

Annual Report

Women's Legal Education and Action Fund



Message from the Chair



Colleen Cattell, LEAF
National Board Chair

Full Circle

This year was launched with what seemed to be an overwhelming change as we concluded that operational fundraising should be folded back into LEAF from the LEAF Foundation for charitable tax purposes.

"How are we going to do this?" was our initial plea. Then an amazing thing happened, revealing to us, yet again, the strength of the volunteers working within our

organization. We met, spoke, pondered, and debated, and finally decided that not only was the challenge achievable, it also was advantageous for many other reasons.

In the process of making this transformational decision, the communications audit commissioned from DBA Consultants by the LEAF Foundation in the spring of 2001 was a valuable tool. It reminded us of the importance of communication, that it is not enough just to do the work; we must also share the news of our struggles and our successes with those who rally to our cause. It also affirmed for us the support in the wider community for our mission of achieving equality for women and girls in Canada, and recalled for us our role as an inspirational model within the international community.

A task force was formed consisting of our Treasurer Paula Jubinville and me from the LEAF Board, and Denise Arsenault and Colleen Albiston from the LEAF Foundation to work through the logistics of transferring fundraising back to LEAF. Their efforts were remarkable. The input of our staff was also invaluable with contributions from LEAF's Executive Director Nancy Radclyffe, the LEAF Foundation's President Lynne Hallinan, and retired Director of Litigation Carissima Mathen, who came back from her graduate studies to give us her input. The hard work was worth the result and LEAF reassumed responsibility for fundraising on January 1, 2002, with the final transition occurring on March 31.

Along the way, at its November 2001 in-person

meeting, the Board created new strategic priorities: executive management / leadership; communications; volunteer leadership and management; public education; legal work; and fund development. These priorities reflect the interconnectedness of our activities and the realization that our resources allocated across key areas provide the needed thrust to flourish as an organization.

I wish to recognize the contributions of Nancy Radclyffe and Lynne Hallinan whose work at LEAF over the past few years and during this transition is so greatly appreciated by all of us. Many of the hardworking women on the LEAF Foundation Board became LEAF's new fundraising committee, chaired by new LEAF Board member Joanne MacLean, and we are so happy to have them. We can already see the benefits in communication and renewed energy generated by our new structure. This year we also welcomed new staff members Sondra Gibbons as Director of Litigation, and Ellen Mary Mills who stepped into a newly defined Executive Director role, including responsibility for administration and fundraising.

continued top of page 2



Wendy Derrick, Audrey Hadfield, Lisa Duranleau, Colin Hadfield, Guy McLean and Joanne McLean show their commitment to raising funds for the protection of equality rights for women and girls in Canada at the 2002 RBC/LEAF Equality Day dinner in Toronto." (Read more about Equality Day and the significance of this 'female-friendly' Canadian flag. Visit LEAF's recently redesigned Web site: www.leaf.ca under "News/Events".)

Along the branches...

In the meantime, the *No Means No* Education program is meeting with critical success in Toronto schools and we are working to develop facilitator guides to expand this program into more communities. The work on our new Web site is also progressing, thanks to the support of Status of Women Canada for these two initiatives. The legal update in this report sets out the incredible amount of work going into advancing

women's equality through the courts. And of course, our branches continue to host successful and inspiring Persons Day Breakfasts across the country.

These positive steps forward could not have happened without the continued vibrant support of our donors, staff, and volunteers within the branches and on the LEAF Board, LEAF Foundation, and our committees. Thank you for making it happen. The future is ours for the shaping.

— Colleen Cattell, LEAF National Board Chair.



Legal Update: Centering the Social and Economic Rights of Women

This has been a year of tremendous transition for the Legal Department. However, the year has also yielded successful interventions and project work in a number of areas important to the advancement of equality rights for women and girls across Canada. I want to express my gratitude to the LEAF family, including the dedicated volunteers on the National Legal Committee, the legal counsel who have contributed countless hours (paid or unpaid) to our case work, and the LEAF branches, who are a vital source of energy and inspiration. And I would like to extend a special thank you to the mainstay of our Legal Department, Marian Ali, who has helped see us through thick and thin.

