

LEAF = FA, E, J Women's Legal Education and Action Fund • Fonds d'action et d'éducation juridiques pour les femmes

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Equality Rights in Action

BY FIONA SAMPSON, DIRECTOR OF LITIGATION

LEAF is currently involved in two significant Supreme Court of Canada cases that will likely redefine equality in Canada. These cases concern whether governments are obliged to respect and advance the equality guarantees of the *Charter* in their policy and budgetary decisions.

At issue in *Newfoundland Association of Public Employees v. Newfoundland* is whether the Newfoundland government

can pay women less than men for work of equal value. This case affects 5,300 female employees of the Newfoundland government, and has the potential to establish a precedent that will affect female employees across Canada. The *NAPE* appeal was heard by the SCC on May 12, 2004.

LEAF argued in *NAPE* that the government admitted that it had violated the equality rights of its female employees when it agreed to compensate them for the

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Message from the Chair

As I write, we are all making the shift from a too short summer to a busy fall. We're going back to school, or back to work, or simply enjoying the seasonal transition. The fall is a very busy time at LEAF too. Our volunteers are putting the last touches on Persons Day Breakfasts and our thousands of supporters are getting ready to get up early for equality.


We are waiting, waiting for at least two key Supreme Court decisions described in this issue by Fiona Sampson, LEAF's Director of Litigation. As we head into 2005, and the 20th anniversary of the coming into force of section 15 of the *Canadian Charter of Rights and Freedoms* on April 17, what is the state of equality in Canada? We are right to celebrate the anniversary – LEAF was also founded on the same date, and we commenced our first two cases that day. LEAF is getting ready to publish a new book on equality in Canada, assessing 20 years of advocacy for women and girls, and how courts have responded in their decisions.

Advances have been made, no question about it, particularly in areas involving personal choices and safety for women and girls. So far, however, the courts have been reluctant to make governments really

accountable for addressing the historic and systemic disadvantage of women and girls, particularly those experiencing discrimination on multiple grounds.

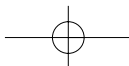
We are also thinking hard about how to pursue equality in a new era, one very different from 20 years ago. LEAF has completed a strategic review of equality law over the last 18 months. During the fall, we will have discussions at our annual general meeting and a broader assembly of all key LEAF volunteers and staff to assess our objectives and priorities for the future.

LEAF's unique and exceptional work can only be undertaken with the commitment and contributions of donors, volunteers and staff. We thank each and every one of you for showing your support for equality. We'll be in touch when we have news – send us your e-mail address (to info@leaf.ca) and we'll add you to our monthly email update.

Beth Atcheson 

With sincere thanks,
Beth Atcheson
Chair, LEAF National Board

*Collective
Committment
Inspires Our
Work Across
Canada*



LEAF Across the Land

L EAF Branches across the country are actively providing education, supporting LEAF's legal work, networking with other women's groups, and fundraising in their local communities. There is so much that the Branches do. This is just a short sampling of what they're involved with! Congratulations LEAF Branches on all your great work.

West Coast LEAF: The framework for all that West Coast LEAF (WCL) does is based on a commitment to inject substantive equality into Canada's laws and legal system. Some of the highlights of their work this past year include an intervention in a case involving privacy in civil law matters (*Smith v. Funk*), and two submissions to the Federal Justice Committee on same sex marriage legislation and the Divorce Act. In addition, WCL continues to move toward test case litigation through their affidavit campaign (a program aimed at building the evidence needed to make constitutional arguments for equality in the provision of family law legal aid).

April 2005 will mark 20 years since the equality provisions of the *Charter of Rights and Freedoms* came into force. It will also be the 20th anniversary of the Women's Legal Education and Action Fund. To commemorate the occasions, West Coast LEAF has partnered with the National Association of Women and the Law to host a national conference called *Women's Rights and Freedoms: 20 Years (In) Equality*. With the help of community partners, West Coast LEAF and NAWL have already started to plan this exciting event. The conference will bring together legal practitioners, law students, community activists and others to examine how far equality rights have come and where they are heading.

WCL is focussed on education. Through their "No Means No" peer facilitation program, they are reaching young people to talk about sexual violence and consent. By examining *Ewanchuk*, a Supreme Court of Canada sexual assault case, young people have an opportunity to discuss concepts like the legal meaning of consent, gender stereotypes, and bullying. By training older high

school students to provide workshops to younger students, West Coast LEAF helps ensure the discussion has real meaning for the youth involved.

