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May 16, 2008

By Facsimile: 613-995-3484 (17 pages)

Canadian Human Rights Tribunal
160 Elgin Street, 11th Floor
Ottawa, Ontario K1A 1J4

Attn: Ms. Carol Ann Hartung, Registrar

**Re: T1073/5405 and T1074/5505
Richard Warman v. Marc Lemire
Application to Intervene**

I am retained as counsel for the British Columbia Civil Liberties Association ("BCCLA") to request an order pursuant to Rule 8 of the *Canadian Human Rights Tribunal Rules of Procedure* for leave to intervene in this matter.

In support of this application, please find enclosed a Notice of Motion, the Memorandum of Argument of the BCCLA, and the Affidavit of Mr. Murray Mollard, sworn May 14, 2008.

Thank you for your attention.

Sincerely,

Jason Gratl

JBG/mvd

TRIBUNAL NUMBERS T1073/5405 and T1074/5505

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

RICHARD WARMAN

COMPLAINANT

-and-

CANADIAN HUMAN RIGHTS COMMISSION

COMMISSION

-and-

MARC LEMIRE and THE FREEDOMSITE

RESPONDENTS

**NOTICE OF MOTION
IN THE MATTER OF THE CONSTITUTIONAL CHALLENGE
OF SECTION 13 AND 54 OF THE *CANADIAN HUMAN RIGHTS ACT***

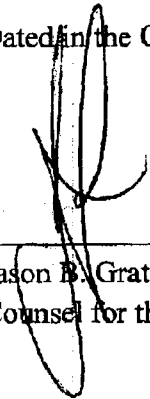
TAKE NOTICE that the British Columbia Civil Liberties ("BCCLA") hereby applies to the Registrar of the Canadian Human Rights Tribunal pursuant to Rule 8(1) of the Canadian Human Rights Tribunal Rules of Procedure, for an order granting the BCCLA interested party status in the matter before the tribunal;

AND FURTHER TAKE NOTICE that the said motion shall be made on the following grounds:

1. The BCCLA has an interest in the matter; and

- 2. The BCCLA's submissions will be useful to the court and different from those of other parties.

Dated in the City of Vancouver, Province of British Columbia, this 16th day of May, 2008.



Jason B. Gratl
Counsel for the Applicant, B.C. Civil Liberties Association

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COPIES TO: Richard Warman
Marc Lemire
Barbara Kulaszka (For Marc Lemire)
Margot Blight (For the Canadian Human Rights Commission)
Simon Fothergill / Alysia Davies (For the Attorney General of Canada)
Paul Fromm (For the Canadian Association for Free Expression)
Douglas H. Christie (For the Canadian Free Speech League)
Marvin Kurz (For the League of Human Rights of B'Nai Brith Canada)
Joel Richler (For the Canadian Jewish Congress)
Steven Skurka (For the Friends of Simon Wiesenthal Center for Holocaust Studies)

TRIBUNAL NUMBERS T1073/5405 and T1074/5505

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

RICHARD WARMAN

COMPLAINANT

-and-

CANADIAN HUMAN RIGHTS COMMISSION

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-and-

MARC LEMIRE and THE FREEDOMSITE

RESPONDENTS

**MEMORANDUM OF ARGUMENT OF THE
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION
ON THE MOTION FOR INTERESTED PARTY STATUS IN THE CONSTITUTIONAL
CHALLENGE OF SECTION 13 AND 54 OF THE *CANADIAN HUMAN RIGHTS ACT***

Introduction

1. This is an application pursuant to Rule 8 of the *Canadian Human Rights Tribunal Rules of Procedure* for leave to intervene in this matter.
2. The British Columbia Civil Liberties Association ("BCCLA") specifically seeks leave to make written and oral submission on the proper interpretation and constitutional status of sections 13 and 54 of the *Canadian Human Rights Act* (the "Act"). As well, the BCCLA seeks standing to introduce evidence and to receive and reply to all other parties' arguments and evidence regarding the proper interpretation of sections 13 and 54 and seeks standing to cross-examine witnesses. At present, the BCCLA does not seek standing to call witnesses.

Position of the BCCLA Regarding Section 13 of the Act

3. If the BCCLA were to receive intervenor standing in this matter, we would argue that sections 13 and 54 of the Act infringe ss. 2(b), 7 and 11(d) of the *Charter of Rights and Freedoms* and that these infringements cannot be justified under s. 1 of the *Charter*.

