NO. L050433
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE CANADIAN FEDERATION OF STUDENTS - BRITISH COLUMBIA COMPONENT AND THE BRITISH COLUMBIA TEACHERS' FEDERATION

PLAINTIFFS

AND:

THE GREATER VANCOUVER TRANSPORTATION AUTHORITY AND BRITISH COLUMBIA TRANSIT

DEFENDANTS

AND:

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

INTERVENOR

CHAMBERS BRIEF NUMBER 1 OF THE INTERVENOR, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

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PART 1 - BACKGROUND

A. THE PLEADINGS AND THE PARTIES

1. STATEMENT OF CLAIM

1. The Plaintiffs in this action challenge decisions taken by the Board of Directors of the Defendants, The Greater Vancouver Transportation Authority (TransLink) and British Columbia Transit (BC Transit), which caused the Defendants not to accept certain advertisements (the "Ads") which the Plaintiffs sought to have displayed on the outside of buses owned and operated by the Defendants. The Plaintiffs also challenge certain portions of the advertising policies approved by the Board of Directors of TransLink and BC Transit. In both cases, the Plaintiffs' challenge is based on the allegation that the decisions of the Defendants place an unjustified limitation on expression by the Defendants in violation of section 2(b) of the *Charter.*

2. STATEMENT OF DEFENCE

2. Both Defendants admit that they refused to permit the Ads, but each says that it is not a government to which the *Charter* applies, there was no infringement of section 2(b) of the *Charter*, in any event, and, if there was, it was justifiable under section 1 of the *Charter.*

3. SUMMARY TRIAL APPLICATION

3. The parties have agreed that this matter can be heard pursuant to Rule 18A. The parties have further agreed that the parties will exchange written submissions as follows:

   (a) Submissions by the Plaintiffs and the Intervenor with respect to the application of the *Charter* to the Defendants and the existence of a section 2(b) infringement;

   (b) Submissions of the Defendants in response to the submissions of the Plaintiffs and the Intervenor and alternative submissions with respect to section 1 justification under the *Charter*;

   (c) Submissions by the Plaintiffs and the Intervenor in response to the Defendants' alternative submissions relating to section 1 of the *Charter.*

This Brief contains the submissions of the Intervenor contemplated in step (a) above.

4. THE PARTIES

4. The Plaintiffs, The Canadian Federation of Students - British Columbia Component (CFS) and The British Columbia Teachers' Federation (BCTF), in the fall of 2004 were active in public debate concerning the manner in which public school systems were being funded and run and numerous other issues that were the subject of political controversy.

Affidavit of Michael Gardiner, paras. 5-6
Affidavit of Moira Mackenzie, paras. 7-8

5. TransLink is a corporation established pursuant to the *Greater Vancouver Transportation Authority Act*, S.B.C. 1998, Chapter 30, that is responsible for providing public transportation within the Greater Vancouver Regional District.

***Greater Vancouver Transportation Authority Act*, S.B.C. 1998, c. 30**

6. BC Transit is a corporation continued under section 2 of the *British Columbia Transit Act*, R.S.B.C. 1996, Chapter 38, that is responsible for providing public transportation in numerous municipalities within British Columbia, other than Vancouver.

Affidavit of Ron Drolet, paras. 3-5

7. The Intervenor, British Columbia Civil Liberties Association (BCCLA), is a society duly incorporated pursuant to the *Society Act*, R.S.B.C. 1996, Chapter 433, and its objects include the promotion, defence, sustainment and extension of civil liberties and human rights.

Affidavit of Jason Gratl, para. 2

8. The BCCLA has approximately 1,100 members and contributors involved in various professions, trades or callings. It has demonstrated a longstanding, genuine and continuing concern with the rights of the citizens in British Columbia and in Canada to liberty and freedom. It gives a voice in a variety of forums to what it believes are the principles that promote individual rights and freedoms, including freedom of thought, belief, conscience, religion, opinion and expression, equality rights, and autonomy.

