

MEDIA ADVISORY and BACKGROUNDER

LEAF to Intervene in Ontario Court Of Appeal Case

Women Have Right to Wear Niqab in Court

TORONTO, June 3, 2010: On **June 8 and 9, 2010**, LEAF will intervene in the Ontario Court of Appeal case of *R. v. N.S.*. The case involves a niqab-wearing Muslim woman who was ordered to remove her niqab to testify against two family members charged with sexually abusing her as a child. N.S. is asking the Court of Appeal to affirm her right to wear the niqab in Court.

LEAF will argue that N.S. is entitled to equal access to justice. “Women who have been sexually assaulted should not be shut out of the justice system just because they wear the niqab” says LEAF counsel, Susan Chapman. “The first question people should ask is not “can N.S. wear the niqab,” but “why are the accused demanding the niqab be removed?””

Chapman goes on to explain that “There is a long history of sexual assault complainants being humiliated, degraded and re-victimized on the stand, to get women to drop sex assault charges or not bring them in the first place. No other category of witness is subjected to the same discriminatory scrutiny and abuse. The request to remove the niqab must be seen in the context of the discriminatory treatment of women who report sexual assault. The effect of ordering this woman to remove her niqab is literally to strip her of her deeply personal religious clothing in open court, while she describes the intimate details of sexual abuse. The Court should not be implicated in undressing the complainant in this way.”

LEAF’s written argument states that access to “demeanor evidence” (the facial expressions of a witness) cannot justify the forced removal of the niqab. “Although we are used to seeing people’s faces in Court, it has been demonstrated that even those most highly trained, like judges, lawyers, the FBI and CIA, do no better than chance in detecting a lie based on facial expressions” says LEAF co-counsel and Legal Director Joanna Birenbaum. “The purpose of cross-examination in the criminal trial is to discover the truth. Judgments based on facial expressions have overwhelmingly undermined this important truth seeking function. Particularly in cross-racial and sexual assault contexts, this kind of evidence is consistently prejudicial. Stereotypes and discriminatory assumptions about who the witness is, or how the witness ought to behave, deeply

influence judgments of credibility. Put simply, the accused in this case have no “right” to discriminatory evidence.”

The implication of this case for the stigmatized minority group of women who wear the niqab is significant. Chapman explains: “If niqab-wearing women believe that they will be ordered to remove their niqabs if they seek the protection of the Canadian legal system, will they ever report sexual assault? The message will be that these women can be sexually assaulted with impunity. This is clearly unacceptable.”

“The complaint’s request for an Order that she not be forced to remove her niqab is not an assertion of “special rights” nor is it just based on freedom of religion” says Birenbaum. “The constitutional rights which the complainant asserts are fundamental: the rights to liberty, to be free from state imposed psychological harm, to physical security, to a justice system that operates free of discrimination and prejudice.”

The wearing of the niqab by Muslim women in Canada has been the subject of public discussion and debate recently. Although the small number of women who wear the niqab in Canada are not a new phenomenon, various national and international events, most obviously 9/11, have changed the political climate in which they are viewed. The Ontario Human Rights Commission, as well as many others, has recognized Islamophobia as a form of racism. The niqab is perceived as belonging to a culture/religion/value-system which is stereotyped as extremist and inimical to Western cultures and values. In this context, the niqab has become emblematic of an irreconcilable “clash of cultures”.

LEAF takes no position on the practice of wearing the niqab. LEAF is very concerned, however, that women who wear the niqab are not excluded from basic democratic institutions. LEAF is also concerned that racist and other stereotypes of Muslims not influence the public discussion of this sexual assault complainant’s right to participate in a fair trial. “All of the discussion has been about the impact of the niqab on the accused” says Birenbaum. “But the disadvantage at trial will be experienced by the niqab-wearing witness. In the current political climate, how will the evidence of a niqab-wearing witness be received? In a climate where veiled Muslim women are feared and mistrusted, a Muslim woman who covers her face in Court must overcome prejudices that she is hiding something and cannot be believed.”

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