

INTERIM REPORT BY JANET LUNAU

I've had a terrific summer so far working with the Women's Legal Education and Action Fund (LEAF) in Toronto. LEAF is an organization that does litigation and education to advance the equality rights of women. LEAF was established in 1985, and since then has built an excellent reputation by intervening in over 150 cases at all levels of court. Here's a link to LEAF's website: www.leaf.ca.

In the nine weeks I've been working with LEAF, I've had opportunities to work with lawyers and advocates on important projects that interest me a great deal. I've got four more weeks to go, and with the supervision of Katherine Hensel and Denise Reaume, I hope to get a chance to do even more great work for women's rights. Outlined below are some of the big projects I've been working on.

Assisted Reproduction:

Earlier in the summer, I continued work on a project I had been doing on a volunteer basis since January. This project centred around a case, *deBlois v Lavigne*, which involved a woman who conceived a child using assisted reproduction with a known donor. The parties had signed a very clear contract stating their shared intention that she alone would parent the child. After the child's birth, the donor sought a declaration of his legal parentage, and extensive custody and access rights.

On this project, I did research into case law and secondary sources to develop arguments for a proposed intervention. I drafted a case proposal for LEAF's Board of Directors. In the case proposal, I suggested that LEAF argue that a different approach to determining parentage is warranted in cases involving known donors of gametes. Courts have generally been reluctant to recognize intention as a key factor in establishing legal parentage. The overriding concern is for the best interests of the child, which cannot be fixed in advance by any statement of intention, contract, or agreement. As a result, the mother's intention has often been overridden in the name of fostering relationships to third parties with genetic connections to the child (usually donor fathers). However, parties who rely on assisted reproductive technologies necessarily locate parenthood outside of biology. Because they rely on the biological contributions of others to form their own families, their familial structures largely grow out of intention. If parental status cannot be secured for intended parents, or precluded for known donors, until after birth, the stability and equality of reproductive choice for people using known donors is undermined. Recently, new provisions have been introduced in Quebec, Alberta, and British Columbia that protect the intentions of users of donor gametes. These new provisions are indicative of a trend that needs recognizing in Ontario.

LEAF ultimately decided not to intervene in *deBlois v Lavigne*, but recognizes that these cases will only become more common in the years to come. While LEAF is still developing its position on these issues, I hope these arguments will inform its thinking in future interventions.

Federalism, Child Support and Child Welfare:

I have also been independently working on two cases: *Droit de la Famille – 111526 (HC v PN)* and *First Nations Child and Family Caring Society v Canadian Human Rights Commission (Caring Society)*.

The first case, *HC v PN*, is a s.15 challenge to the Quebec child support guidelines, on the grounds that they discriminate based on province of residence. The claimants are divorced mothers who argue that in many cases, the Quebec guidelines give much lower support amounts than the federal guidelines (which are used by all other provinces). The second case, *Caring Society*, involves a challenge under the Canadian Human Rights Act to the federal funding formulas for child welfare services for First Nations children living on reserves. The claimants argue that the federal formulas discriminate against children on reserves on the basis of race/ethnicity, because federal funding is significantly less generous than the provincial formulas (which apply to all other children).

While these cases have important differences, claimants in both cases allege discrimination based on differences that arise from Canadian federalism. I have been researching secondary sources, legislation, and case law to determine what obstacles this creates for each claim. Some of the questions I'm working on include:

- How can we square the differences inherent in federalism with the differences that constitute inequality?
- Can cross-jurisdictional comparisons be made, and if so, in what circumstances?
- Does federalism come into play in a s.15 analysis, or only later under s.1?

LEAF has not yet reviewed the work or decided whether it will proceed with either of these cases. Whatever the outcome, these problems are likely to arise again in the future, and my research will provide a resource from which LEAF can develop their position.

Charter Cases Website:

LEAF has begun working on a website that will contain summaries of important Charter decisions as they are released by the Supreme Court of Canada and provincial Courts of Appeal. The hope is that it will serve as a resource for students, lawyers, and advocates with an interest in equality, by making it easy to keep up-to-date with recent developments. I've been reading and summarizing cases for the Ontario Court of Appeal, focusing on important developments for equality and Charter law.

That's all I have for now! Thank you for giving me the opportunity to work with LEAF this summer. It's been a wonderful experience, and I hope these projects will provide LEAF and other advocates with resources for years to come.

Best,
Janet Lunau