

BeLEAFs

Fall 1999
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Person's Day Issue

LEAF celebrated not one but two victories in as many days at the Supreme Court of Canada! On September 9, the Supreme Court ruled that a B.C. Ministry fitness test discriminated against woman forest firefighter, Tawney Meiorin that resulted in her dismissal in the case of *BCGSEU v. PSERC*. The following day, the Supreme Court announced that New Brunswick's failure to provide legal aid to a poor woman involved in a child wardship case violated her Charter rights in *J.G. v. Ministry of Health and Social Services (NB)*.



British Columbia Government and Service Employees' Union v. Government of the Province of British Columbia as represented by the Public Service Employee Relations Commission (BCGSEU v. PSERC Tawney Meiorin Grievance) – Sex Discrimination in Fitness Testing

Tawney Meiorin lost her job in 1994 after failing to complete the 2.5-kilometre running component of a four-part fitness test in 11 minutes or less. She missed the required time by 49 seconds. Before her dismissal, Ms. Meiorin worked for more than two years as an Initial Attack forest firefighter and received positive reviews from her direct supervisor. She filed a sex discrimination complaint against the B.C. government shortly after being laid off.

LEAF, in coalition with the Canadian Labour Congress and DAWN Canada: the Disabled Women's Network Canada, intervened in this case to show how the test keeps women out of traditionally male jobs. The test in this case was developed based on the physical characteristics of male firefighters. It effectively screens out qualified women from employment as firefighters.

The Supreme Court considered the extent of an employer's duty to review and change workplace rules or policies to ensure that they do not disproportionately exclude women. The Court unanimously ruled that a new test for discrimination in employment is needed. This decision is an important advance for equality law in Canada: if a workplace rule excludes women or other groups, it must be scrutinized to ensure that it is truly necessary for determining job performance. The Court's decision is a victory for Tawney Meiorin and all working women who know that they will be judged by their ability to do the job and not by their similarity to men. Kate Hughes and Melina Buckley were counsel.

J.G. v. the Minister of Health and Community Services (N.B.) – Civil Legal Aid for Wardship Applications

J.G.*, a poor woman from New Brunswick, lost custody of her three children to the Ministry of Health and Social Services for 18 months after being denied legal aid in the wardship proceedings. LEAF, in coalition with the National Association of Women and the Law (NAWL) and DAWN Canada, intervened in this case last fall to argue that the state's failure to provide legal aid for poor parents in temporary wardship cases infringes their Charter rights. This failure can result in an unfair hearing with the potentially devastating result that children are removed from their families. In this case, J.G.'s children, three-, four- and seven-years of age, were placed in foster care for more than a year. The Supreme Court recognized that this case raises issues of gender equality particularly since women, and especially single mothers, are disproportionately affected by child wardship proceedings. LEAF argued, and the Court agreed, that the nature of state-led child custody hearings is a complex and often emotionally-charged process. Legal representation for indigent parents in these cases is necessary for a fair process. This is an important victory for women in Canada who are most likely to be involved in child custody hearings. Carole Curtis and Anne Dugas-Horsman were counsel.

* Please note that by order of the Chief Justice of Canada, the plaintiff in the case may only be identified by her initials.

Blencoe v. British Columbia Human Rights Commission and Andrea Willis – Sex Discrimination

Irene Schell and Andrea Willis filed sexual harassment complaints against their employer with the B.C. Human Rights Commission after they were forced to leave their jobs. Their employer was former B.C. Cabinet member and Minister of Sports and Recreation, Robin Blencoe. Blencoe was removed from office prior to these human rights

complaints, as a result of a separate allegation of sexual harassment from one of his ministerial assistants. The women's complaints proceeded through a series of steps that took a little over 30 months from the original filing. Blencoe filed a petition at the B.C. Supreme Court to dismiss the proceedings because of an unreasonable delay, which he felt would cause serious prejudice. The Court dismissed Blencoe's claim of prejudice and maintained that the complaint process was open and fair. Blencoe appealed the decision to the B.C. Court of Appeal. That Court ruled that the proceedings against Blencoe should be stopped because his right to privacy and human dignity was violated. In May, 1999, LEAF was granted leave to intervene in this case at the Supreme Court of Canada to argue that the dismissal of the sexual harassment charges against Blencoe infringed the complainants' rights. LEAF counsel is Jennifer Conkie.

Little Sisters Book and Art Emporium et al v. Canada (A.G.) – Discrimination in the Enforcement of Obscenity Laws

Little Sisters Book and Art Emporium v. Canada (A.G.) is a case about Canada Customs' use of obscenity law to censor books and other materials, a system known as "prior restraint". LEAF is intervening at the Supreme Court of Canada to ensure that obscenity legislation is not applied in a discriminatory manner, as occurred in this case. In the past, Customs has marked shipments of books and artwork destined for the Little Sisters bookstore as "obscene". Little Sisters charges that Canada Customs has unfairly targeted the lesbian bookstore and violated its rights to equality and freedom of expression under the Charter. Representatives from the bookstore assert that certain publications Customs officials labeled as obscene did not contain any sexual content; other publications were allowed in to other bookstores. In May, 1999, LEAF conducted a series of consultations across the country about the Little Sisters case to inform LEAF's intervention. LEAF counsel are Karen Busby and Claire Klassen.

