



Feminist Strategic Litigation: A Method of Advancing Indigenous Gender Equality in Canada?

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Abstract:

This working paper examines the use of law as a strategy for advancing gender equality, Indigenous rights, and reconciliation in Canada. It focuses on the work of the Women's Legal Education and Action Fund (LEAF) to explore the tension between law as a tool of oppression and as a potential means of transformation. To this end, the paper asks how systemic change can be pursued through a legal system that has itself been, and continues to be, a central instrument of colonial governance and political violence. The paper traces LEAF's development and its practice of Feminist Strategic Litigation (FSL), paying particular attention to its engagement with the rights of Indigenous women, girls, and 2SLGBTQIA+ people. Drawing on LEAF's litigation and advocacy concerning colonial laws, the treatment of Indigenous people within the justice system, and violence against Indigenous women and girls, the paper reflects on the achievements and limitations of the application of FSL. Thus, it considers LEAF's evolving practice as a lens through which to assess the possibilities and contradictions of pursuing reconciliation and decolonization using the law. Through this lens, the paper illustrates the ambiguity of LEAF's role as an agent of transformation in postcolonial Canada.

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1. Introduction¹

The research presented in this working paper lies at the intersection of gender, Indigeneity, and law within the broader framework of dealing with Canada's colonial past and present. It therefore asks how reconciliation and decolonization can be achieved when the state itself fails to fulfil its promises, and how civil society organizations seek to "force" the state to act by the law.

The *Truth and Reconciliation Commission of Canada (TRCC)* was established in 2008 under the 2006 *Indian Residential Schools and Settlement Agreement* as a component "for the resolution of the legacy of Indian Residential Schools" (Canada et al. 2006). This agreement was intended to bring an end to the campaigns led by former residential school students since the 1980s and was expected to usher in a new era of recovery (de Bruin and Gallant 2013). The TRCC contributed to this process by conducting research and documenting the experiences of "Residential Survivors, their families, members of their communities, former staff of residential schools, and others" (National Centre for Truth and Reconciliation 2020). The commission concluded its work in 2015 by publishing its final report and a document containing 94 Calls to Action. Justin Trudeau, who later became prime minister, declared his support for the outcomes of the TRCC's work and for the Canadian government's implementation of its recommendations (The Liberal Party of Canada 2015). However, according to the website *Beyond 94*, which tracks progress on the implementation of the Calls to Action, only 15 have been fully implemented to date, with just 34 projects underway (CBC News 2026; see also Kopp 2024). The *Yellowstone Institute*, an Indigenous-led research and education center, identified structural

factors as the greatest challenges to reconciliation. These include the paternalistic attitudes of politicians, insufficient funding, the utilization of the economic interests of the non-Indigenous public, discrimination against Indigenous people, and the ongoing dispossession of Indigenous lands. Ultimately, this risks reducing reconciliation to merely performative measures, creating opportunities for exploitative behavior, particularly in the case of economic reconciliation (Jewell and Mosby 2023: 11).

However, the continued manifestation of Canada's colonial legacy cannot be reduced to the stalled process of reconciliation. Rather, it remains an everyday reality for large parts of the Indigenous population. According to the latest census data from 2021, Indigenous people – comprising the constitutionally recognized groups of the First Nations, Inuit, and Métis – accounted for 5% of Canada's population (Government of Canada 2023). Yet, they continue to be disproportionately impacted by victimization. For instance, in 2025, 30.21% of homicide victims were Indigenous (Statistics Canada 2026). Indigenous women and girls are particularly vulnerable to high levels of violence, particularly gender-based violence (Women and Gender Equality Canada 2024). They have a much higher probability of becoming victims of intimate partner violence, sexual assault, and homicide than their non-Indigenous counterparts (ibid.). Indigenous women and girls are also more likely to go missing (Crown-Indigenous Relations and Northern Affairs Canada 2020). Similarly, they are more likely to experience conditions that increase their vulnerability to violence, including poverty, homelessness, incarceration, and exploitation (Harney et al. 2026). Indigenous people identifying as 2SLGBTQIA+² face additional risks arising from

¹ We thank Rita Kopp, Mariel Reiss, Tina Cramer, and Henriette Franken for their constructive feedback on the manuscript, and Carla Hammes-Welch for her scrutiny in language editing.

² Two-Spirit, Lesbian, Gay, Bisexual, Transgender, Queer, Questioning, Intersex and Asexual people.

discrimination and exclusion (ibid.). In many cases, these risks are compounded by police inaction stemming from prejudice and stereotypes (Mannitz 2024a: 9).

This illustrates how gender, Indigeneity, and socioeconomic factors intersect, with detrimental effects on those victimized, on Canadian politics and the reconciliation process. Indeed, the national human rights crisis of *Missing and Murdered Indigenous Women and Girls* (MMIWG)³ has long served as a mobilizing factor for nongovernmental organizations (NGOs) and social movements, particularly Indigenous movements (ibid.), although their responses may differ. In this working paper, we seek to shed light on one Canadian NGO and the strategies it has applied to advance the equality of 2SLGBTQIA+ Indigenous people in Canada. The *Women's Legal Education & Action Fund* (LEAF) aims to address these issues through law reform advocacy. For this analysis, LEAF's experiences are of particular relevance given the longstanding expectation in peace and conflict research that the law can contribute to establishing sustainable peace orders. Furthermore, in Canadian settler colonialism, legal mechanisms were instrumental not only in creating and sustaining colonial violence, but also in contesting it and addressing the enduring injustices resulting from colonial rule (see Mannitz and Drews 2022; Ghattas et al. 2026). Since 1985, LEAF has been engaging with questions of gender-based violence, reproductive justice, workplace rights, and Indigenous rights and law through strategic litigation, law reform, and public legal education (LEAF 2025a, 2026a). This is consistent with their mission statement: "Advancing gender equality through law" (LEAF 2026a). This makes LEAF one of the few feminist organizations in Canada with the legal expertise to address systemic issues and push for gender equality through law (LEAF 2020a). Examining why Indigenous women, girls, and 2SLGBTQIA+ individuals experience disproportionate "poverty, violence, incarceration and other negative outcomes" (LEAF 2026b), LEAF identifies the denial of "equal protection and benefit of the law" (ibid.) by the Canadian state as a key factor, making law their primary area of engagement. However, LEAF also acknowledges the constraints imposed by Canadian law, which the organization refers to as "Canadian colonial law" (ibid.). As a result, LEAF is committed to deepening its understanding of Indigenous legal traditions in relation to its own work (ibid.).⁴

