Friends of Freedom

A private and confidential newsletter for the supporters of the Canadian Free Speech League, dealing in cases of censorship and persecution of political, religious, and historical opinion.

"It's a funny thing about free speech: It can't be just for your political friends. If freedom means anything, it is the one valuable gift you have to give to your worst enemies, in order to keep it for yourself." -- Douglas Christie

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Ahenakew Victory

At the end of May, Mr. Justice R.D. Laing, Chief Justice of the Saskatchewan Court of Queen's Bench, brought some good news for free speech when he overturned the conviction of David Ahenakew on charges of promoting hatred against a group, and ordered a new trial.

The section of the Criminal Code reads as follows:

"319.(2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of
(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
(b) an offence punishable on summary conviction.

Defences (3) No person shall be convicted of an offence under subsection (2),
(a) if he establishes that the statements communicated were true;
(b) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;
(c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or
(d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada."

The Crown has since decided to proceed with an appeal to the Saskatchewan Court of Appeal, but as Dr. Ahenakew's lawyer, Doug Christie, pointed out, there is no new evidence to contradict the fundamental lack of evidence for the necessary intention (which was the basis for the appeal decision) so it's unlikely that a new trial will have any different verdict.

It was somewhat disappointing to hear that the judgment had failed to give effect to the words "other than in private conversation," and had in fact ratified the judgment of the provincial court judge who once said that when talking to a reporter one must always assume one's comments are public. The judgment nevertheless involved a very important realization that in a conversation between two people that is unpremeditated, spontaneous, argumentative and emotional, intent is a crucial element. In this case, it was missing, and the trial judge ignored that determinative fact.

Essentially, this judgment establishes that where circumstances exist which raised doubt about the intention of the speaker, a high degree of scrutiny has to be given to that issue, which was not done by the learned trial judge in this case. The provincial court judge had looked only at the contents of the statements and decided what he thought, picking and choosing what would be capable of promoting hatred. He eliminated some of the conversation and asserted that other parts would have promoted hatred. He did not pay any attention to the issue of the surrounding circumstances, the nature of the conversation itself, and the denial of intent by the accused.

This gives some hope for the thought that where a person's intention is not obvious and where

circumstances exist making it unlikely that public promotion of hatred could occur, intent may very well be the missing ingredient in the offence.

Either way, this judgment was a welcome relief from the endless series of triumphs by those who assert that ideas they don't like must be criminalized. It was a reassuring demonstration that the powerful don't always win.

The Crown's Appeal may mean that the conviction could be restored and the earlier appeal set aside. From such a bad judgment, it may not even be possible to appeal. The other alternative would be a new trial. Dr. Ahenakew has received support from the Canadian Free Speech League, both during his trial and his appeal to the Court of Queen's Bench, and we intend to continue to support his defense through whatever may occur in the Court of Appeal.

We may even seek leave to cross-appeal on the simple issue that conversation between two individuals, regardless of whether one of them happens to be a reporter, is nevertheless a private conversation. The fact that the reporter chooses to make the private conversation public, should properly mean that the *reporter* is guilty of the offense and not the initial person who speaks it in the private conversation. This logical conclusion, of course, would disturb and offend the media who love to communicate sensation at times with impunity. They would equally like to be able to reproduce salacious gossip and be free from any danger of defamation. But should they be? For defamation, they are not, but the situation is not clear under the hate laws.

Who else but the Canadian Free Speech League is asking this question in the defense of the freedom of the individual and against the power of the media? You, by your support, are enabling our help to defend these important principles and these otherwise helpless individuals.

We stand with them for the simple reason that their rights are our rights. We hope you understand and support us in our continuing efforts.

Victory in Klundert Case

On July 26, 2006, the jury came back in the Jack Klundert case and pronounced two words: "not guilty." This was the conclusion of a ten-year battle.

