



By Alison Brewin & Amber Dean

If we consider the question “should same-sex couples be given the legal right to marry” from the perspective of the values and mandate of West Coast LEAF, the answer is obviously “yes”! In fact, in our submission to the House of Commons Standing Committee on Justice and Human Rights last April, we argued that there are really no legal grounds upon which the government could conceivably continue to exclude same sex couples from the right to marry.

Given the government’s equality obligations under Section 15 of the *Charter* and the precedents set in other cases in which LEAF has intervened (such as *Eldridge*, *Vriend*, and *Law*), providing same sex couples with the right to marry is an obvious and necessary step in the pursuit of justice and equality. Fortunately, the Courts of Appeal in Ontario, British Columbia and Quebec have agreed, and in two of these provinces (BC & ON) gay and lesbian couples have been tying the knot in droves since the courts announced their decisions earlier this year.

After the Supreme Court has examined the draft bill put forth by the federal government, the bill be debated through the usual legislative process. Assuming that the government intends to live up to its obligations under the *Charter*, it seems likely that same sex couples will soon be able to

I Do...I Don't: Problems and Possibilities of State Recognition of Same Sex Unions

legally marry across the country (yes Mr. Klein, even in Alberta!).

However, when viewed through the framework of *women's* equality, legislation that would permit same sex marriage is only one in a series of issues related to marriage that need to be examined and addressed. While legalizing same sex marriage will allow some women to choose a partner of the same sex without forfeiting the many social and economic benefits associated with the institution of marriage, the fact remains that traditional heterosexual marriage has long been a perilous institution for women. Women have greater responsibility for the care of children and elderly loved ones, for example, and women are more vulnerable to emotional, physical and financial abuse at the hands of their spouse. Further, if the

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marriage breaks down, women are more vulnerable to poverty than their male partners and are therefore more dependent on the marriage itself. These conditions exist for women in heterosexual marriages as a result of historical stereotypes about women, family and the dichotomy between the private and public spheres.

By offering another valid model for family relationships through legalization of same sex marriage, the government can begin to address the inequities for women that exist in marriage as it is presently defined. But to ensure women’s equality, it is also necessary for the government to remedy the more general inequities created by traditional heterosexual marriage, which would involve at a minimum the implementation of universal child care; the provision of adequate family law services and legal aid for women experiencing marital breakdown; upholding its obligations under the *UN Convention for the Elimination of Discrimination Against Women* (CEDAW); ensuring that same sex couples are also granted adoption rights; and ensuring adequate services and support for women victimized by violence at the hands of a spouse or partner. Given the recent giant strides away from these remedies taken by our current provincial government, it would seem that achieving anything like equality for women is becoming a more and more distant reality.

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LEAF and Coalition Partners Fight for Privacy Rights in Civil Litigation

By Susan Griffin

This summer LEAF joined with the British Columbia Coalition of People With Disabilities (BCCPD) and obtained leave to intervene in an appeal concerning production of documents in private litigation, in the case of *Smith v. Funk*. Susan Griffin represented LEAF and the BCCPD on the appeal. The appeal concerned the ability of a defendant to have access to the private documents of a plaintiff that are held by a third party. Prior review of such documents would allow for the editing of irrelevant or privileged private material before they are turned over to the defendant. In the *Smith v. Funk* case, the defendant was seeking an order that the government produce the plaintiff's social assistance records directly to the defendant. The plaintiff was suing the defendant in relation to personal injuries suffered in a motor vehicle accident.

The defendant argued that when it comes to a court's consideration of an application for production of non-party records, a litigant's privacy interests cannot be considered, as the litigant has forfeited rights to privacy. LEAF and the BCCPD opposed the appeal and pointed out that the defendant's position could not only have widespread implications for all litigants, it was of particular concern to women and the disabled. LEAF and the BCCPD pointed out that women and the disabled, due to issues of poverty, health, and sexual assault, are more heavily documented by third parties and so they will be more seriously impacted by the loss of privacy in these records. This loss of privacy will create a deterrent to accessing services and the courts, and can therefore infringe upon the right to equality. This result has been noted

by academics in several studies and has also been recognized by the Supreme Court of Canada in the case of *M. (A.) v. Ryan*. Furthermore, non-party records may be fraught with inaccuracies and may be of very little probative value, as noted in a recent study of health records funded by The Law Foundation of British Columbia.

In the *Smith v. Funk* case, the Court of Appeal dismissed the appeals as moot. The decision on appeal represented victory for LEAF and the BCCPD in that the defendant's argument was not accepted.

Susan Griffin is a lawyer with Fraser Milner Casgrain. For the complete story of the Smith v. Funk case and its implications, visit the West Coast LEAF website at www.westcoastleaf.org

I do, I don't...continued

While legalizing same sex marriage is a step towards equality, there are common law rules under the *Income Tax Act* (ITA) that pose a threat to the civil and privacy rights of all citizens, including women. These rules allow the government to presume that two people living together are a couple, regardless (now) of their sex. This is perceived as burdensome to some and coercive to others, particularly since many members of the queer community (and some straight people) would like to maintain the right to define and live out their relationships outside a mainstream understanding of couplehood.

