



MEDIA RELEASE

MIXED RESULT FOR WOMEN AND EQUALITY SEEKING GROUPS:

SUPREME COURT OF CANADA MAINTAINS TWO TIER SYSTEM FOR EMPLOYEES WITH HUMAN RIGHTS CLAIMS; BUT CLARIFIES THAT MENTAL DISTRESS DAMAGES ARE AVAILABLE IN WRONGFUL DISMISSAL CASES

Toronto Friday June 27, 2008 - LEAF (Women's Legal Education and Action Fund) says that the Supreme Court of Canada's decision in the wrongful dismissal case of *Honda v. Kevin Keays* is disappointing but does have a silver lining. At issue is the ability of employees to receive true access to justice by giving courts full jurisdiction over claims of workplace harassment and discrimination.

Writing for the majority, Justice Michel Bastarache overruled two lower courts which had each recognized an independent cause of action for discrimination suffered on the job. He did make employers liable for damages "where the manner of dismissal caused mental distress that was in the contemplation of the parties." The majority decision also held that employers have an obligation to conduct dismissals in a manner characterized by good faith and fair dealing. "The Court's acknowledgment of mental distress damages is an important step towards fully compensating women and other equality-seeking groups for the harms of workplace harassment and discrimination," says LEAF co-counsel Susan Ursel. "By expanding on the concept of implied terms and obligations the majority decision should be of some assistance to those employees."

While LEAF is pleased that the Court accepted our call to at least partially clarify this area of law, LEAF is disappointed that the majority did not recognize that discrimination is an independent actionable wrong for which punitive damages are available. In dissent, Justice Louis LeBel said that tort law should be informed by *Charter* and human rights principles, concluding that it "was not necessary for this Court to preclude all common law actions based on all forms of discriminatory conduct." "The continued bifurcation of human rights violations and other kinds of wrongs means that remedies are not fully available for the different kinds of harm that employees experience," says LEAF co-counsel Kim Bernhardt. "We are particularly disappointed that the Court did not recognize an implied obligation in all employment contracts to not discriminate."

"While the Court's ruling today did not go nearly as far as we would have wished, it does give us important building blocks. LEAF will use this case in our continuing fight to achieve full and substantive equality for women in Canada," says Ursel.

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