Women's Legal Education and Action Fund Fonds d'action et d'éducation juridiques pour les femmes

> ANNUAL REPORT

20182019



MISSION

The Women's Legal Education and Action Fund (LEAF) has been speaking with a proud feminist voice for almost 35 years. LEAF works to advance the substantive equality rights of women and girls through litigation, law reform, and public education using the Charter of Rights and Freedoms.

LEAF is unique among Canadian charities. We bring our legal expertise to constitutional law and act strategically to make legal arguments that can have a significant impact to all women and girls. Women's rights have been tested, and strengthened, though our advocacy work. Since 1985, we have intervened in over 90 cases that have advanced equality in Canada. Our landmark victories have created real change in women's lives – helping to

prevent violence, eliminate discrimination in the workplace, allow access to reproductive freedoms, provide better maternity benefits and spousal support, and ensure a right to pay equity.

LEAF's vital work is only possible with the support of pro bono counsel, community partners, and our generous donors. Together, are making a lasting contribution to women's rights in Canada

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A MESSAGE FROM THE CHAIR OF THE BOARD

This has been a productive and transformative year at LEAF, with much to celebrate.



Elizabeth Shilton, LEAF Board Chair

Thanks to the hard work of our litigation partners and a dedicated cadre of volunteer feminist lawyers and academics, we have participated in a record number of cases. These cases produced victories in the courts on crucial feminist areas of concern, including:

- Voyeurism and women's sexual autonomy in public spaces;
- The role played by gendered myths and stereotypes in sexual assault cases;
- Women's reproductive autonomy and access to reproductive health care.
 Meanwhile, we continue to collaborate with our branches in work on law reform and public education. Issues currently on our agenda include:
- Online hate speech and emerging forms of cybermisognyny;
- The continuing quest for equality and justice for Indigenous women in Canada.

Those of you who have followed LEAF's work over its long history will recognize that while some of these issues relate to new threats to women's equality posed by emerging technologies, social media, and environmental degradation, some address inequalities that LEAF has been engaged with for decades. Sexual assault law is one example. Past legal victories that acknowledge women's sexual autonomy are continuously undermined within Canadian legal institutions by ignorance, misogyny, and gendered myths and stereotypes. To truly carry out its mission, LEAF must constantly search for novel approaches and new ideas that will help cement legal victories and transform them into real societal change.

To that end, and with financial assistance from the Federal Department for Women and Gender Equality, LEAF has embarked on an ambitious three-year project to evaluate feminist strategic litigation, and develop a new five-year plan for the next phase of LEAF's work. That project will engage frontline activists and the feminist legal community in an examination of LEAF's current strategic framework, and explore alternative legal mechanisms for securing more effective and durable outcomes for achieving our mandate.

It's an exciting time to be involved with LEAF, but we need your help. Only with the support of our volunteers at both the national and branch level, our donors, and our granting organizations can we carry on our work and implement our new strategic plan. Together we can achieve our shared goal of substantive equality for women and girls in Canada.

A REPORT FROM THE EXECUTIVE DIRECTOR AND GENERAL COUNSEL

I have long admired the important work LEAF has done to advance gender equality and was delighted to step into the role of Executive Director and General Counsel at the beginning of June 2019. It is an exciting time to be leading LEAF. We are on the cusp of LEAF's 35th anniversary in April 2020 (coinciding with the coming into effect of the Charter's equality guarantee) and have funding from the federal government's Department for Women and Gender Equality for both the Feminist Strategic Litigation Project and a strategic review and capacity building project.



Megan Stephens, **Executive Director** and General Counsel

While we look forward to these new projects, there is also much to celebrate from the past year. LEAF intervened before the Supreme Court of Canada in R v Barton and R v Gagnon to underscore how myths and stereotypes continue to infuse and undermine the integrity of sexual assault trials. LEAF brought its voice and experience to Parliamentary committees considering reforms to sexual assault laws and policies, including the prosecution of HIV non-disclosure.

LEAF has also been at the forefront in addressing new challenges brought by technology. LEAF intervened in the Supreme Court's first consideration of the voyeurism offence, in a case about a high school teacher who used a pen camera to record his students' cleavage area (R v Jarvis).

We still have a long way to go to redress systemic discrimination for women who are marginalized and disadvantaged. This past year, LEAF continued to raise concerns about the ongoing discrimination and violence suffered by Indigenous women, including its participation in the Missing and Murdered Indigenous Women's Inquiry. Later this fall, LEAF will bring its unique feminist perspective to a case concerning the over-incarceration of Indigenous women (R v Sharma, to be argued at the Ontario Court of Appeal in November).

All of this work is possible because of LEAF's exceptional staff, amazing network of feminist academics and lawyers, and committed branch members. LEAF's ground-breaking work in the areas of sexual violence, substantive equality, and reproductive justice remains as urgent and vital as ever. LEAF will continue to lead the way in advancing substantive equality rights and working towards a more just society for all.

A REPORT FROM OUR FSL PROJECT DIRECTOR

LEAF has been at the vanguard of the push for gender equality – fighting key battles in sexual assault law, pay equity, family law, and reproductive justice. While we have obtained hard-won victories in these areas, the reality is that there is still work to do. The landscape we work in is constantly changing and shifting, with new challenges emerging, and we need to be able to respond quickly and efficiently.



Kat Owens, Project Director

This is why we launched our new Feminist Strategic Litigation Project in April of this year. Our work on this project will culminate in a new plan to guide the way we carry out our litigation work – one which centers the needs and experiences of the women and girls for whom we advocate.

