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BC Civil Liberties Association

A Civil Liberties Ombudsman for Canada

In a major submission to Mr. Justice Dennis O'Connor's Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (the "Arar Inquiry" or "Arar Commission"), the BCCLA is calling on Commissioner O'Connor to recommend that the federal government create a new National Security Review Agency to review the work of all national security agencies like CSIS and the RCMP. In addition, the BCCLA is also urging the creation of a new officer of Parliament in the Office of the Civil Liberties Ombudsman that would have the mandate to advocate for civil liberties, the rule of law and Charter of Rights and Freedoms values in the context of national security work.

The Arar Commission has a mandate to recommend a new system of civilian accountability to review the RCMP's national security activities. BCCLA Executive Director Murray Mollard met recently with legal counsel from the Arar Commission to discuss the BCCLA's submission. The BCCLA anticipates being invited to make submissions to Commissioner O'Connor when he holds public hearings regarding this Policy Review part of his mandate in the fall of 2005. The Commissioner is also currently holding public hearings as part of a Factual Inquiry into what happened to Mr. Arar and whether any Canadian officials were complicit with Mr. Arar's deportation by the United States to Syria where he was tortured. The BCCLA is also an intervenor at the Factual Inquiry. Regrettably, much of the information regarding CSIS and RCMP involvement in the Arar affair has

remained secret because of the federal government's unreasonable claims to national security confidentiality. Intervenors, as well as Mr. Arar and his legal counsel, have been very frustrated by what has become a very private inquiry.

The following represents a summary of the BCCLA's submission.

i The full text of the submission is available on the BCCLA website at: <http://www.bccla.org/othercontent/05ararpolicy.htm>

Summary of Key Recommendations

1. the Arar Commission and the government of Canada recognize and rectify the RCMP's resistance to police accountability via a review mechanism,
2. the government of Canada create a

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THE DEVILISH ADVOCATE / A message from president Jason Gratl

Democracy in Canada is threatened by informational asymmetry – a trend by which the government both gathers and withholds more information from the population.

On one branch of the asymmetry, government bureaucracies and agencies reveal their voracious appetites for information. At airports across the country, the government gobbles up international travel data, assigning travelers “threat ratings” that determine their treatment by police and customs forces at home and abroad, and then serves up the data to foreign security services.



BCCLA president
Jason Gratl

Beyond airline travel, routine information gathering at border checkpoints has the Canada Border Services Agency salivating. The Ministry of Citizenship and Immigration is grumbling to initiate programs such as national ID cards and special passports, and create omnivorous databases to digest the information. Under the pretence that they are “terrorist” groups, national security teams of the RCMP gather information on environmentalists and aboriginal activist groups, just as they targeted student radicals in the sixties and seventies.

On the other branch of the asymmetry, bureaucratic excuses for keeping information from public scrutiny have multiplied like rats. The *Canada Evidence Act* was amended to keep information in the dark by deeming it “sensitive” or related to “national security.” The amendments prevent even the Supreme Court of Canada from forcing public disclosure of the information. The government’s tacit threat to use these new powers has cowed the O’Connor inquiry into the deportation and torture of Mahar Arar into near silence.

The newly propagated *Security of Information Act* permits the imprisonment of anyone who discloses information that might, among other categories, impair the function of government. Under the newly amended *Access to Information Act*, the government can clamp down on freedom of information requests for a murky brood of national security related reasons. Other arcane provisions abound, all designed to seal sensitive information in darkness.

Each branch of the asymmetry is anti-democratic. The collection of information about ordinary citizens offends the right to privacy: the principle that government should confine itself to collecting only information that is reasonably necessary to perform legitimate government functions. The routine collection of personal information about ordinary Canadians is an

unnecessary and unjustifiable intrusion on our lives. The use of that information to assign “threat rankings” – creating an international caste system for traveling Canadians – is only one example of the many nefarious uses to which the information can be put. The reality is that information can be abused – and more information lends itself to greater abuse.

