

FEDERAL COURT

BETWEEN:

CANADIAN HUMAN RIGHTS COMMISSION

Applicant

-and-

**RICHARD WARMAN, ATTORNEY GENERAL OF CANADA
and MARC LEMIRE**

Respondents

**AFFIDAVIT OF ABIGAIL DESHMAN
(sworn March 3, 2010)**

I, Abigail Deshman, of the City of Toronto in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Project Director with the Canadian Civil Liberties Association ("CCLA") and as such have knowledge of the matters set out below, except where this knowledge is based on information and belief, in which case I believe it to be true.

Overview

2. The CCLA seeks leave to intervene in this important application concerning freedom of expression. The application also engages important legal questions concerning the assessment of the effect of a statutory scheme in the context of a section 1 *Charter* analysis, and the appropriateness of the constitutional remedy of severance in freedom of

expression cases. As a result of its expertise, special knowledge, and perspective regarding civil liberties, the CCLA can assist the Court in the determination of the legal issues engaged in this proceeding.

3. At issue in this application is whether the Canadian Human Rights Tribunal ("CHRT") erred in law when it concluded that section 13(1) of the *Canadian Human Rights Act* ("CHRA"), in conjunction with sections 54(1) and (1.1), are inconsistent with section 2(b) of the *Charter of Rights and Freedoms* ("Charter") and refused to apply the provisions.

4. Key issues in this application include:

- a. whether the CHRT erred when it considered whether respondents to section 13 complaints experience a conciliatory and preventative process in the context of conducting the section 1 *Charter* analysis; and
- b. whether the CHRT erred by refusing to sever section 13 from sections 54(1) and (1.1) of the *CHRA* for the purpose of the disposition of this matter.

5. The CCLA wishes to present its distinct civil liberties perspective and expertise on these important public law issues. The CCLA will approach the legal issues engaged in this application from a broader perspective than that of the Respondent Marc Lemire. The CCLA's submissions will not be focused on the facts of this specific case, but rather on the general principles of public law engaged by the application.

6. The inclusion of the CCLA's distinct perspective will help to ensure that the Court hears from all sides of the debate. If permitted to intervene, the CCLA will emphasize the manner in which the legal questions raised in this

application require an assessment of the potential for “chill” on future expression.

7. The CCLA will submit that information about the actual operation of a statutory scheme properly forms part of the inquiry into the purpose and effect of legislation required for a proper constitutional analysis. Further, the CCLA will submit that the “chill” on freedom of expression is not effectively remedied by severing section 13 from sections 54(1) and (1.1) in the context of this case specifically, and that severance may serve to exacerbate and continue “chill” in freedom of expression cases generally.

The CCLA

8. Founded in 1964, the CCLA is a national organization dedicated to the furtherance of civil liberties in Canada. The CCLA has several thousand paid supporters; a wide variety of persons, occupations, and interests are represented in the national membership.

9. In every issue on which the CCLA advocates, we direct our attention to the critical balance between civil liberties and the competing public interests that are involved. The underlying purpose of our work is to maintain a free and democratic society in Canada.

10. Courts have frequently recognized the CCLA’s contribution to the development of the law in relation to civil liberties. For instance, in *Tadros v. Peel Regional Police Service* [2008] O.J. No. 4599 at para. 3, Mr. Justice O’Connor commented that the CCLA:

has substantial experience in promoting and defending the civil liberties of Canadians and in examining the boundaries of acceptable police conduct.

11. Similarly, in *Prud'homme c. Rawdon (Municipalité de)* [2009] J.Q. no 12510 at paras. 17-18, which involved the *Charter* guarantee of freedom of expression, the Court stated of its decision to allow the CCLA's intervention:

À la simple lecture de la requête de CCLA, et en particulier au paragr. 5, a), b) c) d), je suis convaincu que son intervention sera vraisemblablement utile , à propos et donc opportune. Autrement dit, elle ne saurait être qualifiée d'inopportune, c'est-à-dire déplacée ou malvenue.

12. The CCLA possesses a distinct awareness and understanding of many aspects of civil liberties, having argued for and defended the rights of individuals on many occasions. The CCLA has been involved in the litigation of many important civil liberties issues arising both prior to and under the *Charter*. It has frequently been granted intervener status before Courts and tribunals across Canada – including more than 50 appeals before the Supreme Court of Canada – to present oral and written argument on civil liberties issues. A list of many of the cases in which the CCLA has been granted intervener or party status is attached as **Exhibit A**.

13. A recurring theme in the CCLA's submissions to the courts and to government bodies is the need to develop principled approaches to the balancing of interests that almost inevitably occurs in cases involving civil liberties. In all of its work the CCLA seeks to propose an appropriate balance on a principled basis.

The CCLA and Freedom of Expression

14. As a staunch defender of freedom of expression, the CCLA has made submissions and provided advice on a range of issues to various levels of government, as well as to commissions of inquiry and a variety of public bodies. A list of the many submissions made by the CCLA to governmental and other public bodies on this issue is attached at **Exhibit B**.

15. The CCLA has made vital contributions to the jurisprudence on freedom of expression over the years by intervening in cases before courts at many levels. By granting the CCLA leave to intervene in a significant number of cases, the courts have acknowledged the CCLA's special perspective and expertise on these issues. The following is a list of some of the freedom of expression cases, including those which touch on hate messages in particular, and charter remedies more broadly, in which the CCLA has been granted intervener status. A more comprehensive list is attached as **Exhibit C**:

- *Nova Scotia (Board of Censors) v. McNeil*, [1978] 2 S.C.R. 662, concerning whether statutory provisions and regulations authorizing the Board of Censors to regulate and control the film industry in the province were *intra vires* the provincial legislature and whether they violated fundamental freedoms, including freedom of speech (the CCLA intervened in the Supreme Court of Canada).
- *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892, concerning whether a provision in the *Canada Human Rights Act* that prohibited telephone communication of hate messages offended the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada).
- *R. v. Keegstra*, [1990] 3 S.C.R. 697, concerning whether the *Criminal Code* provision which made it an offence to willfully promote hatred against an identifiable group constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada).
- *R. v. Butler*, [1992] 1 S.C.R. 452, concerning whether the obscenity provisions in section 163 of the *Criminal Code* violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada).
- *R. v. Zundel*, [1992] 2 S.C.R. 731, concerning whether section 177 of the *Criminal Code* prohibiting spreading false news violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada).
- *Ramsden v. Peterborough (City)*, [1993] 2 S.C.R. 1084, concerning whether a municipal by-law banning posters on public property violated

the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada).

- *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, concerning (1) whether the common law of defamation should be developed in a manner consistent with freedom of expression; (2) whether the common law test for determining liability for defamation disproportionately restricts freedom of expression; and (3) whether the current law respecting non-pecuniary and punitive damages disproportionately restricts freedom of expression and whether limits on jury discretion and damages should be imposed (the CCLA intervened in the Supreme Court of Canada).
- *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, concerning whether a teacher, who had been subject to discipline for making discriminatory anti-Semitic statements while off duty, could defend his conduct, at least in part, on freedom of religion (the CCLA intervened in the Supreme Court of Canada).
- *Little Sisters Book and Art Emporium v. Canada (Attorney General)*, [2000] 2 S.C.R. 1120, concerning whether certain provisions of Canada's customs legislation which permit customs officers to seize and detain allegedly obscene material at the border unreasonably infringe on the right to freedom of expression (the CCLA intervened in the Supreme Court of Canada).
- *Owens v. Saskatchewan Human Rights Commission* (2006), 267 D.L.R. (4th) 733 (Sask.C.A.), which concerned the application of the *Charter's* guarantees of freedom of religion and expression to a provincial statute banning hateful speech (the CCLA intervened in the Saskatchewan Court of Appeal).
- *Lund v. Boissoin and The Concerned Christian Coalition Inc.* (2006), CarswellAlta 2060 (AHRCC), which examined the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Alberta Human Rights and Citizen Commission);
- *Whatcott v. Assn. Of Licensed Practical Nurses (Saskatchewan)*, 2008 SKCA 6, concerning the freedom of expression of an off-duty nurse who picketed a Planned Parenthood facility - whether he should be subject to disciplinary action by the professional association of nurses for this activity (the CCLA intervened in the Saskatchewan Court of Appeal).
- *R. v. Breeden*, 2009 BCCA 463, concerning whether the constitutional right to freedom of expression applies in certain public and publicly

accessible spaces (the CCLA intervened before the British Columbia Court of Appeal).