List of Advisory Committee Members:

Avalon Sexual Assault Centre

Canadian Association of Elizabeth Fry Societies (CAEFS)

DAWN Canada

Institute for the Advancement of Aboriginal Women (IAAW)

Linda Silver Dranoff: lawyer, feminist, activist, and writer

Metropolitan Action Committee on Violence Against Women and Children (METRAC)

Nathalie Léger: lawyer, La Centrale des syndicats du Québec (CSQ); member, LEAF's Law Program Committee

Pauktuutit Inuit Women of Canada

West Coast LEAF

In just 5 months, we have carried out over 30 consultations with community organizations from coast to coast, feminist academics, and organizations advocating for gender equality in South Africa, the United States, and the United Kingdom. We have developed and sent out a survey to over 1,200 organizations advocating for women and girls or providing services to them, to learn more about the key areas of need for women and girls throughout Canada. Over the next year, we will continue to have important conversations as we build towards a two-day Fall 2020 conference which will bring together community organizations, academics and gender equality advocates to talk about using the law to push for gender equality.

With the help of the community partners and feminist advocates on our Advisory Committee, LEAF will be ready to continue to fight the battles it has been involved in for the past 34 years, and lead the way in responding to new challenges. Our new litigation plan will allow LEAF to do what it does best – hold the law accountable for women and girls, and fight for substantive equality.

I can't wait to see where this year will take us!

PROFILE - Pro Bono Lawyers: Kelly McMillan and Nasha Nijhawan



We have been acting as LEAF pro bono counsel since we opened our own litigation practice in 2016. We first became involved with LEAF as part of a unique grassroots project to bring abortion access to PEI, and LEAF supported litigation brought by a community of activists on the Island. Since then, we have also acted in interventions on criminal appeals dealing with the law of sexual assault (R v Al Rawi

(NSCA) and R v Gagnon (SCC)). This work is one way that we try to contribute towards making Canada a better place for women and girls, and to advance the principles of equality that drew us each to the law in the first place. The chance to work with LEAF's brilliant case committee members in developing LEAF's arguments in these cases has provided us with a unique opportunity to be mentored by leading feminist legal thinkers in Canada, and to push ourselves to be better advocates.

Thank You to Our Pro Bono Lawyers, Case Committee Members and Community Partners

Every one of LEAF's interventions is guided, supported, and informed by a case committee composed of academics, practitioners, activists, and community members with specific expertise in the issues engaged. LEAF gratefully acknowledges the commitment and contributions of case committee members, pro bono counsel, and all those who have given countless hours over the past year to make Canada a more equal place for women and girls.

Tope Adefarakan Moira Aikenhead Gabby Aquino Joyce Arthur Jane Bailey Gillian Balfour Karen Bellehumeur Janine Benedet Danielle Bisnar Lydia Blois Jan Borowy Susan Boyd Tory Brown Courtenay Catlin Erica Chestnut Kirby Chown Emma Cunliffe Krisha Dhaliwal Suzie Dunn **Emily Dutton** Mary Eberts Nadia Effendi

Joanna Erdman

Alex Fidler-Wener Savannah Gentile Daphne Gilbert Clio Godkewitsch Lise Gotell Isabel Grant Alison Gray **Emily Hill** Gillian Hnatiw Pam Hrick Kate Hughes Beverly Jacobs Karine-Myrgianie Jean-François Holly Johnson Julie Kaye Paniz Khosroshahy Lara Kinkartz Jo-Ann Kolmes Jennifer Koshan Kathleen Lahey Kathy Laird Breanne Lavallée-Heckert

Nathalie Léger Zohar Levy Raine Liliefeldt Nneka MacGregor Lily MacLeod Raji Mangat Kelly McMillan Naiomi Metallic Samantha Michaels Cheryl Milne Carly Moore Janet Mosher Iulie Mouris Vrinda Narain Nasha Nijhawan Jessica Orkin Fran Oudette Renée Pelletier Marilyn Poitras Sandeep Prasad Molly Reynolds Rakhi Ripatuka Brittany Ross-Fichtner

Harmit Sarai Karen Segal Martha Shaffer Elizabeth Sheehy Elizabeth Shilton Linda Silver Dranoff Jackie Stevens lennifer Tomaszewski Susan Ursel Rachelle Venne Adriel Weaver Lisa Weber Julia Wilkes Tamar Witelson Jill Witkin Claire Young Laurie Turner Robin Reinertson Rosalie Clark

SEXUAL VIOLENCE

"Equality is really a celebration of difference."

Patricia Monture, Locating Aboriginal Peoples in Canadian Law: One Aboriginal Woman's Journey Through Case Law and the Canadian Constitution (Masters of Law, Osgoode Hall Law School, 1988) at 12.

Parliament enacted [the rape shield laws] to address concrete social prejudices that affect trial fairness as well as the concrete harms caused to the victims of sexual assault. Throughout their lives, survivors may experience a constellation of physical and psychological symptoms including: high rates of depression; anxiety, sleep, panic and eating disorders; substance dependence; self-harm and suicidal behavior. A recent Department of Justice study estimated the costs of sexual assault at approximately \$4.8 billion in 2009, an astonishing \$4.6 billion of which related to survivors' medical costs, lost productivity (due in large part to mental health disability), and costs from pain and suffering. The harm caused by sexual assault, and society's biased reactions to that harm, are not relics of a bygone Victorian era.

Justice Karakatsanis, writing for the majority of the Supreme Court of Canada in *R v Goldfinch*, 2019 SCC 38 at para 37, references omitted.

