


the democratic Commitment

JOURNAL OF THE BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

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THE  **LAW**
FOUNDATION
OF BRITISH COLUMBIA

The BCCLA acknowledges the generous support of the Law Foundation of BC

BRAIDWOOD INQUIRY BCCLA Urges Moratorium on Tasers

The B.C. Civil Liberties Association has urged Thomas Braidwood, Q.C. to place a moratorium on the use of Tasers by police until more independent research is undertaken and the weapon is deemed not to pose an unreasonable risk of safety to the public. The BCCLA's written and oral submissions were presented to Mr. Braidwood on May 23, 2008 by BCCLA Executive Director Murray Mollard.

Mr. Braidwood is the Commissioner responsible for two Commissions of Inquiry – a study commission which is to inquire into and report on the use of conducted energy weapons by municipal police in B.C. and a hearing commission which is to inquire into and report on the circumstances of the death of Robert Dziekanski, the Polish immigrant who died at Vancouver International Airport in October 2007 after being stunned by a Taser weapon.

The BCCLA has been calling on the government to ensure the safety of the Taser and to create uniform,

high standards for training, deployment and reporting on the use of the weapon since it was first introduced in British Columbia almost ten years ago. To date, the government has done neither.

The BCCLA's submission to Commissioner Braidwood focuses on five areas including the failure of the provincial government to adequately evaluate and regulate the Taser, the need for more research, a precautionary approach to the weapon, a call for the implementation of standards and the need for a further public review in three years.

The Taser is a weapon that was originally sold by the police to politicians and the general public as an alternative to using a firearm that would save lives. For example, rather than shoot threatening individuals suffering from a mental disorder, a Taser would be used. Over time, it has become clear that the Taser has been used by police in a wide range of much less serious circumstances, including those where there is no great threat to police or public safety.

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An ancient poet's counsel (Horace, I do believe) about catching a reader's interest by starting in the middle of things is, for me, not a matter of planning but of following the course, and the force, of events since I became President of the BCCLA. I have been involved in the BCCLA since 1979 and the

range of civil liberties issues that arise and how the BCCLA engages them never ceases to amaze me. The activity level right now seems very high. But the extent of the BCCLA's involvement matches that. For that, I must give special credit to Jason Gratl, who has served ably and diligently as our President and who continues to volunteer his time and efforts as our Vice-President. I know that we will have to rely upon him, the Executive and Board, and, of course, Murray Mollard and our dedicated staff, to continue addressing the concerns that civil libertarians have to the issues of the day. My appreciation for all of that grows with each day that passes. So where are we now and where does it appear that we are going? While I am sure I will have left out several, the concerns at the fore now appear to me to be:

 **The Police and those in custody**

- The National Parole Board, Appeal Division reversal of the decision of a panel of the National Parole Board in the Latimer case (thanks to the efforts of Jason Gratl)
- the RCMP Complaints Commissioner's position concerning our complaints about public announcements of criminal investigations during election campaigns,
- the Transit Police use of Tasers on 10 occasions in the past 10 months, including incidents involving whether fares had been paid,
- the Braidwood Commission hearings into the use of Tasers,
- the treatment of a young woman in a padded police cell in Victoria,
- the Frank Paul Inquiry concerning a tragic death in custody and ongoing concerns about accountability (which we believe will not be ensured until comprehensive civilian investigation of the police and of complaints about the police is put in place);

 **Free speech and the democratic process**

The Simpson v. Mair defamation suit (where I appeared as BCCLA counsel) at the Supreme Court of Canada (judgment still reserved), Human Rights Tribunal cases concerning complaints from religious groups that views freely expressed in MacLean's magazine were offensive, the B.C. government's attack on voting rights (including a new electoral map and voter ID laws) and on free speech (through a 150 day gag rule for non-political party election advertising), and the City of Powell River's threats to sue individuals who spoke out about local election issues for alleged defamation of the city;

 **Privacy**

Ongoing concerns about the use and sharing of medical, fingerprint, DNA and other personal information among government officials, medical professionals and business groups;

 **Human dignity and necessities**

Prompted by the valuable discussion at our AGM this year, we have a renewed focus on matters concerning basic human needs for housing, food, water and security, including for the homeless, the poor, the disabled and others in need, while continuing our concern about unfair discrimination; and

 **Canada's values internationally**

Our government's actions internationally, including prisoner transfers in Afghanistan, our recent successful intervention at the Supreme Court of Canada in the Omar Kadr case which will have a major positive impact on our government's international actions complying with the *Charter*.