Hiding information from the public eye is also deeply undemocratic. Citizens need to know the actions and activities of their elected and unelected officials in order to vote and agitate for better government. The system of secrecy now in place lacks public accountability in the form of basic safeguards and oversight mechanisms to prevent government abuse and exploitation of bloated powers. There is nothing to prevent a regime from burying information considered embarrassing or compromising. Even human rights violations as extreme as torture can be hushed up and hence may continue unabated.

This trend was nurtured by hysteria following 9/11. Information asymmetry grew in the shadows without significant debate in Parliament or public consultation, in a bureaucratic atmosphere rife with whispers and rumours and vague international imperatives. Developments were announced after implementation as a ‘fait accompli.’ Fundamental changes to the relationship between the individual and the state have occurred without the participation of citizens.

The effect of this information asymmetry is to diminish the power of ordinary citizens to contribute to the direction of our political collective. Power is granted to bureaucrats to decide the fate and treatment of individual citizens and our relationships to one another. And rule by a bureaucracy is rule by no one.

The BCCLA has identified informational asymmetry as a priority for legislative reform and judicial intervention. We will campaign to have information collection and state secrecy cut down to justifiable levels in the coming years. There are some who worry that asymmetry is irreversible. But I believe, and I encourage you to believe, that Canada still belongs to Canadians. There is a balloon to be popped, and we have the pin.



JASON GRATL

Summary of Key Recommendations

continued from page 1

- National Security Review Committee with the jurisdiction and adequate authority to review all federal and provincial agencies engaged in national security work,
3. the government of Canada create an Office of the Civil Liberties Ombudsman to promote civil liberties, the rule of law and *Charter* values by reviewing the work of the National Security Review Committee, reviewing complaints and providing advice regarding law reform,
 4. the principle of openness be enshrined in the legal regime for a review mechanism of national security work, and
 5. the Arar Commission reaffirm the government of Canada's commitment to oppose torture and propose reforms to ensure that all Canadian officials neither engage in torture nor be complicit in facilitating the torture of any person.

RCMP's Resistance to Civilian Review

The BCCLA believes that the RCMP continues to demonstrate considerable resistance to civilian review and accountability. As evidence, the BCCLA refers to the submission of the Commission for Public Complaints Against the RCMP (CPC), which documents ongoing problems the CPC has had in making the RCMP accountable. Though the RCMP will often agree with the recommendations of the CPC, there continues to be a high percentage of cases in which the RCMP does not accept the findings and recommendations of the CPC with respect to complaints. Of particular relevance to the question of resistance, the CPC has sought to obtain sensitive information about an informer who was at the centre of one investigation. The RCMP has refused to release this in-

formation to the CPC despite guarantees of maintaining confidentiality. In order to get access to this information, the CPC is now appearing before the Federal Court of Appeal to obtain a ruling that the legislation requires the RCMP to divulge the information. The RCMP's legal counsel has vehemently resisted. The BCCLA had unsuccessfully sought intervenor status in this case. In addition to the CPC's experience of resistance, the BCCLA also has had two recent complaints against the RCMP dismissed summarily without justification.

From the BCCLA's point of view, the RCMP's resistance to civilian oversight and review is real and poses a significant challenge. It will be important for the Arar Commission to acknowledge this resistance and seek to address it in ways that go beyond simply new legal powers for a review agency. When there is cultural resistance in a very large organization like the RCMP, it can be difficult to change that culture simply through legislative amendments.

The BCCLA also urges that a review agency for the RCMP, and all agencies involved in national security work, be given new powers of proactive audit. A complaint based model, especially involving national security work, will be woefully inadequate.

In addition to a review agency that would conduct after-the-fact review of the work of the RCMP, the BCCLA recommends that Ministers responsible for the RCMP and other departments involved in national security work undertake greater influence in ensuring that the agencies under their responsibility respect the rule of law and basic rights and freedoms. From the BCCLA's point of view, respecting principles of police independence in investigations would not pre-empt the Executive branch of government from ensuring that law enforcement agencies respect basic freedoms.



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The Democratic Commitment is a 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.