- *Stephen Boissain and the Concerned Christian Coalition Inc. v. Darren Lund*, 2009 ABQB 592, which examined the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Queen’s Bench of Alberta).
- *Quan v. Cusson*, 2009 SCC 62, raising the novel question of a public interest responsible journalism defence, as well as the traditional defence of qualified privilege, in the setting of defamation law and its relationship to freedom of the press (the CCLA intervened in the Supreme Court of Canada).
- *Peter Grant v. Torstar Corp.*, 2009 SCC 61, concerning the creation and operation of a public interest responsible journalism defence (the CCLA intervened in the Supreme Court of Canada).
- *Whatcott v. Saskatchewan (Human Rights Tribunal)* (19 September 2008), Saskatchewan 1566 (C.A.), concerning the extent to which a Saskatchewan human rights law can limit the expression of a man distributing anti-homosexual flyers (the CCLA intervened in the Saskatchewan Court of Appeal).

The CCLA's Interest and Distinct Perspective on this Application

16. Arising out of the CCLA's mandate to foster and protect fundamental rights and liberties, the CCLA seeks to ensure that the law adequately protects certain fundamental rights enjoyed by the public, including the right to free expression. Forging the appropriate balance between competing rights and interests forms a critical part of the CCLA's mandate.

17. The CCLA has a vital interest in ensuring that freedom of expression is protected except where the state has adequately met its burden of proving a reasonable limit demonstrably justified in a free and democratic society. The legal questions concerning how that analysis is properly conducted, and how *Charter* violations are properly remedied in freedom of expression cases, goes to the core of the CCLA's mandate.

18. The CCLA's submissions will provide a different perspective from what it anticipates to be the submissions of all parties to the application. The CCLA will bring to the application a distinctive, principled, perspective that will focus on the broader public interest in ensuring that the effect of a statutory scheme continue to be an important consideration in the context of section 1, particularly where the nature of the experience goes to the heart of the minimal impairment analysis. The CCLA's interest is directed towards the broader public interests at stake and the proper approach to sections 2(b) and 1 of the *Charter*.

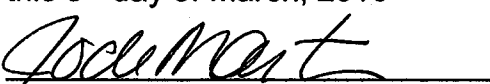
19. The CCLA's submissions will seek to propose a principled balancing to the civil liberties and countervailing interests at stake in this application.

Positions That CCLA Will Advance If Granted Leave to Intervene

20. If granted leave to intervene, the CCLA will advance and elaborate on the positions outlined in paragraphs 13-32 of its Written Representations submitted in support of this motion to intervene.

Costs

21. The CCLA will not seek costs, and asks that it not be liable for costs to any other party.

SWORN BEFORE ME at the City)
of Toronto, in the Province of Ontario)
this 3rd day of March, 2010)
)
Commissioner for Taking Affidavits)


Abigail Deshman

TAB A

This is Exhibit "A"
to the Affidavit of ABIGAIL DESHMAN
sworn 3rd day of March, 2010



A Commissioner for taking affidavits

Exhibit A - CCLA Interventions

Cases in which the CCLA has been granted intervener status include those listed chronologically below:

1. *R. v. Morgentaler*, [1976] 1 S.C.R. 616, where the general issue was whether the necessity defence was applicable to a charge of procuring an unlawful abortion under the *Criminal Code* (the CCLA intervened in the Supreme Court of Canada);
2. *Nova Scotia (Board of Censors) v. McNeil*, [1976] 2 S.C.R. 265, in which the issue was whether a taxpayer has standing to challenge legislation concerning censorship of films (the CCLA intervened in the Supreme Court of Canada);
3. *R. v. Miller*, [1977] 2 S.C.R. 680, in which one of the issues was whether the death penalty under the *Criminal Code* constituted cruel and unusual punishment under the *Canadian Bill of Rights* (the CCLA intervened in the Supreme Court of Canada);
4. *Nova Scotia (Board of Censors) v. McNeil*, [1978] 2 S.C.R. 662, in which the issues were whether statutory provisions and regulations authorizing the Board of Censors to regulate and control the film industry in the province were *intra vires* the provincial legislature and whether they violated fundamental freedoms, including freedom of speech (the CCLA intervened in the Supreme Court of Canada);
5. *Reference re Legislative Privilege* (1978), 18 O.R. (2d) 529 (C.A.), in which the issue was whether a member of the legislature has a privilege allowing him or her to refuse to disclose the source or content of confidential communications by informants when testifying at a criminal trial (the CCLA intervened in the Ontario Court of Appeal);
6. *R. v. Saxell* (1980), 33 O. R. (2d) 78 (C.A.), in which one of the issues was whether the provision in the *Criminal Code* for the detention of an accused acquitted by reason of insanity violated guarantees in the *Canadian Bill of Rights*, including the guarantee of due process and the protection against arbitrary detention and imprisonment (the CCLA intervened in the Ontario Court of Appeal);
7. *Nova Scotia (Attorney General) v. MacIntyre*, [1982] 1 S.C.R. 175, in which the issue was whether a journalist is entitled to inspect search warrants and the information used to obtain them (the CCLA intervened in the Supreme Court of Canada);

8. *Re Fraser and Treasury Board (Department of National Revenue)* (1982), 5 L.A.C. (3d) 193 (P.S.S.R.B.), in which the issue was whether termination of a civil servant for publicly criticizing government policy violated freedom of expression (the CCLA intervened before the Public Service Staff Relations Board);
9. *R. v. Dowson*, [1983] 2 S.C.R. 144, and *R. v. Buchbinder*, [1983] 2 S.C.R. 159, in which the issue was whether the Attorney General could order a stay of proceedings under section 508 of the *Criminal Code* after a private information has been received but before the Justice of the Peace has completed an inquiry (the CCLA intervened in *R. v. Dowson* in the Ontario Court of Appeal and the Supreme Court of Canada. In *R. v. Buchbinder*, the CCLA intervened in the Supreme Court of Canada);
10. *R. v. Oakes* (1983), 40 O.R. (2d) 660, in which the issue was whether the reverse onus clause in section 8 of the *Narcotic Control Act* violated an accused's right to be presumed innocent under the *Charter* (the CCLA intervened in the Ontario Court of Appeal);
11. *Re Ontario Film & Video Appreciation Society and Ontario Board of Censors* (1984), 45 O.R. (2d) 80 (C.A.), in which the issue was whether a provincial law permitting a board to censor films violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court and the Ontario Court of Appeal);
12. *R. v. Rao* (1984), 46 O.R. (2d) 80 (C.A.), in which the issue was whether a provision under the *Narcotic Control Act* permitting warrantless searches violated the *Charter's* guarantee of protection against unreasonable search and seizure (the CCLA intervened in the Ontario Court of Appeal);
13. *Re Klein and Law Society of Upper Canada; Re Dvorak and Law Society of Upper Canada* (1985), 16 D.L.R. (4th) 489 (Div. Ct.), in which the issue was whether the Law Society's prohibitions respecting fees advertising and communications with the media violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court);
14. *Canadian Newspapers Co. Ltd. v. Attorney-General of Canada* (1986), 55 O. R. (2d) 737 (H.C.), in which the issue was whether the provision in the *Criminal Code* limiting newspapers' rights to publish certain information respecting search warrants violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario High Court of Justice);
15. *R. v. J.M.G.* (1986), 56 O.R. (2d) 705 (C.A.), in which the issue was whether a school principal's seizure of drugs from a student's sock violated the *Charter's* protection from unreasonable search and seizure (the CCLA intervened in the Ontario Court of Appeal);
16. *Re Ontario Film & Video Appreciation Society and Ontario Film Review Board* (1986), 57 O.R. (2d) 339 (Div. Ct.), in which the issue was whether actions taken

by a film censorship board violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court);