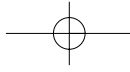
Finally, WCL has developed a new program called "Equality in Action". This educational program brings the concept of substantive equality to legal organizations and allows the leaders of those bodies to apply the principles to their own work in practical and meaningful ways.

LEAF Edmonton: LEAF Edmonton focused its efforts on the Person's Day Breakfast this year. Julie Lloyd, an advocate and spokesperson for the gay lesbian bisexual and transgendered community, spoke on the topic of, "Marriage, Morality and Personhood: Relearning the Lessons of the Past." One hundred and eighty-five people attended the breakfast and raised in excess of \$4000.

LEAF Edmonton plans on placing a new emphasis on education; watch for "No Means No", "Transforming our Future" and a possible speakers series programs in the New Year.

LEAF Regina: Approximately 150 people attended the 12th annual LEAF Regina Person's Day Breakfast. The speaker was Elizabeth Abbott, Dean of Women at Trinity College, University of Toronto. An historian, she has worked for more than a decade as a journalist and writer with a special interest in social history and the environment.





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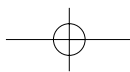
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LEAF Ottawa



issues facing women in our community. Volunteers attended meetings with groups such as the Criminal Justice Sub-Committee, the Sexual Assault Network, the Elizabeth Fry Society, Immigrant Women's Association and Planned Parenthood.

In addition to their education and community outreach programs, LEAF Ottawa has been busy organizing events: to celebrate Persons Day, LEAF Ottawa hosted Senator Lucie Pépin as the keynote speaker at a Persons Day dinner and attended celebrations on Parliament Hill where the annual Person's Day Awards were given to outstanding Canadian women. For International Women's Day, they distributed over 120 copies of the *Charter of Rights and Freedoms* to first year law students. Finally, LEAF Ottawa hosted experts from across Canada at a two-day consultation on Women's Equality and the Law of Internet Communications.

For more information about LEAF Ottawa, please visit www.leafottawa.ca

LEAF New Brunswick: The Richibucto breakfast occurred on Saturday October 18th. Approximately 30 people attended and had the pleasure of hearing Carissima Mathen, Vice-Chair of the National LEAF Board of Directors, speak on "Working for Women's Equality," which covered amongst other things a general overview of LEAF with a focus on our work in the areas of sexual assault and access to justice.

LEAF PEI: The focus for LEAF PEI this year was a membership drive/legal education event. Islander and long-time LEAF supporter Dalhousie Professor Ronalda Murphy made two presentations, "Just Making Law?: Struggling for Inclusion", and "Making Law Just!: Comparing Canadian And American Approaches." In



addition to community folks, the public talks drew social justice advocates, academics, lawyers and judges. The University of Prince Edward Island co-sponsored the event with LEAF, as did the Chief Justice Thane A. Campbell Lectureship in Law. The University of PEI taped the presentations for future viewing.

A LEAF memorial tea in honour of **Starr Solomon, JoAnna Townsend and Ruth Berger** was held on Wednesday, February 25 2004 in Ottawa. Starr, JoAnna and Ruth were all founding members of LEAF Ottawa and gave generously of their knowledge and know-how throughout the years. They were lively, fun, and committed women. The tea, hosted by Jean Pigott, Grete Hale and Gay Cook at their family residence raised over \$4500 for the Starr, JoAnna and Ruth LEAF Memorial Fund.

LEAF would also like to celebrate the lives of the following individuals and to mark their passing with family and friends:

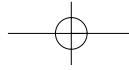
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Moira Armour

Joanna Brown

Susan Crerar





Conversion with LEAF Counsel - Dianne Pothier



BY MARY NERSESIAN

With the help of Dianne Pothier, the lead counsel in LEAF's intervention in the Supreme Court of Canada case *Auton v. British Columbia*.

Professor Pothier argued for LEAF and LEAF's intervention partner DAWN (DisAbled Women's Network) Canada, alongside co-counsel Fiona Sampson (LEAF's Director of Litigation), that ignoring autism's effects risks isolating children – especially young girls with autism.

She appeared in front of the Supreme Court on June 9, 2004 to argue that the B.C. government must fund health services to children with autism.

It is cases such as this one that are “part of the reason why I went into law in the first place,” Prof. Pothier said, who first studied political science, and was admitted to the Nova Scotia bar in 1982.

She is currently a professor at Dalhousie Law School teaching constitutional, public, labour, and conflicts law.