R v BARTON

On May 24, 2019, the Supreme Court released its decision in *R v Barton*, ordering a new trial for Bradley Barton on manslaughter charges, but not for the murder of, Cindy Gladue. Cindy Gladue died in tragic circumstances, and the trial of the man charged with her sexual assault and murder was dehumanizing and a further attack on her dignity. LEAF partnered with the Institute for Advancement of Aboriginal Women (IAAW) to intervene in this important and tragic case at both the Alberta Court of Appeal and the Supreme Court.

The Supreme Court's decision strongly condemns the use of racist and sexist stereotypes about Indigenous women and encourages trial judges to explicitly counter prejudice against Indigenous women and girls in their instructions to juries. The Court denounced the use of dehumanizing language and the prejudice that infused the trial by failing to call Cindy Gladue by name. The decision makes it clear



Karen Segal (then Staff Laywer, left), Shaun O'Brien (then Executive Director and General Counsel, second on the left), Muriel Stanley Venne (IIAW Founder and Board President, middle), Dr Emma Cunliffe (UBC Law, Case Committee member, second on the right), and Beverly Jacobs (University of Windsor Law, right) at the Supreme Court of Canada in October 2018.

it clear that the trial "let us all down" by failing to uphold the dignity and humanity of Cindy Gladue. As the decision reads, "She was a mother, a daughter, a friend, and a member of her community. Her life mattered. She was valued. She was important. She was loved."

The Court also provided clear conclusive direction and consent. on including: the accused cannot rely on past sexual history evidence to ground a belief consent; and there must be expressed consent to every sexual activity. There is much more to be done to ensure that no Indigenous women ever has to face such treatment again.

LEAF and IAAW were represented by Beverly Jacobs and Shaun O'Brien. LEAF extends a special thank you to the members of the Case Committee, whose expertise and hard work on this difficult and devastating case have had a significant and lasting impact on the law of sexual assault and the courts' treatment of Indigenous women and girls.

R v BOYLE

On June 11, 2019, the Ontario Superior Court of Justice released a disappointing decision in an application for review brought mid-trial in a sexual assault case arising in the marital context. In the application, the complainant sought to invalidate the provincial court judge's decision that she could be cross-examined on previous sexual history with the accused. LEAF intervened in the application to argue in favour of a complainant's right to seek such a review (known as a certiorari application) before being subjected to cross-examination.

LEAF is dismayed by the Superior Court of Justice's decision on that application. The judge ruled that complainants do not have the right to ask a higher court to review a judge's decision. This allows

a complainant to be cross-examined about her prior sexual history, even where the trial judge has committed an error of law on the face of the record. Although that was sufficient to decide the issue, he went on to find that he did not think the judge had erred in his application of the rape shield law.

LEAF believes that the decision fails to adequately balance the competing Charter rights at play and is at odds with Supreme Court jurisprudence and Parliament's recent efforts to empower sexual assault complainants. LEAF looks forward to revisiting these issues in a future case.

LEAF was represented by Gillian Hnatiw and Julia Wilkes of Adair Goldblatt Bieber LLP, and Zohar Levy of Fasken.

R v GAGNON

On October 16, 2018, LEAF appeared before the Supreme Court to intervene in the Crown's appeal of the Court Martial Appeal Court's decision in *R v Gagnon*. LEAF provided the Court with a feminist, equality-focused analysis of the defence of "honest but mistaken belief" in consent.

As in this case, the Crown may prove that a complainant did not consent, but the accused can avoid conviction for sexual assault if he is able to demonstrate an honest but mistaken belief the complainant was consenting. However, the Criminal Code specifies that anyone relying on this defence needs to have taken reasonable steps to ensure consent.

argued for an interpretation "reasonable steps" that requires the accused to take active steps to obtain consent. believe this recognizes women's substantive equality and acknowledges the myths, stereotypes and power imbalances that influence the dynamics of consent. For example, the accused should not consider silence as consent, and agreement to one sexual act should not be regarded as agreement to any other sexual acts. Moreover, our courts should not ignore how relationships and environments—such as the hierarchical structure of the military—may create barriers to a woman's objections to unwanted sexual contact.

LEAF was represented by Shaun O'Brien (then) Legal Director of LEAF, and Kelly McMillan of Nijhawan McMillan Barristers.

EQUAL ACCESS TO REPRODUCTIVE HEALTH CARE IS ESSENTIAL FOR WOMEN'S EQUALITY

While this year saw the rollback of women's reproductive rights in many American states, LEAF was working to ensure that those rights would be given a robust interpretation in Canadian courts. LEAF will continue to advocate broadly for reproductive justice in Canada and will remain vigilant to any attempt to limit women's rights to control their bodies.

THE CHRISTIAN MEDICAL AND DENTAL SOCIETY OF CANADA V COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

On May 15, 2019, the Ontario Court of Appeal released a great feminist judgment in this case. The case considered the constitutionality of two of the College's policies, which require members of the College who object to providing certain medical services – including reproductive health care – to provide patients seeking such services with a referral to another practitioner to provide the care. Reproductive health care was central to the case as such services are often refused on religious grounds. The appellants argued that the policies violate their religious freedom. LEAF argued that the effective referral policy affirms and protects women's equality rights and right to reproductive choice, and should be saved under section 1 of the *Charter*.

In a victory for women's reproductive freedom, the Court agreed that the policies are constitutional, as their importance in facilitating equitable access to health care justifies interference with the doctors' religious freedom. The Court was clearly influenced



Former LEAF Executive Director and General Counsel Shaun O'Brien, and former LEAF Staff Counsel Karen Segal

by LEAF's intervention, and made specific reference to our arguments stating that an effective referral is necessary for access to health care for the most marginalized women.

