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WEST COAST LEGAL EDUCATION AND ACTION FUND (LEAF)  
555 – 409 GRANVILLE STREET  
VANCOUVER, B.C. V6C 1T2  
TEL: (604) 684-8772  
FAX: (604) 684-1543  
E-MAIL: [info@westcoastleaf.org](mailto:info@westcoastleaf.org)  
WEBSITE: [www.westcoastleaf.org](http://www.westcoastleaf.org)

August 27, 2012

Mayor and Council  
Kelowna City Hall  
1435 Water St, V1Y 1J4

Sent via email: [mayorandcouncil@kelowna.ca](mailto:mayorandcouncil@kelowna.ca)

Dear Mayor and Council:

**Re: Proclamation of “Protect Human Life Week”**

I understand from media reports that, as per the request of the Kelowna Right to Life Society (“KRLS”), Kelowna Mayor Walter Gray has proclaimed the last week of September “Protect Human Life Week,” as he has done for the past five years. I also understand that the City has cancelled its “courtesy flag” policy after receiving a request from the same group to fly a flag over Kelowna City Hall bearing the words “Pro-Life” to coincide with “Protect Human Life Week.”

We write to express our deep concern regarding the City’s proclamation of a special “Week” dedicated to advancing a cause that undermines women’s equality rights and espouses a view that is directly contrary to Canadian and international law. West Coast LEAF is an organization dedicated to the advancement of women’s equality in Canada. The City of Kelowna’s implicit endorsement of an anti-choice organization and perspective flies in the face of Canadian values, women’s equality, and human rights law. We urge you to reject the KRLS’s request and end the practice of proclaiming a “Protect Human Life Week” that offers no consideration of a woman’s constitutionally protected autonomy and right to make decisions regarding her own bodily integrity.

Abortion is a lawful medical procedure which, by its nature, is specific to women. Access to abortion is thus, at its core, an issue of sex equality. The view espoused by anti-abortion activists through the use of “pro-life” rhetoric is one that is in direct conflict with women’s rights to equality, liberty and security of the person, which are protected by Canada’s *Charter of*

*Rights and Freedoms*. So-called “pro-life” groups like the KRLS seek to remove women’s control over their reproductive capacity and give that control over to the state. The Supreme Court of Canada has held that to force a woman to carry a fetus to term, irrespective of her own aspirations and priorities, is a profound interference with a woman’s body and thus a violation of her right to security of the person, and cannot be justified in a free and democratic society.<sup>1</sup> The very *raison d’etre* of organizations like the KRLS is to remove a woman’s freedom to choose to terminate an unwanted pregnancy, in accordance with her own aspirations and priorities, and to force her to carry the fetus to term against her will. This mandate, which has been thoroughly rejected by the Supreme Court of Canada, ought not to be given the City’s imprimatur through the proclamation of a special week to celebrate it.

The rights enshrined in the *Charter* are founded upon the inherent dignity of the individual. One aspect of the respect for human dignity upon which the *Charter* is based is the right to make fundamental personal decisions without interference from the state. This right is a critical component of the right to liberty, protected by section 7 of the *Charter*. Women’s ability to choose if and when to become pregnant is an essential component of their liberty rights. Allowing the state to have final say over such a fundamental and personal decision is a gross violation of women’s dignity, autonomy and the security of her person, which are protected by Canada’s highest law.

Politicians are of course free to hold personal views about the morality of abortion, including views that run contrary to the established laws of Canada. However, the Mayor issues proclamations in his capacity as head and chief executive officer of the City of Kelowna. Issuing a proclamation espousing an anti-abortion view, in the capacity of Mayor, is to appear to endorse an anti-choice position that is contrary to Canadian law and the rights of women. As Justice Wilson said in *R. v. Morgentaler*, in which the Supreme Court of Canada struck down the criminalization of abortion as unconstitutional, “liberty in a free and democratic society does not require the state to approve the personal decisions made by its citizens; it does, however, require the state to respect them.”<sup>2</sup> Whatever the Mayor’s own personal views on abortion, he must respect women’s right to choose in the context of his public, governmental role, and must not allow his position to be used to advance an anti-choice agenda.

The City of Kelowna’s Proclamation Policy states that proclamations, which are issued at the discretion of the Mayor, “are intended to help meet the objectives or [sic] causes and activities which benefit the community as a whole.” A cause which seeks to undermine the autonomy, rights and freedoms of one half of the population simply cannot be said to be of benefit to the community as a whole.

I am aware that the BC Human Rights Tribunal has held that a proclamation constitutes a “service customarily available to the public” for the purposes of the application of the *Human*

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<sup>1</sup> *R. v. Morgentaler*, [1988] 1 S.C.R. 30.

<sup>2</sup> *Ibid* at para. 229.

