

the democratic Commitment

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Caseworker Jesse Lobdell talks about his work at the BCCLA

Civil Liberties in the 21st Century: Is the BCCLA Constitution up to the task of defending civil liberties?

On October 18, the BCCLA board and staff participated in a meeting convened to review opportunities for expanding the defense of civil liberties. Stephen Owen agreed to facilitate our quest to determine whether the society's Constitution might limit any expansion of activity and whether it adequately serves the Association today. As a result of the impassioned discussion that took place, I thought it important to touch on some of the key points set out in the Constitution by our founders over forty years ago, and then reveal what conclusion emerged from the meeting.

The BCCLA Constitution states clearly as the mission of our organization the following:

"The object of the Society is to promote, defend, sustain, and extend civil liberties and human rights. We recognize that such rights are fundamental and inalienable for the well-being of human society. Among these liberties and rights are those which have been embodied in such documents as:

-  the Canadian Charter of Rights and Freedoms,
-  the Declaration of the Rights of Man and the Citizen,
-  the American Declaration of Independence,
-  the British, American and Canadian Bills of Rights, and
-  the Universal Declaration of Human Rights."

"Promote, defend, sustain, and extend..." is a phrase to think about.

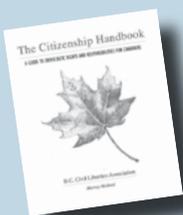


Rob Holmes
BCCLA President

Promote implies a commitment to speak out publicly and to educate. Defend embodies a commitment to persuade others and to stand up against those who would not respect civil liberties and human rights. Sustain requires a commitment to be thoughtful and reflective about civil liberties and human rights. By nurturing thought about them and by seeking to involve others in that process, we stand the best chance to maintain an educated polity that is committed to the values we want to sustain through time. Extend suggests twin commitments:

- to press for civil liberties and human rights to be developed further than we historically or currently may understand them; and
- to press for those to be enjoyed by all, wherever they are not being respected and enjoyed by people, whether in British Columbia or beyond.

www.bccla.org



The *Citizenship Handbook* & *Arrest Handbook* were recently revised thanks to The Law Foundation of BC, Rotary Club Vancouver Arbutus and the Unitarian Church of Vancouver. Publications are free.

“Civil liberties and human rights...” is another phrase to consider.

Civil liberties include legal rights, like having fair trials and not being subjected to abusive police power. Civil liberties include democratic rights, like voting and being elected to government, speaking out and hearing expressive content, practicing religious or conscientious activities, moving around as one sees fit, and so on.

The right to privacy features here as well – the right to be left alone when one chooses that, not to be subjected to the “unwanted gaze” of government or others and not to be interfered with when we make personal choices and decisions that do not involve harm to others.

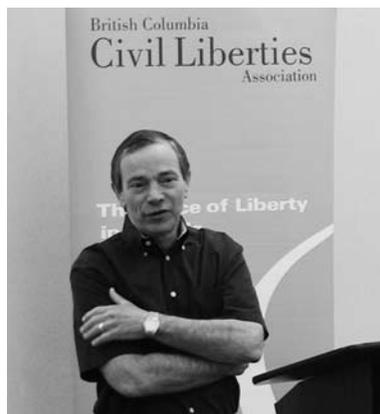
The concept of human rights adds to that. Human rights bring in concerns about racism and discrimination, rights to necessities of life and rights to tolerance, respect and dignity.

The interplay of all these rights and liberties sometimes makes for difficult decisions and for balancing interests. But that has been the lifeblood of this Association – facing up to difficult issues and offering a principled and thoughtful response in the public debate.

“We recognize...” that the rights we are committed to uphold are important. Recognition is an interesting concept itself. Recognition implies extending a mutual and reciprocating sense of humanity and decency.

“...such rights are fundamental and inalienable...” Fundamental in the sense that they are the most pressing concern no matter what the debate. Inalienable because they cannot be sold or chipped away for a price and because each one of us is owed recognition as an individual entitled to dignity and respect.