- 17. *R. v. Swain* (1986), 53 O.R. (2d) 609 (C.A.), in which some of the issues were whether the provision in the *Criminal Code* for the detention of an accused acquitted by reason of insanity violated sections 7, 9, 12 or 15(1) of the *Charter* (the CCLA intervened in the Court of Appeal);
- 18. *Reference Re Bill 30, an Act to amend the Education Act (Ont.)*, [1987] 1 S.C.R. 1148, in which the issues were whether Bill 30, which provided for full funding for Roman Catholic separate high schools, violated the *Charter's* guarantees of freedom of conscience and religion and equality rights (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada);
- 19. *Zylberberg v. Sudbury Board of Education (Director)* (1988), 65 O. R. (2d) 641 (C.A.), in which the issue was whether an Ontario regulation which provided for religious exercises in public schools violated the *Charter's* guarantee of freedom of conscience and religion (the CCLA intervened in the Ontario Divisional Court and the Ontario Court of Appeal);
- 20. *Tremblay v. Daigle*, [1989] 2 S.C.R. 530, in which the issue was whether a father of an unborn child could obtain an injunction prohibiting the mother from having an abortion (the CCLA intervened in the Supreme Court of Canada);
- 21. *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892, in which one of the issues was whether a provision in the *Canada Human Rights Act* that prohibited telephone communication of hate messages offended the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
- 22. *R. v. Keegstra*, [1990] 3 S.C.R. 697, in which the issue was whether the *Criminal Code* provision which made it an offence to willfully promote hatred against an identifiable group constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
- 23. *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, in which the issues were whether the use for certain political purposes of union dues paid by nonmembers pursuant to an agency shop or Rand formula violated the *Charter's* guarantees of freedom of expression and association (the CCLA intervened in the Supreme Court of Canada);
- 24. *R. v. Seaboyer*, [1991] 2 S.C.R. 577, in which one of the issues was whether the rape shield provisions of the *Criminal Code* violated the *Charter's* guarantee of a fair trial (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada of Canada);

- 25. *R. v. Butler*, [1992] 1 S.C.R. 452, in which the issue was whether the obscenity provisions in section 163 of the *Criminal Code* violate the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
- 26. *J.H. v. Hastings (County)*, [1992] O.J. No. 1695 (Ont. Gen. Div.), in which the issue was whether disclosure to municipal councilors of a list of social assistance recipients violated the protection of privacy under the *Municipal Freedom of Information and Protection of Privacy Act* (the CCLA intervened in the Ontario Court - General Division);
- 27. *R. v. Zundel*, [1992] 2 S.C.R. 731, in which the issue was whether section 177 of the *Criminal Code* prohibiting spreading false news violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
- 28. *Ontario Human Rights Commission v. Four Star Variety* (October 22, 1993) (Ont. Bd. of Inquiry), in which the issues were whether convenience stores displaying and selling certain magazines discriminated against women on the basis of their sex contrary to the *Ontario Human Rights Code* and if the Board of Inquiry's dealing with the obscenity issue intruded on the *Charter's* guarantee of freedom of expression (the CCLA intervened before the Board of Inquiry);
- 29. *Ramsden v. Peterborough (City)*, [1993] 2 S.C.R. 1084, in which the issue was whether a municipal by-law banning posters on public property violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada);
- 30. *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, in which the issues were: (1) whether the common law of defamation should be developed in a manner consistent with freedom of expression; (2) whether the common law test for determining liability for defamation disproportionately restricts freedom of expression; and (3) whether the current law respecting non-pecuniary and punitive damages disproportionately restricts freedom of expression and whether limits on jury discretion and damages should be imposed (the CCLA intervened in the Supreme Court of Canada);
- 31. *Ontario (Attorney General) v. Langer* (1995), 123 D.L.R. (4th) 289 (Ont. Gen. Div.), in which the issue was the constitutionality of ss. 163.1 and 164 of the *Criminal Code* relating to child pornography (the CCLA intervened in the Ontario General Division);
- 32. *Adler v. Ontario*, [1996] 3 S.C.R. 609, in which the issues were whether Ontario not funding Jewish and certain Christian day schools violated the *Charter's* guarantees of freedom of conscience and religion and of equality without discrimination based on religion (the CCLA intervened in the Ontario General Division, the Ontario Court of Appeal, and the Supreme Court of Canada);

33. *Al Yamani v. Canada (Solicitor General) (TD.)*, [1996] 1 F.C. 174 (T.D.), in which some of the issues were whether the provision in the *Immigration Act* regarding the deportation of permanent residents on the basis of membership in a class of organizations violated principles of fundamental justice contrary to section 7 of the *Charter* or the *Charter* guarantees of freedom of association and expression (the CCLA intervened in the Federal Court Trial Division);
34. *R. v. Gill* (1996), 29 O.R. (3d) 250 (Ont. Gen. Div.), in which the issue was whether section 301 of the *Criminal Code*, which creates an offence of publishing a defamatory libel, constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Court - General Division);
35. *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, in which some of the issues were whether a teacher, who had been subject to discipline for making discriminatory anti-Semitic statements while off duty, could defend his conduct, at least in part, on freedom of religion (the CCLA intervened in the Supreme Court of Canada);
36. *R. v. Stillman*, [1997] 1 S.C.R. 607, in which the issue was the explication of the circumstances, including police conduct, that would bring the administration of justice into disrepute within the meaning of subsection 24(2) of the *Charter* if unconstitutionally obtained evidence were to be admitted into a proceeding (the CCLA intervened in the Supreme Court of Canada);
37. *Winnipeg Child and Family Services (Northwest Area) v. D.F.G.*, [1997] 3 S.C.R. 925, in which the issue was whether the law should permit the state to interfere with the privacy, dignity, and liberty of a pregnant woman where her actions may expose the fetus to serious injury (the CCLA intervened in the Supreme Court of Canada);
38. *R. v. Lucas*, [1998] 1 S.C.R. 439, in which the issue was whether section 300 of the *Criminal Code*, which creates the offence of publishing a defamatory libel, constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
39. *Thomson Newspapers Co. (c.o.b. Globe and Mail) v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, in which the issue was whether section 322.1 of the *Canada Elections Act*, which prohibits the publication of public opinion polls during the last 72 hours of a federal election campaign, constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
40. *Daly v. Ontario (Attorney General)* (1999), 44 O.R. (3d) 349 (C.A.), in which the issue was the extent to which Ontario's constitutionally protected Catholic separate school boards must adhere to the restrictions on employment discrimination contained in the *Ontario Human Rights Code* (the CCLA intervened in the Ontario General Division and the Ontario Court of Appeal);

41. *R. v. Mills*, [1999] 3 S.C.R. 668, in which the central issue was the appropriate balance to be struck between the rights of the accused and the rights of complainants and witnesses with respect to the production of medical and therapeutic records (the CCLA intervened in the Supreme Court of Canada);
42. *Moumdjian v. Canada (Security Intelligence Review Committee)*, [1999] 4 F.C. 624, in which one of the issues was the constitutionality of *Immigration Act* provisions which impacted on the freedom of association (the CCLA intervened in the Federal Court of Appeal);
43. *United Food and Commercial Workers, Local 1518 (U.F.C.W.) v. KMart Canada Ltd.*, [1999] 2 S.C.R. 1083, and *Allsco Building Products Ltd. v. United Food and Commercial Workers International Union, Local 1288 P.*, [1999] 2 S.C.R. 1136, in which the issue was whether leafleting by striking employees at non-strike workplaces is constitutionally protected expression (the CCLA intervened in the Supreme Court of Canada);
44. *R. v. Budreo* (2000), 46 O.R. (3d) 481 (C.A.), in which the issue was whether the provision in section 810.1 of the *Criminal Code*, which permits a court to impose recognizance on a person likely to commit sexual offences against a child, violates section 7 of the *Charter* (the CCLA intervened in the Ontario Court of Appeal);
45. *Martin Entrop and Imperial Oil Ltd* (2000), 50 O.R. (3d) 18 (C.A.), in which one of the issues was the legality of an employer testing employees' urine for drug use (the CCLA intervened in the Ontario General Division and the Ontario Court of Appeal);
46. *Little Sisters Book and Art Emporium v. Canada (Attorney General)*, [2000] 2 S.C.R. 1120, in which one of the issues was whether certain provisions of Canada's customs legislation which permit customs officers to seize and detain allegedly obscene material at the border unreasonably infringe on the right to freedom of expression (the CCLA intervened in the Supreme Court of Canada);
47. *Toronto Police Association v. Toronto Police Services Board and David J. Boothby* (Ont. Div. Ct. Court, File No. 58/2000), in which the issue was the propriety of police fundraising and political activities, and the validity of a by-law and order issued by the Toronto Police Services Board and the Chief of Police, respectively, regarding police conduct (the matter settled prior to the hearing);
48. *R. v. Latimer*, [2001] 1 S.C.R. 3, in which one of the issues was whether the *Criminal Code* provision for a mandatory minimum sentence of life imprisonment for second degree murder constitutes cruel and unusual punishment under section 12 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
49. *R. v. Banks* (2001), 55 O.R. (3d) 374 (O.C.J.) and 2007 ONCA 19 (docket no. C43259) in which one of the issues was whether provisions of the Ontario *Safe*

