THE DEMOCRATIC Commitment

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Revisiting the bubble zone debate

In recent years, there is likely no more difficult problem with which the British Columbia Civil Liberties Association has grappled than that of anti-abortion protests, and the so-called "bubble-zone" legislation they inspired, British Columbia's *Access to Abortion Services Act*.

Of course, part of the challenge of being a modern civil liberties advocate is where to draw the line 'when rights collide', to borrow a line from the Canadian Civil Liberty Association's Allan Borovoy. Nevertheless, we are generally able to confront these situations and take a principled position that is satisfactory to a comfortable majority of our members, even if that position is vilified by the public and popular press.

Bubble zones, however, are different. They arose after a series of injunctions were issued against abortion-clinic protesters in the early 1990s. That regime was seen to be ineffective, although injunctions, and either contempt or obstruction charges for breach of their terms, are the preferred tactic of law enforcement agencies in most other jurisdictions. It is certainly true that any civil libertarian should be concerned about 5-year "temporary" injunctions becoming a form of *de facto* legislation, as they have in Toronto; in a way it is far preferable that the difficult decisions be made by elected lawmakers in the Legislature rather than in hurried proceedings in judges' chambers. Nevertheless, abortion protest is the type of social and political dissent to which we are committed to preserving, and we do not, and could not, endorse even legislative measures to restrict it without pressing and properly articulated reasons.

The Association's history on the bubble zone issue has been

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The Devil's Advocate

A MESSAGE FROM BCCLA PRESIDENT CRAIG JONES

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less than consistent. At first, the Board condemned the legislation. Then, a few months later, after further consideration of the conflicting rights at stake, endorsed it. Then, only this year, the Province used the *Act* to impose a large bubble zone around parts of Vancouver Hospital. The Association criticized the move, and more particularly the process under the *Act* that allowed such decisions to be made without any meaningful public justification.

None of these decisions are made by the Board without vigorous debate and a full exploration of the issues, and internal divisions persist, as indeed they must in any organization committed to preserving sometimes conflicting rights. For me, the vigorousness of the debate is proof that our Association remains vital and relevant.

In this issue of the *Democratic Commitment*, we are publishing a pair of opposing points of view on the bubble zone issue. These arguments were prepared by Board members in advance of our last meeting on the subject, although they are by no means the only points of view that informed that recent discussion. As always, we invite and encourage the thoughts and feedback of all members on the difficult questions this legislation presents.

I should point out that the Association's general support for the bubble zone legislation has not meant that the association is in any way "taking sides" on whose speech is "right". We remain vigilant in ensuring that, within all reasonable limits, the rights of abortion protesters, pro and con, are preserved. To this end, in the last month alone we have monitored and actively investigated claims by anti-abortion protesters that their rights have been infringed by the City of Vancouver and the University of British Columbia.

There is always a danger that, in accepting some infringements on the liberty of citizens, greater and greater "liberties" will be taken by the State. There have been accusations made that the bubble zone legislation is the beginning of just such a slippery slope. Conversely, it might be said that the very controversy surrounding the imposition of the zones has put our representatives on notice that any such infraction will not be treated lightly and comes with political cost.

I am interested in your thoughts on this subject. You can find a copy of the *Access to Abortion Services Act* on the Province of BC's web site, www.qp.gov.bc.ca/bcstats/96001_01.htm.

Craig Jones
President

The BC Civil Liberties Association
425 - 815 West Hastings Street
Vancouver, British Columbia
V6C 1B4
Phone: (604) 687-2919
E-mail: info@bccla.org
Web: www.bccla.org

Office hours: 9:00 am to 4:30 pm
Monday to Friday.

