



## **LEAF intervening at SCC in *Whatcott v. Saskatchewan***

### **Prohibiting Religious Hate Speech is Constitutional Hate speech is more than mere expression. It is a form of discrimination**

**October 11, 2011, Toronto** - On Wednesday October 12, 2011, the Supreme Court of Canada will hear *Whatcott v. Saskatchewan*. LEAF is intervening in the appeal. The case involves a constitutional challenge to s.14(1)(b) of the *Saskatchewan Human Rights Code*, which prohibits the promotion of hatred against protected and vulnerable groups.

“Hate speech is a deeply harmful form of discrimination which not only harms the targeted group, it harms all of society” explains LEAF co-counsel Jo-Ann Kolmes. “Limits on hate speech against targeted groups, like gays and lesbians in this case, play a critical role in promoting an inclusive and tolerant Canadian society that respects equality of all our citizens.”

Whatcott distributed homophobic leaflets to homes in Regina and Saskatoon. The Saskatchewan Human Rights Tribunal and the Saskatchewan Court of Queen’s Bench held that these flyers constituted hate speech. The Saskatchewan Court of Appeal held that although the flyers may be “demeaning,” “crude” and “harsh,” they did not cross the line into expression which vilifies and degrades gays and lesbians and exposes them to hatred. The Supreme Court of Canada will consider whether the flyers constitute hate expression and whether the provision of the Code is constitutional.

“Twenty years ago, LEAF participated in the important and successful effort to establish that limitations to hate speech are constitutionally justified, culminating in the Supreme Court’s decisions in the Keegstra and Taylor cases”, says LEAF co-counsel and professor of law Kathleen Mahoney. “These limitations are now under attack, only this time, instead of Jews, the target of the hatred is gays and lesbians. LEAF argues that speech rights raised by Whatcott must be subject to the same equality principles Courts have applied to racial hatred. The Court cannot ignore the grievous injuries homophobic hate speech inflicts on sexual minorities.”

Mahoney points out that society has long recognized that expression must be regulated in many ways, most of them invisible and now taken for granted.

“Journalists are prevented on a daily basis from reporting what could be relevant information by libel and contempt of court laws. Government servants are bound by oaths of lifelong secrecy. The *Broadcasting Act* sets limits on the content of programming on television and radio. The centuries-old law of defamation clearly limits harmful speech. Human rights statutes prohibit sexual and racial harassment, which often take the form of speech.” Mahoney says the regulation of hate speech must be understood in this context, “Hate speech is much more than mere expression. In and of itself it is a form of discrimination. Sometimes it goes beyond discrimination to result in violence. The continuum between expression, discrimination and violence is undeniable.”

LEAF’s factum documents the unique ways in which women are harmed by hate speech.

“The portrayal of Aboriginal women as dispensable, run-away prostitutes or ‘squaws’ has been connected to violence against Aboriginal women, including disappearances and murders,” says LEAF Legal Director Joanna Birenbaum. “Hate expression targeted at lesbians, women with disabilities, Muslim and racialized women, depicts and degrades them in specifically gendered, often-sexualized ways. Expressions of hate directed at women must be treated extremely seriously under human rights legislation such as the Saskatchewan statute, especially since women are excluded from the *Criminal Code* protections.”

LEAF has a long history of equality analysis and advocacy with respect to the importance of statutory limitations on freedom of expression. LEAF intervened in the Supreme Court of Canada cases of *R. v. Keegstra* and *Taylor v. The Canadian Human Rights Commission* in 1990. In December 2009, LEAF made submissions to government on the importance of s.13 of the *Canadian Human Rights Act* that also prohibits hate speech (which can be found on our website at [http://leaf.ca/wordpress/wp-content/uploads/2011/09/Submission\\_to\\_JUST\\_Committee2009.pdf](http://leaf.ca/wordpress/wp-content/uploads/2011/09/Submission_to_JUST_Committee2009.pdf))

LEAF’s factum in *Whatcott v. Saskatchewan* is available at [http://leaf.ca/wordpress/wp-content/uploads/2011/09/Factum\\_LEAF\\_Whatcott\\_Finale\\_Signed-copy.pdf](http://leaf.ca/wordpress/wp-content/uploads/2011/09/Factum_LEAF_Whatcott_Finale_Signed-copy.pdf)

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For more information, please contact:

**Joanna Birenbaum**  
**LEAF Legal Director**  
**(Cell) 647-500-3005**  
**(Office) 416-595-7170 ext. 223**  
**(E-mail) [j.birenbaum@leaf.ca](mailto:j.birenbaum@leaf.ca)**

**Kathleen Mahoney**  
**Counsel**  
**(Cell) 403-837-1141**

**Jo-Ann Kolmes**  
**Counsel**  
**(Cell) 780- 993-0839**

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