

Lawyered Ep94

[00:03] HUSEIN: This is Episode 94 of Lawyered. I'm Husein Panju. And on this week's episode, we'll be speaking with Pam Hrick, the Executive Director and General Counsel of LEAF, about the powerful world of gender equity law.

First up, we'll be speaking about a proposed federal bill that would criminalize the area of coercive control. This bill would tackle a pervasive form of intimate partner violence, but several are warning that this bill may also compromise systemic support. Next, we'll chat about a controversial pronoun policy in Saskatchewan that would require parental consent for students to change their names or pronouns in school. And this ongoing litigation is striking at the core of gender equity and parental rights.

[00:48] And later on, we'll speak about the role of Section 28 in the ongoing saga of Quebec's Bill 21. And we'll find out how the Charter Guarantee for Gender Equality may provide an intersectional outlet to overturn this law, notwithstanding the Notwithstanding Clause. And in our Ask Me Anything segment, Pam will respond to questions submitted by our listeners on a range of topics, including the federal government's LGBTQ2 Plus Action Plan, gender equity in the legal profession, and the tangible impact of intersectionality. All that and a lot more is coming up in just a bit. This is Lawyered.

[Music Break]

[01:38] Hello, everyone, and welcome to another episode of Lawyer. Thanks again for tuning in. Just off the top, I wanted to give a special shout out to my friends and students in the LPP program. One of the highlights of the fall that I've been looking forward to for quite a while is that I was selected to be one of the subject matter experts as part of the Law Practice program at the Toronto Metropolitan University. I was really excited to be offered this opportunity, and this is specifically in the area of legal research. So I am part of a team with Andrew Campbell and John Khan, and we have the really exciting task of kind of dispelling a lot of the techniques and tactics that we've developed over the years in the year of legal research, and presenting it to a bunch of really engaged candidates.

[02:24] And as listeners of the show will know, I am a litigator as part of my day job, so I do a fair amount of legal research on the regular, but producing the show and being able to interview these guests requires some fairly creative forms of legal research. I've really enjoyed sharing some of those learnings with the class, and there's still a lot more sessions to go, but to all the students who I encourage to check out this podcast episode, thanks for coming. Appreciate it.

[02:52] Otherwise, I just wanted to call out our last episode, which was Episode 93. We talked about the area of startup law with our guest Mark Asfar—really compelling episode. We talked about a bunch of topics. One was that there was a new appellate law decision that provides some really important guidance on recent expectations of founders while drafting. And I won't go into the whole episode now, but there was a decision that provides that the context really matters, even if the agreement itself says something different.

[03:26] We also spoke about the rise of representations and warranties insurance, and also some considerations for AI products, both for startup founders who are pitching or maybe working with AI products, and also in the legal field. Mark gave some updates about some potential concerns regarding the use of AI in the legal practice, and it was a really exciting episode. One thing that I appreciated that I didn't really recognize earlier was that this is an area of law where it seems like the lawyers are really guiding the startup individuals and companies through the process, and the advice is not necessarily all legal advice.

[04:10] A lot of it's kind of business savviness and strategy and helping to take a product from nothing into something that could be multi-millions or billions of dollars. So it was really interesting to hear Mark talk about how those discussions really take place, including the ups and downs of working with founders who have exciting products. So I really enjoyed that episode, really recommend that episode. You can find that in our archive and on our website, and that is episode number 93.

[04:41] Now, today's episode is one that I've been looking forward to for some time. I'm going to be speaking about the area of gender equality law, which is as important now as ever. We have a guest who is particularly well-received to speak about this area. She's got a ton of experience, both in the private sector, she's also a bencher with Law Society, and in her current role she's the Executive Director and General Counsel with LEAF, which is the Women's Legal Education and Action Fund. We talk about a lot of the law and a lot of the social issues in this important area. And so without further ado, here is our discussion with our guest Pam Hrick.

[Music Break]

[05:22] Pam is the Executive Director and General Counsel at the Women's Legal Education and Action Fund, which is also known as LEAF, and Pam leads and manages LEAF's legal activities and daily operations, and works with the board to develop the vision and strategic plan for the organization. Pam joined LEAF from a boutique litigation firm, and prior to that clerked for judges at the Federal Court of Appeal and the Supreme Court of Canada. She also served as the Legislative Advisor and Issues Manager to the Attorney General of Ontario.

[05:51] Pam is also an active volunteer in the legal community and broader community, including serving as the Chair of the Board of Management of the 519, which is a city organization that advocates for the inclusion of 2SLGBTQ plus communities, and has always been recognized as a 2022 Lexpert Rising Star, Leading Lawyers Under 40 by Lexpert Magazine, and a leader to be proud of by Start Proud. So Pam, thanks for being on the show today.

[06:17] PAM: Thanks for inviting me, I've been looking forward to this.

[06:18] HUSEIN: Thank you, I feel the same way. So I've got a few things I want to chat with you about before we get started. We're around the same vintage, and everyone's got basic careers. And I know, on top of that, you have a lot of active interests. I spoke about those in the bio. I know you're also a bencher. I'm sure a lot of people ask you, like, how do you manage all of your times and priorities and family and all that?

