

# LEAF *let*

The newsletter of West Coast LEAF  
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**ON PERSON'S DAY IN VICTORIA**, and the following day in Nanaimo, West Coast LEAF was proud to welcome founding mother of LEAF, Nancy Ruth, to speak on the past, present and future of our important work. The two events were well-attended by members of both communities. We thank all those who attended, with a special hello to our newest Themis Club members (monthly donors) from the island. The following is an excerpt from Senator Ruth's speech:

This year, we mark the 20th anniversary of constitutional equality rights, and the 30th anniversary of the first UN international conference on women, in Mexico City. They both seem a long time ago. It is a short time too. We are at a threshold, moving from one place to another. A threshold marks an end, and a beginning. We have things to laugh about, and to cry about. The first 20 years of the Charter have gone. Now we know that our Charter life has been and is going to be like life – hard tough diligent slog-ging, with moments of pure ecstasy.

Not one important change in the status of women in Canada has been given to women in Canada. We have had to take change, to make change. That was the case with the patriation of Canada's Constitution. It started in 1980 and ended in 1985 with the coming into force of section 15 on equality rights. This was the last of the constitutional provisions. OUR equality was last thing to come.

We needed to get better wording in section 15, and we did. We needed to name women's equality, and we did in section 28. We needed to enforce these provisions in the courts, and that is what LEAF and West Coast LEAF are doing.

We can toast these achievements at this our 20th anniversary. They led directly to important achievements for women and girls individually, and for the well-being of our society.

In *Andrews v The Law Society of British Columbia et al*, the Supreme Court of Canada agreed with LEAF's



## Senator Nancy Ruth inspires in Victoria & Nanaimo

seminal arguments. That we have a positive right to equality in the substance and the administration of the law. That the disadvantaged, powerless and excluded – are the beneficiaries of these positive rights. Here are some examples of how our laws have changed:

- Sexual harassment is discrimination.
- Discrimination on the basis of pregnancy is recognized.
- Maternity leave benefits have been protected, and parental benefits established in addition.

*A threshold marks an end, and a beginning.*

- A woman's right to choose is just that, a woman's right, it is an equality right.
- Sexual assault is a crime committed overwhelmingly against women and it must be subject to equality considerations.
- Questions about sexual reputation and past sexual conduct interfere with equal access to justice.
- We can say no to sexual advances.

- Spousal support decisions under the *Divorce Act* have to take into account women's economic disadvantage.
- Workplace requirements cannot discriminate against women. And more.

Anniversaries are also times to look forward. Constitutional equality rights have had reach and power – where the courts have been called upon to address the rights of individuals. Or where the shifts in power or resources are between private parties, women's civil, political and cultural rights have been advanced in Canada.

When equality rights come up against governments and budgets, governments prevail. On key social and economic rights lost in the intricacies of their own reasoning. We have big, expensive accountability mechanisms, and no accountability.

Would any of us have predicted that, on the eve of the 20th anniversary of Charter equality rights, the Supreme Court of Canada would agree that a province could overrule a pay equity agreement with women health care workers and continue to discriminate against them? That is what the Court did in *NAPE v. Newfoundland*, a case in which LEAF intervened. The Court did call what happened discrimination. It was justifiable, because Newfoundland said that it was broke in 1991 and could not pay. In the end, the women lost \$80 million from the first discrimination – failure to pay for work of equal value, and from the second discrimination – the court-sanctioned rollback of the settlement agreement. The Court also ordered the women's union to pay the government's legal costs.

Equal pay for work of equal value is one of the earliest campaigns for improvement of women's rights in our lifetime. Governments have accepted, through legislation and enforcement structures, the need to address the wage gap. As LEAF and other women's advocacy groups have proven repeatedly:

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# INSIDE

West Coast LEAF

## STAFF TRANSITIONS AT WEST COAST LEAF

On September 8th, West Coast LEAF said good-bye to Executive Director Audrey M. Johnson. We are happy to say that, while she went far away physically by moving to Toronto, she has not strayed from the LEAF family. Audrey began her post as Executive Director of LEAF National mid-month. We will miss her here at home, but look forward to the renewed energy she brings to our National organization.



*Audrey M. Johnson*

Replacing her at the helm of West Coast LEAF is our Program Director of four years, Alison Brewin. Apart from her deep commitment to the work of the organization, Alison brings to the position a long history of non-profit management, small business skills, and community development work.

In addition, we welcome new Fund Development Coordinator, Natasha Shields. Natasha takes over the amazing work of our much-missed Christine Basque on October 24th. She brings a fund development history with Sierra Legal Defence Fund and the Dr. Peter Centre. Welcome Natasha.