Jack Klundert is an optometrist in the city of Windsor. He is a devout Christian, who believes that income tax is essentially immoral, illegal, and contrary to all sound judgment, therefore beginning in the year 1994 he began to protest against the Income Tax Act.

At the end of 1993 , he had heard the speech by Murray Gauvreau presenting his arguments for the proposition that the Income Tax Act is illegal and demonstrating the theory that it is contrary to the Constitution of Canada, specifically because as a direct tax, it could not be within the jurisdiction of the federal government under section 91 of the British North America Act, being reserved to the provinces under section 92.

In February 1994, Jack Klundert began to fill out his T-1 income tax form in a totally different way: He would indicate his name and address, place no numbers in the income lines of the return, put a "0" in the box for tax owing, and sign a brief declaration about the legality of income tax.

In 1997, he received a demand to deliver his books and records. This he declined to do, and so he was charged with failure to respond to the demand, under section 238 of the Income Tax Act. On May 1, 1997, he was acquitted of that charge.

Instead of simply making a further demand for an income tax return or alternatively for further records, Revenue Canada decided to charge him with the much more serious charge of income tax evasion under the federal Income Tax Act , section 239. This, in effect, was a criminal charge.

In the spring of 2002, before a jury and Mr. Justice Rogan of the Ontario Superior Court, he was tried for two counts. The first count was for income tax evasion from 1994 to 1998. The second count was for making a false statement in 1996. He was acquitted of the first count by the jury. He was convicted of the second count, by the same jury, at the same time. This created two inconsistent verdicts. The culpability necessary to convict for evasion was the same culpability necessary to convict for the false statement. He was, however, acquitted of income tax evasion in 1996. Thereafter the government appealed the acquittal and the accused appealed the conviction.

In 2004, Justice Dougherty of the Ontario Court of Appeal allowed both appeals. A new trial was ordered. Finally, on June 6th, 2006 a new trial began. It ended when the jury acquitted the accused

of the one and only count remaining on June 26.

Therefore, after a battle from 1994 to2006, Jack Klundert finally emerged victorious. Reports from the trial say there was not one point in the trial where the judge made any legal errors in favor of the accused, which makes it unlikely there could be a successful appeal by the crown.

This is a classic example that the powerful do not always win when a determined person stands up for what they honestly believe to be the truth. Jack Klundert may have been a foolish tax protester, but he was no criminal, as there was no intent to evade any known tax. Jack Klundert testified he did not believe that tax was owing. He testified he was protesting against the Income Tax Act. The jury obviously believed him.

Why can this be considered a free speech case? Simply put, an income tax return is a compulsory statement. They say that income tax is "self assessment." If this is true, then how, in a free and democratic society, can a government criminalize those who fill out a compulsory form in a manner not approved by the government?

It is obvious that some people are beginning to doubt the validity and morality of the Income Tax Act. This sometimes arises from the corruption of government; this sometimes arises from the very high level of taxation; this sometimes is based upon the realization that a person must work almost one-half the year to support government. But whatever the cause, honest and sincere, hard-working people are beginning to question the validity of authority in our state. This is a good thing.

In the modern world, obedience is the prime characteristic being inculcated by governments everywhere, even the so-called "free world." The principles of individual liberty and the assertion of freedom of expression demands that people with unique courage like Jack Klundert, must not be crushed when they stand against the authority of the state. All free individuals should stand against totalitarianism, and respect the courage of individuals like Mr. Klundert, and as well, the jury that had the singular courage to acquit him.

Even though the government may appeal, Jack Klundert has stood alone, through all these years, strong in his faith, and in fact represents the one hope that those who call themselves citizens will not mindlessly accept the title of "tax slave."

For these reasons, we have often mentioned Jack Klundert in this newsletter. Whether you agree with his opinions or not, he has been highly successful in his struggle and continues with his protest. No one knows how his case will finally end, but at this point he appears to have lasted through a long hard struggle that few people could have endured.

Late Note: It appears that the Crown will appeal the Klundert acquittal, so the story is not yet over.