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National Security Review Agency

One of the chief structural questions posed to the Arar Commission in its mandate to recommend a new system of civilian review for the RCMP's national security work is whether it makes sense to have a single agency – as SIRC provides for CSIS – to review the RCMP, or whether it makes more sense to have a single review agency to undertake the review work of all agencies engaged in national security activities. Since September 2001, there has been a significant expansion of both the intelligence and other national security activities of existing agencies like CSIS, the RCMP, the Communications Security Establishment and Department of Foreign Affairs as well as the creation of new agencies like the Canada Border Services Agency to do this work.

Office of the Civil Liberties Ombudsman

One of the most significant challenges in the sphere of national security is creating systems of accountability that ensure there is appropriate civilian review and oversight while maintaining national security confidentiality. Given that much of the work of national security agents must be conducted covertly due to the *modus operandi* of terrorists, the normal systems of Parliamentary transparency will not be possible.

In many ways, Canadians are left to trust the government and those appointed to oversee the work of our spies to ensure that they are not violating our rights.

But why should we trust the watchdogs? Who are they? What do they do? Are they doing their jobs adequately? Are they being “captured” by the agencies they regulate? SIRC's annual reports are a good attempt at transparency but ultimately require readers to trust them as much as we must trust CSIS and the RCMP.

In such a climate of secrecy and in a political environment in which Canada's national security forces have been given new powers, more money and the political mandate to catch terrorists before they strike, the BCCLA believes that it is time to likewise reinvigorate our mechanisms for civilian oversight, review and accountability of national security agencies.

To address this need, the BCCLA proposes that an Office of the Civil Liberties Ombudsman be created to promote civil liberties, the rule of law and *Charter*

values. This office would also be a double check on the work of the National Security Review Agency by reviewing and auditing their work. Its mandate would extend to providing expert advice to the government regarding civil liberties in the context of national security as well as reviewing complaints. Like the National Security Review Agency, it would be an Office of Parliament.


Principle of Openness in Review of National Security Activities

The Arar Commission's Factual Inquiry has provided a detailed case study of how the federal government is ready to play its national security confidentiality card almost at will. Documents relating to CSIS and the RCMP have been subject to a claim of privilege by the federal government rendering a *public* inquiry mostly *private*. Though the BCCLA expects that this sort of privilege will be appropriate in many instances, we believe also that the government can abuse this sort of claim especially when the law permits such abuse. Due to the government's post 9/11 anti-terrorism initiative, federal legislation was amended to give the government a virtual veto over public disclosure even if a court finds there would be no harm if the information was publicly disclosed.

The BCCLA believes that these changes inappropriately skew the balancing that needs to occur with respect to public disclosure and national security in favour of a presumption of secrecy for the federal government. Instead, we believe that there should be a presumption of openness that can be rebutted by the federal government if they can demonstrate that the release of information will harm national security.

Opposing Torture

The Arar Commission should make a strong recommendation to the government that it create legislation and policy that reaffirms Canada's commitment to oppose the use of torture and to ensure that Canadian officials neither engage in torture nor are willingly or negligently complicit in facilitating the torture of any person.

 To access the BCCLA's full submission to the Arar Commission's Policy Review, visit: www.bccla.org/othercontent/05ararpolicy.htm

Promoting Police Accountability

The BCCLA continues to be very active on the police accountability front by making complaints, working on law reform, assisting other complainants and meeting with key stakeholders.

RCMP

The BCCLA has registered a complaint as a result of the death of an individual shot by the Vanderhoof RCMP. We made the complaint to ensure that there is adequate civilian review of the incident, via the Commission for Public Complaints Against the RCMP (CPC). In our view, civilian review of police conduct should be automatic when there are critical incidents of death or serious injury due to police actions. Regrettably, there is no such standard review at the moment due to resource constraints of the CPC. Despite summarily dismissing our complaint, the RCMP are now investigating.

The BCCLA has also made a complaint against Hope RCMP for their Operation Pipeline Convoy program which seeks to interdict vehicles transporting drugs. This issue came to light as a result of media reports about an off-duty Vancouver police officer who was stopped at a roadcheck by a Texas Ranger. The BCCLA complaint centres on the inappropriateness of foreign law enforcement personnel engaging in front line policing in Canada, the legality of the roadside checkstops and the use of drug recognition programs to justify intrusive searches. We are currently appealing the RCMP's summary dismissal of our complaint.