So, I conclude this message as I started – we stand in the middle of things, our interest and attention caught by the currents sweeping us along, but our resolute aim one of protecting and advancing the values that we as civil libertarians hold dear.

continued from page 1

The most egregious example of this phenomenon has been the recent revelation that SkyTrain police have used the Taser to subdue fare evaders. This shift in Taser use over time, also known as “usage creep”, has occurred due to a vacuum of government control over the police.

The BCCLA’s submission emphasizes the lesson to be learned from the lax regulation of the Taser: the Ministry of Public Safety and Solicitor General in B.C. had an obligation to properly evaluate and regulate the Taser when it was first introduced. Rather than doing so, the government delegated all its responsibility to the police. The result has been usage creep, uncer-

With a reported 350 deaths associated with Taser use in North America and an unknown number of injuries, there is a real concern about the weapon’s safety. The BCCLA therefore urged Mr. Braidwood to recommend new research including research into the risk of Taser deployment to those with pre-existing heart disease, pregnant women, children, the elderly and the mentally ill. There should also be research regarding the impact of pain caused by Tasers, the risk of multiple shocks and the effects on those who are severely agitated or distressed due to drug use or other causes. The research will need to be independent of any manufacturer or potential user of the weapon to ensure credibility of the results.

There appears to be no consensus among the scientific and medical community about the safety of the Taser.

tainty about the weapon’s safety, a lack of reliable data about its use, and growing public distrust of the police. Inevitably, new weapons technology will arrive on the scene. Public authorities need to learn from their mistakes about lax evaluation and regulation of the Taser. Inadequate civilian governance over police is a theme that mirrors the problem of civilians who die or are seriously injured while in police custody. Public confidence is a key ingredient to successful policing. Lax civilian governance and oversight of the police erodes public confidence in the police and undermines public safety.

During the public hearing phase of the Inquiry, Mr. Braidwood also heard from many other groups and individuals including the police, Taser International, doctors, scientists, advocacy groups and concerned citizens. There appears to be no consensus among the scientific and medical community about the safety of the Taser. Given that uncertainty, the BCCLA urged Mr. Braidwood to take a cautious approach, one that justifies a moratorium on Taser use. In the alternative, if Mr. Braidwood recommends continued use of the weapon, the BCCLA urged that the weapon be restricted to use only when a firearm is otherwise authorized.



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The Democratic Commitment is a publication of the British Columbia Civil Liberties Association. Its mandate is to preserve, defend, maintain, and extend civil liberties and human rights across Canada through public education, complainant assistance, law reform and litigation.

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TASERS

Currently, the Taser is classified as an “intermediate weapon” which authorizes the police to use it when there is merely “active resistance” from those that the police have lawful authority to detain or arrest, a standard far too low according to the BCCLA.

The BCCLA has also urged strict control and regulation of the weapon including clear, enforceable standards regarding training, use and reporting. All police recruits should be trained to a high standard at the Justice Institute and re-certification should occur annually. Trainers must also be certified and training materials should be independent of Taser International. Training for police officers should also include extensive training regarding crisis intervention so that dialogue and negotiation can be used to solve conflicts rather than force. The BCCLA commends the Vancouver Police Department for its program to train all its officers in crisis intervention and recommended that the province pick up the bill to ensure all officers in B.C. receive standard crisis intervention training.

With respect to use, deployment should only occur once emergency health services (EHS) are present.

If there are exigent circumstances that justify use before EHS arrival, police will need to ensure that EHS are called to the scene in any event



and permit them to examine any individual who has been shocked by the weapon. The police must also record and report data regarding any deployment of the weapon to enforce regulations and for research.

Finally, the BCCLA urged Mr. Braidwood to recommend a further public review of the Taser three years after his report is submitted to the government. Given the scientific uncertainty regarding the weapon’s safety, the failure of government regulation to date and a skeptical public, a further review would be in the public interest.

