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LEAF and Avalon offer a feminist analysis of the Court of Appeal's decision in *R. v. Al-Rawi*

Today, the Nova Scotia Court of Appeal released its decision in the Crown's appeal of the acquittal of Bassam Al-Rawi on a charge of sexually assaulting a female passenger in his taxi. The Court of Appeal has allowed the Crown's appeal, quashed the acquittal, and ordered a new trial.

The Women's Legal Education and Action Fund (LEAF) and the Avalon Sexual Assault Centre (Avalon) intervened before the Nova Scotia Court of Appeal in *R. v. Al-Rawi* to offer the Court of Appeal a feminist perspective on the legal issues raised in the appeal.

LEAF and Avalon welcome the Court of Appeal's affirmation of the availability of circumstantial evidence to prove non-consent and incapacity to consent due to intoxication. "This decision sends a strong message to all parties in the justice system that even in cases where a complainant has no memory of her sexual assault due to intoxication, the Crown can prove its case beyond a reasonable doubt through circumstantial evidence," said Karen Segal, Counsel, Women's Legal Education & Action Fund (LEAF).

"The consumption of alcohol is a factor regularly exploited by men who commit sexual assault, but which at the same time has often contributed to a low rate of reporting, prosecution and conviction. Avalon is hopeful that the Court of Appeal's decision will promote more frequent reporting and prosecution of sexual assaults in cases where a complainant has been drinking." Jackie Stevens, Avalon Sexual Assault Centre.

The Court of Appeal took this opportunity to provide much-needed clarification on the legal standard for "capacity" to consent to sexual touching. "While we are hopeful that this clarification will assist in future cases where capacity to consent to sex is at issue, we are disappointed that the test adopted by the Court of Appeal did not go further in advancing women's equality. In particular, we would have liked to see the Court of Appeal recognize that if a person is so intoxicated that they cannot affirmatively communicate their consent to sex, they must lack the legal capacity to consent," said Kelly McMillan & Nasha Nijhawan, counsel for the Intervenors.

LEAF and Avalon also advanced arguments before the Court of Appeal which highlighted the ways in which discriminatory myths and stereotypes about women, including intoxicated women, have

affected judicial decision-making in this area. “LEAF is disappointed that the Court of Appeal did not take the opportunity presented by this appeal to address the discredited myths and stereotypes about sexual assault complainants that, in LEAF’s view, played a role in the trial judge’s reasoning in this case.” Karen Segal, Counsel, Women’s Legal Education & Action Fund (LEAF).

LEAF and Avalon are grateful to *pro bono* counsel Kelly McMillan and Nasha Nijhawan of [Nijhawan McMillan Barristers](#) for their representation in this case. You can read LEAF and Avalon’s factum [here](#).

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About Women’s Legal Education and Action Fund (LEAF)

Since April 17, 1985, when equality rights were enshrined in sections 15 and 28 of the *Charter of Rights and Freedoms*, LEAF has used litigation, law reform and public education to work toward equality for women and girls. LEAF intervenes in key cases to ensure that when courts interpret equality rights, there will be a systemic improvement in women’s lives. For more information about LEAF, visit www.leaf.ca.

About Avalon Sexual Assault Centre

Avalon Sexual Assault Centre is a feminist organization in Halifax, Nova Scotia, which provides services for those affected by sexualized violence. Avalon’s primary emphasis is on support, education, counselling and leadership and advocacy services for women and trans/non gender binary people. Avalon offers individual therapeutic counselling and group program services for women and trans/non gender binary individuals age 16 and older, community education, public awareness, legal and professional training

targeting the prevention of sexualized violence and intervention and support of victims/survivors. Avalon also operates the Avalon Sexual Nurse Examiner Program which provides immediate response to sexual assault victims of all ages and genders requiring medical care and the collection of forensic evidence. For more information about Avalon Sexual Assault Centre, please visit <http://www.avaloncentre.ca>.