The Democratic Commitment *is a quartlery publication of the British Columbia Civil Liberties Association. The Association was established in 1962, and is the oldest continuously active civil liberties association in Canada. Its mandate is to preserve, defend, maintain, and extend civil liberties and human rights in British Columbia and across Canada.*

Case updates

CURRENT CASES AND LAW REFORM WORK

view of the building that houses the bccla's vancouver office

HIV testing of rapists

In September, the BCCLA Board of Directors considered whether those accused of sexual assault should undergo non-consensual HIV testing. In several recent cases, rape victims have requested that the accused be tested for HIV so that: if the test is negative, the victim's fears of having contracted HIV will be eased; if the test is positive, the victim can seek medical treatment and take steps to prevent infecting others.

The Board voted that non-consensual HIV testing is a serious violation of the privacy and autonomy rights of the accused, but these rights could be overridden if the harm from not testing were great enough.

The Board noted that there is now an extremely accurate HIV "viral load" test that must be taken within five days of possible infection.

However, since all of the benefits of testing the accused can also be gained by a viral load test of the victim, and only in rare cases would a court have the opportunity to order a test of the accused within a five day period, the Board rejected the idea that courts should have the authority to order HIV testing of the accused.

Challenge to federal government secrecy

The Association is leading the charge in a court challenge to the federal government's refusal to release documents relevant to the APEC Inquiry. The government claims that their release would harm national security, international relations, and policing operations.

The documents at issue are a collection of briefings, threat assessments, and information about covert operations by CSIS, the RCMP and the Solicitor General.

The BCCLA argues that the public interest in disclosure of the documents, especially considering the APEC hearing's mandate to inquire into whether the RCMP were directed to stifle protest for political rather than security reasons, outweighs the public interest in preventing harm to national security and policing operations if the documents are released.

The BCCLA is fortunate to be ably represented by **Rick Twining** of Whitelaw Twining.

Bill C-6: privacy in the private sector

As a welcome check on the growing trade in sensitive personal information, the federal government has introduced Bill C-6, the *Personal Information Protection and Electronic Documents Act*. If passed, this legislation will require companies to obtain informed consent from individuals before it collects, uses or discloses their personal information. In creating a set of fair information practices and enforcement mechanisms, the law will change the ethos of businesses and employers and their approach to privacy.

The bill is now before the Senate of Canada. The BCCLA expects to testify before the Standing Committee on Social Affairs, Science and Technology in support of the bill and to counter a ferocious lobby from the health sector, which wants an exemption for health information.

The BCCLA encourages *Democratic Commitment* readers to voice their support for Bill C-6 by contacting Senator Bernard Boudreau at 1-800-267-7362 or via e-mail: bboudreau@pco-bcp.gc.ca.

Case updates

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Sexual harassment decision

In a highly publicized decision, a BC Human Rights Tribunal member found a UBC professor guilty of sexually harassing one of his students. The evidence was that he twice invited her to his home; that he created a "sexualized" environment with dinner, candles, and soft music; that she was uncomfortable with this; and that he should have known she was. Key to the decision was the power differential between the two.

The BCCLA questions whether the behaviour described above either legally constitutes sexual harassment, or in principle should constitute sexual harassment. We also question whether the somewhat lax procedural rules in a human rights tribunal setting, which understandably favours the complainant in cases of alleged discrimination, are appropriate for allegations as serious as sexual harassment. Finally, we question whether a power differential by itself can turn normal social or sexual behaviour into sexual harassment.

If the respondent seeks a judicial review of this decision, there may be an opportunity to address these issues in court.

The decision is on-line at the BC Human Rights Tribunal web page: www.bchrt.gov.bc.ca/mahmoodi3.htm.

BCCLA's complaint against the New Westminster Police Department

Last November, in response to public pressure, New Westminster police cracked down on suspected street drug dealers. Video clips of the police operation that were broadcast on local TV news prompted the BCCLA to lodge a complaint about police tactics. The investigation, completed at the end of October, found that there were problems with police policy on the privacy of suspects (videotaping) and on the procedure relating to entering private dwellings without a warrant. Investigators recommended a variety of policy changes that have been accepted by the New Westminster Police Board.

We are generally satisfied with the recommendations. However, important issues regarding use of force and police authority to detain and remove suspects remain unresolved. We have met with the Chief of Police and the Mayor of New Westminster to discuss these unresolved issues and will continue to press for changes.

