

the democratic Commitment

THE BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION NEWSLETTER

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Though the BCCLA is not a member agency, you can direct your gift to the United Way towards our efforts. Whether you are raising funds through a workplace campaign, or you are donating independently, when your contribution card asks if you would like your gift to go towards a specific charity, just fill in our name, and the United Way will pass on your gift.



Thanks for giving!

Northern Tour Reveals Systemic Issues in B.C. Communities

The BCCLA's northern tour has already resulted in major exposure of serious systemic issues in Kamloops and Williams Lake, and the official report hasn't even been released yet. The BCCLA visited 14 cities in 14 days, conducting 16 educational workshops for more than 400 people. We distributed more than 1400 arrest handbooks during the tour and we learned a lot, and not just about how to keep an eye out for moose on the road.

Kamloops

Following revelations in Kamloops that 4 male RCMP officers and 3 civilian male staff supervised by RCMP allegedly watched while two women had sex in RCMP cells, the BCCLA was able to partner quickly with the local Elizabeth Fry Society to raise systemic issues for women in RCMP cells, including that women don't get the same access to showers and toothbrushing as men, that they are guarded and searched by men, that the Elizabeth Fry Society is banned from the RCMP cells preventing women from accessing basic advocacy services around legal aid and keeping their homes and children, and that when cells are full women's toilet facilities are exposed to male prisoners.

We were also able to gather some concerning information about the Kamloops RCMP detachment, including that 10 Kamloops RCMP officers have either been criminally charged or have been placed (and are currently, as of press time) under active investigation since January, 2010, representing

almost 10% of the 120 member force in that city.

Williams Lake

Our visit to Williams Lake quickly revealed questions of systemic problems between the aboriginal community and the RCMP there. We met with a media outlet that was cut off the press release list, personally, by the head of the Williams Lake detachment after he

didn't like a story they ran about aboriginal and police relations in the community.

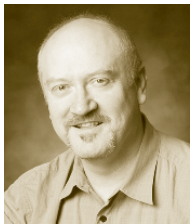


We learned from local lawyers about the existence of multiple videotapes of questionable interactions between aboriginal people and RCMP officers, including one that involved the head of the detachment himself. We heard from a local business owner his opinion that RCMP officers were targeting his aboriginal patrons, and that when he made the complaints public, nobody investigated. Our compilation of this material is currently the subject of an RCMP internal code of conduct investigation and led CTV's national news in late September.

Please consider supporting the BCCLA so that we can continue to do this important outreach and education work in B.C.'s north. The BCCLA's report on the northern tour will be out in early November.

Religious Liberty

Many people today squirm at the idea of religionists in public life. Given references to the deity and protection of religion and conscience in the Charter, that is somewhat odd. We still swear in witnesses, judges, and public officials, continuing in public life a rite established long ago. It is odder still given the premise of being a multicultural, tolerant society. And that people of deeply held, conscientious convictions are generally admired. Should we really exclude those who choose to



profess adherence to religious values? A recent book by a respected journalist, Marci Macdonald, *The Armageddon Factor: The Rise of*

Christian Nationalism in Canada (which I will not pretend to have yet read) apparently chronicles the fact that the current government in Ottawa has a number of evangelical Christians in its midst. Some have argued that her account is inaccurate and stands as a surrogate for anti-religious bigotry.¹ On the other side, a choir of voices has chanted a warning that plays on suspicions about having religious people in government.

That this should be fodder for editorials betokens how far things have changed in the past

50 years. One need only call to mind Tommy Douglas, icon of Canadian history, “The Greatest Canadian” according to our national broadcast agency. The Reverend Thomas Douglas, a Scottish-born Baptist minister, during the Depression took to public office to advance the lot of the poor and underprivileged. Many others in the CCF rooted their socialist convictions in religious ones. J.S. Woodsworth, who started as a Methodist minister before entering political life, is another example. Religious ministers in other parties have made real contributions to public service as well.

Care should be taken when criticizing religionists in political life. If we accept that criticizing someone for their skin color, ethnic background, sexual orientation or physical abilities is bad, why would prejudging someone because of religious beliefs be acceptable. What passes for a not-so-subtle condemnation by Ms. Macdonald of evangelical Christians in government positions is as much a form of “profiling” as would be discomfort about Muslim, Sikh or other religionists in public life. Yet concern cannot reasonably be over having religious-minded people in politics. Anything that excluded religionists per se would amount to discrimination and leave us all at a loss. Democracy is, after

all, supposed to be a welcoming and inclusive thing. And debate usually operates more effectively when people give opposing views the benefit of rational consideration before rejecting them.

