



## CANADIAN CONSTITUTION FOUNDATION May 2008 Newsletter

### “Judging Bastarache” study to be released in June

In 2007 the CCF released “Judging the Judges,” a first-of-its-kind study evaluating the track record of Supreme Court of Canada Justices in rulings which affect individual freedom, economic liberty, and equality before the law. Released prior to the 25<sup>th</sup> anniversary of the *Canadian Charter of Rights and Freedoms*, “Judging the Judges” garnered extensive media attention across Canada. The Supreme Court of Canada has posted a link to our study on its own web site.

With the retirement of Supreme Court of Canada Justice Michel Bastarache at the end of June, the CCF will release a study which analyses his rulings since he was appointed to the Court in 1997.

### CCF not intervening in *Lemire* human rights case

The CCF intends to challenge the constitutional validity of Section 13 of the *Canadian Human Rights Act*, which prohibits saying or writing anything “that is likely to expose a person to hatred or contempt.” Section 13 is being used to prosecute Maclean’s Magazine for running a section of Mark Steyn’s book *America Alone*. A citizen who violates Section 13 can be fined up to \$10,000 and can also be ordered to pay up to \$20,000 to the “victim” whose feelings were hurt.

Section 13 of the *Canadian Human Rights Act* is now being challenged by Marc Lemire, whom Jonathan Kay of the *National Post* describes as a former leader of Canada’s neo-Nazi Heritage Front.

Dealing with the Canadian Human Rights Tribunal has been very frustrating. In April, our Foundation inquired several times as to whether we met the requisite time limits for intervening in the Marc Lemire case. The Tribunal’s staff did not answer with a “yes” or “no,” essentially telling us that the only way to find out would be to apply for intervenor status. Accordingly, the CCF applied for intervenor status, for the sole purpose of finding out whether we could – or could not – intervene in this case. The Tribunal then informed us that we could *not* obtain intervenor status.

The CCF plans to take advantage of other opportunities to challenge Section 13 of the *Canadian Human Rights Act* – and similar provincial legislation – as an unreasonable violation of Canadians’ right to free expression.

## Prominent speakers confirmed for October law conference

The Days Inn Downtown Toronto has been booked for October 17-19, 2008, for the CCF's second annual law conference: "Individual Freedom and the Common Good – Defining Human Rights in a Free Society."

Last year's conference saw over 100 law students, lawyers, judges and law professors enjoy lively debate between panelists. Conference participants also enjoyed listening to, and asking questions of, two outstanding keynote speakers: Harvard Law Professor and former U.S. Solicitor General **Charles Fried**, and Supreme Court of Canada Justice **Marshall Rothstein**.

At this October 17-19 conference, **Thomas Isaac** and **Kate Kempton** will speak on the first panel: "Aboriginal Rights in the 21st Century: can equality and aboriginality be reconciled?"

**Elizabeth Brubaker** is one of the panelists speaking on the second panel: "Protecting the environment through private property rights: is legislation the *best* solution?"

**Alan Borovoy** has accepted our invitation to speak on the third panel: "Freedom of expression under attack: do human rights need to be redefined?"

**Thomas Isaac** is a partner in the Business Law Group of McCarthy Tétrault. He is recognized nationally for his expertise in Aboriginal law, but also has experience in a variety of other fields including environmental law, litigation, oil and gas, power and mining. Mr. Isaac has been counsel in numerous aboriginal law cases, including *Haida Nation v. British Columbia (Minister of Forests)* and *Taku River Tlingit First Nation v. Tulsequah Chief Mine Project*.

**Kate Kempton** is a partner with Olthuis, Kleer, Townshend. She has vast experience in environmental and aboriginal law, including litigation. Ms. Kempton was recently selected to be included in *The Best Lawyers in America 2008* by her peers in the field of Aboriginal Law. Over the years, Ms. Kempton has worked with the Sierra Club of Canada and Environmental Defence Canada, where she has the opportunity to lead the groups as director. Cases that Ms. Kempton has been involved in include *R. v. Kerton*, *R. v. Pecchiarich*, and *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation*.

**Elizabeth Brubaker** is the executive director of Environment Probe, a division of Energy Probe Research Foundation. She has been with the Foundation since 1987, and became executive director in 1994. Elizabeth has authored *Greener Pastures: Decentralizing the Regulation of Agricultural Pollution* (2007); *Liquid Assets: Privatizing and Regulating Canada's Water Utilities* (2002); and *Property Rights in the Defence of Nature* (1995). Ms. Brubaker has also contributed chapters to 13 books published in four countries, and is a member of the National Round Table on the Environment and the Economy.

**Alan Borovoy** has been General Counsel of the Canadian Civil Liberties Association since 1968, prior to which he worked with other human rights and civil liberties organizations. Mr. Borovoy has made presentations before public inquiries and Parliamentary Committees on issues such as mandatory drug-testing in the workplace, wiretapping, and police race-relations. His community organizing activities have included delegations to the federal and provincial governments on issues of capital punishment,

religious education in the public schools, the War Measures Act, campus speech codes, and national security and intelligence. He is the author of *The New Anti-Liberals*; *Uncivil Obedience: The Tactics and Tales of a Democratic Agitator* and *When Freedoms Collide: The Case for Our Civil Liberties*. In addition to his B.A. and LL.B., he has received four Honourary Doctor of Laws Degrees, the Law Society Medal from the Law Society of Upper Canada in 1989, and an Award of Merit from the City of Toronto in 1982. He was made an Officer of the Order of Canada in 1982.

## Youngest constitutional freedom fighter weighs 8 lbs 4 oz

Alicia Marie Carpay was born May 10 at the Foothills Hospital in Calgary, weighing 8 lbs 4 oz. Alicia is the third child of John and Barbra Carpay. Victor and Anastasia are delighted to have a new sister.

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