As we stated in our press release after the investigation was complete: "[P]olice were under tremendous public pressure to clean up the streets. Citizens need to be reassured that police respect the law while enforcing it. This report sends a strong message that police are not free to act outside the law, no matter how much public support they have to deal with a particular problem."

The entire BCCLA press release can be viewed on our web site at www.bccla.org. The investigative reports of the New Westminster and Delta Police are on-line at www.opcc.bc.ca/reports.htm.

BCCLA challenge to forest company bubble zone injunction

Injunctions preventing interference with logging have become the standard method for forest companies to prevent protest against their operations. The BCCLA will seek to intervene in a court case in which an injunction in favour of Interfor goes much further. Rather than simply prohibiting interference with Interfor's logging operations in the Elaho Valley (also known ask the Stoltman Wilderness), the injunction in this case creates a bubble zone in which no one, except those specifically named in the Court order, may enter a specified geographic area. This despite the fact that the land is Crown land and thus public. In addition, there have been allegations of serious assaults by loggers on protesters, yet media are also prohibited from entering the area to report on the controversy. The BCCLA is concerned that such injunctions go too far and unreasonably circumscribe the rights of citizens.

John Dives of Dives, Grauer, Harper will represent the Association in the matter.

Revisiting the bubble zone debate

Why the BCCLA should oppose bubble zone legislation

by sam black, vice president & steven davis, executive member

The BCCLA should categorically oppose the *Access to Abortion Services Act*.

The central civil liberties issue in this case is the right to freedom of expression: should a group that is passionately opposed to the life-style choices of certain individuals and the public policy which protects those choices be permitted to express their opinions in public, even when it targets specific individuals, may be deeply upsetting to those persons, and may have an impact that has important consequences for these individuals' future?

The situation is not without precedent. Other examples of where these conflicting interests may arise are antiwar demonstrators who protest at the offices processing new conscripts and volunteers, animal rights activists who demonstrate at a restaurant that specializes in dishes concocted from intelligent or endangered species, and opponents of genetically engineered foods who demonstrate before supermarket chains which stock products from the responsible firms. In each of these cases we can imagine demonstrators singling out patrons or conscripts and disturbing them with what they say. To disturb is indeed the aim of protest.

Would the Association contemplate bubble zone legislation on these occasions? Definitely not. What then could possibly make the abortion case different?

Legal Limits

Opposing bubble zones does not mean "anything goes" at a protest. Laws that govern assault, harassment, and freedom of speech apply. If demonstrators become unruly and defy the law, an injunction can be sought against them.

Injunctions are preferable to bubble zones because those who seek an injunction must provide evidence that there is a reasonable risk that protesters will break the law. Injunctions provide safety. This acts as a safeguard for ensuring speech will not be suppressed simply because some find its contents disturbing.

Opposing bubble zones does not mean "anything goes" at a protest. Laws that govern assault, harassment, and freedom of speech apply. If demonstrators become unruly and defy the law, an injunction can be sought against them.

The arguments holding that nothing short of bubble zones are adequate rest on a variety of implausible assumptions.

Protecting Privacy?

The claim that privacy should supersede the right to protest around abortion clinics is wrong for a number of reasons.

First, proponents of bubble zones argue the zones will decrease the likelihood that individuals who use this state service can be identified. This is unlikely because the bubble zone law is not rationally connected to privacy. Inexpensive equipment is available to take reliable photos or videos of staff and patients, even when bubble zones are in place.

It is also objectionable to justify bubble zones on privacy grounds because individuals have no right to remain anonymous in these public spaces. The fact that patients are using a state

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service rather than patronizing a supermarket, restaurant or war is equally irrelevant. If there were such a right, the state would have a corresponding duty to shuttle them into clinics and hospitals in unmarked vehicles, which is absurd.

Nor does the state have the right even to prevent members of the public, for example reporters, from determining whether some gangster or athlete is seeking admission to a hospital emergency room.

