

Can. Judicial Centre

Supreme Court of Canada



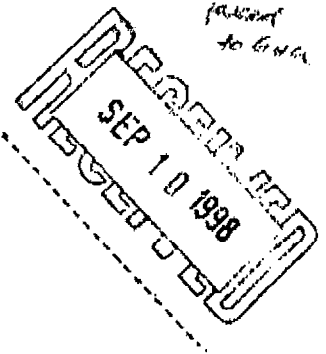
Cour suprême du Canada

Ottawa, Ontario
K1A 0J1

Chambers of
The Chief Justice

Cabinet du
Juge en chef

September 4, 1998



Ms. C. Gwendolyn Landolt
National Vice President
Real Women of Canada
Box 8813, Station "T"
Ottawa, Ontario
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Dear Ms. Landolt:

Thank you for your letter of July 29, 1998. I regret the delay in responding.

As I indicated, I asked my Executive Legal Officer, Mr. James O'Reilly, to review the NJI materials on Gender Equality in light of your group's concerns. His conclusion was that the materials give considerable attention to the subject of domestic assault and that the perspective of women who are victims of such assaults is given primacy in the materials. However, he felt this was a product of the timing of the preparation of the materials rather than bias. The materials were put together just after this Court's decision in *R. v. Lavallée*. Quite naturally, the manner in which the issue is addressed is affected by the legal issues that arose in that case. As you know, the case centred on the perspective of a battered woman. The fact that the materials look at the issue from that perspective as well does not necessarily mean that they are biased. Rather, they reflect a natural desire to explore legal issues that were very topical at the time. I have no doubt, however, that if the materials were to be updated and revised, they would reflect a subtler and more sophisticated understanding of domestic assault as the understanding of this issue has evolved considerably since 1990.

Other areas addressed in the materials include sentencing of a person convicted of a spousal assault, custody of children, sexual assault trials and the credibility of women in the courts. Again, there is a good deal of consideration of the perspective of women in these areas. Such issues as the need to take account of the reality of working women, the prevalence and effect of sexual assault on women, the need to use gender neutral language and the reality of young women practising law in a male-dominated profession are addressed. Mr. O'Reilly concluded that there was nothing improper about the manner in which these issues were presented. It brings to the attention of judges a perspective that may assist them in better dealing with these issues fairly.

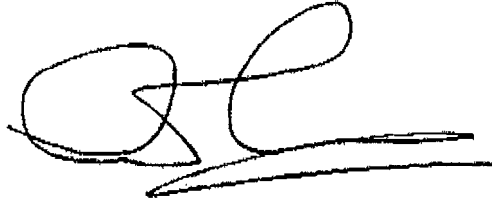
As for the excerpts from articles written by Shelagh Day and Gwen Brodsky, who are founders of LEAF, as you know, these excerpts provide background on equality cases decided under the *Canadian Bill of Rights* and a discussion of this Court's first decision under s. 15: *Andrews*. Both are critical. The first criticizes this Court's judgments in *Lavell* and *Bliss*. The second is critical of the equality analysis provided by this Court in *Andrews*. Mr. O'Reilly informs me that the excerpts are very short and do not present any overall thesis, if one exists, of the authors. All that one can glean from these passages is that the authors are critical of the analysis contained in the above-mentioned cases. While in principle it might have been better to include some commentary that praised the Court's decisions, given the brevity of the articles, such a measure was not strictly necessary in the circumstances.

In summary, Mr. O'Reilly's conclusion was that the materials do not reflect a feminist bias. At the same time, he felt that the materials should be improved. They very much need updating. In fact, I am told that the materials will be revised and updated within the framework of the NJI's Social Context Education Project. No doubt, the new version will be more relevant and current, as well as balanced.

A final point - my consideration of your concerns and the conclusions of my Executive Legal Officer convince me of the importance of dealing with these kinds of issues in substantive programs as well as in discrete capsules. For example, if the discussion of domestic violence took place in the context of a program on substantive criminal law (i.e. homicide or self defence), the perspective of both women and men would be equally relevant and would be discussed side by side. Taken out of that context and dealt with alongside other issues relating to women, one may get the mistaken impression that judges are only getting the point of view of women on such issues. I know that the NJI works very hard to ensure that these matters are not just dealt with in isolation but as part of their overall programming. I can well see the need to do so.

I very much appreciate your having raised your concerns with me. As I have said before, and now repeat, I believe that the NJI should be developing and delivering programmes that are relevant, informative and balanced. Comments that assist us in achieving those goals are welcomed.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a horizontal line that extends to the right and then loops back under the 'A'.

Antonio Lamer
Chief Justice of Canada