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Instruments of justice

BY SADIE BOND

The Women's Legal Education and Action Fund (LEAF) uses test cases in an effort to promote the equality of women. In so doing, LEAF is using a tool developed in a social and political environment characterized by oppression and domination.

As the law has been, and is, a tool of dominance, it is not well suited for ending dominance. Nevertheless, LEAF has employed the law to promote equality with some success. The dangers, however, of adopting a tool that is not designed for the task at hand must be recognized.

Firstly, there is the danger that, in employing this tool, the pattern of domination will be perpetuated. The risk is that the result will be the promotion and maintenance of privilege for a dominant group of women, at the expense of women not part of that privileged group. LEAF's goal of "widening the circle" is an effort to ensure that women of colour, disabled women, Aboriginal women, women living in poverty, lesbian women, refugee women, etc. are represented in their activities. LEAF must hear from all women and address their needs.

A further danger is in adopting a tool that is fitted only to certain users and to a particular task. We are thus forced to accept its present parameters.

Issues of equality must be redefined to fit into a legal paradigm based on and is a contributing factor to the domination by men. Women are forced to carve out a space for themselves within a tradition characterized by their exclusion. The danger is that the resulting space will not be to women's specifications. Something may be left out.

Moreover, the practical rules of the legal process must be followed. The law has developed to deal primarily with private disputes between private individuals. In order for LEAF to sponsor a test case there must be an individual plaintiff who is willing to engage in litigation.

The law is not open to litigation of collective rights or interests. Consequently the case of an individual plaintiff must be the vehicle by which equality issues are brought into court.

This individual plaintiff must somehow become the embodiment of the collective interest or right at issue. Conflict inevitably arises between the goal of the plaintiff as defined in law — damages — and the broader goal of the recognition or promotion of some aspect of equality for the group — women.

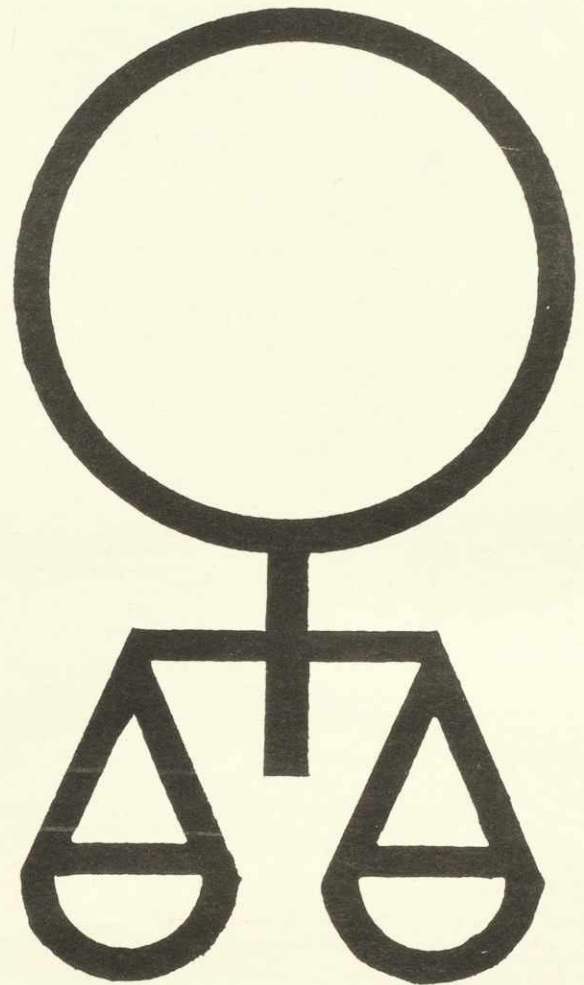
In addition, getting evidence of women's lived reality into court requires putting that evidence in a format recognized by the law. What is required is expert testimony, or statistics, that reflect the truth about our reality. Truth in that form however, may not be a full or complete representation of that reality. Rather than the tool fitting the task, the task is redefined to fit the tool.

As the tool is applied to new tasks in the pursuit of new goals, however, it will be transformed. Just as the law has been conditioned by its development within and its being part of a social order of dominance, it will be

reconditioned as it is used to pursue the goal of equality.

The relationship between the law and the social environment within which it develops is a reflexive one. The relationship between the tool and the use to which it is put is likewise reflexive. Just as the present structure of the tool defines the limits within which it may be used, the challenging and stretching of those limits works to restructure the tool.

The limitations and dangers of this refitting process mean that equality litigation can not be the only tool employed in the fight against discrimination and subjugation of women. Recent victories in the courts — *Lawlee, Butler, Sullivan, Andrews* — must be recognized as limited triumphs within a limited sphere. Law is an effective tool in the building of equality. Nevertheless we must continue to develop other tools — tools that we design ourselves to achieve our ends.



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