Vancouver Police Department


The BCCLA has persuaded the Vancouver Police Department to post their Policies and Procedures Manual on their website. We believe that ready public access to this material will enhance the VPD's accountability. In other positive news, we are happy to report that the VPD policy and practice regarding strip searches at the Vancouver jail are now more in line with the law. The BCCLA will be meeting with the Vancouver Police Board in the near future to discuss a variety of issues. We believe that the police board needs to be taking more of a leadership role in directing the VPD.

Provincial Audit of Internal Investigations

The BCCLA's push for the last two years for a province wide audit of all municipal police forces' internal investigations of public complaints has finally paid dividends. Acting on recommendations by Police Complaint Commissioner Dirk Ryneveld, the Solicitor General has recently appointed retired judge Ben Casson to lead an audit of the Vancouver Police Department and other municipal forces' internal investigations. Mr. Casson was not our first choice for an independent auditor because of prior decisions he made on the Hyatt complaint while he was Acting Police Complaint Commissioner. However, the BCCLA is ready to meet with him to discuss the audit. We have been named to an advisory committee to assist in his work.

Taser Review

The BCCLA recently met with the Victoria Police Department to discuss their final taser report. The Victoria department was appointed by Mr. Ryneveld to review the safety of and regulatory framework for tasers in British Columbia after several incidents including deaths of citizens where taser use was implicated. Though the BCCLA supports the recommendations in the report, we caution that the report does not provide adequate evidence to conclude that tasers do not pose a risk of harm. To their credit, the Victoria investigators have been a catalyst for more research on tasers. Finally, the BCCLA has met with various policing leaders in the last several months to discuss these and other matters. These leaders include Chief Jamie Graham of the Vancouver Police Department, Larry Campbell, Chair of the Vancouver Police Board, Chief Paul Battershill of the Victoria Police Department, Bev Busson, RCMP Deputy Commissioner, Pacific Region, and Dirk Ryneveld, B.C. Police Complaint Commissioner. Please contact the BCCLA if you need information or assistance in making a complaint against the police.

 To view the VPD manual, visit www.city.vancouver.bc.ca/police/Planning/RPM/index.htm

To view the taser final report, visit www.opcc.bc.ca

FREEDOM IN ACTION

BCCLA's First Annual High School Seminar on Civil Liberties a Resounding Success

With funding from the Vancouver Foundation, Law Foundation of BC and assistance from Simon Fraser University's Faculty of Education, the BCCLA held its first day long seminar for high school students on April 27, 2005. With over 180 students and teachers in attendance, the day was a great way to introduce high school students to civil liberties and encourage them to actively participate in civic engagement.

Billed as an interactive seminar on civil liberties and citizenship, the day began with an address by new Liberal MLA and former Court of Appeal justice, Wally Oppal, who discussed criminal justice and youth. The following session focused on civil liberties in the schools highlighted by the theatrical skills of

young actors who dramatized civil liberties issues in schools like censorship of school plays, drug dog searches and video surveillance. After each of the morning plenary sessions, students broke up into small groups to work with resource people (BCCLA lawyers, staff, Board members and other friends of the Association) to discuss current issues of interest to them in greater detail and more interaction.

The afternoon was devoted to a plenary session on promoting student activism and civic engagement followed by workshops on select topics including homelessness, the impact of 9/11 on Muslim youth, globalization, environmentalism, and gay/straight alliances. As one teacher remarked on the homelessness seminar: "The students felt their consciousness had been changed profoundly, and that they would

never see a homeless person the same way again."

A huge thanks to the many resource people, workshop presenters, volunteers and funders for making this event possible. The BCCLA looks forward to making this an annual event.



BCCLA past-president John Russell (above) and youth advocate Romi Chandra (right) speak to students at BCCLA's first annual student civil liberties seminar.



