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NEWS RELEASE

SUPREME COURT OF CANADA DECIDES PREGNANT WOMAN CANNOT BE FORCED TO ACCEPT TREATMENT

(Ottawa - October 31, 1997) The Women's Legal Education and Action Fund applauds the Supreme Court's 7-2 decision today that a pregnant woman may not be confined or forced to accept treatment in order to protect her fetus. The case arose last year when a Manitoba judge ordered that a pregnant woman who was abusing solvents enter into a treatment program until the birth of her child. The Manitoba Court of Appeal overturned the original order on the basis that there was no legal foundation for a court to make such an order.

Winnipeg Child and Family Services appealed to the Supreme Court of Canada on June 18th, 1997. LEAF intervened to persuade the court that coercion and force applied to pregnant women is both illegal and ineffective. LEAF was especially concerned that the case not set a precedent that pregnant women enjoy fewer legal protections than other citizens.

Writing for the 7-judge majority, Justice Beverly McLachlan wrote: "This is a not a story of heroes and villains. It is the more prosaic and all too common story of people struggling to do their best in the face of inadequate facilities and the ravages of addiction".

The majority then upheld and affirmed Canadian law that a fetus is not a legal person, and that the state is not entitled to take action against a pregnant woman on its behalf. The Court stated that any change to current law would require a major reformulation of legal principles which would have serious repercussions on the rights of women.

The majority recognized that the question of how best to deal with pregnant women who abuse substances is complex. "Lifestyle 'choices' like alcohol consumption, drug abuse and poor nutrition may be the products of circumstance and illness rather than free choice capable of effective deterrence," the Court wrote. The Court also acknowledged that there is no evidence showing that aggressive intervention actually helps promote fetal health.

"We are extremely pleased and relieved that the Supreme Court has rejected the argument that state coercion against pregnant women can in any way promote fetal health," says LEAF Staff Lawyer Carissima Mathen. "The Court has accepted that as a matter of both law and health policy, this approach is unacceptable."

“While the Court said that Parliament may choose to legislate with respect to this issue, it was careful to point out that such change would have to be in accordance with the *Charter of Rights and Freedoms*,” said Ms. Mathen. “Certainly, all of the difficulties identified by the Court with respect to it changing the current law, apply with equal force and effect to Parliament. Parliament would do better to focus on improving treatment services for everyone who might need them, instead of seeking ways to legitimate the use of force against pregnant women.”

Sheilah Martin and Sharon McIvor were co-counsel in the intervention.

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