Second, bubble zone supporters argue that if the Association opposes bubble zones, the Association does not take privacy seriously.

This is simply not true. The Association *should* oppose demonstrations around physicians' homes since they disrupt many aspects of his or her life. Protests at a clinic only impact on one facet of a person's life, and possibly for no more than one hour. They target individuals during the time at which they are involved in the activities which protestors find objectionable. The protests at hospitals and clinics are narrowly rather than broadly targeted, and consequently do not trench on legitimate privacy interests.

Third, proponents argue that there is a special privacy interest implicated in this case: the right to have one's personal airspace respected in public venues. Surely there is no such right. People have the right not to be assaulted or harassed in public, or otherwise have their person violated. But the privacy right being contemplated here goes well beyond those simple rights, by seeking to provide individuals with a veto over the messages that enter their personal airspace.

If people can claim this oversized privacy right to 'personal airspace', then any street corner orator or street side religious proselytizer could be shut down. The Association would take a dim view of any such prohibition.

The importance of proximity in abortion protest

Zone defenders say they do not restrict the content of the speech but only its place and manner and that none of the content is suppressed. This is not entirely true.

Human beings have a regrettable capacity to ignore the most savage events when those events are merely described in language. In order for certain kinds of expression to have their full impact, it is essential that they be accompanied by images which are as graphic as possible.

The shift in public opinion during the Vietnam war is widely attributed, for example, to the nightly television footage depicting American casualties, along with the terrible suffering inflicted on the Vietnamese people. Someone protesting that war had every right to confront people in public spaces, including those enlisting for military service, with disturbing images of children burned with napalm or blown apart by land mines. Similarly, animal rights activists should have every right to draw our attention to the horrific conditions prevailing on many commercial farms, even by picketing restaurants.

Given the way peoples' minds process information, it is clear that something is lost when information is conveyed through language alone. Images make an important impact. And it is equally critical that images are seen close up, where it is impossible to avert one's gaze from their disturbing content.

Thus, bubble zones are much more than simply a time and manner restriction. The distance between an image and the viewer often determines whether content is understood. Imagine a state censor ruling that news footage of the Vietnam war could only be lawfully viewed on televisions placed at a distance of 50 meters!

Bubble zone supporters may respond that this case is no different from a pro-child pornography group that advertises its political cause using large billboards. The Association would have no problem with restrictions on such billboards. Why should this case be any different?

In fact, the cases are totally dissimilar.

First, anti-abortion protests are directed at individuals who are contemplating the use of a service, just at the time when they are making their decision.

On the other hand, a bill board is not narrowly targeted. It hovers over people continuously. This broad targeting creates a strong presumption against a right to that form of expression.

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Second, there is a rational connection between the form of protest and the content of the speech being communicated. As stated earlier, anti-war and anti-abortion protestors can only communicate their message effectively by compelling people to look at pictures of the blood and gore at close quarters. A political advertisement for the child pornography cause does not require this kind of direct contact with visual images. So the absence of a rational connection between the form of expression and its objective does nothing to eliminate the already strong presumption against broadly targeted speech.

These examples illustrate the difference between a genuine time, place and manner restriction, as would apply to pornographic bill boards, and absolutely bogus time, place and manner restrictions which the Association is contemplating applying to anti-abortion protests.

It might be argued that the grounds for bubble zones are like other restrictions on offensive speech. Pornographic billboards can be restricted partly on the grounds of their offensive content. Why not regard anti-abortion protests in the same light?

This is yet another analogy that doesn't work. Restrictions on pornography are justified in part over concern for exposure to minors, and this ground does not apply to the bubble zone case.

Furthermore, a pornographic billboard is likely to be commercial speech and is accordingly entitled to less protection — again, a disanalogy with the case at hand.

Anti-abortion protests are neither commercial speech, nor is there reasonable risk of minors being exposed. This is protest speech. It relates to issues of public policy and personal responsibility on the very gravest of matters: the killing of potential human beings. The possibility of vigorously expressing one's point of view on issues of such vital importance lies at the very centre of the value of freedom of expression.