In this working paper, we examine tensions surrounding the effectiveness of strategic mobilization of the legal

system in addressing (post)colonial dynamics. We do so by tracing LEAF's activities, with a particular focus on its efforts to promote Indigenous rights and its practice of *Feminist Strategic Litigation* (FSL). The working paper then discusses the extent to which FSL can be a strategy for achieving justice for marginalized groups, examining the outcomes of LEAF's practice alongside critical Indigenous perspectives. In doing so, we assess the transformative potential of both LEAF as an organization and FSL as a legal mobilization strategy. Lastly, the paper offers some concluding reflections on the political significance of these issues and their relevance for Canada's ongoing process of reconciliation.

2. Profile of the Women's Legal Education & Action Fund (LEAF)

As part of the process referred to as the patriation of Canada's Constitution, culminating in the *Constitution Act, 1982* and the removal of the remaining elements of British control (McWhinney et al. 2006), the new *Canadian Charter of Rights and Freedoms* was adopted. In the run-up to the constitutional change, a women's lobby emerged with the aim of ensuring women's rights were included in the new constitution. As Sharene Razack describes in her book *Canadian Feminism and the Law*, this lobby comprised "mainly women knowledgeable in law and drawn from the established women's organizations" (1991: 33). As many activists were unconvinced that the new constitution and charter would provide adequate protection for women's rights, they formed the *Ad Hoc Committee of Canadian Women on the Constitution*. The committee's advocacy is widely credited with the inclusion of Section 15 of the Charter, which guarantees equal rights regardless of race, national or ethnic origin, color, religion, sex, age, or mental or physical disability (Anderson and Lambert 2006; Courcelles 2020; Razack 1991: 34f.).

Since then, this form of Charter activism has been closely associated with LEAF, as two leaders of the *Ad Hoc Committee*, Marilou McPhedran and Nancy Ruth, were among LEAF's 25 founders (Courcelles 2020; LEAF 2025a). The organization was established on 17 April 1985 and, in the same year, initiated three Charter challenges to discriminatory government practices under Section 15 (Courcelles 2020; LEAF 2025a). At the time of LEAF's founding, its executive bodies were composed, of what Razack describes as "professional white women" and "homogeneous in character" (Razack 1991: 47). She depicts LEAF's vision at that time as being shaped predominantly by the

³ The MMIWG human rights crisis has been the subject of discussion since the 2010s (Brant 2017; see also Mannitz 2024b).

⁴ The relationship between formal Canadian federal and provincial law and the long-suppressed legal traditions of Indigenous people is among the contentious issues shaping Canada's reconciliation process and the struggles surrounding it. While legal pluralism offers potential avenues for recognizing Indigenous peoples' rights to self-government, the state's power to obstruct precisely such forms of self-determination remains embedded in law, making new arrangements dependent on state concessions. Therefore, our study of LEAF's strategies and outcomes offers a window into the complex interactions between the colonial state and grassroots civil society organizations advocating for Indigenous rights.

founding members' identity as middle-class liberal feminists and their strong belief that "if people were adequately informed, their interests notwithstanding, they would make the correct (i.e., just) choices" (ibid.: 44). She further characterizes their approach as "undeniably one born out of a profound belief that the system, in particular the legal system, can accommodate women's needs" (ibid.: 48), quoting LEAF's own self-description: "'we don't argue about things that are system-driven'" (ibid.).

The organization's practice involved selecting nationally important cases and developing them as test cases (ibid.: 52). This required substantial funding to finance lengthy court proceedings, which LEAF secured through its network spanning major law firms and the corporate legal sector. However, this created notable tensions, as LEAF found itself "being attractive to its funders but alienated from the feminist communities it served and needed" (ibid.: 54). This resulted in activities that were widely criticized within those communities. One example is the 1986 collaboration between LEAF and the *Centre for Spanish Speaking Peoples*, where LEAF members acted prejudicially toward immigrant and racialized⁵ women (ibid.: 57).

Notwithstanding its at times limited connection to parts of the communities it sought to represent, LEAF established a strong reputation by opening more than 300 files during the first three years of its existence (ibid.: 62). During this period, most of its work comprised interventions on behalf of women in court cases brought by men. This soon shifted toward more proactive work in the fields of "employment law and income assistance for low-income women" (ibid.). One notable case supported by LEAF in this field was *Chittenden, Villanueva, and the Toronto Organization for Domestic Workers' Rights v. Ontario* (1986), in which the constitutionality of Ontario's *Employment Standards Act* was successfully challenged on the grounds that it excluded domestic workers from protections relating to working hours, minimum wage, and overtime pay (LEAF 2026c).

Today, LEAF is building on its legal work in healthcare through its *Valuing Care Economy Project*, which combines law reform advocacy with public legal education while addressing the effects of

participation for Black, Indigenous, racialized, disabled, and lower-income women with household responsibilities, and in lower income for those who do participate in the labour force (Women and Gender Equality Canada and LEAF 2026: 4).

This form of advocacy, combining legal action and public education, extends beyond the healthcare sector to other fields in which LEAF has been active since its foundation. For example, in 2025, LEAF launched a campaign advocating healthcare coverage for pregnant international college students in Ontario, continuing its work against pregnancy discrimination, which began in 1988 (LEAF 2025a). Other areas in which LEAF currently works include sexual assault and consent law, workplace rights, socioeconomic rights, identity-based oppression, hate speech and online hate, gender-based violence, family law, and Indigenous rights and law (LEAF 2026a).