— Marina Browning, Staff Lawyer.

As is LEAF's practice, each of these cases was directed by a subcommittee made up of feminist experts who work on the specific issues being litigated. In conjunction with counsel, the subcommittee developed the legal arguments and assisted in drafting the factum, those submissions provided to the court at time of litigation. We would like to thank all of these fabulous, hardworking women for their valuable input into these cases. And we thank the counsel noted below who represented LEAF so brilliantly and so powerfully.

— National Legal Committee.



Privacy, the Scope of Cross-examination in Sexual Assault Matters and Similar Fact Evidence — *R v Shearing* (heard by Supreme Court of Canada, October 9, 2001)

The accused was convicted of a variety of sexual offences involving seven complainants including two sisters, K.W.G. and S.G. The G sisters alleged that they were subject to ongoing sexual abuse during their childhood and teenage years when they were residing with their mother in a religious centre run by the accused.

At trial, defence counsel sought to cross-examine K.W.G. on the contents of her personal diary (found by the accused) that she kept during part of the time the abuse was alleged to have occurred. A second issue was whether the evidence from the G. sisters could be used as similar fact evidence at trial, first, to assess the credibility of other

complainants, and second, to rebut the accused's defence of honest belief in consent relating to the other complainants. The accused was convicted at trial of sexual assault against all seven complainants, and appealed to the B.C. Court of Appeal, which allowed the appeal with respect to two counts, but otherwise dismissed the appeal.

LEAF, as represented by Sheilah Martin and Rita Khullar, intervened in this case because it raised issues of critical importance for the rights of complainants in sexual assault trials to equality, privacy and security of the person.

On July 18, 2002, the Supreme Court of Canada ordered a new trial with respect to the counts relating to K.W.G. (L'Heureux-Dubé and Gonthier JJ. dissenting in part). The Court supported the lower court rulings that the similar fact evidence should be admitted, as the prejudicial effect of the evidence was outweighed by its probative value. At the same time, a majority of the Court

found that the complainant's privacy interest did not outweigh the accused's right to test the complainant's memory on the absence of diary entries recording the alleged abuse. The dissenting justices would have ordered the defence to return the diary to the complainant and seek its production through the proper statutory channels.

LEAF was disappointed in the majority's lack of gender analysis on the issues relating to the diary. The decision, in allowing cross-examination on the absence of diary entries recording abuse, supported the discriminatory beliefs that underlie the myth of recent complaint as noted by Justice L'Heureux-Dubé in dissent. The majority also failed to recognize that the production provisions of the Criminal Code should apply to documents in the hands of the accused.

Clearly, there is more work to be done by LEAF and other feminist legal practitioners in this area of the law.



Hate Speech and Freedom of Expression —
Kane et al v. Alberta Report et al
A Special Case Application made by
Alberta Human Rights Panel to the Court
of Queen's Bench.

Mr. Kane and the Jewish Defence League of Canada filed a complaint with the Human Rights Commission against the publication, *Alberta Report*. The complaint concerned an article alleged to have anti-Semitic content. Section 2 of Alberta's *Human Rights, Citizenship and Multiculturalism Act* prohibits statements that discriminate against persons, or are likely to expose them to "hatred or contempt", on the basis of race, religion, sex and other personal characteristics.

At issue was the scope of section 2 of the *Act*, including whether it applied to statements that were "opinion", and whether it balanced the prohibition of hateful statements with the protection accorded to "freedom of expression".

LEAF, represented by Jo-Ann Kolmes, Sheila Greckol and Renée Couchard, took no position on the specifics of the complaint, but argued that section 2 of the *Act* is consistent with Canada's constitutional commitment to equality. LEAF argued that section 2 should be interpreted in a contextual manner that properly balances the right to equality and freedom of expression.

On June 29, 2001, Justice Rooke agreed with arguments made by LEAF, and remitted the matter back to the Human Rights Panel for consideration on the merits of the complaint.

Justice Rooke noted that freedom of expression is not absolute; the media enjoys no special protection when it publishes third party statements. He ruled that

the Human Rights Panel must also consider principles such as equality, freedom of religion and multiculturalism in interpreting section 2 of the *Act*.