Glen Bahr Case

Glenn Bahr has an ongoing preliminary hearing before the court in Alberta on the charge of promoting hatred under section 319 of the Canadian Criminal Code (see above for the Criminal Code section).

This case has already proceeded to a preliminary hearing and will be going back October 2nd to October 6th of this year at the Winston Churchill Square courthouse in Edmonton. Because the matter is at present in a preliminary hearing, details of it cannot be further discussed. Suffice it to say that there is one very interesting issue that has arisen, and will be likely to arise again. It is possible for any person who wishes to attend, to be in court and hear what that issue is, as long as they don't publish it.

This matter, although paid for by Legal Aid at least as to the court proceedings, has enabled the Canadian Free Speech League to assist in the defense of liberty by paying some of the travel and accommodation costs for the General Counsel the Canadian Free Speech League, Doug Christie, who is defending the accused, Mr. Bahr. The accused has not yet been committed to stand trial and it's possible that he may not be so committed.

The issue at stake in this particular case is the application of the Criminal Code to a website located in the United States. This issue has not been tested at least before any jurisdication other than the Canadian Human Rights Tribunal, a quasi-judicial board.

It is quite obvious that the messages located on many American websites would be illegal in Canada. It is equally obvious the only person who reintroduces those messages into Canada, in other than a private communication, would have to be those persons who choose to search for the website, access it and then choose in some cases, to

download it into Canada. Who has in fact introduced material into Canada? The person who may have put it up there in the first place would have done so by a private communication between himself, on his computer, and the international internet service provider, located in the United States.

It amounts to an offense under section 319 of the Criminal Code of Canada, if the communication (as we have observed in the Ahenakew case) is other than in private conversation. This means at the very least that the only communication that could possibly qualify as public or at least non-private, would have to be the communication which occurs by virtue of the act of downloading the contents of the foreign website. Even this could probably qualify as private unless it was done by more than one person at a time.

Those who dislike freedom are very anxious to limit the scope and significance of the words "other than in private conversation." Even in the judgment of Mr. Justice Laing of the Saskatchewan Court of Queen's Bench, the Chief Justice in fact has declined to give much significance to the words "private conversation." Even the words "private conversation" demonstrate that the effects of the section were never intended to apply to the Internet, which is usually, at least for websites, printed text, and not conversation at all.

This section of the Criminal Code was designed to incorporate restrictions on public speeches and that's why it was written in this way. Those wanting to control free speech are very concerned about the problems created when the section only applies to other than private conversation. They realize that private conversations must be attacked in order to achieve the state described by George Orwell, of the public scrutiny of even private thoughts. If the government of Canada or any government was able to access private thoughts, doubtless they would be very anxious to regulate them! After all, thoughts are the precursors to action!

That is why people who speak out against the prevailing beliefs of our time are so critically dangerous to the establishment. That is why free speech itself is such a significant and dangerous thing. That is why, sadly, the war on terror has quickly become a war on freedom. Control is the goal, and unpopular opinions are the first targets. Websites have become one major method of communicating heresy.

The cases of Glenn Bahr, David Ahenakew, Ernst Zundel, Malcolm Ross, James Keegstra, Mark Lemire, and Alexan Kulbashian, are essentially Canada's version of the heresy trials of old, which are taking place throughout the world right now. The public humiliation associated with them, and with their trials, is designed to render their thoughts unacceptable.

In this context the Canadian Free Speech League must not be misunderstood, or underestimated. Its effect in communicating the reality of censorship, and the dangers of censorship is larger than you might think in a world where any resistance at all is remarkable. Throughout the world there are some of us who still value the right to hear and see things for ourselves, and make up our own minds.

No one else is going to defend this right for you, if *you* don't. The so-called "civil liberties associations," government-funded as they generally are, always seem to draw the line and steer clear of real controversy. They could fund the challenges of the Little Sister's Bookstore for the lesbian pornographic material they desire, but they have not come to the defense of any of the people named in the previous paragraph.

