



WOMEN'S LEGAL EDUCATION AND ACTION FUND
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“NO MEANS NO”, SAYS ONTARIO COURT OF APPEAL: SEXUAL ASSAULT LAWS ARE CONSTITUTIONAL

(Toronto, February 5, 1998) On February 4, 1998, the Ontario Court of Appeal dismissed the appeal of Andrew Scott Darrach, convicted of sexual assault in 1994. Darrach had argued that several provisions of the *Criminal Code* specific to sexual assault prevented him from receiving a fair trial.

The provisions at issue were added to the *Criminal Code* in 1992, after the Supreme Court of Canada struck down the old “rape shield” laws. *Darrach v. The Queen* represents the first time a Canadian appellate court has considered the constitutionality of the 1992 amendments.

The particular provisions of the *Criminal Code* prevent an accused person from using a complainant’s past sexual history to discredit her testimony. The provisions also state that “no means no” and require that, if an accused person wishes to rely on the defence of mistaken belief in consent, he must show that he took “reasonable steps” to ascertain that the complainant was consenting. Darrach claimed that because of these provisions, his trial was unfair.

The appeal was heard on November 3, 1997. The Women’s Legal Education and Action Fund, the Canadian Association of Sexual Assault Centres, the DisAbled Women’s Network Canada, and the National Action Committee on the Status of Women (“the Coalition”), intervened together to argue that the provisions were constitutional.

The Court of Appeal unanimously rejected Darrach’s appeal and held that all the challenged provisions were constitutional. Writing for the Court, the Honourable John Morden, Associate Chief Justice of Ontario, noted that the accused does not and should not have an unlimited ability to inquire into a woman’s past sexual history. With respect to the requirement that an accused person must take reasonable steps to ascertain consent, the Associate Chief Justice wrote: “[It] is difficult to contemplate that a man who has sexual intercourse with a woman who has not consented is morally innocent if he has not taken reasonable steps to ascertain that she is consenting.”

“We are very pleased that the Court upheld the constitutionality of these laws. This is an important victory for women across Canada,” said Carissima Mathen, LEAF Staff Lawyer. “The Ontario Court of Appeal has recognized that protecting complainant’s rights enhances the criminal justice system and promotes fairness for everyone.

“These particular amendments to the *Criminal Code* were enacted in 1992 only after extensive consultation and public debate,” Ms. Mathen continued. “The provisions acknowledge women’s equality and autonomy, and fully safeguard an accused’s person right to a fair trial. They are absolutely necessary to ensure that women who bring forth complaints of sexual assault receive equal benefit and protection of the law.”

Counsel to the Coalition were Christine Boyle and Susan Vella.

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