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BC Civil Liberties Association

Protecting the freedoms of
British Columbians since 1962

BCCLA ON FRONT LINES DEMANDING CHANGE

Anti-terrorism bill a threat to civil liberties

ON OCTOBER 15, 2001, the Federal Government introduced Bill C-36, the *Anti-Terrorism Act*. After two short days of debate, the Bill passed second reading and was sent to the House of Commons Standing Committee on Justice and Human Rights for their review. The Committee immediately began hearing from witnesses. The Association appeared before the Committee on October 30, 2001.

Bill C-36 (the Bill) was drafted in reaction to the events of September 11, 2001. It contains 146 sections and two schedules, and amends at least 20 other acts, including the *Criminal Code*, *Canada Evidence Act*, *Access to Information Act* and *Privacy Act*. The Bill also amends five bills pending before the House and Senate. It also creates a new act, the *Charities Registration (Security Information) Act*.

The enormity of the Bill is overshadowed only by the ways in which it fundamentally modifies established legal principles and civil liberties. Of all the concerns with this Bill from a civil liberties perspective, the most disturbing is the speed with which such a significant legal instrument is being pushed through the legislative process. That speed may compromise a complete and careful analysis of the Bill's provisions and their impact on our legal culture and civil liberties.

The following provisions of the Bill are of particular concern.

Definition of "terrorist activity"

The Bill defines "terrorist activity" in unacceptably broad terms and would include simple, non-violent acts of civil disobedience. Many of the Bill's other provisions flow from this definition.

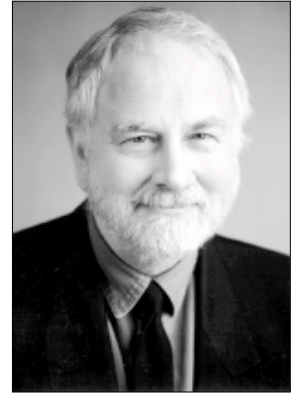
The definition includes any act that is committed for a political purpose and prevents a person from doing or refraining from doing an act, and that is intended to cause serious interference with or serious disruption of an essential service, facility or system. For example, the definition would include the blocking of a road or bridge by First Nations or environmental protesters.

The Association has asked the House Committee to amend the definition to limit its application to activities which are more readily identifiable as terrorist activities.

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THE DEVILISH ADVOCATE / A message from our president

September 11th has displaced nearly all our ordinary citizenly concerns. The events of that date, and the forces set in motion by them, are so extraordinary, so shocking, so disruptive of normalcy that even our culture, with a propensity toward naming things, has been reduced to referring merely to a place in time. The moniker “Pearl Harbor” rose above Roosevelt’s naming of December 7th as “a date that shall live in infamy.” But it is unlikely that any other name will succeed the simple identifying point of “September 11th.”



A debate has ensued as to whether we are truly “at war.” I prefer to cite Thomas Hobbes, when he reminded us in Leviathan that “as the nature of foul weather lieth not in a shower or two of rain, but in an inclination thereto of many days together: so the nature of war consisteth not in actual fighting, but in the known disposition thereto during all the time there is no assurance to the contrary. All other time is peace.”

So it is fair to say we have entered a time of war; a time for democracies to balance the requirements of national security against the principles of civil liberty. Freedom, everybody agrees, must to some measured extent now give way to the imperative of public safety.

The key focus now for society is the phrase “measured extent.” What civil liberties and rights should be limited or sacrificed to protect ourselves and our allies from the threat of terrorist attack? Obviously, there can be no mechanical process or formula for striking the right balance. In this, as in most other moral challenges, it is largely a matter of spirit and tone.

The spirit and tone that recommends itself to me was exemplified by Abraham Lincoln at the conclusion of the American Civil War. The secessionist states had finally been defeated through the sacrifice of untold treasure along with rivers of American blood. Elections were looming, and the fragile security of the Union hung on the question of the voting privileges of the Confederate States. Were the citizens of the Southern States to be permitted to take the country back at the ballot box? How could Lincoln square the imperative of national security with the ideal of political liberty?

Lincoln responded by completely restoring the franchise to the Southern States. “Finding themselves safely at home,” he said (in the speech that confirmed Booth’s determination to kill him), “it would be utterly immaterial whether they had ever been abroad.”

