



Women's Legal
Education and
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d'éducation juridiques
pour les femmes



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FOR IMMEDIATE RELEASE

Supreme Court Misses Opportunity to Ensure Law Protects Abused Women

January 21, 2013 (Ottawa) – The Supreme Court of Canada has released its decision in *R.v. Ryan*. CAEFS intervened in the case, in coalition with LEAF, 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 Court has held that the defence of duress does not apply but has ordered a stay of proceedings. Thus Ms Ryan does not have to endure further prosecution.

CAEFS-LEAF had argued that the law should reflect an understanding of the realities of the lives of abused women. In ordering a stay of proceedings, the court noted the “enormous toll” of the abuse Ms Ryan suffered:

“the abuse which she suffered at the hands of Mr. Ryan took an enormous toll on her, as, no doubt, have these protracted proceedings, extending over nearly five years, in which she was acquitted at trial and successfully resisted a Crown appeal in the Court of Appeal. There is also the disquieting fact that, on the record before us, it seems that the authorities were much quicker to intervene to protect Mr. Ryan than they had been to respond to her request for help in dealing with his reign of terror over her.”

Unfortunately, while the SCC says the case is exceptional, there is good reason to believe it is not. “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. The Canadian government has unmet obligations under international law to show due diligence in protecting women from sexist violence.” advised Lee Lakeman, speaking on behalf of the Canadian Association of Sexual Assault Centres (CASAC). “Women escaping abuse are entitled to defend against their attackers and the law must change to ensure that they are not criminalized for acting in their life threatening desperation”, continued Ms Lakeman.

While the stay ends the prosecution of one woman, unfortunately the Court's analysis of criminal defences does not hold out hope for the evolution of defences generally. The Court focuses on a doctrinal analysis and some clarification of defences, but does not address concerns that they fail to capture the diversity of human experiences to which they need to be applied. “The overall message I get from the decision is that of a wish for conceptual stability in the law of defences and a preference for constitutional challenge or legislative change over the

evolution of the common law. This contrasts dramatically with the wish of CAEFS-LEAF for equality-driven evolution of the law of defences, to avoid the criminalization of women driven to resisting abuse,” commented Christine Boyle Q.C., counsel for CAEFS-LEAF.

Background

Nicole Ryan, suffered a 15 year “reign of terror”. Her account of abuse, fear and efforts to seek help was accepted by the trial court in Nova Scotia and her acquittal on a charge of counselling to commit murder was unanimously upheld by the Nova Scotia Court of Appeal - she was sexually and physically assaulted, emotionally and psychologically abused, threatened repeatedly with a gun and told by her husband 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 sought protection. The charge of counselling came after she was approached by an undercover police officer, who posed as a hit-man.

Jennifer Tomaszewski, speaking on behalf of the Women’s Legal Education and Action Fund, said: “Violence against women remains a critical issue today. We remain committed to advocating on behalf of women and articulating the equality concerns raised in cases such as *R.v.Ryan*. We are concerned that, read in the context of the very recent decision in *R.v.O’Brien*, much work remains.”

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/>

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