Affidavit of Jason Gratl, paras. 3-4

9. BCCLA was granted intervenor status in these proceedings on August 31, 2005 by Order of Madam Justice Arnold-Bailey.

Order of Arnold-Bailey J. dated August 31, 2005

B. THE POSITION OF THE BCCLA

10. The BCCLA respectfully submits that the impugned portions of the advertising policy of both Defendants is overly restrictive and is an infringement of the Plaintiffs' right to free expression guaranteed by section 2(b) of the *Charter.*

PART 2 - THE FACTS

11. The Defendants, TransLink and BC Transit, both have longstanding policies of accepting advertisements to be displayed for a fee on the outside of buses through which they provide public transportation.

Affidavit of Michael Gardiner, para. 11, Exhibit "C", "D"
Affidavit of Ron Drolet, para. 7

12. Paragraphs 7 and 9 of the policies of both Defendants provide as follows:

> 7. No advertising will be accepted which is likely, in the light of prevailing community standards, to cause offence to any person or group of persons or create controversy.
>
> ...
>
> 9. No advertisement will be accepted which advocates or opposes any ideology or political philosophy, point of view, policy or action, or which conveys information about a political meeting, gathering or event, a political party or the candidacy of any person for a political position or public office.

Affidavit of Michael Gardiner, para. 11, Exhibit "C", "D"

13. Paragraph 2 of TransLink's policy reads as follows:

> 2. No advertisement will be accepted which TransLink, in the exercise of its sole discretion, considers to be of questionable taste or in any way offensive in the style, content or method of presentation.

Affidavit of John Beaudoin, Exhibit "A"

14. The Plaintiffs submitted the Ads for publication on the Defendants' buses and the Board of Directors of each organization decided to decline to permit the Plaintiffs' advertisements to be published on the side of their buses because the Ads did not comply with the advertising policy previously established by the Board of each Defendant.

Affidavit of Michael Gardiner, paras. 14-15

Affidavit of Moira Mackenzie, paras. 15-16

15. The Ads sought to establish a link between specific issues of concern to the Plaintiffs and the then upcoming provincial election and encouraged the reader to vote in that election in consequence. The Ads that were rejected by the Defendants were run in alternative media and met normal community standards of good taste and appropriateness for public display. The Ads were rejected by the Defendants on the basis that the substance of the message violated policies 7 and 9. The Ads were also rejected by TransLink on the basis that the substance of the message violated policy 2.

Affidavit of Michael Gardiner, paras. 5-6, paras. 14-15
Affidavit of Moira Mackenzie, paras. 8-9, paras. 15-16
Affidavit of John Beaudoin, Exhibit "A"

16. At the time that the Ads were rejected, the Board of Directors of TransLink was comprised entirely of elected municipal politicians. Similarly, a majority of the Board of BC Transit was comprised of elected municipal politicians.

***Greater Vancouver Transportation Authority Act, supra*, section 8**
***British Columbia Transit Act*, R.S.B.C. 1996, c. 38, section 4(1)**

17. Both TransLink and BC Transit have the power to tax and make by-laws in connection with the provision of public transportation and derive their authority to do so from provincial legislation.

***Greater Vancouver Transportation Authority Act, supra*, section 6(2)(b), 25(2), 6(2)(c)**
***British Columbia Transit Act, supra*, section 15, 8(1)(e)**

PART 2 - THE ISSUES

ISSUE 1 **Does the *Canadian Charter of Rights and Freedoms* (the *Charter*) apply to TransLink and BC Transit?**

ISSUE 2: **If the *Charter* does apply to TransLink and BC Transit, do sections 7 and 9 of the advertising policy of both of these entities, as well as section 2 of the advertising policy of TransLink, violate section 2(b) of the *Charter*?**

PART 3 - ARGUMENT

1. Does the *Canadian Charter of Rights and Freedoms* (the *Charter*) apply to TransLink and BC Transit?

18. Section 32(1) of the *Charter* establishes that the *Charter* applies:

> (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
>
> (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

***Charter*, section 32(1)**

19. The *Charter* can apply to an entity in two circumstances. The *Charter* applies to an entity if it is governmental in nature or if it is carrying out an activity that can be ascribed to government.

***Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, at para. 44**

20. Where an entity is "governmental in nature", it will be subject to the *Charter* with respect to all of its activities.

***Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, at para. 47**

21. In *Godbout*, LaForest J. set out a list of questions useful in assessing whether or not a given entity constitutes government for the purposes of the application of the *Charter* pursuant to section 32(1):

> (a) First, are the representatives of the entity elected by members of the general public and accountable to their constituents in a manner analogous to that in which Parliament and the provincial legislatures are accountable to the electorates they represent?
>
> (b) Second, does the entity possess a general taxing power?

