Vice-Chair (Mrs. Irene Mathyssen): Thank you.

Ms. Hutchison, please. You had your hand up.

Ms. Carmela Hutchison: Thanks.

Many times it's been suggested—fundraising, family, and friends. Unfortunately, when you are someone who comes from a very disadvantaged situation, as Ms. McIvor and I do, that isn't a possibility.

My husband and I put each other through school. We've had tremendous support from the good woman sitting behind me, my mother-in-law, but in terms of approaching organizations to try to get funding for the medical treatment I need....

I have a mental disorder that no psychiatrist in the province of Alberta will treat. Foothills Hospital will not see me in the OT department to even assess me for a walker.

We're supposed to have universal health care, and because I have a traumatic brain injury and a mental illness, I'm denied brain injury rehabilitation. Medical fees for me in this country are as serious as for someone in the U.S. There are no qualified personnel to care for me. I've got to suck it up and I've got to deal with it on my own. You should be applauding that.

The reality is I ended up in the leadership of every organization I approached for assistance as to how I might help myself. That is how I've come to this table. And while it's been a privilege to come to this table, also our organizations are pressed so badly with every woman....

As Shelagh said, I too am privileged. Even in my disadvantage, I have a husband, a home, and a vehicle. But every ounce of every day—and I go as hard as I can, to the detriment of my health—is in the service of the women of this country. There are people who phone me at 2 a.m. There are people who phone me at six in the morning. There are people who phone me to fall asleep at night. There are people whose tears I dry, whose houses I try to help clean.

We are so maxed out just trying to service the people coming to our door that we can't even think about fundraising.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you. That's time.

We have to go on to Ms. Davidson, please.

Mrs. Patricia Davidson (Sarnia—Lambton, CPC): Thank you very much, Madam Chair.

I'd like to thank each of the presenters for being here with us today.

Ms. Day, I apologize. I had another committee beforehand, so I did miss part of your presentation, but I'd like to thank all the rest for being here and sharing their thoughts and ideas with us.

We know that this issue has been studied by about three other committees as well. We felt strongly, because we're the Standing Committee on the Status of Women, that we needed to hear the issues here firsthand, as well as study the reports from the other committees.

We've heard certainly a diversity of ideas here today. We've heard some things that were a bit surprising in some ways. We've heard that perhaps the CCP wasn't the be-all and end-all, but it did serve a purpose. We've heard that it was not accountable, that some people who they may have felt should have got funding didn't, that it funded only narrow views.

But the thing that I think I heard today that intrigued me the most was from Ms. Atcheson. I think you said that perhaps we need to separate the principles from the details of the design—if I captured correctly what I thought I heard you say. Could you please elaborate some more on that?

•(1245)

Ms. Elizabeth Atcheson: I'll try. It's only something I've just started thinking about.

Let me say, first of all, we can and do raise money for the work that we do. However, it is extremely difficult to raise money for litigation. I've been doing it for 30 years. It takes people who are highly, highly committed, and there's a very small pool of people in that category.

Let me go to the issue of principles from design. You have to look really hard in the blue book, in the main estimates, to find a program at \$3 million. This is a very small program in federal terms. In fact, we've probably spent more money on the committees looking at it than it would have cost to run it for this year, which is kind of shocking.

If in fact there's value in the effort—and that is certainly our argument and the argument of many people who aren't perhaps as close to it as we are but who look at the law or who look at these processes—then there's lots of room to expand it.

I disagree that it's not accountable. I think it has been very accountable for the money and I think that's entirely provable, but if there are accountability mechanisms, we have that expertise to get the right accountability mechanisms. We have expertise about appointments, to get the right appointments. We can do all these things if in fact we think there's a value in making sure that people who would otherwise not be able to can argue things that are of significance to the country.

I'd like to go back to a question. Our cases come up through the court system. They're funded in whatever way they are by parties. A lot of the work that we've done has been done by interventions, and that is because parties don't have a legal obligation or a professional obligation to speak to all of the issues that are raised in a case. For instance, in these criminal law cases, the parties—the crown and the accused—have no legal or professional obligation to think about how this affects the situation in which thousands and thousands of women find themselves.

What we need to do is think, does the court effort have value? Is it of value to be able to go to court, to be able to identify things that the court needs to know that are within its ambit, in a fair process and a process where the court has to hear from all parties equitably? If there's value in that, then let's take our public administration expertise and our public policy expertise and find a better way to do it.

I think inevitably that means expanding it. I don't happen to think that's a bad idea. I think \$3 million in the federal system is a grain of sand.

Mrs. Patricia Davidson: Thank you very much.

I know that we decided to pass unanimously the motion from Ms. Demers to hear people on this issue. We were asked if we knew of names we could put forward so people could come and give witness. Of course, there has been no lack of names coming forward. As a matter of fact, I think we've seen most of you people before at the status of women committee at one time or another. Getting a balance was a difficult thing to do.