*Natasha Shields*

And we are also very excited to welcome a new Administrative Assistant to the West Coast LEAF team, Christine Conroy. Christine has already established her incredible talent for organizing us all in the two months she has spent with us on contract. Her good humour and talent will ensure things run smoothly for some time to come.



*Christine Conroy*

## EDITORIAL

# Harsha Walia on trafficking and *Bill C-49*

On May 12, 2005 Irwin Cotler, Minister of Justice and Attorney General of Canada, announced the tabling of amendments to the Criminal Code that would prohibit trafficking in persons.

In summary, the proposed amendments of Bill C-49 would create three new indictable offences. The main offence, trafficking in persons, would prohibit anyone from engaging in specified acts for the purpose of exploiting or facilitating the exploitation of a person. The second offence would prohibit anyone from receiving financial or other material benefit resulting from the commission of a trafficking offence. A third offence would prohibit withholding or destroying documents, such as identification or travel documents, for the purpose of committing or facilitating the commission of a trafficking offence.

The politics of anti-trafficking measures has significant impacts on how legislation is created to tackle the issue. A recent report by the Special Rapporteur on Trafficking in women and Women's migration (2000) states that "overwhelmingly, the law continues to be fuelled by moral considerations." The migration of women has been uniformly ignored in the design of anti-trafficking interventions and trafficking has been co-opted as an immigration control measure. Canada currently combats trafficking in humans by relying on certain provisions of the Criminal Code and Immigration and Refugee Protection Act (IRPA). IRPA contains punitive measures for people who have been smuggled or trafficked, including increased powers of detention.

Proposed Bill C 49 reads that "No consent to the activity that forms the subject-matter of a charge of trafficking is valid". Many commentators emphasize the notion of "voluntariness" in all forms of migration. By negating consent, Bill C-49 perpetuates the association that all trafficking is an exploitative and violent experience from which women must be protected regardless of the minimal amount of agency they might possess in such circumstances. The Special Rapporteur calls on Governments to move away from paternalistic approaches that seek to "protect" women to more holistic approaches in which prejudicial institutional arrangements are adjusted so as to reduce vulnerability to trafficking harms.

Sunera Thobani has written, "Women are trafficked through the interplay of the underlying economic and social conditions within the global economy, as well as through the state policies and practices of receiving countries that construct their illegality; and hence their vulnerability to being exploited." Most trafficking harm is actually sustained and supported by inadequate Canadian policy—the Live in Caregiver Program, dependence in family class sponsorships, application fees, and the recent Safe Third Country Agreement signed with the US - that has not responded to the needs of migrant women.

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*Harsha is a writer and activist and works part time at West Coast LEAF.*

# Nancy Ruth

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- unequal wages deprive women of income,
- contribute to the feminization of poverty,
- increase women's financial dependence on men, including in situations where they are at risk of spousal abuse and violence,
- reduce women's pensions and disability benefits; and,
- diminish women's ability to participate fully in society.

LEAF is preparing to intervene in a BC case that will revisit whether governments can roll back equal pay commitments with impunity. BC passed a *Bill 29, Health Services Delivery Improvement Act*, which voided equality provisions of collective agreements in the female-dominat-

ed health sector. The Supreme Court will hear the case in the spring of 2006.

Early next year, the Supreme Court of Canada will hear the Alberta case of *DBS v. SRG*. At issue is whether a father must pay child support to the mother based on increases in his income even though the mother did not apply. The answer will depend on how the Court interprets the Federal Child Support Guidelines under the *Divorce Act*. The Alberta courts have said he must pay more. Courts in other provinces have interpreted the Guidelines to say the opposite.

Fathers' rights activists and parts of the mainstream media have already labeled these awards "retroactive", arguing that such payments create a windfall to custodial mothers and their children that they

don't "deserve". LEAF will seek leave to intervene in this case. LEAF will argue that the Court must interpret the legislation in ways that address sex-based economic disadvantage. If the Court does that, it will be delivering substantive equality. If the Court does not do that, it will be delivering formal equality, treating men and women the same, denying the reality of our lives.

Let's move the 20th anniversary spotlight from the SCC down Wellington Street to Parliament and the federal government. The dominant federal policy in the last 20 years has been another deficit, the national one. It is fair to say that the Federal Gender Plan, and the women who looked to it, are truly buried in the national deficit. One in seven Canadian woman lives below the poverty line. The situation is much worse for single mothers and women over 65, for Aboriginal women, immigrant women, women of colour and women with disabilities. The federal government committed in 1995 to implement gender based analysis into its decision-making. In 2005, GBA is almost entirely still voluntary across government. As the testimony before the House of Commons Standing Committee has made clear, GBA is not happening in key places like the Department of Finance, the Privy Council Office and Treasury Board. So individual ministries are not required to look at gender, and neither are the key central decision-makers.