It is worth noting that if Mr. Dziekanski’s death had not been captured on a video by Paul Pritchard and if his video had not been broadcast widely to the public (despite the efforts by the RCMP to sequester the video), there would not be a public inquiry into the Taser. The BCCLA hopes that Mr. Dziekanski’s death, rather than being simply tragic, will spur greater civilian oversight and regulation of the police.

While the police risk their lives to protect the public, and thus are deserving of our respect and support, they must always remain accountable to

and under the direction of civilian authority.

i The BCCLA’s submission to Mr. Braidwood can be found at: <http://www.bccla.org/othercontent/TaserFinalSubmission08.pdf>

For more information about the Braidwood Inquiry, visit: www.braidwoodinquiry.ca



Spreading the word... through your community networks

Since starting in the role of Director of Development in January, I have had the pleasure of talking to many members. The level of generosity and commitment to civil liberties has been inspiring and I look forward to meeting many more of you in the coming months.

Being able to count on our members and donors makes it easier for the BCCLA to focus its attention on protecting civil liberties and human rights. However, the BCCLA is in urgent need of new sources of financial support in order to achieve all of our program goals in 2008.

Instead of asking you for another contribution, I am hoping that you will join me in spreading the word about the BCCLA's important work in Canada.

The truth is that people give to people and I have only had the opportunity to meet a small number of our supporters – but you, along with hundreds of other members and donors, know many more people, who know many more people...and well, you get the idea. With your help, we'll be friend-raising and fund-raising across the country in no time. Here are some ideas on how to get the conversation started:

Rights Registry

Planning a birthday party or other celebration? Create a personal online giving page at www.CanadaHelps.com so donations can be made in your honour to the BCCLA.

Free Speech Forum

Even better than a book club, invite friends to join a weekly discussion on civil liberties and human rights topics and ask them to become members of the BCCLA.



Sarah Sandusky

Power of the Pen

Write a letter or e-mail to your contacts, telling them why you support the BCCLA and asking them to join or donate.

Community Champions

If your workplace conducts a United Way or employee giving campaign, your coworkers' regular gifts can do twice as much if you ask them to designate donations to the BCCLA – just include our registered charity number: 888466844RR0001.

Liberty Legacy

Remind friends that including the BCCLA in their Will ensures that their commitment to civil liberties and human rights will live on indefinitely. This is also a great time to contribute stocks or shares to the BCCLA since capital gains tax no longer applies to donations of securities and the donation receipt will actually help reduce personal taxes.

Don't forget to tell me about the special way you raised funds so that I can include your story on our website or in upcoming newsletters.

For brochures, newsletters, speaking notes or more information, please contact Sarah Sandusky, Director of Development, at 604-630-9750. Also check our Third Party Events webpage for other fundraising ideas: www.bccla.org/3p.htm

BCCLA Volunteers

Long-serving board members, **Hamar Foster** and **J.J. McIntyre** have resigned from the board. The Association is grateful for their volunteer contributions which have helped make the Association what it is today.

Having finished her practicum with the BCCLA, SFU Criminology student, **Shaheena Virani** has been replaced by **Abeed Bhimji**.



Judy Graves, Coordinator, Tenant Assistance Program City of Vancouver received the Reg Robson Civil Liberties Award at the BCCLA AGM on March 27, 2008.

Radio Frequency IDentifications Forum

The BCCLA was delighted to work with the **Sheldon Chumir Foundation for Ethics** in Leadership to bring three stellar academics to Vancouver to give a public talk on Radio Frequency Identification (RFID).

Panelists **Jacquelyn Burkell** (University of Western Ontario), **Ian Kerr** and **Valerie Steeves** (University of Ottawa) described some of their research on the increasingly ubiquitous electronic chips that are tracking everything from store inventory to VIP bar patrons.

The panel presentations were chaired by **David Loukidelis**, Information and Privacy Commissioner for British Columbia.

Thanks to the VBA

“The Vancouver Bar Association has chosen to donate to the B.C. Civil Liberties Association’s litigation program again this year because of the importance of the BCCLA’s mandate to preserve, defend, maintain, and extend civil liberties and human rights. We recognize that many Vancouver-based lawyers volunteer their time to the BCCLA, and we wish to do what we can to assist with the preservation of civil liberties and human rights in British Columbia.”

