

Women's Legal Education and Action Fund (LEAF)



LEAF FAEJ

Impact Case Studies
Volume 3: LEAF and Income Assistance





LEAF
FAEJ

LEAF is a national, charitable, non-profit organization, founded in 1985. LEAF works to advance the substantive equality rights of women and girls in Canada through litigation, law reform and public education using the Canadian Charter of Rights and Freedoms. For more information, visit [our website](#).

This publication was created as part of LEAF's Feminist Strategic Litigation (FSL) Project. The FSL Project examines the use and impact of feminist strategic litigation to help LEAF, feminists, and gender equality advocates more effectively combat systemic discrimination and oppression.

LEAF would like to thank the following individuals and groups:

- All of those who have been involved in LEAF's many years of advocacy in the area of income assistance
- Mukisa Kakembo, Summer Legal Intern, for her research assistance
- Kat Owens, FSL Project Director, for creating this publication

The FSL Project is funded by Women and Gender Equality Canada.



Women and Gender
Equality Canada

Femmes et Égalité
des genres Canada

Canada

Why Measure Impact?

Choosing how we measure impact helps us identify our goals and examine our value judgments about who and what we prioritize

Measuring impact helps us to figure out whether litigation has achieved our goals, and what additional work needs to be done

Measuring impact can help us make strategic decisions moving forward, thinking about whether litigation is appropriate in a particular case and how to increase the effectiveness of our efforts

Looking for Impact

Below are five key levels of impact for feminist strategic litigation, and potential sources of impact to consider. When looking at these levels of impact, it is important to keep in mind that:

- Impact can be found in the process and the outcome of the case
- Impact can be positive, negative, or neutral
- Impact can change over time
- Litigation is rarely the only form of advocacy in play, so identify other forms of advocacy being used - both by your organization and by other actors - and think about their impact



Impact On Individuals and Broader Communities

Impact of the remedy

Impact of any policy changes

Impact of the process and being involved

Impact on communities involved or facing similar challenges

Impact on communities not immediately involved



Legal Impact

Outcome of the case

Precedent set

Feminist or equality arguments adopted

Impact on legal culture



Impact on Legislation, Regulations, and Policy

Reversal or removal of policy

Enforcement of existing policy

Creation of new policy



Impact on Public Discourse and Perception

Framing or reframing of issues

Media coverage

Social media engagement

Academic commentary

Other engagement

Backlash



Impact on Social Movements

New supporters or relationships

Connections with movement actors

Connections with influential actors

Impact on organizational capacity or credibility

Income Assistance Cases Timeline



Beaudette v. Ontario
Horvath v. Ontario
LEAF Support for
Test Cases
Supreme Court
of Ontario

Schachter v. Canada
LEAF as a Party
to the Case
Federal Court
of Appeal

Falkiner v. Ontario
LEAF Intervention
Ontario Court
of Appeal

Lesiuk v. Canada
LEAF Intervention
Federal Court
of Appeal

1986

1988

1990

1992

2002

2003

2017

Schachter v. Canada
LEAF as a Party
to the Case
Federal Court

Schachter v. Canada
LEAF as a Party
to the Case
Supreme Court
of Canada

Miller v. Canada
LEAF Intervention
Federal Court
of Appeal

Broomer v. Ontario
Coalition
Intervention
Ontario
Divisional Court

**Sparks v. Nova
Scotia**
LEAF Intervention
with Ms. Sparks
Nova Scotia
Court of Appeal

Beaudette v. Ontario (1986)

Horvath v. Ontario (1986)

Facts: These cases challenged a regulation under Ontario's *Family Benefits Act*, which only granted benefits to those who were described as "living as a single person" – also known as the "spouse-in-the-house" test. As a result, it denied benefits to women in relationships regardless of whether their partner actually lived with them or had a legal responsibility to them or the children.

Main issue: Does the regulation violate equality rights under the *Charter*?