SFU President Michael Stevenson Headlines BCCLA AGM / Joe Arvay, Q.C. wins Reg Robson Award


SFU President Michael Stevenson was the keynote speaker at the 2005 BCCLA Annual General Meeting held in Vancouver on March 31, 2005. His talk, entitled “Threading the Needle: Civil Discourse and Free Speech at the “University,” emphasized the need for all members of the academic community to honour the principles of academic freedom,

remain as civil as possible and not abuse the freedom that universities provide in creating an open forum for debate and discussion on all topics, no matter how controversial. In elucidating these grand principles, Mr. Stevenson focused on several incidents that had occurred at SFU including an event last year at which Israel’s Ambassador to Canada was shouted down by demonstrators protesting Israel’s policies towards Palestine.

The other highlight of the evening included the awarding of the Reg Robson Civil Liberties Award to Joe Arvay, Q.C. Over the years, Joe has come to be a regular legal counsel for the Association appearing on our behalf in interventions before the Supreme Court of Canada in constitutional challenges to obscenity laws, marijuana possession prohibitions and Cabinet confidence privileges as well as representing the BCCLA and Little Sisters Bookstore in our never ending battle against Canada Custom’s prohibitions on importing gay and lesbian sex materials.

In addition, the BCCLA held its regular AGM business including the approval of the Annual Report and financial statements, appointment of auditor Tompkins, Wozny, Miller &

Co. as well as the ratification of new Board members Bing Chan, Michael Feld, Robert Holmes (who previously was part of the BCCLA Board of Directors in the eighties) and Laura Huey.

 For biographies of BCCLA Board members, visit: www.bccla.org/members.html

BCCLA IN ACTION



A hooded Tom Sandborn, BCCLA Director, poses as part of our demonstration on June 8 against security certificates and our concern about deporting individuals to countries that practice torture.

Lawful Access: Another Step on the Road to the Surveillance Society

“Lawful access” refers to the lawful search and seizure of information, including computer data. For example, lawful access occurs when police receive authorization from a court to wiretap a telephone. The federal government is currently proposing a significant expansion of the police’s capacity to lawfully access Canadians’ communication.

The BCCLA first encountered this proposal in 2002 when the federal government held consultations expanding lawful access. The 2002 proposal included not only “modernizing” the language of existing laws but also expanding lawful access to include advancement in communications technologies, primarily email. The 2002 proposal also required telecommunications service providers to pay for the costs of surveillance technology and greatly expanded police powers by lowering the standard needed to justify certain kinds of interceptions and searches. With the exception of the police, the BCCLA, along with other groups, strongly opposed these proposals.

This spring, the BCCLA was invited by the Department of Justice to a new round of consultations which focused on new legislation. While there have been

some improvements from the original conceptual proposal, the overall direction continues to make private businesses agents of the police in conducting surveillance and to erode Canadians’ privacy by lowering the standard for monitoring communications.

The BCCLA continues to object to the government’s proposed direction. Lawful access reforms constitute a seismic shift in the surveillance of individuals. Costs of surveillance will be downloaded onto consumers given that businesses will pass on these costs. This represents a departure from law enforcement costs being borne by the general treasury. In contrast, the model being proposed has already reached its final absurd result in 2002 in Germany when customers subject to wiretaps were billed for the ‘service.’ More compellingly, private ►


BCCLA Opposes Proposed Amendments to Child Pornography Laws

The BCCLA recently made a submission to the House of Commons Committee that is reviewing proposed amendments to the provisions of the *Criminal Code* dealing with child pornography (Bill C-2). The bill narrows the artistic merit defence and substitutes a “legitimate purpose” defence. BCCLA Past President John Dixon argued before the Committee that the use of a “legitimate purpose” defence is an inappropriate criterion for art and the definition of the defence is, at any rate, impermissibly vague.

There is little doubt that the proposed narrowing of the artistic merit defence is a result of the political outcry over Robin Sharpe’s acquittal on the charge of

child pornography with respect to his written works (he was convicted on the basis of photos he possessed). In narrowing the artistic merit defence, the legislation would also likely capture works such as Nabokov’s *Lolita* and Zefferelli’s *Romeo and Juliet*.

