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WOMEN'S LEGAL  
EDUCATION & ACTION FUND  
FONDS D'ACTION ET D'ÉDUCATION  
JURIDIQUE POUR LES FEMMES

## **LEAF to appear before Supreme Court to support equality, dignity, and privacy rights of sexual assault complainants**

**August 5, 2021** – Ambushing sexual assault complainants with their private records during a trial harms access to justice and equality rights, says the Women’s Legal Education and Action Fund (LEAF).

Last week, the Supreme Court of Canada determined that LEAF can make submissions to the Court as an intervener in [A.S. v. Her Majesty the Queen](#). A.S. will be heard alongside another case on October 5 and 6, 2021.

The two cases are constitutional challenges to the legal framework governing what happens when an accused person has a sexual assault complainant’s private records in their possession, and wants to use those records at trial. LEAF will argue that the framework is constitutional, as it enhances the equality rights of complainants while respecting the accused’s right to full answer and defence.

“Sexual assault complainants are deeply impacted by the use of their private records,” says Kat Owens, Project Director at LEAF. “The challenged legal framework recognizes and responds to that reality, and promotes the equality, dignity, and privacy rights of complainants.”

Under the framework, an accused person who has possession of a complainant’s private records (such as text messages, photographs, and medical records) cannot surprise the complainant with these records during a trial. Instead, the accused person must ask the judge to hold a separate hearing and decide whether or not to allow the records to be used in court. The judge will consider different factors in making the decision, including factors supporting the equality rights of complainants. Complainants have the right to participate in these hearings, and to have access to independent counsel to help them participate.

“We know that sexual assault disproportionately impacts Indigenous women, racialized women, women living with disabilities, and trans women,” says Owens. “Choosing hearings with meaningful participation for complainants over ambush tactics grounded in harmful stereotypes enhances their equality rights.”

LEAF is grateful to its counsel, Kelley Bryan (PBP Lawyers) and Karen Steward, for their *pro bono* representation in this matter. LEAF is also grateful to the members of the case committee that are guiding, informing, and supporting this intervention: Frances Chapman (Lakehead University), Elaine Craig (Dalhousie University), and Karen Segal (Allevato Quail & Roy).

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## **About the Women's Legal Education and Action Fund (LEAF)**

The Women's Legal Education and Action Fund (LEAF) is a national not-for-profit that works to advance gender equality in Canada through litigation, law reform, and public legal education.

Since 1985, LEAF has intervened in more than 100 cases that have helped shape the *Canadian Charter of Rights and Freedoms*, responded to violence against women and gender diverse people, pushed back against discrimination in the workplace, allowed access to reproductive freedoms, and provided improved maternity benefits, spousal support, and the right to pay equity.

LEAF understands that women and gender diverse individuals in Canada experience discrimination in different ways, and builds partnerships across communities to inform our understanding of how race, gender identity, sexual orientation, (dis)ability, class, and other intersectional identities underlie legal structures that perpetuate inequality, discrimination, and harm.