



LEAF FAEJ WOMEN'S LEGAL EDUCATION AND ACTION FUND

FONDS D'ACTION ET D'ÉDUCATION JURIDIQUES POUR LES FEMMES

Charitable Registration
No. 10821 9916 RR0001
Numéro d'Enregistrement

2 rue Carlton Street, Suite 1307
Toronto, ON M5B 1J3

Telephone: (416) 595-7170
Facsimile: (416) 595-7191
Website: www.leaf.ca

July 19, 2002

LEAF disappointed Supreme Court of Canada rejects privacy of diary in sexual assault case

Toronto – The Women's Legal Education and Action Fund (LEAF) is disappointed that the Supreme Court of Canada has ruled that the trial judge erred in restricting the accused's cross-examination of a complainant's diary in the Shearing case.

Ivon Shearing had appealed his convictions for sexual offences against several women and children between 1965 and 1989. Shearing was the leader of a marginal cult called the Kalbarians and had been convicted at trial of sexually assaulting his housekeeper's two daughters and five other "teenage disciples".

At the trial Shearing's defence lawyer tried to cross-examine one of the complainants using her diary which had been left behind at the commune and turned over to Shearing when discovered by a cult follower. Defence counsel had wanted to cross-examine one of the complainant's on why she had not recorded the sexual abuse in her diary. The trial judge refused the defence's cross-examination on the absence of references to the abuse in the diary.

Based on the specific facts of this case, the Supreme Court however said: "The defence was rightly precluded from asking the jury to assume that if the abuse had occurred it would have been recorded, but it does not follow that the defence should have been precluded from attempting to demonstrate its premise before the jury using the diary".

Ellen Mary Mills, Executive Director of LEAF explained why LEAF is disappointed.

"The diary should have been returned to the complainant, its rightful owner. Cross-examination based on sexist myths has no place in a truth seeking process. What makes this case unusual is that it wasn't what was in the diary that Mr. Shearing's lawyer wanted to make use of, but rather what wasn't in there!" This issue can now be addressed in a new trial of the accused.

In dissenting, The Honourable Madame Justice Claire L'Heureux-Dubé agreed; "The defence should have been required to return the diary to the complainant and to seek its production through the proper statutory channels." Also, she stated: "Allowing cross-examination on the absence of entries recording abuse would have endorsed the same discriminatory beliefs that underlie the unfounded "recent complaint" myth and wrongly implied that the absence of such entries is support for a conclusion that the events were fabricated".

Contact:

Diana Majury, Cochair LEAF National legal Committee, 613 520-2600 Ext. 3685

Veronica Jackson, Cochair LEAF National Legal Committee, 204 944-3254