“...for the well-being of human society...” does not just mean the sense of goodwill that comes from



Stephen Owen

acting in a civilized manner to others, respecting their right to hold odd viewpoints and say peculiar things.

“...well-being of human society...” suggests that we have some basic obligations as a civilized society to ensure that each person has at least some provision of the necessities of life.

The list of declarations of rights and liberties for us is a list of texts that Canada, France, the USA, the UK and the UN have put together, but our Constitution does not limit itself to those.

“Among these liberties and rights...” are those set out in the written texts noted. But there may be more, either because they have always been there and needed recognition not yet reflected in those laws and statements, or because they are new and need recognition in order that the “well-being of human society” through recognition of “civil liberties and human rights” may occur.

Part of our mission is to pick up and carry forward the rights and liberties that the documents listed in our Constitution have set out. We are committed not just to the legalistic approach to civil liberties and human rights. “What the law says” as currently interpreted when we bring or intervene in a case or intervene to assert “our angle” is not the limit of our interest. Our mandate is broader: we can press for changes in law and when that is not practicable or possible, we can offer reasoned arguments for what civil liberties and human rights ought to mean in a civilized society, no matter what the current law says.

And what did we conclude about the Constitution? That the founders of the Association largely got it right; they crafted a Constitution that might only require tinkering if, following on our basic commitment to its principles, we see the need to clarify and extend what has been handed to us. Before we make any decisions on this, I’d like to hear what you have to say. Write me at: holmes@bccla.org.

A Message from Outgoing Executive Director Murray Mollard

Murray Mollard joined the BCCLA in 1994 as the Policy Director and Caseworker. He became Executive Director in 2000. He leaves the Association to become the Executive Director of the UBC Faculty Association.

A lot can happen in 15 years. From a staff of 3.5 FTE employees and an average budget of \$290,000 in the early nineties, the BCCLA has grown to 8 employees and a projected budget of almost \$900,000 in 2008. Reflecting this growth and undeterred by the geographic boundaries of our name, the Association has fought endless civil liberties battles over these years to become *the* voice for civil liberties in Canada. Whether it be national security issues – think Afghan detainee litigation, police accountability – civilian deaths-in-custody, privacy – e-health initiatives or a host of other important civil liberties matters, no other organization in Canada provides the range of advocacy work on civil liberties like the BC Civil Liberties Association. We should all be proud of this achievement.

How did this happen? Ultimately, the BCCLA's success relies upon the passion, commitment, expertise and hard work of dedicated people. At a time when the BCCLA had only one or two staff doing substantive work, the Association's Board of Directors extended our reach by not only setting our direction and positions but advocating for civil liberties

in the media and to law makers. While the Board continues to be actively engaged as the "directing mind" of the organization and in the every day defence of civil liberties, a growing and capable staff provides significant support



Murray Mollard
BCCLA Executive Director

on the ground assisting complainants, undertaking public education and law reform advocacy and coordinating our litigation efforts. Meanwhile, the number of *pro bono* lawyers representing the BCCLA at all levels of court is exploding. Of course, all of our efforts rely heavily on the financial and moral support of individual members, donors and institutional funders like The Law Foundation of British Columbia.

I have been fortunate to have had the opportunity to influence this course a little and see all of this unfold first hand since 1994. The last 15 years went by so fast for me in part because I have enjoyed working with so many inspirational Presidents, directors, colleagues, lawyers and supporters. It has been an honour to serve and work with you.

As much as ever, Canada needs the BC Civil Liberties Association. I look forward to the BCCLA's evolution and civil liberties victories in the coming years.



Murray Mollard

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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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BCCLA to Boycott Police Complaint Procedures Cites Loss of Confidence

The BCCLA has decided to boycott the police complaint procedures for both municipal police and the RCMP. The boycott extends to complaints that involve serious concerns of police misconduct where a civil action in superior or small claims court is possible. For those complaints, the BCCLA will encourage individuals to consider a court action as a way of promoting police accountability. The BCCLA is working to assemble a pool of lawyers who would be willing to advise and possibly represent individuals who have serious police misconduct allegations.