This is the brand of democratic courage we need as we face the questions raised by September 11th. Of immediate concern is the Government’s proposed anti-terrorism bill, which is being fast-tracked through the committee process, and may be law by the time these comments are printed. Much of what the government proposes to do about terrorism is worrisome, but of first importance is their definition of what will count as terrorist activity in the eyes of Canadian law. This is the key to everything else.

In addition to the “classic” definitions of terrorism as violent attacks on civilians, the law would define as terrorist, any acts which: cause serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of *lawful* advocacy, protest, dissent or stoppage of work... (emphasis mine)

According to this definition, Mahatma Ghandi’s life work of civil disobedience – along with a large portion of Martin Luther King’s – would certainly be included.

The government has already shown some indication that it may be willing to amend this definition, and the BCCLA is exerting every possible influence to that end. Bill C-36 demonstrates how important the work of civil libertarians will be in the clouded future.

We will stand much in need of democratic optimism and spirit – the spirit of Lincoln when he cast aside five horrendous years of bitter warfare as nothing compared with the democratic commitment.

A handwritten signature in blue ink that reads "John Dixon". The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

JOHN DIXON, PRESIDENT

BCCLA opposes spy cameras

The Vancouver Police Department has again proposed the installation of video cameras in the Downtown Eastside. Due to community opposition when it was originally proposed in 1999, the Police Board referred the matter back to the department for further study. The police department has now asked the Police Board to again consider the program.

The “Neighbourhood Safety Watch Program” would initially involve 23 fixed, overt colour cameras and two mobile cameras installed in the Downtown Eastside, Strathcona, Gastown and Chinatown. All would involve recording, not simply monitoring.

In response to the 1999 proposal, the Association created a position paper on video surveillance in public places, addressing the impact of video surveillance on personal privacy, the effectiveness (or lack thereof) of the technology for law enforcement, and the dangers involved, including the risk of wrongful identification. Also emphasized is the troubling asymmetrical nature of the observation, where the police may observe individuals but those being observed may not observe the police.

The Association does not maintain that video surveillance of public places is always unjustified. Rather, the paper set out criteria to be met before video surveillance, especially by state actors, can be justified. Despite this measured critique, in the proposal the police department states that “Civil liberties organizations and supporters take the immediate position that state run CCTV is an invasion of privacy and cannot be justified under any circumstances.”

If that characterization refers to this Association, it is inaccurate and unfair.

The program is not substantively different from the previous proposal. Nothing has been added to police obligations already found under B.C.’s *Freedom of Information and Protection of Privacy Act*.


After reviewing the use of video surveillance by the Kelowna RCMP, the

federal Privacy Commissioner found that the continual recording of individuals would contravene the federal *Privacy Act*. As the RCMP modified use of the camera to record only where a crime was detected, he found that their collection of information complied with the law.

The Commissioner went on to consider the broader issue of video surveillance of public places without continuous recording. He found that such surveillance was not sufficiently respectful of the spirit of the privacy law nor of the privacy rights of Canadians. In his view, only outright removal of the cameras would meet that standard. He concluded that video surveillance of Canadians by the state should be the very rare exception, not the norm.

The VPD has asked for written submissions regarding the proposal by December 31, 2001. They should be addressed to Inspector Axel Hovbrender, Vancouver Police Department, 312 Main Street, Vancouver, B.C. V6A 2T2.

While it has been suggested that public meetings will be held before a neutral facilitator, the Association understands that the Police Board is not contemplating oral submissions. This lack of opportunity to address the Police Board is unacceptable, and we will be asking the Police Board to allow organizations and individuals to address it directly. The Vancouver Police Board can be reached at 312 Main St., Vancouver, B.C. V6A 2T2.

 View the VPD’s new proposal at www.city.vancouver.bc.ca/police

View the BCCLA’s position paper on video surveillance at www.bccla.org/positions/privacy/99videosurveillance.html



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The investigative hearing

The Bill introduces into the *Criminal Code* an “investigative hearing,” where a person can be compelled to give oral evidence and produce documentation for the purpose of assisting a peace officer in the investigation of terrorist activity or potential terrorist activity. Refusal to give this evidence could result in a finding of contempt of court and imprisonment.

