

# Justice for Battered Women -- Denied, Delayed ... Diminished

## Jails are Not the Shelters Battered Women Need

### Highlights

- Judge Ratushny was appointed by the Solicitor General and Minister of Justice (Ministers Gray and Rock) in 1995 to review the cases of women jailed in relation to the deaths of abusive men.
- Judge Ratushny sought the input of prosecuting authorities, defence counsel, legal academics, equality-seeking groups, and the allegedly wrongly convicted women, in order to conduct a thorough review.
- Following a stringent legal review of the cases, Judge Ratushny recommended that 7 of 98 applicants be granted relief and that longer term law reform initiative be undertaken.
- Ministers McLellan and Scott (current Minister of Justice and Solicitor General) provide relief for 5 women.
- 2 women are already finished their sentences. They are granted conditional pardons.
- 2 women are in the community on full parole. They are granted a remission of their sentences and resources for community-based, non-correctional after care support.
- 1 woman, serving a term of life imprisonment with no parole eligibility for 25 years, is referred, via the s. 690 government process, to the Manitoba Court of Appeal for consideration for a retrial of whether her involvement was planned and premeditated.
- 2 women who are still in prison are granted no relief. Both have served more than 20 years in relation to their involvement in the deaths of abusive men. Judge Ratushny determined that the defence of provocation applied to both cases and recommended remission of their sentences. She also recommended several years of gradual release for one and a period of non-correctional after care support for the other.
- No women are released from prison as a result of the Self Defence Review.
- Judge Ratushny's recommendations were referred to provincial Attorneys General and federal bureaucrats for input into the Ministerial responses.
- The government should not have permitted prosecuting authorities and federal bureaucrats to intervene to critique the merits of Judge Ratushny's review of their previous actions.

*"It feels like a grudging provision of relief for some of us and a rejection of others." "If I was wrongfully convicted, what do they need me to rehabilitate?" "I feel so happy for myself and my family, but guilty about the others. Why wouldn't they let anyone out of prison?" "I don't know why they let us have a ray of hope if they didn't want to really listen to what Judge Ratushny said" "The judge made legal decisions about the cases. It doesn't seem right that they judged the judge. It feels like the Ministers and their people are judging us all over again. If they didn't have faith in the judge, why did they get her to do the review?" "It's so disappointing. It feels like the system is saying I'm, we're, guilty again, like they don't think we deserve any justice ever." " I'm happy for me, but what about the other women? I think this puts us all*

*behind and it's tragic. Do you think abused women will ever get justice?" "I don't know what to say, I'm just so sad..."* **Responses of the women for whom Judge Ratushny recommended relief.**

Although disappointed that no women will be released from prison as a result of the Ministerial announcement on Friday, the Canadian Association of Elizabeth Fry Societies (CAEFS) applauded the government's decision to release Judge Ratushny's report and to provide relief for five women. "The mere fact that the Minister of Justice and the Solicitor General followed up on Judge Ratushny's recommendations is a significant demonstration of the importance of external input and examination of the criminal justice system to correct injustice and reflect law and social policy developments with respect to the application of the law of self defence to battered women who defend themselves," stated Kim Pate, who is currently in Calgary to testify at a s. 745 ["faint hope clause"] hearing for a woman who has been in prison for 16 1/2 years for her involvement in the death of her abusive husband.

Judge Ratushny was appointed by the Ministers to conduct an independent review of the cases of battered women convicted of murder or manslaughter while trying to defend themselves from abusive men. In order to fulfill her self defence review mandate, Judge Ratushny sought the assistance, input and analysis of legal counsel, provincial attorneys general, officials within the Department of Justice, Ministry of the Solicitor General, legal academics, independent equality-seeking and advocacy groups, front-line anti-violence rape crisis and shelter workers, as well as the allegedly wrongfully convicted women themselves.

Following her appointment in the autumn of 1995, Judge Ratushny reviewed the cases of 98 women. She suggested relief for 7 women. After receiving Judge Ratushny's recommendations, the government sought the input of provincial prosecuting authorities. Judge Ratushny's recommendations were consequently modified as a result of the intervention of bureaucrats. CAEFS and other equality-seeking groups are very critical of the government for allowing such one-sided and myopic intervention.

"Current investigations into the wrongful convictions of David Milgard and Guy Paul Morin surely underscore the inappropriateness of providing provincial attorneys general with special opportunity to provide instruction to Ministers regarding the merits of their own prior prosecutions. Judge Ratushny invited such authorities to provide their perspective directly to her during the course of her rigorous examination of the women's cases. The subsequent interventions should not have been permitted by the Ministers. If the Ministers doubted the validity of Judge Ratushny's legal conclusions and recommendations, they should have provided a full and thorough analysis of her findings in all 98 cases. After all, if they did not agree with her in the seven cases, then they must have doubted her legal assessments of the cases of the 91 women for whom she did not recommend relief," stated Pate.

Judge Ratushny conducted a very thorough and rigorous legal analysis and review of each of these women's cases. Accordingly, CAEFS is extremely disappointed and disheartened that the Ministers did not follow Judge Ratushny's recommendations for relief for all but one of the seven women. In fact, it is telling that the only recommendation that was accepted was the one which referred a woman's case back to the bureaucracy to institute the s. 690 process and thereby invoke a referral of her case to the Manitoba Court of Appeal.

"The Self Defence Review was a significant initiative which exemplifies the importance of the government being able to examine the operation of the criminal justice system. The entire initiative was resisted for many years amid claims that it would create chaos within the system and open the floodgates for additional calls for review. In fact, the system has not and will not collapse as a result of this review. It has, however, exposed the urgent need for reform within the criminal justice system and Judge Ratushny has pointed to several law reform possibilities. CAEFS and other equality-seeking groups recognize the need for reform of self defence provisions and will continue to urge the government to implement appropriate law reform initiatives," continued Pate.

"CAEFS expects the government to take positive steps to ensure that there are further concrete benefits for battered women in the future. CAEFS now anticipates that the process of reviewing Judge Ratushny's law

reform recommendations will be guided by women's equality- seeking groups. Such leadership will ensure that it is a meritorious exercise and that policing, prosecutorial and sentencing practices are properly and thoroughly examined through an equality-seeking lens," concluded Pate.

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