



West Coast LEAF NEWS ALERT September 4, 2008

Safe access to abortion services upheld by BC Court of appeals: *R v Watson and Spratt* dismissed

September 4, 2008 - The British Columbia Court of Appeal has upheld the provision of safe access to abortion services in BC by dismissing the appeal *R v Watson and Spratt* today.

Clinic staff, service providers and reproductive rights supporters are relieved and thrilled by the news.

"We're all extremely thrilled and pleased that this has been the result," says Jill Doctoroff, Director of the Elizabeth Bagshaw Women's Clinic. "This is a legal medical procedure happening at an accredited facility, and we're really pleased that medical staff will not be harassed and patients are able to access a medical service in a medical facility with dignity and respect."

"We feel absolute joy and deep satisfaction with this decision today. This decision upholds the right of women to access this legal medical service in a private dignified manner," says Cheryl Davies, vice president of BC Women's Hospital Ambulatory Programs.

Watson and Spratt challenged the Access to Abortion Services Act, which creates a no-protest ("bubble") zone around abortion clinics to allow women access to clinic services free of unwanted approaches by anti-abortion protesters.

Watson and Spratt argued that the bubble zone law violated their Charter right to freedom of expression. A coalition of abortion service providers and pro-choice organizations, including LEAF, intervened to support the legislation. The case was argued last fall.

"I'm happy that we don't have to face the prospect of women suffering under intimidation and harassment anymore," says Joyce Arthur, of the pro-Choice Action Network. "I don't think we're going to go backwards - the Canadian public supports abortion rights."

The Coalition includes the Every Women's Health Centre Society, the Elizabeth Bagshaw Women's Clinic, the B.C. Women's CARE Program (of the B.C. Women's Hospital and Health Centre), The Women's Legal Education and Action Fund (West Coast LEAF) and the Pro-Choice Action Network. Counsel Nitya Iyer of Heenan Blaikie (and West Coast LEAF Board member) represented the Watson Spratt Coalition.

West Coast LEAF strives to make the promise of the Charter a reality for the women of British Columbia.

LEAF is the Women's Legal Education and Action Fund, a national non-profit organization founded in 1985. LEAF works to advance the equality of all women and girls in Canada through litigation, law reform and public education using the *Canadian Charter of Rights and Freedoms*.

In Our Words

In its intervention, The Watson Spratt Coalition (including West Coast LEAF) argued that the bubble zone in the *Access to Abortion Services Act* is appropriate and proportional, stating that the *Act*, "advances the constitutional values of equality, privacy, dignity, liberty and security of the person [ss. 7, 15 and 28 of the *Charter**], and that any infringement of *Charter* rights by the impugned provisions of the *Act* is constitutionally justified under s. 1 of the *Charter*."

Specifically, "the means are **proportional** to the objective sought to be achieved, such that the measures adopted are rationally connected to the legislative objective, they impair 'as little as possible' the right of freedom in question, and there is a **proportionality** between the deleterious effects of the measures and the legislative objective, and also between the **deleterious and salutary effects** of the measures."

In its decision, the BC Court of Appeals concluded:

"The right to express opposition to abortion is a constitutionally protected right. The object of the *Act* is to protect vulnerable women and those who provide for their care to have safe, unimpeded access to health care services. The question is whether the degree to which the *Act* limits the right of those to demonstrate their opposition to abortion and to seek to persuade women to decide against abortion is **disproportionate** to the purpose of the *Act*. The purpose or objective of the *Act* is sufficiently important to justify a limitation on the way in which freedom of expression is exercised in an area adjacent to the facilities providing abortion services. The impugned provisions of the *Act* are crafted in such a way that the '**deleterious**' effects do not outstrip the importance of the objective of the legislation. The objective of the *Act* justifies the limited infringement of freedom of expression in the circumstances."

*1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

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West Coast LEAF works to realize this vision of women's full equality through public legal education, strategic litigation, and law reform.

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