While there are some similar proceedings in the regulatory sphere, this is a novel provision for the

Of all the concerns with this Bill from a civil liberties perspective, the most disturbing is the speed with which such a significant legal instrument is being pushed through the legislative process.

Criminal Code. It is not clear that any of those provisions would survive *Charter* challenge.

This provision is a severe transgression of the principle that individuals, as autonomous agents, are free to give or withhold their own evidence. While the investigation and prevention of large-scale terrorist acts may justify this extraordinary measure, this challenge to the legal right to remain silent in the presence of the state should not, without justification, become a fixture of our legal culture.

Preventative arrest

The Bill introduces into the *Criminal Code* the power of preventative arrest and subsequent release on conditions where there are reasonable grounds that a terrorist activity will be carried out, and there is a reasonable suspicion the arrest of the person or their release on conditions is necessary to prevent the carrying out of the terrorist activity.

The arrest may take place without warrant. The person must be brought before a provincial court judge within 24 hours or as soon as possible thereafter. The person can only be further detained for an additional 48 hours (unless they are charged with an offence). If the criteria described above are met, the person shall be released on a recognizance with conditions for up to one year. If the criteria are not met, the person must be released unconditionally. Refusal to sign the recognizance can result in custody for up to one year.

The Department of Justice has admitted that the threshold for arrest under this section is lower than those provisions currently contained in the *Criminal Code*, which requires reasonable grounds that the person has committed or is about to commit an indictable offence.

It is unclear why the lower threshold contained in the Bill is necessary. Again, if this lower threshold for short-term detention and subsequent release on conditions is justified in times of crisis, it should not remain in our legal culture longer than is necessary.

Summary of BCCLA’s submission to the House of Commons Standing Committee on Justice and Human Rights

ON OCTOBER 30, 2001, BCCLA Vice President John Russell and Policy Director Garth Barriere appeared before the House of Commons Standing Committee on Justice and Human Rights, along with Quebec counterpart organization Ligue des droits et libertes, and the Quebec human rights commission, Commission des droits de la personne et des droits de la jeunesse.

The BCCLA urged the Committee to carefully review this legislation and propose amendments to the House which address some of the more problematic provisions. Mr. Russell noted that this must be the beginning and not the end of the debate on balancing security and civil liberties.

We also urged that the Committee accept as a guiding principle in this context that restrictions to basic rights and freedoms in a free and democratic society are justified only if they are necessary to secure and restore those same rights and freedoms. Any retreat from this principle signals a retreat from what we have accomplished as a society; from what is arguably our most remarkable cultural and moral contribution to history.

In our presentation, we noted that two fundamentally important implications follow from this principle.

First, restrictions on basic human rights and freedoms must be no greater than are necessary to address the problems at hand. In this respect, the onus is clearly on the government to demonstrate where existing legal instruments of law enforcement are inadequate to protect our basic institutions of rights and freedoms.

Second, if restrictions on basic human rights and freedoms can ultimately be justified only for the sake of those rights and freedoms, there must be some evident commitment that the restrictions will come to an end.

Deletion of hate propaganda from computers

The Bill authorizes a judge to order the deletion of material from a computer system that is, on a balance of probabilities, hate propaganda, and where that hate propaganda is available to the public.

Even without the Association's general objections to hate propaganda legislation, this new provision is objectionable. The Bill would extend the hate propaganda laws to include information persons must actively seek out on personal websites, rather than information that is published or disseminated. Of even greater concern, this provision reduces the level of proof from "beyond a reasonable doubt" to "a balance of probabilities." This will greatly assist the agents of censorship, while making it much more difficult for the accused to defend their material on the basis of truth, opinion on a religious subject or public interest.

Certificates prohibiting disclosure of information

The Bill authorizes the Attorney General of Canada to issue a certificate which prohibits the disclosure of information in connection with a proceeding, including a criminal trial, for the purpose of protecting international relations or national defence or security. The certificate could also make inapplicable the *Access to Information Act*, the *Privacy Act* and the *Personal Information and Electronic Documents Act*. The certificate

would not be reviewable by any commissioner or judge.

The Association is presently intervening to oppose the government's power to invoke cabinet confidence – without review by the courts – of the information the government claims as cabinet confidences. The certificates proposed in the Bill suffer from this same disability, and from one more. The sections authorizing these certificates set out criteria that are simply too broad to be meaningful.

