

# Annual Report 2000/2001

Women's Legal Education &  
Action Fund — LEAF



## Message from the Chair

### “Knowing and sharing what we have”

Something shifted for LEAF this year and we may not have noticed it. We are becoming aware of the unique position that LEAF occupies in the world - yes, I chose those words carefully, “in the world”. Quite simply, LEAF has the best success record, with the most number of cases, relative to population of any women’s defence fund anywhere. And LEAF representatives are winging their way to the UN, and countries like India and Croatia while others such as the Women’s Crisis Centre in Malaysia are making plans to come to Canada to observe and share at the invitation of governments and women’s organizations because LEAF has a lot of expertise that we are being asked to share.

founding mother of LEAF, so I marvelled that there, in the midst of thousands of women from more than a hundred countries, this serendipitous conversation occurred.

This shift for LEAF that has more clearly taken shape this year is that we are being “discovered” and we are being asked to share what, relative to the rest of the world, is our considerable wealth. This poses new challenges for LEAF. Across this great and complex country of ours, hundreds of women and men volunteer their resources of time, expertise, commitment and money to make the equality seeking work of LEAF possible. Since April 17, 1985, LEAF has been doing extraordinary things for ordinary women in Canada.

Our steady progress over 16 years in presenting equality arguments in more than one hundred and thirty cases on behalf of Canadian women and girls belies the financial challenges we frequently face. This past year the LEAF board continued to make tough business decisions in the interest of the long-term viability of LEAF, and there are more changes to come. Please stay with us-- we can’t do this without you!

LEAF supporter and granddaughter of Nellie, Marcia McClung brought the following quote to my attention: “ the poor woman who is making a brave struggle for existence is not saying much. She has not the time. The women who are making the disturbance are the women who have time for observation...they wonder about the causes, the underlying conditions.” To the volunteers on our national board, the National Legal Committee and LEAF branches, to LEAF national staff, and to members of the LEAF Foundation, we extend appreciation for giving so much thought and energy to fulfilling LEAF’s mission.

*Marilou McPhedran, Chair*



**UN Special Session-Beijing + 5, Canada's Delegation :** Marilou McPhedran, National Chair, LEAF; Senator Lucie Pépin, Senator Ermine J. Cohen, Christiane Gagnon, Member of the House of Commons, Bloc Québécois Party; The Hon. Hedy Fry, P.C., M.P. (left to right)

As part of my women’s human rights research, I was at the UN when a law professor from eastern Europe started chatting about her travels to Britain, the USA and Canada as a visiting scholar in search of advocacy models to address the horrible inequalities in her country, exacerbated by “democratisation”. She said to me: “there is only one group that is doing what we need in my country, it is called LEAF - do you know them?” This professor had no way of knowing that I am a

# Legal Work: Blencoe, Darrach, Provocation

I am writing this as I prepare to leave LEAF and know that I will continue to feel very connected to the organization. I spent close to seven years with LEAF, during which time I worked with brilliant lawyers and professors on some of the most exciting legal cases in Canada. And yet, the most gratifying part of this job was my contact with the thousands of women and men across Canada who support LEAF, in ways both large and small.

This year I greatly enjoyed traveling to cities including Kingston, Sudbury, Winnipeg and Vancouver to meet with LEAF branches and to speak personally about the amazing work done by the women in LEAF. It has always been amazing to me that so many people give so much of their time to transform into reality, the ideal of true, substantive equality for women and girls in Canada. It is directly through your efforts that LEAF continued its groundbreaking legal work in 2000-2001, and combined victories before the Supreme Court of Canada with important law reform work and coalition building.

## Human Rights and Sexual Harassment:

In *Blencoe v. British Columbia Human Rights Commission et al.*, LEAF contributed to an important victory in human rights law. In *Blencoe* a respondent to a sexual harassment complaint sought to have the complaint stayed on the grounds of excessive delay. This case represented the first time that a human rights respondent had successfully used section 7 of the *Charter* to escape a human rights complaint. LEAF was also concerned because the case involved allegations of sexual harassment, a crucial human rights issue for women in the workplace. LEAF believed that granting a stay in Blencoe's case would have unfairly penalized the complainants and set a bad precedent.

On October 5, 2000, the Supreme Court of Canada agreed that the stay ought not to have been granted, and ordered the complaints to proceed. The sexual harassment complaints were ultimately upheld, and Blencoe was ordered to pay damages. The Supreme Court also criticized the delays that had occurred in the case, noting that the delays affected the rights of respondents and complainants alike. The decision

was a clear "wake-up" call to human rights agencies - and the governments that fund them - to improve their services.