The decision to boycott the complaint process comes after years of frustration with the current procedures. At the municipal level, the province has yet to implement the Wood Report recommendations.

The BCCLA was a stakeholder in the Wood review of the *Police Act*. Though the Wood recommendations fall short of the BCCLA's call for reform – which includes civilian investigators for all police-involved deaths – implementing former Court of Appeal's Joe Wood QC's recommendations would be an important first step to meaningful reform.

As for the RCMP complaint process, the BCCLA has no confidence in the process. The BCCLA's experience from our own police-involved death complaints points to the RCMP's inability to properly investigate complaints, especially the most serious. Moreover, the civilian oversight agency – the Commission for Public Complaints Against the RCMP (CPC) – has proven unable to keep the RCMP honest. The BCCLA has been in

federal court twice recently to force the CPC to take its job seriously.

For now, the BCCLA is working to encourage other groups to join the boycott to achieve the end goal of persuading provincial and federal governments to overhaul the complaints systems. Potential police complainants are encouraged to contact BCCLA Caseworker Jesse Lobdell for further information.

i To read the BCCLA's letter to Public Safety Minister Stockwell Day, visit: www.bccla.org/othercontent/08day.pdf

To view Pivot Legal Society's guide to suing the police in small claims court, visit: www.pivotlegal.org/pdfs/HowtoSueThePoliceandPrivateSecurityinSmallClaimsCourt.pdf

BCCLA Advocates for Improved Crisis Intervention Training

The BCCLA is spearheading an effort to persuade the provincial government to improve standards and funding for crisis intervention training for police and first responders. Growing out of the Braidwood Inquiry's hearings into Taser use, the BCCLA has identified the importance of high standards for crisis intervention training for police so that they have the tools and knowledge to respond safely to situations where mental health crisis may underlie police/citizen

conflicts. The Braidwood Inquiry was established by the provincial government after the Taser-related death of Robert Dziekanski at the Vancouver International Airport in October 2007.

The BCCLA is working with groups like the Canadian Mental Health Association and the Community Legal Assistance Society to advocate for improved training by crafting a statement of principle that recognizes the importance of such training for police. Some police forces,

including the Vancouver Police Department, are already providing advanced crisis intervention training for police. However, there is a need to ensure that all police and first responders have adequate training. The province needs to establish minimum training standards and fund training to ensure a preventative approach that will save lives.

i To read the Statement of Principle, visit: www.bccla.org/rcmp_training.html



*Honour a special person
this holiday season*

trib•ute (trīb'yōōt) n.

A gift, payment, declaration, or other acknowledgment of gratitude, respect, or admiration.

Tribute donations are a way to honour, celebrate or remember a loved one, friend, relative or colleague while providing important support for the BC Civil Liberties Association. The BCCLA offers the following donation options that give supporters a chance to involve friends and loved ones in a cause that is important to them.

In Honour

In Honour gifts are a wonderful way to mark a special occasion, celebrate a birthday, anniversary, wedding, milestone or other event. Think how special your honouree will feel when you make such a meaningful gift in their name!

In Memory

Memorial donations provide a way to acknowledge the passing of a loved one or remember a cherished friend or colleague. A memorial gift is a significant way to preserve the memory of a friend or family member by ensuring a lasting legacy in support of civil liberties. The gift may be made by you alone, or by a group such as your family, neighbours or fellow co-workers.

In Lieu

Many supporters choose to ask friends and family to make a donation to the BCCLA in lieu of presents for special occasions. You can create your own personalized tribute page at www.canadahelps.org and invite people to make a difference in the community instead of buying you a tie or trinket this holiday season.

Gift Membership

Need a special holiday gift for the person who has everything? Consider getting them a membership in the BCCLA! It's the gift that gives twice: they will receive a member card and all the benefits of annual membership, while you will receive the tax receipt.