VBA
Vancouver Bar Association

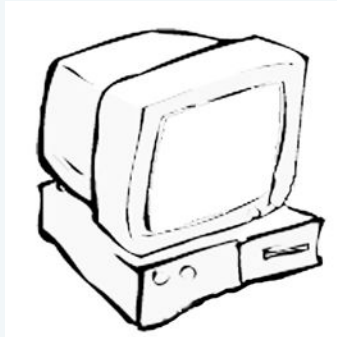
PATIENT PRIVACY: Threatened by electronic health records

Technology promises all sorts of things. What it delivers is another matter. The B.C. government is about to pass a bill governing health information banks. These are databases of citizens' health information that the government says will increase the efficiency of health care by providing ready access to health records. The BCCLA has been working with an informal coalition of health and privacy groups to lobby the government to ensure that "greater efficiency" does not come at the cost of patient privacy.

There is absolutely no question that the plan to make millions of health records available electronically will imperil the security of that information. While paper files are not always properly secured, since Watergate, when have we heard of anyone stealing paper files? Who is breaking into health care facilities and walking off with file folders? On the other hand, privacy breaches of citizens' information held electronically is the stuff of weekly news reports. And these are privacy violations on a scale that was unimaginable before electronic storage. With the assistance of technology, the United Kingdom has managed to lose the personal information of half of Britain's population in the last year alone.

Many governments are prepared to vouch for the enhanced security of their electronic health informa-

tion systems, but these claims are frequently undermined by experience. Most recently, Australia's electronic health information system has come under fire from whistle-blowing physicians who maintain that the overdue, over-budget new computer system in hospitals leaves patient data vulnerable. And incidentally, over-budget is a constant refrain in this realm. Think gun registry.



"...privacy breaches of citizens' information held electronically is the stuff of weekly news reports."

In addition to the risks inherent in vast electronic systems, we are also deeply concerned with who exactly is controlling the dissemination of the information to "authorized" users of the system. Citizens have a right to control the access and use of their health information regardless of the format in which that information is recorded. Early

on, the B.C. government told us that a consent-based system for the electronic databases was out of the question. Citizens are not going to be able to consent to having their information on the electronic system, all we can hope for is that we can control the dissemination of our information on the system by "disclosure directives".

After working for almost two years in consultation with the government on disclosure directives, we were shocked when the government tabled legislation that would only allowed disclosure directives at the discretion of the Minister. We went public with our opposition to the bill and were successful in lobbying the government to introduce amendments that make disclosure directives mandatory. But we still have concerns about inadequate protections built into the system and the legislation, including the fact that the legislation allows the information to leave the country.

And unbeknownst to the average citizen, there's even more where this came from. Our deep concerns about electronic health care records get kicked up a notch further knowing that the government is working on integrating a series of citizen databases in a so-called "Integrated Case Management" system that would link information on health, social services, education and justice.



Whether or not one is inclined to believe that this is all in the name of providing “better service”,

the scope for abuse, the scale of potential privacy violation and the prejudice likely to be suffered by people whose information is disclosed cannot be ignored. Interestingly enough, when pressed to provide empirical evidence of service improvement by such means, governments have very little to show. It’s as if the rhetoric of technology as the panacea for all woes has won out over rationality. What-

ever benefits might be said to flow from readily sharing information have got to be weighed against the profound risks and citizens’ rights. You don’t need to be a Luddite to argue that the precautionary principle needs to prevail in this arena.

i To read the BCCLA’s news release visit: www.bccla.org/pressreleases/08eHealth.pdf

BCCLA Working to Push for Better Law and Citizenship Education in B.C. Schools

The B.C. Civil Liberties Association is working with the Law Courts Education Society of B.C. and other partners to promote active citizenship and law education for students. The project is examining B.C. secondary school curriculum to identify strategies to ensure that all students graduate with the motivation, skills and knowledge necessary to be active citizens. In the context of civil liberties, students need to be aware of their rights, responsibilities, and freedoms as Canadian citizens, and be prepared to actively engage in efforts to uphold democratic values.