The BCCLA intends to call for the outright removal of the certificate provisions from the Bill. Failing that, we will call for the establishment of detailed and justified statutory criteria that must be met before the certificates can be issued, as well as for judicial review of the certificates.

Interception of private communication without judicial authorization

The Bill authorizes the Minister of National Defence to authorize the interception of private communications – both foreign and domestic – including, in some circumstances, within Canada and between Canadians. No judicial authorization is required.

The displacement of the principle of judicial authorization for the invasion of personal communications by the state is a very serious departure from our legal heritage. No justification for this departure has been offered by the government.

We then outlined two key problems with the legislation. First, the definition of terrorism was too broad. Second, the Government had failed to show any commitment to restoring the basic rights and freedoms infringed by the Bill by including a sunset clause in the legislation, as have the Americans.

We also warned the Committee that labelling those who are engaged in civil disobedience as "terrorists" tests the boundaries of civil society. Additionally, such labelling can cause those affected to take the terminology to heart, itself a significant victory for real terrorists.

Finally, we reminded the Committee that these provisions will inevitably be aimed at Muslim Canadians. As that community becomes the main focus of investigation, and as genuine controversies arise and mistakes are made, it is inevitable that Muslim Canadians will ask questions about their government's commitment to respect their rights to fundamental freedom and equality alongside their non-Muslim Canadian brothers and sisters.

The Committee then peppered the three rights groups with their questions and concerns. Some of the Committee members repeated the familiar refrain that since September 11, 2001, "everything has changed." We reminded them that not everything has changed. Our principles as a free and democratic people have not changed. It is those principles themselves which can both justify additional legal measures in these circumstances and ensure that they are carefully drafted and of limited duration. As one other group said, fighting terrorism is not a goal in itself. The goal must be to preserve, foster and restore our basic rights and liberties and move forward as an free and open society.

Chrétien's failure of leadership

This past summer, a year after wrapping up a hearing which included months of evidence, Commissioner Ted Hughes Q.C. filed his report on complaints against the RCMP during the APEC conference. His report comes nearly four years after the conference itself and after the initial three-person panel established to examine the complaints disbanded in a sea of controversy. Other casualties during the stormy early days of the APEC inquiry include Andy Scott who was forced to resign as the Solicitor General after his inappropriate comments regarding the complaints were publicly revealed. The road to Mr. Hughes's report has truly been long and winding.

The B.C. Civil Liberties Association was an important participant throughout the hearings, ably represented by Michael Doherty of the B.C. Public Interest Advocacy Centre. The BCCLA's primary concern was that political elites had sought to use the RCMP for their own political ends and that the police had allowed themselves to be used in this way. Our concern was animated by the principle that in a

Our primary concern was that political elites had sought to use the RCMP for their own political ends and that the police had allowed themselves to be used in this way.

democracy which operates under the rule of law, the police must be scrupulously impartial in their enforcement of the law or risk becoming the palace guard.

On this issue, Commissioner Hughes stretched his mandate to its fullest by considering who at the political level had sought to influence the RCMP and how. In several circumstances, the trail led directly to the Prime Minister's Office (PMO) and in particular to Jean Carle, the PMO's Director of Operations. In one instance, Commissioner Hughes found that Mr. Carle had "inexcusably thrown his weight around" in pressuring the RCMP and UBC to push back a fence that was part of a designated demonstration area so that it would be further from APEC leaders. However, contrary to arguments by some complainants, Mr. Hughes did not find that Mr. Carle had pressured the RCMP to prevent embarrassment to foreign leaders like President Suharto of Indonesia. Rather, he concluded that Mr. Carle's motivation was to create a quiet retreat-like atmosphere at UBC conducive to a meeting of foreign leaders.

Commissioner Hughes also found that Mr. Carle and the PMO had improperly interfered with the operations of the RCMP by pressuring them to remove a protest camp in advance of the planned takeover of the Museum of Anthropology for the conference.

In addition to these findings, the report concludes that there were serious violations of constitutional rights and wrongful police conduct, including the removal of a Tibetan flag from campus, the removal of protest signs at Green College, clearing of protesters from Gate 6 using pepper spray, and strip searching of students after arrest. Among Commissioner Hughes's many recommendations is that the independence of the RCMP from their political masters should be enshrined in law.