Streets Act prohibiting certain forms of soliciting violate subsection 2(b) of the *Charter* (the CCLA intervened before the Ontario Court of Justice, the Ontario Superior Court of Justice and the Ontario Court of Appeal);

- 50. *R. v. Golden*, [2001] 3 S.C.R. 679, in which one of the issues was whether a strip search of the accused conducted as an incident to arrest violated section 8 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
- 51. *R. v. Sharpe*, [2001] 1 S.C.R. 45, in which the issue was whether the *Criminal Code* prohibition of the possession of child pornography is an unreasonable infringement on the right to freedom of expression under the *Charter* (the CCLA intervened in the Supreme Court of Canada);
- 52. *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S. C. R. 772, in which the CCLA supported a private university's claim to be accredited for certification of its graduates as teachers eligible to teach in the public school system, despite the fact that the university's religiously-based code of conduct likely excluded gays and lesbians (the CCLA intervened in the Supreme Court of Canada);
- 53. *Ross v. New Brunswick Teachers' Association* (2001), 201 D.L.R. (4th) 75 (N.B.C.A.), in which one of the issues was the extent to which the values underlying the common law tort of defamation must give way to the *Charter* values underlying freedom of expression, especially where a claimant who asserts the former at the expense of the latter freely enters the public arena (the CCLA intervened in the New Brunswick Court of Appeal);
- 54. *Ontario (Human Rights Commission) v. Brillinger*, [2002] O.J. No. 2375 (Div. Ct.), in which the issue concerned the balance to be struck between freedom of religion and the right to equality (the CCLA intervened in the Ontario Superior Court of Justice);
- 55. *Chamberlain v. The Board of Trustees of School District # 36 (Surrey)*, [2002] 4 S.C.R. 710, which involved the balancing of freedom of religion and equality rights in the context of a public school board's approval of books for a school curriculum (the CCLA intervened in the Supreme Court of Canada);
- 56. *Falkiner v. Ontario (Ministry of Community and Social Services)* (2002), 59 O.R. (3d) 481 (C.A.), in which the issues were the extent to which regulations made under the *Family Benefits Act* and the *General Welfare Assistance Act* amending the definition of "spouse" in relation to benefit entitlement (1) constituted discrimination under subsection 15(1) of the *Charter*, and (2) set the stage for unwarranted government intrusion into the personal and private circumstances of affected recipients (the CCLA intervened before SARB, the Ontario Divisional Court, the Ontario Superior Court of Justice, and the Ontario Court of Appeal);
- 57. *Retail, Wholesale and Department Store Union, Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, [2002] 1 S.C.R. 156, in which the issue concerned the

- extent to which the common law regarding secondary picketing should be modified in light of *Charter* values (the CCLA intervened in the Supreme Court of Canada);
58. *Lafferty v. Parizeau* (SCC File No. 30103), [2003] S.C.C.A. No. 555 (leave granted but settled before hearing), which examined the application of *Charter* freedom of expression values to defamation and the defense of fair comment (the CCLA intervened in the Supreme Court of Canada, but the matter settled prior to hearing);
 59. *R. v. Malmö-Levine, R. v. Clay, R. v. Caine*, [2003] S.C.J. No. 79, in which one of the issues was whether the criminal prohibition against the possession of marijuana violates section 7 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
 60. *Odhavji Estate v. Woodhouse*, [2003] 3 S.C.R. 263, which examined the appropriate scope of both the tort of abuse of public office and the tort of negligent supervision of the police, and the appropriate legal principles to be applied when addressing the issues of costs orders against private individuals of modest means who are engaged in public interest litigation (the CCLA intervened in the Supreme Court of Canada);
 61. *La Congrégation des témoins de Jéhovah de St-Jérôme Lafontaine, et al. v. Municipalité du village de Lafontaine, et al.*, [2004] 2 S.C.R. 650, which examined the constitutionality of a municipal zoning decision that limited the location of building places of religious worship (the CCLA intervened in the Supreme Court of Canada);
 62. *R v. Glad Day Bookshop Inc.*, [2004] O.J No. 1766 (Ont. Sup. Ct. Jus.), in which one of the issues was the constitutionality of the statutory regime requiring prior approval and allowing the prior restraint of films (the CCLA intervened in the Ontario Superior Court of Justice);
 63. *In the matter of an application under § 83.28 of the Criminal Code*, [2004] 2 S.C.R. 248, which questioned *inter alia* the constitutionality of investigative hearings and the over breadth of certain provisions of the Anti-Terrorism Act (the CCLA intervened in the Supreme Court of Canada);
 64. *In the Matter of a Reference by the Government in Council Concerning the Proposal for an Act Respecting Certain Aspects of Legal Capacity for Marriage for Civil Purposes*, [2004] 3 S.C.R. 698, which examined the equality and religious freedom aspects of proposed changes to the marriage legislation (the CCLA intervened in the Supreme Court of Canada);
 65. *R v. Mann*, [2004] 3 S.C.R. 59, which examined whether the police have the authority at common law to detain and search a person in the absence of either a warrant or reasonable and probable grounds to believe an offence has been committed (the CCLA intervened in the Supreme Court of Canada);

66. *R v. Tessling*, [2004] 3 S.C.R. 432, which examined the constitutionality of the police conducting warrantless searches of private dwelling houses using infra red technology during the course of criminal investigations (the CCLA intervened in the Supreme Court of Canada);
67. *Genex Communications Inc. v. Attorney General of Canada*, [2005] F.C.J. No. 1440 (F.C.A.), which examined the application of the *Charter's* guarantee of freedom of expression to a decision by the CRTC to refuse to renew a radio station license (the CCLA intervened in the Federal Court of Appeal);
68. *R. v. Hamilton*, [2005] S.C.J. No. 48, which examined the scope of the offence of counseling the commission of a crime (the CCLA intervened in the Supreme Court of Canada);
69. *R. v. Déry*, [2006] 2 S.C.R. 669, which examined whether the *Criminal Code* contains the offence of "attempted conspiracy" (the CCLA intervened in the Supreme Court of Canada);
70. *Montague v. Page* (2006), 79 O.R. (3d) 515 (Ont. S.C.J.), which concerned the application of the *Charter's* guarantee of freedom of expression to the question of whether municipalities are allowed to file defamation suits against residents (CCLA intervened in the Ontario Superior Court of Justice);
71. *Multani v. Commission Scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, which concerned whether the *Charter's* guarantee of freedom of religion allows a student to wear a kirpan in school (the CCLA intervened in the Supreme Court of Canada);
72. *O'Neill v. Attorney General of Canada*, [2006] O.J. No. 4189 (Ont. S.C.J.), which concerned the interaction of national security and *Charter* rights (the CCLA intervened in the Ontario Superior Court of Justice);
73. *Owens v. Saskatchewan Human Rights Commission* (2006), 267 D.L.R. (4th) 733 (Sask.C.A.), which concerned the application of the *Charter's* guarantees of freedom of religion and expression to a provincial statute banning hateful speech (the CCLA intervened in the Saskatchewan Court of Appeal);
74. *Lund v. Boissoin AND The Concerned Christian Coalition Inc.* (2006), CarswellAlta 2060 (AHRCC), which examined the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Alberta Human Rights and Citizen Commission);
75. *Charkaoui et al. v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, which examined, *inter alia*, the constitutionality of certain "security certificate" provisions of the *Immigration and Refugee Protection Act* (the CCLA intervened in the Supreme Court of Canada);