Merits of the Application

4. Section 50 of the Act gives the Tribunal wide discretion with respect to the granting of interested party status.

Pieters v. Department of National Revenue and the Canadian Human Rights Commission, Interim Ruling, October 3, 2001.

5. In the absence of specific statutory or policy guidelines regarding the appropriate test for intervenor status, we submit that it would not be appropriate for the Tribunal to apply a test that is any more difficult than the test applied for granting intervenor status by courts of law and in particular the Supreme Court of Canada.
6. The test for intervenor standing as applied by the SCC generally considers the following questions:
 - a) whether the applicant has an interest in the matter; and
 - b) whether the applicant's submissions will be useful to the court and different from those of other parties.

R. v. Finta, [1993] 1 S.C.R. 1138.

Reference Re Workers' Compensation Act, 1983 (Nfld.), [1989] 2 S.C.R. 335.

7. Given these criteria, we submit that the BCCLA meets the test for intervenor status before the Tribunal.

Interest in the Matter

8. The BCCLA has a substantial and distinct interest in the matter before the Tribunal. The BCCLA is the most active autonomous civil liberties organizations in Canada and has been involved in case work, public education, and public policy and law reform on issues engaging freedom of expression and other civil liberty interests of Canadians. The issues before the Tribunal in this case fall squarely within the mandate of the BCCLA to preserve, defend, maintain and extend civil liberties and human rights across Canada.
9. The BCCLA has a long history of involvement in issues of law that arise when freedom of expression interests are perceived to clash with society's interest in promoting tolerance and

equality. The BCCLA is recognized as an important public interest organization in respect of freedom of expression as well as being recognized for its work in the area of discrimination.

10. The BCCLA has had significant involvement in constitutional litigation regarding freedom of expression and discrimination/ equality matters. We intervened before the BC Human Rights Tribunal in *Canadian Jewish Congress v. North Shore Free Press and Doug Collins* (7) (1997), 30 C.H.R.R.D./5 (B.C. Human Rights Tribunal). That case involved the constitutionality of hate speech provisions of the BC *Human Rights Code* and bears many similarities to the matter before the Tribunal in this case.
11. The BCCLA was also granted intervener status by the B.C. Human Rights Tribunal in *Pegura and Forster v. School District No. 36(No. 4)*, 2004 BCHRT 237. In granting intervener status to the BCCLA, the Tribunal Member noted:

I find, first, that the material before me indicates that the BCCLA has a demonstrated interest in issues such as the one before the Tribunal in this matter. The BCCLA is an important public interest organization in respect of freedom of expression, and has done significant work on matters of expressive freedom, including those that require a balancing of free speech with equality rights...

Further, this case raises some unique issues which do not appear to have been extensively canvassed in the human rights jurisprudence. Given BCCLA's specific interest and experience in matters such as these, I am prepared to accept that the BCCLA's participation may assist the Tribunal in its resolution of the interpretation issue relating to s.8(1) of the *Code*.

12. Other notable litigation regarding freedom of expression and the constitutionality of laws that conflict with freedom of expression interests in which the BCCLA has intervened include *Chamberlain et al. v. Surrey School District No. 36*, [2002] S.C.J. No. 87 (S.C.C.), *Little Sisters Book and Art Emporium and the British Columbia Civil Liberties Association v. Minister of National Revenue and Minister of Justice*, [2000] 2 S.C.R. 1120 (S.C.C.), *R. v. Butler*, [1992] 1 S.C.R. 452 (S.C.C.), and *R. v. Small*, [1973] 4 W.W.R. 563 (B.C.C.A.).

Affidavit of Murray Mollard, sworn May 14, 2008 at paras. 6, 7.

13. BCCLA's mandate and historical involvement in issues of freedom of expression as well as liberty interests protected under s. 7 of the Charter constitute a significant interest in the present matter. The intervention of the BCCLA will add this institutional experience and historical perspective to the arguments before the Tribunal.
14. In its submissions, the BCCLA will draw from its historical involvement with civil liberties issues and its unique perspective as an organization concerned with the liberties of Canadians at large. The BCCLA has been granted intervenor status before other courts and tribunals on several occasions in order to provide the court or tribunal with this perspective.

Special Expertise or Knowledge that Could Assist the Court

15. The BCCLA has an extensive record of advocacy in defence of the constitutional rights and civil liberties of all Canadians. The BCCLA has intervened in, been a party to, or made submissions with respect to numerous actions, appeals, and legislative consultations regarding freedom of expression and s. 7 interests. As noted above, this public interest advocacy has included submissions to the B.C. Human Rights Tribunal, the Human Rights Research and Education Centre in Ottawa, and the House of Commons Standing Committee on Justice and Legal Affairs. As a result of this work, the BCCLA has developed a degree of institutional expertise in this field.