**Sexual Assault:** On October 12, 2000, LEAF won yet another victory in its continuing struggle to promote the equality and dignity of women and girls who are victims of sexual violence. In *R. v. Darrach*, the Supreme Court of Canada unanimously upheld several provisions of the *Criminal Code* which limit the use of a woman's sexual past history as evidence. LEAF hopes that the decision will finally end the legal battle over the constitutionality of the so-called "rape shield" laws.

The Supreme Court upheld the constitutionality of s.276 and held that it did not infringe an accused's rights. The Court held that the provisions were "carefully crafted" to "protect the integrity of the judicial process while at the same time respecting the rights of the people involved." LEAF was extremely pleased with the result, as we believed that the provisions of the *Criminal Code* properly balance the interests of accused persons,

complainants, and society as a whole.

In this case LEAF continued its tradition of working in coalition with other women's organizations. LEAF's intervention partners were the Canadian Association of Sexual Assault Centres, the Disabled Women's Network Canada, and the National Action Committee on the Status of Women.

**Lesbian/Gay Discrimination:** Another case on which LEAF worked was *Little Sisters v. Canada Customs*. In this case, a Vancouver-area bookstore launched a discrimination claim under section 15 of the *Charter* against Canada Customs. The claim followed ten years of seizure of the bookstore's shipments by Canada Customs at the border, and the detention and destruction of hundreds of books, magazines and other materials on the basis that they were "obscene". Little Sisters bookstore claimed that it was being discriminated against because it imported materials for the lesbian and gay community. The bookstore argued that many of the materials detained were



# Legal Work Continued.....

allowed through when ordered by other importers. As well, other detained materials could be found in public libraries. This case was important to LEAF because it involved discrimination against lesbians. The Supreme Court unanimously agreed that the actions of Canada Customs officials were discriminatory against Little Sisters. However, the Court upheld most of the Customs Regime that had been challenged as discriminatory against importers of gay and lesbian materials. The Court did strike down one provision that imposed a "reverse onus" on importers that required them to prove that seized materials were not "obscene".

**Immigrant Access to Health Care:** LEAF was disappointed with the result in *Irshad v. Ontario*. LEAF intervened in this Ontario Court of Appeal case, in which several Ontario immigrants challenged provisions of Ontario's health legislation that delayed or in some cases removed entirely the right of certain immigrants to public health insurance. This resulted in the denial of basic medical services such as prenatal care for pregnant women, pediatric visits for children and treatment of ongoing disabilities such as cerebral palsy. In coalition with DisAbled Women's Network Canada and the Ontario Council of Immigrants with Disabilities, LEAF argued that the Ontario law discriminated against persons on the basis of immigration status and disability and was linked to historic biases against immigrants, refugees and persons of colour. Unfortunately, the Ontario Court of Appeal disagreed and ruled on February 28, 2001, that the law did not violate the equality provisions in the *Charter*. This ruling means that some immigrants in Ontario will continue to lack basic medical care. LEAF will continue to monitor the issue.

**Provocation:** LEAF developed a position paper concerning the defence of provocation. In criminal law, if an accused is "provoked" by the actions of the victim and thereby does not have the mental "intent" required for the crime of murder, the charge of murder can be reduced to manslaughter. In recent years, provocation has been used by men accused of killing their female partners, often in a jealous rage. LEAF was concerned about the impact of the defence of

provocation on crimes of violence against women. However, LEAF also was aware of the possibility that provocation could provide a useful defence to female accused, for example battered women who kill their batterers. LEAF therefore held consultations and developed a position paper around this critical issue. LEAF concluded that the defence of provocation should be eliminated from Canada's criminal law, together with the removal of mandatory minimum sentences for murder, so that judges may have the discretion to take into account possible mitigation factors when they set sentences. LEAF believes that this reform will protect the rights of women who are victims of violent crimes, as well as women who stand accused of such offences.

## Other LEAF legal work:

LEAF also adopted the following cases, and is awaiting a decision from the Courts:

In *Boston v. Boston*, LEAF intervened before the Supreme Court of Canada to argue that elderly women who are divorced should have the right to continued support from their former spouse, including access to a portion of the spouse's pension income.

In *Kane v. Alberta Report*, LEAF intervened in an Alberta Court to argue that the hate speech provisions in Alberta's human rights code should be given a broad interpretation, consistent with the goals of promoting equality and non-discrimination.

In *Shearing*, LEAF intervened before the Supreme Court of Canada to argue that the absence of diary entries should not be used to challenge the credibility of a complainant in a sexual assault case.