It's not a pretty picture, is it? It is not what we had in our mind's eye when we changed the Constitution and convened in Mexico, Nairobi and Beijing. It begs the question: what should we do?

I have been sitting in the red Senate chamber, and smaller committee rooms, asking myself the same question. Here's my answer. We have to continue to be a "constituency for change," for equality for women and girls in Canada. We have to be vocal and visible on the things that really matter to us. We don't have to agree on every detail or do it single-handedly. It does not have to take tons of our time or money. We know what works. Women standing up for women works. It is what each of us must do at home, at work, in our social and political lives. Let's "stand up for women", toast our successes and each other, let's make wishes for the future and make them happen.

The Family Court Watch Program grew out of West Coast LEAF's larger Family Law Project. Over the last few years, the Family Law Project has been measuring the impact of the cuts to family law legal aid on women and their ability to access justice.

The first phase of this project centred on our Affidavit Campaign. During this campaign, our volunteers collected sworn affidavits from women who were denied legal aid and had to negotiate the legal system on their own or with very minimal assistance. The evidence we gathered through

these powerful stories clearly reveal the serious impact the legal aid cuts have had on women in British Columbia. In the publication *Legal Aid Denied* (available on our website – [www.westcoastleaf.org](http://www.westcoastleaf.org)) West Coast LEAF was able to present the gender-based implications of the cuts to legal aid.

The Family Court Watch Program is part of the second phase of the Family Law Project. Our goal is to create a formal record of what is happening on a daily basis in BC family courts, particularly to those without legal representation. We

hope to use the statistical information to continue our call for the development of a legal aid system that works for women, and to support equality rights arguments in the Canadian Bar Association test case litigation on the right to civil law legal aid.

Presently we are gearing up for the

implementation of the program. This past summer Jessica Ash, (a Victoria law student) worked on developing a questionnaire for volunteers to fill out as they watch provincial Family Division.

Volunteer law students are completing a training

program this month that will familiarize them with this questionnaire as well as with Family Law and Civil Procedure. This fall will see pairs of volunteers recording activities in the Provincial Court Family Division in two court houses – Victoria and Vancouver – every Wednesday for twelve weeks. At the end of this period we will compile the data and produce a document that we hope will convey another dimension of women's experiences in the present family law system in BC.

MOVING BEYOND ACCESS TO JUSTICE:

## West Coast LEAF Court Watch Program & the Family Law Project

*by Kate Hamm, Law Co-op Student*



# West Coast LEAF in BC classrooms

by Niveria Oliveira, Program Assistant

## “NO MEANS NO”

Amanda Oster, “No Means No” Trainer, travelled to Nelson this past spring to deliver a “Train the Trainer” session which was held at L.V.R. Secondary school. Tamara Martin, L.V.R. Teacher, was instrumental in securing the training space and organizing the event. Adults and students who are committed to equality rights participated in the two day training effectively forming a “No Means No” community in Nelson. West Coast LEAF now has a full compliment of supporters who are actively expanding this public legal education program throughout School District 8. The hiring of a local Program Coordinator will continue this expansion and further strengthen West Coast LEAF’s work throughout the province.

**HAVE YOU JOINED** West Coast LEAF’s Themis Club? A small donation each month helps West Coast LEAF sustain and enhance its important work.

## YOUTH IN THE WORKPLACE

West Coast LEAF is developing a public legal education program to teach youth about their legal rights and responsibilities related to employment. Mirroring the peer to peer delivery model of the “No Means No” program this youth program will engage diverse adolescents in teaching their younger peers about labour legislation and how it applies to them. Ann Bradbury, Curriculum Developer, in collaboration with an Advisory Group is forming the core content of the program. West Coast LEAF hopes to begin pilot sessions within the next school year.

West Coast LEAF’s “Youth in the Workplace” public legal education program has been generously supported by the Vancouver Foundation and the Coast Savings Foundation.



VANCOUVER  
FOUNDATION

**THANK YOU TO THE STATUS OF WOMEN CANADA** for their support for the Family Law Project. SWC has committed funding to the Family Law Project over the next three years. It will support West Coast LEAF’s important work in addressing women’s equality rights issues in family law through law reform, litigation and legal education.



*West Coast LEAF Board and Staff at their annual retreat on Bowen Island, October 1st. Back row left to right: Niveria Oliveira, Eloise Spitzer, Karey Brooks, Suneeta Vyas, Roz Currie, Sabrina Ali, Mary Woo Sims. Middle row: Alison Brewin, Andrea Hilland, Liz Hall. Front row: Amy Francis, Stephanie Fraser, Nitya Iyer, Mary Salaysay.*

# Thank you!

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