



SUPREME COURT BETRAYS EQUALITY GUARANTEES

MEDIA ADVISORY

THE SUPREME COURT OF CANADA DECIDES THAT AUTISTIC CHILDREN DO NOT HAVE A RIGHT TO HEALTH SERVICES

(Toronto – November 18, 2004) LEAF (Women's Legal Education and Action Fund) and its intervention partner DAWN (DisAbled Women's Network) Canada say that this morning's decision from the Supreme Court in *Auton v. British Columbia* is devastating for all disadvantaged persons. At issue is whether the B.C. Government's refusal to fund health services to ameliorate the effects of autism violates the equality rights of autistic children, rights guaranteed in the *Canadian Charter of Rights and Freedoms*. The Court found that the failure to provide autism related health services does not constitute a breach of the Charter's s. 15 guarantee.

The Court's decision has turned back the clock by decades on equality rights progress in Canada by its ruling in *Auton*. The Court has applied a narrow and formalistic interpretation of the equality guarantees in s. 15 of the *Charter*. The critical flaw with the Court's reasoning lies in its narrow conception of health services – it endorsed a conception of health services that is focused on the able-bodied norm, and accepts that norm instead of challenging it as exclusive and discriminatory. It takes the current health services framework as natural, and the implication is that anything outside of it is “extra” or “abnormal”.

The LEAF/DAWN argument was that the government discriminated because it failed to respond to the needs of autistic children – the Court found that there was no s. 15 breach because the services were not provided – this kind of restrictive and circular reasoning is a betrayal of the Court's early promise to apply the equality guarantees in a broad and purposive manner. The Court's concept of equality recognizes only formal equality, everyone has the equal right to sleep under the bridges.

The Court justified its reasoning in part based on the novelty of the services at issue. The disadvantaging effects of failing to provide the services in this case were clear. Governments should not be allowed to stall the provision of equality because a service or treatment is new.

As a result of the Court's decision, disabled persons are to be treated as second-class citizens because the Court did not acknowledge that the health system privileges the able-bodied. Autistic children in particular will remain at risk of isolation and institutionalization. The negative effects will be compounded for girls with autism. For example, women with autism who are institutionalized are likely to experience one of the most serious forms of gendered disability discrimination - the physical and sexual abuse that is prevalent in institutions.

Counsel for LEAF and DAWN are Dianne Pothier and Fiona Sampson.

Contact:

Fiona Sampson, LEAF Counsel (416) 595-7170 ext. 223

Catherine Frazee, DAWN Equality Rights Committee (905) 304-8191