Bubble zones will have no impact whatsoever on the ability of violent individuals to identify doctors and patients. Inexpensive technology makes identification simple for someone who can acquire assault rifles or construct bombs.

Protest is about changing minds

Yet another concern of bubble zone supporters is that anti-abortion protests often have the consequence of causing women who seek abortions to change their minds. In fact, getting someone to change their mind is the whole point of a protest, and the possibility that a mind can change explains why freedom of expression is valuable in the first place.

Abortion protestors shouting "fire"

It has been argued that anti-abortion speech works on people not by engaging their values and beliefs but through intimidation. It is like falsely yelling "fire" in a crowded theatre. There are two primary reasons the fire analogy doesn't work.

First, as a mob panics and stampedes the exits of a theatre, there is no time for anyone to think about what they're doing. By contrast, someone who makes her way into a medical building has ample opportunity to deliberate, and change her mind.

Second, the consequences of these kinds of speech are crucially different. The risk of harm in falsely yelling fire is that some people will be killed or injured, serious consequences that cannot be reversed by any subsequent reassessment of the truth of that what was yelled. The risk of harm in the abortion case is that some people will reconsider their decision to have an abortion. It is possible to change your mind at a later time in the case of abortion; there's no immediate risk involved in this medical procedure.

Motives irrelevant to bubble zone debate

It is also charged that abortion protesters have the intention or motivation of intimidating others. The motivations of the protesters are irrelevant, unless they break the law. Many demonstrators probably have a combination of motives,

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including the view that in such cases people have failed to seriously engage with the enormity of the decision to destroy a potential human life. But motives are irrelevant, since no one should dispute that part of the protest involves expressions which seek to persuade through their content.

Safety and bubble zones

Proponents argue that the violence perpetrated against health workers makes this case special. Special perhaps, but not in a way that is relevant to bubble zone legislation. Bubble zones will have no impact whatsoever on the ability of violent individuals to identify doctors and patients. Inexpensive technology makes identification simple for someone who can acquire assault rifles or construct bombs.

Some people argue that even if there is no rational connection between bubble zones and reducing the risk of harm, what matters are the perceptions of health care workers. Since the rash of attacks, there has been a decrease in the number of physicians willing to perform abortion services, thus denying essential services to women. Something must be done.

Even if it is true that there are fewer doctors willing to perform abortions in BC, there is no evidence that bubble zone legislation will stem the flow. Why assume that health care workers will respond to that impotent gesture? Surely, a better solution is to devote greater resources to enforcing existing laws than to restrict speech.

Conclusion

Antiwar demonstrators often approach prospective soldiers and expose them to the most disturbing images of war in the most intimate ways. The targets are often singled out as individuals, and if they succumb to the demonstrator's message, this may have enormous consequences for their future. No one in this Association would question the privilege of these antiwar demonstrators to wage their heated campaigns. Many of us might indeed applaud those demonstrators: officially, for exercising their right of free speech, unofficially because we loathe certain wars. When we consider abortion demonstrators rather than war demonstrators, however, our unofficial sympathies often line up quite differently. But our unofficial sympathies have no business determining the Association's position. Just as the Association should not oppose war, it should not condone legalized abortion.

No one in this Association would question the privilege of these antiwar demonstrators to wage their heated campaigns.... When we consider abortion demonstrators rather than war demonstrators, however, our unofficial sympathies often line up quite differently. But our unofficial sympathies have no business determining the Association's position.

Those who join protests are convinced that abortion involves the destruction of human life. No one can doubt the fundamental importance of this issue. Nor can anyone doubt that visual information often plays a critical role in sensitizing human beings to consequences of their actions. Whatever we may think of the merits of the argument that abortion is murder there is a very strong presumption that these protests should be permitted to take place without restriction.

The reasons advanced for using bubble zone laws to restrict this expression are basically incoherent. There is no bona fide privacy right implicated in this case. Nor can the content of the speech be conveyed as effectively in some other way. Finally, bubble zone laws will do nothing to enhance the legitimate privacy and security interests of patients and health care workers.

