

Final Report – Janet Lunau, Legal Intern at the *Women’s Legal Education and Action Fund (LEAF)*

This summer, I was fortunate to receive the Asper Centre Internship, which allowed me to spend 12 weeks working with the Women’s Legal Education and Action Fund (LEAF). LEAF is a not-for-profit organization that was founded in 1985, with the mandate to advance women’s rights through litigation and education. In the past 27 years, LEAF has intervened in over 150 cases at all levels of court, to make equality arguments and point out potential implications of court decisions on women’s rights. In its litigation function, LEAF has intervened in high-profile cases that have helped transform the equality rights landscape, including *M. v H.*, *R v J.A.*, and *R v D.A.I.* It was inspiring to work with an organization that has been involved in cases I have studied in school, and to help advocate for such important causes. More information about LEAF can be found on their website at www.leaf.ca.

I spent my summer working on three major projects: One which dealt with legal parentage in the context of assisted reproduction; another which looked at whether differences arising from federalism could constitute discrimination in the context of child support; and a third project updating LEAF’s catalogue of recent Charter cases.

Parentage and Assisted Reproduction

The first project developed out of work I had been doing with LEAF on a volunteer basis since January. LEAF had recently learned about a case, *deBlois v Lavigne* that was scheduled for trial, which involved questions about legal parentage arising from assisted reproduction. In that case, a woman conceived a child using sperm from a known donor, with whom she had a very clear written agreement stipulating she was to be the sole parent of any resulting child. After the child’s birth, the donor reneged on his agreement, and sought recognition of his legal parentage along with extensive custody and access rights.

On this project, I did research into case law and secondary sources to help LEAF prepare for a possible intervention at the trial level. This posed unique problems, because LEAF rarely intervenes at the trial level – they typically wait until a case reaches an appeal court or the Supreme Court of Canada. However, because of the unique facts of this case, and the reality that access awarded at trial level is seldom reversed on appeal, LEAF felt compelled to consider an early intervention. It was exciting work on such an important project with a tight timeline. I drafted a case proposal to present to LEAF’s Board of Directors, which outlined legal arguments we would want to make at trial. These arguments focused on the importance of intentionality over biology in determining legal parentage in the context of assisted reproduction. In particular, we pointed out recent changes to legislation in other provinces that protects the users of assisted reproduction from unwanted parentage claims by donors. We also argued that people use assisted reproduction necessarily locate parenthood outside of biology, because they must rely on the biological contributions of others to procreate. Therefore, privileging biology in this

context places the users of assisted reproduction in precarious parentage situations that unfairly disadvantage them.

LEAF ultimately decided not to intervene in *deBlois v Lavigne* due to budgetary constraints. LEAF recognizes that these cases will continue to arise, and I believe the work I did this summer will be of assistance in any future intervention.

Federalism and Child Support

I also prepared arguments for a possible intervention in a second case, *Droit de la famille – 111526*. This case involves a s.15 challenge to the constitutionality of the Quebec child support guidelines, on the basis that they discriminate against divorced or divorcing mothers based on province of residence. While the federal government has its own guidelines (which apply in all other provinces), it chose as an exercise of cooperative federalism to give provinces the option to create their own guidelines. Currently, Quebec is the only province that exercises this option. The claimants in this case are divorced or divorcing mothers who claim that the Quebec guidelines are discriminatory, because in many cases they give custodial parents much lower payments than they would receive under the federal guidelines.

This case raises interesting questions about whether differences arising from federalism can constitute discrimination. It highlights the tension between two parts of the constitution – the right to equality under the Charter, and the protection of inter-provincial differences as a cornerstone of federalism. In particular, it is unclear whether and when differences arising from federalism can constitute discrimination for the purpose of s.15. As part of my research, I sought to answer this question, and to develop arguments to advance the claimants' position. Work on this project is ongoing, and I will continue collaborating with interested advocates and (hopefully) lawyers involved in the case throughout the fall semester.

Charter Cases Catalogue

In my final project, I helped LEAF update their catalogue of Charter cases. I reviewed all the recent equality and rights-focused cases from the Ontario Court of Appeal and Supreme Court of Canada. I also provided information about cases that were scheduled to be heard or awaiting decisions. This gave me a great overview of the current state of equality rights caselaw, and I believe it will help LEAF stay up-to-date in their field for the next little while.

Other Exciting Parts of the Summer

In addition to my projects, I got to sit in on cases at the Ontario Court of Appeal and the Supreme Court of Canada. At the Ontario Court of Appeal case, in which LEAF was interested but not intervening, I was able to speak with the litigator before and after the hearing. We talked about the various legal arguments and our impressions of the judges' reactions. This experience sparked an interest in litigation that will stick with me for the

future. At the Supreme Court of Canada, I sat in on the closed hearing of *R v Ryan*. This was a case in which LEAF was intervening, and it was exciting to see arguments I had read beforehand in LEAF's factum presented to the panel. The judge's questions were impressive and to-the-point. I am awaiting the Court's release of their decision with great interest.

I also got to meet and work with incredible people. During my internship, LEAF's long-time legal assistant Marian Ali was awarded the Diamond Jubilee Medal in recognition of her outstanding contributions to Canada. Marian is an inspiration, and someone I am fortunate to have worked with. I am also enjoying ongoing working relationships with my supervisors and colleagues from this summer. From these lasting connections, I am continuing to learn about the field of equality rights in Canada.

I am very grateful to Cheryl Milne and the Asper Centre for making this experience possible. I got to develop my legal research and writing skills by working on projects that mean a great deal to me, and make connections that I hope will last for years to come. This is truly a rare opportunity that I am confident will be a highlight of my law school experience, and a significant influence on my career.