If we accept icons like Tommy Douglas in politics as religionists whose political views are synchronous with what certain non-religionists prefer, then subjecting religionists who associate with other political views to pejorative characterizations for being religionists is misconceived. Logic and reason suggest that disagreement is not over whether they are religious. It is rather over their politics. Yet critiques based upon religious adherence of an adversary abound and amount to prejudicial stereotyping. One may be forgiven for asking whether people committed to a liberal-minded approach to democratic participation ought to eschew such tactics.

All of which is a polite way of saying that self-reflection on the part of everyone is a valuable commodity. Failure to do so is the only explanation for aberrant decisions such as that of the Supreme Court of Canada in the *Hutterian Brethren*² case last fall. The case was simple – Alberta required everyone with a driver’s licence to have their photo on it; Hutterites objected

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10 Ways Your BCCLA Made a Difference for Rights in Canada

Worked for justice for aboriginal communities in the north

1 The BCCLA released three videos showing problematic interactions between the RCMP and aboriginal men in Williams Lake cells, including the head of the detachment personally throwing a man sitting on a jail cell bench to the ground, injuring the man's head. We also exposed how a media outlet that reported on aboriginal/police relations faced clear retaliation from the detachment head, and focussed attention on a local bar owner's allegations that RCMP officers were harassing his aboriginal clients. Our story was national news, and the RCMP has started a full code of conduct investigation in the small northern B.C. town.

Helped deliver a public inquiry into the unnecessary deaths of the murdered and missing women of Vancouver's Downtown Eastside and the Highway of Tears

2 The BCCLA was on the front lines with women's groups and aboriginal groups in demanding justice for families who had brought complaints of missing women to indifferent and uncaring police departments. The Inquiry was announced in late September (see article in this month's Democratic Commitment).

Hosted an international human rights award winner in Vancouver

3 When we were approached on short notice to host

international human rights award winner and former High Court of Australia Chief Justice Mr. Michael Kirby, the BCCLA delivered, partnering with local rights groups and the Canadian Bar Association for a compelling talk about the future of rights and civil liberties in Canada at Vancouver's Law Courts Inn. Thanks to Benefic Law Group for their sponsorship of the event.

Exposed systemic issues in RCMP cells in Kamloops

4 The BCCLA was fresh from our northern tour when news broke of seven RCMP officers and civilian staff members watching two women allegedly have sex in Kamloops jail cells. We were able to work with the local Elizabeth Fry Society to talk about the systemic issues they'd identified there around men guarding and searching women, lack of access for women to showers and basic hygiene supplies, and women prisoners not having privacy from male prisoners. There is now a Commission for Public Complaints Against the RCMP inquiry into the issue.

Campaigned against B.C.'s plan to end judicial appeals of drunk driving tickets

5 The BCCLA opposed the provincial government's plan to eliminate the ability of allegedly drunk drivers to appeal their tickets, some of which total thousands of dollars in penalties, to a judge. Drunk driving tickets now have fewer procedural protections than parking tickets in B.C., and

while nobody likes drinking and driving, the BCCLA is strongly opposed to this erosion of the right to appeal to an independent judge.

Ended child sex research being done by the B.C. Forensic Psychiatric Service

6 Our work with Justice for Girls to expose the government of B.C.'s "forensic psychiatric service" and their research on child sex offenders using the penile Plethysmograph ended the program overnight. No longer will government scientists be connecting equipment to the genitals of children and exposing them to violent sexual imagery and narratives for the purposes of research projects, or any other purpose. Child and youth advocate Mary-Ellen Turpel-Lafond continues her independent investigation, and the College of Physicians and Surgeons is currently investigating the doctor who ran the program.

Fought hard to end storm-trooper style police tactics

7 Our intervention in the case of R v. Cornell helped push three Justices in favour of our vision of a world where police need to justify, based on evidence, using balaclavas and smashing doors down to conduct a search warrant. Unfortunately, we couldn't convince the last judge we needed, and we lost in a 4-3 decision.