LEAF was represented by Shaun O'Brien, (then) Legal Director of LEAF, and Karen Segal, (then) staff counsel at LEAF.

CYBERMISOGYNY

Hate proliferates online with profound, measurable effects on women and other vulnerable groups. Amnesty International found that an abusive tweet is sent to a woman on Twitter every 30 seconds, including threats of murder, rape, and the use of misogynistic slurs. With your support, LEAF intervened in a key Supreme Court decision concerning voyeurism, emphasizing the gendered nature of the crime. LEAF is advocating for government regulations to address online hate speech and cybermisogyny more generally.

R v JARVIS

On February 14, 2019, the Supreme Court released its groundbreaking decision in *Jarvis*, which will contribute to the advancement of women's and girls' equality in the digital age. At issue in the case is whether a male high school teacher who used a camera pen to secretly film his female students' cleavage committed the criminal offence of voyeurism, found in section 162 of the Criminal Code.

LEAF intervened at the Supreme Court, urging the Court to apply an equality lens to the interpretation of the voyeurism provision, which takes into account the highly gendered nature of this crime. LEAF advocated for a broad and contextual definition of "circumstances that give rise to a reasonable expectation of privacy", which recognizes women's reasonably held privacy expectations in both private and public places and provides meaningful protection for women's sexual integrity in public life.

LEAF is pleased that the Supreme Court has recognized that voyeurism is a violation of sexual integrity and is hopeful that future decisions will continue to recognize the equality harms that image-based sexual violence causes women and girls. *R v Jarvis* will act as a critical precedent in future cases, as technology enables new forms of violence against women to emerge.

CYBERMISOGYNY PROJECT

The proliferation of technology has changed our society in both positive and troubling ways. Among the more pernicious consequences is men's use of technology to engage in manipulation, control, and sexual violence against women, and the proliferation of all forms of misogyny and gender-based violence online, referred to as "cybermisogyny". This growing problem requires a principled feminist response.

While cybermisogyny takes many forms, LEAF's work in this area has largely focused on image-based sexual violence, which forms a logical starting point for the task of regulating technology through the lens of women's equality.

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The cybermisogyny project is bringing together feminist lawyers and academics to conduct research and prepare a report imagining legal responses to technology-facilitated violence against women that are informed by equality principles.

LEAF has received a one-year grant from the Canadian Bar Association's Law for the Future Fund to support our work in this area.

PROFILE - LEAF Legal Interns



Gabby Aquino (left), Emily Dutton (middle), and Paniz Khosroshahy (right)

It was a pleasure to work with our Legal Interns over the summer. Gabby Aquino (pursuing her ID at Osgoode Hall and her MA in Sociolegal Studies at York University) and Emily Dutton (pursuing their JD at the University of Victoria in the Faculty of Law). Gabby and Emily worked on our Strategic Litigation Project. Gabby and Emily worked on researching cases, conducting literature reviews, and consulting with past and future partner organizations. Paniz Khosroshahy (pursuing her JD at the University of Toronto Faculty of Law) researched and drafted memos and reports on access to justice in our Due Justice Project. Paniz also worked

on our Cybermisogyny project on image-based sexual violence. We are grateful for their great work and welcome them to our community as lifelong LEAFers.

LAW REFORM

In addition to the legal work, LEAF works to advance women's equality rights through its participation in public inquiries, and by making submissions to parliamentary committees considering legislative reforms. This past year saw many opportunities to advocate for women's rights.

THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS **WOMEN AND GIRLS**



On June 4, 2019, the National Inquiry into Missing Murdered Indigenous Women and Girls released its final report, along with 231 Calls for Justice to: protect Indigenous women, end violence against Indigenous women, and promote their

substantive equality. LEAF worked tirelessly with its partners to advocate for an Inquiry and was a party with national and regional standing in the Inquiry. LEAF will continue to work to ensure that the Inquiry's Calls for Justice are implemented.

The report makes critical findings that are consistent with the work of Indigenous feminists and LEAF over the past many decades. It identifies the root factors of Indigenous women's inequality and violent victimization, including Indigenous women's social and economic inequality, biased policing, an unfair justice system, and a broken child welfare system. Perhaps most critically, the Inquiry expressly recognizes colonization as a root cause of Indigenous women's inequality.

LEAF has committed itself to allying with Indigenous women to advocate for the implementation of the Calls for Justice.

IMPLEMENTATION OF BILL S-3

On May 17, 2019, LEAF sent a letter to the Prime Minister and Ministers of Justice, Indigenous Affairs, and Women and Gender Equality, urging full implementation of Bill S-3, which would fully eliminate sex discrimination in the Indian Act.

LEAF has been proud to play a supporting role in this struggle, including through litigation with the Native Women's Association of Canada (NWAC) at the Supreme Court, litigation at the Ontario Court of Appeal, and ongoing advocacy, including an open letter to the Canadian government in May 2019, urging for full implementation of the Bill.

The *Indian Act* historically denied First Nations

women the right to pass on their status to their children without proof of an Indian father.

In August 2019, the final provisions of Bill S-3, which eliminates sex inequalities in the Indian Act, were brought into force. The implementation of Bill S-3 means that up to 450,000 Indigenous women and their descendants could now be legally entitled to registration under the Indian Act. This is an important step towards ending the systemic discrimination against First Nations women. This accomplishment reflects decades of hard work of by Indigenous women and feminists in the Canadian court system, at international rights bodies, and through advocacy for legal reform.

