

primary areas of inequality highlighted in recent Charter cases. The systemic forms of inequality foster and render violence against women legitimate. They create the social climate in which violence against women takes place, and fails to be redressed appropriately, and they prevent women from effectively seeking solutions within the legal system. Legislation enacted to correct these imbalances in our society may be challenged by those hostile to changes that will result in greater equality and security for women. Witnesses before the Committee described examples of equality-enhancing legislation weakened or eroded by such challenges, such as the criminal law provisions limiting the admissibility of evidence on the sexual history of complainants in sexual assault cases.

Sections 276 and 277 of the *Criminal Code* represent an intervention by Parliament into the law of sexual assault, designed to curb the inquiry by defence lawyers into the complainant's past sexual conduct and sexual reputation. This attempt to revise legal rules based on stereotypical and erroneous beliefs about women's sexuality — for example, that sexually active women are more likely to lie about rape allegations and that their evidence is unreliable — represented the intention of Parliament to correct part of the social inequality underlying violence against women. This provision has been subject to several constitutional challenges in recent years, and has been ruled unconstitutional in the majority of cases to date. The issue has been heard most recently by the Supreme Court of Canada, whose decision is yet to be released.

As Helena Orton of LEAF told the Committee, referring to the cases of *R. v. Seaboyer* and *R. v. Gaymes*, where sections 276 and 277 were challenged:

"These provisions were fought very hard for by women's organizations in order to improve access to the criminal justice system for women. Rape has historically been one of the most under-reported crimes. The provisions are being challenged by two men accused of sexual assault, on the basis that they violate their trial rights, that evidence of sexual reputation and evidence of sexual history are relevant to consent" (4:30).

The Committee is concerned that legislation drafted and enacted to correct inequality in Canadian society will fail to achieve its objective if it is vulnerable to constitutional challenges because the drafters have failed to make clear the legislative purpose it serves. Such legislation can be strengthened by the inclusion of statements in its Preamble about Parliament's intention to acknowledge and correct women's inequality. When this is not done, the proving of systemic inequality can be an expensive part of the litigation process. For equality-seeking groups who are supporting legislation which was designed to remedy a disadvantage faced by women this expense is particularly burdensome, because their resources must be directed toward proving a disadvantage which was already accepted by the drafters of the impugned legislation.