Tribute donations in honour or memory of someone offer an opportunity to show your respect, concern and appreciation for friends and family in a special way that will also help other Canadians. You will receive the charitable tax receipt for the amount of the donation and the BCCLA will acknowledge your generous gift to the next of kin or the honouree with a personalized letter – but the gift amount will never be disclosed. You can even add a personal message of your own to the letter, if you wish.

Memorial and Tribute Donations take only a few minutes to make, but their impact can make an incredible difference to the BCCLA's work to protect civil liberties. Please make your donation today and include contact information for your honouree or the next-of-kin so we can acknowledge your tribute gift appropriately. All of us at the BC Civil Liberties Association wish you safe, happy and healthy holidays!



Sarah Sandusky
BCCLA Director of
Development

*Contact Sarah Sandusky at
604.630.9750 or sarah@bccla.org
if you have any questions about
donating to the BCCLA.*

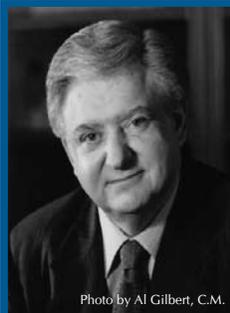


Photo by Al Gilbert, C.M.

“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

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BCCLA staff and board members turned out for the 2008 Vancouver Pride Parade.



Sara Dubinsky
BCCLA Articled Student

Sara is the third articled student to work at the BCCLA. Sara graduated from the Faculty of Law at the University of Victoria in the spring of 2008. Prior to attending law school Sara attended the University of Guelph, where she majored in Criminal Justice and Public Policy.



BCCLA President Rob Holmes, Policy Director Micheal Vonn, Treasurer Alan Rowan and Director Anne Pollak (back to camera) considering options for the Association at the meeting attended by board members and staff on October 18, 2008.

Medical Records on the Internet:

Cost diverts medical resources away from those who need them and much lauded “convenience” comes at high risk to patient privacy.



Micheal Vonn
BCCLA Policy Director

BC has new legislation (passed by closure) to bring in a vast system of electronic health records (“e-health”).

Health care obviously benefits from the use of computer systems, but e-health goes far beyond the use of new technologies and is designed to link systems so that our personal health information becomes instantly available to a very broad range of people. The ultimate goal of Canada Health InfoWay is for pan-Canadian access to our health information. Other jurisdictions have seen massive opposition to such systems because of privacy and security concerns.

Recently, Policy Director Micheal Vonn was asked to speak at the INSIGHT E-HEALTH Conference about patient portals, which would tap into the e-health system to provide patients with online access to their own medical records. These are excerpts from her talk.

In a previous professional incarnation I worked in health care and I remain fluent in the language of Health Promotion, a philosophy and approach to health that is more valid than ever.

The central tenet of Health Promotion is the need for the

empowerment of individuals. So, are patient portals a tool of patient empowerment? That’s the question I’m going to be addressing and in case the suspense is killing you, I’ll give a preview of my conclusion: “No.”

Which will undoubtedly strike many of you as counter-intuitive, so here is my reasoning. We start with the first question needed for all social analysis: Whose empowerment? Which patients?

Very frequently we hear the term “revolution” used to describe the phenomenon of people who are increasingly accessing medical information on the Internet. It is their demand that is being cited as the driver of the movement towards ever-intensifying forms of health information interaction on the net.

And who are these people? Well, we actually know. The digital divide is pretty well documented and gives us a very clear demographic. They are the most affluent, educated and already healthiest members of our society. We might (and fairly) describe them as the segment of the population most apt to do yoga and eat organics. In other words, those already well empowered by their social determinants to maintain their health.

From a population health perspective – it is those with the most dire health prognosis and the worst health outcomes (including the rapidly growing demographics

of the poor and elderly) who are essentially left out of this “revolution”.

These social realities need to be at the forefront of our analysis. After all, we are here in British Columbia, the province with the highest child poverty rate in Canada, where over 20% of our children live below the poverty line.

So, from a health outcomes perspective, if there is any demonstrable health benefit to be derived from interactive Internet health information, the very mechanism for its delivery will distribute this benefit primarily to those whose health is already the best and deprive the sickest among us.

