



lines

Vol. 2 No. 1

May 15, 1988

We need your help

New LEAF lawyers

Once again we are looking for lawyers who can advise and/or act on LEAF cases. LEAF is committed to retain lawyers from the areas where the cases originate and has a strong affirmative action policy towards women. We often must ask lawyers to work on a *pro bono* basis with LEAF covering

disbursements only; however, in return we offer interesting and exciting cases with important principles at issue. Please contact LEAF if you know of lawyers who are interested in gaining experience in the challenging work of precedent-setting sex equality theory and litigation.

A new name for French LEAFlines

We are also looking for a name for the new French edition of LEAFlines. If you have ideas, please contact Susan Joanis at the national office: 344 rue Bloor St. W., Suite 403, Toronto, Ontario M5S 1W9 (416) 963-9654

New LEAF cases

LEAF recently adopted several new cases that involve issues critical to women's survival and well-being. The cases touch on the difficulties women face in meeting basic income needs and securing adequate, affordable housing and the dangers women face as targets of sexual assault.

Quebec spouse in the house

LEAF has agreed to seek intervenor status in the criminal appeal of a Rimouski woman who was convicted of welfare fraud on the basis that she was living as a married, rather than a single, person. The woman had a male friend who often visited on weekends, helped protect her physically from her abusive husband, and helped her to obtain loans she required to provide for basic needs (for example she needed a loan to buy furniture or she risked losing her children to welfare authorities). She fully reimbursed her friend for all loans.

The criminal conviction for fraud came despite the fact that this woman's administrative challenge to

her loss of benefits was successful. In reviewing her circumstances, the welfare authorities were satisfied she fulfilled the requirement of living as a single person. Mr. Justice Bérubé focused on the fact that her friend described himself on loan applications as her spouse and ruled she lived as a married person. This ruling was made despite oral testimony to the contrary. In making his decision, the judge went on to say that the defendant "has not satisfied me that she is innocent".

LEAF hopes to obtain intervenor status at the appeal level to make Charter arguments on the woman's behalf. LEAF will argue, as it did in the Ontario "spouse in the house" cases,

that, at a minimum, there should be no finding of a spousal relationship if there is no existing legal obligation on the part of the "spouse". Lucie Lamarche will argue the intervention application on behalf of LEAF.

This case is very important to LEAF's strategic litigation program. LEAF successfully challenged the "spouse in the house" regulations in Ontario and now hopes to build on that precedent in other provinces. The ability of all women, including those dependent on social assistance, to make their own choices regarding personal relationships is essential to fundamental concerns for privacy and dignity.

Challenging adult-only housing

Lana Salmon is a Toronto woman who was unable to purchase a condominium because she has a 13-year-old daughter. The sale was prevented by an injunction of the District Court upon application by the Condominium Corporation. The Corporation based its application on paragraph 35 of its corporate by-laws which prohibits anyone under the age of 16 from residing in any of its units.

Judge J.D. Hudson granted the injunction, holding that the by-law does not discriminate on the basis of family status as prohibited by the *Ontario Human Rights Code*:

The discrimination is not against parent and child. If the child is 16 years of age or older, then the child can occupy the unit with her or his parent or parents. The discrimination is [with] respect to age, not with respect to family status.

The judge went on to say that the by-law is nevertheless valid because the *Ontario Human Rights Code* only protects people between 18 and 65 from age discrimination (section 9(1)(a)).

Ms. Salmon has appealed the decision with the help of the Metro Tenants Legal Services. LEAF has retained Charles Campbell to act for Ms. Salmon on the appeal, and we will continue to work closely with the clinic. Other groups are supporting the case and have encouraged LEAF's involvement, including NAC and the Committee for Equality Rights in Accommodation (CERA), which first brought the case to LEAF's attention.

This case involves an extremely important legal precedent for women. Although the facts of Ms. Salmon's case involve the purchase of a condominium, the court's interpretation will apply to

rental apartments as well. What is at stake is one of the most important protections in the *Code* for low income women, particularly single mothers, namely the ability to secure housing for themselves and their children without discrimination. The decision to include protection from discrimination based on family status in the 1986 amendments to the *Ontario Human Rights Code* was prompted by tremendous pressure from groups and individuals concerned with women's rights and access to affordable housing. During committee hearings for these amendments, many single mothers told personal stories of being excluded from housing because they had children. In the Salmon appeal LEAF hopes to establish a precedent based on strong sex equality arguments that will recognize that adult-only housing policies constitute discrimination against (primarily) single mothers who are thus unable to find adequate and affordable housing.

The effect of an adult-only rule that prohibits the occupation of housing by persons under age 16 is to exclude a parent and child from accommodation, effectively excluding them because of family status contrary to section 2(1) of the *Ontario Human Rights Code*.

