CAEFS' Battered Women's Defence Committee Work

Background

In 1990, the Supreme Court of Canada decided a landmark decision for women in Canada: R. v. Lavallee. In this case, Madam Justice Bertha Wilson decided that when a woman is charged with the killing of her mate, evidence of his prior abuse and of the effects of long term abuse (ie. "Battered Women's Syndrome" (BWS)), may be heard by the judge and jury, where such information helps her show that she acted in self-defence. If successful, self-defence results in a finding of "Not Guilty".

Limits of *Lavallee*

While the decision in *Lavallee* has meant that some Crown Attorneys have decided not to lay murder and manslaughter charges in cases that present evidence of past violence by the deceased and evidence that the woman was trying to defend her life and safety, many other women have not been so fortunate. CAEFS has examined the cases of 15 women currently serving federal sentences and have identified the following problems with the *Lavallee* decision:

- some of the women were convicted prior to 1990, and so they did not receive the benefit of this enlightened decision of our highest court;

- some Crown Attorneys and judges are using a rigid, stereotyped understanding of who is a "battered woman", so that women who are assertive, who have been violent themselves, or who have criminal records, have been unable to "qualify" for self-defence -- this narrow interpretation has a particularly harsh impact upon First Nations, Blacks and other visible minority women, whose lives and behaviour are examined through the lens of racism;

- some defence lawyers have failed to introduce evidence of abuse and its impact on behalf of their clients because they fail to understand the scope of *Lavallee* or the reality of their clients' experiences;

- some police, Crown Attorneys, and judges have focused upon the women's failure to resolve their dilemmas non-violently, rather than locating the problem with the violent men and the inadequate response of the system in protecting women and children; and

- some lawyers, judges, and juries cannot appreciate the risk and escalation of danger to women who leave abusive and controlling mates, so they cannot see self-defence as necessary in situations where women have apparently escaped danger by leaving.

Why an *En Bloc* Review is Necessary

No remedy other than an *en bloc* review will suffice to achieve justice for these women and for other women in the future. All of these cases need to be viewed together and in context. There are many reasons why individualized remedies will not serve these women and why CAEFS is calling for the *en bloc* review of their situations. These include:

- appeals of conviction and sentence are not available to all of the women because for some, the time periods for appeal have passed and for others, their lawyers entered guilty pleas on their behalves;

- appeals, where technically available, are unlikely to succeed because the women may not be permitted to introduce evidence of abuse and its effects as this evidence was, in fact, "available" at the time of the original trial;

- while pardons may be an option, this exercise of "mercy" is discretionary and rarely used for serious offences like murder and manslaughter;

- judicial inquiries like those granted to Donald Marshall Jr. and David Milgaard are possible, but again this is an extraordinary remedy granted only rarely by the Minister of Justice, who receives over 30 requests per year;

- all of these remedies require legal assistance, which is not equally available to all of the women;

- none of the above remedies will expose to the public, to lawyers, and to judges, the systemic nature of violence against women and children and the justice system's role in its perpetuation;

- as individual remedies, the above possibilities will fail to reveal the problems with the law of self defence and thus will not generate an impetus for reform of BWS;

- there are precedents for this sort of review in other jurisdictions and the Minister of Justice could utilize his legislative power to launch the *en bloc* review.

- The Minister of Justice has made it clear that he will not conduct the sort of review we were initially seeking, which we referred to as the *en bloc* process. Accordingly, while the foregoing concerns and issues persist, we are currently in the process of trying to negotiate an alternative, acceptable process of review.