Over time, LEAF professionalized and gained supporters, members, branches, advocates, volunteers, and partners. It evolved from an organization that primarily saw itself as a women's defense fund, with success measured largely by the number of cases (LEAF 2001: 1), into one that also evaluates its work based on factors such as community partners, public talks, press conference appearances, and workshop participants (LEAF 2025b: 7). The organization's executive board is now more diverse, with Koren Lightning, an Indigenous woman, serving as cochair, and Ruth Goba, a Black woman, as executive director. What has not changed is that almost all of the nearly 30 staff and board members have a background in law, resulting in limited occupational diversity at the executive level.

3. LEAF's Vision of Feminist Strategic Litigation (FSL)

A key term used by LEAF itself, as well as by scholars describing its work, is *Feminist Strategic Litigation* (FSL). As there is no universally accepted definition of FSL, we describe the organization's activities using its own definitions and concepts. In 2019, LEAF launched its three-year *Feminist Strategic Litigation Project*, which they initiated in order to gain a better understanding of their own use of the concept and its impact (LEAF 2020b: 5).⁶ Project director Kaitlin Owens describes FSL as bringing a feminist perspective to strategic litigation, which she defines as "involvement in a legal case with the goal of achieving effects beyond the interests of the parties to the case"

multiple systems of oppression [...] [that] combine to result in lower levels of labour force

⁵ In the original, the term "visible minority" was used. This term was employed in official Canadian government publications and is defined in the *Employment Equity Act* as "persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour" (Statistics Canada and Government of Canada 2021). In 2021, Statistics Canada replaced the term in its Census analytical and communications products with "racialized population" or "racialized groups" (Statistics Canada and Government of Canada 2025).

⁶ This project appears to have become necessary when LEAF recognized that, despite 35 years of using litigation to promote gender equality, substantive gender equality had yet to be achieved (LEAF 2022a: 2). The project comprised a virtual symposium, a survey of organizations to identify the needs of women and girls across Canada, and the publication of a report examining LEAF's understanding of the impact of FSL. Based on this work, LEAF developed a five-year litigation plan (LEAF 2026d). The report *Using the Legal System to Advance Equality for Indigenous Women, Girls, and 2SLGBTQIA People* was also published in 2020 as part of the project.

(Owens 2020.: 22), resulting in the definition of FSL as “feminist lawyering on feminist issues with feminist goals” (ibid.: 23). Here, Owens draws on Naomi R. Cahn’s account of feminist litigation (Cahn 1991: 1). Feminist lawyering is understood as placing lived experiences at the center of litigation in order to expose the effects of law and politics, while also providing legal arguments grounded in feminist theory (Owens 2020.: 23–25). Feminist issues are defined as those that reflect “the existence of institutionalized sexism or patriarchy” (ibid.: 26), while feminist goals involve “working to end systematic sexism, patriarchy, and other oppressive structures” (ibid.), also considering who benefits from FSL and who may be harmed by it (ibid.: 27). In other instances, LEAF has also defined FSL as “a systems-change strategy that uses the courts to address issues impacting survivors and their communities” (LEAF 2026e).

For Owens, feminism is “a movement which looks to end sexism and which opposes patriarchy” (ibid.: 8). She supplements this definition with an intersectional approach that considers how different systems of oppression – including sexism, racism, and ableism – interact and cause harm, while recognizing that women have different needs, desires, and goals (ibid.: 9f.). Owens also considers the role of law in relation to her conception of feminism. In her view, the law is a combination of the “court system, the legislative process, the tribunal system, public inquiries or inquests, truth and reconciliation commissions, and international treaty bodies and courts” (ibid.: 10), all of which “embody and reflect colonial, primarily Western or Anglo-European, understandings of law” (ibid.). She therefore acknowledges the concerns raised by Indigenous and critical scholars about the use of the law, including its potential to reproduce existing oppressive structures and replicate shortcomings within feminism, such as gender essentialism. Concerns have also been raised that the law can weaken social movements, impose structural limitations on change, and create barriers to justice for marginalized groups (ibid.: 11–14). Conversely, Owens presents the arguments in favor of using the law pragmatically, recognizing the “law’s inherent limits but also observe[s] that we exist within the system and cannot opt out of it entirely” (ibid.: 14). From this she concludes that

litigation must be situated in a broader landscape, accompanying and accompanied by education, awareness-raising, alliance-building, discourse-shifting, and policy reform. Frontline service providers, community members, academics,

grassroots organizers, unions, advocacy organizations, students, and more all have crucial roles to play in pushing for gender equality (ibid.: 17).

Taking these theoretical aspects into account, LEAF reevaluated its approach to the use of FSL. As part of its *Feminist Strategic Litigation Project*, it also conducted a *National Needs Assessment*, surveying 189 national organizations on the needs of women and girls (Women’s Legal Education and Action Fund and Social Research Centre at Ontario Tech University 2020: 5). Drawing on the findings of this assessment, LEAF developed a plan for 2022 – 2026 to guide its continued use of FSL and determine its organizational priorities. The first of these priorities is “reconciliation, decolonization of legal and social systems, and harm reduction,” reflecting LEAF’s intention to build stronger connections with Indigenous organizations, develop a better understanding of the Indigenous legal order, and further examine the utility of litigation in challenging colonial structures (LEAF 2022a: 7). The second priority comprises “[t]ackling issues central to substantive gender equality,” which involves LEAF proactively seeking opportunities for litigation focused on ending gender-based violence and violence against women, as well as advancing anti-racism, reproductive justice, and reconciliation and decolonization (ibid.). The third priority the organization identified is “[b]etter centering the needs and expertise of those experiencing gender-based discrimination,”⁷ which they describe as their approach to building relationships with communities, movements, and partners (ibid.: 8). By committing to “[b]uilding on our strengths, exploring opportunities for the future,” their fourth priority, LEAF affirmed its intention to continue developing its litigation work (ibid.). The organization’s final priority, “[w]orking within the bigger picture,” reflects its intention to integrate litigation into broader advocacy strategies (ibid.).

