

Right to Water Position Paper
BC Civil Liberties Association
Submitted to the executive of the Board of BCCLA
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Access to clean water is increasingly being seen as a human right and a profoundly important civil liberties issue. The BC Civil Liberties Association recognizes the right to adequate supplies of clean drinking water as a human need so profound, and so foundational to effective participation as a democratic citizen that it deserves to be protected as both a civil liberty and a human right by legislation and policy at the municipal, provincial and national level. The Association believes Canada should make efforts on the international stage to see that this right is recognized and protected globally.

The Canadian Charter of Rights provides support for these assertions, as do many international agreements, the best of the civil liberties values the BCCLA has championed over decades, some aspects of common law and a rich body of age old human tradition.

Certainly a compelling argument can be made that more than one provision of the Charter speaks to the issue of right to water. Section 7, with its protection of the right to “life, liberty and the security of the person” is germane, and many observers would see Section 7 as pertinent to the situation of homeless Canadians and residents of many first

nations reserves, all of whom must contend with a kind of grotesque poverty drought that denies them access to clean water even in a nation famous for its rich water resources. Section 15's protection of equality rights may well be infringed by the failure of all levels of Canadian government to guarantee the poorest and most vulnerable residents of Canada access to this fundamental and life sustaining resource.

Lack of access to water, this paper argues, is a civil liberties issue on the streets of Vancouver that directly affects the homeless and the poor but has implications for us all. The situation is dire on many of Canada's first nations reserves too, where the treaty and constitutionally based responsibility of the federal government to provide the basics of life to first nations members has been shamefully neglected. The lethal events at Walkerton, Ontario a few years ago illustrate that clean water issues can emerge off the reserve and the mean streets of our urban cores too.

In addition to Charter arguments, some of the fundamental principles of the civil liberties tradition also argue for recognizing access to clean water as a civil liberties issue. We have based much of our ongoing work in both the classical liberalism of such authors as John Locke and Adam Smith, as well as in the more modern current of liberalism found in such writers as Mill and Rawls. It certainly seems arguable that a right to water can be grounded in the concerns of the modern liberalism of Mill and Rawls that calls for the creation of social arrangements that that permit individuals to choose their own path toward a good life. (BCCLA positions that illustrate this include our advocacy for striking down laws that prohibit victimless crimes like cannabis use and consensual prostitution and our recognition of the civil liberties dimensions of

homelessness (<http://www.bccla.org/positions/discrim/04homelessness.htm>) and the undesirability of privatizing prisons.

(<http://www.bccla.org/positions/prisoners/07PrivatePrisons.pdf>) (I am grateful to our Policy Director Micheal Vonn for her thoughts on the relationship of this issue to the larger tradition of liberalism within which the BCCLA has done its work. As always, any errors of interpretation are mine, not those of the many colleagues who have provided helpful feedback.)

I have sketched out above a few of the Charter arguments, prior positions of the BCCLA and larger themes in the tradition of modern liberalism that have persuaded the Association to take up the task of promoting recognition of the right to clean water as a civil liberty. In addition to these supports for our new position, I would also argue that some elements of common law tradition and some strands of our historical understanding of ancient cultures and traditions might also be invoked to support this position.

There is a long-established recognition in English common law of recognizing a “public trust” in water. Admittedly, this has been far more richly elaborated in the UK and the US than it has been in Canada, and has most narrowly been viewed as dealing with access to water for fishing and transportation, I believe. Nevertheless, it can be read as a basis for seeing some basic resources as so precious and so fundamental that they represent a public trust, to be protected and shared with current and future generations, not exploited for private gain. In this tradition, nature (including water) is viewed as a common heritage of all people, to be protected and shared. This tradition and the

stewardship ethic that flows from it can also be invoked to support recognition of a right to water as a civil liberty/human right meriting the intervention of the BCCLA.

Behind the Charter, liberal tradition and case law lies an ancient tradition in many cultures that calls for equitable access to water. James Salzman, of the Duke Law School, outlines some of this historical context in his 2006 paper “Thirst: A Short History of Drinking Water” in which he cites the “right of thirst” in ancient Hebrew law, as reflected in the book of Isaiah’s evocative “Let all you who thirst, come to the water.” The Koran, too, condemns those who would deny the thirsty access to water, and Salzman also cites anthropological evidence from Africa and Australia that reflects similar injunctions to share the waters of life, even with strangers. A decision to protect and promote this value by the BCCLA would place us in a time honoured tradition.

