The Canadian Civil Liberties Association is proud to announce that Nathalie Des Rosiers will be the organization’s next General Counsel, effective July 1, 2009. The current General Counsel, Alan Borovoy, who has been the voice of CCLA since 1968, will retire at the end of June.

“We are very excited to welcome Nathalie,” said CCLA board Chair John McCamus. “She brings a wealth of administrative experience and leadership skills and is deeply committed to civil liberties principles.”

Nathalie is currently Acting Vice-President – Governance of the University of Ottawa. She was Dean of the Civil Law Section of the University of Ottawa's Faculty of Law until November 2008. She obtained an LL.B. from Université de Montréal in 1981, an LL.M. from Harvard University in 1984, and an honorary doctorate from the Law Society of Upper Canada in 2004. She became a member of the Québec Bar in 1982 and of the Law Society of Upper Canada in 1987.

Dean Des Rosiers was president of the Law Commission of Canada from 2000 to 2004. From 1987 to 2000, she was a member of the University of Western Ontario’s Faculty of Law. She served as law clerk to Supreme Court of Canada Justice Julien Chouinard from 1982 to 1983 and then worked in private practice until 1987.

Des Rosiers is the current President of the Canadian Federation of Social Sciences and Humanities. She was President of the Association des juristes d’expression française de l’Ontario (AJEFO), and the Canadian Association of Law Teachers. She received the Médaille de l’Université Paris X in 2007, the Association of Professional Executives of the Public Service of Canada (APEX) Partnership Award in 2004, the Medal of the Law Society of Upper Canada in 1999, and the Order of Merit from AJEFO in 2000.

Nathalie will also become Executive Director of the Canadian Civil Liberties Education Trust.
Top court trashes privacy case

The Supreme Court of Canada recently ruled that police can search household garbage that has been set out for collection without first getting a warrant. In this case, the Calgary police had trespassed on Russell Stephen Patrick’s property six times, seizing and searching the contents of the garbage he had placed out for city collection. The police never had a warrant, and knew that they did not have enough evidence to get one. Prior to this decision, the permissibility of such garbage searches was an open question in Canadian law.

Intervening at the Supreme Court of Canada, CCLA Special Counsel Jonathan Lisus and Alexi Wood (McCarthy Tétrault) argued that the information that can be gleaned from household garbage is so intimate and detailed that a warrant should be required before police can search it. Such constitutional protection, Lisus and Wood argued, should apply until that refuse has been mixed with the garbage of others and become anonymous. In its decision, the Court agreed with CCLA that household garbage is essentially a “bag of information”; however, the court declined to require police to obtain a warrant before searching it. In the Court’s view, when people put garbage out for collection they have abandoned their privacy interest in it.

[R. v. Patrick]

Federal Court refuses to restrain “torture transfers” of prisoners

The Federal Court of Appeal has rejected CCLA’s argument that the Charter should restrain Canadian Forces in Afghanistan from transferring detainees into the custody of Afghan forces, potentially leading to the detainees’ torture and a violation of fundamental human rights. Earl Cherniak, Jasmine Akbarali, and Shannon Puddister (Lerners), CCLA Special Counsel, contended that there is an exception to the limited extra-territorial application of the Charter when Canadian forces are involved in situations that threaten fundamental human rights. They argued that the prohibition against torture, and the transfer of individuals to torture, is one of the most fundamental human rights protections in domestic and international law. Members of Canadian forces should not be ordered, CCLA said, to engage in conduct that violates the most basic human rights protections, just as Canadians back home should not have to worry that such action is taking place in their name.

The Supreme Court of Canada has decided not to review the ruling of the Federal Court.


Activist wins apology, lifting of ban

An activist in the town of Clarington, Ontario has won an apology and the lifting of a ban on his appearance at meetings, after CCLA wrote to support him. In April 2008 Jim Richards criticized the treatment of a young woman who had appeared before the regional council. He said that the behaviour of the regional chair at the meeting was what could be expected “from a bully”. The municipal council then voted to ban Richards from its meetings until he offered a personal apology.

In a letter to the council, CCLA’s Alan Borovoy wrote, “In a democratic society, it is essential that those who perform the public’s business must be susceptible to public challenge and criticism for the way they handle their responsibilities…”

A. Alan Borovoy
Gov’t plans mandatory minimum sentences for drug crimes

New legislation proposed by the federal government would introduce unprecedented mandatory imprisonment for certain drug crimes. Bill C-15’s mandatory minimum sentences include jail time of at least six months for growing as little as one marijuana plant for trafficking purposes. Similarly, at least two years imprisonment would be required for anyone dealing certain drugs “near” any “public place usually frequented by persons under the age of 18”.

Appearing before the federal Standing Committee on Justice and Human Rights, CCLA’s Public Safety Director Graeme Norton argued that the government should abandon the use of mandatory minimum sentences to achieve criminal justice objectives. Norton asserted that the Bill would result in extensive injustice, because its rigidity would force courts to send people to jail who don’t belong there. He further pointed out that in other jurisdictions where mandatory sentences have been used to address drug crime, there has been no discernible impact on drug consumption or related illegal activity. Norton also took aim at the overly broad nature of the Bill, pointing out that a “public place usually frequented by persons under the age of 18” could be virtually anywhere in an urban area. So far, at least two opposition parties have indicated that they will not support the legislation.