So I thank each and every one of you for coming out today and speaking with us. I think you've given us a perspective that we needed to hear. I think the majority of you have given very balanced presentations.

I guess, from the Conservative side, we had a difficult time putting names forward, so I appreciate hearing from each of you.

• (1250)

The Vice-Chair (Mrs. Irene Mathyssen): Thank you very much.

We have to move on to the last round, and it has to be for two minutes each—that's for the question and the response—so please be succinct.

We'll go to Ms. Minna, please.

Hon. Maria Minna: Thank you, Madam Chair.

First, I want to say thank you for coming today.

The words “radical feminist” have been thrown around this morning. I have to say that I never thought of myself as radical, but

certainly I've always thought of myself as a feminist. I suppose at times in this room I'm a radical, as well.

But you know what? Without us or without the famous five, who were very radical compared to me, we wouldn't even have the right to vote today, probably, and we wouldn't even be persons, and who knows what else we wouldn't have.

Actually, after listening to some presentations on the tax structure in the last couple of days while looking at gender budgeting, we also found that the whole basis of the tax structure is quite systematically racist and discriminatory against women. Maybe we should do a charter challenge on that as a whole. I think that would be a fun one to do, quite frankly.

Having said all that, I guess what I'm saying, really, is that we know that the problems are there. We know that the systemic problem of discrimination against women in this country is alive and well and exists. We know that government policies—federal, provincial, municipal, and what have you—can miss the mark and create disadvantages, unintended or otherwise. And there are still nuggets there from previous legislation that need to be addressed.

We know that “no means no” would never have happened, and I think that's something we would never want to go back on.

For me, obviously, the court challenges program is of fundamental importance in continuing to give women and all minorities in this country an ability to defend themselves.

I guess I have more of a comment than I have questions, partly because I think, to some degree, a lot of the things we've discussed here this morning..... I have here a whole list of cases that affected only women, because I went on the website of the charter challenge program itself. I didn't even get cases that affect the other minorities overall, just women. There is a whole slew here, which I'm not going to try to put in the record.

I guess my only question to all of you would simply be this: Looking forward rather than backward, what would you do? Let's reinstate the program, yes. But what else would you do with it? Actually, that's even more important to me at this point.

The Vice-Chair (Mrs. Irene Mathyssen): We're at two minutes.

Hon. Maria Minna: Sorry. Can you answer quickly?

The Clerk of the Committee (Ms. Danielle Bélisle): Maybe we could do three minutes each.

The Vice-Chair (Mrs. Irene Mathyssen): Okay. Ms. Day.

Ms. Shelagh Day: Put the funding back, extend it to provincial jurisdictions, and add a lot more money.

The Vice-Chair (Mrs. Irene Mathyssen): We'll go to Mr. Comuzzi.

Ms. Gwendolyn Landolt: Madam Chair, obviously we do not think it should be reinstated. It's a discriminatory, biased organization, and it should be scrapped. It was rightfully scrapped, because it's not open to all women and to all people. And it is really a running sore in the face of democracy to allow it to continue.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you.

Go ahead, Mr. Comuzzi.

Hon. Joe Comuzzi (Thunder Bay—Superior North, CPC): Thank you, Madam Chair.

When I woke up this morning, I didn't think I'd end up here when I came to work, but I'm glad that I did come.

The first three questions in my office this morning were about the absence of funding. Someone called in about the reduced Elizabeth Fry allotment from the federal government. The second one was a complaint about the AIDS \$15 million, and the third one was something about.... I forgot what. Anyway, that's why I decided to come this morning.

I was really interested in Ms. Minna's first round of questioning to Professor Buss. She asked a question that was not answered. The professor had made some allegations, and I think you were trying to show some background factual information on why you would make these allegations. I think that's what you were trying to say.

What I would have liked is to have heard the case law. I don't expect you to give it to me now.

Hon. Maria Minna: I'm sorry, Madam Chair, if I could—

Hon. Joe Comuzzi: Just allow me for a minute, Maria.

If I could have that case law to back up your accusations, that would be very helpful.

Hon. Maria Minna: No, no. You can't just put words in my mouth, I'm sorry.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you, Mr. Comuzzi.

Ms. Minna needs a moment.

Hon. Maria Minna: I appreciate what you're saying, but with all due respect, that was not my question.

My question was simply, what other cases are on the docket, in progress, that cannot be fulfilled.

•(1255)

Hon. Joe Comuzzi: We're asking the same thing.

Hon. Maria Minna: No, you were talking about something else.

Thank you.

Hon. Joe Comuzzi: You and I very seldom agree, so, that's good.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you.

Hon. Joe Comuzzi: We carry on the challenge, Ms. Minna.

The Vice-Chair (Mrs. Irene Mathyssen): Professor, for a minute.

Ms. Doris Buss: Okay.

I'm trying to make clear what the original question was.