[06:40] PAM: I mean, it often feels like you're barely managing some of them, or that's how I feel. But there's no way that I can do it without having the most wonderful wife and partner in my spouse, Kristyn. And I am so grateful that I get to do all of this amazing work. And I get to also share my life with her and our son, Paxton.

[07:06] HUSEIN: And other strategies you have to keep all the balls in the air, because I imagine must be challenging, like having one career is a lot on its own but with everything else that's going on?

[07:16] PAM: Yeah, I mean, get really good at plugging things into your calendar. Otherwise I would forget about a good chunk of things that I'm actually responsible for. But yeah, just like also feel comfortable. Sometimes you're just going to feel—I mean, you have to pick and choose what you get involved with and trying to set limits for yourself. But understand that sometimes you might let a ball drop here or there and that's okay, as well.

[07:40] So I think we have standards, or I try not to embrace the standard of absolute perfection all the time. And to be forgiving, as forgiving of myself as I would hopefully be of others, as well. So I think people carry kindness and compassion for themselves, as they move through their work and through participating in things that bring them joy as well. That's something that I've found helpful.

[08:03] HUSEIN: That's a very sound outlook. All right, so I've got a bunch of interesting topics to speak about in the air of gender equality law that I know you have a specialty in. One of the most controversial provincial bills of the last few decades has been Quebec's Bill 21, which bans public sector employees from wearing religious symbols, which includes Muslim women who wear the hijab. This matter will be heading to the Supreme Court very likely in the months to come.

[08:27] And while many are focusing on the bill's impact on freedom of religion as part of the Charter, there's always a strong argument to be made about the role of Section 28, which guarantees charter rights equally to male and female persons. So Pam, for the few people who are not following this bill, can you tell us more about what Bill 21 is and how it's been playing out in Quebec?

[08:50] PAM: Bill 21 became law in Quebec in 2019. And as you mentioned, it restricts wearing religious symbols in many professions, including teachers, police officers, judges. The whole idea is to affirm Quebec as a secular state. And this is something that has had a disproportionate impact, as we've seen play out in subsequent litigation, against Muslim women who wear religious symbols, including the hijab or niqab. The bill has a lot of support among the population in Quebec. But there has also been a lot of criticism, both within Quebec and outside of it across the country about its discriminatory impact.

[09:35] HUSEIN: The bill also includes the activation of the notwithstanding clause. Can you tell us more about that and your thoughts on the same?

[09:43] PAM: This is another example of the notwithstanding clause having been invoked preemptively to try to shield it from court challenge and being struck down for being a violation of various charter rights, including the right to religious freedom, the right to equality, and the right to freedom of expression. I should mention this notwithstanding clause was re-upped for another five years earlier this year by the provincial legislature. So, a constitutional challenge was started nonetheless. It's a case called HAC in Quebec.

[10:16] What happened was the Quebec Superior Court back in about early 2021, it struck down part of it as it related to English language school boards and banning Quebec MLAs from wearing religious symbols, finding that they couldn't actually do that under the parameters of the notwithstanding clause. The court talked about the ways in which this was obviously a violation of the freedom of expression and right to religious freedom and equality rights of Muslim women, but couldn't do anything more about it or chose not to engage further with whether the court could do anything about it. And that decision was appealed to the Court of Appeal, which upheld the law in February of this year and overturned that piece of the decision related to the English school boards as well.

[11:09] HUSEIN: There's a lot of very clear and obvious concerns about freedom of religion. I want to talk to you about Section 28 and the impact that you think this section could or should have on the court's decision on this bill.

[11:25] PAM: One of the really interesting aspects of this case is the opportunity to really flesh out the meaning of Section 28 of the charter. And Section 28 for the uninitiated says that notwithstanding anything in this charter, the rights and freedoms referred to it are guaranteed equally to male and female persons. Parenthetically, I'd say under sort of living tree doctrine of 28, that we'd say all genders guaranteed all genders equally. And that has really been under-scrutinized and under-considered since the charter's adoption.

[12:00] HUSEIN: Can you tell us more about what it means practically?

[12:02] PAM: That's why this case is really important is that there hasn't been a lot said about what the clause actually means by the courts. And I think part of that has to do with when there are violations of women's rights, violations of rights on the basis of gender equality, they're litigated under Section 15. That's the go-to provision. There hasn't been a lot of turning to Section 28 in part because there hasn't been a need to. However, we have a situation now where the notwithstanding clause has been invoked, section 15 is knocked out.

[12:40] HUSEIN: The theory is that Section 28 should be recognized to have a substantive rule that overrides the notwithstanding clause. That's why I wanted to highlight that notwithstanding anything in this charter, including the notwithstanding clause, the rights in this charter have to be guaranteed equally across genders.

[12:58] HUSEIN: So what does that have to do with this Bill 21 matter?