In response to these findings, the BCCLA held a press conference to publicize our demand that Prime Minister Chrétien, as the Minister responsible for the PMO, disclose his knowledge or endorsement of the actions of his subordinates at the PMO. The BCCLA also demanded that – at the very least – he apologize to those protesters and to Canadians, since he must take responsibility for his subordinates actions even if he did not know of or acquiesce in their behaviour. Further, we called on the government to pay compensation to the complainants who had their constitutional rights unjustifiably infringed and that protocols be created to ensure that political actors do not seek to improperly interfere with RCMP duties in the future.

Predictably, Mr. Chrétien, who has dodged responsibility throughout the APEC affair, has refused to accept any blame for the behaviour of his subordinates, thumbing his nose at political convention (see the attached article by Andrew

Irvine). Perhaps a slightly more hopeful response came from the RCMP who at least acknowledged their wrongdoing but disagreed with the recommendation to codify their independence.

After so much effort and mayhem to discern the RCMP's role in the clampdown on democratic protest at APEC, the question remains: How relevant are Mr. Hughes's findings and recommendations, and what impact will they have on future RCMP policing of large scale public dissent? The time lag between the APEC Conference in 1997 and Mr. Hughes's report already gives rise to fears that it will be discarded into the dust bin. The events of September 11th have only exacerbated this concern.

However, the report provides a body of analysis that can provide much guidance to the RCMP in the future, as well as to politicians who must interact with the police.

At the same time, important issues remain unresolved, including how best to ensure the RCMP are adequately insulated from, and respond appropriately to, improper political pressure. Complicating this issue is that pressure from political masters on the RCMP may sometimes be appropriate and necessary. For example, we would expect politicians to pressure the RCMP to respect basic *Charter* rights if there was ample evidence that the police were doing the opposite. Further concerns remain regarding the RCMP spying on and infiltrating perfectly legal groups of citizens opposed to official government policy on trade or human rights.

As Canada gears up to host the G8 summit next year in Alberta, the BCCLA will work to make sure that the lessons learned from APEC are not forgotten.

i The Hughes report will be available at www.cpc-cpp.gc.ca

It's time for the Prime Minister to take some responsibility

by **Andrew Irvine**

Wouldn't it be nice if the next time you received a speeding ticket you could just say to the police officer, "Thanks for your trouble, Constable, but I don't think I'll pursue this," and that would be the end of it? Or if you were found guilty of obstructing justice, wouldn't it be helpful if you could just turn to the judge and say, "With respect, your honour, I believe you've got the facts wrong," and then you would be free to go?

This might not be how things work for you or me, but it seems to be the way things work for Prime Minister Jean Chrétien.

After months of public hearings into events surrounding the 1997 APEC conference, and after painstakingly sifting through thousands of pages of evidence, this is what Public Complaints Commissioner Ted Hughes has concluded about the involvement of the Prime Minister and his staff:

"I am satisfied that ... the federal government, acting through the Prime Minister's Office, improperly interfered in an RCMP security operation." In addition, this "improper and inappropriate" interference occurred on at least two occasions and, as a direct result, security arrangements were compromised.

Was this the result of an honest mistake on the part of the Prime Minister's right-hand man, Jean Carle? Well, no. Says Mr. Hughes, "Mr. Carle, in his testimony, agreed that he understood that as a consequence of [his actions], students who were peacefully protesting had to cease that protest and some of them were arrested."

Mr. Carle also testified that he understood that "there was no security reason" that would have justified his intervention in these matters. As a result, says Mr. Hughes, "I have concluded that the removal of the protesters was an unjustifiable infringement of their rights under Section 2(b) of the *Charter*."

On a separate occasion, Mr. Hughes reports that Mr. Carle again "vehemently opposed" RCMP security provisions in order to advance the objectives of the

Prime Minister's Office. Concludes Mr. Hughes, "I am satisfied that Mr. Carle demanded that the size of the 'demonstration area' be reduced in order to accomplish his own agenda and I reject his explanation that the reduction was necessary to ensure the safety of the protesters."