She says of her political science studies, “I was getting frustrated that it didn't have too much connection to reality, the stuff I was researching seemed kind of remote and removed. Part of the reason I went to law school was to work with things that affected people... If the court pays attention to anything we are saying LEAF has the potential to have a major impact.”

Ms. Pothier first became involved with LEAF as part of a case sub-committee. In 1996 she was involved in the *Eldridge* case, involving the government's refusal to provide medical interpreters for people with hearing disabilities.



abilities. Since then she has also been involved in the *Meiorin* case involving whether a fitness test discriminates against a BC women firefighter. She worked on LEAF's interventions either as a subcommittee member or as counsel.

Her work on the *Auton* case began with team brainstorming initiated by questions developed by her and co-counsel Fiona Sampson. “I found it to be quite a good process, people feeding off each other's ideas,” she said. Once they decided how to argue the case, she and

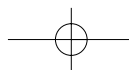
co-counsel divvied up the work and spent a large part of February-April on the phone, she said.

Typically a lawyer's work is “pretty much a solitary process,” Dianne said, adding that senior lawyers often instruct junior lawyers on what to do. The LEAF drafting process is not like that.

Dianne explained that there was ongoing input from the *Auton* subcommittee and the National Legal Committee with respect to the development of the LEAF/DAWN factum. The LEAF factum drafting process is much more collaborative and co-operative than the traditional factum drafting process.

Whether or not the LEAF/DAWN intervention is successful, it's important to the women of Canada because it's a voice to “push substantive equality, and to acknowledge different power, different circumstances, different needs,” she said.

“I think LEAF has been significant in how some cases are handled when courts don't agree, they are providing a voice for LEAF to say.”



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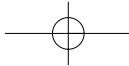
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For more information, please contact LEAF's Director of Development, Angela Ryan-Rappaport at a.ryan-rappaport@leaf.ca or 416-595-7170 x 225.



Spotlight on Supporter Bev Lacastro

BY MARY NERSESIAN

When Beverly Lacastro went to her first LEAF Sudbury Persons Day Breakfast and saw that hundreds of people were in attendance – even at that “god-awful” hour of 7:30 a.m. - she knew LEAF was on to something major.

“I couldn’t get over the speakers, they were just amazing...they were from all different walks of life and they were all passionate about whatever they did.”

Bev opened her own travel agency, Global Travel Destinations Ltd. in 1995. The Sudbury agency is still going strong and she now has six employees.

“And when I opened it, I decided that LEAF was something that I wanted to support strongly,” she said.

“Where would I be as a female today if it wasn’t for these strong-willed women [who helped] women to become known as persons. I wouldn’t be able to open my business.”

The idea took root and Ms. Lacastro has been providing

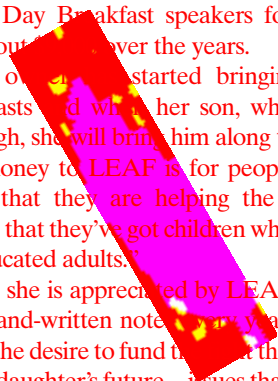
flights for the Persons Day Breakfast speakers for nine years now – totalling about \$10,000 over the years.

The small-business owner has started bringing her daughter to the breakfasts and when her son, who is in Grade Four, is old enough, she will bring him along too.

Donating time or money to LEAF is for people who “really want to know that they are helping the future and...want to make sure that they’ve got children who grow up and become well-educated adults.”

Although she knows she is appreciated by LEAF - she receives three to four hand-written notes a year – her motivation is fuelled by the desire to fund the work that “will mean something for my daughter’s future...issues that won’t be issues when my daughter is an adult.”

How long will she keep contributing to LEAF? “For as long as I’m able to,” she says.



BY ROSEMARY MOLESWORTH

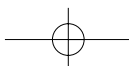
I was delighted when the LEAF Sweeps contest offered a “7 - day getaway in the historic and cultural mecca of San Miguel de Allende, Mexico.” I only know one person in Mexico; an old school friend who happens to be have been living in San Miguel for 7 years. Given that I feel that LEAF deserves to be supported for the necessary work they do fighting for women’s rights, and I needed a holiday, this sounded too good to be true. I quickly sent in my donation and entry form and got on with my busy fall. Imagine my surprise when I received a telephone call saying my name was drawn as the winner!