- 76. *R. v. Bryan*, [2007] 1 S.C.R. 527, which examined the constitutionality of provisions of the *Elections Act* which penalize dissemination of election results from eastern Canada before polls are closed in the West (the CCLA intervened in the Supreme Court of Canada);
- 77. *R. v. Clayton*, 2007 SCC 32, concerning the scope of the police power to establish a roadblock and to stop and search vehicles and passengers (the CCLA intervened in the Supreme Court of Canada);
- 78. *R. v. Hill*, 2007 SCC 41, concerning the issue of whether police officers can be held liable in tort for a negligently conducted investigation (the CCLA intervened in the Supreme Court of Canada);
- 79. *Bruker v. Marcovitz*, 2007 SCC 54, which examined the extent to which civil courts can enforce a civil obligation to perform a religious divorce (the CCLA intervened in the Supreme Court of Canada);
- 80. *Whatcott v. Assn. Of Licensed Practical Nurses (Saskatchewan)*, 2008 SKCA 6, concerning the freedom of expression of an off-duty nurse who picketed a Planned Parenthood facility - whether he should be subject to disciplinary action by the professional association of nurses for this activity (the CCLA intervened in the Saskatchewan Court of Appeal);
- 81. *R. v. Kang-Brown*, 2008 SCC 18, and *R. v. M.(A.)*, 2008 SCC 19, concerning the constitutionality of using dogs to conduct random warrantless inspections of high school students (the CCLA intervened in the Supreme Court of Canada);
- 82. *Michael Esty Ferguson v. Her Majesty the Queen*, 2008 SCC 6, which concerned the constitutional challenge of a law requiring mandatory minimum sentences (the CCLA intervened in the Supreme Court of Canada);
- 83. *Elmasry and Habib v. Roger's Publishing and MacQueen (No. 4)*, 2008 BCHRT 378, concerning the extent to which a British Columbia human rights law can limit the freedom of expression of a news magazine that had published offensive material about Muslims (the CCLA intervened before the British Columbia Human Rights Tribunal);
- 84. *Amnesty International Canada v. Canada (Minister of National Defence)*, 2008 FCA 401, concerning the extraterritorial application of the *Charter*, and specifically its application to Canadian Forces in Afghanistan and the transfer of detainees under Canadian control to Afghan authorities (the CCLA intervened in the Federal Court of Appeal);
- 85. *WIC Radio Ltd., et al. v. Kari Simpson*, 2008 SCC 40, concerning the appropriate balance to be struck in the law of defamation when one person's expression of opinion may have harmed the reputation of another (the CCLA intervened in the Supreme Court of Canada);

86. *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2009 ONCA 20 regarding freedom of information and the extent to which the public's right to access electronic data requires that the institution render such data in retrievable form (the CCLA intervened in the Ontario Court of Appeal);
87. *R. v. Patrick*, 2009 SCC 17, concerning the constitutionality of police conducting warrantless searches of household garbage located on private property (the CCLA intervened in the Supreme Court of Canada);
88. *Robin Chatterjee v. Attorney General of Ontario*, 2009 SCC 19, concerning the constitutionality of the civil forfeiture powers contained in Ontario's *Civil Remedies Act, 2001* (the CCLA intervened in the Supreme Court of Canada);
89. *R. v. Suberu*, 2009 SCC 333, concerning the constitutional right to counsel in the context of investigative detentions (the CCLA intervened in the Supreme Court of Canada);
90. *R. v. Grant*, 2009 SCC 32, concerning the appropriate legal test for the exclusion of evidence under s. 24(2) of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
91. *R. v. Harrison*, 2009 SCC 34, concerning the appropriate application of s. 24(2) of the *Charter* in cases where police have engaged in "blatant" and "flagrant" *Charter* violations (the CCLA intervened in the Supreme Court of Canada);
92. *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, concerning whether a provincial law requiring that all driver's licenses include a photograph of the license holder violates the freedom of religion of persons seeking an exemption from being photographed for religious reasons (the CCLA intervened in the Supreme Court of Canada);
93. *R. v. Breeden*, 2009 BCCA 463, concerning whether the constitutional right to freedom of expression applies in certain public and publicly accessible spaces (the CCLA intervened before the British Columbia Court of Appeal);
94. *R. v. Chehil* [2009] N.S.J. No. 515, concerning the permissibility of warrantless searches of airline passenger information by police (the CCLA intervened at the Nova Scotia Court of Appeal);
95. *Matthew Miazga v. The Estate of Dennis Kvello, et al.*, 2009 SCC 51, concerning the appropriate legal test for the tort of malicious prosecution (the CCLA intervened at the Supreme Court of Canada);
96. *Johanne Desbiens, et al. v. Wal-Mart Canada Corporation*, 2009 SCC 55, and *Gaétan Plourde v. Wal-Mart Canada Corporation*, 2009 SCC 54, concerning the interpretation of the Quebec *Labour Code* and the impact of the freedom of

association guarantees contained in the *Canadian Charter* and the *Quebec Charter* (the CCLA intervened in the Supreme Court of Canada);

- 97. *Stephen Boissoin and the Concerned Christian Coalition Inc. v. Darren Lund*, 2009 ABQB 592, concerning the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Queen's Bench of Alberta);
- 98. *Quan v. Cusson*, 2009 SCC 62, raising the novel question of a public interest responsible journalism defence, as well as the traditional defence of qualified privilege, in the setting of defamation law and its relationship to freedom of the press (the CCLA intervened in the Supreme Court of Canada);
- 99. *Peter Grant v. Torstar Corp.*, 2009 SCC 61 concerning the creation and operation of a public interest responsible journalism defence (the CCLA intervened in the Supreme Court of Canada);
- 100. *Whitcombe and Wilson v. Manderson*, December 18 2009, Ontario Superior Court of Justice File No. 31/09, concerning a Rule 21 motion to dismiss a defamation lawsuit being funded by a municipality (the CCLA intervened in the Ontario Superior Court of Justice);
- 101. *Karas v. Canada (Minister of Justice)*, (SCC File No. 32500) concerning the appropriateness of extraditing a fugitive to face the possibility of a death penalty without assurances that the death penalty will not be applied (the CCLA was granted leave to intervene at the Supreme Court of Canada but the case was dismissed as moot prior to the hearing);
- 102. *Prime Minister of Canada, et al. v. Omar Ahmed Khadr*, 2010 SCC 3, concerning *Charter* obligations to Canadian citizens detained abroad and the appropriateness of *Charter* remedies in respect to matters affecting the conduct of foreign relations (the CCLA intervened in the Supreme Court of Canada);
- 103. *Her Majesty the Queen in Right of the Province of Alberta v. Lyle Marcellus Nasogaluak*, 2010 SCC 6, concerning the availability of sentence reductions as a remedy for violations of constitutional rights (the CCLA intervened in the Supreme Court of Canada);
- 104. *Whatcott v. Saskatchewan (Human Rights Tribunal)*, 2010 SKCA 26, concerning the extent to which a Saskatchewan human rights law can limit the expression of a man distributing anti-homosexual flyers (the CCLA intervened in the Saskatchewan Court of Appeal);

