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NEWS RELEASE

SUPREME COURT DECIDES SAME-SEX COUPLES HAVE RIGHT TO APPLY FOR SPOUSAL SUPPORT

(Toronto - May 20, 1999) In a landmark decision, the Supreme Court of Canada today announced that gays and lesbians must be included in the definition of "spouse" in the *Ontario Family Law Act (FLA)*, and therefore have the legal right to apply for spousal support upon the dissolution of a relationship. The Women's Legal Education and Action Fund (LEAF) intervened in the case of *M. v. H.* in March, 1998, because of its importance both to lesbian and gay persons, and to the development of equality law that will end government-sanctioned discrimination.

In this case, "M" attempted to sue "H" for support after the breakdown of their 10-year relationship, but was not entitled to use the provisions in the *FLA*. M claimed financial difficulties had arisen from the dependency that was created by her relationship. She maintained that in her relationship with H, she assumed a domestic role and H assumed the financial responsibility. H stated that they did not take on any specific gender roles, but that they lived together in a manner that avoided a lifestyle similar to that of a heterosexual couple.

The parties settled out of court. The Supreme Court allowed the case to proceed as a test case to determine the constitutionality of the definition of "spouse".

In its 8-1 decision in favour of M., the Supreme Court has signified that it is prepared to recognize the existence of homosexual spousal relationships. "LEAF applauds this courageous decision," said LEAF counsel Carol Allen. "This is a joyous day for gays and lesbians, and for all persons who support the principle of equality. LEAF is proud to have participated in this momentous case."

The decision today is a precedent: never before has the Supreme Court ruled that a law is unconstitutional because it fails to treat same-sex and heterosexual couples equally.

In its decision, largely written by retiring Justice Peter Cory, the eight justices recognized that the exclusion of gays and lesbians from the *Family Law Act* perpetuates historic discrimination against this group. The Court also noted that the purpose of the *Family Law Act* -- the provision of support to spouses in need -- is actually thwarted by the law's failure to extend itself to gay and lesbian couples. The Court held that the Ontario government had not proved that the exclusion was either necessary or justified.

The Court declared the offending provision unconstitutional, but has suspended the effect of this decision for six months, partly to give the Ontario government time to amend other parts of the *Family Law Act*, not at issue in this case, which should also apply to gay and lesbian couples. "LEAF calls on the Ontario government, and indeed all other governments, to immediately examine and correct family law legislation, in the spirit of the *M. v. H.* decision, so that equality for all gays and lesbians in Canada is no longer denied," said LEAF's Director of Litigation, Carissima Mathen.

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