[13:02] PAM: Muslim women in particular are having their equality rights, their freedom of expression rights, and their freedom of religion rights stripped by this law in ways that

Muslim men are not, or any other men are not. It's about recognizing specifically that intersectional impact and how their rights are not being guaranteed under the charter by this law.

[13:34] So this is an opportunity for the court to say there is a substantive rule, recognize the substantive rule of section 28 in guaranteeing rights when the notwithstanding clause has been invoked, or independently, entirely, to have a freestanding right that is recognized to guarantee those freedoms that are set out in the charter to, as it says, male and female persons equally.

[13:58] HUSEIN: This issue about section 28 that we've been talking about, was this issue raised and/or addressed by the lower courts?

[14:06] PAM: It was certainly raised in the litigation, but the idea that it had an independent role to play that would override the invocation of the notwithstanding clause was basically rejected. But we are hopeful, again, to see the Supreme Court really engage more fully with that issue and to recognize the important role that section 28 does play independently of other rights and helping guarantee, in this case, the rights of Muslim women in particular.

[14:39] HUSEIN: And so you mentioned intersectionality. I was wondering, are there any historical precedents for church challenges that involve this sort of intersection you're talking about between gender and, for example, religious discrimination?

[14:50] PAM: Certainly, one that comes to mind for me right off the top is a case called NS, which was decided by the Supreme Court 10, 12 years ago. And that had to do with a Muslim woman who wore the niqab, who was a sexual assault complainant in a criminal trial. She was ordered at a preliminary inquiry to remove her niqab before testifying. Of course, sexual assault complainants, sexual assault survivors are disproportionately women.

[15:20] And in this case, requiring a Muslim woman to remove her niqab before testifying would require her to make a fundamental choice to adhere to her religious values and beliefs or to decide to seek justice for something that has been done to her in this system, which is fundamentally, deeply, deeply problematic and it's a discriminatory impact to have visited upon somebody who is a member of a particularly marginalized community.

[15:53] HUSEIN: And so how did the court find in that matter?

[15:58] PAM: The court ended up setting out considerations that trial courts would have to apply. The court says a witness can be ordered to remove the niqab where it would be reasonably necessary so that there wasn't a risk to trial fairness. There weren't other reasonably alternative measures that could prevent the risk and where there were benefits of requiring the witness to remove the niqab and they outweighed the costs of requiring her to do so.

[16:29] HUSEIN: We're still waiting for the court to grant leave. I think most dominators are still not that the matter will go to the Supreme Court. Assuming it does, what impact the decision will have generally for lawyers who are watching this matter?

[16:44] PAM: A lot to say. I mean, for me, I think it'll be interesting to see what the court does. The first case that has really squarely put the meaning of Section 28 before it, where it allows it to go nearly beyond a widely recognized rule of charter rights informing one another. So an interpretive rule to whether or not it has that substantive rule that I discussed earlier. It may have an impact on whether courts actually confirm the extent to which they will comment on a law that is rights violating when the notwithstanding clause has been invoked.

[17:20] And perhaps depending on what the consequences, what any fallout is politically as well, perhaps an impact on provincial governments and federal government willingness to invoke the notwithstanding clause proactively.

[Music Break]

[17:43] HUSEIN: In September of 2023, the Saskatchewan provincial government introduced a controversial pronoun policy that would require the parents' consent for students under 16 years old to change their names or pronouns at school. And this new pronoun policy has prompted numerous concerns and legal actions in response, including charter challenges that this would undermine Section 7 and 15 of the charter, knowing it underscores the tensions regarding gender identity, parental rights, and the government's use of the charter's notwithstanding clause.

[18:17] Under State for Transparency Matters heading to the Court of Appeal and LEAF, the organization where Pam works, is seeking LEAF to intervene at the Court of Appeal matter. I know there's a lot to talk about here, so why don't we start by just explaining what is this pronoun policy that's at the heart of this litigation?

[18:34] PAM: The policy that was initially introduced in September is called the Use of Preferred First Name and Pronouns by Students Policy. And it has a requirement for students who are under 16 who, "wish to change their pronouns and or preferred first name to align with their gender identity, "there are special requirements that are imposed upon them. And I read that specific language out because it does not apply to Pamela, who wants to go by Pam, or Samantha, who wants to go by Sam, and does not relate to how I identify myself or what my gender identity is. It only applies to students where that requirement for pronouns or name preference relates to a change in their gender identity from what they were assigned at birth.

[19:30] And so what the policy does, the requirements it places, it says that only school personnel can only refer to a trans, non-binary, gender diverse student by their pronoun or their proper name if their parent consents. And it imposes a requirement on the school professional to contact the parent to seek that permission.

[19:52] HUSEIN: So what are some of the issues that you see with this policy?

[19:57] PAM: There's an outing requirement. So basically, that the school personnel who receives a request from a student who's under 16, they have to out that student to their

parents, whether or not the parent knows, whether or not the student wants that to happen, whether or not it could cause them harm. The second problem is a requirement to misgender. That's how I'll put it. Because if the parent doesn't consent, there's a requirement to continue to refer to that student by the name and the pronouns that are assigned to them at birth.