Marciano

Karen Marciano is an incest survivor from Kitchener, Ontario, who recently brought a civil suit for damages against her father who sexually assaulted her as a child. The jury found in her favour and awarded her damages of \$50,000; however, the judge subsequently dismissed the case, on the basis that since she was now 30 years

Courts have held that it is not necessary for all members of a particular group to be adversely affected by a law or policy for that law or policy to be considered discriminatory. In this case, although the Corporation's by-law allows discrimination only against some families, that is families with children under 16, and not all families with children of all ages, it is nonetheless discriminatory on the grounds of family status. Adult-only policies also have an adverse impact on women, thus constituting sex discrimination contrary to the *Ontario Human Rights Code*. Because the majority of single-parent families are headed by women, such rules have a particularly harsh impact on women.

Alternatively, LEAF argues that section 9(1)(a) of the *Code*, to the extent that it allows discrimination with respect to accommodation against persons under age 18, violates the guarantees against age and sex discrimination contained in s.15(1) of the Charter. LEAF hopes that in reviewing cases like this one, courts will take the appropriate purposive approach to human rights legislation, including consideration of the provision's legislative history and the protection the *Ontario Human Rights Code* offers from "adverse effect" discrimination.

old, it was too late for her to file a suit.

Mr. Justice Maloney ruled that the action was barred by the *Limitations Act* which requires that claims be filed within four years in the case of assault and six years in the case of negligence. (If, as in this case, the plaintiff is a minor at the time of the act, the time period

begins to run when she reaches the age of majority.) The judge said that it was not open to him to create a special limitation period that would apply specifically to incest cases, even if he wished to do so.

Ms. Marciano has appealed this decision and LEAF will apply for intervenor status in the appeal. We have retained Elizabeth McIntyre and Nicole Tellier to act as co-counsel on the case.

To apply a straight assault statute of limitations is completely inappropriate for incest, an experience which many victims actually block out of their memories for as much as 10 years or more. Incest survivors often lose work time for health reasons and must undergo expensive therapy. This leads to a substantial financial loss which in turn adds to the difficulty of pursu-

ing a legal action within so few years of attaining the age of majority. For women, such financial loss can create a particular hardship given their traditionally disadvantaged economic status. With increasing public awareness of the problem of incest, more incest survivors are coming forward with an interest in bringing civil actions. These women often face the problem of time limitations that Karen Marciano is confronting. Her case will set an important precedent for many Canadian women who have suffered the horrors of incest.

That the law prevents individuals from seeking damages from acts which victimize almost exclusively women is a serious and important problem. If granted permission to intervene, LEAF will argue that applying the statute of limitations for assault to cases in-

volving incest violates section 15 of the Charter. The limitation periods that are currently applied to civil suits against incest offenders discriminate by preventing a great many incest survivors, the vast majority of whom are women, from bringing legal actions and thus having equal access to the justice system. Such a restrictive limitation period has a disparate impact on women by denying equal benefit of laws that would provide damages for the extremely serious and long-term harm that survivors suffer. Time limits of four years for assault or six years for battery or negligence do not begin to account for the years needed by victims to become emotionally, psychologically and financially able to seek legal remedies for the life-long damages they suffer.

Case updates

Schachter

The *Schachter* trial, raising complex issues of appropriate maternity and parental leave policies, was heard in the Federal Court in Toronto in mid-April. The case arose when a father challenged the adoptive and maternity leave provisions of the *Unemployment Insurance Act* on the basis that they discriminate against fathers who wish to remain at home and care for infant children. During the trial, which lasted a week and a half, the court heard considerable evidence regarding maternity leave schemes in other countries, the costs of various leave arrangements, and reports and recommendations of organizations and commissions that have studied the

matter of maternity and parental benefits.

Under the current scheme, natural mothers are entitled to a 15-week pregnancy leave period; adoptive parents are entitled to a 15-week parental leave period which can be taken by either the mother or the father; natural fathers, however, receive no paid leave time. Much of the argument in the *Schachter* case focused on the nature of the inequality and the appropriate policy to address the separate needs related to pregnancy and child care.

Mr. Schachter argued that natural fathers should be placed in the same position as adoptive parents and allowed up to 15 weeks

of paid leave for child care. By contrast, LEAF argued that paid leave for child care should be allocated to natural parents, not only fathers, to place them in the same position as adoptive parents. LEAF's position is based on the principle that parental benefits for child care should be separate from, and in addition to, the mother's pregnancy benefits which are specifically for the purpose of recovering from childbirth. LEAF's counsel, Mary Eberts, pointed out that any plan providing parental leave benefits to natural fathers and not natural mothers would mean that only the natural mother would have no parental leave time. Mr. Justice Strayer has reserved his decision in this case.

