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February 1, 2013

M. Jerry McHale, Q.C.
Chair, Family Justice Working Group
Action Committee on Access to Justice in Civil and Family Matters

Dear Mr. McHale

Re: Meaningful Change for Family Justice – Beyond Wise Words

We write to offer our feedback on the Family Justice Working Group’s report dated December 19, 2012, entitled “Meaningful Change for Family Justice – Beyond Wise Words”. We appreciate the opportunity to provide our comments and perspective.

West Coast LEAF has done considerable work on women’s equality in family law and access to justice in the family law context. Most recently, we intervened at the BC Court of Appeal in *Vilardell v. Dunham* to make submissions regarding the constitutional validity of court hearing fees as they relate to women in family law proceedings. We are also currently engaged in province-wide consultations with community-based women-serving organizations to explore legal service delivery models that will meet the needs of diverse communities.

West Coast LEAF delivers public legal education workshops on family law issues and their implications for women’s equality, and we have published several reports on family law-related topics. We have also written extensively on access to justice concerns, including submissions to government decision-makers and legislative finance committees, and published two research reports, *Legal Aid Denied: Women and the Cuts to Legal Services in BC* and *Rights-Based Legal Aid: Rebuilding BC’s Broken System*, which make the case for significant re-investment in BC’s legal aid system as a matter of women’s equality and fundamental rights.

The “Meaningful Change” Report makes a number of recommendations that we wholeheartedly support and endorse. In particular, the recommendation to increase funding for family law legal aid (recommendation 15) is essential to the fairness of the family law system, particularly for women, and should be prioritized by the Family Justice Working Group.

While inadequate legal aid affects us all, the lack of legal aid has a devastating and disproportionate impact on women, particularly women living in poverty, women of colour, Aboriginal women, women with disabilities, and other marginalized women. Women are especially affected by inadequate legal aid in family law cases because they are more likely to be economically disadvantaged by the breakdown of a relationship. The need for adequate legal aid is particularly compelling in situations where a woman is attempting to leave an abusive relationship and her life and physical and mental security, as well as that of her children, is at stake. No less pressing is the need for legal assistance to ensure that women and their children do not face poverty upon the end of the relationship.

We also recommend that the Family Justice Working Group prioritize an increased focus on family law in Canadian law schools and the hiring and development of more professors interested in family law (recommendations 1 and 3); expansion of early, front-end services in the family justice system and the allocation of new resources to these services (recommendation 10); and increased educational opportunities and professional support for lawyers to assist them to develop the full range of skills and knowledge they need (recommendation 4). The needs of Aboriginal and rural communities, immigrant women, people with disabilities and those with low or no literacy in English or French should also be prioritized.

It is imperative that the training opportunities for family law lawyers and law school courses on family law referenced above include a focus on violence against women within families and the impacts that violence has on women's ability to access and navigate the legal system and obtain fair outcomes. Generic, one-size-fits-all legal information is not responsive to the unique needs of women who have been abused by their spouse, and is no substitute for informed and sensitive advice from an advocate who understands the dynamics of abuse and unequal power relations that characterize many abusive relationships.

The lack of attention to violence against women in the family context is our main critique of the Working Group's Report.

The Report places considerable emphasis on "consensual dispute resolution" (CDR) as an alternative to litigation, particularly mediation and collaborative practice. Mediation can certainly be a preferable alternative to costly and protracted litigation, and a skilled mediator can provide invaluable assistance to parties to resolve their disputes and achieve fair and durable agreements. While the Report does note in recommendation 9 that exemptions should be available for cases involving family violence, in West Coast LEAF's view the Report does not adequately address the issue of violence against women and its impact on women's ability to participate as equal parties in mediation.

The success of CDR is premised on the existence of two parties with a relatively equal ability to assert their needs and negotiate fair solutions. This dynamic is unlikely to be present when the relationship has been characterized by violence and abuse. Mediation is unlikely to be effective when a woman has left her abusive spouse and is attempting to enforce her rights to custody

and access of children, property division, and child and spousal support. It is much too easy for abusers to use the mediation process to continue their bullying and manipulative behaviours and prolong their control over their ex-spouse.

The period immediately after separation is the most dangerous time for a woman fleeing abuse, and she may fear for her own or her child's safety and be subject to ongoing threats and intimidation by her abuser. This may cause her to compromise her rights to property or support in an effort to reduce conflict with her abuser, and she may be more easily coerced into agreements that do not adequately protect her rights and interests. Power imbalances between separating spouses may be exacerbated by disparities in education, English language abilities, and familiarity with Canadian laws. For immigrant women, particularly those who have been sponsored by their spouse and who do not have independent immigration status, these power disparities are all the more pronounced and will have even more profound impacts on their ability to negotiate with an abusive ex-spouse.

We are concerned that the Report inappropriately prioritizes mediation and other forms of CDR at the expense of just outcomes, particularly for women who have experienced abuse. The combination of mandatory mediation with a lack of free/low-cost legal advice and representation, as well as the emphasis on keeping family disputes out of court, creates a serious risk that parties will sign on to unfair agreements out of ignorance or fear. Anyone who does not wish to participate in mediation due to psychological or physical violence should be able to refuse to participate without penalty; those who do participate should have access to independent legal advice prior to the mediation session.

We appreciate your work in developing this Report and your efforts to improve the family justice system. We would encourage you to strengthen the impact and relevance of this Report by providing a more comprehensive consideration of family violence in the analysis of issues and recommendations. We would be pleased to be of assistance in this regard, if that would be useful.

Yours truly,

A handwritten signature in black ink, appearing to read 'Laura Track', written in a cursive style.

Laura Track
Legal Director