Affidavit of Murray Mollard, sworn May 14, 2008 at paras. 6-9

16. The BCCLA has been operating as a non-profit society since 1963. It is Canada's most active autonomous civil liberties organization. It currently has approximately 1100 members. The diversity of its membership and Board of Directors (made up of academics, lawyers, business people, social workers, students and others) is indicative of the breadth of its support-base.

Affidavit of Murray Mollard, sworn May 14, 2008 at paras. 2-4.

17. The BCCLA has a large and diverse membership and represents a philosophy widely held: that individual liberties and constitutional freedoms should be closely guarded against restrictions and limitations by the state.

Position to be Taken by the BCCLA if Granted Leave to Intervene

18. The BCCLA's submissions will present its views of the proper interpretation and constitutional status of sections 13 and 54 of the Act. The BCCLA's position is:

- Section 13 of the Act unreasonably infringes on freedom of expression as guaranteed under s. 2(b) of the *Charter*.
- Sections 13 and 54(1)(c) create a criminal offence without providing the respondent with the defences common to analogous criminal offences or requiring proof beyond a reasonable doubt, proof of a culpable mental state (or *mens rea*), or a strict application of the rules of evidence and accordingly violate the respondent's rights under ss.7 and 11(d) of the *Charter of Rights and Freedoms*.
- Section 13 creates an arbitrary distinction whereby an individual may be denied his/her rights under ss. 2(b) and 7 on the basis of using the internet or intranet as a medium of expression as opposed to other forms of media.

- The infringements of ss. 2(b), 7 and 11(d) are not saved by s. 1 of the *Charter* because the measures adopted are not rationally connected to the objective of the legislation and they fail to impair the abridged rights as minimally as possible.
19. These perspectives will inform the BCCLA's submissions on both the issues of the appropriate interpretation of ss. 13 and 54(1)(c) and on the relevant *Charter* issues.
 20. Consequently, the BCCLA will submit that s. 13 of the Act is unconstitutional and inconsistent with the *Charter* in its capacity to restrict freedom of expression in a private context and s. 54(1)(c) of the Act is unconstitutional and inconsistent with the *Charter* in its capacity to criminalize certain communications broadcast by internet and intranet media. The BCCLA will submit that ss. 13 and 54(1)(c) of the Act should be struck on the basis that they are unconstitutional.

Submissions to be Made by the BCCLA if Granted Leave to Intervene

Section 7

21. In 1998, s. 54(1) of the Act was amended to grant the Tribunal the authority to order a respondent to pay a penalty of up to \$10,000 for engaging in a discriminatory practice under s. 13. In the submissions of the BCCLA, this is an extraordinary power not reflected anywhere else in the Act, and a power that is inconsistent with the remedial purpose of the Act.
22. The imposition of a financial penalty of significant magnitude on the basis of one's moral blameworthiness takes the Tribunal well beyond the normal parameters of its jurisdiction. The significant correlations between the imposition of a penalty under s. 54(1)(c) and the sentencing process in the criminal law are inescapable.
23. The authority of the Tribunal to order payment of a significant financial penalty enables the Tribunal to deprive an individual of his/her right to liberty and security of the person without the institutional and procedural safeguards that exist in the criminal process.
24. Section 7 of the *Charter* requires that a person may only be deprived of their security and liberty in accordance with the principles of fundamental justice. This includes a requirement that criminal prosecutions must be carried out in accordance with rigorous procedural safeguards, including common law and statutory defences, the presumption of innocence until proven guilty beyond a reasonable doubt, and *mens rea* elements that require proof of a culpable mental state.
25. Section 11(d) requires that any person charged with an offence has a right to a fair and public trial. Section 11(d) guarantees the rigorous procedural safeguards mentioned above.

26. Sections 13 and 54 of the Act allow a person to be deprived of their security and liberty on the basis of the civil standard of the balance of probabilities, do not require proof of a *mens rea* requirement, and make no provision for criminal law defences.

Section 2(b)

27. Freedom of expression is a fundamental democratic right. The internet has become an important forum for the publication of written material. The BCCLA will argue that access to controversial written material is a necessary pre-condition for democratic self-rule.

28. The inclusion of communication by any means of "a computer or a group of interconnected or related computers" in s. 13 extends the scope of this provision to include private communications.