[20:31] HUSEIN: Yeah, despite the student's intentions.

[20:32] PAM: Exactly. And knowing that research shows that misgendering somebody, especially in a public space, especially among peers, causes a significant amount of psychological harm.

[20:43] HUSEIN: So I know that there's several groups, including a group called You Are Pride, who are claiming that this policy is contrary to the Charter. Can you tell us more about these Charter issues?

[20:52] PAM: So, You Are Pride is the University of Regina Center for Sexuality and Gender Diversity. And so what they have done with the support of EGAL is that they launched a constitutional challenge alleging violations of transgender diverse students' rights under Section 7 and Section 15 of the Charter. They launched that challenge and the government responded, not by, I don't know, admitting or maybe recognizing the harm that would be caused by the policy, but instead implementing it in legislation and invoking the notwithstanding clause, which is, I think, for reasons that should be obvious, deeply problematic. It means that the legislation will operate notwithstanding whether it violates Section 7 or 15 in this case.

[21:44] And there's a slew of rights under the Charter that a government can invoke the notwithstanding clause over, and it's just those two rights in this particular case. And I think it's important to pause and acknowledge a couple of things at this point. Number one is that this policy and this legislative action is taking place in a broader context. New Brunswick had already amended their similar policy in that province to require that parental consent be obtained before a student's gender identity could be respected. And the broader context of rising anti-queer and anti-trans hatred across Canada, for which I think Bennett-Jensen, specifically EGAL, I want to note, deserves a heck of a lot of credit for leading many of the challenges and advocacy.

[22:35] HUSEIN: You mentioned that there's a violation of 7 and 15. Can you expand on why these rights are, in fact, being violated according to these groups?

[22:42] PAM: The harm that I sort of touched on earlier, that you are impacting the psychological security, the security of the person, and the safety of some of these kids who don't come from families that will necessarily accept them for who they are. That's a targeting on the basis of analogous ground of the Charter, and it is discriminatory treatment. So that's really what gets at the heart of why these are Charter violations of, I mean, their kids, Charter violation of children's rights.

[23:20] HUSEIN: Got it. And so we're recording this episode in early to mid-July of 2024. So at the time of this recording, can you tell us what is the current status of this litigation?

[23:30] PAM: Once the litigation was started, the government legislated the policy, invoked the notwithstanding clause, tried to say to the court, listen, this is moot, you shouldn't deal with it, there's nothing that can be done. The UR Pride Centre said that's not true. They should still be adjudicated, even though you can't strike down this now-legislated policy. UR Pride applicant amended their application to allege a violation of Section 12 of the Charter.

[24:02] So a cruel and unusual punishment that this policy constitutes cruel and unusual punishment of trans kids. And that was not one of the sections of the Charter that the government invoked the notwithstanding clause over. So what happened was the court said, yes, you can amend your pleadings to plead Section 12. I'm not going to end this Charter challenge at this point. I think I have jurisdiction, the court said, to be able to declare that this is a Charter violation if that's the case. And that decision was released, I think, in February, but the government has appealed now. So that's why this is going up to the Saskatchewan Court of Appeal. LEAP is seeking LEAP to intervene. And the crux of the issue is whether the court can provide declaratory relief despite the notwithstanding clause being invoked.

[24:56] HUSEIN: Right. Another use of another problem is the use of Section 33, the notwithstanding clause. This has been happening in a bunch of different contexts. When the Court of Appeal renders a decision on this issue, what impact is it going to have for those who practice in your area of the law and even for lawyers generally?

[25:15] PAM: I think one way or another, I would expect this is a case that's going to make its way up to the Supreme Court. But if the Court of Appeal says, you know what, yes, you can, as a court, still consider and issue a declaration that a law violates the Charter, even if the court can't strike it down as unconstitutional, even if it still operates, notwithstanding its unconstitutionality, that is going to be some tool that advocates can use where the notwithstanding clause is invoked. And so that is something that's going to be important for advocates of gender equality to be aware of.

[25:35] PAM: And once this actually, if that is the case, the court says, yes, we can pronounce on this. It's going to take a while for this to work its way back through the courts on the substance of whether or not there is a Charter violation and a declaration issued. But if we can have statements of Charter violations and declarations of Charter violations with the rationale for why the government has infringed the rights of groups that are protected under the Charter, that could be also an important tool, a persuasive tool to make better use of the political lever that is available to allow the population to tell the government that they disagree with the use of the notwithstanding clause and trampling on people's rights.

[26:41] It's not going to be the law that effectively tackles anti-trans hate that's on the rise or misogyny that is on the rise. It's going to be political and social change. It's going to be political pressure and social pressure. So, it's going to be very interesting to look at what happens in the elections that are happening, for example, in New Brunswick and Saskatchewan later this year.