In *Falkiner*, LEAF continued its history of work on the issue of equal access to social assistance benefits, and challenged Ontario's "spouse in the house rule", which automatically disqualified single mothers who were sharing their residence with a man.

*Carissima Mathen, Director of Litigation (1999-2001)*



# Branch Events Bring In Record Amount

LEAF's annual Persons Day Breakfast was one of the most successful to date! Through the efforts of dedicated supporters we raised an impressive \$172,000 for the organization. A big heartfelt thanks goes out to everyone who helped make the 2000/2001 annual events so successful - you are all very much appreciated!

Originally held in celebration of the landmark Persons Case and as a breakfast, LEAF's annual event may now occur at different times of the year and day. They are hosted by various LEAF branches and affiliate groups across the country and feature speakers from all different walks of life who have in common a strong belief in the importance of LEAF's work.

This past year LEAF supporters joined together from coast to coast to enjoy many event highlights. In central Canada, close to 1,000 people attended the **Toronto** breakfast hosted by Barbara Hall. Major sponsors included C.A. Delaney Capital Management Ltd., Devlin Applied Design, Starbucks Coffee Company, The Toronto Star and Toronto Hydro Energy Services.

LEAF **Sudbury** enjoyed a great turnout as over 600 supporters met to hear the Honourable Margaret Norrie McCain speak. Lead sponsors included TD Canada Trust, Global Travel Destinations, Cyber Beach Communications, Journal Printing and the Law Office of Joseph Michael Fragomeni.

In **Kingston** around 250 people met at a daylong symposium at Queen's University to hear Judy Rebick and Maude Barlow discuss the progress of women since the 1970 Royal Commission on the Status of Women. The highlight for most was participating with women of all ages as they shared history and planned for a better future.

In **Regina** and **Saskatoon**, Kim Pate, Executive Director of the Canadian Association of Elizabeth Fry Societies, did double duty and spoke at both breakfasts about restorative justice issues for women. In total close to 400 people came out to show their support. The lead sponsors at the Saskatoon event were Halyk Harradence and The College of Law, University of Saskatchewan while Jacqui Shumiatcher was the major corporate sponsor in Regina. In **Edmonton** Judy Rebick spoke to a crowd of about 240 people. Fraser Milner Casgrain was the top sponsor.

The **Winnipeg** Persons Day Breakfast was the biggest ever with 880 in attendance. The guest speaker was Sally Armstrong, former editor-in-chief of Homemaker's magazine, who spoke passionately for women's rights on a global scale. Major supporters included James Richardson & Sons, Frontier Subaru, Assante, UNPAC and the International Institute for Sustainable Development. Another event highlight was the recognition

## AUDITORS' REPORT ON SUMMARIZED FINANCIAL STATEMENTS

To the Members of Women's Legal Education and Action Fund Inc.

The accompanying summarized balance sheet and statements of operations and fund balances are derived from the complete financial statements of Women's Legal Education and Action Fund Inc. as at March 31, 2001 and for the year then ended. In our auditors' report on the complete financial statements dated November 7, 2001, we expressed a qualified opinion because we were unable to satisfy ourselves concerning the completeness of donation revenue. The fair summarization of the complete financial statements is the responsibility of management. Our responsibility, in accordance with the applicable Assurance Guideline of The Canadian Institute of Chartered Accountants, is to report on the summarized financial statements.

In our opinion, the accompanying financial statements fairly summarize, in all material respects, the related complete financial statements in accordance with the criteria described in the Guideline referred to above.

These summarized financial statements do not contain all the disclosures required by generally accepted accounting principles. Readers are cautioned that these statements may not be appropriate for their purposes. For more information on the organization's financial position and results of operations, reference should be made to the related complete financial statements.

Cowperthwaite Mehta, Chartered Accountants  
November 7, 2001 Toronto, Ontario

## Branch Events Continued...

of those women who have acted as Breakfast chairs since the inaugural event. Two of these dedicated supporters, Betty Hopkins and Daria Kiperchuk, have been steadily involved with LEAF Manitoba/Winnipeg since its formation.

In **Victoria** guests were in a unique position as both LEAF counsel and Blencoe counsel were in attendance at the breakfast however only LEAF had the opportunity to speak! This exciting breakfast, sponsored in large part by the Victoria Legal Community, garnered great media coverage and had over 230 people in attendance.

Around 450 people shared their morning cup of coffee at the Hyatt Regency in **Vancouver** and listened to the passion of speaker Dionne Brand as she read some of her poems. Held in March on International Woman's Day, the biggest sponsors were VTV and the West Coast Title Search.