Social Assistance and Sex Discrimination:
LEAF Successfully Challenges the "Spouse in the House" Rule in *Falkiner v. Ontario* (Ontario Court of Appeal)

On January 31, 2001, LEAF, represented by Fay Faraday and Kerri Froc, intervened in *Falkiner v. Ontario* to challenge the definition of "spouse" under social assistance regulations. To determine eligibility for benefits, this "spouse in the house rule" deemed that a person who cohabits with someone of the opposite sex is that person's spouse and has access to their income.

Following a 1986 LEAF challenge, the definition was amended to comply with the Charter, but in 1995, the government reintroduced the "spouse in the house rule". As a direct result, 10,000 people were cut off assistance: 90% were women; 76% were single mothers.

LEAF argued that the rule discriminated against women and single mothers by linking their eligibility for benefits to their relationships with men.

The Ontario Court of Appeal found that the "spouse in the house rule" discriminated on the basis of sex and marital status because it overwhelmingly affected women and because it reinforced the stereotype that women's intimate relationships have an economic subtext and that women must be financially dependent on men with whom they live. The rule forced women to become financially dependent on men who did not support them and had no legal obligation to support them or their children. The Court of Appeal agreed with LEAF's argument that this is discriminatory.

The Court also made the novel ruling that "receipt of social assistance" is an analogous ground of discrimination under the Charter and that the definition also discriminated on this basis.

The government sought leave to appeal the case to the Supreme Court of Canada and leave was granted on March 20, 2003. LEAF hopes to be able to intervene in this final hearing of this important case.



Pensions as a Source of Spousal Support —
Boston v Boston (Supreme Court of Canada)

This case deals with the financial situation of post divorce women in the later stages of their life cycle. The specific issue in *Boston* was whether the former husband was

entitled to reduce his support obligation to his former wife when he retired, on the basis that his pension was previously included as part of the agreed division of matrimonial property. The parties separated after a 36-year marriage, during which Mrs. Boston worked in the home, with primary responsibility for raising their seven children, while Mr. Boston pursued his career in education.

LEAF, represented by Nicole Tellier and Joanna Radbord, intervened to argue that the determination of spousal support must be based on a thorough and balanced assessment of the conditions, needs, means, and circumstances of both parties, conducted in a manner that promotes women's equality. LEAF provided the substantive equality context for this analysis by outlining the social and material conditions of divorced women in Canada. We focused on older women's vulnerable economic circumstances and the fact that relationship breakdown continues to cause poverty for an alarming number of women and children. LEAF argued that a truly equitable sharing requires that the totality of income be considered in assessing support.

The majority of the Court did not go so far as to reject totally LEAF's approach by automatically excluding pension income for the purposes of support. However, in the circumstances of this case, the majority held that the fact that Mr. Boston's reduced income after retirement was derived from his pension constituted a material change in circumstances warranting a dramatic reduction in spousal support. On the other hand, the two dissenting judges adopted an approach consistent with LEAF's position that all income streams, including pension income, are relevant in the assessment of support.

As acknowledged by the judges on this case, this is a

complex and confusing issue, desperately in need of legislative attention. Without doubt, LEAF and other equality-seeking groups will have future opportunities to build upon the analysis that LEAF presented in Boston and to continue our work to redress women's inequality as manifested by their economic vulnerability arising from divorce.



Domestic Violence and Tenant Rights — *Jane Doe v Large Corporate Landlord* (Ontario Divisional Court)

Jane Doe was living with an abusive spouse and she felt she was lucky when he left. But her luck changed when the landlord then tried to increase the rent on the apartment where the family had lived for many years. The landlord said that he could increase the rent because Jane Doe was not on the lease and therefore was a "new tenant". Jane Doe challenged the landlord but the Ontario Rental Housing Tribunal accepted the landlord's position.

LEAF intervened with the Centre for Equality Rights in Accommodation ("CERA") in Jane Doe's appeal to Divisional Court. They argued that the definition of "tenant" in the *Tenant Protection Act* had to be interpreted in accordance with equality principles, which meant that Jane Doe's years of unpaid labour in the household had to be recognized as contributions to rent, making her a tenant whether or not she was on the lease.