[Music Break]

[27:12] HUSEIN: Now, the criminal code may soon be amended to address a pervasive yet often overlooked form of intimate partner violence. And a private member's bill known as Bill C-332 would criminalize coercive and controlling behaviors within intimate partner relationships. And this bill is aimed to address certain behaviors that have a significant impact on individuals, and subject to some definitional issues, may reshape how law enforcement, courts, and social services respond to this misconduct. So Pam, we're going to talk about the private member's bill in a moment, but can we start by talking about what we mean when we talk about this concept of coercive control?

[27:51] PAM: Coercive control was developed as a term to describe some of that conduct that is abusive within an intimate partner relationship going beyond simply a manifestation of physical violence, for example. It's meant to capture a pattern of behavior. It sometimes includes physical or sexual violence, but it also includes non-physical and controlling behavior. Things that are a little bit more subtle things that include trying to isolate your partner from their social networks, trying to control their finances, trying to limit access to whether it's bank accounts or passports or immigration documents for people for whom that's particularly relevant, trying to control what they wear, what they access online. It's really about establishing through that kind of pattern of behavior a dominance and an isolation of somebody.

[28:51] So it's a very broad concept, but coercive control is that sort of pattern of one person's action and control over another's in that partnership relationship.

[29:04] HUSEIN: All right, so tell us more about this bill and the new offence that will be created from it.

[29:10] PAM: So this new offence would propose to criminalize coercive control sort of understood in the way that I've just described and reflecting that pattern of conduct that has the impacts that are significant on the psychological well-being, physical well-being, financial well-being of a victim or a survivor. And there are a lot of provisions in the criminal code that already capture kind of abusive conduct that you would see in relationships of violence that includes offences like assault or sexual assault, criminal harassment, uttering threats.

[29:53] But the criminal offences that are in the code right now don't capture the whole breadth of abusive conduct that can be at play in coercive and controlling behavior. So that is part of the motivator for the introduction of the Private Members Bill, and that was introduced by NDPMP Laurel Collins. What the bill proposes to do is to criminalize this conduct.

[30:21] When it was first introduced, there were, I think, a number of concerns about how vague some of the language was. And now that this has moved through the House, it's gone to the committee study, and it's sort of tightened up the language to be clearer about what

coercive control is, so the purposes of a criminal prosecution. And it has also removed some of the more problematic elements that had initially been included in that bill as well.

[30:45] HUSEIN: I know that part of the purpose of this bill was to increase access to justice for the victims of coercive control. Can you tell us your thoughts about how this new bill would impact the ability of victims to seek justice and protection under the law, especially compared to how it's currently proceeding under the status quo?

[31:03] PAM: So I think this is a complicated question. The theory is that if coercive control is criminalized, victims or survivors will have that validation of knowing that the behavior that they're being subjected to is wrong, it is criminal, that they will be, in theory at least, able to access the criminal legal system, whether through police, through a prosecution, to be able to hold accountable the person who has been engaging this sort of conduct. And it's fair to say that some victims and survivors want this option. That's why it is actually before Parliament, why it's made its way through the House at this point. But I think there are some real concerns about how realistic it is that it will have the benefit that those who are advocating for it want.

[31:53] HUSEIN: And what do you mean by that?

[31:54] PAM: What I mean is that we have seen time and time again the criminal justice system failing survivors of gender-based violence. The things that I've talked about earlier, they're already crimes. Assault, intimate partner violence is a crime. Sexual assault is a crime. Having it criminalized has not done a heck of a lot to help bring justice for the victims or survivors, or to prevent that sort of harmful conduct in the first place. And I think that's a real problem with looking to the criminal law to solve this issue, to address coercive control.

[32:29] It has the added layer on top of it that it's hard to identify. So again, if you're not showing up with the physical signs of abuse—and even when you do show up with physical signs of abuse to police, you're often disbelieved. You are often not taken seriously. Nothing happens. If you show up and say this, I've been berated by my spouse, he's taken my keys, he's restricting access to my phone, restricting access to the internet. If you're sort of dealing with that in the first situation described of disbelief and hard to prove, it's going to be even worse for proving the elements and gaining a sense of belief from the criminal system for coercive control. So this is one, I think, the biggest issues with looking at criminalization as a response that could be effective for coercive control.

[33:20] HUSEIN: Some critics are saying that an over alliance of criminalization like this bill would undermine existing or future systemic supports on community resources. Do you have any thoughts on the relation between these two?

[33:33] PAM: Yeah, I generally agree with it. And I think some of the major problems with the proposed criminalization, which I will call good faith, I'll assume good faith unintended consequences, are the reality of disproportionate enforcement of criminal laws against Black, Indigenous, racialized, otherwise marginalized communities. Going back to your point of the difficulty improving elements of the offense and that causing potential additional

trauma and disappointment to victims. Another really important issue is, is criminalizing this going to put another tool in the hands of abusers?

[34:13] So abuser can say, for example, that a victim is actually the one committing the offense of coercive control, if she takes steps to keep his kids from him, because he is abusive. And as that turned around and called, well, you're actually engaging in coercive control, that's a criminal offense, you ought to be charged. And all of that comes into play in the context, not just of family law proceedings as well, in relationship terminations, but also in the context of a criminal system where we have policies like mandatory charging for intimate partner abuse.

