



April 3, 2008

To the Superintendent of Schools

Re: Safe Schools and Social Responsibility Survey

HONOURARY DIRECTORS

David Barrett

Neil Boyd

Thomas Berger, Q.C., O.C.

Robin Blaser

The Right Honourable
Kim Campbell, P.C., Q.C.

Andrew Coyne

Bill Deverell

David H. Flaherty

John Fraser, P.C., Q.C.

Gordon Gibson

Mike Harcourt

Rev. Phillip Hewett

Michael Ignatieff

Art Lee

Alex MacDonald, Q.C.

Rafe Mair

Stephen Owen P.C., Q.C., M.P.

Svend Robinson

David Suzuki

Milton Wong

I am writing on behalf of the B.C. Civil Liberties Association regarding our concerns about the Safe School and Social Responsibility Survey. Before doing so, I wish to provide a brief introduction to the British Columbia Civil Liberties Association (BCCLA). The BCCLA is Canada's most active civil liberties organization. Founded in 1962, the BCCLA's mandate is to promote, defend and sustain civil liberties in British Columbia and Canada. To achieve our mandate, we work in four program areas: public education, complainant assistance, law and policy reform and litigation. The Association is governed by a volunteer Board of Directors and assisted by a small, professional staff. We are funded by grants from the Law Foundation of B.C. and donors who support our work and civil liberties. For more information on the BCCLA, visit our website at www.bccla.org.

It is our understanding that the BC Centre for Safe Schools and Communities and the University College of the Fraser Valley will administer the Safe School and Social Responsibility Survey to more than 80,000 students across British Columbia. We should state at the outset that the BCCLA supports the general objective of the survey. However, the survey asks students to reveal extremely sensitive information such as their involvement in criminal activity and use of illicit drugs. In completing the survey, students are asked to provide certain information so that their participation can be tracked from year to year. The BCCLA believes this method of tracking individuals could be used by law enforcement authorities to identify students and their responses. The Safe School and Social Responsibility Survey effectively asks students to provide self-incriminating evidence. Should a student be matched to their survey, participation could result in criminal investigation and/or criminal proceedings.

As there is a reasonably foreseeable possibility that law enforcement authorities could obtain personal information to identify individuals, the BCCLA believes that the survey violates the privacy rights of students. The fact that the survey is presented as anonymous and confidential without any notice to students or their parents that the survey could be used for

disciplinary or law enforcement purposes is a further violation of students' privacy rights.

Given our concerns, in 2007, the BC Civil Liberties Association met with the Research Ethics Board of the University College of the Fraser Valley to express our concerns regarding the Safe School and Social Responsibility Survey. After our meeting, the Research Ethics Board agreed to modify the 2007 survey so that individual students would no longer be tracked. According to our understanding of our agreement with Chair of the Research Ethics Board Ken Brealey, this agreement on the 2007 survey applied to all future incarnations of the survey. Recently, the BCCLA discovered that the 2008 Safe School and Social Responsibility Survey would once again resume tracking individuals. The Chair of the Research Ethics Board has stated that the 2008 survey is a different survey than the 2007 survey, and that the agreement between the Research Ethics Board and the BCCLA only applies to the 2007 survey. The principal difference between the two surveys is that the questions used to track students are now cited as optional. However, allowing students to choose whether they would like to be individually tracked without informing them of the consequences of that choice runs contrary to students' privacy rights and the need for free and informed consent.

How the 2008 Safe School and Social Responsibility Survey is not confidential

The admissions of criminal activity collected by the Safe School and Social Responsibility Survey could be very attractive to criminal justice agencies. The Tri-Council Policy Statement, which provides the ethical guidelines for academic research in Canada, explicitly discusses the precedented and foreseeable possibility of research data being subpoenaed. Currently, ethical guidelines allow researchers to choose whether or not to break confidentiality in the face of a subpoena. While many researchers may take a principled approach and maintain confidentiality, refusing to comply with a subpoena may result in criminal sanctions. Privacy legislation is much clearer: under no circumstances should confidentiality be broken.

How the 2008 Safe School and Social Responsibility Survey is not anonymous

The Safe School and Social Responsibility Survey asks students to fill in a 'privacy code' and asks six other questions related to demographics. The privacy code consists of the following:

- The first letter of the student's mother's first name
- The last number of the student's birth year
- The last letter of the student's last name
- The third letter of the student's birth month
- The number of the student's older siblings

The next six questions ask for school name, grade, gender, ethnicity, residency, and home language. (The survey no longer asks students for their postal code, a remnant from our previous agreement with the Research Ethics Board).

The survey does not record a student's name; however, the information contained in the privacy code and six other questions can identify a student when combined with knowledge of the student. Criminal justice agencies may have records with sufficient information on a student to match a survey to that student. As well, school records can be easily obtained by criminal justice agencies, even without a subpoena. Seven of the eleven responses will be in a student's school record, and the remaining four may be present. It is also reasonable to assume the privacy code and demographic information, in whole or in part, will be known by some teachers and students. The effectiveness of the survey in isolating individuals for longitudinal tracking ensures that an extremely small number of people will have the same responses to the privacy code and demographics questions. Matching a student to their survey can be done merely by piecing together information that is readily available. With minimal investigation, law enforcement authorities can draft a subpoena for a specific student's survey.

How the 2008 Safe School and Social Responsibility Survey can cause harm

Students who fill out the Safe School and Social Responsibility Survey are asked to admit to serious criminal activity, such as committing assault, carrying weapons, and using illicit drugs. The foreseeable possibility of forced disclosure of this information to law enforcement authorities would allow students' admissions to be used against them. School Boards often

have strict guidelines that ensure research is conducted anonymously, in accordance with privacy rights, and with adequate parental consent.¹

How the 2008 Safe School and Social Responsibility Survey violates privacy

Privacy legislation requires that all research maintain adequate safeguards to ensure individuals whose personal information is being collected are not inadvertently harmed in the process. The Safe School and Social Responsibility Survey does not guarantee that the information collected will only be used for the reason it was collected. Given that the design of the survey leaves the door open to third-party access to the research data, the administration of the survey constitutes a violation of the privacy rights of students.

Without an unequivocal guarantee of both confidentiality and anonymity, the Safe School and Social Responsibility Survey violates the privacy rights of students and presents a real possibility of harm. The BCCLA has filed a complaint with the Office of the Information and Privacy Commissioner for British Columbia regarding the administration of the Safe School and Social Responsibility Survey. I hope that BC Superintendents of Schools and School Boards will exercise caution and not allow the Safe School and Social Responsibility Survey to be administered until Privacy Commissioner David Loukidelis has investigated our complaint. I thank you for your interest in this matter.

Sincerely



Jason Gratl,
President

¹ For example, Vancouver School Board policy:
<http://www.vsb.bc.ca/NR/rdonlyres/D4610F0D-0064-408C-B2FD-CF83F33406B5/0/GuidelinesforConductingResearchStudies2008.pdf>