



## LEAF NEWS RELEASE

### SUPREME COURT UPHOLDS "RAPE SHIELD"; CRIMINAL CODE INTACT

(Toronto, October 12, 2000) The Supreme Court of Canada today unanimously upheld several provisions of the *Criminal Code* which limit the use of a woman's sexual past history as evidence. This ends a long battle over the so-called "rape shield" laws.

The decision, *R. v. Darrach*, was applauded by the Women's Legal Education and Action Fund (LEAF), the Canadian Association of Sexual Assault Centres, the DisAbled Women's Network Canada, and the National Action Committee on the Status of Women, which had intervened in the case.

Andrew Darrach was convicted of sexual assault in 1994. He challenged the provisions of the *Code* which he had to follow in order to introduce evidence of his victim's sexual past. These provisions were enacted in 1992 after an extensive consultation process and were known as *Bill C-49*. *Bill C-49* contained two major amendments: a redefinition of "consent"; and strict limitations on the admission and use of a woman's past sexual history to show either that she actually consented or that she should not be believed. The Ontario Court of Appeal dismissed Darrach's appeal in 1997. On appeal to the Supreme Court, Darrach narrowed his appeal to s.276 of the *Criminal Code* which puts limits on the admissibility and use of past sexual history evidence.

The Supreme Court upheld the constitutionality of s.276 and held that it did not infringe an accused's rights. Speaking for the Court, Gonthier J. wrote: "The current version of s.276 is carefully crafted to comport with the principles of fundamental justice. It protects the integrity of the judicial process while at the same time respecting the rights of the people involved. The complainant's privacy and dignity are protected by a procedure that also vindicates the accused's right to make full answer and defence."

LEAF Director of Litigation, and co-counsel in the case, Carissima Mathen, said, "This is an important decision for women in Canada, and it ends a long battle to ensure that sexual assault trials are focused on whether or not a sexual assault took place, as opposed to the sexual history of a particular woman. We are glad that the Court recognized and reaffirmed the importance of maintaining sensitivity to the equality rights of women when considering an accused's right to a 'fair trial'. Section 276 properly balances the interests of accused persons, complainants, and society as a whole."

Elizabeth Thomas and Carissima Mathen were counsel to the Coalition at the Supreme Court.

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