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For Immediate Release

CAEFS and LEAF Intervene in SCC Battered Woman Appeal

June 12, 2012 (Ottawa) – CAEFS-LEAF will appear before the Supreme Court of Canada on June 14, 2012 to argue that battered women who take steps to use force against their abusers in order to save their and their children’s lives, are entitled to criminal law defences.

“The legal question before the Court is whether duress, or another criminal law defence, is available to abused women in the circumstances of Ms Ryan,” explained Kim Pate, Executive Director of the Canadian Association of Elizabeth Fry Societies (CAEFS). “CAEFS and LEAF’s position is that abused women should not be criminally convicted when they act to protect themselves and their children from lethal intimate partner violence. This is especially true in cases like Ms Ryan’s, where she repeatedly contacted the police and they did not protect her.”

The accused, Nicole Ryan, suffered a 15 year “reign of terror” (to use the words of the Nova Scotia Court of Appeal) under her abusive husband, Michael Ryan. According to the trial court and the Nova Scotia Court of Appeal, she was sexually and physically assaulted, emotionally and psychologically abused, threatened repeatedly with a gun and told by Michael Ryan that if she ever left, he would “kill”, “destroy” and “annihilate” Ms Ryan and their daughter. These threats were often morbidly graphic. Mr. Ryan threatened to burn their home down with Ms Ryan and their daughter in it and showed Ms Ryan the piece of land where he said he would dig a trench and bury them under a pile of gravel and garbage. Ms Ryan is a mere 5’3” and 115 pounds, to Mr. Ryan’s 6’3” and 230 pounds.

When Ms Ryan was finally able to leave, the evidence at trial was that even though Mr. Ryan lived a two-hour drive away, he showed up on the road to and from her place of work, and outside her sister’s home where she was living. Ms Ryan contacted the police and victim services a dozen times, but according to the Court, her pleas for help “went unheeded”. Isolated, terrified and without options, Ms Ryan eventually turned to a third party for protection. The third party was in fact an undercover police officer, who posed as a hit-man. Ms Ryan was charged with counseling to commit murder. She was acquitted on the basis of the defence of duress by the trial court. This acquittal was unanimously upheld by a three judge panel of the Nova Scotia Court of Appeal, which included the Chief Justice.

CAEFS-LEAF argue that the acquittal should be upheld by the Supreme Court of Canada.

“Every six days a woman in Canada is killed by an intimate partner. Repeatedly those deaths have been tied to inaction or inappropriate action on the part of the criminal justice system. Women escaping abuse are entitled to defend against their attackers and should not be criminalized for acting in their life threatening desperation,” advised Lee Lakeman, speaking on behalf of the Canadian Association of Sexual Assault Centres (CASAC). “CAEFS, CASAC and LEAF argue that for those women who are forced to use, or attempt to use, violence to protect themselves and their children, the criminal law must not demand that their actions fit stereotypical male scenarios,” continued Ms Lakeman.

The Nova Scotia Court of Appeal acknowledged that, “all too often the law is drafted against the backdrop of a male norm. Thus, where women’s experiences differ from those of men, the law may be incapable of responding to the realities of women’s lives.” In this case, it means that abused women may need to plan their means of escape and resistance and to seek help from others in order to protect themselves and their children.

“When an abused woman like Ms Ryan, protects herself against threats and danger which are in no way her own making, she surely must be able to avail herself of criminal law defences. It would simply be unacceptable that men in barroom brawls are entitled in law to plead self-defence and obtain acquittals, even in cases where they were the initial aggressors, and then deny abused women any defence,” concluded Pate.

The CAEFS-LEAF factum argues that “the law should not reflect an expectation that women should die in a saintly way, or engage in predictably unbalanced spontaneous hand to hand combat in an heroic way. To deny any defence to women in Ms Ryan’s desperate situation would be to place the burden of state failure to respond to pleas for help on their shoulders alone.”

Christine Boyle QC is counsel for CAEFS-LEAF.

The CAEFS-LEAF factum can be downloaded at: <http://leaf.ca/legal-issues-cases-and-law-reform/active-cases/>