

For Immediate Release

LEAF intervening in SCC: No Consent to Sex When a Woman is Unconscious or otherwise Incapacitated

**There is No Consent to Sex When a Woman is Unconscious/Incapacitated
LEAF Intervening in Supreme Court of Canada on November 8, 2010**

For Immediate Release

November 5, 2010, Toronto -On Monday, November 8, 2010 LEAF will appear before the Supreme Court of Canada in the case of *R. v. J.A.* to argue that the Court should not introduce a novel concept of "advance" consent to sexual relations into Canadian law.

"The accused is asking the Supreme Court to turn the clock back twenty years" says LEAF Legal Director Joanna Birenbaum. "A vital part of the meaning of consent is the right to say "no" at any point. The accused is asking the Court to change the law so that a woman's earlier "yes" continues, even after she becomes unconscious, extremely intoxicated, or otherwise unable to say "no". Any change in law to recognize "advance" consent would be dangerous and regressive."

The case involves a woman who reported that she was sexually assaulted by her common-law spouse J.A. On the night in question, the accused strangled the complainant into unconsciousness. The complainant estimates that she was unconscious for approximately three minutes. When she awoke, she found herself bound and being anally penetrated with a dildo. The accused says that the complainant consented "in advance" to the strangulation and the anal penetration that would take place while she was unconscious. The complainant first reported to the police that she did not consent to the sexual activity. Later, the complainant recanted. Her evidence at trial was described by the judge as a "typical cross-examination of a recanting complainant in a domestic matter."

"This case is not about 'S & M' nor is it about women's sexual autonomy or liberty. Unconscious women enjoy no sexual pleasure and exercise no autonomy. "Advance" consent makes a mockery of the legal and social understanding of consent" says Birenbaum. "Instead, this case raises serious concerns about wife assault. A doctrine of "advance" consent would offer dangerous abusers who strangle their partners a defence to otherwise potentially deadly criminal activity. More generally, it will effectively revive the marital rape exemption. The ongoing consent of wives or intimate partners will be assumed or implied from the nature of the relationship."

LEAF's intervener factum argues that any recognition of "advance" consent in law will have significant and serious implications for the lives and safety of women, particularly women who are already more likely to be targeted for sexual assault, such as intoxicated women, women with disabilities and Aboriginal women. "The burden will shift to women to prove that they never gave "advance" consent", says Birenbaum. "This is totally unacceptable and in many instances will be a near-impossible threshold. It is the man's responsibility to ensure that his partner is actively consenting at the time of the sexual activity."

Susan Chapman and Elizabeth Sheehy will be representing LEAF at the hearing. LEAF's intervener factum can be found at: http://www.equalityrightscentral.com/canada_equality_rights_law.php?page=sexual_assault&subtopic=Facta&id=20101104135118&doc=JA_LEAF_SCC_link.html

-30-

For more information, please contact:

Joanna Birenbaum (LEAF Litigation Director/Co-Counsel)
Counsel

Susan Chapman -Co-

(416) 595-7170 ext. 223 (office)

(416) 364-8773 (office)

(647) 500-3005 (cell)
j.birenbaum@leaf.ca

(416) 276-2794 (cell)
smchapman@papebarristers.com

LEAF is a national, non profit organization committed to confront all forms of discrimination through legal action, public education, and law reform to achieve equality for women and girls under the *Charter of Rights and Freedoms*. For more information, please visit us at www.leaf.ca "

[Forward email](#)



This email was sent to audia.johnson@leaf.ca by info@leaf.ca | [Update Profile/Email Address](#) | Instant removal with [SafeUnsubscribe™](#) | [Privacy Policy](#).

LEAF | 60 St. Clair Avenue East | Suite 703 | Toronto | ON | M4T 1N5 | Canada