Challenge to Spouses' Allowance Program

LEAF is moving ahead on a challenge to the Spouses' Allowance Program run by the federal government. This program provides benefits to people between the ages of 60 and 64 who meet a residency criterion and both a financial needs test and a marital status test. LEAF is sponsoring the case of a divorced woman who is in need but fails to meet the marital status requirement of the program.

Under current provisions, only people who are either married to a pensioner or widowed are eligible for the benefits available through the Spouses' Allowance Program; those who are either divorced or who never married are ineligible.

LEAF's client was married for 12 years and then divorced. She worked in her husband's business for many years and held a variety of short-term and part-time low-paying jobs. It was only in the last few years before her retirement that she worked in a job that enabled her to contribute to a pension plan. As a result, this woman was not able to adequately provide for her financial security in her later years. Still, she does not qualify for benefits designed for people in her situation solely because she divorced her husband before he died.

In setting up the Spouses' Allowance Program, the government has drawn arbitrary and discriminatory distinctions between people who are single because they are widowed and people who are single because they are either divorced or they simply never married. LEAF has launched a Charter challenge to this legislation, arguing that the current entitlement discriminates on the basis of marital

status and on the basis of sex through its adverse impact on women.

The Spouses' Allowance Program is available to both men and women who fulfill the requirements, however statistics show that the majority of recipients are women. This is due to the work patterns of women's lives, i.e. that they generally work for lower wages for fewer years. Studies are now showing that older divorced women often suffer severe financial loss and find themselves in particularly difficult economic circumstances. These women are in need of assistance yet they are not entitled to government benefits simply because they are divorced.

This case offers another example of LEAF's efforts to have legislation extended to include a broader class of people. In *Schachter*, LEAF argued that the *Unemployment Insurance Act* should be extended to provide parental leave benefits to natural parents as well as adoptive parents. In this case, LEAF will argue that the Spouses' Allowance Program should be extended to include

divorced and never-married people, as well as married and widowed people, who meet the age and need criteria. We hope that courts will take this approach of repairing legislation that violates Charter guarantees rather than striking such legislation entirely.

A Statement of Claim has been filed and examinations for discovery are expected to begin soon. LEAF has received several requests from other women who are disintegrated by the same program. We are not currently considering adding other plaintiffs to the action and have advised these women to seek legal representation to consider their options. While we certainly hope that the LEAF challenge will ultimately resolve the situation of all those who are unfairly disintegrated under the current scheme, we have no way to guarantee such an outcome, and therefore urge potential plaintiffs to seek independent legal advice as soon as possible.

LEAF has retained Fran Kiteley and Nicole Tellier to act as co-counsel in the challenge to the Spouses' Allowance Program.

Funding news

This year LEAF again decentralized its applications to the SEED program for summer student funding. To date, we have heard that several of the requests were granted. The next issue of LEAFlines will carry a full report about who has been hired and where.

We are pleased to report two government grants that were recently received by local LEAF branches. In British Columbia, the West Coast LEAF Association received a \$50,000 grant from the B.C. Law Foundation. This

represents a substantial increase from the \$20,000 grant provided last year and means that West Coast LEAF Association will be able to keep its office open and staffed.

In Saskatchewan, the LEAF branch received a grant of \$31,000 to conduct an extensive research project on equality and rural women. The final report will offer recommendations for addressing the equality concerns of rural women.

Congratulations all around!

Case notes

CPP cases

Helena Orton recently traveled to Ottawa where she and LEAF counsel for this case, Sheila Purdy and Cathy Aitken, met with officials of Health and Welfare Canada to begin negotiations. The case concerns the entitlement to the division of a spouse's Canada Pension Plan credits upon separation or divorce.

Janzen & Govereau; Brooks, Allen & Dixon

Hearing dates have been set for two important cases in the Supreme Court of Canada. On the morning of June 15, 1988, the Court will hear *Janzen & Govereau v. Platy Enterprises*, a case involving the sexual harassment of two Winnipeg waitresses. The question before the Court is whether sexual harassment is sex discrimination and therefore a violation of the protections contained in Manitoba's human rights legislation.

In the afternoon of June 15, the Court will hear argument in

Brooks v. Canada Safeway, the pregnancy discrimination case stemming from Canada Safeway's sick leave plan. In the *Brooks* case the Court is once again faced with the question of whether pregnancy discrimination constitutes sex discrimination. This will be the first time since the infamous *Bliss* case that the Supreme Court of Canada will rule on that issue. Both of these decisions will set important precedents for future equality litigation.

Index

The following is an index of all the cases that were reported in LEAFlines during its first year of publication. LEAFlines is designed to provide ongoing reports about the cases as they develop. We hope that this will be a useful guide for those readers who may want to refer to past articles about particular cases.

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