



Charitable Registration
No. 0699991-21
Numéro d'Enregistrement

LEAF FAEJ WOMEN'S LEGAL EDUCATION AND ACTION FUND 415 Yonge Street, Suite 1800, Toronto, ON M5B 2E7
FONDS D'ACTION ET D'EDUCATION JURIDIQUES POUR LES FEMMES

Telephone: (416) 595-7170
Facsimile: (416) 595-7191

FOR IMMEDIATE RELEASE

**SUPREME COURT ISSUES DECISION IN LITTLE SISTERS
RESPONSE OF THE WOMEN'S LEGAL EDUCATION
AND ACTION FUND**

(Toronto, December 15, 2000) A majority of the Supreme Court of Canada voted today to uphold most of the Customs Regime that had been challenged as discriminatory against importers of gay and lesbian materials. The Court did strike down one significant provision that imposed a "reverse onus" on importers that required them to prove that seized materials were not "obscene".

The case, *Little Sisters v. Canada Customs*, involved a gay and lesbian bookstore in Vancouver which for over ten years had had most of its shipments stopped by Customs agents at the Canada-U.S. border. The bookstore launched a constitutional challenge to its treatment at the hands of Canada Customs on the basis of freedom of expression and the right to equality without discrimination. The trial judge held that shipments of materials to Little Sisters, some of which were sexually explicit, were systematically targeted by Customs agents as "obscene". Shipments of identical books and magazines cleared Customs without delay when ordered by other bookstores. Canada Customs detained the books on the grounds that they were "obscene" within the meaning of s.163(8) of the *Criminal Code*.

The Supreme Court unanimously agreed that the actions of Canada Customs officials were discriminatory against Little Sisters. "[The] adverse treatment meted out by Canada Customs to the appellants and through them to Vancouver's gay and lesbian community violated the appellants' legitimate sense of self-worth and human dignity," wrote Justice Ian Binnie. "When Customs officials prohibit and thereby censor lawful gay and lesbian erotica, they are making a statement about gay and lesbian culture, and the statement was reasonably interpreted by the appellants as demeaning gay and lesbian values. The message was that their concerns were less worthy of attention and respect than those of their heterosexual counterparts."

The Women's Legal Education and Action Fund ("LEAF") intervened in the case when it was heard in March, 2000. This case was important to LEAF because it involved discrimination against lesbians and required analysis of the meaning of obscenity law. LEAF also intervened in an earlier Supreme Court decision, *Butler* (1992) in which the Court held that criminal laws prohibiting obscenity were constitutional provided that "obscene materials" were understood as materials which cause harm to women and other vulnerable groups.

"We are pleased that the Court recognized that Canada Customs officials acted in a discriminatory manner," said LEAF Director of Litigation Carissima Mathen. "The Court also held that any "community standard" applied to sexually explicit materials must reflect a community that respects the equality rights of gays and lesbians. However, the majority of the Court did not strike down the Customs legislation which, in our view, permitted this discrimination to occur. We therefore have mixed reactions to the decision."

LEAF argued that a contextual approach is required when making obscenity determinations. The contextual approach applies to all categories of materials; gay and lesbian materials are no more likely to be harmful and therefore obscene than any other sexually explicit materials. Justice Iacobucci appeared to agree, stating: "To determine whether something is obscene, it must be seen in its entirety, with close attention to context, tone, and purpose." LEAF also argued that simple extrapolations about harm concerning heterosexual materials may not be appropriate when applied to materials by and for the gay and lesbian community. However, this is merely one factor to be considered; it does not lead to a general "exemption" or "immunity", from obscenity law, for all gay and lesbian materials.

"LEAF supports an analysis of sexually explicit materials that focuses on whether they cause harm," said LEAF counsel Karen Busby. "We believe that freedom of expression and equality rights are both important when dealing with materials pertaining to disadvantaged groups in Canada, such as gays and lesbians."

Lesbian materials, which can include sexually explicit materials, are important in fostering a sense of community. It is in part for this reason that LEAF was so concerned at the ongoing and chronic seizure of these types of materials from Little Sisters bookstore.

The Supreme Court was extremely critical of Canada Customs' behaviour, noting: the targeting of Little Sisters; the failure by customs officials to review materials in a timely way; inadequate training of officials; and failure to develop workable procedures to evaluate books and other written texts. The Court affirmed the findings of the trial judge but believed that a more specific remedy was not practicable because of the time that had elapsed since the 1994 trial. However, the Court stated, "These findings should provide the appellants with a solid platform from which to launch any further action in the Supreme Court of British Columbia should they consider that further action is necessary." The Court also awarded costs to Little Sisters.

LEAF Executive Director Nancy Radclyffe concluded, "In our opinion, the Supreme Court has put the government on notice that it cannot continue to rely on its current procedures and practices to review materials. The government has a responsibility to ensure that Customs procedures do not discriminate against gays and lesbians."

-30-

For more information, contact Nancy Radclyffe - LEAF - 416-595-7170 ext.230