The Supreme Court of Canada has given clear direction on the issue of artistic merit in the Sharpe case and the current bill attempts to improperly circumvent the Court’s pronouncements. We have argued that if the bill becomes law, it would almost certainly be unconstitutional.


 To view the BCCLA’s submission, see: www.bccla.org/othercontent/05billc2.htm

◀ businesses – whose fiduciary duties extend to its customers – should not be made agents of the police.

The Association also objects to the lowering of safeguards for privacy. In our view, there is no compelling justification for the unprecedented attack on the well-entrenched principle of prior judicial authorization for interception and search.


We view this proposal as yet another example of the state expanding its ever widening net of surveillance over society. Viewed in context with other initiatives that arise from our War on Terrorism, including the exponential expansion of national security agencies and capacity, no-fly lists, proposed national ID cards, biometrics, data-mining and data sharing, the BCCLA sees this as no less than a war on Canadians' privacy.

The federal government justifies the lawful access proposal as necessary for Canada to ratify an international treaty on cyber-crime. But this type of justification is both undemocratic and unconvincing because the treaty provides for reservations, which allow states to ratify it without all parts of the agreement being adopted, as is the case with the Council of Europe Convention on Cyber-crime.

 The Association's 2002 submission on lawful access can be viewed at: www.bccla.org/othercontent/02lawfulaccess.html

BCCLA Opposes Drug Recognition Expert Proposals

The BCCLA travelled to Ottawa in June to oppose the federal government's latest intrusive measure to authorize police to require drivers to submit to drug testing. The BCCLA supports prohibitions on driving while impaired. Currently, police in B.C. can suspend drivers for 24 hours if they suspect drivers are incapable of driving safely. Three 24 hour suspensions and the driver's license is suspended for an extended period. The federal proposal however would permit "drug recognition experts" (DREs) to require drivers they suspect of impairment due to drug use to be subjected to highly invasive urine or blood testing. With DREs using unscientific means to detect drugs and the high rate of false positives from such testing, the BCCLA believes that the system would result in many civil liberties violations if passed.


 To review the BCCLA position, visit: www.bccla.org/othercontent/05roadside.htm

Submissions to Subcommittee on Solicitation Laws

The BCCLA has made a submission to the Parliamentary Subcommittee that is reviewing the solicitation laws in the Criminal Code. The BCCLA has consistently held that the criminal laws relating to prostitution create more social harm than they prevent. We appeared before the committee to argue that the current bawdy house laws and solicitation laws contribute to the social marginalization of sex trade workers and increase the dangers of the sex trade.

The Association supports the repeal of criminal sanctions against adult prostitution (our position does not apply to children in the sex trade). We support the development of a regulatory system for sex work, and we argued against the proposal that would criminalize customers only. We oppose the 'johns

only' proposal because it is unprincipled and discriminatory, but also because the scant evidence that exists on that system, suggest that it continues to endanger prostitutes by forcing the sex trade into more and more remote locations to elude detection. In our view, the abusive and exploitative aspects of prostitution should be addressed using the existing *Criminal Code* prohibitions against extortion, battery and sexual assault. Sex trade workers would be more willing to report violent incidents to the police if they were not afraid of being prosecuted for prostitution-related offences.

 To see our written submission to the Subcommittee, see: www.bccla.org/positions/privateoff/05sex%20work.htm

No-Fly Lists: Worse Every Minute

The BCCLA has been very concerned about Transport Canada's plan to implement a 'no-fly' list. A no-fly list is a terrorist watch list that contains the names of people who are not permitted to board a commercial aircraft or who will be subjected to higher scrutiny before they are allowed to board. The no-fly lists that have been operating in the United States for several years are a notorious disaster. Not a single terrorist has been detained or arrested because of the U.S. no-fly list and many thousands of innocent passengers have been routinely stopped, questioned and searched, or prevented from flying for no known reason or because their name was similar enough to a name on the list to be flagged. The U.S. no-fly list famously prevented U.S. Senator Ted Kennedy from boarding a flight and appears to have delayed the boarding of Canadian Defence Minister Bill Graham.

