

**Barriers to Justice for Nova Scotia Women  
In Need Of  
Legal Aid**

Nova Scotia Coalition of Women for Justice  
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## Executive Summary

Positive experiences with access to justice were shared by some women, that included high quality legal support and synergistic benefits of involvement with legal aid and women's organizations simultaneously. However, as described in the limitations section of this report, this research is not intended as an overall assessment, but rather as a tool for identifying barriers for particular groups of women. Therefore, a higher proportion of this report is dedicated to discussion of these barriers than to general satisfaction with services, as stated by lawyers or women.

The objective of the research documented here has been to identify barriers facing diverse women in accessing legal aid in Nova Scotia., and to provide a basis for recommendations for improved access to legal aid for women. As is encouraged by *Status of Women Canada's Women's Program*, this research used a feminist participatory action methodology, a method that provides for dialogue with women, allowing them to speak in their own voice and using their insights as the basis of recommendations. With regard to interviews with lawyers, the same methodology was used, using interview guides developed collaboratively with women's organizations. Although this process is augmented by limited quantitative analysis, the primary research method has been the gathering of narrative for qualitative analysis, using semi-structured interviews and focus groups with targeted women, and interviews with legal aid lawyers. Targeted narrative qualitative information from women such as that in this research cannot be used to draw conclusions about Nova Scotia Legal Aids' overall performance regarding women clients. However, as this research focused on identifying barriers for women from diverse, non-dominant and often oppressed groups, targeted approaches were more suitable here.

Women clients, lawyers and advocates identified the following areas where barriers exist:

- **Awareness of legal aid entitlements:** Lack of education, linguistic challenges, mis-information about the law, abuse and cultural isolation hindered women's awareness of legal aid entitlements
- **Application Process:** Barriers were identified for abused women, women with literacy challenges, immigrant women and Aboriginal women whose first language is not English
- **Accessibility:** Language and cultural barriers, transportation and child care challenges all hindered access to legal aid
- **Eligibility:** Financial cut-offs were excluding women who could not afford private representation. Lack of awareness re the appeals process affected women also.
- **Menu of Services:** Lack of coverage was identified as affecting women most seriously in the following areas: criminal representation for matters deemed to be unlikely to result in incarceration; institutional matters for incarcerated women; representation for survivors of violence during the trials of accused, or in seeking peace bonds; in some civil areas, especially matrimonial property and divorce ,as well as the pursuit of economic and social entitlements outside the family law area. The scheme based on categorical entitlement altogether was seen as dis-serving women's holistic experience and legal needs
- **Quality of Services:** Caseloads and delays, communication issues and problems associated with the presence of abuse were identified as challenges to service quality by both women clients and their lawyers. Women clients identified lack of civil treatment and respect by certain individual lawyers and reception staff ( sometimes associated with racism,) and lawyer's gender, class and race based stereotypes as obstacles to effective advocacy.

The importance of community organizations, especially women's organizations , in best outcomes for women clients was emphasized by all informants.

## Recommendations

### ***Recommendations - Community Linkages With Other Organizations***

**Women's** advocates and legal aid lawyers should work together to create a screening tool to identify partner abuse in clients' lives. This screening tool should then become part of the application process.

**Legal** Aid Lawyers should be provided with training on the potential impacts of woman abuse on both the criminal and family law cases. Organizations serving abuse and women in conflict with the law should be involved in development of educational materials in all regions.

**Nova** Scotia Legal Aid and women's organizations should partner in advocacy for increased judicial education on abuse issues as they affect legal rights and proceedings. They should work together to create an educational package including academic work on the impact of intimate partner abuse on parenting ability and on the risks for women and children where access is not limited.

**Nova** Scotia Legal Aid and women's organizations should partner in advocacy for increased resources for research and expert opinions on matters where woman abuse is a factor.

**Legal** aid lawyers need accurate, up to date knowledge of community programming available to women.

**Support** for woman legal aid clients provided by women's organizations that directly supports legal aid effectiveness should be identified, measured and valued, especially with regard to best outcomes for women.

**Nova** Scotia Legal Aid and women's organizations should explore together programming models, including the development of a community worker job description and specialized clinics and explore resources for this work. New models or positions should always prioritize culturally appropriate support for diverse women. Groups with specific needs for support include women in conflict with the law, women whose first language is not English, women with physical disabilities, Aboriginal women, Black women, immigrant women Acadian women, and lesbian and bi-sexual women.

**Nova** Scotia Legal Aid lawyers and administrative staff should receive gender and diversity training aimed at enabling them to identify and avoid stereotypical beliefs affecting diverse women. Women's advocates should be involved in the development and delivery of this information.

**Women** need support and education in their rights and consequences of plea choices. A focus of collaborative work and any new community worker positions should be supporting women in choosing a plea.

### ***Recommendations - Research and Evaluation***

**Databases** and data systems for Nova Scotia Legal Aid should be able to record and dis aggregate data by gender and other demographic information ( as self-identified) relevant to equality such as race, disability, citizenship status or linguistic background. Profiles of service should be related to applications accepted and rejected, the reasons for acceptance/rejection, numbers of matters, types of matters, time spent on matters, requested and unrequested changes in lawyers, and private or staff representation.

**Legal** aid policy in Nova Scotia should make an explicit commitment to ongoing analysis of societal gender inequality's impact on legal aid, and innovative solutions to identified barriers should be sought that are based on women's lived experiences of inequality. What is impeding women's access to justice and how can legal aid address their particular needs?

**Further** research on disparate impacts on women is needed. Narrative research is needed with women who are denied legal aid to document current policy.

**Further** research is needed on disparate impacts on women of using likelihood of incarceration as an eligibility criterion. This should include information on outcomes for unrepresented women.

**The** experiences of women who are given certificates need to be tracked in terms of their ability to actually find representation, and the quality of that representation.

**The** current menu of services needs to be reviewed by government with input from women's organizations for disparate impacts on women. The starting point for defining appropriate legal aid coverage should be women's lived experiences of inequality for which legal representation is necessary to remedy. Categorical entitlements should be moved away from, as they tend to artificially chop up needs arising from women's experiences of poverty, abuse, family responsibility and inequality. A new way of viewing services that fairly and holistically reflects women's needs should be developed and adequately funded.

**New** service delivery models need to be explored by Nova Scotia Legal Aid and women's organizations that address the unique challenges of legal aid delivery to women clients in Nova Scotia. Models suggested in the course of this research for further exploration by women clients, women's advocates and lawyers include a women's clinic model, including a law clinic for Black women and positions for community workers.

**Ongoing** evaluation mechanisms for clients need to be in place, regarding quality of service to diverse women and should include narrative descriptions by women of their experiences.

**There** needs to be an accessible way to bring problems with particular lawyers to the attention of managers.

**Both** quantitative and qualitative research is needed on women's choice of plea in Nova Scotia to answer questions raised in this research about factors channeling women to guilty pleas.

### ***Recommendations - Client's Awareness and Supportive Access to Services***

**Nova** Scotia Legal Aid lawyers and administrative staff should receive gender and diversity training aimed at improving the respectful treatment of diverse women. This should first be delivered to current employees and become standard for new hires. With respect to increasing women's awareness of legal aid entitlements:

- A binder (with updates ) for front line workers in the community needs to be created providing information on legal aid entitlements, application process, policies and appeals process
- User friendly educational materials on legal aid need to be created for distribution to women through women's service providers
- A annual community education campaign on the vital role of legal aid and legal aid entitlements should be organized to take place across Nova Scotia. Along with other periodic local forums on legal aid issues

- There needs to be a feedback and accountability process when private certificates are not issued to eligible women who cannot access staff lawyers due to conflict of interest
- Resources of women's organizations spent in assisting women to access legal aid should be tracked, measured and brought to government policy makers attention for funding

**Appropriate** supports for women whose first language is not English should be made available at all phases of involvement with legal aid services. This support should not be expected to come from friends or family members, as this may impact women's freedom to communicate to their lawyers.

**Acadian** women should be able to access services in French.

**Education** on plain language communication in English should be provided to Lawyers.

**The** Department of Community Services should provide transportation and childcare assistance payments for women accessing legal aid, particularly for women required by Community Service to pursue support claims.

**Legal** aid lawyers and administrative staff should be given information on challenges faced by women without transportation, without childcare or with only very limited access to these resources accessing legal aid. Legal aid managers should take some responsibility for addressing these issues as they impact access to legal aid services.

**The** financial cut-off level needs to be reset based on a realistic appraisal of what level of income allows clients to afford private representation. This should be a provincial focus of public and justice professionals' advocacy. Resources should be allocated to legal aid to provide increased services.

### **Recommendations - Service Quality**

**Women's** advocates and Nova Scotia Legal Aid should work together on enhancing communication with women clients.

**Unwelcome** changes in lawyers should be avoided to the extent possible; these changes and the reasons for them should be tracked in order to effectively reduce this problem. When such changes are unavoidable, protocols for transfers should be followed minimizing the impact on women, particularly the repeated recounting of abuse details.

**Women's** entitlement to change legal aid lawyers should be established, communicated to clients and protected.

### **Recommendations - Increase Resources for Legal Aid and innovative Justice Programming**

**Women's** organizations and Nova Scotia Legal Aid should be involved in planning together for increased resources to legal aid that will reduce caseloads and delays.

**Caseload** solutions involving innovative justice programming should not have the effect of eliminating legal representation to groups such as abused women seeking effective advocacy in family law matters, and should not focus on decriminalizing violence against women through pre-charge or pre-trial diversion measures, for example.

**Appropriate** focus for innovative justice programming designed to lesson the demand for legal services might include support for measures broadening adult diversion eligibility for many non-violent offences, and ensuring women's (and men's) ability to access them.

**Case** management guidelines should be explored for the government in child apprehension cases

## Background

Demand for legal aid across Canada continues to exceed allocated resources; some analysts describe the situation as a growing crisis<sup>1</sup> Within this context inadequate resources will impact groups differently based on their societal positions, and affect equality and equal access to justice. Impacts are usually disparately distributed or experienced differently by men and women. Women belonging to diverse communities and groups may also have further unique challenges and experiences associated with accessing justice through legal aid.

Quantitative research to explore these impacts can compare, for example, levels of service for men and women. It can show the percentage of resources used to serve women for different sorts of matters, the number of women seeking legal aid, and the percentage receiving it. Some of the information of this nature is included in this report, in the sections on eligibility and on caseloads. Overall, the number of full service matters completed in Nova Scotia in 2001-2002 was 10,807, with male clients associated with 61.7% of the matters, and women clients only 38.3%, a difference of 23.3%.<sup>2</sup> This discrepancy is associated with the higher level of criminal supervision for men (approximately 82% of criminal matters,) and with the higher number, overall, of criminal law matters completed (50.1% of all matters compared to, for example, family matters which are only 30.6% of all completed full service matters.)<sup>3</sup> In order to use quantitative data to uncover equality impacts, it must be collected and reported in disaggregated form.

### **Recommendation**

**Databases** and data systems for Nova Scotia Legal Aid should be able to record and disaggregate data by gender and other demographic information ( such as self-identified) relevant to equality such as race, disability, citizenship status or linguistic background. Profiles of service related to applications accepted and rejected, the reasons for acceptance/rejection, number of matters, time spent on matters, requested and unrequested changes in lawyers, and private or staff representation should be accessible.

The findings in this report are primarily of a qualitative nature. How are lawyers an women clients experiencing the provision of services and what can that tell us about unique barriers to justice for women? While quantitative analysis is important and useful, sole reliance on it to examine equality issues is inadequate. Canadian jurisprudence and legal analysis have moved away from a definition of equality that simply looks at sameness or difference for women and men, which a strictly quantitative approach to accessing equality impacts of legal aid resources reinforces.

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<sup>1</sup>For example, see the Canadian Bar Association comments at <http://frenchculture.miningco.com/library/weekly/aa081702a.htm>

<sup>2</sup>Statistics show matters disaggregated by gender provided by Lisa Stokkeskog of the office of the Executive Director of Nova Scotia Legal Aid. Minor differences in total as reported in the Annual Report are due to an inability to disaggregate telephone duty counsel services and differing report production technologies.

<sup>3</sup>*IBID* However, when service to male and female clients is compared by time spent on full service matters b y staff lawyers, this discrepancy shrinks to 8.2%. This may be linked to the time-consuming nature of child protection matters, as discussed by lawyers in this research, reported in the section below dealing with caseloads. The inclusion of hours served by private ;lawyers acting on certificate would add more meaning to this composition.