To translate these priorities into practice, LEAF has undertaken various activities across different contexts. In its FSL practice, it continues to follow a six-point plan that includes discussions at multiple stages on prioritization, level of involvement, partnership formation, case objectives, legal arguments, and potential complementary advocacy efforts (ibid.: 11f.). In terms of community building, LEAF initiated the *Strengthening Community Capacity Project*, which supports organizations in the gender-based violence sector in developing their capacity to use FSL as a strategy. As part of the project, LEAF published the *Courting Change Course*, a free self-guided course on FSL (LEAF 2026e; Women’s Legal Education and Action Fund and Owens 2026). The course engages

⁷ It should be noted that this turn toward “the needs and expertise of those experiencing gender-based discrimination” came remarkably late. By the time LEAF was founded, hegemonic Western feminisms had already been criticized for failing to account for the experiences and circumstances of Indigenous, peasant, and poor women (Mohanty 1984; see Hernández Castillo 2020).

directly with organizations working closely with communities and draws on previous LEAF cases to demonstrate how litigation can address systemic issues (LEAF 2026f). It also provides an introduction to the Canadian court system and outlines the opportunities to participate in FSL by bringing, intervening in, testifying in, and supporting a case (LEAF 2026g).

4. LEAF's Activities on Indigenous Rights and Law

We now turn to Indigenous rights and law, which is relevant to the present study for two reasons. First, the paper examines the effectiveness and limitations of strategic litigation, specifically FSL, in addressing (post)colonial dynamics. Second, Indigenous rights and law were identified as the top priority in LEAF's five-year FSL plan. It is therefore informative to examine LEAF's rationale for prioritizing this topic and the actions it has taken to fulfil this priority. Upon examination, it becomes clear that LEAF has devoted considerable time and resources to intervening in the amendment process of the so-called *Indian Act*⁸ and litigating cases that address matters of particular concern to Indigenous people. In doing so, LEAF has brought the ongoing discrimination against Indigenous women and their descendants regarding their status rights to the attention of the courts. They have also addressed government programs that discriminate against some Indigenous people while benefiting others, criticized the treatment of Indigenous people by Canadian courts, and raised concerns about Indigenous concepts of justice. The organization's strategic litigation was not always successful, however.

The first activity undertaken by LEAF concerning the lived realities of Indigenous women was a 1996 submission to the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, which investigated incidents at the Ontario prison and the Correctional Service of Canada's response to them (Arbour 1996). This submission addressed the high number of Indigenous women in correctional institutions, highlighting the phenomenon's roots in colonialism (Sachs et al. 1996: 3–14), the unique circumstances faced by Indigenous women in correctional institutions, as well as the lack of accessible and culturally appropriate programs, such as healing lodges.⁹

From 2010, LEAF made it a priority to address the discriminatory provisions of the *Indian Act* by intervening in the process of amending it. In its submission to the *Standing Committee on Aboriginal Affairs and Northern Development*, LEAF challenged the original draft of *Bill C-3: Gender Equity in Indian Registration* on the grounds that it left aspects of sex discrimination intact (LEAF 2010a: 1f.). After its proposals were not adopted by the Canadian government (LEAF 2010b) and it concluded that *Bill C-3* failed to provide the necessary amendments (LEAF 2016: 8), LEAF continued to submit proposals for revisions to subsequent government bills. In 2016, for example, LEAF submitted a proposal to the *Senate Standing Committee on Aboriginal Peoples* regarding *Bill S-3: Eliminating known sex-based inequities in registration*, once again criticizing the Canadian government's failure to ensure equality between Indigenous men and women in eligibility for Indian status (ibid.: 3).¹⁰ In 2026, LEAF again addressed the Canadian government's ongoing consideration of amendments to the *Indian Act* by submitting proposed amendments to *Bill S-2: An Act to amend the Indian Act*. Among other measures, this would allow women who were automatically transferred to their husbands' First Nation to affiliate with their own First Nation, as well as their descendants (Indigenous Services Canada 2025: 2). This time, LEAF supported the amendment and urged the *Standing Committee on Indigenous and Northern Affairs*, as well as Prime Minister Mark Carney and Minister of Indigenous Services Mandy Gull-Masty, to accept the Senate's proposed amendment (LEAF 2026h). However, the bill has not yet been adopted (Parliament of Canada 2026).

In addition to writing submissions, LEAF also litigates cases concerning Indigenous rights, having worked on ten such cases to date (LEAF 2026i). To supplement its submissions on the *Indian Act*, for example, LEAF litigated the discriminatory nature of Indigenous and Northern Affairs Canada's *Proof of Paternity Policy* in *Gehl v. Canada (Attorney General)* (2017), which concerned the application for registration as an "Indian" under the registration system established by the *Indian Act*. Although the appeal was granted, its success must be considered qualified. While LEAF argued that a policy based on unknown paternity necessarily discriminates on the basis of sex¹¹ when

⁸ When first introduced in 1876, the Act "aimed to eliminate First Nations culture in favour of assimilation into Euro-Canadian society" (The Canadian Encyclopedia and Parrott 2006). This included the suppression of widespread matrilineal traditions among Indigenous groups, through which Indigenous women lost rights as well as an important part of their identity (see Mannitz 2024a: 8).

⁹ Healing lodges are correctional institutions in Canada specifically designed for Indigenous offenders. "They offer culturally appropriate services and programs to offenders in a way that incorporates Indigenous values, traditions and beliefs" (Correctional Service Canada 2025). Concerns have been raised about the limited number of such facilities: there are only ten institutions, with a total capacity of 440 beds across the country (Correctional Service of Canada 2019).