The Canadian Civil Liberties Association opposes even injunctions outside abortion clinics. Their letter to the Attorney General of Ontario is on-line at www.ccla.org/pos/letters/agboyd1.shtml.

The Other Side
Why the Association should support bubble zone legislation

by john westwood, executive director & steve katz, board member

THE USE OF BUBBLE ZONES to impose reasonable limits on the proximity of anti-abortion demonstrators to women entering free-standing abortion clinics is a rational, measured and appropriate way to resolve the civil liberties conflict inherent in the situation. The conflict is obvious: the free speech and assembly rights of the demonstrators versus the privacy interests of women seeking to be let alone in accessing the medical services they have chosen.

The BCCLA is settled on how to resolve these competing rights and interests for bubble zones around the homes of abortion service providers. It is agreed that the privacy interests implicit in the home setting are of sufficient weight to permit some regulation of expression—some respectful distance.

Women who seek access to free-standing abortion clinics have a qualitatively equal right to expect a respectful distance be imposed on those who wish "in your face" proximity, especially when they attempt to impose themselves and their views on the women, and attempt to stop the women from carrying out their intentions.

Sam Black and Steven Davis, in the previous brief, argue that bubble zones are an unjustified infringement on the expression rights of anti-abortion protesters. Our reply to these arguments is as follows:

(1) We acknowledge that anti-abortion protesters view abortion as the murder of babies and are opposed to the state policy that protects and provides for the right of women's access to abortion services. We also agree that the protesters have a *prima facie* right to be permitted vigorous expression of their opinions in any public venue, even when that expression targets individuals, is upsetting to them, and has important consequences for their future. To say that they have *prima facie* right is to establish a presumption that the right be honoured unless compelling circumstances exist which override it. We believe that compelling circumstances do exist which warrant restricting the place and manner of the expression of anti-abortion protesters.

Women seeking an abortion desire not only not to be identified, they seek another aspect of privacy: solitude—being let alone, free from interference by others.

(2) The proposed analogies to anti-war, animal rights and genetically engineered foods demonstrators are not helpful. We agree that bubble zones would be unjustified in these cases. However, what makes access to abortion services a special case is the intensely personal and private nature of the situation in which a woman finds herself. Access to medical services in general is a personal and private affair, one in which the intrusion of others, especially strangers, can be upsetting even where the service itself is common and mundane. In addition to this, when a woman is pregnant and considering an abortion, she is often wrestling with a range of highly personal and stressful issues: her own life situation, the relationship with the father and his desires, a desire to bear the child along with a fear that she would not be able to cope, moral and/or religious pressures (not to mention the pressure of time), and so on. It is rare that a woman would seek an abortion with the cavalier attitude she might take to having a tooth pulled. Although a man joining the army might also be under intense strain from personal and family pressures—making what might be a life-or-death choice—what singles out the abortion situation is the inherently private nature of a woman's decision whether to bear a child or terminate her pregnancy.

A better analogy would be a bubble zone around the Cancer Control Agency in the case of a religious group that fervently

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believes the use of cancer therapies is a grave sin and that demonstrates at the Agency using similar tactics to the anti-abortionists is doing God's work. However, a bubble zone here—regulating but not quashing the speech of demonstrators and thereby providing some respectful distance for the patients—would be a rational remedy which gives due weight to the rights and interests of both.

(3) If the only concern was that protesters would break the law in expressing their views, and there existed adequate resources to police demonstrations so that any law-breakers would be arrested, then no action at all, either legislative or injunctive, would be required. But these conditions do not exist. First, we do not have the resources to provide a police presence at abortion clinics at all times when it is open. Second, even if we did, the evidence is difficult to obtain, and the protesters will continually test the limits of legal behaviour, making prosecution an uncertain and time-consuming venture. It is simply not practical to rely on the normal process of enforcing the criminal law. Nor would an injunction which banned only criminal behaviour help, since it would suffer the same policing problems.