Rather, as Jane Mossman writes<sup>4</sup>

*"An equality question is a question of the distribution of power,...specifically of male supremacy and female subordination." This approach to equality is critical of current societal arrangements, many of which cannot be challenged by the sameness/difference approach because only women (and not women and men) are affected by them."*

For example, the pervasiveness of male physical and sexual violence towards women would be one such factor, uniquely applicable to women, affecting needs for legal aid and equality outcomes associated with provision or absence of representation. Women's limited access to economic and social power of all types would be another.

Qualitative analyses of women's experience of legal aid usually looks at the following areas of experience:

**Accessibility** - Are services woman-friendly? Are they sensitive to the needs of diverse women and communities? Are women informed and aware regarding what legal aid provides? Do women know how to apply?

**Coverage and Eligibility** - Are women's legal problems covered? What income levels allow women access to legal aid? What are reasons that women are denied legal aid?

**Quality of Service** - What impacts do caseloads and fee structures have? What quality of lawyering is provided? How do various parties' views of what "quality" means differ? Are there differences among diverse groups of women in their experience of service quality?

This research examines these questions. Existing research indicates that in other jurisdictions in Canada, women are indeed experiencing barriers to legal aid services in these areas, and that these barriers are experienced in unique ways by women and are rooted in women's inequality in the justice system and society generally.<sup>5</sup> Typically, these barriers are exacerbated whenever legal aid funding is reduced. Women shoulder magnified impacts to their already unequal access to legal aid services.<sup>6</sup>

Nova Scotia legal aid managers who were interviewed and many representatives from Nova Scotia women's organizations participating in this project felt that, in the context of national problems with legal aid, Nova Scotia legal aid applicants and clients are faring better than those in some other Canadian jurisdictions, including other Atlantic Canadian Provinces. Accurate comparisons are beyond the scope of this research. This general feeling is shared

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<sup>4</sup> [1993] "Gender Equality and Legal Aid Services," 15:30 Sydney Law review 30. At 38, quoting MacKinnon, C., "Difference and Dominance: On sex Discrimination," in *Feminism Unmodified*(1987) at 40.

<sup>5</sup>See, for example. Addario, Lisa(1998,) "Getting A Foot in the Door: Women, Civil Legal Aid and Access to Justice," National Association of Women and the Law; Melissa Doucette, Women's Network PEI (2003)"Family Legal Aid: A Comparative Study," <http://www.wnpei.org/legalaidcomp.pdf>; Manitoba Association of Women and the law (2002) "Women's Rights to Public Legal Representation in Canada and Manitoba," <http://www.nawl.ca/MAWLcont.htm> ; Bain,Crest and Morrow, *Access To Justice Denied: Women and legal Aid in BC* (Women's Access to Legal Aid Coalition:July 2000)

<sup>6</sup>Cuts to legal aid in British Columbia most recently illustrate these effects; see a report raised by the Vancouver Rape Relief(2002) "Cuts to Legal Aid Undermine Battered Women's Access to the Courts," <http://rapereliefshelter.bc.ca/issues/lacuts.html> and United Nations Submission and UN Committee's recommendations: <http://www3.teles.net/bcwomen/archives/BCCEDAWUnsubmissionjan03.html> See also, generally, Troup, Maggie (1997) "Cuts to Legal Aid: The Impact on Women's Access to Justice," 9 Australian Feminist Law Journal 149.

here to highlight that, while barriers are identified in this research, the Nova Scotia Coalition of Women for Justice’s approach to remedying inequality in access to legal aid is intent on building on what is sensed to be an above average commitment at Nova Scotia Legal Aid to quality services and equality of service for women.

**Recommendation**

**Legal** aid policy in Nova Scotia should make an explicit commitment to ongoing analysis of societal gender inequality’s impacts on legal aid, and innovative solutions to identified barriers should be sought that are based on women’s lived experiences of inequality.

## **Goal, Methodology and Limitations**

### ***Goal***

The objective of the research documented here has been to identify barriers facing diverse women in accessing legal aid in Nova Scotia, and to provide a basis for recommendations for improved access to legal aid for women . This project's research begins to document the experience of barriers for diverse Nova Scotia women, as seen not only by targeted groups of legal aid clients, but also by women's organizations and legal aid lawyers.

The Nova Scotia Coalition of Women for Justice is an inclusive coalition of diverse individual women, and women's grassroots equality seeking organizations in Nova Scotia. The Coalition works to provide better access to Justice for all women by providing a vehicle for communication and research, and by taking collective action on identified justice issues.<sup>7</sup> At its 2001 conference, Coalition members selected women's access to, and experience of legal aid as one of two priority justice issues for the Coalition. At that time, women brought forward concerns around women being denied access to legal aid services, and the current allocations of resources. Women highlighted concerns about systemic discrimination's impact on such access, particularly for visible minority women. Women also identified initial advocacy steps including: strengthening communications between Nova Scotia Legal Aid and women's organization on issues affecting women in the justice system; increasing the awareness of legal aid resources for women in community living in poverty; advocating for individual women seeking legal aid; campaigning for increased funding for legal aid services; and working for improved access to legal aid for visible minority women.

The Coalition received funding from Status of Women Canada's Women's Program to undertake the project "Nova Scotia Women and their Access to Legal Aid," in 2002. The project contained research, communication, and advocacy components. This public report documents the research conducted, provides background, analysis and recommendations and documents steps in advocacy planning by the Coalition.

### ***Methodology***

This research has used a feminist participatory action methodology, as is encouraged by the Status of Women's Women's Program. Although this model is supplemented by limited quantitative analysis, the primary research method has been the gathering of narrative for the qualitative analysis, using semi-structured interviews and focus groups with targeted women and interviews with legal aid lawyers. This reflects the feminist research principle that discussions of women's experience grounded in a personal context instruct more successfully than abstract qualitative data. Women and lawyers were given the opportunity to share their experiences and views in their own words. Participatory and collective research planning was undertaken, beginning with the 2001 conference described above, and continuing through the collaborative work of the Steering Committee, which worked together to develop research plans and instruments. Analysis of the research data and action planning based on it was begun at a Coalition conference in September 2004, and continued through the drafting of this

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<sup>7</sup> Those serving on the Steering Committee of the organization throughout the course of this research included Rose Brooks (African United Baptist Association Women's Institute,) Lynn Johnston (Native Council of Nova Scotia,) Darlene MacEachern (Elizabeth Fry Society of Cape Breton,) Heather MacKenzie (Elizabeth Fry Society of Mainland Nova Scotia,) Helen Morrison (Cape Breton Transition House,) and Cheryl Nasson (Mi'kmaw Family Healing Centre.) Coordinator for the Coalition was Mary DeWolfe (Chrysalis House) who was succeeded in April 2003 by Ms. Nasson, as Acting Coordinator.

report with Steering Committee members and advisors.

The participation of the Nova Scotia legal Aid (NSLA) has been important to the success of this research. In the initial phases, NSLA Executive Director Gerard Lukeman was contacted for discussion of this research's focus and for help in involving NSLA lawyers in the research. Research instruments were shared with Mr. Lukeman, who provided valuable input on those lawyers most likely to have the highest volume of women clients or those with particular experience in equality and equity issues. The interview list was reviewed by Steering Committee members who provided feedback and suggestions for interviews based on their own experience. A revised list was created, and Mr. Lukeman made these lawyers aware of this research and encouraged their participation when contacted by the project's researcher. Thirteen semi-structured interviews with NSLA lawyers<sup>8</sup> were conducted, involving staff from Halifax/Dartmouth, Sydney, Truro and Amherst. Included among these interviewees were four managers. In the interviews, they were encouraged to speak about priority issues from their own point of view, and also were encouraged to address questions from the interview guide. (Please see Appendix A -Interview Guide)

To bring forward the voices of Nova Scotia women directly, the Steering Committee also added a focus group component to the research. Focus group targeted communities were chosen collaboratively by the Steering Committee. It was recognized that the full diversity of Nova Scotia women clearly could not be captured in the planned 6-8 groups. Therefore the following parameters were prioritized in accord with prior research planning: women commonly experiencing systemic discrimination including Aboriginal women, Black women, other culturally diverse women, women living in poverty, women who have experienced abuse; women in conflict with the law, especially imprisoned women; and involving a mix of urban and rural women. Single mothers were also seen as a priority group. These goals were accomplished through the following nine focus groups<sup>9</sup> for women legal aid clients<sup>10</sup> (by definition women living in poverty.)

- Black women, Dartmouth(a mix of urban and rural participants:) 10 legal aid clients, one women's advocate
- Aboriginal women, Millbrook: nine legal aid clients, one women's advocate
- Aboriginal women, Eskasoni: six legal aid clients, two women's advocates
- Women in conflict with the law, living in the community, Sydney: four legal aid clients, one women's advocate
- Imprisoned women, Dartmouth (a mix of urban and rural participants, including visible minority women:) 14 legal aid clients, one women's advocate
- Imprisoned women, Truro ( a mix of rural and urban participants, including visible minority women:) four legal aid clients, one women's advocate
- Immigrant women, Halifax (including one visible minority woman:) three legal aid clients, two women's advocates
- Acadian women, Cheticamp: two legal aid clients, two women's advocates
- Women with experience of abuse, Sydney (a mix of urban and rural women:) 11 women, two women's advocates

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<sup>8</sup>In one case, an NSLA manager was interviewed who was not a lawyer, but had substantial experience advocating for people who had been in conflict with the law.

<sup>9</sup> An attempt was made to organize an Annapolis Valley area focus group which was unsuccessful due to participant recruitment challenges. However, one woman who came forward from that area to participate did so in an individual interview.

<sup>10</sup> Women's advocates who may have acted as community coordinators also participated in the focus groups.



Although demographic information wasn't sought, many of these women spoke of issues related to their children and their responsibilities as the primary or sole care giver.

The recruitment for focus groups participation was accomplished through community coordinators who were part of, or had close links to, targeted groups. Most of the coordinators conducted outreach through women's organizations as well as using their own knowledge of women in the community who were legal aid clients. (Please see Appendix B - focus group outline )

In addition to women's advocates' participation in focus groups, their input was sought through a questionnaire distributed by mail, and by seeking their participation in the September 2003 conference.<sup>11</sup> Questionnaire responses were received from three organizations,<sup>12</sup> and are integrated into this report. Action planning priorities from the September 2004 conference are also integrated into this report, in the recommendations.

### ***Limitations***

Narrative qualitative information from targeted women, such as that in this research, cannot be used to draw conclusions about Nova Scotia Legal Aid's overall performance regarding women clients. Randomly selected participants would be a better source to yield such information. As this research focused on identifying barriers for women from diverse and non-dominant or often oppressed groups, targeted approaches were more suitable here. These groups may also be more likely than privileged women<sup>13</sup> to have had negative experiences with legal aid and the justice system as a whole. Again, although these perspectives are vital in hearing what are often silenced voices and in identifying barriers, this information does not form the basis for conclusions about the proportion of all women clients who were satisfied or unsatisfied with their experience with legal aid. The self-selecting nature of participants from among these groups also may mean that proportionally more negative experiences are reported than are even proportionally prevalent among the target groups, as those with positive or neutral experiences, meaning that the research information cannot serve as a basis for discussing proportional satisfaction or dissatisfaction among even those groups of women. But, again, for the purpose of identifying barriers that women may be experiencing, this targeted and self-selecting participation is useful.

Similarly, the lawyers interviewed were not randomly selected, but form a group that is likely more aware of the Justice challenges facing women and with more experience working with women's community groups. Again, this selection is useful in highlighting barriers and gathering highly informed views on possible solutions, but cannot be said to represent NSLA lawyer's perspectives overall.

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<sup>11</sup> Twenty-four women participated either in their individual capacity or as an organization's representative. A separate document detailing participation and proceedings of this conference is available from Cheryl Nasson, Mi'kmaw Family Healing Centre, Millbrook.

<sup>12</sup> Avalon Sexual Assault Centre, Mi'kmaw Family Healing Centre, Waycobah, and Leaside Transition House

<sup>13</sup> While it is questionable to include women living at the level of poverty required to be eligible for legal aid as more or less "privileged," generally speaking, some women who are legal aid clients will not also face the challenges of race, cultural or linguistic background, prior criminalization and/or abuse that many women participating in this research experience.