¹⁰ Three years later, LEAF wrote to the Canadian government after noting that *Bill S-3* had still not been fully brought into force (LEAF 2019). The bill was subsequently brought into force that same year (Government of Canada and Indigenous Services Canada 2020).

¹¹ Colonial administrative routines of registration and non-registration have become contested issues and subjects of research in other contexts as well (see Walters et al. 2025). Saana Hansen, for example, examines the effects of Danish population registration practices in Kalaallit Nunaat, showing how the non-registration of fatherhood and Inuit identity renders the latter administratively invisible. This practice has legal implications: "Inuit adoptees are not classified as transnational adoptees. Their histories and need for recognition have been excluded from discussions, inquiries, and claims regarding transnational adoptions" (Hansen 2026: 17).

considered in light of the realities of childbearing (Pelletier and Nerland 2016: para 15), the judges largely declined to invoke the Charter. Instead, they relied on an administrative law analysis to reach their decision (LEAF 2020c).

In *Blackwater v. Plint* (2005) before the Supreme Court, in which LEAF intervened alongside the *Native Women's Association of Canada* and the *DisAbled Women's Network Canada*, the *United Church of Canada* was found not to be protected by the doctrine of charitable immunity from liability for the sexual abuse perpetrated by a dormitory supervisor at an Indian Residential School (Supreme Court of Canada 2005: 13). In *Jean v. Canada* (2009), LEAF argued as an intervener that excluding landless Indigenous bands – such as the appellant's band, the Micmac Nation of Gespeg – from the government's *Elementary/Secondary Education Program* violates Section 15 of the Charter (Birenbaum 2009). Nevertheless, the Federal Court of Appeal dismissed the appeal (Federal Court of Appeal 2009). In *Cunningham v. Alberta* (2011), the appellants and LEAF argued that Section 15 of the Charter does not guarantee unrestricted protection for affirmative action programs, even when members of disadvantaged groups challenge their exclusion from such programs (Pothier and Birenbaum 2010). Again, the appeal was dismissed by the Supreme Court (Supreme Court of Canada 2011). In *R. v. Kokopenace* (2015), questions were raised about the representativeness of juries in relation to Section 15 of the Charter. In the case of an Indigenous defendant, LEAF and the *David Asper Centre for Constitutional Rights* argued that the state had failed to “take reasonable steps to ensure the participation of on-reserve Aboriginal peoples in the jury pool, in a context of systematic inequality” (Milne and Stanton 2014: 6). The interventions in *R. v. Barton* (2017, 2019) addressed multiple judicial errors which, as LEAF argued before both the Alberta Court of Appeal and the Supreme Court, allowed “racist, dehumanizing and sexualizing stereotypes about Indigenous women” (O'Brien and Weber 2018: 6) to feature in the trial. In reaching its decision, the Supreme Court also found that the trial judge had failed to prevent the jury from basing their decision on stereotypical beliefs about Indigenous women, particularly Indigenous sex workers (Supreme Court of Canada 2019: 675).¹² In the most recent cases, *R. v. Sharma* (2020, 2022) and *R. v. Cope* (2025), LEAF argued for the application of the *Gladue* principles (LEAF 2022b, 2026j).¹³ In so doing, the organization maintained that the Canadian

justice system can neither prevent Indigenous women from offending (Lombard and Charette 2022: 3) nor protect them from victimization (Lombard and Lomax 2025: 3).

Through its other advocacy work, LEAF has been building on these findings. From 2014 to 2018, it was part of the *Legal Strategy Coalition (LSC) on Violence Against Indigenous Women*, alongside organizations such as the *Institute for the Advancement of Aboriginal Women*, the *Canadian Feminist Alliance for International Action*, *Amnesty International Canada*, and the *Union of British Columbia Indian Chiefs*, among others (LEAF 2026k). The LSC conducted research and legal advocacy work on the ongoing issue of MMIWG. In the process, it reviewed more than 50 reports from human rights bodies, Indigenous women's organizations, and governmental bodies, which included over 700 recommendations in total (ibid.). However, the LSC found that only a small proportion of the recommendations made in the reports, some of which date back to 1994, had been fully implemented (Feinstein and Pearce 2015). In 2018, the coalition published a discussion paper addressed to Dubravka Šimonović, the *United Nations Special Rapporteur on Violence Against Women*. The paper reported on the LSC's activities, the concerns raised by the United Nations treaty bodies and human rights organizations, and the ongoing racism and sexism within the Canadian justice system, which resulted in the “dehumanization of Indigenous women and girls by the criminal justice system” (LSC on Violence Against Indigenous Women 2018: 6). On this basis, the LSC presented ten recommendations for immediate implementation in Canada, including the removal of remaining sex discrimination from the *Indian Act* and the revision of judicial policies (ibid.: 21f.).

Lastly, as mentioned above, during its FSL project, LEAF deliberately focused on using the legal system and justice to benefit Indigenous women, girls, and 2SLGBTQIA+ people. As part of these efforts, Alana Roberts prepared the *Using the Legal System to Advance Equality* report for LEAF providing a historical overview of how colonial rules were established and upheld to control Indigenous peoples, as well as of litigation – not necessarily supported by LEAF – that has affected Indigenous women, girls, and 2SLGBTQIA+ people. The report also explores ways of helping Indigenous people's access the law and how non-Indigenous Canadians, i.e. settlers, can practice settler allyship (Robert 2020). Through this report, LEAF made clear

¹² Whereas LEAF argued, drawing on the Indigenous concept of *wahkohtowin*, meaning “that all of creation is related and inter-connected to all things within it” (Campbell 2007: 5), that the case should be understood as part of the systemic discrimination against Indigenous women within the Canadian justice system (O'Brien and Weber 2018: 2), the Supreme Court did not take this perspective into consideration. However, it did acknowledge the colonial history and injustices endured by Indigenous people, particularly Indigenous women, girls, and sex workers (Supreme Court of Canada 2019: 669), and stressed the need to take “reasonable steps to address systemic biases, prejudices, and stereotypes against Indigenous persons” (ibid.: 670) within the justice system.