Last year the Ministry of Education conducted a Social Studies Needs Assessment (SSNA) which found that “fewer than a quarter (22 per cent) of educators feel that students have ample opportunity in required social studies courses to practise active citizenship” (see www.bced.gov.bc.ca/irp/reports/). Further, the SSNA states that “there is a growing trend toward the use of community engagement and active citizenship projects to take social studies learning beyond the classroom and connect school with students’ lives.” The project team is addressing these two issues in the assessment.

In addition to the BCCLA, the project’s advisory committee includes various government ministries, teachers’ associations, law-related organizations, and others involved in civics education.

i For more information and project updates, visit the website at www.bccitizenship.ca



 BC Law and Citizenship Curriculum Assessment Project

Frank Paul Inquiry

Colossal police department failures uncovered

The Frank Paul Inquiry's massive probe into the freezing death of Frank Paul, a 47-year-old Mi'kmaq man, has now concluded. The Inquiry uncovered the significant role that Vancouver Police Department (VPD) officers played in Mr. Paul's tragic death and highlighted systemic failures in how various institutional agencies responded to his death.

The Vancouver Police dropped Mr. Paul off in a downtown eastside alley without shelter from the elements in the early morning hours of December 6, 1998. Mr. Paul was soaking wet, unable to walk or communicate, and grossly intoxicated at the time. Less than an hour before an officer left him in the alley, a jail sergeant had refused to admit him to the jail's drunk tank.

The BCCLA was a participant at the public inquiry which sought to uncover the truth of what occurred on that night and why the various agencies involved in investigating his death never adequately responded or scrutinized the officers' conduct.

The Inquiry uncovered that the VPD homicide squad conducted a woefully inadequate criminal investigation into Mr. Paul's death. For example, rather than seeking to interview the officers whose conduct was at issue, the VPD immediately arranged for the respondent officers to be provided with legal counsel. The officers provided written statements, some of which contained statements that

were contradicted by the physical evidence found at the scene, but these inconsistencies were never identified or reconciled by VPD investigators. No VPD officer was



Grace Pastine

interviewed during the investigation. The VPD did not segregate any of the police witnesses at the scene who had had contact with Mr. Paul shortly before his death in order to ensure that their recall of events would not be contaminated or compromised. The investigation resulted in a final investigative report that was full of omissions, oversights, and left many critical questions unanswered.

VPD witnesses testified that in cases of in-custody deaths, where the individual potentially died as a result of police conduct, the accepted practice was to prepare a report that did not make judgments about the credibility of witnesses or the veracity of statements, and did not highlight or identify outstanding issues or unanswered questions, or inconsistencies in the evidence. Today, in-custody deaths are investigated in the same wholly inadequate manner.

The failure of the VPD to conduct a proper investigation of Mr. Paul's death polluted every subsequent investigation and review by the Coroners Service, the police disciplinary body, and the Office of the Police Complaint Commissioner. The Coroners Service failed to utilise their investigative powers, and chose merely to rely on the fruits of the VPD investigation. The coroners service determined it was not necessary to hold an inquest. The police disciplinary body conducted virtually no investigation and handed out one and two day suspensions to the officers. The Police Complaint Commissioner, Don Morrison, was the person with the final opportunity to ensure that there was a public airing of the circumstances surrounding Mr. Paul's death, but he refused to order a public hearing.

The Inquiry provided a unique opportunity for the BCCLA to uncover the truth of Mr. Paul's death and to advocate for positive changes for reform. The BCCLA urged the Commissioner to find that there is a fundamental flaw in the manner in which the VPD routinely investigates police involved deaths and to recommend that in cases involving death or serious injury in which the police are involved or implicated, that the police must not investigate themselves. Because there is a significant potential for real or perceived improper influence when police officers are called upon to investigate serious criminal matters involving other police officers, the

LITIGATION UPDATE

BCCLA advocated for the implementation of a system of civilian oversight, in part modeled on the Ontario Special Investigation Unit, whereby civilians trained in investigating major crimes would take charge of all such investigations.

The BCCLA also advocated that the Commissioner should consider broad recommendations in the area of decriminalisation of intoxication. The VPD should not be responsible for the care of intoxicated individuals, instead a properly staffed and funded sobering center should be immediately established.