In **Halifax**, five women shared breakfast and discussion about holding an event in October 2002. In addition to sharing their time, they also made donations to LEAF. In **Richibucto, New Brunswick** about 35 resourceful LEAF supporters gathered at the Richibucto River Resort to hear a speaker from the Women's Labour Union.

**STATEMENT OF FINANCIAL POSITION -- March 31, 2001**WOMEN'S LEGAL EDUCATION AND ACTION FUND INC.**STATEMENT OF FINANCIAL POSITION**MARCH 31, 2001

	<u>2001</u>	<u>2000</u>
<b>Assets</b>		
Cash and short-term investments	\$305,899	\$227,811
Other assets	54,773	138,865
<b>Total assets</b>	<b>\$360,672</b>	<b>\$366,676</b>
<b>Liabilities and Fund Balances</b>		
Accounts payable and accrued liabilities	\$102,478	\$ 87,681
Due to Women's Legal Education and Action Fund Foundation Inc.	3,588	3,791
Deferred revenue	162,830	171,234
	268,896	262,706
Fund balances	91,776	103,970
<b>Total liabilities and fund balances</b>	<b>\$360,672</b>	<b>\$366,676</b>

**CONDENSED STATEMENT OF REVENUE AND EXPENSES**FOR THE YEAR ENDED MARCH 31, 2001

	<u>2001</u>	<u>2000</u>
<b>Revenue</b>		
Donations	\$ 71,818	\$ 90,370
In-kind legal services	306,983	387,592
Grants-		
LEAF Foundation	383,000	327,157
Women's Program-operational funding	55,000	196,000
Court Challenges Program	24,285	126,142
Other	12,500	3,901
Ontario Litigation Fund	20,903	22,073
Interest and miscellaneous	33,806	51,154
<b>Total revenue</b>	<b>908,295</b>	<b>1,204,389</b>
<b>Expenses</b>		
Legal	580,450	727,597
Public education	152,802	127,085
Administration	187,237	360,966
<b>Total expenses</b>	<b>920,489</b>	<b>1,215,648</b>
<b>Excess (deficiency) of revenue over expenses for the year</b>	<b>\$ (12,194)</b>	<b>\$ (11,259)</b>

# Education, Etc.

## A Note from the E. D.

The “E” in LEAF has an exciting vision with dozens of applications that will magnify the trickle down effect of LEAF’s legal work. Girls and boys, women and men, lawyers and judges and many more will learn of rights and responsibilities that spring from the *Charter of Rights and Freedoms*, LEAF’s legal arguments, and the subsequent court decisions.

No one has the right – the implied right – to sexually touch you unless you clearly say “yes.” No one can “presume” your consent. This is what the Supreme Court of Canada said in its decision in the *Ewanchuk* or “no means no” case and it closely parallels LEAF’s argument. It was not long before the results of this LEAF intervention became a vision to develop an education program that could reduce violence against girls and women.

This year that vision was developed by volunteers and staff into a two-class session for boys and girls in grades 7, 8, and 9. This is a program that is highly portable and adaptable for a variety of audiences and ages. It is also designed to be facilitated by trained volunteers, across Canada, who can take it to community groups as well as the classroom.

While the facilitator’s guide was being developed and reviewed by educators, West Coast LEAF took the base curriculum adapted it to their setting and added to the vision. What is now called the Early Teen Project is just the first step in a LEAF education program that will take case decisions from our interventions and turn them into an accessible set of discussion groups and talks for different ages and settings. Already planned is a “no means no” for high school and university ages as well as one for general adult audiences.

The workplace standards case (BC firefighter, Tawney Meiorin) which has already resulted in courts and tribunals applying the “Meiorin Standard” is another case that can be readily translated into

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Join LEAF in making the law work  
for women!

Donate: [donate@leaf.ca](mailto:donate@leaf.ca)

Volunteer: [intake@leaf.ca](mailto:intake@leaf.ca)

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seminars for unions, lawyers and employers. The same is true concerning confidentiality of personal records of the victim in rape cases and the “rape shield law.”

Change and innovation always require a starting place. Little did we know that an idea to use one case to reduce date rape would result in a much broader vision for the extension of LEAF and our work beyond the court room. As we move into next year LEAF and the LEAF Foundation are well into discussions and planning to make way for ground-breaking and vital changes to much that LEAF does.

You can do this with us! We have local and national opportunities to become involved in affecting and changing the world in which we live. Some of these will be as basic as connecting on the Internet with one or two other women in your region or helping to set up for an event. Others could get you into the midst of guiding LEAF’s education, legal and law reform work.

*Nancy Radclyffe, Executive Director*

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