LEAF Support for Test Cases

Advocacy: LEAF argued that the test discriminated against women and failed to capture the lived realities of single and/or low-income mothers. It was rooted in stereotypes of the "deserving" sole support mother and of women as economically dependent on men. It also punished women who did not fit into the nuclear, heteronormative family model.

Outcome: In response to this case and law reform advocacy by LEAF and other organizations, the Government of Ontario amended the law. Single parents who began living with a partner would only have their benefits cut off after three years of living with that partner if they could not demonstrate that they were not in a spousal relationship. The changes also prohibited consideration of sexual factors.



Impact On Individuals and Broader Communities

Women receiving social assistance saw marginal improvements to their access

The burden continued to be on recipients to prove, albeit after three years, that they did not have a spouse

The ban on considering sexual factors respected privacy, but also took away a tool for some women to argue they were not in a spousal relationship



Legal Impact

Previous attempts to make human rights complaints had not seen success, but the coming into force of the *Charter* allowed LEAF to more effectively make an adverse impact discrimination claim



Impact on Legislation, Regulations, and Policy

The Ontario government responded to the case by reaching out for settlement discussions

There was no clear policy that would satisfy both women's economic independence, and the government's concerns about cost and abuse

In 1995, a new government reinstated the "spouse in the house" test



Impact on Public Discourse and Perception

No documented impact on public discourse and perception



Impact on Social Movements

This case built on work undertaken by women's groups and anti-poverty groups to lobby for change to the regulation

Schachter v. Canada (1988, 1990, 1992)

Facts: Under the *Unemployment Insurance Act, 1971*, biological mothers and adoptive parents could receive benefits for 15 weeks, but biological fathers were ineligible for benefits. Shalom Schachter's application for benefits as a biological father was denied. He brought a claim to the Federal Court, arguing that the denial of benefits violated his equality rights. The case then went to the Federal Court of Appeal and the Supreme Court of Canada.

Main issue: Did the denial of benefits to biological fathers violate s. 15 of the *Charter*? If so, could the Court extend the legislation to apply more broadly so it would comply with the *Charter*?

LEAF as a Party to the Case

Advocacy: LEAF's arguments focused on the needs of biological mothers, and the disadvantages faced by women who bore the burden of providing childcare. LEAF argued that striking down the benefits scheme because it was under-inclusive would harm women's equality. Instead, the Court should extend the benefits to cover biological fathers as well.

Outcome: Both lower courts held that the *Act* violated s. 15 of the *Charter* and extended the benefits. The Supreme Court, however, decided not to extend the benefits to biological parents. Instead, the Court said that the provision was invalid, but would continue to operate for a period of time so Parliament could decide what to do.



Impact On Individuals and Broader Communities

Biological parents gained access to new benefits

Adoptive parents saw a decrease in the amount of benefits available to them



Legal Impact

By calling evidence and making arguments at the trial level, LEAF was able to shape the trial record and achieve legal victories at the Federal Court and Federal Court of Appeal

The Supreme Court, however, did not adopt LEAF's arguments on extending the benefits



Impact on Legislation, Regulations, and Policy

Parliament eventually conceded the legislation was unconstitutional

Parliament maintained maternity benefits

Parliament introduced a new 10-week parental leave which could be split between biological parents

Parliament decreased the benefits available to adoptive parents to 10 weeks



Impact on Public Discourse and Perception

LEAF's involvement introduced women's equality into the case, which had initially been presented as a request for a gender neutral law

The media, however, continued to focus on gender neutrality as the theme



Impact on Social Movements

No documented impact on social movements

Falkiner v. Ontario (2002)

Facts: From 1987-1995, a person became a “spouse” and lost their eligibility for social assistance if they had lived with another person for at least three years. The government then amended that definition so that, once a person moved in with another individual of the opposite sex, they were presumed to be spouses unless they could prove otherwise. The Social Assistance Review Board and the Divisional Court held that the new definition violated s. 15 of the *Charter* and could not be saved under s. 1. The government appealed to the Ontario Court of Appeal.