[34:51] And what that means for folks who might not be familiar with it is a mandatory and charging policy was introduced after in response to police just showing up domestic violence situations and say, well, I don't really know who's at fault. We're just going to charge anybody or it's just a private matter. There was a thinking that mandatory charging would require the police to intervene. Charges would be laid. But what actually happened in practice is the police have often said, I don't know who to believe. He said she hit him. She said he hit her. You're both charged. Off you go. We've done our due diligence and due duty with the mandatory charging. So it's in that system that it gets really concerning about who could be charged with coercive control and the impact of that.

[35:35] HUSEIN: This bill is a criminal law amendment, but I think we'll have impacts, as you say, on different areas of law, including family law. What should lawyers be thinking about assuming this bill doesn't in fact get passed?

[35:45] PAM: People who are practicing, I think, in the area of family law and criminal law are going to need to understand the parameters of this new offense, of course, and the dynamics of how criminal prosecutions happen when there is also a parallel family case going on as well. And we have laws in place, both at the federal level now under the Divorce Act and in various provinces that recognize coercive control as a form of family violence.

[36:18] It has to be taken into consideration, for example, in making determinations about parenting time and about decision-making authority when it comes to children. So, there should be some familiarity among family lawyers with the concept, but there's going to have to be that additional level of understanding of how these processes play out. Where are there potential leverage points for, I'll say it in this specific context, for a potential abuser to leverage a victim's participation in criminal proceedings to sort of strike a deal on the family law proceedings.

[36:55] So, if you don't testify against me, I'm willing to give up a little bit of what you want or what you're asking for, which is really just to protect children to be safe in the family proceeding. There are ways in which I'm very concerned that this could be abused and manipulated in ways that legislators and advocates haven't really realized, which is why I have a deep, deep concern and wouldn't support moving forward with criminalizing coercive control at the moment.

[37:21] On top of that, this is a really serious issue, as everyone who is engaged with it agrees, and I have a great hesitation to allow governments or parliaments to say, well, we criminalized the bad thing, we've dealt with the problem, we don't need to actually invest in resources to support survivors to get out of violent relationships, to do preventative work. We've just criminalized it and we're good to go. I'm loath to let parliaments sort of proceed that way.

[Music Break]

[37:57] **HUSEIN:** Before we wrap up, we're going to do our Ask Me Anything segment with Pam to speak about the question that our listeners submitted about gender equality law. As listeners of our show will know, one of the bonus rewards for members of our crowdfunding campaign is the opportunity to ask questions that they want to hear answered on the show. These will be questions about anything at all within our guest's area of expertise, so long as they're not asking for legal advice. And we draw a call for questions about a week before each recording, so if you want to learn how you can submit your own questions and get other bonus awards, you can check out our crowdfunding website, which is www.lawyeredpodcast.com/patreon. That's www.lawyeredpodcast.com/patreon for more info.

[38:35] Great, so Pam, a lot of interesting questions this week. And the first question, a bit personal, so it's asking, can you share your journey about how you built a legal career that involves advocating for gender equality rights?

[38:48] **PAM:** I think it really stems from having had an interest and a passion for advocating for gender equality rights at well-predated law school. I was raised by a single mom. I saw many of the ways in which gender inequality and barriers were put in place to women's equality as I was growing up. And as I got into university, I just became more involved with advocacy to end violence against women, to better guarantee gender equality rights for those who experience gender-based discrimination. And it happened to be what I got the opportunity to do in practice because it was important for me to carve out the space to do that in my professional career.

[39:40] So I did that by acting for the Barbara Schleifer Clinic here in Toronto on a couple of interventions in cases that dealt with sexual assault and complainants' rights. I did that outside private practice through my continued advocacy, and then the opportunity to actually make fighting for gender equality the centerpiece of my career presented itself when this job came open at the end of 2020.

[40:08] **HUSEIN:** Pam, I think where you work as the epicenter of gender equality law, but for people who are looking to get into this area of law, are there any suggestions or tips that you might provide other than working for your organization?

[40:22] **PAM:** Yeah, I'd say seek out opportunities in your inner practice to do things that will make an impact, even at the individual level for clients who are facing those barriers to gender equality, whether that is as a solicitor, seeking out opportunities to help with corporate documents for a woman who wants to start a business, whether that is in private

practice and litigation, seeking out pro bono files to remedy rights infringements that have been experienced by women, trans and gender diverse people, or outside of your practice, seeking opportunities to volunteer with organizations that do that work.

[41:08] So, there are legal clinics that provide those kinds of frontline services. The 519, for example, has a number of legal clinics that are always seeking volunteers. You can find opportunities to do this work that hopefully aligns with your values and your passions. And that's one of the things that I think is really important, especially for younger lawyers to hear, is to carve out that space and find those opportunities for yourself to do work that you find meaningful, whether it's part of your day job or otherwise.

[41:40] HUSEIN: Yeah, absolutely. The next question we have is the federal government recently launched its LGBTQ2 plus action plan. And as a lawyer in this space, we're curious about what do you think about the efficacy of this plan?