It is hardly surprising that the U.S no-fly list is so inaccurate. The typical software used for name matching is derived from an indexing system first used in the U.S. Census of 1880 to catch sound-like and name variants. This generates a huge number of false positive hits, at the same time that the system is often effectively foiled by the addition



of a middle initial. What keeps the situation from being laughable is the vast number of people who are caught in the system with no real form of redress because there is no meaningful way to appeal being wrongfully flagged.

This should concern Canadians for a number of reasons. One reason is the rumblings coming out of the U.S. that it will impose its no-fly list on all domestic Canadian flights that go over U.S. airspace, which is most domestic flights. Another reason is the immi- nence of our own Canadian no-fly list without any indications of how we are going to avoid the night- mares that have attended the U.S. system.

But the situation is perhaps much more dire than a

no-fly list. The U.S. system is set to be replaced with a system called Secure Flight. The new system does not "match" passengers with names on a terrorist watch list, but rather creates an aggregate database full of personal information on all passengers and ranks each of them according to assessed security risk. In other words, Secure Flight creates checkpoints, a notion we are most familiar with in the context of occupied countries. These checkpoints, however, would have surveillance capacities that are unprecedented. The fact that no-fly lists are so ineffective is used as an argument to hasten the development of the compre- hensive passenger surveillance program.

Is Canada adopting the useless security theatre of no-fly lists as a stepping stone to a more compre- hensive traveler surveillance? The federal government has allocated millions of dollars on a program to "risk score" passengers that will be shared with the U.S. Details are sketchy, but it appears that this is meant to complement the U.S. Secure Flight Program. Mean- while, we are being told by the Ministry of Transport that it has yet to formalize a design for a no-fly list and that there will be consultations on the program. And that may be the case. But it may also be the case that no-fly lists are almost a red-herring, deflecting attention from a traveler surveillance program that would see every plane-bound passenger vetted as a potential security risk. The Association will be moni- toring the situation closely.

Weighing-in on Store's Collection of Personal Information


The BCCLA was invited to intervene in an inquiry by the Office of the Information and Privacy Commissioner. The complaint was about the information collection practices of the Canadian Tire Store and the decision is the first under the new *Personal Information Protection Act* (PIPA). The issue was whether the Act permits the store to collect the name, home address and telephone number of customers who are returning merchandise for a refund. The store's stated rationale for collecting the personal information is to prevent fraud. The decision held that the store's practice was largely in compliance with PIPA.

We are pleased with the Privacy Commissioner's decision on a number of counts. In our submission we argued that the store could not use the consent to provide personal information for the purposes of fraud prevention as consent to call customers for the purpose of determining customer satisfaction. The decision held that customers must have clear notice that they do not have to provide personal information for the purpose of customer satisfaction in order to proceed with a refund transaction. And, while finding that the type of information collected in this case is reasonable for the purposes given and that the store can ask to see photo identification to confirm identity, the Commissioner does indicate that it is likely that the collection and use of personal information in photo identification would run afoul of the legislation.

The Commissioner did not agree with our proposed test for a determination under Section 11 of the Act. We had urged the adoption of a test set out by

the Federal Privacy Commissioner to determine whether a "reasonable person" could consider the collection of personal information appropriate. The Commissioner states that he did not find the test useful in this case, but did not foreclose the possibility that some or all of the test would be useful in other cases under this legislation.

A significant portion of the evidence in this case was given in camera because of the confidential nature of information about store security and financial information. The Commissioner did not address our suggestion that the store's interests would be adequately protected if the intervenors were provided with the in camera evidence on the condition that they give an undertaking not to disclose the material.

 To view the decision, see: www.oipc.bc.ca/orders/OrderP05-01.pdf. To view our submission to the OIPC, see: www.bccla.org/othercontent/05privacycommissioner.htm

Safe Streets Act Brochure

The BCCLA has joined with the BC Public Interest Advocacy Centre to put out a brochure about the *Safe Streets Act*. The *Safe Streets Act* prohibits aggressive solicitation and solicitation of so-called "captive audiences", for example, within 5 metres of a bank machine or a bus stop. The BCCLA vigorously opposed the *Safe Streets Act* arguing that it is a tool for street sweeping the poor and that the captive audience provisions are an unwarranted violation of expressive freedom.