¹³ These principles stem from the Supreme Court's Judgement in *R. v. Gladue* (1999) and require judges in criminal proceedings to take Indigenous defendants' Indigenous heritage and identity into account, including by considering alternatives to imprisonment as culturally appropriate sentencing measures (Aboriginal Legal Aid in BC 2023).

that the colonial legacy is the driving force behind its legal advocacy for Indigenous peoples. The organization also clarified that it considers litigation a valuable tool. However, LEAF does not regard strategic litigation alone as sufficient to advance Indigenous peoples' rights; it must be accompanied by efforts to empower them to defend those rights.

5. The role of FSL in Addressing Canada's Colonial Past and Present

This final chapter examines whether FSL, and specifically the way in which LEAF practices it, can serve as a strategy for advancing equality for Indigenous women, girls, and 2SLGBTQQIA+ people in Canada. It also considers the extent to which FSL contributes to the process of reconciliation.

5.1 Assessing LEAF's Effectiveness and Impact

Assessing the effectiveness and impact of strategic litigation is a field of research in its own right (see Cruz Marin 2024; Fallah 2019; Barber 2012). As part of Kaitlin Owens's aforementioned report on FSL, she also addressed this issue, developing a definition of effectiveness¹⁴ and a model for assessing the effectiveness of FSL. In doing so, she emphasized that measuring impact presents distinct challenges, including "a lack of measuring tools, difficulties in measuring particular areas of impact, challenges in distinguishing between correlation and causation, and the trickiness of choosing timelines for assessment" (Owens 2020: 28). At the same time, Owens makes clear that she does not consider measuring the effectiveness of LEAF's FSL to be a scientific process, but instead proposes four general principles for doing so (ibid.: 31). The first is "[m]oving beyond a narrow conception of effectiveness" (ibid.: 32), which means that, rather than assessing the success of an FSL according to the outcome of a trial, it is important to recognize that every case – whether won or lost – can contribute to consciousness-raising, increase social awareness, attract media interest, garner support from other organizations, and provide impetus for social movements (ibid.). With the second principle, "[c]onsidering process and outcome" (ibid.: 33), Owens identifies the practical work involved in building a case and engaging with the women it seeks to support as relevant forms of "feminist work" (ibid.). "Thinking about different types of impact" (ibid.) is the third principle, which acknowledges that impact can be positive, for example when it prompts change or prevents regression. Alternatively, it may be counterproductive, in alienating members of affected communities and generating backlash in the form of countermobilization or harmful legislation, or it may have no impact at all (ibid.: 33f.). The last principle

is "[e]xamining context," which means that the specific features of a case, such as its social context, the people involved, and the time period, must be considered when evaluating indicators of success on a case-by-case basis (ibid.: 34). It also suggests that LEAF should assess a case's effectiveness by comparing it with other available approaches.

Building on this, Owens proposes, as part of her model for assessing FSL, that impact should be measured at six levels. The first is the individual level of the claimants involved, some of whom may feel that their rights were defended, while others may have had negative experiences of litigation (ibid.: 40f.). The second level assesses the impact on broader communities and groups, recognizing that these groups are not homogeneous and that the experiences of some may be overlooked in pursuing the goals of others (ibid.: 41). Third, impact can be assessed by examining the positive or negative effects of FSL on "legislation, regulation and policy" (ibid.: 42) and fourth on "case law, legal systems and culture, and participants in the legal system" (ibid.: 43). In this context, it is particularly important to consider whether the outcomes are grounded in feminist thinking (ibid.). For the fifth level, Owens suggests measuring the impact of FSL by assessing its effects on public discourse (ibid.: 42f.) and, lastly, on social movements (ibid.: 44f.).

As of 2026, LEAF had not yet systematically applied Owens's model to evaluate its FSL, although it plans to assess its work as part of its five-year *Feminist Strategic Litigation Plan* (LEAF 2022a). It has also published annual reports on its memberships and activities since 1999. To mark the organization's 40th anniversary, it reported that it had been involved in over 150 legal cases and inquiries, filed 77 interventions with the Supreme Court, sponsored 23 litigants, and played a role in almost every landmark sexual assault case heard by the Supreme Court (LEAF 2025b: 4). To further evaluate LEAF's activities over the past few decades, Fay Faraday wrote a report titled *Feminist Equality Rights Litigation: Evolution of the Canadian Legal Landscape*, examining the organization's litigation under Section 15 of the Charter as well as broader changes to the Canadian legal system. Faraday highlights LEAF's acknowledgment that it began as a largely middle-class white women's organization that was not in a position to speak for the broader community of women experiencing discrimination (Faraday 2020: 11). In recognition of this shortcoming, LEAF adopted an intersectional feminist approach to its work, which led it "to broaden the inclusiveness and accountability in its governance structures, in its case selection and in its working practices" (ibid.:

¹⁴ Owens uses the words impact, effectiveness, and success interchangeably (Owens 2020: 28).

14). Faraday argues that LEAF lacks a strategy for reflecting on its accountability. In particular, she maintains that LEAF is unable to assess who benefits from the law, who is excluded, whose voices are heard and whose are not, how it builds trusting relationships with the women affected, and whether it acts as an ally within the broader social movement for equality (ibid.: 20). In terms of impact on the advancement of equality rights, Faraday notes that LEAF has had an “undeniable [...] profound impact on the substance of equality rights law under the *Charter*” (ibid.: 22, emphasis in original). She observes that LEAF has successfully advanced feminist legal principles through litigation and persuaded the Supreme Court on multiple occasions. However, the fact that judges do not appear to grasp and apply these principles of their own accord points to a structural problem that requires legislative change (ibid.: 25).

