



## For Immediate Release

### LEAF and DAWN-RAFH Canada Intervene in Family Law Appeal Termination of Spousal Support of Disabled Mother

**April 19, 2011, Toronto** - LEAF and the DisAbled Women's Network Canada (DAWN-RAFH Canada), are intervening in a family law appeal (*L.M.P. v. L.S.*) at the Supreme Court of Canada tomorrow, Wednesday, April 20, 2011.

“If upheld, the lower court decisions under appeal would signal a backwards shift in family law and a return to the ‘clean break’ model of support of 20 years ago” states LEAF Legal Director, Joanna Birenbaum. The “clean break” model assumes that women are on a level playing field with men when relationships end. It seeks to cut the financial ties between former spouses as soon as possible.

“This assumption of economic equality is not true for most women, particularly those who look after the children and the home, whether full or part-time,” explains Birenbaum. “Family law has evolved to value women's contributions in the home and to recognize the economic consequences of women's caregiving roles and labour market inequalities. Yet in this case the lower courts reduced and terminated spousal support payments for the Appellant wife without considering the enormous barriers to remunerative and secure employment for women like the Appellant, who was disabled, had little to no education and work experience, was caring for the couple's two children, and had been out of the workforce for almost 20 years at the time the order was made.”

The case involves a marriage of 14 years between a Montreal commercial litigator and the Appellant wife who, at the time of marriage, did not have a high school leaving certificate and worked in sales for a cosmetics company. During the marriage, the wife assumed a traditional role in the home. Upon divorce, the couple negotiated a consent judgment pursuant to which the husband undertook to pay spousal support with no date for termination or review, and child support for the two young children. The wife has suffered from multiple sclerosis since the first year of marriage, was diagnosed by her private disability insurer as permanently disabled and unable to work, and has been in receipt of LTD benefits since her diagnosis. The couple's agreement included no requirement that the wife seek training or employment.

“Four years after divorce, the husband's income went up and the wife applied to increase child support (not spousal support),” explains Birenbaum. “Instead of simply agreeing to increase child support, the husband argued that the wife's support should be terminated since she hadn't made any effort to look for work. This argument was made despite the terms of the contract which did not require the wife to do so and the wife's diagnosis of permanent disability.”

The husband did not argue that the wife's medical condition had improved following separation, constituting a “material change” to justify a variation of the couple's agreement. Instead he argued that the wife had never really been too disabled to work. According to the husband, the passage of time combined with the wife's failure to find employment relieves him of his contractual undertaking to pay indefinite support. The lower courts accepted the husband's arguments.

On the basis of contested medical evidence brought by the husband that the wife could work part-time and the trial judge's assessment of the wife's appearance on the stand, the lower court reduced and terminated support.

“This case raises important issues for women with disabilities”, states DAWN-RAFH Canada President Carmela Hutchison, “the wife’s contributions to the home and the husband’s career were discounted due to her disability. Support was terminated on the basis that she ‘may’ be able to work 20-25 hours a week. No consideration was given to the systemic barriers to women with disabilities obtaining employment at all, never mind stable and secure employment that would guarantee the Appellant an adequate standard of living. Finally, the courts failed to appreciate the severe consequences to women like the Appellant of the loss of LTD. Such benefits are often a matter of life or death.”

“Another concern” Hutchison continues, “is that women with invisible disabilities are often disbelieved when they present well.”

LEAF and DAWN-RAFH are also concerned by the apparent discounting of the couple’s contract in this case. Contracts have been strictly enforced when women waive their rights to support. A more lenient standard shouldn’t apply to permit men to avoid contracts which require them to pay support.

Maitre Anne France Goldwater and Professor Robert Leckey of McGill University are representing LEAF and DAWN-RAFH in this Supreme Court of Canada appeal.

LEAF and DAWN-RAFH’s factum and more information can be found at <http://leaf.ca/legal-issues-cases-and-law-reform/active-cases/>

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