The counter argument to concerns about taxes and common

law relationships, however, is that the recognition of common law relationships allows women to access the 'protection' of family law if the relationship breaks down. But the current state of family law in Canada actually provides little or no protection to women without legal representation. Many women are, in fact, having their lives turned upside-down by the system. This is another lens through which the call for same sex marriage must be examined – family breakdown and

Recognition of same sex marriage brings the State firmly into queer relationships – for the good and the bad.

the resulting legal implications have been disastrous for many women in the past decade. Recognition of same sex marriage brings the State firmly into queer relationships – for the good and the bad.

Same sex marriage is an important step towards guaranteeing equality as set out in the *Charter*. However, it is equally important that the government address women's continued inequality in traditional heterosexual marriage and the potential for women and people living in poverty to experience disproportionate adverse effects under the ITA and family law systems. If these other issues remain unaddressed, equality will unfortunately continue to be an imagined, rather than a lived, reality.

On October 18, 1929, the English Privy Council overturned a Supreme Court of Canada decision and declared that women were legally persons. That day was an important legal victory for women and marked a turning point in the struggle for equality. West Coast LEAF invites you to join us in celebrating that victory and the achievements of women past and present who have fought for equal rights.

Victoria

9th Annual Person's Day Breakfast
Wednesday October 15, 2003
7:00 am – 9:00 am

Princess Mary Restaurant
358 Harbour Road, Victoria

Guest Speaker: Martha Jackman

Martha Jackman is a professor of constitutional law at the Faculty of Law, University of Ottawa, where she has taught in the French Common Law program since 1988, and is a visiting professor at the University of Victoria for the 2003-2004 academic term. She has published and lectured extensively in the areas of federalism, equality, poverty, social and economic rights and the Charter and is regularly involved in lobbying, litigation, and continuing judicial and legal education efforts on these issues.

Tickets are \$30 in advance by October 13th.
Contact Bridget den Toom at (250) 388-4433 or
email info@westcoastleaf.org

Langley

Person's Day Reception
Thursday October 16, 2003
5:30 pm – 7:00 pm

Chocolate Cottage
21488 Old Yale Road, Langley
(near 48th Avenue & 216th Street)

Guest Speaker: Jean Scott

At 91 years of age, Jean Scott shows no signs of slowing down. The passionate women's rights activist was a contemporary of women like Nelly McClung and others who fought the now famous Person's Case. Jean is a recipient of the Famous Five Commemorative Medal, an honour bestowed by the Governor General in commemoration of the Person's Case.

By suggested donation of \$5 - \$20
RSVP to (604) 684-8772 or email
info@westcoastleaf.org by October 10th

West Coast LEAF's AGM

West Coast LEAF held its Annual General Meeting in June 2003. Guest speaker, Cynthia Flood, an author and pro-choice activist, gave the members and guests in attendance an interesting retrospective of the pro-choice movement in British Columbia, linking it to the work of West Coast LEAF in the recent *Demers* (access to abortion services) case. Along with the usual society business, members helped us recognize the hard work of the many volunteers who assisted the organization over the year and elected a new Board of Directors.

West Coast LEAF expresses a heart-felt thank you to outgoing board members who finished their terms for their years of dedication and service to the organization. Thanks to Penny Bain, Beverley Burns, Xiaoping Li, Ramona Reynolds, Jennifer Scott, Theresa Stowe, and Patricia Wejr.

2003/4 Board of Directors:

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(Guest of the Board)

West Coast LEAF Launches the Joy & Ken Williams Education Fund

West Coast Legal Education and Action Fund (LEAF) is pleased to announce that the Joy and Ken Williams Education Fund has been established at the VanCity Community Foundation.

The education endowment fund is the result of the longstanding commitment of Dr. Ken Williams, a West Coast LEAF supporter, to honour the memory of his late wife, Joy, who was passionate about education and women's issues.

The Joy and Ken Williams Education Fund has been started by West Coast LEAF with an initial capital investment of \$8,000. As the fund grows, its proceeds will support the public legal education work of West Coast LEAF in schools and communities around the province.

Donations to the Joy and Ken Williams Education Fund at the VanCity Community Foundation can be made via West Coast LEAF or at any VanCity Credit Union.

West Coast LEAF Association

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LEAFlet is the newsletter of the B.C. branch of the Women's Legal Education and Action Fund. *LEAFlet* is published four times a year. Please address all correspondence to *LEAFlet* Editor. E-mail: programdirector@westcoastleaf.org

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LEAF is a national organization committed to promoting women's equality before Canadian courts, government agencies and human rights commissions; and to providing public legal education on the issue of equality-rights for women.

West Coast LEAF is supported by



Thank you!

Donors and members between
May 20th, 2003 and September 12th, 2003

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West Coast LEAF (Legal Education and Action Fund)

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Membership Fees: Regular (voting) \$45
Seniors/Students/Income Assisted \$10
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3 Year Membership
 \$100

I would like to assist WCLEAF in achieving equality for women by making a tax deductible donation:

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Please make all cheques payable to West Coast LEAF Association and mail to:
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YES, you can make a difference...

- Become a LEAF member
- Make a donation
- Volunteer your time.

Are you interested in volunteering with LEAF? What would be your area of interest?

- Fundraising
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- Legal Case Work
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