HIV NON-DISCLOSURE

On May 7, 2019, LEAF filed written submissions, and Karen Segal, then-staff counsel at LEAF, appeared before the Standing Committee on Justice and Human Rights Review on the Criminalization of Non-Disclosure of HIV Status.

Canadian law currently criminalizes HIV non-disclosure where a person who is HIV-positive exposes their sexual partner to a significant risk of serious bodily harm – in other words, there is a realistic possibility of HIV transmission. The law has been criticized for its punitive response to those living with HIV.

LEAF shares these concerns, and also brings an equality rights analysis to the law of HIV non-disclosure. While women are often complainants in non-disclosure cases, HIV non-disclosure prosecutions have also led to an increase in women, particularly marginalized women, being convicted of aggravated sexual assault. Almost 80% of women living with HIV are Indigenous or racialized, and they already face serious over-criminalization.

LEAF proposed that HIV non-disclosure be removed from sexual assault law. Where non-disclosure results in actual transmission of the virus, prosecution may be appropriate under non-sexual Criminal Code offences. This could reduce the punitive over-criminalization of people living with HIV, while also protecting women who contract HIV from partners who take no care to prevent transmission.

On June 17, 2019, the Justice Committee released its report. Consistent with LEAF's position, the Committee recommended the creation of a new Criminal Code offence for non-disclosure of an infectious disease where there is an actual transmission to another person. The committee urged the Minister of Justice to work with the provinces to establish a cross-country prosecutorial directive in relation to HIV non-disclosure prosecutions. LEAF will continue to advocate for a substantive equality perspective during this process.

BILL C-51: AMENDMENTS TO THE CRIMINAL CODE SEXUAL ASSAULT PROVISIONS (INCAPACITY TO CONSENT)

LEAF was very involved in advocacy concerning the incapacity provisions in Bill C-51. While the changes LEAF advocated for were not adopted, the Ministry of Justice did undertake consultations with community groups about how to reform this area of law. The Ministry has committed to circulating a "What We Heard" report.

LAW SOCIETY OF ONTARIO ACCESS TO JUSTICE CONSULTATIONS

On May 31, 2019, LEAF filed a submission to the Law Society of Ontario's Access to Justice Consultation. LEAF argues that access to justice is an equality issue – especially for women and marginalized groups – and makes recommendations to help the Law Society of Ontario's Access to Justice Initiative become more responsive to equality concerns.

SUBMISSIONS TO THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

On May 10, 2019, LEAF filed submissions with the Standing Committee on Justice and Human Rights in its consideration of Online Hate. The submissions highlight the need for robust regulation of online platforms and encourage the government to reinstate s. 13 of the Canadian Human Rights Act, which prohibits hate speech communicated by telecommunication.

COMMUNITY IMPACT STATEMENT - R v SEARS AND ST. GERMAINE

On January 24, 2019, the first ever conviction for hate speech against women, pursuant to s. 319 of the Criminal Code, was registered in Ontario. The two defendants published and distributed a free newsletter in Toronto, which consistently depicted women as being inferior and deserving of assault. LEAF provided its first community impact statement commenting on the impact of this speech on women's equality and safety, which the trial judge admitted into evidence. In the sentencing, the judge recognized the aggravated nature of harm posed to women as a result of the hate speech published by the defendants.

PROFILE - Donor: Patricia Paradis



Patricia Paradis, executive director of the Centre for Constitutional Studies and sessional instructor, Faculty of Law, University of Alberta

I first worked with LEAF in 1991, as a Counsel on the Aryan Nations inquiry, arguing for a harms-based approach to discriminatory expressive acts. I was a first year lawyer and ended up examining Professor Catharine MacKinnon at the tribunal hearing. It was a profound experience! After that, I became involved with my local branch before going on to chair the national legal committee and the national board for 5 years. In the face of cuts to the Court Challenges Program, we did a complete restructuring of LEAF. I love supporting an organization that continues to effectively advocate for equality rights despite many, many challenges over the years. LEAF is a testament to strong, focused collaborative efforts by many women.

UPCOMING LEGAL WORK

LEAF is working on a number of other important interventions in appeals. Check our website and follow us on social media for updates as they become available.

R v SULLIVAN AND R v CHAN

These appeals to the Court of Appeal for Ontario are being heard together and concern the constitutional validity of s. 33.1 of the Criminal Code, which prevents an accused from using their voluntary intoxication as a defence to assault based offences, including sexual assault. This law was developed, in large part, as a response to the violence women face by perpetrators who are intoxicated.

The accused argued that the provision violates section 7 of the *Charter* by permitting the conviction of persons who lacked the requisite mens rea to make out the offence. LEAF's intervention will focus on the balancing of *Charter* rights – including the complainant's rights to security of the person and equality, as well as the rights of accused persons – under section 7 and/or section 1 of the *Charter*.

LEAF is represented by Megan Stephens, Executive Director and General Counsel of LEAF, and Lara Kinkartz of WeirFoulds LLP.

R v SHARMA

On June 4, 2019, LEAF and the Asper Centre were granted leave to intervene jointly in this case regarding the constitutionality of *Criminal Code* provisions ss. 742.1(c) and (e) (ii), which eliminate conditional sentences for certain offences. Conditional sentences, often referred to as "house arrest," require an offender to spend all or part of the sentence in their house, as opposed to a jail.