This discussion of the Nova Scotia legal Aid experience is missing the perspective of private lawyers acting on a certificate.<sup>14</sup> Earlier in the project's planning the inclusion of these lawyers was contemplated. However, in order to include the voices of diverse women to the greatest extent possible, limited resources were used instead for focus groups with women clients. Future research in this area should include this group of legal aid service providers, especially as a growing proportion of family law matters were completed by private lawyers acting on certificate. Some women client participants did report to the researcher on experiences with private lawyers acting on certificate. Focus groups or interviews targeting specifically women legal aid clients of private lawyers would be valuable.

Information has been included describing women's awareness of legal aid services and their ease of barriers in getting to and through the application point. This project, however, was not designed to gauge overall awareness of women in community of legal aid services. Rather, women participants described their own experiences, which is useful for identifying aids and barriers experienced. Similarly, lawyers rightly disclaimed knowledge of community awareness levels overall, but did speak about awareness and understanding of legal aid services and entitlements (and legal rights generally) that women clients presented in initial meetings. Future research that explored overall awareness of women in communities of legal aid would be valuable.

Participating lawyers, women clients and women's advocates describe barriers affecting access to legal aid. Nonetheless, this research all came from women who did access some form of legal aid. Documentation of barriers to justice cannot be completed without participation of women who were unable to access legal aid services at all, for any of the reasons identified in this report; financial eligibility, lack of coverage, transportation or childcare obstacles. It would be valuable to target this group in future research, to document barriers and describe outcomes from lack of representation.

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<sup>14</sup> In 2001-2002, 1259 of 3304 family law matters completed, or 38%, were handled by private lawyers, as opposed to criminal adult full service matters which involved private lawyers 19% of the time. In 2000-2001, 25% of family matters were handled by private lawyers (including Dalhousie Legal Aid) and in 1999, 27% [Source: Nova Scotia Legal Aid Commission Annual Reports]

## **Awareness, Application Process and Accessibility**

### ***Awareness of Legal Aid Services***

Both women and lawyers identified factors that aided and factors that hindered women's knowledge of and connection with legal aid services.

Lawyers described several factors that interfered with women knowing they had a legal problem with which legal aid could help them. Lawyers described an overall "naivete" of women with family law problems, especially when it came to entitlements to pensions and other assets, support and financial disclosure:

*Women need education. How do they even find out what their entitlements are? Or are they getting misinformation.*

Lawyers identified abuse and control by intimate partners as a barrier to women's approaching legal aid:

*It is hard for women who have been in abusive relationships to take the initiative. They need help initiating applications.*

Many emphasized that women's understanding of their legal entitlements was especially low in cases involving abuse. Older women who had been in long term marriages involving abuse were also identified as having a particularly onerous and diminished view of entitlements:

*Many women think if they leave the home, they have to leave it behind.*

*When there is a high degree of abuse, there is a huge impact on knowing what entitlements are. Especially for older women entitled to support. They are just so happy to get out, and they see themselves as if he gave them their "bed and board." It's hard to convince them they are worthy of support and that the courts now accept the contribution and value of the homemaker's role.*

*There are barriers, especially if she is abused. He dictates, especially around things like pensions in long term marriages. I women don't know about their rights to the pension, will they come in?*

Some lawyers described misinformation about family law from family and friends that discourage women from seeking help from legal aid in a timely manner or at all:

*I often come in late in the day when there has already been a lot of misinformation communicated to women. For example, friends or family may tell her that he has to prove she is unfit before he can get custody. Well, that hasn't been the test for sometime, so women hesitate to apply for legal aid because they think they don't need it.*

*Sometimes women are scared of the court process because they are scared of being proved unfit - but that is not the test anymore.*

*They have the conviction that he will be perceived as the better parent because he has greater financial resources. They almost have to go through court before they believe he will not be thought the better parent because he has a four bedroom house.*

Women's advocates responding to the project survey indicated that women not applying for legal aid due to misinformation related to their cases and to legal aid entitlements. This had an impact not only on access but on case outcomes due to delays for those who did eventually apply and qualify.

Many women reported becoming aware of legal aid entitlements through transition house services, the Elizabeth Fry Societies or Coverdale Court Services. Lawyers also singled out women's organizations as key sources of information on access to legal aid or women. One transition house responding to the email survey indicated that most of their clients found out about legal aid entitlement from the transition house itself; another reported that most were already aware, but that for those who were not, the transition house provided contact information. One lawyer identified the local transition house as a source of misinformation regarding family law on at least one occasion. However, this lawyer did feel that the transition house, with appropriately educated outreach staff could be an important source of basic legal information for women who might then seek legal aid. Others saw transition houses as already providing valuable information along these lines:

*The transition house will make them aware. Sometimes I refer women directly to their support groups.*

*The transition house is of assistance regarding initial contact with legal aid.*

One lawyer working in the Halifax metro area reported a number of immigrant women and remarked that immigrant women generally had "a lot less" understanding of their legal rights in Canada and Nova Scotia and the support available through legal aid. Immigrant women participating in this research were clients of the Metro Immigrant Settlement Association in addition to having been legal aid clients and connected to legal aid with the support of that organization.

Women had varied experiences regarding the issuing of private certificates. Women interviewed in Eskasoni and Millbrook were not aware of their entitlement to a certificate for a private lawyer if a conflict of interest was present with legal aid staff lawyers, and were not applying if their partner was already a client. This issue was also identified as a problem by Black women. One woman's sexual assault centre responding to the survey indicated that "women were not able to access legal aid because the accused (who may be their ex-partner) got there first."<sup>15</sup>  
<sup>16</sup>One transition house responding to the survey indicated that while there was no problem for women getting a legal certificate, it was virtually impossible to find a private lawyer in the area who would take it.

Some women with private lawyers acting on certificate indicated they were more satisfied while others were less satisfied. Experiences regarding private lawyers on certificate is not fully explored in this research. However, there are women who indicated that they would prefer to

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<sup>15</sup> When asked for clarification, the woman's service provider filling out the survey reported that she was not directly involved in legal aid applications with women, so do not know whether women who reported this meant that they did not have access or only had access through certificates. It was her sense that some women were not aware of certificates as an option.

<sup>16</sup> Reasons for preferring a staff lawyer include being unable to find a private lawyer who would act on a certificate in their community, and/or feeling that the tariffs were so limited that private lawyers could not do an adequate job.

access a staff lawyer for family law matters,<sup>16</sup> and among those women are those who are victims of partner violence. These women and their advocates reported feeling that such women were disproportionately excluded from staff lawyer representation because the accused, who may be in custody, was already a legal aid client.

### **Recommendation**

**The** experiences of women, and particularly women who have experienced partner violence, who are given certificates, need to be tracked in terms of both their ability to actually find representation, and the quality of that representation.

### **Application Process**

The application and application process generally were not seen as difficult for clients by lawyers, but lawyers did highlight problems for particular groups of women. These groups included women with literacy challenges,<sup>17</sup> immigrant women, and Aboriginal women whose first language is not English. Challenges in the application process were reported by these groups of women participating in this research, as well as Acadian women. These women did not have readily accessible help from legal aid during the application process. For example, one Aboriginal woman said:

*They asked me at legal aid "Do you understand English?" I said "Yes," but I didn't want to admit it was hard for me because it's like saying you're stupid.*

Some women from these groups did report being helped through applications by community agencies.

Some lawyers were involved in the application form stage while those in other offices with staff for intake were not. Most lawyers also described the transition houses, the Elizabeth Fry Society and Coverdale Court Services as easing the application process for women. Some lawyers reported not bothering with a formal application in critical situations if a woman was already a client in other matters.

Lawyers in response to questioning about what makes the procedure easier or harder on women did indicate that having an Aboriginal court worker was helpful, but that this position was discontinued. (This was not a legal aid funded position)

Acadian women reported problems with the time lag between application and approval. In the translator's description:

*The process of availing of legal aid services is also discouraging for women. They first have to go make an appointment, and then fill in an application. Just filling in the form is difficult and help is not always available. Then they have to wait to find out if they're accepted or not. The time lag often causes many women to second guess and change their minds.*

One lawyer identified problems with the application process when women were expected to

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<sup>17</sup> One lawyer reported that staff were able to help women with literacy challenges to apply.

provide information on household income were unaware or deliberately kept uninformed about their partners' incomes. This is especially likely to be the case where a partner exercised abusive control over financial matters in the relationship.

Lawyers also indicated that in offices without separate intake staff, the time lawyers had to spend on intakes added to their already challenging workload.

### ***Recommendations***

**A** binder (with updates) for front-line workers in the community needs to be created providing information on legal aid certificates, entitlements, application process, policies and appeals procedure.

**User-friendly** educational materials on legal aid need to be created for distribution to women through women's service providers

**An** annual community education campaign on the vital role of legal aid and legal aid entitlements should be organized to take place across Nova Scotia, along with similar [periodic] forums on legal aid matters

**There** needs to be a feedback and accountability process when private certificates are not issued to eligible women who cannot access staff lawyers due to conflicts of interest

**Resources** of women's organizations spent on assisting women to access legal aid should be tracked, measured and brought to government's policy maker's attention for funding

### ***Accessibility Issues***

Women in this research identified three main issues that affected their ability to access legal aid services after they had qualified: language barriers; access to childcare; and transportation. These same issues were identified by lawyers.

Various sorts of language barriers were identified. All women, but particularly Aboriginal and Black women indicated they needed help understanding legal language, and the complicated style of English some lawyers used. Black women reported feeling that their lawyers sometimes used complicated language intentionally to make things difficult for women to understand. All participating immigrant women were being supported by a counsellor from MISA as well as an interpreter in most cases; lawyers indicated that immigrant women clients who did not have this kind of support were less able to assist in the preparation of their cases and tended to be more nervous and upset. Lawyers reported that some Aboriginal women were assisted by family members as interpreters. Women and lawyers reported problems involving confidentiality or shame when known community members were acting as interpreters. Lawyers indicated a need for interpreters to be trained in legal terminology. Lawyers in Cape Breton expressed a wish that the translation services available in court could also be available for case preparation. An Acadian woman's advocate attending the Cheticamp focus group pointed out that some Acadian women would be better served in their mother tongue. This was not an option available for Acadian women in that area.

### ***Recommendations***

**Appropriate** supports for women whose first language is not English should be made available

for all phases of involvement with legal aid services. This support should not be expected to come from friends or family members, as that may impact a woman's freedom to communicate with their lawyers.

**Acadian** women should be able to access services provided in French

**Education** on plain language communication in English should be provided to lawyers

Women reported difficulties attending meetings with their lawyer, as well as attending at court dates, in the absence of available or affordable child care. Women did not want to bring children to appointments but often had no choice; this was very stressful. They reported being chastised by staff and lawyers for bringing children. Lawyers also, recognized the obstacles for women clients with children without access to childcare. Lawyer often did not want to discuss upsetting aspects of cases in front of their children.

*I don't want to do client interviews with children present especially if it is a serious nasty case.*

Women did report, however, being treated with hostility when attempting to reschedule appointments related to child care.

Transportation to legal aid appointments was a great challenge for many women, particularly women living in rural areas, and especially in Cape Breton. As an example, the legal aid office serving women of the Cheticamp area region is in Antigonish, and although meetings can be held in Port Hawkesbury, this still represents a two hour drive. This is an absolute barrier for women who do not have their own mode of transportation, since public transportation is virtually non-existent over some routes and distances. It was also a barrier for women who have had access to a car, but not the resources for gasoline for four hours of driving. Aboriginal women reported having to walk long distances for appointments because no other means of transportation was available. This challenge was highlighted as a problem by one lawyer in the Sydney office:

*Transportation is a huge problem in Cape Breton.*

Rural women with abusive partners or former partners had the greatest challenges of all. Here are two abused women's experiences, as translated by an Acadian women's advocate:

*The two women expressed the fact that the trip to Port Hawkesbury is long and because they live in a small community, their movements are monitored by all. They fear being followed by their husbands, as one actually was. He threatened to run her off the road. To save herself and her current partner, she had to turn into a police station where she stayed for two hours until she was sure her ex-husband had left. He later told her that the next time, he would be better prepared and he would do the job right.*

Rural women who had experienced abuse also described the long trip to the legal aid office as emotionally excruciating. One woman wished that the legal aid lawyer could have met her at home or another safe place. Instead of at the legal aid office in town. (One lawyer reported, however, that clients may prefer to come to a legal aid office outside their rural community, in order to better protect their anonymity.)