(c) Third, is the entity empowered to make laws, to administer them and to enforce them?

(d) Finally, and most significantly, does the entity derive its existence and lawmaking authority from a province?

***Godbout v. Longueuil (City)*, *supra*, at para. 51**

22. The BCCLA submits that the answer to these questions in the context of TransLink and BC Transit provides a strong basis that both are government entities:

(a) First, pursuant to section 8 of the *Greater Vancouver Transportation Authority Act*, the board of directors of TransLink must be comprised of elected officials. Although the Greater Vancouver Regional District (the "GVRD") is responsible for appointing the members of the board, they must all be elected officials who are responsible and accountable to their constituents.

***Greater Vancouver Transportation Authority Act*,**
S.B.C. 1998 c. 30, section 8
Affidavit of Ian Jarvis, para. 3, para. 9

Similarly, section 4 of the *British Columbia Transit Act*, [R.S.B.C. 1996] c. 38, requires that a majority of the board of directors of BC Transit consist of elected officials. Further, section 25(4) of the *British Columbia Transit Act* requires that the members of its regional commission consist entirely of elected officials.

***British Columbia Transit Act*, R.S.B.C. 1996 c. 38, section 4, section 25(2), 25(4)**

The elected nature of the board of directors of both TransLink and BC Transit is an indicium of government.

(b) Secondly, pursuant to section 6(2)(b) of the *Greater Vancouver Transportation Authority Act*, TransLink has the authority to raise revenue by means of taxes and

levies. Further, section 25(2) grants TransLink the authority to assess property tax on land and improvements.

***Greater Vancouver Transportation Authority Act, supra*, section 6(2)(b), 25(2)**
Affidavit of Ian Jarvis, para. 6

Pursuant to section 15 of the *British Columbia Transit Act*, through the regional transit commission, BC Transit is able to raise revenue by prescribing taxes.

***British Columbia Transit Act, supra*, section 15**

Thus, the taxing authority enjoyed by both TransLink and BC Transit is an indicium of government.

(c) Third, pursuant to section 6(2)(c) of the *Greater Vancouver Transportation Authority Act*, TransLink has the authority to make by-laws with respect to the regional transportation system. Section 25(2)(a) of the Act also provides TransLink with the authority to make bylaws.

***Greater Vancouver Transportation Authority Act, supra*, section 6(2)(c), 25(2)(a)**

BC Transit does not have the express authority to make bylaws, but section 8(1)(e) of the *British Columbia Transit Act* provides BC Transit with all of the rights and powers that a municipality can exercise with respect to operating a rail transit system on a highway in a municipality. This express grant of municipal government powers is strong indicia of governmental authority.

***British Columbia Transit Act, supra*, section 8(1)(e)**

(d) Finally, both TransLink and BC Transit have derived its existence and lawmaking authority from the Province. TransLink was created as a result of negotiations between the Province and the GVRD in which the responsibility for transit and

other regional transportation services was transferred from the Province to the GVRD.

Greater Vancouver Transportation Authority Act, supra

BC Transit is the provincial crown agency charged with coordinating the delivery of public transportation throughout British Columbia (outside the Greater Vancouver Regional District). Essentially, the powers and functions that both TransLink and BC Transit are responsible for would be performed by the Province if they did not carry out this function. The existence and lawmaking authority that has been granted to TransLink and BC Transit from the province is further indicia of government.

British Columbia Transit Act, supra

23. The criteria in *Godbout* has been applied to establish that a school board, which is an "elected body endowed by legislation with largely autonomous rule-making and decisional powers" is a governmental entity subject to the *Charter*.

***Chamberlain v. Surrey School District No. 36*, [2002] 4 S.C.R. at para. 121**

24. It has also been established that both the GVRD and TransLink are governmental entities subject to the *Charter*.

***Greater Vancouver Regional District Employees' Union v. Greater Vancouver Regional District*, [2001] B.C.J. No. 2026**
***Churchill v. Greater Vancouver Transportation Authority*, [2001] B.C.J. No. 926**

25. The BCCLA submits that all of the characteristics of TransLink and BC Transit listed above support the conclusion that both TransLink and BC Transit are governmental entities subject to the *Charter* pursuant to section 32(1).