In other words, Mr. Hughes has found that, on at least two occasions, members of the RCMP allowed

Who knew that avoiding responsibility could be so easy? All the Prime Minister has had to do to avoid culpability is to state that, respectfully, he disagrees with Mr. Hughes' findings of wrongdoing.

themselves to be inappropriately influenced by members of the Prime Minister's Office and, as a direct result of this influence, at least some law-abiding Canadians were wrongfully arrested and had their *Charter* rights violated. Mr. Hughes also found that Mr. Carle's "expression of concern for public safety" was "spurious" and that in his various dealings with conference organizers he was less than honest.

These are serious findings. In fact, for Canadians who believe that it is the job of the RCMP to protect citizens' rights and enforce the law, and not to advance the political objectives of the Prime Minister, it is hard to imagine findings more serious.

How has the Prime Minister responded? Has he admitted that mistakes were made? Has he clarified his role in directing Mr. Carle's activities? Has he apologized or offered compensation to the protesters who were wrongfully arrested? Or to the RCMP officers whose professional reputations have been compromised as a result of his office's interference?

Not exactly. Instead, his office has responded as follows: "With respect to the two isolated incidents, in which Mr. Hughes was critical of federal officials, the Government has publicly stated that it, respectfully, disagrees with Mr. Hughes."

Who knew that avoiding responsibility could be so easy? All the Prime Minister has had to do to avoid culpability is to state that, respectfully, he disagrees with Mr. Hughes' findings of wrongdoing. And so far this response seems to have worked. On the Prime Minister's say-so, both the media and the opposition have been content to relegate findings of

serious wrong-doing to the back burner. And given the recent tragic events in New York and Washington, D.C., it is hard to believe that people are going to return their concentration to domestic wrong-doing any time soon. But eventually we must.

In the case of the RCMP, Mr. Hughes found that police performance "failed to meet an acceptable and expected standard of competence, professionalism and proficiency" and that there were many instances



Andrew Irvine

of "inappropriate police conduct." As a result, RCMP Commissioner Giuliano Zaccardelli has stated that he agrees and accepts "that errors were made by the RCMP in planning the security arrangements for APEC."

However, it appears that even Commissioner Zaccardelli wants to pick and choose among Mr. Hughes' findings. For example, he is uncertain whether he should accept Mr. Hughes' conclusion that the RCMP "succumbed to government influence and intrusion in an area where such influence and intrusion were inappropriate."

The question that thus naturally occurs is why the Prime Minister and Commissioner Zaccardelli should be permitted to ignore such serious findings of wrong-doing.

For months the Prime Minister told Canadians that it was important to let the RCMP Public Complaints Commission do its work. Now that it has completed its investigation and made findings of inappropriate behaviour on the part of both the RCMP and the Prime Minister's Office, it's time for the Prime Minister to do what's right. He alone is responsible for the actions of the Prime Minister's Office and he alone must now stand up and apologize to Canadians who were wrongfully arrested as a result of his staff's actions.

For until the Prime Minister admits that wrongdoing has occurred, and until he takes responsibility for the actions of his office, what guarantee do Canadians have that this kind of abuse of political power won't happen in the future?

Andrew Irvine is a past president of the BCCLA.

New faces join the BCCLA office

Though the BCCLA Board of Directors is directly responsible for setting the positions of the Association, BCCLA staff are crucial to organization's success in working to protect and enhance civil liberties in British Columbia. The BCCLA runs a small office including an Executive Director, the Policy Director, a Membership Secretary and Office Manager.

This year has seen considerable staff changes in the BCCLA office. First and foremost, longtime Executive Director John Westwood has left the Association. John first joined the BCCLA as the caseworker in 1987, soon graduating to the Executive Director position a year later. Since then, John has been pivotal in running the organization both in terms of our substantive work in defending civil liberties but also on the administrative front. The Association's reputation as a credible and professional advocate for civil liberties is in no small part due to his efforts during his tenure. We will miss him. We wish John, his wife Aihua and son Fan, all the best in the future.

Murray Mollard, who has held the Policy Director position for the past seven years, has been appointed the new Executive Director.

Filling the position of Policy Director on November 1, 2001 is Lindsay Lyster. Ms Lyster is a lawyer with considerable litigation experience including acting as counsel before the Supreme Court of Canada. She is also a former gold medalist at UBC's Faculty of Law. The BCCLA extends her a warm welcome and we look forward to working with her.