I suggest this is obviously not an empowering strategy. It is particularly not an empowering strategy when the vast expense of the e-health system necessarily draws critical and scarce resources away from proven health care interventions that could go to those most in need.

Where are the patients who have voted to spend scarce healthcare resources to build a vast, longitudinal database of citizen health information, with its unprecedented risk to patient privacy, rather than investing in more hospital beds and equipment, more health care providers, the reinstatement of needed “delisted” medications and diagnostic tests, more addiction and mental health services?

In order to say that patient demand is really driving this “revolution”, it would have to be shown that the push came from a truly ethical and meaningful question. Which in this case is not: Would it be handy to have your medical information at your fingertips on the Internet? The ethical and empowering question would include the matter of cost and trade-off. A question like: Would you be prepared to sleep on a gurney in the hospital hallway or be denied currently available medical services in order to pay for such a convenience?

Because in essence, “convenience” is the only genuine item on offer. After all, it is well-settled that patients’ medical information belongs to them. No revolution there. Patient portals are a way to “sell me” what is already mine, ostensibly in a format that will be more convenient because I won’t have to wrestle my supposedly reluctant doctor for access to copies. But even supposing that my doctor is as notoriously controlling as she is invariably painted by the patient portal boosters, what you need to solve that problem is a clarifying statute. Codify the existing state of the law – something that is done all the time, is simple, readily available and cheap like borscht.

But nobody’s interested in any such obvious solution.

We are told that the benefit of the e-health system is efficiencies, which are to translate into cost savings down the road. E-health is not supposed to be taking money out of the system – except up front. Long-term it is supposed to pay for itself and then some.

However, the last time I checked I could find no actual evidence to support this theory. And when I have asked representatives of the BC government for this evidence I’ve come away empty-handed.

But for the purposes of this discussion, let’s suppose that it’s at least theoretically possible for Internet access to contribute to cost savings by putting some significant portion of healthcare interactions into the virtual realm.

“Let’s keep in mind what should be obvious – that Internet access to medical records presents astronomical privacy and security risks and massive financial investment.”

The business model for this idea is an old, old story. It is also the business model that informs the massive institutional push for on-line education, which, incidentally, is marketed identically to interactive Internet health sites – claiming to be: “enhanced”, “convenient”, “personalized”.

So, what does the research in this online education field tell us about these claims? I am no expert, but I did call up some research. Looks like it’s pretty clear that in-person education has far superior education outcomes to distance/online education. Despite aggressive marketing claims, I found no evidence that the real push for on-line education could legitimately be about student empowerment or enhanced education outcomes. It is about trying to effect cost-savings by commodification and trans-

forming the role of the teacher.

The model for this involves disassembling and de-skilling professional work and substituting work in discrete components, assigned to different piecemeal, detail workers. I know of no reason to believe that the proposed web-based health services are likely to operate on a different model.

And it is hard to understand how the “enhancement” for the patient is to be achieved by further eroding continuity of care and a personal relationship with health care providers and substituting an inventory of assorted, fragmented bits of “health information”.

Which will, of course, be a colossal magnet for would-be commercial advertisers.

But more fundamentally, it begs the question: Is this primarily a story of patient empowerment, or primarily institutional restructuring for managerial/corporate advantage?

Let’s keep in mind what should be obvious – that Internet access to medical records presents astronomical privacy and security risks and massive financial investment. And let’s take a sober and scholarly look at what we are being offered in exchange for imposing this risk on patients, who have essentially been no part of the process that is ushering in the “revolution”, but are being assured that they’ll be empowered, somehow, once all the really crucial decisions have been made on their behalf, without them so much as knowing about it.

Court Releases Landmark Judgment Protecting Rights of the Homeless

The BCCLA intervened in *Victoria (City) v. Adams*, a groundbreaking homeless rights case that found that homeless men, women and children who have nowhere to sleep but the street must not be prevented from protecting themselves from the elements. The case marks the first time that any Canadian court has struck down an ordinance that criminalizes the lack of shelter.