29. Section 13 of the Act restricts the ability of Canadians to convey messages both publicly and privately without providing for defences of truth or fair comment, both of which are defences to defamatory words in civil actions and to the private communication of hate propaganda under s. 319 of the *Criminal Code of Canada*.

30. Section 54(1)(c) also restricts the freedom of expression guaranteed by the *Charter*. A Tribunal exercising its authority under s. 54(1)(c) is setting limits on the scope of freedom of expression under s. 2(b) of the *Charter* by imposing a penalty for expressing one's views.

Section 1

31. In the BCCLA's submissions, the measures adopted in ss. 13 and 54(1)(c) are not proportional to the objective of addressing concerns of the dissemination of hate messages. The application of s. 13 to internet and intranet communications creates an arbitrary, unfair and irrational distinction between messages communicated via computer networks and messages expressed in other forms of media.

32. The limits also fail to minimally impair the protected rights and freedoms. The measure adopted is significantly broader than necessary as it (a) includes private communications and (b) fails to include statutory defences recognized by the *Criminal Code of Canada*. The effects of the measure represent an unacceptable abridgment of the right to freedom of expression and the right not to be deprived of one's liberty except in accordance with the principles of fundamental justice.

Prejudice to Other Parties

33. The BCCLA submits that no prejudice will be caused to other parties by it being granted leave to intervene. The BCCLA is making this application to intervene prior to the deadline

for filing written arguments. We are in a position to meet the deadline and file our factum at the same time as other intervenors.

34. The submissions the BCCLA seeks to make as an intervenor will be restricted to the constitutionality of ss. 13 and 54. The BCCLA does not intend to repeat any arguments already being put forward by other parties and intervenors. To this end, the BCCLA intends to focus its submissions primarily on the ss. 7 and 11(d) *Charter* interests engaged in this matter.
35. The BCCLA submits that having the right to introduce evidence and cross-examine witnesses will greatly assist in the full presentation of its arguments. On February 23, 2006, other interested parties in this matter were granted the right to present evidence and cross-examine witnesses with respect to the constitutionality of s. 13 and related provisions of the Act. In the submissions of the BCCLA, the Tribunal will benefit significantly if this evidence is tested under cross-examination in light of the unique perspective the BCCLA proposes to take on the *Charter* issues. The BCCLA takes the position that its submissions regarding the proper interpretation of ss. 13 and 54 can only be fully developed if it is granted standing to test the evidence of the other parties.

Conclusion and Order Sought

36. In conclusion, the BCCLA respectfully requests leave to intervene in the Constitutional Challenge of ss. 13 and 54 of the Act before this Tribunal. Owing to the complexity of the arguments involved, the BCCLA asks for the right to file a written argument no longer than 30 pages, to introduce evidence, to receive and reply to all other parties' arguments and evidence regarding the proper interpretation of ss. 13 and 54, to cross-examine witnesses, and to present oral argument. At this point in time, the BCCLA does not anticipate a need to call witnesses, but we request permission to apply for this right in the future.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated in the City of Vancouver, Province of British Columbia, this 16th day of May, 2008.



Jason B. Gratl

Counsel for the Applicant, British Columbia Civil Liberties Association

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TRIBUNAL NUMBERS T1073/5405 and T1074/5505

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

RICHARD WARMAN

COMPLAINANT

and

CANADIAN HUMAN RIGHTS COMMISSION

COMMISSION

and

MARC LEMIRE and THE FREEDOMSITE

RESPONDENTS

**AFFIDAVIT OF MURRAY MOLLARD
(APPLICATION OF THE BC CIVIL LIBERTIES ASSOCIATION
FOR LEAVE TO INTERVENE)**

I, MURRAY MOLLARD, Barrister and Executive Director of the B.C. Civil Liberties Association, of 550 - 1188 West Georgia Street, in the City of Vancouver, Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

- I am the Executive Director of the B.C. Civil Liberties Association ("BCCLA"), and accordingly have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be on information and belief and, as to such facts, I verily believe the same to be true.