5.2 Indigenous Perspectives on Litigation and Reconciliation

As mentioned earlier, Owens outlines the main arguments for and against the use of law in her report, but also makes clear that, from a pragmatic standpoint, the law remains a valid tool for advancing feminist change (Owens 2020: 14). In LEAF’s *National Needs Assessment Survey*, nearly two-thirds of the 146 participating organizations agreed with this assessment, likewise considering the law a useful tool for the communities they serve (LEAF and Social Research Centre at Ontario Tech University 2020: 44f.). By contrast, respondents identified several areas in which they felt the law had often failed women and girls, including issues faced by Indigenous women and girls on account of their Indigenous identity, as well as those faced by sex workers, trans women, women experiencing sexual and gender-based violence, women who use drugs, and women living in rural and northern communities (ibid.: 46f.). However, Indigenous women and girls are also overrepresented among these groups. Fifty percent of sex workers engaged in street-based sex work identify as Indigenous (Wilson 2020: 3). Substance abuse among Indigenous women is also a well-documented issue (Miller et al. 2011; Owen 2023). In addition, Indigenous populations predominantly live in rural areas (OECD 2020: 17), while Indigenous women and girls are particularly vulnerable to gender-based violence (Women and Gender Equality Canada 2024). Taken together, these findings suggest that the legal system does little to protect this group. Feminist legal scholars and activists, including LEAF, acknowledge that the law can be both oppressive and emancipatory. In the context of Indigenous people, however, and particularly women and girls, the Canadian colonial judicial system

can also be harmful and potentially traumatizing. Cassandra Churcher described this experience during a truth-finding hearing of the *National Inquiry into Missing and Murdered Indigenous Women and Girls*:¹⁵

Indigenous women must rely on a justice system that is in no way reflective or adaptive to their cultural history and reality. [...] When a First Nations Métis or Inuit woman appears in court, they go before the same justice system that established the reserve system, the residential school system and continues the removal of children from their families, and they ask that court for justice. (National Inquiry into Missing and Murdered Indigenous Women and Girls 2018: 38f.)

However, perspectives on this issue differ, including, and perhaps particularly, within Indigenous communities. Indigenous women who used litigation in the pre-Charter era faced a lack of understanding within their communities. They were accused of acting in an “uncultural” manner and of lacking solidarity with other community members, both male and female (McIvor 2004: 109). Whether the strategic mobilization of the legal system can, in and of itself, serve as an adequate tool for changing the living conditions of marginalized groups cannot be definitively answered here. It has been shown in this working paper that people who engage in (F)SL may interpret the outcomes of the process differently depending on their individual circumstances and contexts.

As part of the *Feminist Strategic Litigation Project*, LEAF organized a panel to discuss the uses and limitations of the colonial Canadian legal system in advancing equality for Indigenous women, girls, and 2SLGBTQIA+ people. This panel brought together Indigenous women connected to LEAF, all of whom, except one, were lawyers (LEAF 2020d). Lynn Gehl, the only non-lawyer on the panel and the plaintiff in the aforementioned case, *Gehl v. Canada (Attorney General)* (2017), argued that the Canadian legal system is not an “appropriate place of resistance” (Owens et al. 2020: 3) and asserted that Canada is creating and exploiting legal loopholes to avoid addressing the underlying issues (ibid.: 13f.). Alana Robert, author of the aforementioned report, described the many successes that the Manitoba Métis Federation, an Indigenous government of which she is a member, has achieved for the Métis people through the use of litigation. However, she also acknowledged that the legal system is not designed to address the Métis’s

¹⁵ The *National Inquiry into Missing and Murdered Indigenous Women and Girls*, an independent inquiry commission launched by the Government of Canada in 2016, was established to investigate the systemic causes of violence against Indigenous women, girls, and 2SLGBTQIA+ people and to examine institutional policies in response to that violence (National Inquiry into Missing and Murdered Indigenous Women and Girls 2019: 5). Upon concluding its work in 2019, the inquiry found that the colonial and systemic violence, as well as the apathy of Canadian society, amounted to genocide against Indigenous women, girls, and 2SLGBTQIA+ people (ibid.: 4).

disconnection from their culture caused by Canadian settlers' attempts to remove them from their land and eliminate the group (ibid.: 15). Beth Kotierk discussed the lack of access to justice for Indigenous people living in Nunavut. She expressed hope that the pressing issues facing the region, such as the housing crisis resulting from colonial settlement, will soon be brought before the courts (ibid.: 16f.). Naomi Metallic was also optimistic, emphasizing the potential for greater integration of Indigenous law and Indigenous law students into universities and legal practice (ibid.: 20).

Addressing the violence experienced by Indigenous women, girls, and 2SLGBTQQIA+ people is an important part of the work of the TRCC and is also reflected in its 94 Calls to Action, 15 of which are devoted to this issue. These include "[e]liminating the overrepresentation of Aboriginal youth in custody," "[c]ommit[ing] to the recognition and implementation of Aboriginal justice systems," "[r]equir[ing] all law students to take a course in Aboriginal people and the law," and "[a]ppoint[ing] a public inquiry into the causes of, and remedies for, the disproportionate victimization of Aboriginal women and girls" (Truth and Reconciliation Commission of Canada 2015a: 3f.). With the establishment of the *National Inquiry*, Canada complied with the last call, which was one of only two Calls to Action it had completed. However, reconciliation involves more than merely completing these calls – as stated in the final report of the TRCC, "[r]econciliation must become a way of life" (Truth and Reconciliation Commission of Canada 2015b: 184). While LEAF may not be able to accelerate the Canadian government's to completion of the Calls for Action, its continued focus on the injustices experienced by Indigenous women, girls, and 2SLGBTQQIA+ people represents a contribution to the reconciliation process by drawing attention to their experiences and supporting efforts to address these injustices.

