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Equality and the Charter: Ten Years of Feminist Advocacy Before the Supreme Court of Canada

Women's Legal Education and Action Fund
Toronto: Emond Montgomery, 1998, 529 pp.

Reviewed by Dana MacKenzie[†]

Published by the *Women's Legal Education and Action Fund* (LEAF), this book is a collection of the facta LEAF has submitted to the Supreme Court of Canada in its role as intervenor. Presented in the order in which the cases were heard by the Supreme Court, the submissions serve as a chronology and profile of LEAF's work as equality advocates. Spanning a ten year period, the various submissions bear out the group's position in cases where issues such as pornography, abortion, and sexual assault have brought gender equality into sharp relief. A reading of the submissions bears witness to the proposition that LEAF may be solely responsible for the addition of the term "substantive equality" to Supreme Court *Charter* interpretation.

Organizationally, each factum is accompanied by an introduction to the case in which LEAF acted as intervenor. Used as a device to set the legal and social framework for the litigation, the introduction also indicates what other organizations, if any, also acted as intervenors. The court's decision is also encapsulated at the end of each factum: LEAF acknowledges that "The Outcome" (as it is termed in the text) is taken primarily from the Supreme Court Reporter's headnotes. However, the headnote text itself is often amended: LEAF felt that they did not always pay adequate attention to the equality issues most relevant to the decision. As a result, the headnote text is frequently supplemented with passages from the decisions that highlight the issues LEAF felt were important, yet absent from the headnote. Statements on LEAF's philosophy and history are more appropriately saved for the introduction to the

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book. As a result, the group's successes are fittingly left to be determined by the reader: one need only read the outcome at the end of each factum to keep the proverbial score.

Given the choice to publish LEAF's work as a collection of facta, however, the book may be limited to a legally-trained readership. As an obvious example, the appearance of case-citations at the end of each point may be prohibitive to those interested in equality theory, but unschooled in the formalities of legal citation and the peculiarities of factum writing. The irony of this limitation is heightened by the group's own assertion, in its introduction to the book, that it is actively seeking to reconstruct its current image of catering exclusively to the white professional woman. However, the precision and simplicity of argument necessitated by the litigation context mitigates this exclusivity: each point, although followed by supporting case law or literature, is concisely stated in clear language. As well, this format is exactly what makes the book so attractive to both law students and practitioners.

The book is also useful for the historical perspective it provides on jurisprudence on section 15 of the *Canadian Charter of Rights and Freedoms*. The LEAF factums, by necessity, make reference to the Supreme Court's judicial treatment of the *Charter*. Invariably, in pressing its various interpretations, LEAF has had either to draw on, or distinguish, the Court's earlier decisions. The presentation of facta, therefore, not only illuminates the group's position on the particular matters raised by each case, but also gives the reader insight into the breadth of the court's treatment of the *Charter* as a tool for egalitarian change.

This book is highly recommended to students of law. If used to supplement the traditional case study method, this text could fill a void too often overlooked in legal pedagogy. By showcasing both the form and substance of *Charter* advocacy it provides the law student with the context of several important constitutional law cases. Additionally, for the student as eventual practitioner, this book exemplifies superior factum-writing. Finally, and most importantly, it also archives the work of one of Canada's premier equality organizations.