Darrach v. The Queen – Constitutional Challenge to Amendments to the Criminal Code

LEAF and its coalition partners: the Canadian Sexual Assault Clinics (CASAC), DAWN Canada and the National Action Committee on the Status of Women (NAC), intervened in this sexual assault case at the Ontario Court of Appeal in 1997. Darrach was appealing his conviction for sexually assaulting a woman with whom he'd had a previous relationship. In his defence, Darrach claimed that two sections of the Criminal Code prevented him from having a fair trial. The two sections dealt with the definition of "consent" and the admission and use of a woman's sexual history. The Court of Appeal upheld Darrach's conviction.

Now, Darrach is appealing to the Supreme Court of Canada. This time he is challenging amendments to the Criminal Code which limit the use of a woman's sexual history as a defence in sexual assault trials. Once again, LEAF and its coalition partners, is intervening to argue that these sections of the Criminal Code are essential to safeguard women's right to equal protection and benefit of the law when they are complainants in sexual assault trials. The Supreme Court hearing is set for December 13, 1999. Counsel are Carissima Mathen and Elizabeth Thomas.

COURT DECISION PENDING...

L.C. v. Mills – Constitutional Challenge of Bill C-46 (an Act to amend the Criminal Code disallowing production of records in sexual offence proceedings)

LEAF is still awaiting a Supreme Court of Canada ruling on this constitutional challenge to Bill C-46 heard in January, 1999. Bill C-46, passed in 1997, amended the Criminal Code to provide guidelines for the accused's use of a victim's personal records in sexual assault trials. Brian Joseph Mills is charged with sexually assaulting a 13-year-old child (L.C.). He is challenging the constitutionality of Bill

C-46 because he was denied access to the victim's medical records. LEAF's intervention in *Mills* is but the latest step in LEAF's long-standing work on the issue of defence applications for women's personal records, particularly in sexual assault trials. LEAF intervened in this case because of its

importance for the equality rights of all women in Canada. LEAF counsel were Anne Derrick and Peggy Kobly.

PERSON'S DAY '99

The annual Person's Day celebration is here once again. Every October LEAF branches host special events in communities across the country to mark a milestone in the early years of women's equality. On October 18, 1929, England's Privy Council ruled that women were permitted to sit in the Senate. This decision overturned the Supreme Court of Canada's decision that barred women from government office because they were not considered "persons" under the law. LEAF commemorates that

precedent-setting moment in history with Person's Day events on or around October 18, while continuing to work towards real equality for all women in Canada.

Special thanks to Sally Armstrong, former editor, *Homemaker's* magazine and new LEAF Foundation board member, for including a list of Person's Day events in the October issue of *Homemaker's*.

1999 Person's Day events and guest speakers:

Vancouver BC

Daphne Dumont,
VP Can. Bar Assoc.
Hyatt Hotel
November 5, 7:30 a.m.
(604) 684-8772
email: wcleaf@dowco.com

Victoria, BC

Shari Ulrich,
Songwriter/musician/performer
Princess Mary Restaurant
October 20, 7:30 a.m.
(604) 385-4311/604-381-7321
email: wcleaf@dowco.com

Edmonton, AB

Jan Fox, Warden,
Edmonton Institute for Women
Delta Edmonton Centre Suite Hotel
October 15
(780) 963-0928
email:
j.quinn@ahlstromwright.com

Saskatoon, SK

SCC Justice L'Heureux-Dubé
Top of the Inn,
Sheraton Cavalier Hotel
October 28
(306) 244-6245
email:
k.prisciak@robertsonstromberg.com

Regina, SK

SCC Justice L'Heureux-Dubé
Saskatchewan Centre of the Arts
October 29, 7:15 a.m.
(306) 352-9676
email: calexander@sasklaw.com

Winnipeg, MB

April Burey, Counsel in landmark
Supreme Court decision
(R.D.S.) 1997
The Lombard
October 29
(204) 945-6281

Sudbury, ON

Margarita Papandreou,
former First Lady of Greece
Caruso Club
October 15
(705) 560-9574
email: banshee@sympatico.ca

Owen Sound, ON

Ann Finlayson, Author
The Stone Tree
October 27, 7:00 p.m.
(519) 376-8020/1-800-263-5165

Hamilton, ON

Nancy Radclyffe
Executive Director, LEAF
Purple Pear Restaurant, Visitors Inn
October 18, 7:30 a.m.
(905) 383-4779

Toronto, ON

Sandra Shamas, Performance Artist
Avril Benoit, Host
Royal York Hotel
October 28
(416) 595-7170 ext. 225
email: leaftor@interlog.com

Kingston, ON

Carissima Mathen,
LEAF National Director of Litigation
Ban Righ Centre,
Queen's University
November 25
(613) 542-3804
email: mmd@post.queensu.ca

Richibucto, NB

Michèle Caron,
Co-chair, LEAF Legal Cmte.
Habitant Motel & Restaurant
October 18
(506) 876-3359
email: amdrisco@nbnet.nb.ca



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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e-mail: leafcomm@interlog.com or call (416) 595-7170 ex. 223.
Please note: all submissions are subject to editing.

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