Here is one way the argument might be framed in its particular application to the homeless, as helpfully suggested by our board colleague Larry Cohen:

“-the right to security of the person is a constitutional right.

- water is entirely and solely owned by the government as part of the public common asset

- water is a necessity upon which the public depends for each members life sustenance

- in an urban setting it is available generally in homes or buildings but not necessarily so in public spaces.

- therefore those who have no home and who are not allowed in privately owned buildings are dependent on those who control public space for access to a necessity for the security of their person since access is not available by right from private sources .
- the homeless therefore must be accommodated by the governors of public space for access to water that is controlled by them and owned by the government
- therefore the government must provide reasonable access to water to those who are homeless.”

As an Association, the BCCLA first faced the water right challenge when we hosted Vancouver city homelessness advocate Judy Graves as our Annual General Meeting keynote speaker in 2008. Graves, who has worked with the city’s homeless for decades now, spoke eloquently about the fact, so easy for those of us with clean, dry homes and easy access to taps that flow with clean water to ignore, that many of our fellow citizens, trapped in homelessness, often couldn’t find a drink of clean water literally to save their lives. She pointed out that for the city’s homeless, unwelcome in coffee shops and gas stations, dependent on taps in public buildings that close overnight, roaming streets where many previously available drinking fountains have been shut down, or discharged from hospital to the streets, the city can be a nightmare of thirst. Maternal dehydration is suspected, she pointed out to us, as one of the factors in causing fetal alcohol syndrome. Without their need for access to clean water being met, it is hard to imagine the chronically thirsty and dehydrated taking their place as self governing citizens of a democracy.

So, if Canada moves to recognize and implement the human right/civil liberty to access clean water, what are the implications for the nation's global policies?

Internationally, Canada is one of the few nations that have, to our shame, actively fought to prevent recognition of the right to water as a protected human right, most recently at the United Nations Human Rights Council last spring.

<http://www.thestar.com/News/Canada/article/409003>

Well over a billion people around the world do not have access to the 20 to 50 litres of water a day per person that the United Nations World Water Development Report of 2006 defines as a basic minimal requirement for each human individual's functioning.

http://www.righttowater.org.uk/code/overview_1.asp)

This thirsty, dying billion live in a dry, dirty world without access to clean, potable water. Think of them as trapped in a poverty desert. Without access to life-giving clean water, they live lives that are defined by dehydration, ill health and despair. Some of that dying billion live, not in faraway developing nations in the third world or on heat blasted deserts. Their lives are shriveled and their capacity to participate as sovereign, self ruling democratic citizens is diminished by social, economic and material conditions that deny them one of the basic supports for all human life right here in Canada.. Too many Canadians endure the poverty draught on first nations reserves or in areas where water quality has been degraded by inadequate infrastructure investment or compromised by imprudent experiments in the privatization of core public services.

1.1 billion people lack access to an adequate supply of water
2.6 billion people lack access to adequate sanitation
1.8 million children die every year as a result of diseases caused by unclean water and poor sanitation

Source: UN World Water Development Report 2006

This is despite the fact that various UN bodies have recognized the right to water as a basic human right, as early as 1977 as part of the Mar Del Plata action plan. More recently, in November of 2002, The United Nations Committee on Economic, Social and Cultural Rights adopted the General Comment on the right to water referring to article 11 of the International Covenant on Economic, Social and Cultural Rights. The General Comment states that: “The human right to drinking water is fundamental for life and health. Sufficient and safe drinking water is a precondition for the realization of all human rights.” <http://www.citizen.org/cmep/Water/humanright/articles.cfm?ID=8610> Canada’s own Louise Arbour, acting as UN High Commissioner for Human Rights, stated that "specific, dedicated and sustained attention to safe drinking water and sanitation is currently lacking at the international level" and recommended that access to safe drinking water and sanitation be recognized as a human right.

