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NEWS RELEASE

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FOR IMMEDIATE RELEASE

B.C. Court of Appeal Agrees with BCCLA: Human Rights Tribunal Should be Allowed to Determine if "Sexual Orientation" Provisions Protect "BDSM"

The BC Court of Appeal upheld a decision by the BC Human Rights Tribunal to accept a human rights complaint for filing. The complaint alleged discrimination on the grounds of sexual orientation due to the complainant's practice of a "BDSM lifestyle." The complaint can now proceed in the normal course to a hearing before the Tribunal.

The BCCLA intervened at both the BC Supreme Court and the Court of Appeal to argue that the Tribunal should be afforded the opportunity to consider whether a restrictive interpretation of the sexual orientation would infringe fundamental rights. The Court of Appeal agreed with the BCCLA that it was premature to review the decision of the Tribunal, and dismissed the appeal. The Court of Appeal found that the Tribunal decision simply opens the door to the examination of evidence and further submissions on an unusual question.

Grace Pastine, litigation director and counsel for the BCCLA: "The question before the Court was not whether the complainant's sexual practices are or ought to be protected under the Human Rights Code. The issue was whether the Tribunal should be allowed to hear evidence of the complainant's sexual identity and what BDSM is. Human rights legislation is frequently interpreted more expansively over time in response to changing social conditions – this decision allows the Tribunal to consider the issue based on facts and a full evidentiary record, rather than dismissing the complaint out of hand."

Peter Hayes brought a human rights complaint against the Vancouver Police Department alleging that a VPD officer had denied him a chauffeur's licence because Mr. Hayes is a pagan and engages in sexual behaviour loosely defined as BDSM (bondage and discipline, domination and submission, and sadism and masochism). The Human Rights Tribunal accepted the complaint on the basis of discrimination in relation to services on the grounds of religion. After receiving submissions from the parties, the Tribunal also accepted the complaint on the basis of discrimination in relation to services on the grounds of sexual orientation. The City of Vancouver (acting on behalf of the VPD) brought a petition to review the Tribunal's decision, arguing that the complaint was without merit and could not possibly succeed because BDSM is not a form of "sexual orientation."

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