6. Conclusions

With this working paper we aimed to provide insights into the work of LEAF, a feminist organization that has used the law to advance gender rights for over four decades, including how it defines and practices FSL, what it has sought to achieve, and the outcomes of its efforts. The paper particularly aimed to shed light on LEAF's activities concerning the rights of Indigenous women, girls, and 2SLGBTQQIA+ people, including the specific issues they have been facing, and to examine the potential for achieving its objectives, taking into account Indigenous critiques and the broader framework of the Canadian reconciliation process.

This organization provides a useful example for examining whether and how systemic change is possible within a system originally designed as an instrument of colonial governance. On the one hand, LEAF is an organization with a generally optimistic and libertarian outlook on the legal system, and it has

repeatedly received funding from the Canadian government (LEAF 2026d, 2026e; Women's Legal Education and Action Fund and Owens 2026). On the other hand, LEAF acknowledges Canada's colonial history and the systematic violence experienced by Indigenous people and actively seeks to develop organizational structures that address these legacies. The paper shows that LEAF began as an organization that did not represent the wider community of marginalized women, being composed primarily of white, middle-class female lawyers. Over time, LEAF not only grew and professionalized but also increasingly adopted an intersectional feminist approach to its work. At the same time, it also began to focus more closely on issues affecting Indigenous women, girls, and 2SLGBTQQIA+ people. Although LEAF has become more involved in community-based work and has begun to look beyond legal tools as a means of advancing gender equality, FSL remains central to its approach, which it considers critical to bringing feminist issues before the courts and achieving feminist goals for survivors and their communities. The organization strongly maintains that this strategy can facilitate "systems-change" (LEAF 2026e).

The paper also shows, however, that LEAF lacks a strategy for evaluating its own accountability and systematically assessing who benefits from the law and who does not. Although it has outlined how the impact of FSL could be assessed in general, it has not yet systematically evaluated the effects of its own use of FSL. Given the paper's focus on the rights of Indigenous women, girls, and 2SLGBTQQIA+ people, we examined LEAF's work in this area. We found that a significant proportion of LEAF's work to advance the rights of Indigenous people has involved using legal tools to intervene in efforts to amend the *Indian Act*, which continues to discriminate against Indigenous people on the basis of gender. Building on this, the paper looked at the damaging relationship between Indigenous people and the Canadian colonial legal system, as well as LEAF's attempts to address this through law. In studying different Indigenous perspectives on LEAF's use of the law, the paper revealed both skepticism and optimism toward this approach. While there was broad agreement that more needs to be done to address the harm caused by colonial state violence, many viewed LEAF as having the potential to contribute become an agent of transformation within the Canadian reconciliation process. It remains to be seen whether LEAF's approach can advance equality for Indigenous women, girls, and 2SLGBTQQIA+ people, or whether Audre Lorde's often-quoted words will prove prescient:

For the master's tools will never dismantle the master's house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change. And this

fact is only threatening to those women who still define the master's house as their only source of support. (Lorde 1979)

As a study of a single organization, this working paper aims to encourage further research into the relationship between NGOs and the legal system, the use of strategic litigation to advance Indigenous rights, and the role of (colonial) law in reconciliation processes worldwide.¹⁶ Since the paper did not address the implicit and explicit assumptions about the law and indigeneity articulated by the court and the organization during the proceedings, these would provide a valuable starting point for further research. Other understudied areas include the material foundations of the crises experienced by Indigenous people and the Canadian state's interests in maintaining or failing to dismantle colonial conditions, both of which could provide fruitful avenues for further research. Lastly, LEAF's longstanding activism and the wealth of experience it has accumulated offer ample opportunities to develop a more comprehensive understanding of the struggle for decolonization in Canada and the crucial role of grassroots organizations within it.

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¹⁶ The book *Queer Lawfare in Africa: Legal Strategies in Contexts of LGBTQ+ Criminalization and Politicization* (Jjuuko et al. 2022) makes an important contribution to research on the challenges of advancing LGBTQ+ rights through law on the African continent.

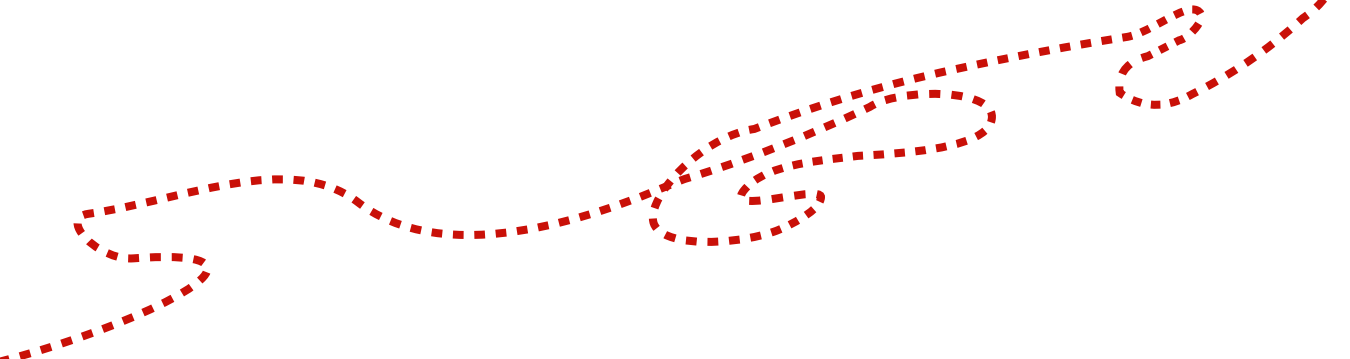
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ABOUT TRACE

What effects do global developments such as technologization and climate change have on political violence? How can political violence be limited or legitimized by international institutions? How is it interpreted and conceptualized? Since April 2022, these questions are addressed by the BMFTR-funded research center "Transformations of Political Violence" (TraCe), in which five Hessian research institutions work together with a variety of disciplinary perspectives.

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