The Association would also like to thank Garth Barriere who worked as the Policy Director on contract this year. Mr. Barriere's knowledge of civil liberties principles and his skills as an advocate were of great assistance to the organization in this year of transition.

There has been a big change in the office on the administrative side as well. Pam Murray, our effective Office Manager/Communications Director for the past three years, has returned to school to study law at UBC. We wish her well and will continue to tap into her expertise for managing our website and other projects.



HOME TEAM Clockwise from top left, newly-appointed executive director Murray Mollard, policy director Lindsay Lyster, long-standing membership secretary Lil Woywitka, and office manager Ingrid Witvoet.

Replacing Pam as the new Office Manager is Ingrid Witvoet who comes into the job with considerable administrative experience.

In addition to these changes, the staff has been augmented this autumn by Kurt Sharpe, a student in SFU's Criminology program. As part of his field placement, Kurt has been assisting us in casework and administrative tasks. Laura Huey and long time member Lynda Hird continue to be involved in various projects throughout this year.

Last but not least, readers of the *Democratic Commitment* will know that Lil Woywitka continues her 25 year + quest to best serve our members as the Membership Secretary.

BCCLA intervenes in three Supreme Court of Canada cases

The BCCLA is set to intervene in three cases before the Supreme Court of Canada and will be asking the Court to grant us standing in a fourth important case

Possession of marijuana

This is a challenge to the federal law that prohibits the possession of marijuana. Underlying our legal argument will be the principle that the state should not use the criminal law to prohibit conduct purely on paternalistic grounds. In particular, in this case, the use of marijuana, even its overuse, poses no significant risk of harm to others that can justify the use of the criminal law and the power of the state to proscribe this conduct. Civil libertarians will know

This case presents an opportunity for our courts to push timid legislators to make long overdue changes to the way society approaches drug use.

that the criminalization of drug use and the “war on drugs” has caused considerably more personal and social harm than it has addressed. Thus, this case presents a real opportunity for our courts to push timid legislators, so fearful of controversy, to make long overdue changes to the way society approaches drug use. Joe Arvay of Arvay Finlay will represent the Association in our intervention.

i To view our paper on the decriminalization of marijuana, visit www.bccla.org/positions/privateoff/95c7.html

Cabinet confidences and absolute privilege

The Association has also received leave to intervene in *R. v. Babcock*, a case which pits a group of federal lawyers suing their own employer for better wages. The BCCLA is interested in the aspect of this lawsuit which focuses on a constitutional challenge by the employees to the provisions of section 39 of the *Canada Evidence Act* which provides for absolute privilege over Cabinet documents if claimed by a Minister or Clerk of the Privy Council. Though we believe that Cabinet confidentiality is a crucial

requirement for properly functioning democratic governments, it is not an absolute rule. There may be certain cases in which the case for disclosure outweighs the justification for confidentiality. Moreover, in our view, it is the courts, as the institution responsible for ensuring the rule of law, that should have the supervisory authority to make this assessment. Joe Arvay and Chris Jones of Arvay Finlay are representing the Association.

Prisoners' right to vote

The third case involves a challenge to the federal *Elections Act* which prohibits federally incarcerated prisoners from voting in federal elections. In our factum, we argue that the right to vote is a right of pre-eminence in the *Charter of Rights and Freedoms*. This right is constitutive of citizenship. Prisoners, notwithstanding their crimes, do not forfeit their status as citizens while incarcerated. The right to vote is also of practical importance to prisoners in their ability to hold the state accountable for mistreatment and in their rehabilitation and reintroduction into civil society. Aside from the importance of the right to vote, we also argue that denying this right to prisoners can not be justified under *Charter* scrutiny. The restriction does not satisfy a compelling public objective. The law is highly arbitrary in focusing on a very small group of offenders while ignoring others who demonstrate a disrespect for democratic institutions. In our view, criminality is considerably unreliable as a proxy for determining fitness to participate in democracy. Finally, we argue that there are less intrusive means for the government to teach prisoners the importance of respecting the rule of law and of democracy. Long-time prison rights advocate John Conroy will represent the BCCLA before the Supreme Court.

i To review the BCCLA factum in full, visit www.bccla.org/othercontent/01sauvefactum.html

