



## **West Coast LEAF NEWS ALERT October 20, 2008**

### **LEAF and West Coast LEAF address Supreme Court of Canada: Urging fairness and equality in separation agreements**

LEAF and West Coast LEAF presented oral arguments in *Rick v. Brandsema* at the Supreme Court of Canada on October 14.

Joanna Radbord, co-counsel in the case, says:

"Nitya Iyer [co-counsel and president of the West Coast LEAF board of directors] was absolutely excellent at the hearing - an articulate, passionate and compelling advocate. We hope that the Supreme Court of Canada will expressly require that spouses make full and fair financial disclosure in negotiating separating agreements, thereby promoting fairness, finality and women's substantive equality."

*Rick v. Brandsema* is a B. C. family law case in which the parties entered a separation agreement that left Mr. Brandsema with substantially more assets than Ms. Rick after 27 years of marriage. Ms. Rick suffered mental health challenges when the agreement was signed and identified herself as a survivor of domestic violence. The trial judge determined that Mr. Brandsema failed to disclose assets and awarded Ms. Rick funds to equalize the property division. The Court of Appeal overturned that result.

West Coast LEAF maintains that separating spouses have a common law duty to provide full and accurate financial disclosure, and when a spouse has exploited the known vulnerabilities of the other to obtain an unfair bargain, the agreement should be set aside as unconscionable.

The intervention in Ms. Rick's appeal to the Supreme Court of Canada urged the court to include considerations of substantive sex equality (s. 15(1), *Charter of Rights and Freedoms*\*) in development of common law principles around separation agreements.

"The constitutional value of sex equality mandates recognition of the disproportionately negative economic impact of family breakdown on women, and of the systemic disadvantages experienced by women relative to men in the negotiation of separation agreements," says Radbord. "LEAF submits that this recognition should inform the Court's determination of what constitutes an unconscionable bargain, and when a separation agreement should be set aside on grounds of financial misrepresentation or unconscionability."

For a case summary of *Rick v. Brandsema* by the Supreme Court of Canada, please go

[here](#).

\*s. 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.

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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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