As I understand, the question you would like to have answered is what some of the cases are that would remain unfulfilled as a result of the de-funding of the court challenges program, and that's an excellent question.

I think we have talked about a few. Obviously, Ms. McIvor has given very powerful evidence about one of the most important cases that's working its way up. Other areas I've alluded to are the cases that are coming up through the criminal bar. Also, Elizabeth Atcheson made clear that there's a problem here, because in a case like that the defence and the prosecutor are really focused on their particular case. What they're doing is actually unintentionally eroding some of the very important charter gains that have been made around the protection of privacy of Canadians, the protection for women against harmful effects of stereotypes. They don't intend that to happen, but the cases are coming up, and somebody needs to be at the court to say, "Hang on, you don't actually see what's happening here. Here's the evidence to the court. We have the expertise and we can provide it." Because we don't have funding, we can't get access to those cases. And when we do find out about them, we don't have the money to launch a challenge.

Those are some examples.

Hon. Joe Comuzzi: Thanks for that.

The Vice-Chair (Mrs. Irene Mathyssen): Joe, I'm sorry—

Hon. Joe Comuzzi: Just let me ask Sharon McIvor, for a moment—

The Vice-Chair (Mrs. Irene Mathyssen): No, no. I'm sorry.

It's Madame Deschamps.

[Translation]

Ms. Johanne Deschamps: I would just like to make a brief comment, because my time is limited.

I would like to come back to funding, because governments today have a tendency to rely on the community sector; Ms. Boucher referred to this earlier.

I find it rather a shame because now, in the community sector, there are organizations and associations that hold all kinds of drives for people who are alone, the elderly, people who are sick, the disabled, crime victims, victims of sexual abuse, the disadvantaged, and people with drug problems. I could go on and on, but the fact is that the community system has been allowed to take over in recent years, and this, in my opinion, has led both the provincial and the federal governments to offload their responsibilities.

What most of you have told us this morning is that it is important to reinstate the Court Challenges Program, even if, as Ms. Davidson pointed out, it is not perfect. As parliamentarians, it is our responsibility within the government to maintain this program and to improve it if possible.

I must say there is something that I have had difficulty understanding ever since this government came to power. They have tried to make us believe that backpedalling is a good idea. There is a total lack of understanding on their part.

There has been progress made with regard to the status of women. It is important that we not let you down or take away the tools that you are entitled to in order to further the cause of women. I defy any one of you to stand up and tell me that gender equality has been achieved.

Please stand up.

[*English*]

The Vice-Chair (Mrs. Irene Mathyssen): Thank you. That's time.

I have a very quick question, and then we'll conclude with Madame Boucher.

The previous Minister for the Status of Women said that there was no problem cancelling the court challenges program because every woman in Canada is able to access her rights with a phone call. Do you have a quick comment in regard to that statement?

Ms. Carmela Hutchison: For anyone who's interested, I have my personal directive here, which is similar to a living will. Attached to it is a letter from the health minister explaining why I don't have access to my health rights.

The Vice-Chair (Mrs. Irene Mathyssen): Thank you.

I'm sorry, I have to give the last word to Madame Boucher.

[*Translation*]

Mrs. Sylvie Boucher: Point of order.

Earlier, opposition MPs on this committee referred to certain guests who are here today, saying that they were obviously on our side. I would like to correct that: the people we invited are not here today.

•(1300)

Ms. Johanne Deschamps: We do not know who you are referring to.

Mrs. Sylvie Boucher: I am saying this because earlier, certain things happened. I would just like to set things straight.

[*English*]

The Vice-Chair (Mrs. Irene Mathyssen): I'll ask the clerk to please respond to Ms. Boucher.

[*Translation*]

The Clerk: Ms. Boucher, we called everyone.

Mrs. Sylvie Boucher: Yes, but the people we invited are not here today.

The Clerk: Two people whose names were suggested by Mr. Stanton turned down our invitation. So we were given other names. That happened on Thursday.

Mrs. Sylvie Boucher: I was not aware of that.

The Clerk: So we suggested that they come on December 11 and we are waiting for their reply.

Mrs. Sylvie Boucher: That is fine.

The Clerk: As concerns Ms. Deschamps, we tried to balance things out by going on to the Aboriginals, perhaps on December 11. However, one of the two witnesses suggested by Ms. Demers turned down our invitation, and we are still awaiting a reply from the sexual assault crisis centres concerning the appearance on December 11. But absolutely all the witnesses whose names were submitted to us were called.

[*English*]

Ms. Gwendolyn Landolt: Madam Chair, I'd hardly say that there was balance today. You get all these people who get funded by the program, and REAL Women are left without.

The Vice-Chair (Mrs. Irene Mathyssen): Okay, this meeting is adjourned.

I would like to thank the witnesses for coming. We're very much at the mercy of time. I wish we did have more time, but we thank you for the energy and the commitment that you have given to this committee today. We are most grateful.

The meeting is adjourned.

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