2. The BCCLA is a non-profit, non-partisan advocacy group incorporated on February 27, 1963, pursuant to the *Society Act*, with its registered office at 550 – 1188 West Georgia Street, Vancouver, British Columbia. The objects of the BCCLA include the promotion, defence, sustainment and extension of civil liberties and human rights. We speak out on the principles which promote individual rights and freedoms, including freedom of thought, belief, conscience, religion, opinion and expression, equality rights, and autonomy rights generally.
3. The BCCLA has a collective expertise in considering the sometimes very difficult issues that civil liberties involve. Our organization includes over one thousand members, thirty-eight directors and seven full-time staff members engaged in public education, complaint assistance, law reform and litigation. We have played an important and prominent role on almost every significant national civil liberties issue for over 40 years.
4. The BCCLA is an autonomous civil liberties organization. We have no formal, and few informal, ties to the Canadian Civil Liberties Association ("CCLA"), based in Toronto. Although both organizations address civil liberties issues with national scope, as well as issues arising in their respective home provinces, we neither coordinate our efforts nor share our resources. The BCCLA is further distinguished by having a large and active volunteer Board of Directors that directs the BCCLA's policy and agenda. It has been able to tap the expertise and energies of a wide range of academics, professionals, and lay persons with expertise in civil liberties work. This has given the BCCLA a unique status in this country as the only truly grass-roots citizens' organization devoted exclusively to civil liberties.
5. Freedom of expression, as a fundamental democratic right, is central to the BCCLA mandate. The BCCLA believes that the defense of fair comment is one of the most significant protections for freedom of expression in our country. The BCCLA is seeking leave to intervene in this case because of its potential to profoundly shape the scope of this defense, and thus its availability to citizens seeking to voice their views on matters of public importance.

6. The BCCLA has frequently engaged with the need to balance freedom of expression interests against competing freedom of expression (and other civil liberties) interests held by those advocating on either side of a controversial issue. The BCCLA has considerable experience as interveners in assisting the Supreme Court of Canada to craft leading decisions on freedom of expression. Examples include:

- (a) *BC Teacher's Federation and Canadian Federation of Students v. TransLink and BC Transit*, a *Charter* case dealing with advertising restrictions on transit heard in March 2008, decision reserved;
- (b) *WIC Radio Inc. and Rafe Mair v. Kari Simpson*, a defamation case heard in December 2007, decision reserved;
- (c) *Chamberlain et al. v. Surrey School District No. 36*, [2002] S.C.J. No. 87, on the subject of the censorship of books depicting same-sex parented families in schools;
- (d) *R. v. O.N.E.*, [2001] 3 S.C.R. 478, on the subject of the appropriate scope of publication bans given the value of freedom of the press;
- (e) *R. v. Sharpe*, [2001] 1 S.C.R. 478, on the definition of "child pornography" in section 163 of the *Criminal Code*;
- (f) *Little Sisters Book and Art Emporium and the British Columbia Civil Liberties Association v. Minister of National Revenue and Minister of Justice*, [2000] 2 S.C.R. 1120, in which the BCCLA acted as co-plaintiff in this ten year battle against Canada Customs regarding their censorship of gay and lesbian literature;
- (g) *R. v. Butler*, [1992] 1 S.C.R. 452, regarding the constitutionality of the obscenity provisions of the *Criminal Code*.
- (h) *R. v. Small*, [1973] 4 W.W.R. 563 (B.C.C.A.), in which the BCCLA provided legal assistance to a theatre company on the appeal of their conviction under the

obscenity provision of the *Criminal Code* for the performance of the play "The Beard."

7. The BCCLA has been granted intervener status in cases before other courts and tribunals dealing specifically with freedom of expression issues, including:
 - (a) *R v Spratt; R v Watson*, leave to intervene granted by the B.C. Court of Appeal, (protest 'bubble zones' around abortion clinics);
 - (b) *BC Teacher's Federation and Canadian Federation of Students v. TransLink and BC Transit*, 2007 BCCA 221 (political advertising on public transit buses);
 - (c) *Kempling v. The British Columbia College of Teachers*, 2005 BCCA 327 (freedom of expression versus responsibilities of high school teachers);
 - (d) *Davidson v. Attorney General of B.C.*, 2005 BCSC 1765 (publication ban in the context of a highly political private prosecution);
 - (e) *Pegura and Forster v. School District No. 36 (Surrey)*, (2004) (discrimination alleged based on public statements made at a school board public meeting)
 - (f) *City of Vancouver v. Maurice et al.*, 2002 BCSC 1421 (S.C.) (freedom of expression and court injunctions against protest)
 - (g) *Canadian Jewish Congress v North Shore Free Press and Doug Collins*, (November 4, 1997), [1997] B.C.H.R.T.D. No. 23 (constitutionality of hate speech provisions of BC *Human Rights Code*).
8. Other examples of cases engaging civil liberty interests and questions of constitutional validity in which we have intervened include:
 - (a) *Charkaoui v Canada (Minister of Citizenship and Immigration)*, 2007 SCC 9 (security certificate procedures);