Grace Pastine
BCCLA Litigation Director

At issue in the case was whether the City of Victoria's bylaws, which prevented homeless individuals

from erecting temporary shelters, such as tents and tarps to protect themselves from the elements when sleeping outside, violated homeless individuals' *Charter* rights and Canada's international obligations. Justice Ross ruled that the bylaws violated the individuals' *Charter* rights.

The BCCLA argued that sleeping outdoors without shelter has serious adverse consequences for a person's health and safety and Victoria's bylaws interfered with the ability of individuals to access adequate shelter, a fundamental necessity of life.

The BCCLA stressed that the problem of homelessness is growing and it is part of a national trend. The City of Victoria Mayor's *Task Force on Breaking the Cycle of*

Mental Illness, Addictions and Homelessness estimated that there were approximately 1,500 homeless people in Victoria in 2007 and that during peak capacity, the number of shelter beds and mats on floors could accommodate only up to 326 people. Telling homeless men, women and children who have nowhere else to go that they can sleep outside but they can not protect themselves from the elements places the homeless in an impossible situation.

Ron Skolrood and **Elizabeth Clarke**, articulated student, of Lawson Lundell LLP represented the BCCLA.

Court Rules that Warrantless Searches of Homes are Illegal

The BCCLA is encouraged by a decision of the BC Supreme Court which ruled that provincial legislation that allows electrical inspections of homes that are suspected of being marijuana grow-ops is sound, but police cannot accompany those safety teams without a warrant.

The BCCLA intervened in the case, *Arkininstall v. City of Surrey*, over our concern that the legislation was being used as a tool to conduct warrantless searches of citizens' homes, which is a clear violation of the *Charter*. The inspections were done without any judicial warrant to enter the home and the only justification given or required for the inspections was that one had high power consumption based on electricity consump-

tion records that the City can compel from the utility provider.

The decision came after two Surrey residents went to court against the City of Surrey after the team of Surrey safety inspectors and police demanded entry into their home. The couple said they would allow the electrical inspectors and fire fighters to enter the home, but not the police unless they had a legal warrant. In response, the City of Surrey simply cut the power supply to the home, forcing the couple and their young child to abandon the house.

The BCCLA remains concerned that municipal electrical and fire inspectors can demand entry into anyone's home to do an electrical safety inspection. Energy providers are mandated to provide electrical consumption data to local governments, and local governments are permitted to disclose the information to the police. Anyone who has high hydro consumption will continue to be a potential victim of such entries into their homes. This is disturbing, because citizens have a great expectation of privacy in the confines of our homes, where our most intimate and private activities are likely to take place. The court ruled that high power consumption alone is not sufficient to justify intruding on a private home; the city must have reasonable grounds before entering a home and each case must be looked at individually.

The BCCLA was represented by **Brent Olthuis** and **Micah Rankin** of Hunter Litigation Chambers.

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is committed to supporting our communities through financial support and through a substantial *pro bono* programme. Our longstanding relationship with the BC Civil Liberties Association is an important part of this commitment. The cases taken on by the BCCLA are at the forefront of defining and maintaining the rights and freedoms of individuals across Canada. The BCCLA has our tangible support in pursuing these goals, both financial and by taking on matters on a *pro bono* basis.

We have had the privilege of representing the BCCLA in three recent landmark cases: the “Surrey books” case, cases concerning “political” advertising on buses and the rights of the homeless to erect temporary shelters in public parks. Lawson Lundell’s active *pro bono* programme, including assistance to the BCCLA, allows our lawyers to put into practice some of the ideals of the legal profession. We are proud to contribute to the success of the BCCLA.

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

Supreme Court Strengthens Freedom of Expression Protections

The BCCLA celebrated a victory after the Supreme Court of Canada released its reasons for judgment in *Simpson v. Mair and WIC Radio*. The BCCLA was an intervener in the case and presented oral and written arguments to the Supreme Court.