The Association may mount a legal challenge to the *Safe Streets Act*, but in the interim, we are pleased to be collaborating on a brochure with information about the law. In particular, the brochure clarifies that panhandling is legal, that only police can enforce the *Safe Streets Act*, and that security guards and Downtown Ambassadors have no authority to move people along who are on public property. It also outlines how to make a complaint against a security guard.

Brochures will be available at the Association office.

NEW BOARD MEMBERS

BING CHAN is an Associate Portfolio Manager with RBC Dominion Securities. She is a former financial columnist for the Ming Pao Newspaper and has taken a leadership role in our fundraising initiatives.

DOMINIQUE CLEMENT is a historian who teaches at the University of British Columbia. He has published extensively on the history of the civil liberties and human rights movement in Canada (including the BCCLA).

TOM SANDBORN is a writer, organizer and consultant. His work has appeared in the Vancouver Sun, the Georgia Straight, the Globe & Mail and Xtra West. He has done extensive political and community organizing on civil liberties and social justice issues. Tom also brings a wealth of fundraising experience to the Association.

RICHARD ROSENBERG is a Professor Emeritus in the Department of Computer Science at UBC. He has written extensively on free speech, ethics and privacy issues and appeared before federal parliamentary and provincial legislative committees.

i To view Board member biographies, visit the BCCLA website at: www.bccla.org/members.html

CIVIL LIBERTIES UPDATE

We have developed a brief electronic newsletter outlining Association positions and activities. If you would like to receive this please contact us via e-mail at info@bccla.org or phone and provide your e-mail address.

UNITED WAY DONATIONS



Don't forget that you can designate the BCCLA as a specific recipient of your United Way donation!

BOARD OF DIRECTORS

BCCLA Announces New President & VP

The B.C. Civil Liberties Association has appointed Jason Gratl as President and Ann Curry as Vice President.

Mr. Gratl takes over the helm of the civil rights group from John Russell, who has held staff and board positions during his 25 years with the Association. According to John Russell: "Jason Gratl is an articulate and committed civil libertarian. He will be an outstanding advocate for civil liberties at a time when civil liberties are clearly in peril."

Mr. Gratl is a lawyer practicing in the areas of criminal and human rights law. He holds a Masters degree in philosophy from the University of Toronto. He was counsel for the BCCLA in the Supreme Court of Canada case *Vancouver Sun v. O.N.E.*, which dealt with publication bans and the presumption of an open court. An active and visible member of the BCCLA Board since 2000, Mr. Gratl has made significant contributions to the Association in the areas of censorship, police accountability and national security issues.

Jason Gratl: "September 11th and its aftermath taught us the dangers of complacency in civil liberties matters. We now have a small window of opportunity to restore the balance in favour of freedom and government accountability."

In another change in the BCCLA Executive, Ann Curry takes over as Vice President from John Dixon, who is also a past president of the Association. Dr. Curry is an Associate Professor at UBC's School of Library, Archival and Information Studies. She teaches graduate level courses on intellectual freedom and censorship and is a longstanding advocate for public access to information and legal protections for libraries.

According to BCCLA Executive Director Murray Mollard: "The BCCLA is indeed fortunate to have Jason Gratl and Ann Curry as new leaders of the organization. Jason has distinguished himself during his six years on the Board as a prolific drafter of BCCLA positions and brings new energy to keep the Association at the forefront of defending civil liberties in Canada. Ann is that rare breed of academic willing to stand up for free speech. Her academic expertise and sheer moxie are a boon for the Association."

The Association welcomes Bing Chan, Dominique Clement, Tom Sandborn and Richard Rosenberg to our Board of Directors.

The B.C. Civil Liberties Association wishes to thank the Law Foundation of B.C. and our other funders for their financial support.



BC Gaming Policy and Enforcement
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