[41:51] PAM: The 2SLGBTQ plus action plan the government of Canada released in 2022, I believe, which set out and announced some funding and a strategy for how it was actually going to enhance the rights of members of our community. It's the first time the federal government has ever done that. And so, they deserve praise for having done that as a result of extensive consultation with communities to seek feedback input on what that strategy should entail. I mean, that's the good thing. They committed to making permanent something called the 2SLGBTQ plus secretariat, which is dedicated exclusively to issues and advocacy for members of these communities. So, that's the good of it.

[42:49] And you asked like, what do I think about its efficacy? I think the not so good is that the plan itself, I don't think highlighted enough the challenges that are being faced by trans, non-binary and gender diverse folks at this point. And that includes the need for access to gender affirming healthcare and mental health services as well. I think that it could have used a much larger investment.

The investment that was announced financially was 100 million over five years. And so, you think 20 million a year in a country this size with the various things that need to be undertaken to ensure the equality of members of queer and trans communities. The implementation of the plan speaks to some concerns and some disconnect between words and action.

[43:40] One of the things that the plan said it would do is it promised consultation on criminal law and policy reform. It set out two specific things that I think are worth mentioning. One is looking at the criminalization of non-disclosure of HIV status, which is considered a sexual offense under the criminal code. And the government did do a consultation on that last year and it's been crickets ever since.

[44:09] So, I think it's not controversial to say there's not much good in consulting about something if you're not actually going to act on what you're hearing through that consultation. And I think it's been a long-standing issue that not just queer and trans communities, but allied communities and organizations like LEAF have been supporting or moving that from the criminal code and not treating it as a sexual offense. So, it's disappointing to see that nothing's been done on that.

[44:40] HUSEIN: The next question we have is, how would you describe the status of gender equality within the legal profession?

[40:47] PAM: That's a great question. I think it's complicated. The good part would be, I think, is I genuinely think that we are in a better place than we were 15, 20, 30 or more years ago. That's for sure. But anyone who thinks that we are in a place of gender equality in the legal profession is, I think, not paying attention. I think we still have a disproportionately low number of women, for example, who are partners and even more specifically equity partners in law firms.

[45:27] HUSEIN: Despite the fact that there's a large number of female graduates, right?

[45:32] PAM: Yes. More than half of the... I think the last numbers I saw, more than half of law school graduates are women. And it's been that way for a while. There's been gender parity thereabouts in graduating classes in law school for years. But we are not seeing those women work their way up into partnership positions. We're seeing women leave the profession. We're seeing some women start their own firms, which is amazing, and I love cheering that on. There are some incredible women who have done that over the last few years in particular. But we are still not seeing parity in the upper ranks of the profession.

[46:16] We are also not seeing things like gender-based discrimination, including sexual harassment, being treated as it should be, which is to say that there is no tolerance for it. There are many situations where people who experience that and decide for whatever reason it is, whether it be career preservation, whether it be because they just don't want to be in an environment that tolerates that, leave. And they're forced out of these places when it shouldn't be them. It should be the people who are committing this harassment and who are engaging in this sort of discrimination. So I think that while we're better off than we were, we are not where we need to be. And I think that is fairly obvious to anyone who's paying attention.

[47:11] HUSEIN: And so there's not like a silver bullet to fix this. But are there some things that you can think of that would help move the needle in the short or long term?

[47:19] PAM: That's also a great question. There needs to be, I think, a number of things taken into consideration and implemented. There needs to be an actual commitment on the part of many firms, especially the larger firms to providing supports to women, but not just women. Also, I'd be remiss not to mention or reflect on the lack of overall diversity of all kinds, whether it be the lack of Black, Indigenous, racialized, disabled, and other marginalized groups in the upper echelons of the legal profession, so to speak.

[48:02] HUSEIN: There needs to be actual commitment and accountability to supporting members of those communities as they enter the legal profession, as they grow in the legal profession, and to show a commitment to holding accountable people who are engaging in behavior that undermines their ability to succeed in the profession that is just discriminatory on its face.

[48:29] One of the things that the Law Society is looking at is holding next year an equity summit, which I think is a really interesting and innovative step that can be taken that's going to gather research from groups external to the Law Society about ways in which we still have not fulfilled the promise of equality in this profession. I also think it's really important, especially for people in this profession who do hold positions of power, to speak up and to hold accountable people when they see them engaging in the kind of behavior that is discriminatory, when they see harassment, calling it out, not creating areas of tolerance for it. I think there's a responsibility at an individual level for each of us to do that wherever we can.

[49:21] HUSEIN: So we just have one more question, which is a big one. We spoke about this term, I think, in a previous segment about intersectionality. The question is, how does the concept of intersectionality impact the area of gender equality law?

[49:33] PAM: Yeah, intersectionality is a term coined by Kimberlé Crenshaw, and it's really meant to describe how different identity, what I'll call different identity markers, whether it's being as I am a woman who is gay, how having those identities are not additive in terms of understanding how discrimination happens, but are intersecting in that they form their own unique experience of discrimination.