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105. *Trent Terrence Sinclair v. Her Majesty the Queen* (SCC File No. 32537), *R. v. McCrimmon* (SCC File No. 32969), and *Stanley James Willier v. Her Majesty the Queen* (SCC File No. 32769), concerning the scope of the constitutional right to counsel in the context of a custodial interrogation (the CCLA intervened in the Supreme Court of Canada – decision pending);
106. *National Post, et al. v. Her Majesty the Queen* (Ontario) (Criminal) (By Leave) (SCC File No. 32601), concerning the relationship between journalist-source privilege, freedom of the press under s. 2(b), and search warrant and assistance orders targeting the media (the CCLA intervened in the Supreme Court of Canada – decision pending);
107. *Globe and Mail, a division of CTVglobemedia Publishing Inc. v. Attorney General of Canada, et al.*, (Quebec) (Civil) (By Leave) (SCC File Nos. 33114 and 33097) concerning the disclosure of confidential journalistic sources in the civil litigation context, and the constitutionality of a publication ban (the CCLA intervened in the Supreme Court of Canada – decision pending);
108. *Farès Bou Malhab v. Diffusion Métromédia CMR inc., et al.*, (Quebec) (Civil) (By Leave) (SCC File No. 32931) concerning statements made by a radio host, and examining the scope and nature of defamation under Quebec civil law in the context of the freedom of expression guarantees found in the Quebec and Canadian Charters (the CCLA intervened in the Supreme Court of Canada – decision pending);
109. *Canadian Broadcasting Corporation, et al. v. Her Majesty the Queen, et al.* (SCC File No. 32865) and *Toronto Star Newspapers Ltd., et al. v. Her Majesty the Queen in Right of Canada, et al.* (SCC File No. 33085), concerning the constitutionality of mandatory publication bans regarding bail hearing proceedings when requested by the accused (the CCLA intervened in the Supreme Court of Canada – decision pending);
110. *Warman v. Fournier, Fournier and John Does 1-8*, (Ontario) (Civil) (Ontario Superior Court of Justice File No. 09-DV-1512) concerning the appropriate legal test when a litigant in a defamation action is attempting to identify previously-anonymous internet commentators (the CCLA has been granted leave to intervene at the Ontario Superior Court of Justice);
111. *R. v. N.S. et al.*, (Ontario) (Criminal) (Ontario Court of Appeal File No. C50534) concerning the balancing of freedom of religion and conscience and fair trial rights, where a sexual assault complainant is a religious Muslim woman and the accused has requested that she be required to remove the veil before testifying (the CCLA has been granted leave to intervene at the Ontario Court of Appeal);

- 112. *Canadian Broadcasting Corporation et al. v. The Attorney General of Quebec et al.* (SCC File No. 32920) and *Canadian Broadcasting Corporation v. Her Majesty the Queen and Stéphan Dufour* (SCC File No. 32987) concerning the constitutional protection of freedom of the press in courthouses and the constitutionality of certain rules and directives restricting the activities of the press and the broadcasting of court proceedings (the CCLA has been granted leave to intervene in the Supreme Court of Canada);
- 113. *Leblanc et al. c. Rawdon (Municipalite de)* (Quebec) (Civil) (Quebec Court of Appeal File No. 500-09-019915-099) concerning the ability of a municipality to sue for defamation, the proper test for an interlocutory injunction in a defamation case, and the impact of "anti-SLAPP" legislation (the CCLA intervened at the Quebec Court of Appeal – decision pending);
- 114. *R. v. Cornell* (Alberta) (Criminal) (As of Right) (SCC File No. 33186) concerning whether the manner in which police conduct a search, in particular a unannounced 'hard entry', constitutes a violation of s. 8 (the CCLA intervened in the Supreme Court of Canada – decision pending);
- 115. *City of Vancouver, et al v. Alan Cameron Ward, et al.* (SCC File No. 33089) concerning whether an award of damages for the breach of a *Charter* right can be made in the absence of bad faith, an abuse of power or tortious conduct (the CCLA intervened in the Supreme Court of Canada – decision pending);
- 116. *R. v. Ahmad et al.* (Ontario) (Criminal) (By Leave) (SCC File No. 33066) concerning the constitutionality of ss. 38 to 38.16 of the *Canada Evidence Act*, R.S.C. 1985 (the CCLA has been granted leave to intervene in the Supreme Court of Canada);
- 117. *Tiberiu Gavrilă v. Minister of Justice (Canada)*, (Quebec) (Criminal) (By Leave) (SCC File No. 33313) concerning the interaction between the *Immigration and Refugee Protection Act* and the *Extradition Act* and whether a refugee can be surrendered for extradition to a home country (the CCLA intervened in the Supreme Court of Canada – decision pending); and
- 118. *Reference re Marriage Commissioners Appointed Under the Marriage Act, 1995 S.S. 1995, c. M-4.1*, (Court of Appeal for Saskatchewan File No. 1800) concerning the constitutionality of proposed amendments to the *Marriage Act* that would allow marriage commissioners to refuse to perform civil marriages where doing so would conflict with commissioners' religious beliefs (the CCLA has been granted leave to intervene at the Court of Appeal for Saskatchewan).

TAB B

This is Exhibit "B"
to the Affidavit of ABIGAIL DESHMAN
sworn 3rd day of March, 2010



A Commissioner for taking affidavits

Exhibit B - CCLA Submissions on Freedom of Expression

Submissions made by the Canadian Civil Liberties Association, to a variety of government Ministries, Parliamentary Committees, Commissions of Inquiry, and other public bodies involving freedom of expression include those listed chronologically below:

1. Submissions to the 1969 Senate Committee on Hate Propaganda;
2. Submissions on November 26, 1970 to the Board of Commissioners of the Metropolitan Toronto Police regarding law enforcement policies in obscenity matters and the CCLA's concerns that freedom of speech and freedom of the press were jeopardized both by legislated censorship and the policing practices adopted to enforce those laws;
3. Submissions to the 1973 Ontario Task Force on Policing, including an analysis entitled "Police and the Rights of Demonstrators", which dealt specifically with demonstrations as a form of expression as well as the appropriateness of placing certain restrictions on demonstrations;
4. Submissions on January 30, 1978 to the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police regarding the conduct of the Inquiry and the CCLA's concerns that both police lawlessness and excessive police powers threaten the viability of democratic values including democratic dissent and freedom of speech;
5. Submissions on October 3, 1979 to the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police regarding the *Official Secrets Act* and the CCLA's concerns that freedom of speech and freedom of the press were threatened by the broad and vague criminal prohibitions in the *Act*;
6. Submissions on October 3, 1979 to the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police regarding the *War Measures Act* and new contemplated peace-time emergency powers and the CCLA's concern that the invocation of powers that restrict civil liberties inflicts substantial injury upon the viability of democratic institutions including freedom of expression;
7. Submissions on March 12, 1980 to the Board of Commissioners of the Metropolitan Toronto Police regarding a police investigation at the Contact School of a classroom speech by a black community leader. The police alleged that the classroom speech affected the rights of certain accused police officers and might have involved the offences of defamatory libel and contempt of court. The CCLA expressed its concerns that such an investigation imperiled freedom of speech and cast a chill over the educational process;

8. Submissions on February 15, 1982 to the Honourable Robert Kaplan, Solicitor General of Canada regarding security, intelligence, and the Report of the McDonald Commission and the CCLA's concerns that there be strong legal safeguards against the unreasonable invasion by a public authority of the freedom and dignity of the individual, including freedom of expression;
9. Letter dated April 19, 1983 to the Honourable R. Roy McMurtry, then the Attorney General for Ontario, regarding the handling by police of demonstrations at the Litton Industries plant in 1982, and conveying the CCLA's concerns regarding the suppression of freedom of expression resulting from police powers to regulate demonstrations;
10. Submissions on September 12, 1983 to the Special Committee of the Senate on the Canadian Security Intelligence Service regarding Bill C-157 - National Security and the CCLA's concerns that there be strong legal safeguards against the unreasonable invasion by public authority of the freedom and dignity of the individual, including freedom of expression;
11. Submissions on February 24, 1984 to the University Students' Council at the University of Western Ontario regarding the ratification of a specific campus group and the CCLA's concerns that the Council's grounds for denying ratification involved discrimination against certain political opinions;
12. Submissions on April 6, 1984 to the Parliamentary Special Committee on Pornography and Prostitution (the Fraser Committee) regarding the potential impact on freedom of expression in the proposed restrictions on pornography;
13. Submissions in 1984 to a parliamentary committee regarding the proposed legislation to establish the Canadian Security Intelligence Service (about which one of the issues was freedom of expression);
14. Submissions in 1985 to a parliamentary committee with respect to proposed legislation regarding soliciting in public places for the purpose of prostitution (about which one of the issues was freedom of expression);
15. Submissions on October 5, 1987 to the Honourable Perrin Beatty, Minister of National Defence regarding Bill C-77 on Emergency Powers and the CCLA's concerns that such emergency powers be narrowly tailored so as not to unnecessarily imperil fundamental freedoms including freedom of speech and the right to peaceful dissent;