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on religious grounds. Lower courts found that imposing a photo requirement offended Charter guarantees. The Supreme Court held, surprisingly and by a narrow vote, to the contrary. The decision is unportable, particularly when held up against earlier decisions. One involved protection by the court of practices of Orthodox Jewish groups in Montreal³ that a “succah” (a structure used for religious observance) be set up on a balcony on common property in an urban multi-dwelling project. Another involved Sikhs in Quebec and the court finding that “an absolute prohibition against wearing a kirpan infringes the freedom of religion of the student.”⁴

How can these be reconciled? The BCCLA intervened in 2001 in yet another case, arguing for protection of religious liberty against a blanket rule banning religionists from teaching careers. The Supreme Court held “the proper place to draw the line ... is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them.”⁵

Yet how to deal with the suspicion that allowing religionists to act on their beliefs undermines everything? And how to cope with the fact, as Gandhi noted, that religionists are unlikely to be content with being excluded from public life: “A religion that takes no account of practical affairs and does not help to solve them is no religion.”

I fear that the only explanation for the court’s inconsistent decisions is not based on reason. As with the beguiling attraction of condemning religionists in public life, the court’s inconsistency as to what laws must give way to religious conviction and what laws need not is hardly something that civil libertarians can support. So I am left to hope that someday, those who purport to embrace the philosophy of the likes of yet another reverend fellow – Dr. Martin Luther King – might embrace his words. After all, he looked for a world where everyone, including religionists, would “be judged” not on prejudice as to the group they belonged to, but as individuals and “by the content of their character.”

- 1 E. Levant, *Why is it OK to pick on Christians?* June 1, 2010, <http://www.nationalpost.com/story.html?id=3094830> and *A comedy of errors*, May 20, 2010, <http://www.nationalpost.com/opinion/story.html?id=3049634>.
- 2 *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, [2009] 2 S.C.R. 567.
- 3 *Syndicat Northcrest v. Amselem*, 2004 SCC 47, [2004] 2 S.C.R. 551.
- 4 *Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6, [2006] 1 S.C.R. 256.
- 5 *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31, [2001] 1 S.C.R. 772 at para. 36.

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The Democratic Commitment is a publication of the British Columbia Civil Liberties Association. The BCCLA 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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10 WAYS YOUR BCCLA MADE A DIFFERENCE *continued from page 3*

Encouraged students to think about civil liberties and human rights issues

8 Our third annual *Mary McDonald Essay* contest winners were announced, and we were proud to have the largest number of students ever participating in the contest. Winner Sarah Allan's essay on the rights of the homeless was the favourite of our judges Tom Sandborn, Shirley Heafey and Elin Sigurdson. The essays can be read at www.bccla.org.

Supported Cameron Ward in revolutionizing rights enforcement in Canada

9 The BCCLA was at the Supreme Court of Canada, supporting Vancouver lawyer Cameron Ward who was arguing that if Charter rights are violated, judges should be able to give out monetary awards against government to victims. We won, in a decision that completely changes the game for people seeking remedies for having their rights violated.

Demanded B.C.'s government implement regulations around sex work

10 In the wake of the legal vacuum created by the Ontario Charter challenge that strikes down the sex work provisions of the criminal code and makes the activities associated with prostitution legal again, the BCCLA demanded that our Ministry of Labour immediately meet with sex worker advocacy groups to set out clear rules that will make women and men in the sex trade safer.

Murdered and Missing Women Inquiry Announced in B.C.



After years of advocating for a public inquiry into the massive and systemic policing failures around the women murdered by Robert Pickton and those who have gone missing on the Highway of Tears, rights groups across the province, including the BCCLA, celebrated at the news that an inquiry would finally be called.

The inquiry has a restricted terms of reference that focus

on how police responded to reports that women went missing. Systemic issues around race, sex work, and drug addiction have been hived off into a separate consultation that will be taking place outside

the inquiry process and will be run by a national aboriginal women's organization.

The Commissioner for the Inquiry is slated to be Wally Oppal, who has previously been Attorney General and ran in the last provincial election for the B.C. Liberal Party.

The BCCLA spoke out in the media on Mr. Oppal's appointment, registering our

disappointment that someone independent of the file had not been appointed. Mr. Oppal had previously suggested that there was not much to be learned from an inquiry, had defended the Crown's decision not to press the remaining 20 murder charges against Robert Pickton, and has close personal relationships with people from the Criminal Justice Branch, including many potential witnesses.

