

For Immediate Release

## Supreme Court of Canada affirms importance of equality principles in family law

West Coast LEAF and LEAF celebrate a victory for women in *Rick v Brandsema*

**Vancouver, February 19<sup>th</sup>, 2009** – West Coast LEAF and LEAF are thrilled to announce the Supreme Court of Canada's decision to uphold and advance important principles of equality in family law in its decision in *Rick v Brandsema* today.

"In our intervention in the case, we argued that a separation agreement is not like a commercial contract and shouldn't be treated as such in the law," says LEAF counsel, Nitya Iyer. "The negotiation of separation agreements presents a unique set of circumstances, power relations, and vulnerabilities for women. The Court agreed."

In *Rick v. Brandsema*, the parties signed 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, or properly value, family and jointly held business assets and awarded Ms. Rick funds to equalize the property division. The Court of Appeal overturned that result, but the Supreme Court of Canada accepted Ms. Rick's appeal and restored the trial judge's decision. The Supreme Court of Canada found that the parties' separation agreement was unfair and invalid because Mr. Brandsema exploited Ms. Rick's vulnerabilities and purposely misled her about the state of their financial affairs.

In its unanimous decision, the Court made strong statements about the potential exploitation of vulnerable partners:

*The Court has frequently recognized that negotiations following the disintegration of a spousal relationship take place in a uniquely difficult context. The reality of this singularly emotional negotiating environment means that special care must be taken to ensure that, to the extent possible, the assets of the former relationship are distributed through negotiations that are free from informational and psychological exploitation.*

The implications of this decision include the establishment of a clear right to equality in the negotiation of separation agreements. Quite apart from equality rights in the *Charter* or in legislation, principles of gender equality exist in common law, and they require the spouse who has more information about the financial affairs of the relationship to share it fully with the other.

"Another important principle established in this case," says West Coast LEAF Executive Director Alison Brewin, "is a firm statement that getting legal advice does not automatically mean both parties are equal. The Supreme Court recognized that having some legal advice does not ensure a fair agreement. Too often, women in BC can only access a few hours of legal representation. If the Court of Appeal decision had stood, imagine what it might have meant for women trying to challenge an unfair agreement."

**The West Coast Legal Education and Action Fund (West Coast LEAF) formed when the equality guarantees of the Canadian Charter of Rights and Freedoms came into force. Our mission is to achieve equality by changing historic patterns of systemic discrimination against women through BC-based equality rights litigation, law reform and public legal education.**

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For more information about the case please go to

<http://www.westcoastleaf.org/index.php?pageID=58&parentid=20>

And for the decision, go to:

<http://scc.lexum.umontreal.ca/en/2009/2009scc10/2009scc10.pdf>