26. The BCCLA respectfully submits that the form of the entity should not determine whether the *Charter* applies to the entity if the substantive functions of the entity are ones which the government would otherwise carry out. The BCCLA further submits that the

government should not be allowed to avoid its responsibilities through the form of other entities such as TransLink and BC Transit.

27. These concerns were expressed by La Forest J. in *Godbout*:

> Since the Canadian Charter clearly applies to the provincial legislatures and governments, it must, in my view, also apply to entities upon which they confer governmental powers within their authority. Otherwise, provinces could…simply avoid the application of the Charter by devolving powers on municipal bodies.

***Godbout v. Longueuil (City), supra*, at para. 51**

28. Thus, as a matter of policy, the BCCLA submits that the *Charter* should be applied to TransLink and BC Transit.

2. If the *Charter* does apply to TransLink and BC Transit, do sections 7 and 9 of the advertising policy of both of these entities, as well as section 2 of the advertising policy of TransLink, violate section 2(b) of the *Charter*?

29. The BCCLA submits that because TransLink and BC Transit are governmental entities, it is not necessary to focus on the nature of the activity to determine whether or not TransLink and BC Transit are subject to the *Charter*. Rather, all of the activities of both entities are subject to the *Charter*.

***Eldridge, supra*, at para. 44**

30. Section 2(b) of the *Charter* provides all citizens with the right to freedom of expression.

***Charter*, section 2(b)**

31. The classic analysis of the application of section 2(b) is found in *Irwin Toy Ltd. v. Quebec (Attorney General)*. There, LaForest J. identified three steps that are necessary to determine whether there has been a violation of this freedom. Taken together, these steps establish the general principle that all communication which conveys or attempts to convey meaning through non-violent means is expression which is protected under section 2(b).

***Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927**

32. In the general case law on section 2(b), all communications which convey or attempt to convey a meaning, through a non-violent form of expression, are found to have expressive content, and thus fall within the scope of section 2(b). It is not until an infringement of section 2(b) is sought to be justified under section 1 that the content of the expression is examined in order to determine whether or not infringements on expression are justified.

***R. v. Keegstra*, [1990] 3 S.C.R. 697**
***R. v. Butler*, [1992] 1 S.C.R. 452**
***R. v. Zundel*, [1992] 2 S.C.R. 731**
***City of Montreal v. 2952-1366 Quebec Inc.*, 2005 S.C.C. 62**

33. In *Keegstra*, communications which wilfully promote hatred against an identifiable group were held to be protected by section 2(b) of the *Charter*.

R. v. Keegstra, supra

34. As expressed by Dickson C.J. in *Keegstra*:

> Content [of expression] is irrelevant to this interpretation [of the scope of section 2(b)], the result of a high value being placed upon freedom of expression in the abstract. This approach to s.2(b) often operates to leave unexamined the extent to which the expression at stake in a particular case promotes freedom of expression principles.

***R. v. Keegstra, supra*, at para. 82**

35. In *Butler*, the definition of obscenity in the *Criminal Code*, R.S.C., 1985, c. C-46, s.163(8), was found to infringe the freedom of expression guaranteed in section 2(b) of the *Charter* as it sought to prohibit certain types of expressive activity. The Court held that an analysis as to whether the infringement was justifiable based on content was to be conducted under section 1 of the *Charter*, not section 2(b).

R. v. Butler, supra

36. In *Zundel*, s.181 of the Criminal Code, R.S.C., 1985, c. C-46, which prohibited the wilful publication of false statement of news that a person knows is false and is likely to cause injury or mischief to a public interest, was found to infringe section 2(b) of the *Charter*.

R. v. Zundel, supra

37. The Court in *Zundel* held that all communications which convey or attempt to convey meaning, with an exception for violent communications, are protected by section 2(b).