Surrey school board ban on children's books portraying same sex parents

Finally, those troubled by the B.C. Court of Appeal's decision regarding the Surrey School Board's classroom ban on books portraying same-sex parents will be pleased to know that the Supreme Court of Canada has granted leave to appeal. The BCCLA intervened at the trial and appeal court level, with considerable success, and will seek leave to intervene again. Our chief interest in this case is promoting the principle of

separation of church and state, which we believe is articulated in the *School Act*. This means that decisions by public school authorities must be made without regard to religious dogma. In the Surrey School Board case, we have argued that the Board inappropriately based its decision on the religious viewpoints of parents opposed to homosexuality. The Association is fortunate to have Chris Sanderson of Lawson Lundell continue to represent us, as he has in the courts below.

BC GOVERNMENT

Anti-SLAPP legislation repealed by Liberals

AFTER DEVOTING A COUPLE OF PAGES IN THE LAST BCCLA NEWSLETTER to informing the public about B.C.'s new anti-SLAPP legislation, the Liberal government has abruptly killed the law. Strategic Lawsuits Against Public Participation (SLAPP) are lawsuits designed to intimidate and silence those who seek to change government decisions or policy by exercising their right to free speech. Given the growth of SLAPPs in B.C., the BCCLA cautiously supported the new legislation on the basis that it struck an adequate balance between protecting public participation in the democratic forum and ensuring that legitimate lawsuits could proceed without burden.


The Liberal government repealed the law arguing that it was unnecessary, and that the current rules regarding civil procedure in litigation are adequate to deal with this problem. The BCCLA disagrees. Given the government's swift action, the BCCLA sees no reasonable prospect for new anti-SLAPP legislation in the future. However, we will continue to push for reform to the law of defamation to extend the defence of qualified privilege to cover those who criticise others in the context of a public debate on matters of public interest.

 For more info, visit www.bccla.org/othercontent/01slapp.html

Secure care act repealed

IN A FURTHER HOUSECLEANING MOVE, the Liberals also scuttled plans to implement the secure care program created by the previous government. Under this program, a Secure Care Board could detain and treat youth up to 90 days if they pose a high risk of causing harm to themselves due to addiction or sexual exploitation. The Association had previously expressed support for a much more limited form of secure care as recommended by the Secure Care Working Group. The BCCLA opposed the NDP legislation on the basis that the power to detain youth for so long could result in preventive detention and forced long-term treatment. We had also objected to the law on the basis that there are not currently adequate services for those youth who seek help voluntarily and that the law reached too far in including individuals up to the age of 19.

The Liberals are now considering changes to the secure care program. The BCCLA would support and even encourage a more constrained secure care program. As our elected representatives and policy makers continue to debate how best to assist our youth, there are too many young people whose lives are currently being irreparably harmed by addiction and sexual exploitation.

 To view the BCCLA position on secure care, visit www.bccla.org/positions/children/99securecare.html

PAC reminder

The easiest way to send your tax-creditable gift to the BCCLA is by pre-authorized credit card or account withdrawal. Please contact the BCCLA by telephone at (604) 687-2919 or by e-mail at info@bccla.org for information about your monthly pre-authorized donation options.

Endowment fund

Are you planning your estate? Making a will? Worried about the capital gains tax you'll have to pay on appreciated investments?

The BCCLA Endowment Fund was established in 1988 to ensure that the resources to protect our rights and freedoms will always be there. A bequest to the BCCLA Endowment Fund is a gift that keeps giving.

Please contact the BCCLA at (604) 687-2919 or by e-mail at info@bccla.org for information about the significant tax advantages of a gift to the BCCLA Endowment Fund. Find more about the Fund at www.bccla.org/civillibertiesfund.html

Holiday greetings



FROM JOHN DIXON, PRESIDENT

ON BEHALF OF THE BOARD OF DIRECTORS AND STAFF of the B.C. 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 *Democratic Commitment* readers of the crucial role supporters play in our ability to confront the many threats to our civil liberties we face each year. Since 1962, supporters have been – and certainly continue to be – the backbone of the Association.

We simply cannot do our job without your help.

Whether or not you are already a BCCLA supporter, please 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, please fill out the coupon below to make your year end, tax creditable donation.

Thank you and happy holidays!



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