Despite our concern about the appointment of someone so closely tied to government and the file, we will be applying for standing at the Inquiry so we can raise important issues of concern to our members around the failure of our police services in one of their most critical functions.

Evidence Derived from Torture

Keeping it out of Canadian courts

In early October, the BCCLA issued a letter to Minister of Justice Robert Nicholson, urging him to ensure that evidence derived from torture be kept out of Canadian courtrooms. Canadian law flatly prohibits the use of evidence derived from torture in legal proceedings.

This issue arises from proceedings related to Hassan Diab, a Canadian citizen whose extradition is being sought by the French government. Mr. Diab has no criminal record in Canada. He has taught at Carleton University and the University of Ottawa. The charges against him arise from his alleged involvement with a bombing in Paris that took place 30 years ago.

Key evidence being offered in support of Mr. Diab's extradition is "intelligence" information from unidentified sources. According to Mr. Diab's lawyer, neither the application judge in Mr. Diab's extradition hearing



Hassan Diab

nor the Crown counsel making the extradition application on France's behalf knows the source of this intelligence. They do not know whether the information comes from human or technical sources. They do not know how, where, or when France obtained this information.

That the intelligence is unsourced is troubling enough. Not knowing the source of the information makes it extraordinarily difficult – if not essentially impossible – to test its reliability. But in this case, there's the added worry that the unsourced intelligence may be information derived from torture, given France's documented willingness to use information derived from torture. Indeed, in 2008 and 2010, Human Rights Watch issued reports criticizing France's use of torture evidence in terrorism cases both at the investigatory phase and at trial

Canada's domestic laws – including the *Criminal Code* and the *Immigration and Refugee Protection Act* – make clear that evidence derived from torture has no place in our courtrooms. Canada's international obligations under the U.N. Convention Against Torture also make plain that it cannot permit the use of evidence derived from torture in legal proceedings.

To our knowledge, the French government has made no assurances that the unsourced intelligence being offered against Mr. Diab is not derived from torture. Canada should neither be accepting unsourced intelligence in its courts, nor should it be permitting the Department of Justice to submit unsourced intelligence information to our courts, unless it can be satisfied that the intelligence information is not obtained as a result of torture or other cruel, inhuman or degrading treatment. The universal prohibition against torture demands no less of Canada.

Diab photo: Mike Carroccetto, Ottawa Citizen

GHOSTS: follows three Canadian Muslims sent to torture



The BCCLA is excited to be co-hosting a screening of the documentary *Ghosts*, concerning three Canadians detained and tortured in Syria and Egypt, and the Australian film *The Trial*, about

Australia's massive terrorism trial of twelve Muslim men in 2008. The films are presented as part of Amnesty International's annual film festival. Join BCCLA Executive Director David Eby at the film for the screenings and a lively audience discussion after the films.

When

November 19, 2010 at 8:15 pm

Where

Vancity Theatre, 1181
Seymour Street, Vancouver

What

Double bill screening of
Ghosts and *The Trial*
(Australian documentary)

A New Face at the BCCLA

The BCCLA has a new staff member. After two busy years steering our fundraising activities, Director of Development Sarah Sandusky, who made great strides with the BCCLA in engaging new donors and members, has moved on to greener pastures. Good luck Sarah!

While we're losing Sarah, the BCCLA is thrilled to welcome Theresa Negreiff as our new Director of Development. Theresa has a long history

of working with charities including the David Suzuki Foundation and Sierra Legal Defence Fund (now EcoJustice). Most recently she held the position of Director of Development and Community Relations at the North Shore Neighbourhood House. Welcome to the BCCLA Theresa!

To welcome Theresa to the BCCLA, send her an e-mail at theresa@bccla.org.

Dear Friends of BCCLA,

I am so pleased to join the team at BC Civil Liberties Association – I have cheered on this organization in the news and am glad to have the chance to support the efforts of the board, volunteers and staff in a meaningful way. One of the first things I did after I came on board, (after reading numerous back issues of this newsletter and meeting front line staff), was sign up as a monthly donor. I know from working with many charities that a committed monthly pledge is one of the best ways to ensure the stability and vitality of a charity you believe in. If you are not giving this way yet, I encourage you to sign up for a monthly pledge on your credit card or through your bank account. Monthly donations let us plan ahead on campaigns knowing committed funds are available and also let us reduce administrative time and paper waste.