Women living in the Sydney area, although not living in what could be considered rural settings nevertheless had great challenges in using public transportation to attend appointments, to

get from, for example. Sydney Mines or New Waterford, to Sydney.<sup>18</sup>

### **Recommendations**

**The** Department of Community Services should provide child care assistance payments for women accessing legal aid. Particularly for women required to pursue support claims by Community Services. Emergency funding for this purpose should be made available through transition houses and other organizations providing services to women in crisis.

**Legal** Aid lawyers and administrative staff should be given information on challenges faced by women without transportation, without childcare or with very limited access to these resources, and the impact of this in accessing legal aid. Legal aid managers should take some responsibility for addressing these issues as they impact access to legal aid services.

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<sup>18</sup> The public transportation system in the Sydney area is widely described, by women's advocates and others working at community agencies, to be inadequate.

## Eligibility and Menu of Services

### **Eligibility**

Eligibility for legal aid in Nova Scotia is determined primarily through financial criteria which are set by regulation. Other reasons for rejection may include that the matter is seen to have no merit, is a matter not serviced, or it is seen as an abuse of services.

The income cutoff for legal aid is set by regulation at the level of social assistance support by Clause 1(1)(a) of the Legal Aid General Regulations.<sup>19</sup> Clause 1(1)(b) provides the opportunity for some discretion regarding this cutoff.

Eligibility:

1(1) Subject to the Act, an applicant is eligible to receive civil legal aid and criminal legal aid (a) when an applicant qualifies for benefits under the Provincial Social Assistance Act, Part II, or benefits under the Family Benefits Act; or (b) when the obtaining of legal services outside of the legal aid plan would reduce the income of an applicant to a point whereby the applicant would qualify for benefits as per subsection [clause] 1(1)(a.)

Women's advocates, as well as lawyers felt that the income cutoff urgently needed to be revisited and the level of income under which one qualifies for legal aid, raised. (with one exception - one senior lawyer with a criminal practice remarked: "I think where the bar is set is fair. If she is in custody, she qualifies.") One lawyer put it most bluntly:

*The financial criteria are preposterous. It's scandalous.*

*Other lawyers and women shared the following comments:*

*It's \$1067.00 gross ([or one adult] - that's not even subsistence.*

*It should be indexed. Eligibility hasn't changed since 1992.*

*This needs to be raised.*

*There is a big group who can't afford private counsel that is above our cutoff.*

*The eligibility criteria leave a lot of women on the cusp. The bar should be set related to the actual cost of living and that's the poverty level. Right now the regulations basically set it at social assistance or comparable.*

*We see too many women [who have experienced abuse] who just miss qualifying, and there's no way they can afford a private lawyer.*

It is well documented that women in Nova Scotia ( and the rest of Canada) make up the majority of the adults living in poverty, and have less access to economic resources in the

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<sup>19</sup> Legal aid General Regulations and Tariff of Fees made under Section 27 of the *Legal Aid Act*, R.S.N.S. 1989, c.252 O.I.C. 77-954 (August 9, 1977,) N.S. Reg. 77/77 as amended by O.I.C. 90-344 (March 27, 1990,) N.S. Reg. 102/90 Section 1 replaced: O.I.C. 82-675, N.S. Reg. 128/82.

form of wages, loans, or other income, than men. In this light, some women's advocates and lawyers spoke of the disparate impact on women of the legal aid financial eligibility criteria: with proportionately less resources, women as a group are less likely than men as a group, to be able to afford private representation. For women experiencing compound discrimination, such as Black women or Aboriginal women, and with even greater attendant disparities in economic power, it could be expected that they would be even less able to access private lawyers.

The financial criteria may create disparate impacts in other, less obvious ways. For example, women are the great majority of sexual assault survivors. The experience of assault can be devastating physically and psychologically. It is challenging for any woman to represent herself; this may become simply impossible for assault survivors for whom contact with the assailant triggers flashbacks, or jeopardizes recovered health in other ways. As a sexual assault center service provider indicated, sexual assault survivors who do not qualify for legal aid ended up representing themselves in custody cases involving their sexual assailant because they could not afford private lawyers. In these cases, to her knowledge, sexual assault survivors attempting to represent themselves in these circumstances ended up either simply dropping their claims for custody, or giving into the assailant's demands around custody without having important issues addressed.

Another hidden disparate impact of financial criteria emerging from this research is women's concern about ability to access legal aid independent from a partner and without that partner's knowledge. Cases where a woman may feel the need to hide from a partner the fact that she is accessing legal aid often involve abuse and control by the partner. Is it fair to include the income of a partner in eligibility determinations if a woman has no control over that income or little knowledge of it? Access to legal aid that is hidden from a partner or community may be crucial to a woman's safety and well being, as described by one immigrant woman in a patriarchal marriage. For this woman, keeping the criminal charges against her secret from her husband and community was absolutely vital.<sup>20</sup> For a woman in this position, is it fair to include her partner's income and assets as she tries to confidentially access legal aid?

Lawyers also raised fairness issues around disqualifying women with potential future access to even modest matrimonial assets [which they could not access without legal help.] They also questioned the fairness of disqualification based on interim support orders.

Lawyers and offices also exercise some discretion in following the financial criteria as set out in the regulations. In the Black women's focus group, there was concern voiced whether Black women were receiving the benefits of such discretion as often as women from the dominant culture.

Lawyers also mentioned the existence of the formal appeals procedure as allowed by s.25 of the Legal Aid Act:

Interim Support will sometimes put her above the criteria. The appeals procedure may help her if she is denied for that reason.

Internal appeals can work.

However, women reported being unaware of the appeals procedure, or only feeling able to pursue it with the help of a woman's advocate or support person.

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<sup>20</sup> The woman in this research in this situation was able to access legal aid, but it was unclear whether her husband's income was included in the application process.

One legal aid manager identified a delay problem for women applicants who were also newly applying for social assistance benefits:

We should reduce stress by presumptive rules of qualification. We should be able to start legal aid before she is on the social assistance rolls. Self-advocacy is a hard fight and energy draining - there is a big difference in her energy level between the first two weeks and six weeks into it.

This concern is particularly applicable to women existing abusive relationships: the challenges of coping with social assistance and perhaps sudden poverty, while attempting to deal with legal aid issues as they arise, quickly become overwhelming.

## **Recommendations**

**The** financial cutoff level needs to reset based on a realistic appraisal of what level of income allows clients to afford private representation. This should be a provincial focus of public and justice professionals' advocacy. Resources should be allocated to legal aid to provide increased services.

**Further** research on disparate impacts on women, and particularly on racialized women facing compound inequality, is needed. Narrative research is needed with women who are denied legal aid on this basis to document outcomes of the current policy.

## **Menu of Services**

In interviews with senior lawyers who had been practicing with legal aid for a long time, all lamented the shrinking menu of services offered. All lawyers pointed to gaps in services offered that may disparately affect women in various ways, particularly increasingly limited coverage for civil matters. As reported in Nova Scotia Legal Aid's statistics in annual reports and in statistics shared for this research, men are receiving a greater quantity of services, and to some extent this is linked to greater service provision in criminal law matters, and to criminal law matters that involve men ( those with a risk of incarceration for the accused.) Historic rationales for the emphasis on criminal legal aid provision have relied on arguments based on the disparity of power between the accused and the state, and on the seriousness of outcomes' impact on liberty. Feminist scholarship challenges the validity of these rationales, for example, pointing to great disparities in power between moneyed and un-moneyed spouses, to the seriousness of liberty outcomes for women[ particularly for survivors of violence] of legal proceedings although women may not be in the role of accused or involved in criminal proceedings at all. Feminist analysis also points to how the public/private dichotomy operative in the development of Canadian (and Euro-North American) legal ( and other "public") systems traditionally excluded disadvantaged women, corresponding to the public/private conceptual split associated with criminal and civil proceedings and legal aid entitlements based thereon.<sup>21</sup> Some Canadian feminist analysis has explored how the historical tendency has been reinforced by the existence of federal-provincial cost-sharing agreements in criminal and youth offender legal aid. This historical tendency is also seen in the restructuring of legal aid funding in other areas into block grants for which various departments and agencies, including justice and legal aid, must compete, with no guaranteed federal cost-sharing level,<sup>22</sup> an "unseemly scramble", in the words of one research participant.

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<sup>21</sup> For further exploration of this issue, see Hughs, Patricia (1997,) "Domestic Legal Aid: The Public Means of Redress for Private Matters" 46 UNBJ 119; Mossman, *supra* n.2. Although the Supreme Court of Canada in *New Brunswick (Minister of Health and Community Services) v. G. (J)* (1999) 177 DLR (4<sup>th</sup>) 124 established that parents are constitutionally entitled to legal representation in child protection cases in certain circumstances, analysts have been cautious in connecting the decision to increased entitlement to civil aid:

"In short, if an interest is protected by s.7 - and this is determined by a rather tortuous parsing exercise - then *perhaps* someone involved in a civil matter which involves *direct* government intervention will be entitled to legal representation at the hearing." (Hughes, Patricia (2000,) "*New Brunswick (Minister of Health and Community Services) v. G. (J)*: En Route to More Equitable Access to the Legal System?" 15 J of Law and Social Policy 93. See also Mossman, Mary Jane (2000,) *New Brunswick (Minister of Health and Community Services) v. G. (J)*:" Constitutional requirements for Legal Protection in Child Protection Matters" 12 CJWL 491 (Case Comment.)"

<sup>22</sup> See Addario, *supra* n. 2.

It is beyond the scope of this research to definitively identify the rationales and reasons for Nova Scotia's shrinking menu of services that may be disparately affecting women's areas of legal need. However, if equality is to be defined in terms of outcomes for women, disparate impacts are defined not only in terms of sameness or difference in completion of matters or staff legal aid hours spent (although these are both more limiting for women clients) but rather in terms of women's realities and life impacts. To begin examining equality in this way, the narrative accounts of lawyers and clients regarding gaps in services as they impact women's lives is a starting point.

### ***Possibility of Incarceration as a Criterion for Service***

As one legal aid manager describes it, the provision of criminal representation is usually now also dependant on the possibility of incarceration for the accused:

*There is a high demand for representation and... if there is no prior record and a summary offence with no likelihood of jail (such as shoplifting or writing bad cheques) we don't do it. This is disproportionately women. We determine the level of risk by looking at the Crown disclosure; if there is a slight record we will call the Crown and hear what's going to happen.*

As that manager recognizes, accused persons in this category are disproportionately women, likely leading to disparate rates of unrepresented accused among those who otherwise financially qualify for legal aid. Again, this is likely a compound disparate impact, as women are less likely to be able to afford private representation. (I.e., are relatively poorer) than men.

Other subtler disparate impacts are likely as well; for example, a criminal conviction can make an employee no longer bondable and a higher percentage of women than men work in professions requiring bonding (for example, hotel housekeeping and some forms of in-home care giving.) To the extent that unrepresented accused are more likely to plead guilty or be found guilty, disparate impacts in employment will be felt by unrepresented women as a group. In the view of one lawyer, increased charging of women related to domestic violence was also leading to disparate rates of representation for these charges:

*Summary triage affects women charged with domestic assaults - more women are being charged and they usually have no record, no likelihood of incarceration.*

Legal aid lawyers raising this issue in interviews were all uncomfortable with the policy:

*It's stressful to do these triage decisions on legal aid even if it's done in a group review.*

*First timers are really scared - if they just need a few things I talk to them but try to keep it under the office radar.*

*There may be serious situations where a woman needs representation regardless.*

*In my office, legal aid is only granted if there is a likelihood of prison. So with most women it's a first offence so they get no advice or representation. We need at least some duty counsel in the court.*

*We have a mandate not to take summary matters but I don't always follow this, as they can really affect women a lot.*

Lawyers stressed that these determinations were made erring on the side of caution:

*To access whether there is a likelihood of jail, I look at the worst case scenario based on the Crown's file and the criminal history.*

*Usually we do borderline cases, especially if there are recent or similar convictions.*

*I'm not aware of anyone who got imprisonment who did not get representation. If the Crown is seeking jail time, we're likely to grant legal aid even if they are unlikely to get it.*

Women's advocates, in the early stages of the creation of this project highlighted their concerns in this area. Organizations that serve women in conflict with the law report additional resource demands with increasing numbers of unrepresented women looking for help. Women's advocates also felt that incarceration was not as predictable as it used to be based on Crown disclosures, with more judges exacting a "get tough" attitude on crimes such as shoplifting. An important aspect of the Elizabeth Fry Society's work in Nova Scotia is ensuring that eligible women can access diversion programs when appropriate. Women's advocates agreed with the following remark made by a lawyer with a primarily criminal practice:

*Women are usually not aware of diversion...options. This is an issue when they are not represented.*

### **Recommendation**

**Further** research is needed on disparate impacts of women using likelihood of incarceration as an eligibility criterion. This should include information on outcomes for unrepresented women.