Main issue: Does the definition violate equality rights under the *Charter*?

LEAF Intervention

Advocacy: LEAF argued that the changed definition violated s. 15 of the *Charter* as they discriminated based on sex, and status as a single mother on social assistance. LEAF also argued that the definition violated s. 7 of the *Charter*, by depriving low-income women of economic support for basic survival, violating their privacy, and placing women at increased risk of intimate partner violence.

Outcome: The Court held that the definition violated s. 15 of the *Charter*, as it discriminated based on sex, marital status, and receipt of social assistance. This was the first time the Court recognized receipt of social assistance as an analogous ground under the *Charter*.



Impact On Individuals and Broader Communities

The decision solved the narrow problem of an expanded definition of spouse, but left in place the problematic assumption that a domestic relationship necessarily means two people are sharing incomes

Social assistance levels continue to be inadequate, contributing to inequality for recipients



Legal Impact

The Court recognized the disproportionate number of single mothers receiving social assistance

The Court recognized receipt of social assistance as an analogous ground, but courts refuse to recognize poverty as an analogous ground

The reasoning took a non-intersectional approach to a clearly intersectional claim



Impact on Legislation, Regulations, and Policy

The government implemented a new, less intrusive questionnaire for determining whether a person was a “spouse”

Lawyers for the women who challenged the policy said they believed the new policy was also unconstitutional



Impact on Public Discourse and Perception

No documented impact on public discourse and perception



Impact on Social Movements

No documented impact on social movements

Miller v. Canada (2002)

Facts: Joanna Miller applied for and received 25 weeks of maternity and parental benefits. After her employer told her that her position was no longer available, Ms. Miller applied for regular unemployment benefits. She was only granted 15 weeks instead of 40 weeks, because the government subtracted 25 weeks for the maternity and parental benefits she had already received. Ms. Miller appealed to the Federal Court of Appeal, arguing that this violated her equality rights.

Main issue: Does reducing or denying women unemployment benefits where they have received maternity or parental benefits violate s. 15 of the *Charter*?

LEAF Intervention

Advocacy: LEAF argued that the benefits scheme violated s. 15 as it discriminated based on sex and family/parental status. It used employed women's unique childbearing capacity and their socially-sanctioned role as primary caregivers to deprive them of benefits otherwise available to employed people. Instead of using maternity and parental benefits to support childbirth and parenting responsibilities, women would be forced to use them to search for employment.

Outcome: The Court held that it was required to follow a previous decision, which had found that the provision did not violate s. 15. As a result, it dismissed Ms. Miller's appeal.



Impact On Individuals and Broader Communities

Women who had received maternity or parental benefits continued to have those counted against their eligibility for employment benefits



Legal Impact

The court did not consider LEAF's arguments, instead finding that it had to follow a previous decision



Impact on Legislation, Regulations, and Policy

No document impact on legislation, regulations, and policy



Impact on Public Discourse and Perception

No documented impact on public discourse and perception



Impact on Social Movements

No documented impact on social movements

Lesiuk v. Canada (2003)

Facts: Kelly Lesiuk worked part-time as a nurse in Brandon, Manitoba. After her husband got a job in Winnipeg, she moved there and applied for employment insurance (EI) and then maternity benefits. She was turned down for both because the Employment Insurance Act required her to have worked 700 hours, but she had only worked 667 hours. She appealed the decision to an Umpire, who held that the eligibility criteria violated s. 15 of the *Charter* as they discriminated based on sex. The government applied to the Federal Court of Appeal for judicial review.

Main issue: Did the eligibility requirements, which effectively prevented part-time workers from getting EI, violate the *Charter*?

LEAF Intervention

Advocacy: LEAF argued that hours-based eligibility requirement disproportionately excluded women from EI. It preferred “male”-modelled, full-time, full-year paid work over women’s paid and unpaid work. Denying benefits negatively impacted women’s economic well-being, particularly for lone parents, recent immigrants, Indigenous women, racialized women, and women with disabilities.