Jane Doe was ultimately successful on a different argument, but the presence of LEAF demonstrated the importance of understanding how the invisibility of women's labour was putting vulnerable women at serious risk of losing their homes. Counsel for LEAF and CERA was Mary Truemner.



Research and Consultation Projects

During the year, LEAF actively engaged in a number of research, study and consultation projects in the following areas: the self-defence provisions of the Canadian Criminal Code; abuse claims in residential schools; transgendered issues; civil claims against government authorities for sexual abuse/assault committed by their employees; and equitable access to civil legal aid.

The **Civil Legal Aid Project** was particularly timely, in light of the severe cutbacks in this area by a number of provincial governments.

LEAF received funding from the Court Challenges pro-

gram to conduct a consultation to develop equality arguments regarding the federal government's failure to protect civil legal aid by developing national standards for laws, policies or practices concerning the provision of civil legal aid. LEAF believes that the issue of civil legal aid is critical for women and their ability to access their rights, including their right to claim support, custody and state benefits. A broad-based Civil Legal Aid Consultation took place on May 13, 2002, with over 65 participants. LEAF's final report on the outcome of the consultation will be made available for public distribution in the near future.

Auditors' Report on Summarized Financial Statement

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, 2002 and for the year then ended. In our auditors' report on the complete financial statements dated July 9, 2002, 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
July 9, 2002
Toronto, Ontario

Women's Legal Education and Action Fund Inc.

STATEMENT OF FINANCIAL POSITION MARCH 31, 2002

	2002	2001
Assets		
Cash and short-term investments	\$ 284,358	\$ 305,899
Due from Women's Legal Education and Action Fund Foundation Inc.	81,784	--
Other assets	75,384	54,773
Total assets	\$ 441,526	\$ 360,672
Liabilities and Fund Balances		
Accounts payable and accrued liabilities	\$ 62,024	\$ 102,478
Due to Women's Legal Education and Action Fund Foundation Inc.	--	3,588
Deferred revenue	285,637	162,830
	347,661	268,896
Fund balances	93,865	91,776
Total liabilities and fund balances	\$ 441,526	\$ 360,672

Women's Legal Education and Action Fund Inc.

CONDENSED STATEMENT OF REVENUE AND EXPENSES FOR THE YEAR ENDED MARCH 31, 2002

	2002	2001
Revenue		
Donations	\$ 53,936	\$ 71,818
In-kind legal services	208,017	306,983
Grants-		
LEAF Foundation	310,919	383,000
Women's Program-operational funding	72,898	55,000
Court Challenges program	54,914	24,285
Other	20,000	12,500
Ontario Litigation Fund	295	20,903
Interest and miscellaneous	25,193	33,806
<i>Total revenue</i>	746,172	908,295
Expenses		
Legal	457,782	580,450
Public education	71,890	152,802
Administration	212,873	187,237
Transition expenses, net	1,538	--
<i>Total expenses</i>	744,083	920,489
Excess of revenue over expenses for the year	\$ 2,089	\$ (12,194)

Boards of Directors 2001/2002

LEAF National

Colleen Cattell
Sarah Godwin
Paula Jubinville
Patricia MacAulay
Joanne McLean
Marilou McPhedran
Mary Nicholson
Jennifer Scott
Kate Stephenson
Jan Whitridge

LEAF Foundation

Colleen Albiston
Beth Atcheson
Irene Bailey
Catharine Devlin
Mary Lue Hinds
Joanne McLean
Gail Paech
Dagmar Rinne
Nancy Ruth
Mary Lou Stirling

Increase the 'LEAF environment' and reduce costs too.

We're stepping up our communications in paperless formats, so if you're not already on our e-mail list, do drop us a quick line at info@leaf.ca with your e-mail address and we'll deliver your future copies of the Annual Report and LEAFlines newsletter electronically. Thanks for your help!

Become a LEAF supporter!

Join the dedicated individuals who donate funds, time, and expertise to protect and advance the equality rights of women and girls in Canada! E-mail us at info@leaf.ca.

Or contact us at:

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