We booked our vacation in La Puertecita Boutique Hotel for the March break 2004 when teachers are set free. San Miguel has narrow cobble stone roads, many churches with bells, lots of history, an artisan market & botanical gardens. As a potter I was very interested in the large artist colony and even managed to attend a few art openings including Toller Cranston’s. A House and Garden Tour allowed us entry into three houses to see their art collections, interior courtyards & many fantastic creative uses of brick & cement.

Thanks to LEAF for their good works and dedicated staff, to the donor of the prize Shirley Greenberg, to La Puertecita Hotel and to San Miguel de Allende and finally to our friends in Mexico who gave us such a splendid time.



Rosemary Molesworth in the lobby of La Puertecita Boutique Hotel



Equality Rights in Action continued from page 1

unequal wages they'd been paid in the past. LEAF argued that the Newfoundland government violated the equality rights of the women when it reneged on its agreement to provide the employees with pay equity. The government's position was that it could not afford to implement the agreement to provide for pay equity. LEAF argued that while it is always cheaper to discriminate, the government's budgets cannot be balanced on the backs of the disadvantaged in society, and that the guaranteed equality rights of women must be respected. LEAF was represented by Karen Schucher of Ontario and Fiona Sampson in the *NAPE* appeal. The Court reserved its decision. It is expected that the Court will not release a decision in this case for several months.

The *Auton v. British Columbia* case involves a challenge to the B.C. Government's refusal to fund health services to ameliorate the effects of autism. LEAF intervened in this case in partnership with DAWN (DisAbled Women's Network Canada) Canada. The *Auton* appeal was heard by the SCC on June 9, 2004.

LEAF and DAWN argued that the refusal to fund autism services violates the equality rights of children with autism that are guaranteed in section 15 of the *Canadian Charter of Rights and Freedoms*. We argued in our factum that not addressing the effects of autism risks creating lives of isolation and institutionalization for both male and female children. However, the negative effects will be compounded for girls with autism. For example, women with autism who are institutionalized are likely to experience one of the most serious forms of gendered disability discrimination - the physical and sexual abuse that is prevalent in institutions.

The crux of the inequality in this case is the exclusionary and marginalizing effects of the state failing to respond to autism. Autistic persons who do not fit societal norms experience the stigmatization of mental disability and are banished to the margins of society. LEAF and DAWN argued that the state's refusal to fund autism services conveys the message that autistic persons are just not worth societal investment. The state's neglect is discriminatory because it devalues the lives and worth of such children and subjects them to social

