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LEAF FAEJ WOMEN'S LEGAL EDUCATION AND ACTION FUND 415 Yonge Street, Suite 1800, Toronto, ON M5B 2E7
FONDS D'ACTION ET D'EDUCATION JURIDIQUES POUR LES FEMMES

Telephone: (416) 595-7170
Facsimile: (416) 595-7191

For Immediate Release

LEAF HAPPY WITH ALBERTA COURT DECISION ON HATE SPEECH PROVISIONS IN PROVINCIAL HUMAN RIGHTS ACT

(Toronto, July 11, 2001) The Women's Legal Education and Action Fund ("LEAF") reacted positively to the decision by Justice John Rooke in a Special Case Application concerning *Harvey Kane et al and Alberta Report*.

Mr. Kane and the Jewish Defence League of Canada filed a complaint with the Human Rights Commission against the publication *Alberta Report*. The complaint concerned an article that was alleged to have anti-Semitic content. Section 2 of the Alberta's *Human Rights, Citizenship and Multiculturalism Act* prohibits statements that are found to discriminate against persons, or are likely to expose them to "hatred or contempt", on the basis of race, religion, sex and other personal characteristics.

Before dealing with the complaint, the Alberta Human Rights Panel made a Special Case Application to the Court, posing several legal questions. The questions concerned the scope of section 2 of the *Act*, including whether it applied to statements that were "opinion" and the balancing between the prohibition of hateful statements and the protection accorded to "freedom of expression".

After a general invitation issued by the Alberta Court of Queen's Bench LEAF applied for and was granted standing to make written and oral submissions. While taking no position on the specifics of the complaint, LEAF argued that section 2 of the *Act* is consistent with Canada's commitment to fighting inequality and discrimination. In particular, section 2 recognizes the discrimination and ill effects that arise from "hate speech". LEAF argued that the right to equality for all persons includes respect for the right to freedom of expression and therefore an appropriate balance, that respects both interests, must be reached.

In his decision, released on June 29, 2001, Justice Rooke made several important findings. He held that there is no need to define what constitutes "an opinion" in the Act, and that the fact a statement may reflect a personal opinion is irrelevant to whether the statement contravenes section 2 of the *Act*. Justice Rooke further held that the media enjoys no special protection when it publishes third party statements; such statements can constitute hateful or discriminatory speech. In so finding, he accepted LEAF's arguments and dismissed arguments by *Alberta Report* and *The Calgary Herald* that would have seriously diluted the effectiveness of section 2.

Although Justice Rooke recognized the importance of freedom of expression, he noted that this freedom is not absolute. He ruled that the Human Rights Panel must consider other principles as well, such as equality, freedom of religion and multiculturalism. His findings in this regard reflected LEAF's argument that section 2 of the *Act* should be interpreted in a manner consistent with the *Charter of Rights and Freedoms*.

Justice Rooke cautioned against a rigid approach to deciding complaints under section 2 of the *Act*. He called instead for a framework that is "highly contextual and responsive to the legislation". LEAF was especially pleased that Justice Rooke emphasized the importance of context and the particular purpose of human rights legislation.

Justice Rooke's decision is consistent with Canadian values of tolerance, diversity and equality. LEAF believes that Justice Rooke's reasons will be of assistance to the human rights process in Alberta and Canada. The decision thus represents an important step in the ongoing struggle for human rights in Canada.

LEAF was represented at the Court of Queen's Bench by Sheila Greckol, Renee Cochard and Jo-Ann Kolmes.

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For more information contact:

JoAnn Kolmes, LEAF Counsel

1-780-951-6831

Nancy Radclyffe, LEAF Executive Director

1-416-595-7170, ext. 230