Further, we dispute the assumption that only criminal behaviour justifies a restriction on speech. This is an important point, since it is partly upon this basis that we wish to justify banning within a bubble zone not only behaviour which is harassing, quasi-criminal and barely-expressive, but also behaviour which is non-criminal such as chanting prayers or carrying anti-abortion signs.

(4) We do not agree that the argument that women's privacy should be protected is "confused". Privacy is an interest or value which is composed of different but related values, and more than one of these plays a role in this issue. Whether protesters can identify women entering an abortion clinic is not the main issue.

One privacy issue is identifying the individuals as women seeking an abortion. People normally wish anonymity when seeking any medical service and regard it as no one else's business unless they choose to disclose it to another person. An abortion is an especially personal medical service and most women want to keep the reason for their visit to themselves. Of course, anyone walking by the clinic seeing a woman about to enter has a fairly good idea what she is there for and to that extent her privacy has been compromised even without the presence of protesters. However, it is quite another matter when a group of anti-abortion protesters waits on the sidewalk precisely in order to see if she is seeking an abortion service and is prepared to approach her to try to stop her from going into the clinic. The exposure suffered by women in such circumstances, and the consequences of such exposure, are dramatically increased. It is not that she has a *right* not to be recognized as a woman seeking an abortion service (how could such a right be honoured?), but rather that in being so identified by others looking for just such women, individuals who intend to try to stop her from seeking the service, she is "exposed" in a dramatically injurious way.

Once identified as a woman seeking an abortion, she is approached. The "legal" tactics vary, but include the following: pushing a picture of an aborted fetus in her face, singing religious hymns and praying, asking her if she realizes she is about to murder her baby, begging her not to go in, shouting in her face, walking along side her continuing to shout at her, etc. She may not be being criminally harassed, but she is nonetheless being harassed in a full sense of that word. Women seeking an abortion desire not only not to be identified, they seek another aspect of privacy: solitude—being let alone, free from interference by others. It is not the passerby who may walk within three feet of her that intrudes into her solitude, but rather the anti-abortion protesters shouting in her face. Again, the point is not that she has a *right* not to have her solitude invaded, but rather that in having her solitude shattered in this most aggressive, almost violent manner, the harm she suffers is great.

(5) In the previous brief there appears to be a confusion about the issue of place and manner restrictions: the issue is not whether bubble zones are place and manner restrictions *as opposed to* content-based restrictions. Clearly in limiting the place and manner of

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Supporting Bubble Zones

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expression, we may be restricting the transmission of the content of the idea. It is clear that pictures of bleeding fetuses 50 meters away may not have the same impact on a woman seeking an abortion as they would if shoved in her face. But that is of the very nature of place and manner restrictions: they are put in place when the "in your face" presentation of ideas is judged to be unacceptable.

The regulation of XXX bookstore windows is a case in point: we do not ban the expression of or access to XXX ideas, but rather regulate so that those who do not want to or should not be exposed to them are not so exposed. No one has the right to force their ideas on others, especially when the ideas may be regarded as repugnant and offensive. On the other hand, expression should not be regulated to the point where it cannot be heard or seen at all "from a mountain top." Nor can speech be regulated at the merest whim.

(6) We agree that neither the intention nor manner of the expression should decide whether it ought to be regulated. The whole point of the anti-abortion protesters' expression is to stop women from having an abortion, and the mere fact that their, often non-criminal, harassment and intimidation tactics may have this effect does not, by itself, justify regulation. These tactics range from the clearly expressive: singing hymns, showing pictures of aborted fetuses, etc.; to the barely expressive: following women along the sidewalk, shouting in their faces, taking pictures, etc. The latter deserve little protection as speech, while the former deserve greater protection.

The question is: Should we err on the side of the expression right and allow the clearly expressive behaviour, or should we err on the side of women's privacy interests and their right of access to abortion and ban the barely expressive intimidation tactics? It is relevant in this respect that the purely expressive component of anti-abortion protests can still have some impact from across the street, or even 50 meters away.