The Court dismissed an action for defamation against Rafe Mair, ruling that the statements at issue were protected by the law as fair comment. Rafe Mair is an editorialist, who broadcast an editorial during a radio show in which he made comments about and referred to Ms. Simpson by name. Mair was the author of the editorial and the host of the Rafe Mair radio show, which was broadcast by WIC and its associates throughout British Columbia and the Yukon.

The BCCLA argued that defamation law had to be clarified to ensure stronger protection for freedom of expression. The court’s ruling that “the evolution of the common law is to be informed and guided by *Charter* values” is a step forward in the common law. The Supreme Court of Canada, through Mr. Justice Binnie, who wrote the majority judgment, recognized that the common law must develop consistently with freedom of expression. It is not only opinions

that the majority of Canadian’s agree with that deserve protection. As the court stated, “We live in a free country where people have as much right to express outrageous and ridiculous opinions as moderate ones.”

The BCCLA was represented by **Robert Holmes**, BCCLA President, of Holmes & King.

i To read the BCCLA’s legal argument visit: www.bccla.org/othercontent/Simpson_Factum1.pdf

BCCLA heads to Supreme Court in Two Groundbreaking Cases

The BCCLA has been granted leave to intervene in two cases that will be heard by the Supreme Court of Canada before the end of the year. *Criminal Lawyers’ Association v. Ontario* will be the leading case on the right of the public to access government information. At issue is whether Ontario’s privacy legislation gives the government an absolute right to withhold information where the government states that its release would compromise law enforcement activities.

The BCCLA will argue that that the legislation infringes the *Charter* right to freedom of expression, which protects those who receive information, as well as those who impart it. Political speech is not effective in enabling citizens to make informed democratic choices unless information about public institutions is accessible, and the activities of government are open and transparent.

The BCCLA is represented by **Cathy Beagan Flood** and **Iris Fischer** of Blake, Cassels & Graydon LLP

The BCCLA has also been granted leave to intervene in *Chatterjee v. Attorney General of Ontario*, a case involving a constitutional challenge to the Ontario civil forfeiture laws. The Ontario civil forfeiture laws came into effect in 2002 and allow the province to seize assets if it can prove on the balance of probabilities that the assets were obtained “in whole or in part” due to illegal activity.

The BCCLA is concerned that these laws and other similar pieces of forfeiture legislation that have been enacted throughout Canada circumvent *Charter* rights by re-characterizing what are essentially criminal proceedings as civil matters, thereby reversing the burden of proof and diminishing rights to counsel and other important protections.

The BCCLA is represented by **David Butcher** of Wilson, Buck, Butcher & Sears and **Anthony D. Price** of Farris, Vaughan, Wills & Murphy LLP.

BCCLA Challenges City for Threatening to Sue its Citizens for Criticizing the Government

The BCCLA filed a lawsuit in the Supreme Court of British Columbia against the City of Powell River

for violating the free expression rights of citizens to criticize their government.

The lawsuit arises out of public criticism of the City of Powell River and its officials over the way in which they managed the approval process for a proposed harbour project. As a result of public comments, three citizens – new City Councillor Patricia Aldworth, Winslow Brown and Noel Hopkins – were sent cease and desist letters from the City’s solicitors threatening to sue for defamation and demanding a retraction and apology. After the Mayor of Powell River made it clear that the City would not withdraw its unlawful threat to sue the individuals, the BCCLA sought a remedy through the courts.

It is anticipated that the matter will be heard by the BC Supreme Court in 2009. The BCCLA is represented by **Robert Holmes**, BCCLA President, of Holmes & King.

Elmasry and Habib v. Rogers Publishing and MacQueen (BC Human Rights Tribunal)

The Canadian Islamic Congress filed a human rights complaint against Maclean’s magazine for publishing an article by Mark Steyn entitled, *The Future Belongs to Islam*. The article is an excerpt from Steyn’s book, *America Alone: The End of the World As We Know It*. The complaint was filed with the B.C. Human Rights Tribunal and alleged discrimination in the area

of a publication, on the grounds of religion.

The Tribunal dismissed the complaint, finding that publishing the article did not breach the *BC Human Rights Code*.

