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FOR IMMEDIATE RELEASE

BCCLA Applauds Supreme Court of Canada Decision in Media Defamation Case

The BCCLA is encouraged by the Supreme Court of Canada judgment in *Simpson v. Mair and WIC Radio*, which dismissed an action for defamation against Rafe Mair. The court ruled that the statements at issue were protected by the law as comment.

The BCCLA appeared as an intervenor in the case. Robert D. Holmes, President of the BCCLA comments: "Protection of vigorous debate on matters of public interest and importance is a key value in our democratic society. The court's ruling will go a long way in ensuring that protection."

The BCCLA argued that defamation law had to be clarified to ensure stronger protection for freedom of expression. The court's ruling that "the evolution of the common law is to be informed and guided by *Charter* values" is a step forward in the common law. The Supreme Court of Canada, through Mr. Justice Binnie, writing the majority judgment, recognized that the common law must develop consistently with freedom of expression. It is not just opinions we agree with that deserve protection. As the court stated: "We live in a free country where people have as much right to express outrageous and ridiculous opinions as moderate ones."

In the litigation the trial judge said the "sting" of the words Mair used was a meaning that Mair testified he did not mean. The Supreme Court has ruled: "It seems to me that defamation proceedings will have reached a troubling level of technicality if the protection afforded by the defence of fair comment to freedom of expression ("the very lifeblood of our freedom") is made to depend on whether or not the speaker is prepared to swear to an honest belief in something he does not believe he ever said."

The Court said the test for the defence of comment was: "could any [person] honestly express that opinion on the proved facts?" This clarifies the law and provides protection for those who publish comments and opinions of others (for example, with letters to the editor). The court called this as an objective honest belief standard. We note the concurring judgments of Mr. Justice Lebel and Mr. Justice Rothstein reasoned that the law should protect comments wherever statements made relate to the underlying facts and that the "honest belief" requirement ought not be part of the test. Mr. Justice Rothstein said: "The defence of fair comment should only require the defendant to prove (a) that the statement constituted comment, (b) that it had a basis in true facts and (c) that it concerned a matter of public interest; and these requirements were met in this case. " There is much to be said for this, particularly in protecting satire and humor.

Rafe Mair is an editorialist who on October 25, 1999 broadcast an editorial during a radio show in which he referred to Simpson in comments by name. Mair was the author of the editorial and the host of the Rafe Mair radio show, which was broadcast by WIC and its associates throughout British Columbia and the Yukon.

Robert D. Holmes, of Holmes & King, Barristers & Solicitors, represented the BCCLA.

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