[50:11] So when you think of a Muslim woman who wears a hijab, she's not experiencing in silos discrimination on the basis of being a woman, and in a second silo, the experience of being discriminated against because of her religion, and in a third silo, being discriminated against because of her skin color, her ethnicity, her culture, it is recognizing that there are cumulative impacts, and that you cannot divorce and separate out one's identity to account for the ways in which discrimination is experienced.

[50:53] HUSEIN: And it's like a compounding of that, right?

[50:54] PAM: Exactly, yeah. Representing, acknowledging that I think a common graphic is sort of different streets that are all coming to a meeting point, an intersection, if you will, that describe the impact and acknowledge the experience of somebody who holds multiple intersecting identities.

[51:22] HUSEIN: What does this term have to do with the work that you do, and gender equality law generally?

[51:24] PAM: Yeah, everything, I think. I think a question asked these days is, is it feminism if it is not intersectional? And I would say, no, there is not a proper definition that doesn't recognize feminism as incorporating and understanding of intersectionality. So we're seeing that. We see that come into play, and I'll talk about LEAF's work and the ways in which we address issues that have those disproportionate impacts on communities, as we do with Bill 21, as we see happening with Bill 21. It's important for the benefits of advocacy for gender equality to not be limited to those who have historically benefited from advocacy to advance women's rights, which is disproportionately white women.

[52:26] It would be unacceptable today, and it is unacceptable today for our advocacy and for our fight for gender justice not to bring along and recognize and really center, say, people who have historically been marginalized and have experienced those consequences of discrimination. So it is pervasive in any fight for gender equality that I want to be a part of.

[52:54] HUSEIN: Are there specific things that can be done to employ the principles of intersectionality in advocacy?

[53:02] PAM: I think the first thing is that anyone should do is read up on it, spend some time thinking about it, learning about it, not simply deploying it as a buzzword, which I think does happen quite a bit. So, there's that responsibility to understand the language that we use and what underpins it, and to then sort of reflect on and decide for oneself how that concept can be acknowledged in your spaces in which you work, in which you socialize, how it can be acted upon to ensure that there is a sort of a lens and approach of intersectional equality in your workspace, in your advocacy as well.

[53:48] And I think for those, you know, for example, who work with clients who are coming to them with issues related to gender-based discrimination or other issues as well, to understand for a point of, as a point of professional competence, what intersectionality is and how somebody, how a client's experience of the identities that they hold impact them and impact the problems that they are asking you to help them solve. So yeah, to reiterate, I'd really start with sitting down and doing a bit of reading on the concept.

[54:25] HUSEIN: Pam, I want to thank you so much for joining us on the show today. We've kind of gotten to know each other socially in the last year or so, and I've been looking forward to having you on the show for some time. So I'm great that this starts a line that we could have this opportunity. You're doing fantastic work with LEAF, and I think that the examples you spoke to us today really speak to how seriously you take this issue of gender equality law. And I think you've shared a lot of insights for our guests to take away as well. So thanks for being on the show, and we look forward to staying in touch in the future.

[54:51] PAM: Thanks again for having me, Husein. I really enjoyed the conversation.

[Music Break]

[55:03] All right. And that's going to do it for this week's episode of Lawyered. Thanks for listening. On today's episode, our guest was Pam Hrick, and Pam is the Executive Director and General Counsel at the Women's Legal Education Action Fund, also known as LEAF. You can learn more about LEAF at their website, which is www.leaf.ca. And for more about today's show and links to all the cases and bills that we spoke about on the episode, you can find those on our website, which is www.lawyeredpodcast.com.

[55:33] On our next episode, we're going to be heading out west to Alberta, fittingly, for an episode about oil and gas law. And our guest will be Vivek Warrior, who is a Director of the Canadian Energy Law Foundation and a prominent lawyer in this space in his own right. And we're going to be speaking about a bunch of the current issues in this quickly developing

space, including a recent Supreme Court ruling that spoke to the constitutionality of the Impact Assessment Act. We're also going to be speaking about some new upcoming legislation to address the Upcoming Submissions cap, and also speak about a new creative form to address this issue called Carbon Contracts for Differences. So keep an eye out for that as well.

[56:14] If you want to help to improve the show and make the show more accessible, and get some neat and affordable rewards, including the opportunity to get early access to all of our episodes, and to submit questions for our show, it'd be great if you could check out our crowdfunding website and become a patron of our show. You can find out more about how to do that on our crowdfunding website, which is www.lawyeredpodcast.com/patreon.

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[57:00] Our sound editing work is managed by u Solomon Krause-Imlach, our theme music was provided by Ben Swirsky, and our website was maintained by Steve Demelo. And a special shout out to Steve, who helped us with a bit of a website, low-key decides to do this week. So thanks again for stepping in and figuring that out. And finally, please be advised that while this show is going to be helpful and informative, that it is not legal advice. However, if you do want legal advice, please reach out to our lawyer directly to help you with your situation. And with that, we'll see you back here in two weeks' time. Until then, keep it legal.