Outcome: The Court accepted that Ms. Lesiuk had been treated differently based on her sex and parental status. However, the Court found that the requirement did not create or reinforce stereotypes or undermine Ms. Lesiuk’s human dignity - so it did not violate the *Charter*.



Impact On Individuals and Broader Communities

The decision to deny Ms. Lesiuk benefits caused significant economic hardships to Ms. Lesiuk and her family

The 2000 policy change meant that, moving forward, women in Ms. Lesiuk's position would be eligible for maternity benefits



Legal Impact

The Court took a much more formal approach to equality than in previous adverse effects discrimination cases

The Court said that the remedy Ms. Lesiuk and LEAF wanted needed to be obtained through Parliament and not the courts



Impact on Legislation, Regulations, and Policy

In 2000, the government reduced the hours requirement for maternity benefits from 700 to 600



Impact on Public Discourse and Perception

No documented impact on public discourse and perception



Impact on Social Movements

No documented impact on social movements

Broomer v. Ontario (2003)

Facts: Mr. Broomer and Mr. Beauparlant were convicted of welfare fraud for failing to fully report payments they received from the Workers' Compensation Board. In Ontario, individuals convicted of welfare fraud faced a lifetime ban on receiving social assistance. Unable to access social assistance, the two men suffered significant economic hardship. They challenged the ban before the Ontario Divisional Court.

Main issue: Did the lifetime ban on receiving social assistance after a conviction for welfare fraud violate the *Charter*?

Coalition Intervention

Advocacy: LEAF partnered with the Charter Committee on Poverty Issues; the Canadian Association of Elizabeth Fry Societies; the DisAbled Women's Network (DAWN) Canada; the Income Security Advocacy Centre; the Steering Committee on Social Assistance; and the Ontario Social Safety Network. The Coalition argued that the ban infringed s. 15 because it discriminated against individuals who were in need and required social assistance – reinforcing the discriminatory belief that those who require social assistance are morally inferior and undeserving of support.

Outcome: Prior to the hearing, a newly-elected provincial government decided to repeal the lifetime ban. As a result, the action was withdrawn.



Impact On Individuals and Broader Communities

Individuals convicted of welfare fraud in Ontario – and their families, who can rely on their social assistance payments – are no longer banned for life from accessing social assistance

Social assistance rates in Ontario remain well below the poverty line



Legal Impact

No documented legal impact



Impact on Legislation, Regulations, and Policy

The government repealed the lifetime ban



Impact on Public Discourse and Perception

No documented impact on public discourse and perception



Impact on Social Movements

No documented impact on social movements

Sparks v. Nova Scotia (2017)

Facts: The Sparks family received income assistance, including personal allowances for Mr. and Ms. Sparks and a shelter allowance, in one cheque payable to Mr. Sparks. A caseworker found that Mr. Sparks had failed to comply with the job search requirements of Nova Scotia's employment services program by failing to attend an appointment with his employment counsellor. As a result, the family's entire income assistance was suspended. This suspension was affirmed by the Nova Scotia Assistance Appeal Board and upheld by the Nova Scotia Supreme Court.

Main issue: If a parent in a family fails to make sufficient efforts to secure employment, should his spouse and children also be penalized?

LEAF Intervention with Ms. Sparks

Advocacy: LEAF and Ms. Sparks argued that, where a person unreasonably refused to participate in employment services, only that person's income assistance should be suspended – and not the income assistance for the entire family. Cutting off all income assistance had a disproportionate impact on children and caregivers.

Outcome: The Nova Scotia Court of Appeal held that only Mr. Sparks' personal allowance should have been suspended. Cutting off assistance for the entire family had the effect of punishing people living in poverty. The disproportionate impact of poverty on African Nova Scotian and Indigenous communities was an important factor in the Court's decision.