BCCLA intervened at the hearing and argued that the hate speech provisions of the *BC Human Rights Code* infringe the right to free expression and this infringement cannot be justified in a free and democratic society.

The BCCLA argued that a proper interpretation of the Code must view hate speech, not as a free standing right to be free from deeply offensive material, but rather as a reinforcement of the other rights protected by the Code and the *Charter*. Consequently, a violation of the hate speech provisions of the Code should only be found where there is proof that the hateful or contemptuous statement caused or is likely to cause individual recipients of the communication to change their behaviour so as to preclude the exercise of rights of third parties that are recognized in the Code or *Charter*.

The BCCLA was represented by **Jason Gratl** of Gratl & Company and **Micah Rankin** of Hunter Litigation Chambers.

i To read the BCCLA’s legal argument visit: [/www.bccla.org/othercontent/08McLeans.pdf](http://www.bccla.org/othercontent/08McLeans.pdf)

Casework



Jesse Lobdell,
BCCLA Caseworker

The BCCLA now has a Caseworker on staff, but you may be wondering exactly what a caseworker does.

Much of what I do involves fielding inquiries and requests for assistance by those who believe their civil liberties have been violated. When I am not able to facilitate a resolution to the problem, I do my best to find an organization that can offer services. Here are a few examples of the issues the community brings to the BCCLA:

In July, I drafted a complaint against the Victoria Police Department for doing random, non-consensual searches on Canada Day. Apparently, the Victoria Police believed that being near a public celebration was reasonable grounds to perform a search for alcohol and that having alcohol, even if it was not open, indicated it would later be consumed illegally. It's a sad day when Canada Day, a celebration of our great country, becomes reason enough to ignore our most basic *Charter* rights.

Prior to the Canada Day event, I had written an article for the Times-Colonist denouncing the Mayor of Langford's threat to sue protesters for the costs of their own policing. Where would free speech be if the mere threat of calling the police would bring silence? Thankfully, that particular threat appears to have been dropped.

One of the more challenging cases I have dealt with developed a few weeks after I started working at the Association: the Safe Schools Survey. This survey, administered to thousands of high school students in BC, asked young people to admit to criminal activity without providing a guarantee of privacy. Last year, the BCCLA reported that we reached an agreement with the researchers at the BC Centre for Safe Schools and Communities. This year, we discovered that not only had they reneged, but they appeared to be telling people that we had approved the survey. This was disappointing, but not to be deterred in our defence of civil liberties, we have now taken the concerns of parents, students and teachers about the survey to the Privacy Commissioner of BC.

Keep an eye on www.bccla.org for further developments on these and other cases.



Nancy & Bruce Ketchum:
A commitment to
civil liberties.

For more than 20 years we have been BCCLA members and financial supporters because, in our view, it is one of the country's most valuable institutions. With limited resources (but supremely dedicated people), it performs remarkable work on behalf of not only British Columbians but of all Canadians. Almost every time our stomachs churn at the news of an injustice, the BCCLA is there, courageously helping to rectify the imbalance between individuals or groups and the unfair application of power in its many different forms.

We are just ordinary citizens, with a passion for a better Canada and a better world. Since our retirement from professional careers, we have had an opportunity to observe more closely the work of the BCCLA and we stand in awe of its accomplishments. Recently, we were moved to supplement our regular annual support with a substantial (for us) donation using the new tax provision that allows capital gains exempt transfers of securities to charitable organizations. We urge others to consider similar donations and, if they are not already, to become BCCLA members. Over our lifetime we have supported many worthy causes but none is more worthy than the BCCLA."

Tell us your story! What motivates you to be involved with the BC Civil Liberties Association? Send your story by email to sarah@bccla.org or by mail to 550-1188 West Georgia St, Vancouver BC V6E 4A2 and it could be printed in a future newsletter or on the web!

Don't forget that you can designate the BCCLA as a specific recipient of your United Way donation by listing our BN: 888466844RR0001 on your contribution form.



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Law Foundation of BC



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