These are "haters" and the civil liberties associations will not come to their defense. But the question still remains how to determine the relationship between hatred and truth, whether they can overlap, and whether citizens should be entitled to make that judgment for themselves, after hearing the evidence.

The Ongoing Battle for Michael Seifert

Michael Seifert's case goes back before the Federal Court for the continuation of his trial to determine the citizenship issue, beginning on September 5th, going on to September 15th. This takes place in the Federal Court at the corner of Georgia and Granville streets, in the city of Vancouver, B.C. for those who would be interested in attending the proceedings.

Michael Seifert, at the age of about 82, (though his real age because of stress seems considerably older) is on the stand testifying about what happened in the transit camp in Balzano, Italy, in late 1944 and early 1945. His former friend, also a camp guard, Peter Makelke, testified against him and made it appear worse for him. How Peter could avoid the same consequences is not difficult to imagine, but there

he was, testifying for the prosecution, living in a beautiful condominium in North Vancouver, apparently absolutely unafraid that his citizenship would be affected by his wartime membership in the same organization as the man against whom he was testifying.

That same Peter was the godfather of John Seifert, Michael Seifert's son. He lived across the back lane from Michael for many years. They were close personal friends and frequently played cards together. To have sat in the court in Vancouver and watched his testimony, one could not help but feel pity for him, though more so for the man against whom he testified.

How can the country of Canada justify doing this against old men, who during the war, at less than 20 years of age, acted as guards in a transit camp for the German authorities. The outrageous stories told about Michael Seifert are inconsistent with the mild-mannered, kindly and religious man who has been a good husband and father for over 50 years.

The accusations against him are utterly inconsistent with his entire character, either before or since the brief period of approximately six months from November 1944 to April 1945. Whatever the truth may be, it defies imagination to believe that a man of such otherwise benign character could conduct himself in the way alleged, and never afterwards do the slightest thing wrong. It leads to the totally absurd conclusion that the best cure for a mass murderer is to do nothing at all but allow them to go free and observe the miraculous rehabilitation that simply changing locations would accomplish.

This above all else demonstrates the absurdity of the accusation. The Canadian Free Speech League has paid much to obtain the transcripts both of the extradition hearing, the Ministerial review hearing, and now of the citizenship revocation application going on in the Federal Court at the present time before Mr. Justice O'Reilly.

As you can see, the prosecution is proceeding on three fronts at the same time, against a man who is represented by just one lawyer, funded by a private organization and is clearly overwhelmed by the burden of paper alone, brought against his client. The absence of your support in this regard would render a serious injustice possible. Your presence in court to watch these proceedings would be extremely helpful. Your donation would help to pay for the thousands of dollars necessary to obtain the transcripts.

This is a case of political persecution, reserved for Germans, for political effect. The guards in our camps would never face such trials, relying on 60-year-old inmate testimonies.

The Kulbasian Case

The case of Alexan Kulbashian is now before the Federal Court. Doug Christie, General Counsel of the Canadian Free Speech League, is the counsel for Mr.Kulbashian. This case involves virtually the same issue as the case of Mr.Marc Lemire (see below).

The case questions the constitutional validity of a section of the Canadian Human Rights Act as it applies to the Internet. As is usually the custom, the government agents who defend this legislation are very anxious to delay any judicial consideration. They prefer to have the matter disposed of by the Canadian Human Rights Tribunal before Mr. Kulbashian can have a hearing before the court. Our experience of the Canadian Human Rights Tribunal has demonstrated that it is usually a rubber stamp for the prosecution, not really even pretending to be impartial.

Mr. Kulbashian has recently decided not to agree to defer consideration of this case until the case of Marc Lemire is dealt with by the Canadian Human Rights tribunal. We will keep you informed as to the nature of this proceeding in due course.