(7) Bubble zones will not prevent or even deter those who would engage in the violent and threatening acts like shooting doctors, bombing clinics, sending hate mail, and setting up web sites listing the home addresses of doctors that have created a climate of fear among abortion service providers. However, that does not make the issue irrelevant. If this climate is causing a drop in the number of doctors willing to perform abortions and thus restricting women's access to abortion services, and if the creation of bubble zones would give abortion service providers sufficient comfort so the drop is reversed, then that fact should count as among the reasons for creating bubble zones.

And there may be good reason for assuming that the creation of bubble zones would have this effect. One needs to be open-minded in assessing this. For example, the causal link, if there is one, could arise from the symbolic support of the state and society for women's access to abortion services, and not necessarily from bubble zones around the particular hospitals having difficulty attracting doctors willing to perform abortions.

(8) The BCCLA has a strong pro-choice position. We believe that a woman has a right to choose to terminate her pregnancy, and a claim against the state that it provide for abortion services. Although it is our job to defend the right of those who would disagree to express their views, it is not irrelevant if women's abortion rights are threatened.

(9) We conclude that the answer to the question posed earlier is: We should protect women's privacy interests and their right of access to abortion by supporting legislation that bans the intimidation and harassment tactics within small bubble zones around free standing abortion clinics. The bubble zone remedy is a minimal infringement of the expression rights of anti-abortionists. The non- or barely-expressive tactics of abortion protesters who would intimidate and harass women in this most private of matters and attempt to badger them to abandon their choice can legitimately be curbed, despite the fact that in doing so we also curb clearly expressive behaviour.

The American Civil Liberties Union supports the American Freedom of Access to Clinic Entrances Act of 1994*, legislation similar to BC's* Access to Abortion Services Act*. For more on the ACLU's position see www.aclu.org/library/clinicvi.html.*

Holiday greetings

from Craig Jones, President

On behalf of the Board of Directors and staff of the BC Civil Liberties Association, I wish to extend to you, your family, and friends our warmest wishes for a peaceful and joyous holiday season.

I also want to remind readers of the *Democratic Commitment* of the crucial role that supporters play in our ability to confront the many threats to our civil liberties which we face each year. Since 1962, supporters have been and continue to be the backbone of the BCCLA. We simply can not do our job without their help.

Whether or not you are not already a BCCLA supporter, perhaps you could take a moment to consider how important our democratic rights and freedoms are to you, and how important it is that we are there to protect them. If you agree with me that the Association must be kept strong, please fill out the coupon below to make your year end, tax-creditable donation.

Thank you and happy holidays!

Craig Jones, President

BCCLA Endowment Fund

In 1998, the BCCLA established an Endowment Fund to ensure that the resources to protect our rights and freedoms will always be there.

Are you planning your estate?

Making a will?

Have an insurance policy you can afford to be without?

Worried about the capital gains tax you'll have to pay on appreciated investments?

Please contact the BCCLA office at (604) 687 2919 for information about the significant tax advantages of a gift to the BCCLA Endowment Fund.

BC Civil Liberties Association
425 – 815 West Hastings Street
Vancouver, BC V6C 1B4
Phone: (604) 687-2919
E-mail: info@bccla.org Web: www.bccla.org

Receipt # For internal use only 2A 12/99

Name: _____
Address: _____
City: _____ Postal Code: _____
Telephone (work): _____
Telephone (home): _____
E-mail: _____

Membership fees:
- ❑ Individual $35
- ❑ Family $20/per person *minimum of two persons*
- ❑ Senior/student $20
- ❑ Organization $200 *negotiable*

I wish to send ❑ $35 ❑ $50 ❑ $75 ❑ $100
- ❑ another amount: $ _____
- ❑ I have enclosed a cheque
- ❑ Please charge my donation to:
- ❑ VISA ❑ Mastercard Expiry Date: _____

Card #: _____

Signature: _____

- ❑ Please do not trade my name with other organizations.
- ❑ Please send me information about the BCCLA Endowment Fund.