*Rights Code*,<sup>3</sup> meaning that proclamations must be issued in a manner that does not discriminate on the basis of race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation.<sup>4</sup> It is our view that the Mayor would be well within his rights to refuse to issue a proclamation for “Protect Human Life Week.” Even if the KRLS was successful in establishing that the refusal was a denial of a service customarily available to the public on the basis of one of the prohibited grounds – religion, for example – it is our view that there is a bona fide and reasonable justification for the denial, such that it would not constitute unlawful discrimination.

A bona fide and reasonable justification requires proof of both a subjective element (good faith) and an objective element (related to the provision of the service). In the *Hughson* case, the Mayor’s refusal to issue a proclamation to mark Lesbian and Gay Pride week was found to lack a bona fide and reasonable justification because it was not, in an objective sense, related to any duty or obligation the Mayor had to the general public.<sup>5</sup> That is not the case here. The Mayor has a duty to the general public to uphold the rule of law, respect the *Charter of Rights and Freedoms* and Supreme Court of Canada jurisprudence, and foster a community culture that respects women’s rights and freedoms. If, for example, a white supremacist organization requested a proclamation in support of “White Power Week,” few would argue that the Mayor had no choice but to grant it. His duty to the people of Kelowna to protect them from the hate, discrimination and fear propagated by the group would justify his refusal to issue the proclamation. Similarly here, the Mayor’s obligation to uphold and promote respect for women’s fundamental rights demands his refusal to proclaim a special “week” advocating for a position diametrically opposed to these obligations.

The BC Task Force on Access to Abortion and Contraceptive Services reported that at every one of its five regional meetings, abortion service users and providers recounted experiences of harassment and intimidation due to anti-abortion activities.<sup>6</sup> A Vancouver-based doctor providing abortion services suffered two separate attacks on his life by anti-abortion activists,<sup>7</sup> and violent threats against abortion doctors are common.<sup>8</sup> The Mayor’s duty to foster a community where women can feel safe accessing their legally protected right to the health care they need, and where medical professionals feel safe in providing it, also strongly militates in favour of refusing to issue a proclamation in favour of “Protect Human Life Week.”

Women’s equality depends on their ability to access reproductive health services. Canada is bound by international law to “take all appropriate measures to eliminate discrimination

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<sup>3</sup> *Hughson v. City of Kelowna and Mayor Walter Gray*, 2000 BCHRT 21 at para. 79.

<sup>4</sup> *Human Rights Code*, R.S.B.C. 1996, c. 210, section 8(1).

<sup>5</sup> *Hughson, on behalf of the Okanagan Rainbow Coalition v. City of Kelowna and Mayor Walter Gray*, 2000 BCHRT 21 at para. 97.

<sup>6</sup> B.C. Task Force on Access to Abortion and Contraceptive Services, *Realizing Choices*, at p. 17-18.

<sup>7</sup> “Abortion doc stabbed in Vancouver” *CBS News*, 11 February 2009, online: <<http://www.cbsnews.com/stories/2000/07/12/world/main214492.shtml>>.

<sup>8</sup> “Stabbing suspect picture” *CBC News*, 13 July 2000, online: <[http://www.cbc.ca/news/story/2000/07/13/bc\\_paperthreat000713.html](http://www.cbc.ca/news/story/2000/07/13/bc_paperthreat000713.html)>.

against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”<sup>9</sup> International human rights law requires states to respect, protect and fulfill women’s right to health. Not only must states refrain from interfering with women’s enjoyment of the right to health, they must take positive, proactive measures to realize the right. Safeguarding the right to health means ensuring that women have access to the reproductive services they need, including access to safe, legal abortion. United Nations Treaty Bodies have repeatedly held that the denial of these services constitutes discrimination and violates women’s right to privacy and right to be free from cruel, inhuman and degrading treatment. The European Court of Human Rights has also concluded that States should establish effective and accessible procedures permitting access by women to legal abortion, as a matter of women’s equality and human rights.<sup>10</sup> The UN Human Rights Committee has repeatedly stressed that laws that criminalize abortion are incompatible with women’s international human rights to equality, to life, and to freedom from cruel, inhuman or degrading treatment or punishment.<sup>11</sup>

As a government institution, the City of Kelowna is obligated to comply with the laws of Canada, including the *Canadian Charter of Rights and Freedoms* and international human rights law. Women’s autonomy and right to choose are firmly established in Canadian and international law. By endorsing a special “Pro-Life Week” which seeks to undermine women’s constitutionally protected reproductive rights, the City calls into question its commitment to Canadian equality values and adherence to the rule of law. We call on you to cancel the City’s proclamation of “Protect Human Rights Week” and refuse all further requests for this or other anti-choice, anti-women’s equality events or initiatives.

Yours truly,



Laura Track  
Legal Director

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<sup>9</sup> *Convention on the Elimination of all forms of Discrimination against Women*, article 12(1).

<sup>10</sup> *Tysiac v. Poland*, ECHR Application No. 5410/03, 20 March 2007; *A, B and C v. Ireland*, [2010] ECHR 2032.

<sup>11</sup> See e.g. Concluding Observations of the Human Rights Committee: Peru, 15 November 2000 (CCPR/CO/70/PER), para. 20.