### **Institutional Matters**

Women seeking representation in criminal law matters must be seen to be facing a possibility of incarceration. Other areas identified by research informants (both lawyers and women clients) as in need of coverage, included institutional charges and other post-sentencing issues. Women in prison reported that they needed representation to have a chance at fighting such charges. Women in prison in Truro reported that a lawyer had been available to them for "serious" charges but that even so-called minor charges could have just as big an impact on their lives as criminal charges might and that they needed representation for these matters. For example, "minor" charges could end up affecting a woman's ability to see her children. Some criminal lawyers were keenly aware of these needs:

*Women need representation for parole board hearings, for seg [segregation] review and disciplinary hearings (in institutions.)*

*They are treating women in prison the same way they treat men[ with regard to institutional charges and punishment] and that is wrong - it leads to slashings<sup>23</sup> and more offences.*

Due to caseloads, and to the fact that post-sentencing representation for federally sentenced women was seen as the responsibility of Correctional Services Canada, these lawyers felt they could not help.

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<sup>23</sup> [referring to self-harm]



Women and women's advocates identified a gap in criminal law services that lawyer did not: legal advice and representation for victims of sexual and/or intimate partner violence. This would include help with obtaining Peace Bonds<sup>24</sup> as well as immediate access to a lawyer when a male partner is challenging an Emergency Protection Order made under the *Domestic Violence Intervention Act*.<sup>25</sup> Generally, lawyers have not become familiar with legal needs arising from this new Act. With regard to no longer doing Peace Bonds one lawyer raised this with approval and relief. However, this is often the only option given to women who are trying to live free of abuse. Women talked about the severe psychological strain, and sometimes increased sense of physical threat they felt on pursuing Peace Bonds on their own. Several women reported being terrified of having to interact in court with the abuser in their pursuit of Peace Bonds.

## **Representation of Victims**

Another key area women and women's advocates identified is representation for victims participating in the trials of accused assailants:

*There is a problem for women who are the victims of sexual assault, not feeling represented by the Crown.*

*There are mixed feelings in the women's community and for women in general about legal aid representing violent offenders, if ... women are not having access...It was very public knowledge that William Shrubbsall had legal aid representation. I think this affected how women saw legal aid.*<sup>26</sup>

Constitutional rights, judicial precedent and legal tradition all provide strong support for the representation of those whose liberty and status the state seeks to curtail. The existence of these rights and traditions, however, should not be used as a rationale for displacing the rights of women. Historically, public protections of liberty were defined by men. During the development of these definitions, Euro-North American society has also been conceptually organized into a public/private split that saw the public sphere as male and the private sphere as female. Survivors of male violence are viewed as individuals with a more "private" interest than the accused, and in their lack of entitlement to legal representation maybe seen as suffering the effects of this dichotomy. Analysts have argued that purposive analysis of the rights guaranteed by ss.7,15 and 28 of the Charter imposes an obligation on the state to protect women's lives, liberty and security of the person against sexual violence.<sup>27</sup> The existence of such rights would in turn impact consideration of women's legal aid entitlement in these circumstances.<sup>28</sup>

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<sup>24</sup> Nova Scotia Legal Aid did provide assistance with peace bonds in one case in 2001-2002 (Source: Nova Scotia legal Aid Commission Annual Report.)

<sup>25</sup> S.N.S. 2001, c. 29

<sup>26</sup> Nova Scotia Legal Aid managers noted in reviewing this comment that the failure to provide representation to William Shrubbsall in his assaults against women may have in fact had results that would have been very negative for the public. This could have included his inability to access constitutionally guaranteed fundamental justice, and potentially could have resulted in his release.

<sup>27</sup> See Addario, *supra* n. 5, Martin, Sheilah (1994,) "Some Constitutional Considerations on Violence Against Women" 23(3) Alberta LR 535; Boyle, C (1985) "Sexual Assault and the Feminist Judge" 1 CJWL 93.

<sup>28</sup> For an American exploration of constitutional entitlement to representation for victims of male violence, please see Martin, Lisa E. (1998/9,) "Providing Equal Justice for the Domestic Violence Victim: Due Process and the Victim's Right to Counsel" 34 Gonzaga LR 329.

Progressive support is provided in the area of the O'Connor applications. One participant described her situation of several years ago:

*My ex is a [justice professional] and when I reported the assault he tried to say I made it up. The Crown suggested I go to legal aid for representation [to fight against her assailant's lawyer accessing her psychiatric records.] I applied and they refused to help. They said to me, "The Crown is supposed to be working for you"...The Crown didn't seem to think it was a problem.*

Nova Scotia Legal Aid indicates that a Crown protocol now governs this kind of situation whereby Nova Scotia Legal Aid will arrange for council (funded through Victim Services) for victims facing O'Connor applications. NSLA also indicated that they sometimes don't hear about those needs early enough and have difficulty finding representation for court dates 1-2 weeks from first hearing of the need.

### ***Division of Property and Divorce***

Lawyers identified these two family law areas as gaps in service negatively affecting women:

- Division of Property<sup>29</sup>

*The public interest would be served if we dealt with some property issues especially pensions.*

- Divorce<sup>30</sup>

*Divorce has a psychological impact and women just don't do it alone in my experience.*

*We should still be doing divorces but there is no time. Women don't know how to do the divorce kit."*

These areas were also identified as gaps in services for women by women's advocates. As Lisa Addario has written:

*"Women's legal aid needs should be addressed by legal aid services that don't arbitrarily divide up their life experiences. For example, women fleeing abusive partners should be able to obtain legal aid to pursue claims to recover their property or seek compensation for property that has been destroyed."<sup>31</sup>*

### ***Economic and Social Issues***

Similarly, an holistic view of legal aid representation that addresses women's actual life situations,

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<sup>29</sup> In 2001-2002, however, 36 matters involving matrimonial property were completed (Nova Scotia Legal Aid Commission Twenty-fifth Annual Report 2001-2002 at p. 19.)

<sup>30</sup> In 2001-2002, however, staff lawyers completed 347 divorces (Nova Scotia legal Aid Commission Twenty-fifth Annual Report 2001-2002 at p. 19.)

<sup>31</sup> Addario, *supra* n. 2 at 46

inequality and legal needs would encompass representation in vital civil matters other than family law. Legal aid in Canada seldom provides coverage for those pursuing economic or social entitlements from the state or those holding power over their lives (landlords, utilities, schools, etc.) unless they are directly related to covered family law matters. Economic and social matters ( sometimes identified as poverty law) are no longer generally offered in Nova Scotia. Long-time legal aid lawyers often identified the elimination of these sorts of services as a disappointing change in their practice over the years. Many lawyers identified these areas as gaps disparately affecting women, who are the majority of adults living in poverty. Comments from lawyers included”

*Women need help with challenging determinations of disability benefits and CPP.*

*We need to get the courts to look at positive obligations to provide social assistance , especially where liberty is on the line.*

*Economic, social justice, cultural issues - there is just one person.*

*Income support and housing - eligibility (fo social assistance) and department policies - their interpretation disparately impacts women - such as "man in the house" rules.*

*Women need advocacy on the right to adequate assistance.*

Positive state obligations to provide economic and social benefits is a growing are of analysis, and that is of great concern to women, who are less moneyed as a group than men. While the Supreme Court of Canada’s decision in *Gosselin*<sup>32</sup> has been discouraging to some,<sup>33</sup> other analysts look to its dissent , as well as parts of the majority decision for the basis of future litigation approaches.<sup>34</sup> Along with consideration of the existence of such positive obligations comes the consideration of legal aid entitlement to pursue them, without which such rights would have little meaning.

While very limited, nova Scotia’s coverage of such issues compares not unfavourably with other Atlantic provinces. Nova Scotia has retained a part of its former commitment by funding one staff lawyer targeting this area, who chooses among cases “ with an eye to strategic litigation and systemic issues.”<sup>35</sup>

A recently created Nova Scotia barrier in this area is that of the small claims filing fee now applicable to some residential tenancy cases. One lawyer interviewed identified this fee as prohibitive for people living in poverty. It may also affect women seeking property or compensation for property from abusers or assailants.

In addition to advocacy in support of economic and social justice, other civil area gaps for women identified by lawyers include bankruptcy, and wills for older women (who otherwise die intestate.)

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<sup>32</sup> *Gosselin v. Quebec (Attorney General)* 2002 SCC 84.

<sup>33</sup> See Paul Guy from the Canadian Centre for Policy Alternatives: <http://www.policyalternatives.ca/publications/articles/article373.htm>

<sup>34</sup> See DAWN Ontario, <http://dawn.thot.net/gosselin1.html> and National Association fo Women and the law fact sheet: <http://www.nawl.ca/pr-gosselin-bjgrnd.htm>

<sup>35</sup> It should be noted that NSLA lawyers were activey involved in seeking the definition of constitutionally protected economic and social rights in *Gosselin v. Quebec (Attorney General)* 2002 SCC 84.



## **Conclusion**

As Mossman states:

*"Categorical entitlement is a major feature of legal aid schemes in Canada...On the surface, such a scheme appears gender neutral in terms of ... choices about the eligibility of applicants and categories of entitlement. From the perspective of feminist analyses however, legal categories that define rights and obligations may frequently conceal hidden [and gendered] bias:*

*'Legal practitioners have always known that people's lives did not readily fit into legal categories, but this has not been reflected in a legal system which fragments its treatments of people's problems into categories...For women, these artificial classifications are especially problematic since women have played no part in defining those categories. It is because of this exclusion of women from traditional legal scholarship that taking women's lives as a starting point for any legal analysis requires a fundamental rethinking of those categories.'*

*As this assertion suggests...feminist analyses have consistently challenged the neutrality of legal categories. Either because women were not involved in defining categories... or their interests may have been regarded as less important."<sup>36</sup>*

Lawyers participating in this research in addition to identifying gaps, also emphasized the problematic nature of categorical entitlement ( "menu" of services divided by areas of law) which failed the reality of women's overall situation and needs for representation:

*I deal with the same women in family and criminal because assaults and abuse lead to stress, leads to alcohol abuse and to offences.*

*There is a lack of an holistic look at people.*

## **Recommendation**

**The** current menu of services needs to be reviewed by government with input from women's organizations for disparate impacts on women. The starting point for defining appropriate legal aid coverage should be women's lived experience of inequality for which legal representation is necessary to remedy. Categorical entitlements should be moved away from, as they tend to artificially chop up needs arising from women's life experiences of poverty, abuse, family responsibility and inequality. A new, more flexible way of viewing services that fairly and holistically reflects women's needs should be developed and appropriately resourced.

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<sup>36</sup> Mossman, *supra* n. 2 at 41-42, quoting Graycar, R. And Morgan, J. (1990) *The Hidden Gender of Law* at 3.

## Experience of Legal Services

As described in the limitations section of this report. This research cannot be used to come to overall conclusions about the quality of legal aid services, but rather identifies barriers experienced by women, particularly women from communities that are less powerful than the dominant culture community. The women interviewed are possibly more likely to have had negative experiences than would emerge from a random group of participants. ( Given the background of research participants who identified barriers for this report. It is worth noting that some women at nearly every focus group reported positive experiences with legal aid.) Lawyers interviewed are probably among those most assertively advocating for sensitively attuned to women client's issues, so again, their practices cannot be used as an overall indicator of awareness, but rather as a n indicator of some existing strengths that need to be encouraged and reinforced through legal aid.