One of the unique aspects of the Kulbashian case arises from the fact that the legislation cannot be properly extended to Web sites located in the United States, without having the implication that it is only by Canadians accessing the American website, that the message from the website is ever introduced into Canada. The Human Rights Tribunal, by ignoring this argument, has in effect extended its controlling tentacles into the atmosphere of free speech located in the United States.

Somehow or other the Kulbashian case and the Marc Lemire case must come to a resolution of this problem. Controlling Canadian laws should never have access to websites located under the jurisdiction of the American First Amendment. Otherwise, the controlling interests of the Chinese Communist Party could justifiably intercede in the website activity of Chinese persons who choose to use the Internet for services provided in Canada. We would think that an

unreasonable result. However it appears the Canadian Human Rights bodies don't seem to take the same scruples when it comes to their interference in foreign web sites.

Lemire vs. CHRC

Marc Lemire, who operates the Freedomsite website is challenging the Canadian Human Rights legislation against the Internet.

The Canadian Free Speech League is intervening in this important case to endeavor to assist Marc Lemire in his constitutional challenge to the provisions of section 13.1 of the Canadian Human Rights Act which purports to regulate websites — even those located in the United States.

Against him are arrayed the Canadian Jewish Congress, the B'nai B'rith, the government of Canada, and the Canadian Human Rights Commission, all of whom support the legislation. These are all government assisted bodies.

Once again , the Canadian Free Speech League relies on donations either from the time and efforts of Doug Christie, our General Counsel, or from those of you who desire to support our cause by your donations. Every day, travel expenses, hotel bills, printing costs, transcripts, and other expenses are incurred to defend these important rights. No one else can pay for these things. Although we hate to ask, we know that unless you choose to give us your help, we're unable to carry on with this important work. Unfortunately, we don't find any other groups of people willing or able to do it.

Sad News

We have received word of the untimely deaths of two people who fought for freedom of speech in the past.

Roger Rocan, who sued and then settled with Warren Kinsella over statements Kinsella made in his book "Web of Hate" died several weeks ago of cancer. Roger was active in politics in Western Canada, and after recently completing a watch-maker's course in Quebec, and had returned to the West to open his shop whe he became ill.

Claus Pressler, who with his wife Eileen, successfully sued David Lethbridge and the media over the portrayal of their home as a right-wing compound, was killed on Sunday, July 9th, in a car accident, with a memorial service held on July 22nd.

Other Recent Canadian Free Speech Concerns

Lubomyr Prytulak had a web site which was the subject of a complaint by the Canadian Human Rights Commission at the behest of a special interest group. His website questioned the Holocaust, and by so doing, it appears that he has touched a great taboo. In addition, his story made the front page of the Province newspaper on July 9th, 2006, featuring prominently the fact that he lives with a female justice of the Supreme Court of British Columbia.

The lawyer from California stated that he anticipated the people of B.C. would be distressed to see the connection between a B.C. Supreme Court Justice and a person who has created, maintained and updated a website that resulted in the hate speech complaint. Whatever may have been the contents of Mr. Lubomyr Prytulak's website, it is obvious that his relationship with the Judge was the target point. Perhaps it was intended to be so, using a campaign of "guilt by association." Free speech detractors often act to delegitimize their opponents by detaching them from any and all authority, to isolate them from any support.

It is ironic that those who seek to defend their group against defamation, as Mr Lubomyr Prytulak indicated was his intention, should be subject to public humiliation for doing so. It seems only certain approved groups are entitled to defend their reputations from any possible defamation. No wonder everyone is so frightened to discuss controversial matters or defend their own ethnic group in fear of the consequences for people like Mr. Lubomyr Prytulak and his partner.

21st Orwell Award

The 21st Annual George Orwell Free Speech Award dinner is set for October 21, 2006, in the usual Victoria location. If you would like to reserve early and be sure of a place, please contact us. The cost is $30.00 per person.

Thank you

Your intelligent interest, your kind support, and generous encouragement are greatly appreciated.

Keltie Zubko

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