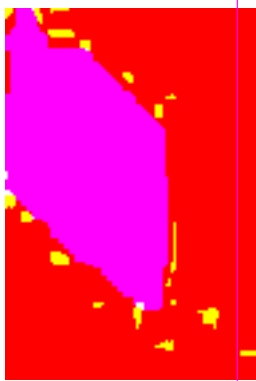
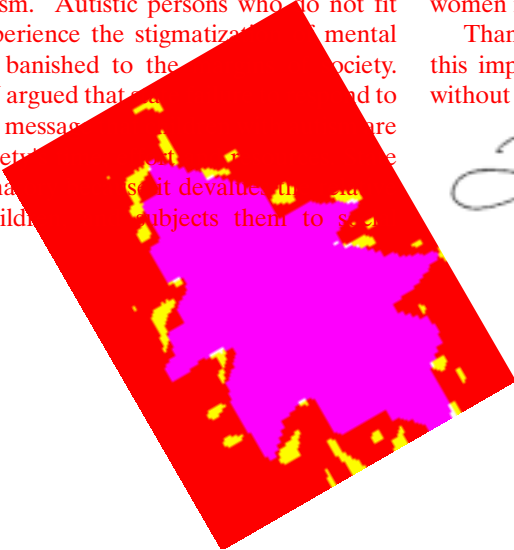
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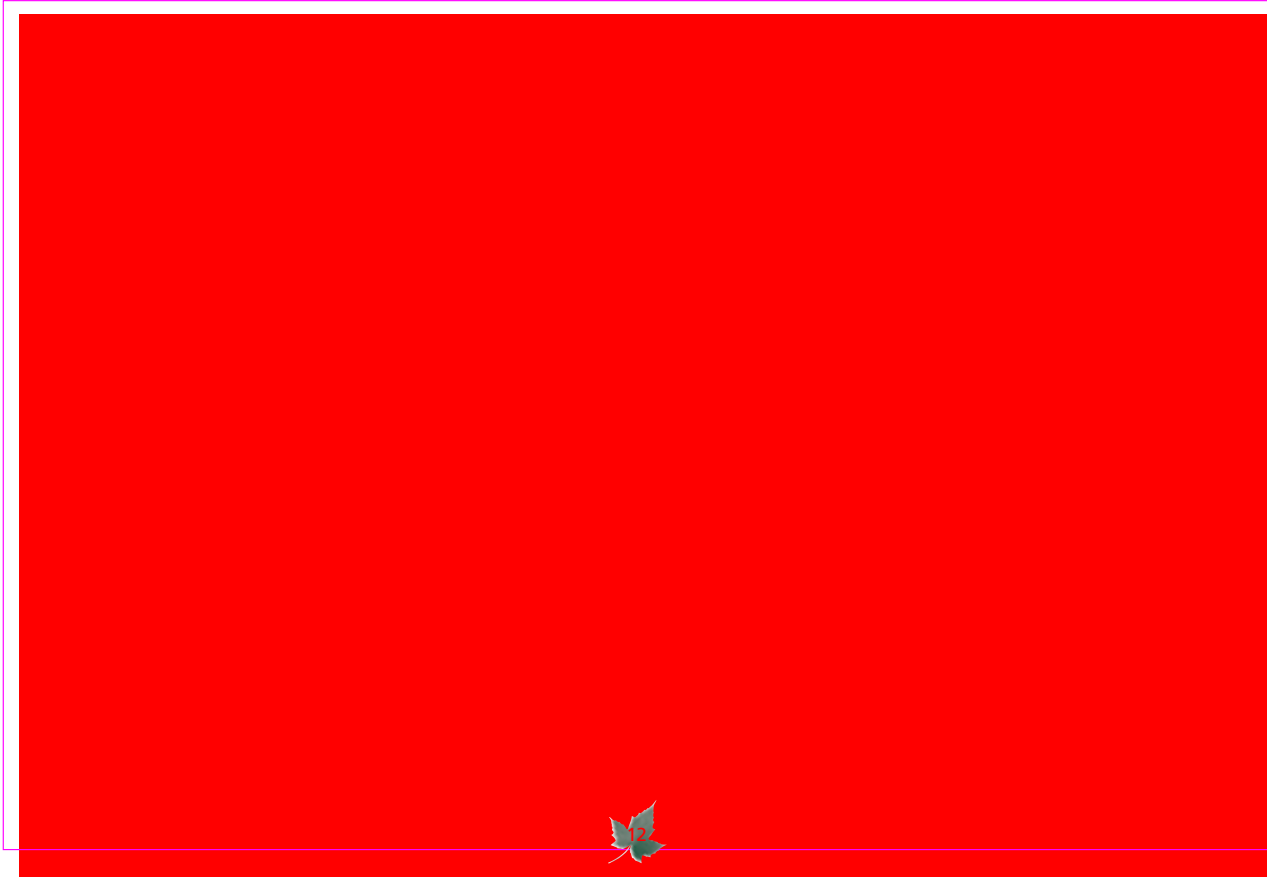
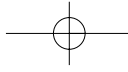
The LEAF/DAWN coalition in *Auton* was represented by Dianne Pothier of Nova Scotia and Fiona Sampson. The Court reserved its decision. It is expected that the Court will not release a decision in this case for several months.

LEAF's National Litigation Committee (NLC) also decided recently to do case development work on the use of the *Ontario Arbitration Act* to resolve family law disputes under religious laws. This practice already exists in some religious communities and public concern has been raised over the opening of an arbitration centre that will apply Sharia (Islamic) law. The Ontario Government has announced that it will review the issue. In consultation with other women's organizations, LEAF hopes to develop an analysis of the equality issues involved, to offer assistance to women's groups directly affected by the issue, and to participate in the government's review process.

Through all of this legal work, LEAF has an opportunity to advance its understanding of substantive equality, and its critique of the equality rights "guidelines" established by the SCC in the 1999 case of *Nancy Law v. Canada*. The results for women's equality claims under the *Law* test have been disappointing. LEAF's NLC has been analysing the *Law* test, in consultation with equality rights experts and social justice activists from across Canada, over the past year. It is the results of this analysis that are informing the legal arguments advanced in LEAF's current equality rights interventions, as well as its case development work relating to Sharia law. This is groundbreaking work that we hope will contribute to the realization of the full potential of the section 15 equality guarantee for all women in Canada.

Thank you to everyone whose generosity has made this important legal work possible - we couldn't do it without your support!





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