Women who were positive about their experience with legal aid most often cited three key factors in their satisfaction:

Timely and responsive communication from lawyers

- Civil treatment and respect for their intelligence and worth
- Perception that their lawyer was willing and able to advocate zealously

Concerns of women who were not satisfied with their experiences primarily involved these and other areas:

- Caseloads and delays
- Communications
- respectful and civil treatment of diverse women
- Effective advocacy
- Impacts of abuse

### ***Recommendations***

**Now** service delivery models need to be explored by Nova Scotia Legal Aid and women's organizations that address the unique challenges of legal aid delivery to women clients in Nova Scotia. Models suggested in the course of this research for further exploration by women clients, women's advocates and lawyers included a women's clinic model, including a law clinic for Black women and positions for community workers.

**Ongoing** evaluation mechanisms for clients need to be in place, regarding quality of service to diverse women, and including narrative descriptions by women of their experiences. There needs to be an accessible way to bring problems with particular lawyers to the attention of managers.

### ***Caseloads and Delays***

One factor with potentially significant impact on how lawyers deliver services is caseload. In 2001-2002, 65 staff lawyers handled 10,804 full service matters ( in addition to any other

matters,) an average of 166,<sup>37</sup> representing a decrease of 9.8% compared to the previous year.<sup>38</sup> A total of 79,968 hours spent on these services meant an average of approximately 1230 hours per lawyer in the year.<sup>39</sup> Almost all lawyers interviewed identified caseload as a challenge.<sup>40</sup>

*There are limits to my capacity to handle the caseload.*

*I work hard to keep quality up but we need more lawyers*

*I am spreading myself thinner and thinner.*

*Legal aid lawyers tend to be dedicated. But it's high volume. There is little time for research or keeping up to date.*

*I have high caseloads. I can't handhold and do all the other things I have to do.*

*It would take me five minutes to help women with some civil matters, but my caseload is so high, I can't.*

*There are not enough lawyers to provide legal aid services that are required.*

*I am so busy I just keep my head down.*

*I have lawyers with 100 files each and new applications.*

*It's so busy - quality of service is a challenge.*

Women clients recognize this situation and had sympathy for lawyers who were trying to keep up. As one woman observed, "they appear most of the time overworked." Women's advocates also identified caseloads as a problem. As one transition house remarked in survey comments: "Lawyers don't have adequate time to give to a specific case. More lawyers are needed."

Symptomatic of high caseloads were some lawyers rushing, as women who were dissatisfied with their representation described. One Aboriginal woman shared a story not dissimilar from those of others who were dissatisfied:

*My legal aid lawyer had no time for me, even though I had a lot of breaches and might go to jail, I had a lot of family and addiction problems but the lawyer didn't present my story. I myself insisted on giving the judge my personal background; that I was thinking of suicide rather than going to jail again. I myself showed the court statements from counsellors, my diploma (earned in the meantime,) and that the breaches were because I was homeless and depressed. I got two months house arrest and had to do a program... My lawyer had over a year to meet with me but*

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<sup>37</sup> Source: Nova Scotia Legal Aid Twenty-fifth Annual Report 2001-2002.

<sup>38</sup> Ibid at p. 15. Matters handled by private lawyers increased by 10.9%, with an overall total increase over the previous year of 3.6%.

<sup>39</sup> Information on time spent on full service matters provided by the office of the Executive Director of Nova Scotia Legal Aid

<sup>40</sup> Several lawyers did report, however, that they could and should go to their managing lawyer when they felt their caseload was such that it was endangering quality of service, and that they did expect to be allowed to stop taking new files for a period in these circumstances.

all I saw him was two minutes in court.<sup>41</sup>

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<sup>41</sup> Several lawyers did report, however, that they could and should go to their managing lawyer when they felt their caseload was such that it was endangering quality of service, and that they did expect to be allowed to stop taking new files for a period in these circumstances.

As another woman participating in the Black women's Metro focus group described her experience of a family law matter:

*You were pushed in and out very quickly. So you just ended up going through the process, knowing full well this was a waste of time.*

As one lawyer described one urban office's situation:

*They're so busy in that office ...they're just processing cases, so you're not going to fight.*

Women reported legal aid lawyers's limited ability to conduct investigation when ex=partners were not providing full or accurate financial disclosure, a limited ability likely associated with caseloads. Legal aid lawyers expected women to do much of their own investigation of these matters but women were very limited in their ability to do so due to the lack of resources or childcare, or because they feared provoking abuse from the ex-partner if they were found to be conducting such investigations.

In addition to sheer numbers of cases, the nature of cases that legal aid lawyers were dealing with limited their valuable time. Family lawyers described child protection cases as swallowing a large portion of their time. Child protection agencies and some of their lawyers, particularly those associated with the Department of Justice, were often seen as contributors to the unwieldy size of these files, and to the inability to resolve them sooner in favour of parents where appropriate:

*In Children's Aid cases...there is a high level of intimidation [of clients] and Children's aid is non-supportive of mothers. I have to fight hard for the smallest concessions. A lot of these assessors are on fishing expeditions. They say she has to do x,y,z - it's hard to fulfil addressing every issue she's ever had in her life.*

*There is an imbalance on cases involving Children's Aid, I get affidavits attacking on all issues and then social workers can't help with the needs a timely fashion vis a vis hearings,] as they are "waiting for assessments."*

*In child protection cases the quality is reasonable considering they are big difficult cases. But there are problems with the process.*

*25% of my file load is child protection, but it takes up 80% of my time. In Metro, salaried justice lawyers can devote their full time to these for CAS - they bombard you with paperwork [in another region of Nova Scotia] those cases are handled by a private lawyer who is much more relaxed.*

*The fundamental issue is that social workers do not have resources to help women with parenting. This is frustrating for legal aid because you cant just consent without hearings on these cases but at hearings you don't have anything to show because enough was not done [by parents to address the issues raised by CAS.] It's very discouraging work.*

*I don't have the time to devote to these cases that I need because of the caseload...with child protection - that generates big files and everything takes longer.*

Black women raised the fact that they felt disproportionately subject to the seizing of their children who would then be placed with white foster families. In their view, legal aid never seemed to look at the race aspect in fighting their cases. This could be related to caseloads which don't permit the exploration of equality arguments, among other possible factors. In these women's view, legal aid seemed more focused on responding to Children's Aid than to Black

families' needs in the apprehension situation. Women wanted help in taking the lead in the proposed plan for their children's return but instead legal aid ended up just being reactive to Children's Aid. This reactive approach was also identified by lawyers coping with a blitz of paperwork in these cases.

Some family lawyers also questioned the time spent on cases generated by the department of Community Services' requirement that all women with children receiving social assistance seek child support.

*I see many women in here because Community Services wants them to pursue maintenance. Community Services should have its own lawyers to do this. And women may not want to pursue for legitimate reasons, but then abused women are threatened with cut-off from social assistance. Or they don't know who the father is or where he is. He might be a one-night stand that they don't want in their life. Y+The father may be long gone. Cases where there is abuse or violence, the requirement can be waived - legal aid can help them with that. But social assistance needs its own screen for violence or abuse - the last thing you want to do is to be finding him.*

These lawyers felt they were in essence servicing the Department of Community Services's needs, not women's, as these measures provided no net gains for women even when they were successful. These efforts were sometimes seen as dangerous for women, when the other partner had been abusive. If not dangerous, they sometimes were seen as potentially disruptive to women's lives in other ways, as when the woman had no wish for the wildcard of an unknown person to be a presence in her family and to have an affect on her survival. In such cases where lawyers perceived contact with the other parent as dangerous, they reported being able to successfully "fight" Community Services to drop the requirement to pursue, but that this took away from their time and resources.

Criminal lawyers identified the demands of representing all young persons charged with offences as cutting into resources that could have been applied to more serious cases involving adults. Two criminal lawyers also expressed some frustration with the number of domestic violence cases legal aid had to deal with, and blamed the Department of Justice's Framework for Action on Family Violence for the high volume. One lawyer noted the difficulty in no longer having a diversion option for women who were arguably unfairly charged. Another emphasized that sometimes women "embellished" their accounts of abuse in the heat of the moment without recognizing the criminal consequences, leading to recantings.<sup>42</sup> A third criminal lawyer interviewed, however, was critical of the policy for the high volume, particularly involving charges against women, through their misinterpreting the Framework and acting "as if they didn't have to have reasonable and probable grounds anymore." This lawyer was concerned by what she perceived as a spike of arrests of women:

*Sometimes the policy act as if pro-charge overrides reasonable and probable grounds. The amount of women charged with spousal assaults - I think the police are trying to increase the stats across Canada to show "it's women, too." But if the male just happens to pick up the phone first and spitefully make a complaint, the police should be looking at the entire picture.*

Both lawyers and women clients identified delays in initial family law appointments as barriers. Shortest wait times for an initial appointment, as indicated by these lawyers were four weeks;

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<sup>42</sup> Front line workers at Nova Scotia women's organizations indicate, however, that rather than exaggerating abusive events, victims generally tend to diminish them, and that reasons for recantings, perjury and failing to appear at trial are more usually connected to fear and intimidation by the assailant. (Source: Research participation by women's advocates in focus groups and conversations related to the issues at conferences held by the Nova Scotia Coalition of Women for Justice.)

longer wait times described were up to three months. These delays were seen as direct results of caseloads. Clients viewed as emergency cases were taken earlier by these lawyers, and these cases were usually those involving abuse but exact screening protocols used by lawyers in the exercise of this discretion were not described. Delays when abuse was involved were of great concern to women. Even when the abuse was brought to their lawyer's attention they often did not understand how terrified women were and did not move cases to "emergency" status without intervention from transition house workers.

Lawyers interviewed provide ideas for solutions to caseload problems. Increased resources were universally recommended. Also prominent ideas included increased reliance on mediation for family law,<sup>43</sup> and a pre-charge diversion program for domestic violence cases. Such attempts to lower caseloads will likely have equality impacts in women, involving safety and fairness issues.

### **Recommendations**

**Women's** organizations and Nova Scotia Legal Aid should be involved in planning together to advocate for increased resources to legal aid that will reduce caseloads and delays.

**Caseload** solutions involving innovative justice programming should not have the effect of eliminating legal representation to groups such as abused women seeking effective advocacy in family law matters, and should not be focusing on decriminalizing violence against women, through pre-charge or pre-trial diversion methods, for example.

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<sup>43</sup> Nova Scotia research suggests that in addition to having safety and fairness impacts for abused women, court annexed alternative dispute resolution of these matters is unlikely to achieve settlement for cases involving abuse. See Rubin, P. (2000) *Abused Women in Mediation: A Nova Scotia Snapshot*, Transition House Association of Nova Scotia. Other lawyers participating were not as positive about mediation alternatives:

*Mediation worries me. I have been able to stop two agreements. There is no expertise. The agreement was below the support guidelines and it was using the term "shared custody" just to allow reduced support. But it's not happening as much.*

*My [family] practice is very court driven. I see collaborative family law as a help with this in the future, possibly. It's better than mediation because it involves lawyers.*

**Appropriate** focus for innovative justice programming designed to lessen the demand for legal aid services might include, for example, support for measures broadening adult diversion eligibility for many non-violent offences, and ensuring women's (and men's) ability to access them.

**Case** management guidelines should be explored for the government on child apprehension cases.

## **Communication**

Regarding communication issues, women highly valued regular communication with lawyers. Some women reported obstacles in this regard, some of which may be attributed to lawyer's caseloads. However, some women, while recognizing the pressures on legal aid lawyers. Identified possible additional factors. Women prisoners, while in jail or in prison, had great difficulty because of communication obstacles. As two women described it:

*One lawyer would always call me back when he said he would. But another one, who everyone knows doesn't care, never returned my calls.*

*You sit in jail calling a hundred times and never get a call back.*

This was particularly acute for women in the Central Nova Correctional Facility. As one lawyer commented on procedures there:

*It's very hard to contact women in the provincial facility. It take me twenty minutes just to get to the meeting rooms. I've started keeping track of the time.*

One woman at the provincial facility described being left completely unaware of hearing dates and of critical appointments in child apprehension proceedings, relying primarily on her mother, not her lawyer, for communication.

## **Recommendation**

**Women's** advocates and Nova Scotia Legal Aid should work together on enhancing communication with women clients.

## **Civil Treatment and Respect**

Women reported varied experiences in the respect they received from their legal aid lawyer. Some women were very happy with the respectful and courteous services legal aid lawyers provided. Others felt unheard or belittled by lawyers. Some women who were very determined about their cases reported being put down by their lawyers for "having an attitude." racialized women reported experiencing the condescension and stereotyping associated with systemic racism, and women from all backgrounds who were dissatisfied with the attitudes of their lawyers reported experiencing stereotyping based on gender and poverty.