The 60-day inquiry concluded after hearing from 68 witnesses. The Commission will now prepare an interim report and will issue a final report pending a Supreme Court decision on whether Crown prosecutors must testify like everyone else.

The BCCLA was represented by [Michael Tammen](#) of Harper Grey LLP and [Grace Pastine](#), BCCLA Litigation Director.

i The final submissions of the BCCLA can be found at www.bccla.org/othercontent/Frank_Paul_Final_Submissions.pdf

Frank Paul Inquiry website:
www.frankpaulinquiry.ca

Safe Injection Site Wins Reprieve

The BCCLA applauds the recent decision of the BC Supreme Court granting a supervised injection facility, Insite, a permanent constitu-



tional exemption from prosecution under federal drug laws. The BCCLA was an intervenor in the cases *PHS Community Services Society v. Canada* (Attorney General) and *Vancouver Area Network of Drug Users v. Canada* (Attorney General).

In a striking decision, Mr. Justice Ian Pitfield ruled that sections of Canada's drug laws against possession and trafficking in illegal narcotics were unconstitutional. The decision marks a major victory for social justice in the downtown eastside and is an important step in ending the criminalization of disadvantage and disease.

Insite is jointly operated by the Vancouver Coastal Health Authority and the Portland Hotel Society. It provides supervised and sanitary conditions for the use of intravenous drugs, and has successfully reduced the health risks associated with addiction to such drugs. Research has found that the operation of Insite has prevented overdose deaths, reduced the suffering of addicts and lessened the spread of HIV/AIDS and Hepatitis C. The court's finding recognizes drug addiction as an illness, and asserts that the government cannot deny access to the vital health services that Insite provides. [Ryan Dalziel](#) and [Daniel Webster](#), Q.C. were counsel for the BCCLA. Both are of the firm Bull, Housser & Tupper LLP.

i The BCCLA submission can be found at: www.bccla.org/othercontent/insite-bccla.pdf

Supreme Court Rules Canada Complicit in Abuse

The Supreme Court of Canada released a decision in *Minister of Justice, et al. v. Omar Khadr*, a groundbreaking constitutional rights case. The judgment unanimously decided that Canada's complicity in the process at Guantanamo Bay violated Canada's binding obligation under international law. The BCCLA appeared as an intervenor in the case.

The decision confirmed that the *Charter* binds Canadian officials when operating abroad, where Canada would also be acting in contravention of its obligations under international human rights law. This has broad significance, and extends to the entire range of ways in which Canada cooperates with foreign governments in the national security context.

Omar Khadr is a Canadian citizen who has been detained by the United States in Guantanamo Bay since 2002 and has been put on trial in a proceeding before a Military Commission that is a violation of international law. Prior to charges being laid, Canadian officials interviewed Mr. Khadr in Guantanamo Bay and passed on the information collected to the American government for use against him.

The Supreme Court of Canada agreed with the BCCLA that by gathering evidence from Mr. Khadr

and sharing it with American military authorities, Canada's complicity in the proceedings violated Mr. Khadr's *Charter* rights to life, liberty and security of the person. The Supreme Court of Canada also agreed with the BCCLA's position that the Charter places Canada under a duty to disclose to Mr. Khadr evidence that may be relevant to his defense in the proceedings against him in Guantanamo Bay.

Joe Arvay, of Arvay Finlay Barristers, Sujit Choudhry, Faculty of Law, University of Toronto, and Paul Champ of Raven, Cameron, Balatyne & Yazbeck LLP, represented the BCCLA.

i To read the BCCLA's legal argument visit: www.bccla.org/antiterrorissue/08KhadrFactum.pdf

To read the Supreme Court of Canada decision visit: <http://scc.lexum.umontreal.ca/en/2008/2008scc28/2008scc28.html>

BCCLA Intervenes to Protect Right to Damages From Illegal Strip Search

The BCCLA intervened at the B.C. Court of Appeal in two cases, *Ward v. HMQ* (BC) and *Ward v. City* (Vancouver) to argue that individuals are entitled to awards of damages when government officials violate their *Charter* rights. The cases were an appeal of a trial court decision in which the court awarded damages to a Vancouver lawyer after his *Charter* rights were

violated by the Vancouver Police Department and Corrections officers in an unlawful strip search and an unlawful seizure of his car. The court is expected to release its judgment in the cases this summer.