Ms. Sharma is a young, Indigenous single mother who has survived a great deal of trauma in her life, including the intergenerational effects of residential schools. She was convicted of importing a kilo of cocaine into Canada – her first and only offence, committed in circumstances of dire need (facing eviction with her very young daughter) and at the behest of her boyfriend. She took significant rehabilitative steps following her arrest, and is precisely the kind of offender for whom a conditional sentence served in the community would be appropriate, particularly given the Gladue framework. The Gladue framework requires courts to consider the circumstances of Indigenous offenders and impose non-custodial sentences wherever they would be consistent with the principles of sentencing.

A conditional sentence was not available for Ms. Sharma, however, because of the Criminal Code provisions that bar conditional sentences for drug importation offences. Ms. Sharma challenged that provision as a violation of section 15 of the Charter because it renders the Gladue framework unavailable to Indigenous offenders accused of certain offences and thereby perpetuates the disadvantage that the Gladue framework was designed to rectify. The trial judge rejected this argument based on a very formalistic interpretation of the equality right provision.

LEAF and the Asper Centre will contribute to the analysis of section 15 equality rights, and in particular will encourage the Court to engage in a substantive equality analysis of section 15 as a tool to redress systemic discrimination.

LEAF and the Asper Centre are represented by Jessica Orkin and Adriel Weaver of Goldblatt Partners LLP.

FRASER v ATTORNEY GENERAL OF CANADA

LEAF is seeking leave to intervene in this appeal to the Supreme Court concerning the RCMP pension plan and its unequal treatment of female RCMP officers, who were denied the benefit of accruing full-time pension while they worked in job-sharing arrangements due to childcare responsibilities. Upon returning to full-time employment, they were not permitted to buy back their pension.

LEAF will seek to advocate for a robust interpretation of s. 15 equality rights and ensure that the court does not revert back to a formalistic equality analysis.

If granted leave, LEAF will be represented by Kate Hughes, Jan Borowy and Danielle Bisnar of Cavalluzzo LLP.

PROFILE - Community Partner: Tamar Witelson



Tamar Witelson Legal Director, METRAC

METRAC and **LEAF** are both firmly committed to ending violence against women and girls. Through our ongoing work on the 'Due Justice for All' Project, we are looking to make justice more accessible for sexual assault complainants. Partnering allows us to each contribute our unique skill sets and expertise to improving how the legal system responds to gender-based violence. Put simply, together we can increase our impact, and increase access to justice for women and girls.

EDUCATION

Women's equality rights must be recognized outside of the courtroom. LEAF's education programs empower people of all genders by teaching them about sexual rights, responsibilities, and the meaning of consent in law – essential knowledge they can apply to their everyday lives. Most of our public education is delivered at the community level by passionate and skilled branch volunteers supported by the national education program committees. Some of our most popular workshops include:

LEAF AT WORK

LEAF at Work is a dynamic workshop for youth in grades 9-12. We analyze real-life scenarios as examples of the inequality they may encounter in the workplace and share how the Charter applies to issues such as sexual harassment, discrimination in government benefits, and hiring practices. We also discuss how gendered stereotypes are used to justify a lack of job opportunities and career advancement. These policies and practices have devastating impacts on women's self-fulfillment and economic independence. This should be the last generation to enter an unfair workforce.

REPRODUCTIVE JUSTICE

Women cannot always control the conditions under which they become pregnant or raise their families. Inadequate access to contraceptives or information about reproductive health, poverty or enforced economic dependence, sexual coercion or violence... these are just some of the issues that disproportionately affect women. LEAF's *Reproductive Justice* workshops highlight how the Charter can protect their reproductive rights.

ONLY YES MEANS YES

LEAF's *Only Yes Means Yes* workshop provides resources to the community to explain consensual relationships, the role of gender discrimination in sexual assault, and their impact on women. Almost 20 years ago, the Supreme Court's decision in *R. v. Ewanchuk* clearly upheld that consent to any sexual activity is mandatory – and consent means saying Yes. *Only Yes Means Yes* describes the wide-reaching relevance of this decision and is one of LEAF's most successful educational programs.

HALIFAX

We continue to facilitate the legal education workshops Only Yes Means Yes ("OYMY") and Reproductive Justice. This year we had the unique opportunity to present the Reproductive Justice workshop to an audience that included legal, healthcare, and social work professionals at the Law Needs Feminism Because National Forum. The session proved educational for participants and facilitators alike, as participants shared their own projects and experiences to the group. We were also excited to be invited back to the Mount Saint Vincent University's annual Girls Conference for another year. We received positive feedback from participants, with some naming the Only Yes Means Yes workshop as their favourite session of the conference.

We were also hosted in a number of middle and high schools in the Halifax Regional Municipality to present Only Yes Means Yes and Reproductive Justice to Law classes and school programs like the Options and Opportunities (O2) program. The students in these sessions made the most of the workshops with their openness, honesty, and willingness to participate. We continue to present workshops to community groups for youth and adults, as well as in our local women's jail.

THUNDER BAY

LEAF Thunder Bay had another big year with our growing executive. We added two new members to our executive, as well as the brand-new position of Student Liaison with the Bora Laskin Faculty of Law. Apart from the student member, our executive is composed of lawyers in their first few years of practice.

We have hosted several events for volunteering and networking, including the event Volunteering

with Lawyers Feed the Hungry. LEAF helped with two Sunday meals at the Dew Drop Inn, a local food bank, where they volunteered to help prepare and serve the afternoon meal.

We also organized Female Lawyer Networking Lunches at local restaurants for the female members of the bar to get out of the office, meet for a casual lunch and get to know each other outside of a workplace setting.