16. Submissions on March 1, 1988 to the House of Commons' Legislative Committee on Bill C-77 regarding proposed amendments to the bill, including the CCLA's concern that the power to prohibit and regulate public assemblies during a national emergency could effectively ban peaceful assemblies protesting the declaration of the emergency itself;
17. Submissions on January 16, 1990 to the House of Commons' Special Committee on the Review of the *Canadian Security Intelligence Service Act* and the CCLA's concerns that security intelligence surveillance can threaten political liberty and the right to dissent;
18. Submissions on January 23, 1990 to the Honourable Otto Jelinek, Minister of National Revenue, regarding the de-registration of charities and the CCLA's concerns that the denial of charitable status to non-profit educational publications on the basis of a common law distinction between "education" and "propaganda" can amount to a form of censorship;
19. Letter dated July 13, 1990 to the Scarborough Board of Education concerning the freedom of expression of an elementary school student who was suspended for wearing a pro-Palestinian T-shirt;
20. Letter dated July 13, 1990 to the Board of School Trustees, District 15, Moncton, New Brunswick concerning the balancing of the freedom of expression of an allegedly anti-semitic teacher and the freedom of association of his students;
21. Letter dated March 28, 1991 to Terry Grier, President of the Ryerson Polytechnic Institute, regarding its anti-harassment policy and its impact on free speech;
22. Letter dated November 12, 1991 to Dr. J. Diamond, Secretary of the Governing Council, University of Toronto, regarding the effect of proposed anti-harassment codes on intellectual freedom in a campus setting;
23. Letter dated May 22, 1992 to the Honourable Tony Silipo, then the Minister of Education for Ontario, about appropriately balancing the freedom of expression of an allegedly racist teacher and the freedom of association of his students;
24. Letter dated June 28, 1993 to the Honourable Marion Boyd, Attorney General for Ontario, regarding the picketing of abortion clinics;
25. Submissions in June 1993 to a parliamentary committee regarding the then-proposed child pornography bill;

26. Meeting on March 15, 1994 with the Honourable Dave Cooke, the Minister of Education for Ontario, regarding anti-harassment codes at colleges and universities;
27. Letter dated September 12, 1995 to the Board of Trustees of the Hamilton Board of Education concerning the freedom of expression of a group of students disciplined for distributing a petition;
28. Letter dated February 9, 1996 to the Honourable Charles Harnick, the Attorney General for Ontario, concerning charges laid against participants in a protest at the Ontario Legislature;
29. Letters dated August 29, 1996 to Dr. Susan Mann, President of York University, and to Mr. Don Brown, President and CEO of Imperial Tobacco Limited, regarding a request by an anti-smoking group for permission to protest on university property against the sponsorship of a sporting event by the tobacco company;
30. Letter dated September 12, 1997 to the Honourable Charles Harnick, the Attorney General for Ontario, concerning possible changes in the law regulating consumer boycotts;
31. Letter dated December 5, 1997 to the Honourable Andy Scott, Solicitor General of Canada, concerning alleged activities of the Prime Minister's Office and the RCMP which threatened the freedom of assembly and freedom of speech of protestors at the 1997 APEC Conference in Vancouver B.C.;
32. Brief dated February 12, 1998, submitted to the Guelph Police Services Board concerning *inter alia* police detention and strip- searching of those involved in political protests;
33. Brief dated February 26, 1998 submitted to the Metropolitan Toronto Police Services Board concerning *inter alia* police detention and strip-searching of students involved in political protests;
34. Submissions in August 1999 to the Honourable Anne McLellan, Minister of Justice, regarding amendments to the law of obscenity and the law of child pornography;
35. Submissions in December 1999 to the committee of the Ontario Legislature regarding Bill 8 (the Safe Streets Act);
36. Letter dated January 26, 2000 to the Honourable David Tsubouchi, Solicitor General of Ontario, regarding the increased political activity by the Toronto Police Association;

37. Letter dated May 26, 2000 to Ted Hughes, Commissioner of the APEC Inquiry, regarding ministerial responsibility for RCMP conduct regarding protests at the APEC summit;
38. Letters in February 2001 to the Hon. Lawrence MacAulay, Solicitor General of Canada, and to the Hon. Serge Menard, Minister of Public Security for Quebec, regarding the balance of protecting the viability of legitimate protest and security at the Quebec Summit of the Americas;
39. Letter dated May 4, 2001 to the Attorney-General of Quebec regarding the detention of a protester without bail at the Quebec Summit of the Americas;
40. Letters in July and August 2001 to the RCMP Public Complaints Commission, the Quebec Police Commission and the Quebec Police Ethics Commission, lodging formal complaints in relation to police treatment of protesters during the Quebec Summit of the Americas;
41. Submissions in October 2001 to the Standing Committee on Justice and Human Rights on Bill C-36, the then-proposed anti-terrorism bill, on its potential impact on civil liberties; *inter alia*, how the activities of legitimate dissenters could be swept up under the wide scope of the bill;
42. Submissions in October and December 2001 to the Special Senate Committee on Bill C-36 on its potential impact on civil liberties; *inter alia*, how the activities of legitimate dissenters could be swept up under the wide scope of the bill;
43. Submissions in February 2002 to the Standing Senate Committee on Foreign Affairs on Bill C-35, the bill to amend the Foreign Missions and International Organizations Act, on balancing the viability of legitimate protest with security concerns at intergovernmental meetings;
44. Letter dated June 14, 2002 to Calgary Mayor Dave Bronconiier and members of City Council, regarding the reported enforcement of a by-law to prevent public gatherings, demonstrations, and political rallies in Calgary's parks that would affect protesters of an upcoming G-8 conference in the city;
45. Letter dated August 21, 2002 to Wellington Township Mayor Pinkney and Councilors, regarding costs awarded by a court against a citizens' group that had challenged an action of the township;
46. Submissions in October 2003 to the Standing Committee on Justice and Human Rights on the child pornography provisions of Bill C-20 that would expand the criminal definition of child pornography;

47. Letter dated March 11, 2004 to the Vice Provost of the University of Alberta regarding the freedom of expression of anti-abortion activists on campus;
48. Letter dated September 7, 2004 to Patrick Carnegie, Facilities and Events Manager for Yonge-Dundas Square in Toronto, regarding the denial of a permit to an animal rights group;
49. Letters dated September 7, 2004 and November 30, 2004 to the Honourable Jim Watson, Ontario Minister of Consumer and Business Services, expressing the CCLA's concerns that the province was still requiring films to be submitted for prior approval, following an Ontario Superior Court ruling deeming this requirement unconstitutional;
50. Submissions in March 2005 to the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness on the child pornography provisions of Bill C-2, an amendment to the Criminal Code that, *inter alia*, would expand the definition of child pornography and significantly narrow the defences;
51. Submissions in April 2005 to the Ontario Standing Committee on Justice Policy on Bill 158, a bill that re-established a mandatory prior approval process for certain categories of films;
52. Submissions on May 16, 2005 to the Special Senate Committee on the Anti-Terrorism Act regarding, *inter alia*, the potential danger that protesters and demonstrators could be prosecuted under the current legislation's definition of terrorism;
53. Submissions in June 2005 to the City Council of Oshawa on a by-law which restricted placing certain signs on private and public property;
54. Submissions on September 20, 2005 to the House of Commons Sub-Committee on the Anti-Terrorism Act regarding, *inter alia*, the potential danger that protesters and demonstrators could be prosecuted under the current legislation's definition of terrorism;
55. Submissions on September 29, 2005 to the Ontario Standing Committee on Regulation and Private Bills on a public transparency bill that could improve the ability of citizens to participate in public discourse;
56. Letter dated March 1, 2006 to Toronto Mayor David Miller, concerning a draft by-law establishing that posters in the public space must be removed within a given period;