Aboriginal women and black women particularly shared negative experiences. Many Aboriginal women reported racism as a factor in their experience of legal aid. They also described experiencing prejudice because of poverty, adding up to a "double whammy" as one woman put

it. Black women in child apprehension cases reported being treated “like the bad guys” even though they were often victims of woman abuse. They believed that their skin colour played a major role in the lack of help from legal aid. They felt lawyers saw them as stereotypes based on race and poverty. Black women participants described legal aid as “another one of the systems that humiliate you.” One woman described her experience of being channeled to social assistance although she previously was not using social assistance:

*I was informed by my legal aid lawyer that my husband could not afford to give me anything and I should not push it. So I ended up on welfare and guess what, I am still there...thanks to legal aid. They make a lot of assumptions about your lifestyle.*

(NSLA lawyers indicated that it would be important to determine if the male partner had any income or assets in this case before assuming this should have been pursued.)

Black women described many ways in which they were disrespected by legal aid lawyers: information they provided was scoffed at; they were treated as if they were unintelligent; they felt lawyers used language to intentionally make things hard to understand. Black women reported not trusting their lawyers in terms of confidentiality, and reported lawyer’s unauthorized sharing of information with Children’s Aid.

But Black women and Aboriginal women reported giving up the fight either in criminal or in family matters because the approach of the lawyer made them feel they were not going to get a “fair shake.” Another woman described the aggressive and impatient treatment received from a legal aid lawyer in the office, and the negative impact that had had on her daughter who witnessed it and this discouraged her from actively seeking child support.

Women indicated that lack of respect by staff at the front counter of the legal aid offices was a common problem. Waiting times before an appointment were already a strain for women, especially those with children with them, and several reported languishing in front of the reception desk for long periods until they were finally acknowledged. Others reported a sense of condescension from office staff. One educator at a woman’s organization responding to the survey commented:

*We...hear comments about... legal aid [counter] staff not being friendly or not acting “very professional” in the way they deal with clients. Someone told me she waited more than ten minutes while a woman behind the counter talked on the phone on what appeared to be a personal phone call. Then without saying anything to the client, she got up and left the room. Later someone else came in and asked her somewhat curtly what she wanted. She indicated who she was there to see. That staff person asked her why she hadn’t let someone know she was there as the lawyer she was to see was waiting for her and now she was late. The woman...was left feeling like she was in the wrong.*

A Black woman’s advocate recounted a similar story of accompanying a woman to an appointment and receiving treatment very similar to that described in the previous comments. The advocate, however, was able to persist in seeking service for the woman and avoided a negative outcome. Aboriginal women most often reported being looked down on and disrespected by staff at the front counter. Aboriginal women who tried to reschedule appointments reported being treated angrily. They also reported counter staff giving legal advice: “this is what you get for this” crime, for example. And this discouraged women from fighting charges. A translator shared the following comments from an Acadian woman:

*The behavior of legal aid staff, even at the secretarial level, can have an impact on women’s taking advantage of the service or not. For example, women calling in can be discouraged of the*

*person on the other end of the telephone line responds in a condescending or impatient manner.*

An important variable was the personality of particular lawyers rather than the approach of entire offices. Often women from a particular community coming together for this research's focus group agreed openly on who were the "problem personalities in a particular office, but had no way to provide feedback on the difficulties they experienced, aside from warning each other informally. Women often felt it was unfortunate that so much depended on the particular lawyer's attitude and approaches. Women who sought to change lawyers reported being discouraged from doing this or penalized in some way:

*I had to call the Crown myself and we worked it out. I had to be my own lawyer. And legal aid wouldn't let me change lawyers.*

Aboriginal women reported being "blacklisted" at legal aid if they attempted to change lawyers.

Conversely, women reported feeling disrespected and their cases' prospects diminished by unwelcome, and sometimes frequent, changes in lawyers. For example, an Acadian woman described through a translator her experience:

*This woman's progress took eight years and six lawyers. She wanted a divorce from her abusive husband who was also a child abuser. In the first year, she [ was sequentially assigned by the office] two legal aid lawyers. The switch from one lawyer to another was anything but efficient or professional. They either failed to pass on her file and when they did, the new lawyer didn't take the time to review her case before meeting her. She was never notified of the change. Over the next five years, this happened [frequently] and he had to repeat her story and recount the events of her situation every time. She notes that this is very frustrating and discouraging and can cause a woman to give up.*

In addition to being frustrating, it can be traumatic for an abused woman to have to recount the details of abuse again and again to a series of lawyers.

### **Recommendations**

**Nova** Scotia Legal Aid lawyers and administrative staff should receive gender and diversity training aimed at improving the respectful treatment of diverse women. This should first be delivered to current employees and then become standard for new hires.

**Women's** entitlement to change legal aid lawyers should be established. Communicated to clients and protected.

**Unwelcome** changes in lawyers should be avoided to the extent possible; these changes and the reasons for them should be tracked in order to effectively reduce this problem. When such changes are unavoidable. Protocols for transfers should be followed minimizing the impact on women, especially the repeated recounting of abuse details.

### **Effective Advocacy**

Women who felt their lawyers were willing to "fight" for them tended to be positive about their legal aid experience, regardless of the outcomes. Many women participating in the research. However, reported an uncaring approach or a failure to act assertively on their cases. Participating women consistently highlighted problems with duty counsel in this regard. Some women ascribed these problems to caseloads. Others, however, felt the lack of zealous advocacy

to be a result of gender, race or class stereotypes, or some combination of the three.

Women reported being discouraged from seeking adequate support from partners. And being encouraged to simply rely on social assistance. One abused woman shared a story which is representative of other also shared with the researcher:

*I went from the transition house to legal aid. I was in a daze, terrified of men. It was a male lawyer. He said, "Why do you need support, you've got social assistance?" My partner had a good job. I called back six weeks later and was told "the case was closed." I had support from the transition house. I asked for another lawyer. I was tough with him and got more active...My own lawyer [then] tried to use the prospect of court to scare me out of going to court...In court the lawyer did catch my ex in his lies [related to financial disclosure] and I received support.*

Black women felt that discouragement in seeking adequate support was linked to a stereotype that poverty or social assistance was not a hardship for Black women who were presumed to be somehow acclimated to it. Rural women family clients reported sexist negativity from private male lawyers in their towns who had been through difficult divorces themselves, who discouraged them from seeking adequate support or appropriate custody and access conditions, or failed to treat them with respect.

Women in prison described being treated with preconceptions. Because they had a criminal record or an addiction history, they reported legal aid lawyers were less willing to fight for them or use defenses:

*I was trying to defend myself when [I assaulted a male] but the Crown tore my legal aid lawyer to shreds. Not because of inexperience but because my lawyer's heart wasn't in it. With my criminal record. With my lifestyle [involving addiction] no one wanted to see this as self-defense. And that's the thing.*

Women also reported being pressured into "deals" rather than being supported to plead not guilty even when they had explicitly told lawyers they were not guilty or that they wanted to plead not guilty. This problem was particularly emphasized by Aboriginal women. Aboriginal women in both focus group locations reported having to represent themselves when legal aid lawyers did not appear or refused to fight for them. Aboriginal women reported a lot of pressure to plead guilty regardless of the facts. They felt they were pressured into taking deals involving guilty pleas based on preconceptions about their lives, without consideration of not guilty pleas as a possible approach. Nov Scotia Legal Aid lawyers indicated that the sort of approach to plea choice indicated by these women could be actionable, and found its frequent occurrence difficult to believe. Women also reported having to fight very hard to get a lawyer to fight for them on criminal matters, especially if a woman wanted to plead not guilty. They reported a lack of cultural sensitivity or understanding of women's lives in their community.

Lawyers interviewed did not perceive advice to clients in the same way:

*I don't see pressure from lawyers to take guilty pleas. I'm not seeing that. The client has to understand that the lawyer's role is not to tell them what they want to hear. Having read the Crown disclosure, I will advise that if they plead guilty the Crown is likely seeking one penalty, if they do not, it's another.*

Lawyers did, however, see other factors operating that might induce women to plead guilty, such as family responsibilities, control by abusive partners, few resources for making the best plea choices, social conditioning for women to be passive or simply being unable to psychologically cope with the stress of matters dragging on:

*I'm seeing more female youth, 17-18 going through - I don't know what's going on except they are kids with adult responsibilities, young spouses. They don't have the resources to make*

*decisions( In their cases) that are going o affect the rest of their lives. They need more resources regarding making choices about pleas. They have no education, are too stressed. They make legal decisions based on their social group rather than future concerns.*

*Too many plead guilty just to get it over with. Or they don't have the resources for childcare and transportation to lawyer's and to courts.*

*Criminal charges for women are difficult situations with many complicating factors. The pressures are different for men. For women, there are more family pressures, they are more affected and stressed as the care giver. There is high stress there due to the criminal proceedings and they want to get it dealt with as quickly as possible so they plead guilty due to heir caregiving responsibilities. For example, for shoplifting I may advise it is good to wait because he Crown may not be able to prove it on the court date, but they can't do this because of the stress of court dates looming.*

*I wish I knew where to send [female client who pled guilty contrary to advice.] I had the suspicion she needed to assess her living situation, that there was abuse. How to reach her?*

*Sometimes I see women pleading contrary to my advice. It may be because of the needs of their family,*

*Women tend to plead guilty disproportionately, especially Native women. Their outlook is " Don't disrupt or rock the boat."*

Lawyers did not identify systemic racism as a barrier to lawyer's attitudes to advocacy for women:

*Racism is not an issue in our office.*

Lawyers did, however, report women clients being treated in court according to gender and class stereotypes, or with ignorance of gender and cultural issues:

I see the approach in court that people are 'lazy" based on gender or race [when social assistance is involved.]

If I had a hotly contested custody case, my intake becomes less. I don't do less on the case. But the Supreme Court is negative about legal aid resources being used to fight for women:"If she were paying for this, she'd never be doing this>" You can see this even in some of the decisions. For them, it's unforgivable for poor people to get the same services as non-poor. Supreme Court judges need to examine their views.

I spend 3/4 of my time in court educating on the background issues; otherwise their eyes just glaze over and they don't get what the issue is really about.

Lawyers also identified sexism and other cultural issues in Aboriginal women's communities themselves that make effective advocacy a challenge:

*Sometimes I think it is hard for Aboriginal women to understand that they can expect more from their community and get it. There's a lot of sexism within their community - big time. Housing is a big issue. With Children and Family Services their position is to take the children and say they will be returned when the woman has a better house. We run into it a lot. And what can the court say about how the Band Council hands out housing? That's the big issue, the housing. And the sexism. And it's not a realistic option to go off reserve because that's where all their family and support is.*

*The ability of the band to control housing will impact on contested control.*

## **Recommendations**

**Nova** Scotia Legal Aid lawyers and administrative staff should receive gender and diversity training aimed at enabling them to identify and avoid stereotypical beliefs affecting diverse women and to better understand the realities of women's lives as they impact lawyering.<sup>44</sup> ( This would include the impact of family care giving responsibilities.) Women's advocates should be involved in the development and delivery of this information.

**Women** need support and education on their rights and consequences of plea choices. A focus of any new community worker positions should be supporting women in choosing a plea.

**Both** quantitative and qualitative research is needed on women's choice of plea in Nova Scotia to answer questions raised in this research about factors channeling women to guilty pleas.

## **Women Abuse and it's Impact**

As described in relation to many issues identified herein, the presence io woman abuse can increase negative impacts or present special impacts of its own. These impacts have been integrated into the discussion above, but are revisited here as a general issue.

Lawyers interviewed for this research were often well aware of abuse's impact for women in both criminal and family law cases.