R. v. Zundel, supra

38. These cases have been usefully summarized as follows:

> Two things about the relationship between section 2(b) and section 1 are noteworthy. First, in most of the Canadian freedom of expression cases, the section 2(b) analysis seems to be little more than a formal step that must be taken before the Court moves on to the more substantial issue of limits under section 1. The Court has interpreted the scope of the freedom broadly. Expression includes any act that is intended to convey a message. At this first stage of the adjudicative process, the Court describes the value of expression in very general terms (noting its contribution to truth, democracy, and self-realization), and says very little about the connection between the restricted expression and the values underlying the freedom. A more concrete or substantial discussion of the value of expression is deferred until the second stage of the adjudicative process, as part of the contextual "balancing" of competing interests under section 1.
>
> **Richard Moon "Justified Limits on Free Expression: The Collapse of the General Approach to Limits on *Charter* Rights", (2002) 40 Osgoode Hall L.J. 337-368, at pg. 339**

39. The Ads convey meaning. The CFS ad attempts to encourage youth to vote while the BCTF ad seeks to inform citizens of public education issues respecting the May 17, 2005 provincial election. Further, the Ads do not contain violent content. Thus, prima facie, the Ads fall within the scope of the section 2(b) guarantee as established by the case law.

R. v. Keegstra, supra
R. v. Zundel, supra
R. v. Butler, supra

40. TransLink and BC Transit consciously chose to make government property they control available for expression. However, they have sought to control the content of the speech that occurs on this property. The introduction of this control interferes with the speech of those who wish to use that space. The BCCLA submits that once a governmental entity attempts to control the content of otherwise permissible expression, a section 2(b)

infringement occurs. Such an infringement would only be permissible if it can be justified under section 1 of the *Charter*.

R. v. Keegstra, supra
R. v. Zundel, supra
R. v. Butler, supra

41. The BCCLA further submits that the type of expression contained in the Ads should be afforded a high degree of protection as political speech lies at the heart of section 2(b).

42. The BCCLA submits that the Ads further the values and purposes that lie at the heart of the constitutional protection of freedom of expression, as identified by the Supreme Court of Canada in *Irwin Toy*, namely the value that "participation in social and political decision-making is to be fostered and encouraged."

***Irwin Toy Ltd. v. Quebec (Attorney General), supra* at para. 53**

43. In advancing its beliefs that political expression lies at the core of the expression guaranteed by the *Charter* and warrants a high degree of constitutional protection, the BCCLA relies upon the following statements by Dickson C.J. in *Keegstra*:

> The connection between freedom of expression and the political process is perhaps the linchpin of the s. 2(*b*) guarantee, and the nature of this connection is largely derived from the Canadian commitment to democracy. Freedom of expression is a crucial aspect of the democratic commitment, not merely because it permits the best policies to be chosen from among a wide array of proffered options, but additionally because it helps to ensure that participation in the political process is open to all persons.

***R. v. Keegstra, supra*, at para. 89**

44. The Supreme Court of Canada has articulated three distinct rationales for the commitment to freedom of expression. The first is the societal benefit of allowing the best choices to be chosen from a wide variety of options as a means of self fulfillment. The second is to ensure that participation in the political process is open to all persons. The third is derived from the Canadian commitment to democracy. The Supreme Court of Canada has recently reaffirmed these purposes, but the BCCLA wishes to emphasize the importance of the third purpose.

***R. v. Keegstra, supra*, at paras. 87-89**
***City of Montreal v. 2952-1366 Quebec Inc., supra*, at para. 74**

45. The BCCLA relies extensively upon Alexander Meiklejohn's writings about the relationship between democracy and freedom of speech in justifying freedom of expression as a fundamental right protected by our *Charter of Rights and Freedoms*. Though his thoughts focus on the First Amendment of the American Constitution, his theoretical ideas about the meaning of democracy and free expression are applicable universally to all truly democratic societies. The following highlights from his work *Political Freedom* capture the core justification for free expression in a free and democratic society:

> We believe in self-government. If men are to be governed, we say, then that governing must be done, not by others, but by themselves (at 9) ... [I]n such a society, the governors and the governed are not two distinct groups of person. There is only one group -- the self-governing people. Rulers and ruled are the same individuals. We, the People, are our own masters, our own subjects (at 12) ... *When men govern themselves, it is they -- and no one else -- who must pass judgment upon unwisdom and unfairness and danger. And that means that unwise ideas must have a hearing as well as wise ones, unfair as well as fair, dangerous as well as safe* ... (at 27) ... We have decided to be self-governed. We have measured the dangers and the values of the suppression of the freedom of public inquiry and debate. And, on the basis of that measurement, having regard for the public safety, we have decided that the destruction of freedom is always unwise, that freedom is always expedient. ... We, the People, as we plan for the general welfare, do not choose to be protected from the search for truth. On the contrary, we have adopted it as our way of life, our method of doing the work of governing for which, as citizens, we are responsible. Shall we, then, as practitioners of freedom, listen to ideas which, being opposed to our own, might destroy confidence in our form of government? Shall we give a hearing to those who hate and despise freedom, to those who, if they had the power, would destroy our institutions? Certainly, yes! Our action must be guided, not by their principles, but by ours. We listen, not because they desire to speak, but because we need to hear. *If there are arguments against our theory of government, our policies in war or peace, we the citizens, the rulers, must hear and consider them for ourselves.* That is the way of public safety. It is the program of self-government. (at 57) (emphasis added)
>
> **Alexander Meiklejohn, *Political Freedom* (New York: Oxford University Press, 1960) (excerpt)**

46. The democratic commitment justification for freedom of expression fully protects expression and access to all ideas that fall within the democratic forum. Often termed political speech, every idea that is part of public discourse, be they ideas no matter how controversial or hurtful, about sexuality, race, religion, etc., are rightly protected by freedom of expression. Freedom of expression protects all ideas that involve social or political issues broadly understood because these ideas are central to our responsibility as democratic citizens in deliberating and choosing the laws, public policies and public institutions that we wish to govern ourselves.

47. Freedom of expression does not simply mean the right of citizens to express particular ideas. Rather, the justification for freedom of expression lies as much, if not more, in the right of citizens to have *access* to all ideas that are central to their self-ruling function as members of a democracy. Just as commercial expression protects listeners as well as speakers in enabling individuals to make informed economic choices, an important aspect of individual self-fulfilment and personal autonomy, political expression, even expression that we abhor, protects listeners in making informed democratic choices about our society's laws, public institutions and public policies.

***Ford v. Quebec (A.G.)*, (1988) 54 D.L.R. (4th) 577 at 618**

48. Given that there is not any section 2(b) case law with respect to government providing space solely for commercial purposes, it is useful to consider cases in which citizens have demanded free access to governmental space.

49. *City of Montreal* is the leading case with respect to access on government-owned property.

City of Montreal v. 2952-1366 Quebec Inc., supra

50. *City of Montreal* establishes that to determine whether the government must permit expression on its property, regard must be had to:

(a) the historical or actual function of the place; and

(b) whether other aspects of the place suggest that expression within it would undermine the values underlying free expression;

This inquiry must be taken without regard for the content of the speech. Here, the fact that advertising for commercial use is allowed by TransLink and BC Transit demonstrates that the historical and actual function of the space on the side of the bus has been for expression. Further, the fact that the defendants actively encouraged the Plaintiff's use of the space for advertising is indisputable proof that the expression in the space would not interfere with the values that underlie free expression.

***City of Montreal v. 2952-1366 Quebec Inc., supra*, paras. 74-78**

51. In this case, there was no attempt to deny the Plaintiffs access to the public space. It is clear from the Affidavit of Mr. Beaudoin and Mr. Drolet that they did not seek to prohibit the Plaintiffs' speech, but rather to control it. It is clear that the defendants' purpose was "to restrict the content of expression by singling out particular meanings that are not to be conveyed."

Affidavit of John Beaudoin, paras. 38-40
Affidavit of Ron Drolet, paras. 14-16, para. 30
***Irwin Toy Ltd. v. Quebec (Attorney General), supra*, at para. 49**
City of Montreal v. 2952-1366 Quebec Inc., supra

52. The BCCLA respectfully submits that attempts by government to control the meaning of speech attract the highest level of scrutiny from the Courts under the *Charter*. Here, where the clear meaning of the speech relates to topics that are at the core of the *Charter's* values, there can be no doubt an infringement of section 2(b) has occurred and the governmental actions that gave rise to the infringement, as well as the policies under which they were taken, should be set aside, unless the Defendants can justify that infringement under section 1 of the *Charter*.

***British Columbia Public School Employers' Assn. v. British Columbia Teachers' Federation*, [2005] B.C.J. No. 1719**
City of Montreal v. 2952-1366 Quebec Inc., supra

DATED at Vancouver, British Columbia, this 4th day of November, 2005.

Chris W. Sanderson, Q.C.
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