57. Submissions on April 24, 2007 to the International Commission of Jurists on Counter-Terrorism and Human Rights regarding, *inter alia*, the potential danger that protesters and demonstrators could be prosecuted under the current legislation's definition of terrorism;
58. Submissions on May 14, 2007 to the Ontario Standing Committee on General Government concerning Bill 212 and restrictions by school officials on the cyber-speech of students;
59. Submissions on August 24, 2007 to the Ipperwash Inquiry concerning the handling of Aboriginal protests by police;
60. Letter dated December 11, 2007 to the Chair of the Toronto Police Services Board regarding a freedom of information request by the Toronto Star;
61. Submissions on April 9, 2008 to the Senate Standing Committee on Banking, Trade and Commerce on a provision of Bill C-10 that could deny tax credits to films that may be designated as contrary to public policy;
62. A letter dated August 14, 2008 to the Ontario Attorney General regarding the Crown's request for a publication ban in a preliminary inquiry;
63. Submissions on January 15, 2009 to the Canadian Human Rights Commission regarding Professor Richard Moon's report on s. 13 of the Canadian Human Rights Act;
64. A letter dated January 28, 2009 to student unions across Canada regarding various actions taken against anti-abortion student groups on post-secondary school campuses;
65. A letter dated February 10, 2009 to the Council of the Municipality of Clarington regarding a resolution they passed in which they banned a constituent from addressing the Council until he issued a personal written apology;
66. A letter dated February 26, 2009 to the University of Ottawa regarding the Administration's decision to ban a student group's poster;
67. A letter dated February 27, 2009 to Carleton University regarding the Administration's decision to ban a student group's poster;
68. A letter dated May 6, 2009 to Citizenship and Immigration Minister Jason Kenney calling on the Federal government to adopt appropriate measures to ensure that immigration law and decisions recognize and respect Canadians' right to hear, in the wake of Minister Kenney's statements regarding UK MP George Galloway's effective exclusion from Canada;

69. August 21, 2009 submission to the Canadian Parliamentary Committee for Combating Anti-Semitism to adopt recommendations that recognize the importance of combating discrimination while also respecting freedom of expression;
70. A letter dated August 26, 2009 to an Ontario secondary school principal urging him to rescind a ban of *To Kill A Mockingbird* from the grade 10 classrooms at his school;
71. A letter dated September 1, 2009 to Regina's City Council to ask that they repeal a city bylaw being used to prohibit panhandling as begging has been ruled to be a form of expression; and
72. A letter dated February 23, 2010 to Ottawa City Council criticizing a proposed By-Law amendment that would, *inter alia*, prohibit indecent, insulting or abusive language as unconstitutional restrictions on freedom of speech and assembly.

TAB C

This is Exhibit "C"
to the Affidavit of ABIGAIL DESHMAN
sworn 3rd day of March, 2010



A Commissioner for taking affidavits

Exhibit C – CCLA Interventions on Freedom of Expression

Cases on freedom of expression in which the CCLA has been granted intervener status include those listed chronologically below:

1.	<i>Nova Scotia Board of Censors v. McNeil</i> (1976)
2.	<i>Nova Scotia Board of Censors v. McNeil</i> (1978)
3.	<i>Re. Fraser and Treasury Board</i> (1982)
4.	<i>A. G. of Nova Scotia v. MacIntyre</i> (1982)
5.	<i>Re Ontario Film & Video Appreciation Society and Ontario Board of Censors</i> (1984)
6.	<i>Re Klein and Law Society of Upper Canada Re Dvorak and Lair Society of Upper Canada</i> (1985)
7.	<i>Canadian Newspapers Co. Ltd. v. Attorney-General of Canada</i> (1986)
8.	<i>Re Ontario Film & Video Appreciation Society and Ontario Board of Censors</i> (No. 2) (1986)
9.	<i>Canada (Human Rights Commission) v. Taylor</i> (1990)
10.	<i>R. v. Keegstra</i> (1990)
11.	<i>Lavigne v. Ontario Public Service Employees Union</i> (1991)
12.	<i>R. v. Butler</i> (1992)
13.	<i>R. v. Zundel</i> (No. 2) (1992)
14.	<i>Ramsden v. Peterborough (City of)</i> (1993)
15.	<i>Ontario Human Rights Commission v. Four Star Variety</i> (1993)
16.	<i>Hill v. Church of Scientology of Toronto</i> (1995)
17.	<i>Issam Al Yamani v. Solicitor General for Canada and Minister of Employment and Immigration</i> (1996)
18.	<i>Ontario (Attorney General) v. Langer</i> (1995)
19.	<i>R. v. Gill</i> (1996)
20.	<i>Ross v. New Brunswick School District No. 15</i> (1996)

21.	<i>R. v. Lucas</i> (1998)
22.	<i>Thomson Newspapers Co. v. Canada (Attorney General)</i> (1998)
23.	<i>United Food and Commercial Workers International Union, Local 1288P. v. Allsco Building Products Ltd.</i> (1999)
24.	<i>United Food and Commercial Workers International Union, Local 1518 v. K-Mart Canada Ltd.</i> (1999)
25.	<i>Ross v. New Brunswick Teachers' Association</i> (2001)
26.	<i>Little Sisters Book and Art Emporium v. Canada (Minister of Justice)</i> (2000)
27.	<i>R. v. Sharpe</i> (2001)
28.	<i>R. v. Banks</i> (2001)
29.	<i>Pepsi-Cola Canada Beverages (West) Ltd. v. Retail, Wholesale and Department Store Union Local 558, et al.</i> (2001)
30.	<i>Ontario (Human Rights Commission) v. Brillinger</i> (2002)
31.	<i>Lafferty v. Parizeau</i> (2003)
32.	<i>R. v. Glad Day Bookshop Inc.</i> (2004)
33.	<i>R. v. Banks</i> (2005)
34.	<i>Genex Communications Inc. v. Attorney General of Canada</i> (2005)
35.	<i>R. v. Hamilton</i> (2005)
36.	<i>O'Neill v. Attorney General of Canada</i> (2006)
37.	<i>Owens v. Saskatchewan Human Rights Commission</i> (2006)
38.	<i>Montague (Township) v. Page</i> (2006)
39.	<i>Hellquist v. Owens</i> (2006)
40.	<i>R. v. Banks</i> (2007)
41.	<i>R. v. Bryan</i> (2007)
42.	<i>Whatcott v. Assn. of Licensed Practical Nurses (Saskatchewan)</i>

	(2008)
43.	<i>WIC Radio Ltd., et al. v. Kari Simpson</i> (2008)
44.	<i>Elmasry and Habib v. Roger's Publishing and MacQueen</i> (2008)
45.	<i>Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner</i> (2009)
46.	<i>Stephen Boissoin and the Concerned Christian Coalition Inc. v. Darren Lund</i> (2009)
47.	<i>Douglas Quan, et al. v. Danno Cusson</i> (2009)
48.	<i>Peter Grant v. Torstar Corp.</i> (2009)
49.	<i>R. v. Breeden</i> (2009)
50.	<i>Whatcott v. Saskatchewan (Human Rights Tribunal)</i> (2010)
CCLA Interventions - Decision pending	
51.	<i>National Post, et al. v. Her Majesty the Queen</i> (2009)
52.	<i>Globe and Mail v. Canada (Attorney General), et al</i> (2009)
53.	<i>Farés Bou Malhab v. Diffusion Métromédia CMR inc., et al.,</i> (2009)
54.	<i>Warman v. Fournier, Fournier and John Does 108</i> (2009)
55.	<i>CBC et al. v. The Attorney General of Quebec et al. and CBC v. Her Majesty the Queen and Stéphan Dufour</i> (2009)
56.	<i>Leblanc et al. c. Rawdon (Municipalite de)</i> (2009)