Impact On Individuals and Broader Communities

Ms. Sparks and her family faced financial difficulties during the ongoing legal battle, but she felt proud and happy of her successful efforts to obtain justice

Entire families should no longer have their income assistance cut off where one member fails to comply with job search requirements



Legal Impact

The Court highlighted the role of social justice considerations in statutory interpretation



Impact on Legislation, Regulations, and Policy

The Court's ruling meant that a failure to comply with job search requirements in the regulation did not mean that a whole family's income assistance should be cut off

However, the ruling did not address other provisions in the regulation which could punish families in the same way



Impact on Public Discourse and Perception

No documented impact on public discourse and perception



Impact on Social Movements

No documented impact on social movements

Moving Forward



Positive Takeaways

Litigation aimed at specific provisions or government action linked to social welfare has seen some success

Governments have made policy and administrative reforms in response to threatened litigation

Even where litigation has been unsuccessful, governments have made positive changes



Remaining Challenges

Litigation successes in this area have largely remained narrow in scope, with broader structural problems (such as the inadequacy of social assistance rates) remaining

Cases have seen victories for some accompanied by losses for others

Policy reforms remain vulnerable to changes in government or fiscal realities



Key Lessons

Losses in the courtroom can still lead to political victories

Victories may need to be defended as political and fiscal climates change

Legal or policy outcomes which benefit one group can have negative consequences for other individuals or groups – and this must be addressed by those using litigation

Litigation may be better suited to challenging specific problems or government actions than arguing for changes to entire policies, regimes, or structures

Resources Consulted

- Blair Rhodes, “Court scolds Nova Scotia government for treatment of family on assistance” (2017), online: [CBC](#)
- Brenda Cossman & Bruce Ryder, “What is Marriage-Like Like? The Irrelevance of Conjuality” (2001) 18:2 Can J Fam L 269
- Caroline Hodes, “Dignity and the Conditions of Truth: What Equality Needs from Law” (2007) 19:2 Can J Women & L 273
- Christopher P Manfredi, *Feminist Activism in the Supreme Court: Legal Mobilization and the Women’s Legal Education and Action Fund* (UBC Press, 2005)
- Daphne Gilbert & Diana Majury, “Critical Comparisons: The Supreme Court of Canada Dumps Section 15” (2006) 24:1 Windsor YB Access Just 111
- Diana Majury, “The Charter, Equality Rights, and Women: Equivocation and Celebration” (2002) 40:3 Osgoode Hall Law Journal 297
- Gillian Calder, “Recent Changes to the Maternity and Parental Leave Benefits Regime as a Case Study: The Impact of Globalization on the Delivery of Social Programs in Canada” (2003) 15:2 CJWL 342
- Jennie Abell, “Poverty and Social Justice at the Supreme Court during the McLachlin Years: Slipsliding Away” (2010) 50 SCLR (2d) 257
- Jennifer Taylor and Stewart McKelvey, “Statutory Interpretation & Social Justice” (2017), online: [CanLII Connects](#)
- Kerri A. Froc, “Commentary on Canada (Attorney General) v. Lesiuk” (2003), online: [NAWL](#)
- Laura Pottie & Lorne Sossin, “Demystifying the Boundaries of Public Law: Policy, Discretion, and Social Welfare” (2005) 38:1 UBC L Rev 147
- “Ontario drops 'spouse in the house' appeal” (2004), online: [CBC](#)
- Shelley A M Gavigan, “Paradise Lost, Paradox Revisited: The Implications of Familial Ideology for Feminist, Lesbian, and Gay Engagement to Law” (1993) 31:3 Osgoode Hall L J 589
- Shelley A M Gavigan & Dorothy E Chunn, “From Mothers’ Allowance to Mothers Need Not Apply: Canadian Welfare Law as Liberal and Neo-Liberal Reforms Law and Feminism” (2007) 45:4 Osgoode Hall LJ 733
- Sherene Razack, *Canadian feminism and the law: the Women’s Legal Education and Action Fund and the pursuit of equality* (Toronto, Canada: Second Story Press, 1991)