Thanks so much for your valuable contributions. I am truly looking forward to getting to know all of our supporters at our events and through your notes and letters. Please feel free to contact me anytime to hear about what's new at the BCCLA!

Best Regards, Theresa
theresa@bccla.org



For the third year in a row, the BCCLA participated in the Vancouver Pride Parade and festival to celebrate liberty.

Thank you to our members and volunteers who came out to represent their Association!

bccla continuing practice development

This fall, the BCCLA is launching a new Continuing Professional Development program and, in collaboration with our pro bono partners, is presenting live continuing legal education courses on topics related to our work. Earn CDP credits in courses taught by experts while supporting the BCCLA.

Liability on the Internet

Chaired by Daniel W. Burnett and Christopher Wilson

November 29, 2010
2 pm to 6 pm
SFU Harbour Centre
Vancouver, BC

4 hours of CPD credits

The rapidly evolving area of internet law encompasses issues ranging from privacy to free expression to intellectual property rights. This course covers recent developments relating to legal liability on the internet.

Join course chairs Daniel W. Burnett and Christopher Wilson and expert speakers from industry and the academy in an afternoon of learning and discussion.

Constitutional Issues in the Criminal Law: 2010 Round-up

Chaired by Michael Tammen and Brock Martland

December 11, 2010
9 am to 1 pm
SFU Harbour Centre
Vancouver, BC

4 hours of CPD credits

From the right to counsel and new *Charter* remedies to challenges of the provisions in the *Criminal Code*, constitutional issues in the criminal law are constantly evolving.

Join course chairs Michael Tammen and Brock Martland for a half-day conference rounding up all of 2010's developments, featuring expert faculty from the judiciary, Crown, and defence bar in the areas of constitutional and criminal law.

Registration and more information on speakers and agendas available at www.bccla.org



BCCLA INTERNS

Law school graduate Marius Adomnica (far left) and Avnish Nanda are currently interning with the BCCLA.

Your Rights on Trial

We work daily in all levels of court to defend and preserve rights and freedoms. Here are some of our high-profile cases.

Ward v. Province of British Columbia and Ward v. City of Vancouver / Supreme Court of Canada

The BCCLA celebrated a victory when Canada's highest court released its decision in *Ward v. Province of British Columbia and Ward v. City of Vancouver*. In a unanimous decision released on July 22, 2010 the Supreme Court of Canada ruled that cash damages are available to Canadians whose Charter rights have been violated even if the government did not intentionally or willfully violate the person's rights.

The BCCLA and the David Asper Centre for Constitutional Rights were joint interveners in the case.

The appeals stem from a case brought by a Vancouver lawyer, Cameron Ward. Mr. Ward was stopped by police investigating a tip that someone was planning to throw a pie at former Prime Minister Jean Chretien. He was wrongly jailed, strip-searched, and had his car illegally seized by the Vancouver Police Department.

The court upheld the \$5,000 in damages that the trial court awarded to Mr. Ward, and rejected the government's argument that the award would have a chilling effect on government officials and open the floodgates to litigation. However, the court also said that damages awarded

should be justified based on the seriousness of the breach, and overturned a \$100 judgment given to Mr. Ward to compensate for the seizure of his car. The court agreed with the argument made by the BCCLA and the Asper Centre that when the government violates a person's Charter rights, those victims deserve more than just a declaration from a Court that their rights were violated. Victims should be able to receive cash damages without having to prove the government had any particular state of mind or acted in bad faith in addition to the violation of the Charter.

The court articulated a three-step test for determining whether an award of damages for a Charter breach is appropriate and just. First, the plaintiff must establish that the government violated his or her Charter rights. Second, the plaintiff must show why damages are a just and appropriate remedy, with regard to whether they would fulfill one or more of the related functions of compensation, vindication of the right, and/or deterrence of future breaches. At the third step, the burden shifts to the government to establish that there are countervailing factors that should preclude a damage award.

The case makes it clear that courts will hold police and other government agents accountable for Charter violations. Awarding damages to individuals whose rights have been violated encourages governments to change their behavior and prevents future constitutional rights violations. In terms of protecting civil liberties and fundamental rights, this case will have extremely far-reaching implications. For people like Mr. Ward who have committed no crime, unless there is a possibility of receiving money from the government, there is no reason to go to court to protect your rights. The ruling encourages meritorious cases to be brought before the Courts, which will benefit the public interest.