The right to water has been explicitly recognized in two of the core international human rights treaties – the Convention on the Elimination of All Forms of Discrimination Against Women (<http://www.un.org/womenwatch/daw/cedaw/>) and the Convention on

the Rights of the Child. (<http://www.unhchr.ch/html/menu3/b/k2crc.htm>) It also forms an implicit part of a number of other rights, most obviously the right to life (protected by the International Covenant on Civil and Political Rights), the right to an adequate standard of living and the right to the highest attainable standard of physical and mental health (both protected by the International Covenant on Economic, Social and Cultural Rights).

General Comment No. 15 in a Nutshell

General Comment No. 15 on the right to water was adopted by the UN Committee on Economic, Social and Cultural Rights at its Twenty-ninth session in November 2002. The Comment provides guidelines for states on the interpretation of the right to water under two articles of the International Covenant on Economic, Social and Cultural Rights - Article 11 (the right to an adequate standard of living) and Article 12 (the right to health).

General Comment 15 affirms that:

"the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses".

It notes that the right to water has been recognized in a wide range of international documents and reaffirms the fundamental importance of the right stating:

"the human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights".

The General Comment clarifies the normative content of the right to water by articulating the individual elements of the right, such as "availability", "quality" and "accessibility".

It also outlines the associated state obligations. These include obligations to:

Respect the right to water by refraining from interfering directly or indirectly with the enjoyment of the right

Protect the right to water by preventing third parties from interfering in any way with enjoyment of the right to water

Fulfill the right to water by adopting the necessary measures directed towards the full realization of this right

The General Comment also stresses that states are obliged to ensure that the right to water is enjoyed without discrimination and on the basis of equality between men and women.)

http://www.righttowater.org.uk/code/overview_5.asp

Our failure in Canada to effectively recognize the obligations created by these treaties and UN comments is a human rights scandal and civil liberties disaster that undermines our national capacity to realize our democratic aspirations, and is connected to Canadian policy on the international stage that allies our nation with policies that cost lives and undermine peace and justice around the world. The BC Civil Liberties Association recognizes the crisis in access to clean water as a civil liberties/human rights issue and intends to publicly lobby for municipal, provincial and federal policies that will begin to address this crisis.

We intend to broadly and promptly publicize our association's new understanding of the civil liberties dimensions of the right to water through press releases, our web site and further publications. We mean to use our influence with legislators on all three levels of government and our role as public educators to promote reforms that will make the right to clean water into a reality. We will remain alert for opportunities to intervene or litigate in court proceedings that bear upon this new position.

1. At the municipal level, we will be arguing for a robust program to open up and maintain public water fountains on city streets and in city parks. Cities should be urged to include the provision of emergency water to street homeless as part of extreme climate response when seasonal temperatures soar. Programs to house the homeless should be expanded aggressively. Safe housing for all, provided with clean running water, would represent the optimum solution for the water crisis of the homeless. As noted above, the Association has already recognized the civil liberties implications of homelessness. Cities should be encouraged to conduct audits of drinking water availability within their boundaries and to take steps to correct shortfalls.
2. At the level of hospitals and other health care facilities, all should be strongly encouraged to make efforts to assure that patients are not released from hospital to the street or to dwellings without clean running water.
3. At the provincial level, health authorities should be urged to more aggressively pursue access to clean drinking water as a public health priority. Provinces should be encouraged to conduct audits of access to clean water within their borders.
4. Federally, immediate steps should be taken to ensure access to clean drinking water on all first nations reserves. The federal government should conduct its own audit of access to clean water within Canada, and pursue policies or infrastructure renewal designed to correct shortfalls. The Federal government should be urged to immediately reverse its current policy in international fora of fighting to block recognition of the right to water. Canada should be a voice for decency and generosity in international water policy, urging all states to take responsibility for

providing clean water and increasing our foreign aid investments in programs that achieve that goal in the developing world.

5. Finally, all jurisdictions should be discouraged from reckless experiments with privatization in confronting our water crisis. Just as the BCCLA has held, in our position on private prisons, cited above, that some functions and services cut so close to the bone on public well being that they should not be entrusted to the market, we will publicly argue that the right to clean water is so fundamental to life, health and democratic functioning that its provision should not be subject to the demands of private enterprise bottom lines.