EDMONTON

The Edmonton Branch has had a busy year building up our educational workshops. Although we did not present to any schools in 2018-2019, a lot of progress was made in the Only Yes Means Yes ("OYMY") initiative. We are moving forward on delivering much needed consent-based education in Edmonton Public Schools with the OYMY initiative. This included allocating funding to assist volunteers

with required background checks and money for a coordinator to assist with moving the project forward. Before presentations can begin in schools, we are working on ensuring the program is revised to better fit Alberta's curriculum. The steps taken this year will lay the foundation for a robust OYMY program next year.

WINDSOR

The Windsor Law Chapter is a completely volunteer, student-run branch. This past year, Windsor LEAF hosted a number of activities in education. In partnership with Pro Bono Students Canada, LEAF partook in the annual *Only Yes Means Yes* ("OYMY") workshops, which are hosted at local high schools in the Windsor-Essex area as well as on campus at the University of Windsor student residences. The purpose of these workshops is

to educate young people on the law regarding sexual relations, with a focus on consent, sexual assault and sexting. The seminar itself helps students understand the law surrounding sexual assault and consent, understand the legal consequences of sexting, enable them to recognize consent and help them identify strategies in obtaining consent.

OTTAWA

LEAF Ottawa is a completely volunteer, studentrun branch. Each member of our branch executive and most of our workshop facilitators are students from the University of Ottawa Law Faculty. We have hosted several fundraisers and workshops over the year to support LEAF National. We delivered the workshops LEAF at Work and Only Yes Means Yes ("OYMY") in high schools throughout the Ottawa region. We received overwhelmingly positive feedback from students and teachers on the Only Yes Means Yes sessions, and many of the latter scheduled workshops for numerous classes.

TORONTO

The LEAF Toronto branch had another busy year hosting educational panels and fundraisers. Building on our March 2018 informative panel *Cyberviolence* and *Your Rights*, we continued to offer our members informative panels discussing legal rights and trends in the law.

This year, we shifted gears to the employment context, offering members a panel on Investigating Workplace Discrimination and Harassment. Our interactive panel hosted in January 2019 outlined workplace discrimination, harassment and sexual harassment, and the various legal avenues that individuals may pursue.

Panelists discussed the components of an effective workplace investigation, including how to navigate cultural, gender and socioeconomic differences, power dynamics and bias. Panelists explored the #MeToo movement's impact on workplace



LEAF Toronto Branch panel (January 2019) *Investigating Workplace Discrimination and Harassment* hosted by Fasken LLP

investigations as well recent trends in investigations. Panelists included: Janice Rubin (Rubin Thomlinson LLP), Toni De Mello (Ryerson University, Office of the Vice President, Equity and Community Inclusion), Sarah Graves (Fasken LLP), Melody Jahanzadeh (Rubin Thomlinson LLP), and Kevin Robinson (Robinson Heeney LLP).

PERSONS DAY SUMMARIES

Persons Day refers to the Persons Case dating back to October 1929 when the Judicial Committee of the British Privy Council (then Canada's highest court of appeal) ruled that women were to be considered persons under the law and therefore eligible to sit in the Canadian Senate.

EDMONTON

LEAF Edmonton had an outstanding fundraising year, having raised \$11 944.05 from our 2018 Persons Day Breakfast, with 326 tickets sold. The successful event hosted keynote speaker, Professor Elaine Craig, who thoughtfully outlined how our legal systems burden sexual assault complainants and marginalized women. The Breakfast also featured the presentation of The LEAF Edmonton Recognition Awards to Lily Tsui, Merryn Edwards, and the Institute for the Advancement of Aboriginal Women (IAAW), who were recognized for their respective dedication to advancing the rights of women and girls across Canada. An honourable guest of the event was Christina Gray, then Minister of Labour & Minister Responsible for Democratic Renewal, who brought with her greetings from Premier Rachel Notley. The impact of the Edmonton PDB could not have been possible without our generous sponsors, of which included the CUPW Edmonton Women's Committee, The Fath Group, and the Legal Education Society of Alberta. The Edmonton PDB committee looks forward to another exciting speaker for 2019: Dr. Karin Humphries, who will speak about the gender health gap, especially amongst Indigenous women.

HALIFAX

Over 100 attendees joined LEAF Halifax for their Persons Day Breakfast to hear the Honourable Laurie Halfpenny-MacQuarrie, Judge of the Provincial Court of Nova Scotia, speak about the establishment of a provincial courthouse at Wagmatcook First Nation. The courthouse features both wellness and Gladue courts to better meet the needs of Indigenous people interacting with the justice system in Nova Scotia. It was a fascinating look at what can be achieved within the justice system when serious efforts are made to advance the project of reconciliation. The event also celebrated the important work of the Nova Scotia Native Women's Association in championing the aspirations of Indigenous women in Nova Scotia, particularly its efforts in establishing and maintaining the Jane Paul Indigenous Women's Resource Centre in Sydney, Nova Scotia. The centre, which continues to face critical funding gaps and a precarious future, works to provide much needed culturally informed, harm-reduction-based services in the community.

THUNDER BAY



Jamie McGinnis, Indigenous Service Coordinator for the Human Rights Legal Support Centre spoke at the Thunder Bay Branch's Persons Day Breakfast.