*I focus special attention on cases involving abuse.*

*I have clients under 19 with children who can't live at home because of the abuse and they can't get support. I've argued with Community Services over this. It leads to the loss of the child because of "no stable place to live." There needs to be a connection between social assistance and child protection. Social assistance has some discretion. If I advocate for them they sometimes get it.*

*Domestic violence charges against women? It's usually self-defense, even if they have a weapon.*

*I deal with the same women in family and criminal because [woman] abuse leads to stress, leads to alcohol abuse and to offences \*\*\*\*\**

*There needs to be more coordination between community services and legal services. Typically, [woman] abuse is the crisis and children are involved but there are time delays in getting support - women can't wage a legal battle without resources.*

*Male judges don't appreciate the weight that should be given to abuse issues. I appeal if they don't weigh abuse.*

*It is frustrating to work with cases involving abuse, Women may not see it as abuse. It is especially frustrating around child abuse. Where the father is abusing, the mother may be powerless to stop it.*

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<sup>44</sup> For a novel holistic and useful exploration of how gender and racial oppression affect lawyering for women, particularly in the legal aid context, see Espinosa, L. (1997) "Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender," 95 Michigan L Rev 901.

*For women involved in abusive relationships, Child Protection takes their children or warns - there is not enough understanding [at Child Protection.]*

*Child Protection - a phone call or other limited contact [with the abusive spouse] gets used as proof of endangerment.*

The ability and responsibility to identify abuse issues and conduct the case accordingly is left to individual lawyers, who are not provided with screening tools or protocols. A lack of regular screenings is likely impacting women clients. Lawyer's comments include:

*Abuse can be a mitigating factor, but women don't want to talk about it, don't want to be "shamed."*

*I wish I knew where to send [female client who pled guilty contrary to advice.] I had the suspicion she needed to assess her living situation, that there was abuse. How to reach her?*

*Pressure is a factor for women who bring drugs into institutions and for prostitution...I can bring this up with the Crown, and get a conditional sentence.*

Women report that legal aid lawyers are not generally inquiring of women clients regarding partner abuse. When such abuse is brought to light, lawyer's responses are mixed - some treat it sensitively, understand the fears and risks and use this knowledge in seeking just results. Others ignore it as an issue. Women clients who have experienced abuse often reported that no inquiries were made as to abuse or that their legal aid lawyer failed to understand or prioritize the issues related to either woman or child abuse.

Lawyers themselves identified training in offices as a need.<sup>45</sup>

*Lawyers need to receive training on partner violence and its impact on cases.*

Lawyers felt when they asked for resources for access to experts or rebutting assessments where abuse was involved. There was no obstacle. Some did report a sense of "raised eyebrows" when seeking funding or resources to fight cases in these ways, and reported having to weigh their requests carefully knowing the pool of resources was limited.

*I get experts to rebut assessments. This has shocked others in family law at NSLA. But no one has ever said no to me.*

*I have never been denied money I requested for special assessments related to child abuse or for rebutting assessments. But I am careful about making requests too often.*

Others felt they simply did not have access to enough resources for expert witnesses to present on defenses involving abuse or the impact of woman abuse on the abusive partner's ability to parent.:

*In family law, there is not enough money for experts on abuse issues.*

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<sup>45</sup> For an idea of content for such training, see McDonald, S. With Cross, P. (2001) "Women's Voices Being Heard: Responsive lawyering" 16 J of Law and Social Policy 207; Valente, R. (1995,) "Addressing Domestic Violence: The Role of the Family Law Practitioner," 29 Fam L Q 188; Orloff, L., Jang, D., and Klein, C. (1995,) "With No Place or Turn: Improving Legal Advocacy for Battered Immigrant Women," 29 Fam L Q 313; and Margulies, P. (1995,) "Representation of Domestic Violence Survivors as a New Paradigm of Poverty Law: In Search of Access, Connection and Voice," 63 George Washington L. Rev. 1071, although ultimately any training materials would ideally be developed with Nova Scotia specific input, especially from women's organizations.

*For defending women on domestic violence charges we do not have great resources, where the defense requires expert opinion.*

*We need more money for library services and research. The researcher in Halifax is fabulous and if we lost that it would be a disaster.*

*Expert testimony and reports - I can't access these to the extent needed, as to the effects of [women] abuse on the ability to parent [of the father.] I need to show the academic work on this.*

Lawyers also expressed frustration that many abused women wanted to eliminate partner access, due to their fears for their children and themselves but did not understand that courts were unlikely to eliminate access in even the extreme cases. Women expressed similar frustration that woman abuse and even child abuse seemed to have very limited effects on access orders. Lawyers commented:

*Transition house insists that the abuser can't have access. But I have to explain that is not the starting point for the court, He is going to get some kind of access.*

*Even where [in my view] he shouldn't have access, the case law says he is going to get supervised access.*

### **Recommendations**

**Women's** advocates and legal aid lawyers should work together to create a screening tool to identify partner abuse in client's lives. This screening tool should then become part of the application process.

**Legal** Aid lawyers should be provided with training on the potential impacts of woman abuse on both criminal and family law cases. Organizations serving abused women and women in conflict with the law should be involved in the development and delivery of educational materials in all regions.

**Nova** Scotia Legal Aid and women's organizations should partner in advocacy for increased judicial education on abuse issues as they affect legal rights and proceedings. They should work together to create an educational package including academic work on the impact of intimate partner abuse on parenting ability and on the risks for women and children where access is not limited.

**Nova** Scotia Legal Aid and women's organizations should partner in advocacy for increased resources for research and expert opinion on matters where woman abuse is a factor.

## Community Connections and New Models for Legal Aid

Many lawyers linked best outcomes for women clients with connection to community organizations, especially with the ability to recommend community programming. Lawyers identified women's community organizations as important providers of programming and as sources of information on what was available in the community.

*The more programs I can offer judges the higher the chances there are for probation as opposed to incarcerations.*

*Coverdale knows more about programs that are available than I do.*

*Coverdale and E. Fry are supportive, they discuss the process with women, tell them what to expect and refer them to support services.*

*Probation is overwhelmed. Women are getting community help from Coverdale and E. Fry.*

*There are lots of mental health issues. E. Fry is very helpful with stoplifting and self-esteem and dependency programs.*

*I have a positive relationship with E. Fry.*

*E. Fry and the Transition House are helpful.*

Lawyers wanted better information sharing with other community service providers, such as hospitals and mental health services, and any sources for housing assistance:

*Women with mental disabilities - I hope something will happen here. Police want to stack the charge so they will get time and get out of their hair for a while. There is no place but jail for these women to stay.*

*Sometimes I see housing problems, not justice problems. But I have adults, saying please send me [to an institution so they can have shelter.] Sometimes the transition house has been helpful with women with no place to go, if I have a suspicion of partner abuse.*

*The issue for women with mental health issues are huge and the resources are small. If they are not fit to stand trial there are some resources but if they are functioning at a level above that - I is an overburdened situation. Even to know what programs are there. I need to hear more often about programming. I need updated information.*

*Cuts to the mental health system means that women end up in the criminal justice system. It can be a housing issue.*

Lawyers particularly saw the Elizabeth Fry Societies and Coverdale Court Services as enhancing their ability to communicate with clients:

*If the client is uncomfortable talking at first, Coverdale can vouch for me.*

Some lawyers emphasized the importance for women clients of support through the transition house:

*Transition house needs outreach capability, to help women make a plan [that will help in*

*pursuing their legal case.] For example, they need support in getting financial information.*

*If there was enough money, there should be a staff lawyer at transition house that could advise the woman. Then right from the beginning we have the right information going out to people.*

*Thank goodness for the transition house.*

Women unanimously identified the need for woman-to-woman support as they made their way through the legal system, including working with legal aid. They reported that support from a women's advocate, particularly one from their own community with awareness of cultural issues, did make or would have made a positive impact on their experience. Women indicated they needed support at application, at appointments and in court. Women who had support persons from a women's agency uniformly described this as a key factor in lowering their fears and stress and helping with their understanding of the legal process.

Black women needed Black women support workers who understood their issues as a Black woman and the racism they were dealing with in the justice system. All women, but particularly Aboriginal, immigrant and Black women indicated that they needed help understanding legal language, and the style of English some lawyers used. Aboriginal women both at Millbrook and eskasoni found the support from Aboriginal women support workers as extremely important - they could help fight for them in the system at a point where they were very worn down by their own [problems and the racism in the justice system. Women in prison described needing support persons while in the system in general and especially when dealing with institutional charges. Women who had been through the system themselves would be valuable supporters. Many women were very scared of going to court and a support person was extremely important for this phase of their experience. A few women disclosed that they had mental disabilities. In some cases related to abuse, an felt they were at a disadvantage in dealing with lawyers and the legal system. They would have done better in the system, they felt, with access to a support person.

Individual lawyers' approaches to the inclusion of support people varied. Some accepted them and found them useful in helping to explain legal processes. Other lawyers felt that explanations from support people could confuse clients. There was also confusion around the effect of support people's presence in lawyer/client meetings with regard to confidentiality and privilege.

Innovative models for legal aid delivery in other jurisdictions have involved new agencies that deliver a combination of services to women, including legal representation, and specialized legal aid clinics addressing unique needs of women in certain communities or groups. Lawyers and women participating described their wishes for a woman's clinic for legal services provision:

*I find it hard to represent men now as family clients. I would like to see a women's legal clinic.*

*A women-only service especially for abuse women that was 'firewalled' from conflict of interest when the abuser is already getting legal aid.*

*A Black women's clinic, with Black lawyers who really care and know the issues.*

## **Recommendations**

**Legal** aid lawyers need accurate up-to-date knowledge fo community programming available to women.

**Support** for women legal aid clients provided by women's organizations that directly supports legal aid effectiveness should be identified, measured and valued, especially with regard to best

outcomes for women.

**Nova** Scotia Legal Aid and women's organizations should explore together programming models, including the development of a community worker job description and specialized clinics and explore ideas for resourcing this work. New models or positions should always prioritize culturally appropriate support for diverse women. Groups with specific needs for support include women in conflict with the law, women whose first language is not English, women with physical disabilities, women with mental disabilities, Aboriginal women, Black women, immigrant women, Acadian women, and lesbians and bi-sexual women.

## **APPENDIX A - Interview Guide for Lawyers**

1. How well do women in [community] understand when something is a legal problem, and understand that they have legal rights, entitlements? How well do you feel women [in community] know what services are available through legal aid?
2. How able are women to navigate application procedures? What makes this process easier or harder for women you serve?
3. Are you able to address all legal issues with an impact on women clients? What issues are not eligible for legal aid assistance that should be?
4. What impact do you feel the eligibility criteria of the province or your office have on women's access to justice?
5. Overall, how do you feel about the quality of service you are able to provide to women? What are the constraints, if any, on the quality of service you are able to provide? What resources, support or community links would allow you/your office to meet more of women's needs?
6. Specifically in cases involving woman abuse and/or child abuse, what challenges are you or your office facing in meeting needs for quality legal services? What resources, support or community links would allow you/your office to meet more of women's needs?
7. Specifically for women clients who are in conflict with the law, what challenges are you or your office facing in meeting needs for quality legal services? What resources, support or community links would allow you/your office to meet more of women's needs?

*[ Lawyers will be asked to address each of these questions with regard specifically to First Nations women, /black women, immigrant and refugee women, women living with disability, and single moms from these groups.]*

## **APPENDIX B - Women's Focus Group Outline**

1. Introduction of Nova Scotia Coalition for Women for Justice, description of project and significance of this focus group [15 minutes]
2. OK with everyone re participation and use of material anonymously in report [oral consent] [five minutes]
3. The idea is to have women describe their experiences in their own words but I will use key questions to get them going (40 minutes)
  - a. How did you hear about and connect with legal aid? Was it easy or hard to get legal help?
  - b. What kind of problems did they work on with you? Were these the problems that you needed help with or were there other problems that they should have helped with?
  - c. How were you treated by your legal aid lawyer? Were you respected? Did you feel comfortable telling the lawyer about your situation? Was racism or discrimination because of disability or other discrimination a factor in your experience?
  - d. Were you satisfied with the quality of legal services you received? How did the quality of services affect the outcome of your case?
  - e. If you are a mother, how did this affect your legal needs, particularly if you had sole responsibility for your children?
  - f. If abuse was a factor in your case or in your life, how was it addressed by your legal aid lawyer?
  - g. What do you think would give women the most shot at getting the legal help they need? What are your current needs for legal help?
  - h. Would it have helped to have a support person helping you relate to your lawyer and the case? If you did have such a support person. Please describe what they did?

BREAK (15 minutes)

4. Go around the circle for each individual to add anything about their experience or what they would like to see in the future in terms of legal help for women in their communities [30 minutes]
5. Paper evaluation of focus group [10 min]