The BCCLA played an unusually important role for an intervener in the case – at the B.C. Court of Appeal, counsel for the BCCLA argued the entirety of the issue of Charter damages, with the appellant adopting our submission.

The Asper Centre and the BCCLA were represented by **Kent Roach**, University of Toronto Faculty of Law, **Cheryl Milne**, Executive Director of the Asper Centre, and **Grace Pastine**, of the BCCLA.

R v. Cornell / Supreme Court of Canada

The Supreme Court of Canada released its judgment on July 30, 2010, holding that the Calgary Police Department did not use unreasonable force when they broke down the door of Lorraine Cornell's home in 2005 while executing a drug search warrant. Without first announcing themselves, the Calgary Police Service's armoured Tactical Enforcement Unit used a battering ram to break down Ms. Cornell's door and then charged in with guns drawn and faces covered by ski masks.

The BCCLA was an intervener in the case and argued that the violent entry was dangerous and unwarranted, and that the police should have followed the centuries-old 'knock and announce' rule. The BCCLA submitted that the knock and announce rule is not only intended to protect the lives and safety of both police and civilians, it actually does so, according to a landmark report by Wallace Oppal. Surprise raids might be necessary in special circumstances, but violent raids should be the rare exception and not the rule.

The court unanimously affirmed the principle that ordinarily the police must announce their presence and wait a reasonable time before forcing entry into a home. However, in a split 4-3 ruling, the majority of the court held that the police's storm trooper-style tactics were justified because the police had concerns that the use of less

intrusive methods would pose safety risks to the officers and would allow for the opportunity for evidence to be destroyed.

In dissent, three judges argued that the claim that the tactics were necessary to protect the safety of the officers was "entirely unsupported by the record" and concluded the search ran afoul of Charter prohibitions against unreasonable searches and seizures.

The appeal was brought by Jason Cornell. Mr. Cornell lived in his mother Lorraine's home, along with his brother, Robert, and 17-year-old sister. Police suspected that Jason was involved in a dial-a-dope operation and executed a search warrant at his mother's home. Instead of finding Jason, police came upon his mentally challenged brother Robert. Police handcuffed Robert, and left him terrified and lying prone while they continued to break down doors in the house. Paramedics had to be called to care for Robert. Police arrested Jason Cornell at his place of work later that evening.

The case sets a worrisome precedent. Nine masked men with loaded rifles broke down this family's door and charged inside with guns drawn. There was no reason for the police to believe that Jason Cornell might be violent – he had no criminal record and no history of violence and neither did anyone else in the

house. The court seems to set a very low bar for the facts that the police need to establish to justify this type of dangerous raid – it seems that all the police need to say, is 'trust us.'

The BCCLA was represented by **Ryan Dalziel** and **Daniel Webster, Q.C.** of Bull, Houser and Tupper LLP.

Inquiry into the Death of Frank Paul / The Davies Commission

The Frank Paul inquiry hearings will resume November 3 following the decision of the Supreme Court of Canada to deny leave to the Criminal Justice Branch of the Ministry of Attorney General. (The Criminal Justice Branch brought a legal challenge to the ability of the Frank Paul Inquiry to obtain evidence from prosecutors involved in the Frank Paul case.) Now the Frank Paul Inquiry is able to obtain evidence from prosecutors involved in the Frank Paul case and to inquire into their decision not to lay charges against the officers that were involved in Mr. Paul's death. The BCCLA is participant in the inquiry.

Mr. Paul was a 47 year-old homeless Mi'kmaq man who died in a downtown eastside alley after being left there by Vancouver police in December 1998. The Commission uncovered that the Vancouver Police Department homicide squad conducted a woefully inade-

quate 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 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 and oversights, and left many critical questions unanswered.

The Commissioner released an interim report in 2009 which uncovered the significant role the Vancouver Police Department played in Mr. Paul's tragic death

and highlighted systemic failures in the responses of various institutional agencies to Mr. Paul's death. Now the Commission will investigate the effect that the VPD's improper investigation had on the Criminal Justice Branch's decision not to lay charges against the officers.

The BCCLA is represented by **Michael Tammen** of Michael Tammen Law Corporation and **Grace Pastine** and **Carmen Cheung** of the BCCLA.