LEAF Thunder Bay expanded its PDB event in 2018 with a grander venue at the Finlandia Club to host more guests to listen to the event's impactful speakers, Cekuba Reitberger and Jamie McGinnis. Reitberger, the former executive director of Nishnawbe Aski Legal Services and an elder of the Indigenous People's Court, delivered insight on important restorative justice issues. McGinnis, Indigenous Service Coordinator of, and counsel for, the Human Rights Legal Support Centre, engaged guests on current Indigenous rights cases before the Human Rights Tribunal, as well as access to justice through the Human Rights Legal Support Centre. These important conversations were able to reach the Thunder Bay community thanks to the generous sponsors and supporters of the LEAF Thunder Bay branch, and we hope to further expand our fundraising for these kinds of events in the future.

WINDSOR LAW BRANCH

LEAF Windsor's PDB had the highest attendance from the past three years of the event, with over 50 students attending from the Faculty of Law! We hosted an engaging panel talk with women in law to discuss the unique adversities they have navigated in their careers. Kim Stanton from Goldblatt Partners, Professor Shanthi Senthe from the University of Windsor, Jennifer Bezaire from Greg Monforton & Partners, and Elizabeth Brown, the Crown Attorney and Professor at the University of Windsor, all provided advice for the

upcoming female lawyers attending. Karen Segal, then Staff Lawyer at LEAF National, also spoke at the event to share LEAF's current events and legal involvement. The Breakfast was free for all students thanks to a successful fundraising raffle held beforehand. We look forward to ensuring these meaningful events continue to be accessible to young students and professionals.

OTTAWA



LEAF Ottawa with presenters Prof. Martha Jackman (third to the left), the Honourable Senator Kim Pate (middle), and Prof. Jamie Liew (third to the right)

Persons Day Breakfast at the LEAF Ottawa branch was a sold-out event at the Rideau Club, with 130 tickets purchased! The theme of the event was on the rights of refugee women in detention centers and women in correctional facilities, such as their access to health care, mental health services, and drug use supports. Keynote speaker, the Honourable Senator Kim Pate, spoke on the issue of access to health for women in prisons, with a focus on Indigenous women. She was followed by Professor Jamie Liew and Professor Martha Jackman, who spoke about access to health for refugee women in detention and access to health as a Charter Right, respectively. The outreach of the event would not have been possible without our generous sponsors, such as Raven Law, Westaway Law Group, MP Sheila Malcolmson, several University of Ottawa Law Professors, as well as the individuals and law firms who donated tickets for those who would not otherwise be able to afford to attend the Breakfast.

PERSONS DAY SPONSORS

Your generosity helps LEAF build a better and more equal Canada for women and girls!

IUSTICE

PRECEDENT





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LEAF's work is only possible with the support of our donors.

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FINANCIAL HIGHLIGHTS

The Women's Legal Education and Action Fund's financials statements provide our supporters with a summary and insight into the organization's well being.

The Board of Directors is committed to investing in programs that will sustain the organization into the future. The dollars we raise, year after year, allow us to engage in litigation, law reform, and public education.

STATEMENT OF FINANCIAL POSITION

Year ended March 31	2019 \$	2018 \$	
ASSETS	<u> </u>	<u>.</u>	
Current assets			
Cash	320,579	205,452	
HST Recoverable	22,538	18,334	
Accounts Receivable	57,734	279	
Prepaid Expenses	11,031	6,311	
	411,882	230,376	
Investments	898,668	614,510	
Capital Assets	22,740	5,171	
	1,333,290	850,057	
LIABILITIES			
Current liabilities	65 507	47354	1 1 1 2 4 10 1
Accounts payable and accrued liabilities Deferred revenue	65,587 130,474	47,254 163,738	Independent Auditor's
Deterred revenue	<u> </u>		Report provided by HILBORN LLP.
ODERATING NET ACCETS	196,061	210,992	
OPERATING NET ASSETS	1,137,229	639,065	Complete audited
	1,333,290	850,057	statements available
	1,333,230	330,037	on request.
Year ended March 31	2019	2018	
	\$	\$	
REVENUES	\$	\$	
REVENUES Donations and fundraising	1,090,179	714,306	
REVENUES Donations and fundraising Grants	1,090,179 427,643	714,306 298,614	
REVENUES Donations and fundraising Grants	1,090,179 427,643 2,425	714,306 298,614 14,988	
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REVENUES Donations and fundraising Grants Investment income (loss) EXPENDITURES	1,090,179 427,643 2,425 1,520,247	714,306 298,614 14,988 1,027,908	
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GET INVOLVED

LEAF thrives with the support of donors, volunteers, and members. There are many ways to join us to advocate for gender equality.

DONATE

LEAF's litigation, law reform and public education work are made possible through the generosity of individual donors and an annual grant from the LEAF Foundation. Please contact LEAF at info@leaf.ca or by calling 416-595-7170 or toll-free 1-888-824-5323, and visit our web site, leaf.ca, for further details and to make a donation.

VOLUNTEER

The dedicated work of our volunteers across the country is central to LEAF's success. The volunteers govern the organization, serve on active committees, staff branches and act as LEAF counsel whenever LEAF intervenes at the Supreme Court of Canada and Appellate Court levels. They also support LEAF with the annual events and play a crucial role in raising the funds. Please visit http://www.leaf.ca/6-ways-to-volunteer/.

MEMBERSHIP

Your membership with LEAF entitles you to receive regular notices of LEAF news and events. The monies we receive in membership dues and donations help support public education events to promote awareness of equality issues as well as litigating important equality cases though our national office.

> Women's Legal Education and Action Fund

Fonds d'action et d'éducation juridiques pour les femmes

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LEAF acknowledges the support of Women and Gender Equality Canada (formerly known as Status of Women Canada)



Equality Canada

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