

**Statement by Paul Champ, BC Civil Liberties Association
May 3, 2012**

Good afternoon, Mr Chair, Mr Clerk, and Committee members. On behalf of the BC Civil Liberties Association, its President Rob Holmes, its Board of Directors, and its over one thousand members, I would like to thank the Committee for this invitation to comment on Bill C-309, and the proposed amendments to sections 65 and 66 of the *Criminal Code*. My name is Paul Champ and I am on the board of the BCCLA and act frequently as their legal counsel.

The BCCLA would like to express its concern and opposition to Bill C-309, and its attempt to increase the criminal sanctions for those who wear masks or face coverings at riots or unlawful assemblies. I would like to four brief points:

1. Freedom of expression
2. Privacy
3. Presumption of Innocence
4. Protection

FREEDOM OF EXPRESSION

Whenever people organize and gather together to protest or demonstrate for or against something, it is a very good thing. The exchange, expression and communication of ideas in a peaceful assembly reinforce the vitality and vibrancy of a democracy. The right to freedom of expression is described as a fundamental value in Canada because, to quote the SCC, “in a free, pluralistic and democratic society we prize a diversity of ideas and opinions for their inherent value both to the community and to the individual.”

How does Bill C-309 inhibit freedom of expression? Simply put, it creates a chilling effect for those who may wish to wear masks at popular protests and demonstrations. And contrary to some opinions this Committee may hear, there are legitimate reasons for wearing masks that are tied to the expressive activity.

Masks can be a powerful aid to unpopular speech. For those who wish to convey messages that are likely to offend governments or others, the anonymity that masks provide may encourage the uninhibited expression of views by offering security against reprisal from government, employers, family or others.

- Imagine the son or daughter of a Cabinet Minister who wishes to attend the legal marijuana rally at Parliament Hill a few weeks ago.
- Or an NDP MP who wishes to attend the tuition rallies in Quebec?
- More seriously, how about people who wish to protest against the treatment of refugees by CBSA or CSIS? What if a person was a refugee who wanted to protest the atrocities against Tamils in Sri Lanka?
- Or the young first year Bay Street lawyer, perhaps not so enamoured with his or her job, who wants to attend the G-20 demonstrations in Toronto?
- Those who might choose to rally for or against same sex marriage?

In some circumstances, masks themselves may also convey a message to observers. People wearing politician masks, Guantanamo Bay orange jumpsuits and deprivation goggles, paper mache stilts, the Palestinian kaffiyeh, Guy Fawkes masks, and so on.

Assembly is not simply something democratic societies should tolerate, it is something that should be encouraged and celebrated.

PRIVACY

The BCCLA has concerns about use of facial recognition software and police or intelligence watch lists. What does it take to become a target today? I can guarantee you that CSIS conducts surveillance of certain protests. If you don't believe me, you should call Mr Fadden.

For university students attending a protest today about something very unpopular, it may end up on an intelligence file for the rest of their lives that they attended a certain kind of protest in their youth.

PRESUMPTION OF INNOCENCE

The criminal justice system in Canada is meant to punish personal intention to commit a crime. Intention or state of mind is a critical element in criminal law. The BCCLA and other civil liberties organizations have long been concerned about the "unlawful assembly" and "riot" provisions in the Criminal Code because it is often very unclear when a "lawful assembly" becomes an unlawful one. And if it does become unlawful, did a person is present at the assembly want it to become disorderly? And how do they remove themselves from the scene? The lack of criminal intent and the ambiguity around when an assembly becomes unlawful are serious concerns for civil libertarians. With Bill C-309, people may be facing five years in prison for not realizing that, at the back of the march, a handful of vandals have smashed some windows.

PROTECTION

I want to make this last point carefully. There is a concern that this provision or tool may be misused by the police. The BCCLA and other groups have raised concerns about unnecessary and excessive police force at rallies and demonstrations. The concern is that this tool will encourage police to target individuals wearing masks who aren't engaging in anything unlawful. This can be a particular concern when there is an escalation of hostilities between police and demonstrators.

At the G-20 in Toronto two years ago, dozens of individuals made complaints about assaults by police. Independent investigations by the SIU and the Independent Police Review Director confirmed excessive use of force by police resulting in broken bones and other injuries. We also shouldn't forget the protests at a 2007 summit at Chateau Montebello with the presidents of US and Mexico and Prime Minister Harper. Quebec police wearing masks infiltrated the crowd and tried to provoke violence between demonstrators and riot police.

You have heard about the Stanley Cup riot in Vancouver last year. I would like to tell you about what happened at the 2010 Olympics in Vancouver. The BCCLA instituted a legal observer program – 400 people were trained to observe rallies and demonstrations against the Olympics. Some called it a 'police watch' program. Those observers wearing t-shirts and holding notepads, deterred the triggering and escalation of hostility between police and protesters. In other words, we don't want this provision to paint a target on the back of those wearing masks for the excessive use of police force.

To conclude, I would like to emphasize to the Committee that Bill C-309 does infringe or inhibit some of our most fundamental freedoms. It is disproportionate and unnecessary to address the concerns raised. Someone committing a crime can and should be prosecuted. This Bill will not change that. What it will do is cause a chilling effect on free speech and several other problems that I have raised with you today. Thank you.