

# BeLEAFs

Winter 1998  
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## Person's Day Events

It was another successful Person's Day across Canada this year as thousands of LEAF supporters celebrated the annual commemoration of the landmark decision that declared women legal "persons" in 1929. Ten cities held events to toast another spectacular year. Special thanks to all of our hard-working volunteers, wonderful supporters and sponsors for making this memorable event possible. Look for details in an upcoming issue of LEAFLines.

LEAF will be celebrating the 70th anniversary of the "persons" case in

1999. Plans are underway to commemorate this important legal victory for women on the eve of the millennium. LEAF is also getting set to embark on a national tour next year. This tour will take us to communities across the country in our goal to establish new ways of working together towards women's equality. The aim of this venture is to unite LEAF's efforts regionally and nationally and to develop strategies that will take LEAF into the next century! More details about the tour will be announced in an upcoming issue.

### LEAF News Share...

Does your branch have LEAF news you'd like to share with LEAF supporters? Send your submissions by email to [leafcomm@interlog.com](mailto:leafcomm@interlog.com) or by mail to: Editor, LEAFLines/BeLEAFs, 415 Yonge Street, Suite 1800, Toronto, ON M5B 2E7.



**BCGEU v. PSERC**

***Tawney Meiorin Grievance -  
Sex Discrimination***

(British Columbia Government and Service Employees' Union v. the Government of the Province of British Columbia as represented by the Public Service Employee Relations Commission)

Tawney Meiorin was hired as an Initial Attack Crew forest firefighter with the province of British Columbia in 1992. Throughout her two-year employment, Ms. Meiorin performed her job to the Ministry of Forests' satisfaction; her direct supervisor considered her a capable and valued employee.

In 1994, Ms. Meiorin was advised of a new firefighters' fitness test requirement that involved a set of components that were different from those at the time she was hired. Ms. Meiorin passed all sections of the new test with the exception of the running component, which she missed by 49 seconds. Her failure to pass the running component of the fitness test led to her eventual lay off from work as an Initial Attack Crew member. Ms. Meiorin later filed a grievance concerning the layoff in which she stated that the testing standard was discriminatory because it had an adverse effect on women.

LEAF, in coalition with the Canadian Labour Congress and DAWN Canada: DisAbled Women's Network Canada, are intervening in this case to show how 'standard' testing based on male standards can actually have a negative affect on women. Kate Hughes and Melina Buckley are counsel.



**R. v. Darrach**  
***Admission of Past Sexual  
History in Sexual Assault Trials***

Andrew Scott Darrach was convicted of sexual assault in 1994. On November 3, 1997, the Ontario Court of Appeal heard the case of R. v. Darrach, to determine if, as the convicted man asserted, sections of the Criminal Code prevented him from having a fair trial in the original court proceedings. Darrach challenged the constitutionality of two sections of the Code and maintained that if those sections did not exist he would not have been convicted of sexually assaulting the complainant with whom he had a previous relationship. The sections in question are: section 273 which defines the meaning of "consent" and when it can be used as a defense; and section 276 which restricts the introduction of a complainant's past sexual history. The Ontario Court of Appeal denied Darrach's claim in a unanimous decision on February 4, 1998.

Darrach has since appealed to the Supreme Court of Canada. However, he is no longer challenging section 273, the consent provisions. The case is now solely about the admission of sexual history evidence.

LEAF and its coalition partners, the Canadian Association of Sexual Assault Clinics (CASAC), DAWN Canada: DisAbled Women's Network Canada and the National Action Committee on the Status of Women (NAC), have been granted leave to intervene in this case before the Supreme Court. As we did at the Ontario Court of Appeal, LEAF will argue that these sections of the Criminal Code are essential to protecting women's right to equal protection and benefit of the law when they are complainants in sexual assault trials.

The hearing will take place in 1999. Counsel are Elizabeth Thomas and Carissima Mathen.

## **R. v. Ewanchuk**

### ***Definition of Consent in Sexual Assault***

This Alberta sexual assault case raised national interest about how to define "consent" in sexual assault cases. On October 14th, LEAF in coalition with DAWN Canada: DisAbled Women's Network Canada, intervened at the Supreme Court of Canada in the case of R. v. Ewanchuk. Thirty year-old Steve Brian Ewanchuk, charged with sexually assaulting a 17 year-old woman during a job interview in his trailer, claimed that the teenager did not rebuff his advances and that her inaction implied her consent. The woman ("B") testified that she became frightened when the older man began to touch her. She tried to remain calm out of fear of antagonizing him and repeatedly said "No" in response to his sexual assaults.

Ewanchuk was acquitted on the basis that because the woman did not scream, struggle or threaten to call police, there was "implied consent". The Alberta Court of Appeal upheld the acquittal stating that Ewanchuk's actions were "more hormonal than criminal". LEAF counsel, Diane Oleskiw and Ritu Khullar, argued that the issue of consent must clearly be established before any sexual activity occurs between two people. This case touched a nerve across the nation as the media attempted to interpret the complexity surrounding "implied consent".

LEAF received national media coverage from this case and counsel presented a compelling argument at the Supreme Court of Canada. The Court reserved its decision.

## **J.G. v. the Minister of Health and Community Services (N.B.)**

### ***Civil Legal Aid for State Guardianship Applications***

New Brunswick's legal system does not provide legal aid funding for temporary child wardship cases. J.G., an economically disadvantaged woman, lost custody of her three small children to the Ministry of Health and Community Services (MHSS) after participating in a hearing without a lawyer. Her application for legal aid counsel was denied. This case, J.G. v. Ministry of Health and Social Services (N.B.), addresses the serious issue of access to justice for poor women and the constitutionality of denying legal aid in temporary child wardship cases.

LEAF in coalition with the National Association of Women and the Law (NAWL) and DAWN Canada: the DisAbled Women's Network Canada, intervened in this case at the Supreme Court of Canada on November 9th. LEAF and the coalition, argued that the refusal to provide legal aid to parents opposing temporary child wardship applications, adversely affects women. Counsel were Carole Curtis and Anne Dugas-Horsman. The Court reserved its decision.





The Women's Legal Education and Action Fund (LEAF) is a national non-profit organization which promotes equality for women through legal action and public education. Using the equality guarantees in the Canadian Charter of Rights and Freedoms, LEAF intervenes in court cases to challenge discrimination against women. LEAF is committed to working for women's equality in Canada through legal intervention. Please note: LEAF is not a law firm or legal clinic. LEAF does not represent clients and cannot provide any legal advice.

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BeLEAFs is the new sister publication of LEAFLines and is available twice a year. The smaller format provides LEAF supporters with case updates and national LEAF news.

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