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SUPREME COURT ORDERS SEXUAL HARASSMENT COMPLAINTS TO PROCEED; SAYS DELAY DID NOT VIOLATE THE CHARTER

(Toronto, October 5, 2000) The Supreme Court of Canada has issued an important decision for women and for the human rights process in Canada. In *Blencoe v. Andrea Willis and The British Columbia Human Rights Commission et al.*, the Court ordered that the sexual harassment complaints against former B.C. Cabinet Minister Robin Blencoe must proceed. The complaints were previously stayed by the British Columbia Court of Appeal.

The Women's Legal Education and Action Fund (LEAF) intervened in this case because of its importance for the rights of women, who make up 95% of sexual harassment victims. As well, because Blencoe based his arguments in part on section 7 of the *Charter*, LEAF was concerned that the case could frustrate the very purpose of human rights proceedings. Section 7 states that everyone has the right to "life, liberty and security of the person", and those rights may not be interfered with except in accordance with "the principles of fundamental justice".

In separate complaints, two former employees of Robin Blencoe alleged that he sexually harassed them. The first complaint was filed in July, 1995. In November, 1997 Blencoe tried to quash the decision by the B.C. Human Rights Commission to refer that complaint to a Tribunal.

At the B.C. Court of Appeal Blencoe argued that excessive delay in the processing of the complaint had violated his *Charter* rights. A majority of the Court of Appeal agreed with Blencoe, concluding that his *Charter* rights had been violated by the stigma associated with the adverse publicity he experienced. LEAF argued that the B.C. Court of Appeal did not consider the rights of complainants in reaching this conclusion.

Today the Supreme Court unanimously held that the stay of the proceedings was improper and the complaints should proceed. Five justices, led by Michel Bastarache, considered and analyzed the role of section 7 of the *Charter*. They concluded that neither Blencoe's right to "life" nor "security of the person" was affected by the delay that had occurred. The remaining four justices dealt with the case based on administrative law principles.

"We are very pleased. This is an important decision for women in Canada," said LEAF Director of Litigation Carissima Mathen. "By overturning the stay, the Court has removed a serious barrier that may have further discouraged women from coming forward with sexual harassment complaints."

The entire Court was critical of the Human Rights Commission's handling of the complaints. "I am very concerned with the lack of efficiency of the Commission and its lack of commitment to deal expeditiously with complaints," said Justice Bastarache. Writing in partial dissent, Justice Lebel was even more direct, referring to the Commission's "ineptitude". Justice Lebel further noted that the Commission's delay affected not only Blencoe but also the women who brought forward the allegations.

"Notwithstanding that the Court approached this case in different ways, this is a positive decision," said LEAF counsel Jennifer Conkie. "The partial dissent acknowledges that complainants have a serious interest in the expeditious processing of human rights complaints, and must be considered when fashioning a remedy. In this way, the dissent as well as the majority addresses the imbalance at the Court of Appeal, which ignored the complainants and allowed the respondent's interests to trump the process."

"It is also significant that the Court awarded costs against the Human Rights Commission to both the complainants and the respondent. This shows how seriously the Court viewed the Commission's handling of this matter," continued Ms. Conkie.

"We do regret that the Court did not explicitly address the context of sexual harassment including its impact on women," said Ms. Mathen. "Nonetheless, we are encouraged that the majority declined to equate sexual *harassment* in the human rights context with sexual *assault* in the criminal context. This could have seriously hampered the ability of human rights commissions to process these complaints. Fortunately, the Court recognized and distinguished the important differences between each system."

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