- (b) *May v. Ferndale Institution*, 2005 SCC 82 (availability of habeas corpus in provincial superior courts);
 - (c) *Reference re Same Sex Marriage*, 2004 SCC 79;
 - (d) *R. v. Malmö-Levine*, *R. v. Caine*, [2003] 3 S.C.R. 571; *R. v. Clay*, [2003] 3 S.C.R. 735 (opposing marijuana prohibition on s.7 and division of powers grounds);
 - (e) *Sauve v. Canada (Chief Electoral Officer)*, [2002] 3 S.C.R. 519 (prisoners' voting rights)
 - (f) *Babcock v. Attorney General (Canada)*, [2002] 3 S.C.R. 3 (challenge to validity of the Crown Privilege provision of the Canada Evidence Act);
 - (g) *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31 (religious freedom in private college);
 - (h) *R. v. Cuerrier*, [1998] 2 S.C.R. 371 (fraud in failing to disclose HIV status vitiating consent).
 - (i) *Reference Re Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158 (electoral districts).
9. Freedom of expression issues have also been central to BCCLA public advocacy and education efforts. As a result, we are widely recognized as one of the foremost defenders of free expression in Canada. Examples of this public advocacy work over the past five years include:
- (a) Supporting the Falun Gong's efforts to maintain their round-the-clock peaceful protest of Chinese persecution. The City of Vancouver ordered the group to remove the small structure in which a single person sits in vigil outside the Chinese Consulate. Since January of 2005, the BCCLA has acted as a consultant to the group and their counsel, in addition to corresponding with City officials and

commenting extensively in the media on the freedom of speech issues involved;

- (b) Calling on the York School Board in Ontario and the Canadian Jewish Congress to reconsider their opposition to the nomination of *Three Wishes*, a book of interviews with Israeli and Palestinian children, for the prestigious Silver Birch Award. In our open letter dated March 7, 2006, the BCCLA expressed concern that this opposition would effectively discourage children from reading the book. We argued that intellectual freedom and access to controversial written material are a necessary pre-condition for democratic self-rule, and that these values merited protection for young readers as well as old;
- (c) Denouncing the decision of Telus management to block a website set up by their own employees regarding an ongoing labour dispute. In our press release of July 26, 2005, the BCCLA took no position in the labour dispute itself, but pointed out that Telus was leveraging its power as a telecommunications service provider to censor a specific group, shut down debate and limit the messages conveyed about the labour dispute;
- (d) Urging the Attorney General of British Columbia to provide legal immunity for public libraries who distribute materials in their collection which are the subject of a suit for defamation, but which have not yet been found to be defamatory by a court of law. We argued that holding libraries liable for 'publishing' material that is merely potentially defamatory is a blatant violation of free expression by way of prior restraint. The Attorney General heeded our advice and on October 7, 2004 the government passed Bill 62 amending the *Libel and Slander Act*, R.S.B.C. 1996, c.263 accordingly;
- (e) Making submissions to the Standing Committee on Justice and Human Rights regarding Bill C-20, which amended the child pornography provisions of the *Criminal Code*. In our submissions of August 11, 2003, we supported prohibition of mere possession of pornography, which depended on the assault of actual children for its production. However, we argued that other aspects of the


provision departed from the principle of harm, and therefore represented unjustifiable infringements of free expression;

(f) Issuing a January 10, 2002 press release in support of the protesters in Edmonton who chose to express their views about Canada's electoral system by eating their ballots. The BCCLA condemned the decision of Elections Canada to attempt to silence the protest by prosecuting them under provisions of the *Elections Act* clearly designed for another purpose.

10. I believe that the submissions of the BCCLA will bring a different and useful historical and contextual understanding to these issues on this Application.

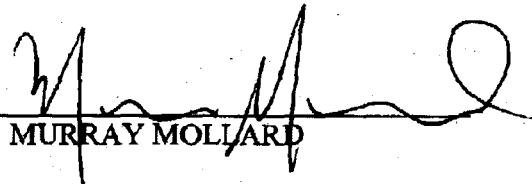
11. I swear this Affidavit in support of an application by the BCCLA for leave to intervene in this matter.

SWORN BEFORE ME at the City of)
Vancouver, in the Province of British)
Columbia this 14th day of May, 2008)



A Commissioner for taking Affidavits for)
British Columbia.)

MICHAEL VONN
550-1188 WEST GEORGIA
VANCOUVER, B.C., V6E 4A2



MURRAY MOLLARD