Afghan Public Interest Hearings / Military Police Complaints Commission

The Military Police Complaints Commission resumed its inquiry into the conduct of the military police in transferring detainees captured by Canadian forces into Afghan custody in the face of reported risks of torture in Afghan prisons. The Commission was adjourned earlier this year while it awaited further production of documents from the Canadian government. The Commission will hear from the subjects of the complaint in November.

The Commission's public interest hearing was established in response to complaints filed by the BCCLA and Amnesty

International Canada in 2007. Witness hearings commenced earlier this year, and thus far, the testimony provided has been troubling.

An abundance of evidence now before the Commission indicates that the Canadian Forces continued to transfer for prisoners to Afghan authorities in the face of a known risk of torture.

Wilful blindness and blame-shifting have been the dominant themes to date. Senior members of the Canadian Forces and officials in Foreign Affairs have testified that they were ignorant of numerous reports issued by

the U.S. State Department and the U.N., all of which attest to the prevalence of torture in Afghan prisons. Government and military officials have pointed fingers at everyone except themselves. The public has a right to know why these illegal transfers are continuing to this day, and why there's been a complete failure to investigate these very serious breaches of domestic and international law.

Amnesty and the BCCLA are represented by lawyers **Paul Champ** and **Khalid Elgazzar** of Champ and Associates, and **Carmen Cheung** and **Grace Pastine** of the BCCLA.

Youth Protecting Youth v. University of Victoria / B.C. Supreme Court

Faced with a lawsuit filed in B.C. Supreme Court by a campus pro-life club – Youth Protecting Youth (YPY) – the University of Victoria Student Society (UVSS) has agreed to terms under which

YPY has agreed to hold the lawsuit in abeyance.

The lawsuit was a response to an escalating program of sanctions and discrimination

by the UVSS, directed against the pro-life students, culminating in YPY being thrown out of the society's group of formally recognized student clubs. The UVSS took the position that

since all pro-life advocacy - no matter how civil or mild in form - is both harassment (as defined and interpreted by its policy documents), and hate propaganda against women, YPY had no legitimate right to ordinary claims of freedom of expression. The UVSS executive consistently voted for measures designed to punish, stigmatize, and finally brand as illegitimate, all advocacy of pro-life expression by a campus club.

Now, faced with a Supreme Court lawsuit, the UVSS has reinstated YPY as a student club in good standing, repaid all the funding wrongly denied it in the past, revised its policies to expunge those elements (such as the definition of harassment) that specifically targeted pro-life expression, and agreed to permit the Supreme Court lawsuit to stand in abeyance rather than be withdrawn, with the BCCLA appearing as an intervener in the event that it is necessary to proceed with the case.

This last condition of settlement provides the YPY with the privilege of activating its lawsuit at a moment's notice if the UVSS, at some future time, should again favour political correctness and censorship over freedom of expression. The result is a victory for the BCCLA and free expression on University campuses.

Youth Protecting Youth is represented by **Joe Arvay** of Arvay Finlay. The BCCLA is represented by **Frank Falzon, Q.C.**

Crookes v. Newton / Supreme Court of Canada

The BCCLA has been granted leave to intervene in this case, in which the Supreme Court of Canada will consider whether hyperlinking to defamatory material – defamatory material hosted by someone else, elsewhere on the internet – amounts to publication for the purposes

of a claim in defamation. The hearings are set for December 7, 2010.

Paul Schabas, Roy Millen and **Jonathan Goheen** of Blake, Cassels & Graydon are representing the BCCLA.

Reference re Constitutionality of s. 293 of the Criminal Code

BC Supreme Court

The BCCLA has been granted "interested person" status in the polygamy reference. The reference will test the constitutionality of the section of the Criminal Code that prohibits polygamy. The BCCLA will argue that criminalizing polygamous relationships violates several of the freedoms enshrined in the Charter. While the BCCLA acknowledges that the potential harms emerging from polygamous relationships are very real, our position is that the proper role for the state is to limit these harms by ensuring that children are not abused, that children receive proper education, that

property rights are enforced, and most importantly, that all marriages are consensual. The BCCLA is concerned that an attack on polygamy will simply drive it underground, making it even harder for the state to address the real dangers faced by vulnerable members of polygamous families.

Hearings at the B.C. Supreme Court are scheduled to begin in the fall of 2010.

The BCCLA is represented by **Monique Pongracic-Speier** of Ethos Law Group, LLP.

The BCCLA acknowledges the generous support of the following sponsors:



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