

VIA EMAIL: mayor&council@nanaimo.ca

Nanaimo City Council
455 Wallace Street
Nanaimo, BC V9R 5J6

Dear Mayor and Councillors,

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Re: City of Nanaimo Council's *Leadercast 2014* Decision and Subsequent "Clarifying Statement"

I write on behalf of the British Columbia Civil Liberties Association (BCCLA). Our mandate is to preserve, defend, maintain and extend civil liberties and human rights in Canada. We are writing to you to express our concern over your original May 5, 2014 resolution regarding *Leadercast 2014* and our acknowledgment of your "clarifying statement" of June 26th, 2014.

The BCCLA has long fought for the fundamental freedoms of people to come together to express their sincerely-held beliefs. That's what s. 2 of the *Canadian Charter of Rights and Freedoms* ("the *Charter*") is all about, protecting our freedoms of association, of assembly, of belief and of expression. At the same time, and completely consistent with this, we have long fought against discrimination on the basis of sexual orientation. It is the BCCLA's deeply held conviction that queer rights are human rights.

Given the BCCLA's commitment to both equality and civil liberties, we are well-versed in the challenges that may arise when it appears that rights and freedoms collide. We are convinced that equality and non-discrimination for certain

groups cannot be achieved through intolerance for the exercise of fundamental freedoms by others. As Chief Justice Dickson said in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295:

A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct ... The Charter safeguards religious minorities from the threat of "the tyranny of the majority". (paras 94-96)

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Those words remain true today, and in our respectful submission, should have guided the Council in its deliberations. The Council, as a government institution, is bound by the *Charter* and was required to consider *Charter* values in making its decision. It is clear to us that the council's May 5 decision failed utterly to do this. The May 5 resolution purports to disallow space rentals for events "associated with organizations or people that promote or have a history of divisiveness, homophobia, or other expressions of hate."

This policy is unconstitutionally overbroad, and in practice, would be practically impossible to apply. The B.C. Civil Liberties Association has long supported the principle of open access to public spaces for all citizens' groups in order that they may express their political views, regardless of the content of their views – or the views of the sponsors of their meeting, as in this instance.

Regulation of the availability of public spaces for the use of the public must be done in accordance with the *Charter*. The BCCLA takes the position that to deny the use of public meeting space to a group based on the views – or in this case the presumed views – that those individuals are going to express or to hear, amount to censorship. Should the state elect to restrict the availability of

public meeting spaces to certain groups based on the content of their views—for example, allowing access only to those who do not espouse extremist or offensive views—this would constitute an unwarranted encroachment upon the rights of B.C.'s citizens. Even more so, it would represent a retreat from democracy since, in doing so, we will have undermined our collective ability to deliberate on and make decisions about matters of public importance.

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Even if the views held or expressed by groups might be greeted with repugnance by a majority of members of the community – or are “divisive” in the language of the policy, it is not the place of civic government to play a screening role in which it casts judgment on the contents of these groups’ ideas. In our view, this runs against democratic principles and is contrary to the *Charter*.

A few further examples illustrate the dangers of such a policy. Members of various religions hold views that may be at odds with those of the majority of council, or of Nanaimo citizens, at any given time. Any number of individuals or groups may hold political views that some would characterize as divisive. Should a community group with a strong opinion on a hotly contested issue that divides the community be refused a space rental? Should a Catholic service organization be forbidden in a blanket way from using civic facilities because their church does not ordain women or sanction gay marriage? Should a Muslim youth group be banned from using civic facilities because it is sponsored by a business owned by a Muslim individual who has publicised his personal view against gay marriage? Obviously, the answer to these questions must be no, just as the proper answer, in this case, was that the Leadercast event should have been allowed to proceed.

We note that the City's statement of June 26th indicates that its May 5 resolution was not intended to discriminate against Christians and that such discrimination does not reflect the beliefs and values of council. Under the law, the intention of government is not relevant to whether or not the government is found to have discriminated or violated the *Charter* rights of individuals. All the same, we are troubled by remarks made on the council floor that described the views of some Christians on equal marriage as being akin to a "criminal point of view", and invoked an analogy of renting community space to a criminal organization. Certainly, all elected officials have the right to have and express their views, however offensive and uninformed they may be – a proposition to which we are deeply committed – but for the record, we strongly disagree with these kinds of harmful characterizations that discriminate against people of faith.

In our view, the only legitimate content-based restriction on equal access to public meeting spaces would be in a case where it could be shown that there is a real and substantial threat that a group will break laws in connection with the meeting. For example, a group or individuals with a documented history of violence or property damage might be legitimately refused a request to use civic space, if there were a genuine and well-founded fear that such illegality might flow from the meeting in question. This would depend on the circumstances, and would only be justifiable on a serious examination of those circumstances. This should only be a very narrow exception to a broad rule that space made available to the public should be made available to all, regardless of the content of the message to be conveyed. We strongly suggest that this be the position that the city takes in the future in relation to the booking of public spaces.

In condemning the decision to cancel this event, and in counselling a way forward to avoid such unconstitutional actions in future, we wish to note that the BCCLA does not support hateful speech against any group including LGBTQ+ people, and that we firmly support marriage equality and oppose harmful practices like so-called “reparative therapy” – not that that any of this appeared to be on the agenda of the proposed broadcast. Nevertheless, as civil libertarians we have had a long experience with the danger of governments attempting to stop groups considered ‘divisive’ by the majority from associating or expressing themselves. We cannot pick and choose only those whose beliefs we agree with when it comes to protecting freedom of belief and association. If we want freedom of belief and association for ourselves, we must uphold it for all.

Council’s June 26 statement indicates that, “if presented with comparable circumstances again, Nanaimo’s current Council is confident that actions similar to those taken on May 5 would not be repeated.” We hope that to be true, and we suggest that the council draft a policy that would provide guidance to future councils as well, providing the widest possible scope for the use of civic public spaces, in order to promote respect by the City for the fundamental *Charter* rights of its residents well into the future.

Sincerely,

A handwritten signature in black ink, appearing to be 'Josh Paterson', with a long horizontal line extending to the right.

Josh Paterson
Executive Director