The BCCLA was represented by BCCLA Board Director Kent Roach, University of Toronto Faculty of Law, and Grace Pastine, BCCLA Litigation Director.

i To read the BCCLA's legal argument visit: www.bccla.org/othercontent/08Ward.pdf

Tribunal Allowed to Determine if Sexual Orientation Provisions Protect Sexual Practices

The B.C. Court of Appeal upheld a decision by the BC Human Rights Tribunal to accept a human rights complaint for filing. The complaint alleged discrimination on the grounds of sexual orientation due to the complainant's practice of a "BDSM lifestyle" (bondage and discipline, domination and submission, and sadism and masochism). The complaint can now proceed in the normal course to a hearing before the Tribunal.

The BCCLA intervened at both the BC Supreme Court and the Court of Appeal to argue that the Tribunal should be afforded the opportunity to consider whether a restrictive interpretation of the sexual orientation would infringe fundamental rights. The Court of Appeal agreed with the BCCLA

that it was premature to review the decision of the Tribunal, and dismissed the appeal. The Court of Appeal found that the Tribunal decision simply opens the door to the examination of evidence and further submissions on an unusual question.

The BCCLA argued that question before the Court was not whether the complainant's sexual practices are or ought to be protected under the Human Rights Code, but rather the issue was whether the Tribunal should be allowed to hear evidence of the complainant's sexual identity and what BDSM is.

Human rights legislation is frequently interpreted more expansively over time in response to changing social conditions – this decision allows the Tribunal to consider the issue based on facts and a full evidentiary record, rather than dismissing the complaint out of hand.

Grace Pastine, BCCLA Litigation Director, represented the BCCLA at both levels of court.

i To read the BCCLA's legal argument visit: www.bccla.org/othercontent/Hayes_appeal.pdf



Photo by Al Gilbert, C.M.

“Our concern for privacy has been eroded because our nation does not seem to care about privacy, even though ‘the right to be left alone is the beginning of all freedom.’ “

~ Eddie Greenspan, Q.C.

THE POWER OF LIBERTY

The B.C. Civil Liberties Association presents a special public lecture by leading criminal lawyer **EDDIE GREENSPAN, Q.C.**

7:00 pm
Thursday, November 20, 2008
Law Courts Inn
800 Smithe Street
Vancouver, BC

A VIP reception will follow to honour *pro bono* lawyers and key supporters who champion civil liberties and human rights on behalf of the B.C. Civil Liberties Association.

GENERAL ADMISSION TICKETS

Members/non-members: \$15/\$20

VIP TICKETS & SPONSORSHIP LEVELS

TICKETS	PRICE	BENEFITS
1	\$150	Private Reception
8	\$1,000	Bronze Sponsor
15	\$2,500	Silver Sponsor
25	\$5,000	Gold Sponsor
40	\$10,000	Presenting Sponsor

Event tickets and sponsorship levels are limited!

Contact Sarah Sandusky to reserve your tickets and to inquire about sponsorship details:
604-630-9750 or sarah@bccla.org

B.C. Civil Liberties Association
www.bccla.org

Research Project: The surveillance of travellers

The BCCLA working is working in partnership with the International **Civil Liberties Monitoring Group** and others on a project to document the number of people who believe they have been mistakenly or unfairly targeted as a traveller, and the nature of the incident.

The purpose of the project is to investigate and generate better public understanding of the practices, programs and systems used to screen travellers at Canadian airports and at the Canada-U.S. border crossings in order to assess the scope and depth of their concrete impacts on civil liberties, privacy rights and mobility rights.

We want to hear from anyone who has been targeted by the U.S. or Canadian “no-fly” list, subjected to long secondary interrogations at borders, been barred from entering the U.S. or detained and arrested in the U.S.

We will not divulge the identity of anyone who agrees to share his or her story with us unless explicit consent is given. Please contact our researcher:

Toll-free number: 1.866.613.0778
In the Montreal area: 514.484.2020
www.travelwatchlist.ca

A research project led by the International Civil Liberties Monitoring Group in partnership with:



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

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BC Gaming Policy and Enforcement Branch
of the Ministry of Public Safety and Solicitor General