Custodial right to counsel contested

The Charter right to “retain and instruct counsel without delay and to be informed of that right” was the subject of three cases heard recently before the Supreme Court of Canada. In each case, the accused prisoner asked to contact counsel before continuing with a police interrogation and that request was ignored.

CCLA Special Counsel Jonathan Lisus and Alexi Wood (McCarthy Tetrault), told the Supreme Court that the right to counsel imposes obligations on police that begin upon arrest or detention, “the entry points to a process of rapidly-escalating state power and rapidly-increasing vulnerability for the accused”. Any attempt by police to thwart the desire of an accused person to speak with a lawyer before or during a police interrogation -- or even when they have already spoken with counsel -- constitutes a violation of the accused prisoner’s Charter rights. Every person accused of a crime should be able to make meaningful and informed decisions after retaining counsel, Lisus and Wood declared.

[ Trent Terrence Sinclair v. R., Stanley James Willier v. R., and Donald Russell McCrimmon v. R.]

Supreme Court upholds seizure of property gained through illegal activity

In April, the Supreme Court of Canada upheld the constitutionality of an Ontario law providing for the seizure of money or property linked to crime.

Stopped by police for driving without a license plate, Robin Chatterjee had nearly $30,000 in his car, alongside equipment used in marijuana grow-operations. The car smelled strongly of the drug, but no marijuana was discovered and Chatterjee was never charged with any drug-related offence. Nevertheless, the Attorney General of Ontario applied to have the money and equipment seized under the Civil Remedies Act as the proceeds of “unlawful activity”.

CCLA Special Counsel Bradley Berg and Alison Thornton (Blake Cassels Graydon) argued that this law exceeds the scope of provincial powers set out in the Constitution Act, 1867, by delving into the criminal field. Supplementing the federal criminal law with such punitive provisions allows a province to “prosecute the property” of a person never convicted of any offence. In a civil proceeding under this law the standard of proof that is required to make a case is much lower than in a criminal trial.

[ Robin Chatterjee v. Attorney General of Ontario]
**CCLA rebukes censorship on university campuses**

During the winter, the Canadian Civil Liberties Association lashed out against the campus censorship practices of both university administrations and students’ unions. In the case of the administrations of both Ottawa and Carleton universities, the civil liberties group rapped their banning of posters supporting the campaign against “Israel Apartheid”. The poster had shown an airplane marked “Israel” aiming a missile at a young child. The Carleton administration had declared that such a poster is “insensitive to the norms of civil discourse”.

CCLA general counsel Alan Borovoy countered that universities must be “open to the most biting of criticisms … while verbal civility is desirable, verbal incivility must be permissible.”

Not long before this, Borovoy and CCLA Freedom of Expression Project Director Noa Mendelsohn Aviv wrote to students’ unions across Canada to oppose the growing practice of students’ unions refusing to grant campus recognition to organizations opposed to abortion. They pointed out that, while CCLA has always been strongly pro-choice, the proper response to the anti-choice position “is debate – not censorship”.

**Case examines needs for confidentiality of journalists’ sources**

In a case at the Supreme Court in May, CCLA argued for a privilege that protects the confidentiality of credible sources relied on by reporters in the course of newsgathering.

A February 2008 ruling of the Ontario Court of Appeal ordered the National Post to give the RCMP allegedly forged documents concerning Jean Chretien and the so-called “Shawinigate” scandal. The documents had been given to a Post reporter by a confidential source.

CCLA Special Counsel Jamie Cameron (Osgood Hall Law School), John McCamus, and Matthew Milne-Smith (Davies Ward Philips & Vineberg) contended that newsgathering is protected under the Charter’s right to freedom of the press, and that confidential sources are a key part of the newsgathering process. Democracy depends on eye-opening reporting, and the state should have to demonstrate that its interest in accessing an unnamed source is greater than the public interest in protecting the relationship between journalists and their confidential sources.

*National Post, et al. v. R.*

**Taser use gets CCLA members energized**

Dear Members and Donors:

Thank you to everyone who responded to our request to write to the minister responsible for policing across Canada urging greater controls on the use of tasers. Many of you modified our template letter with personal notes to emphasize your concerns. Some of you have received replies, and we thank you for forwarding copies to us.

If you haven’t sent your letter yet and would like to receive a copy of the template letter and the contact information for your provincial minister, please contact me at csmith@ccla.org or at the postal address provided on page 9.

Sincerely,

Caitlin Smith
Coordinator, Fundraising & Membership
Walmart attacked for store closing

The Québec Court of Appeal’s refusal to examine why Walmart decided to close its store in Jonquière, Québec, just six months after employees won union certification, does not provide sufficient guarantees for freedom of association in the workplace, according to CCLA. The case arose out of a February 2008 ruling by the Court that concluded that, so long as the closure was permanent, it was irrelevant whether an employer was closing its store in order to prevent the formation of a union or to intimidate workers at other locations.

CCLA Special Counsel Andrew Lokan and Jean-Claude Killey (Paliare Roland) argued before the Supreme Court of Canada that Québec’s Labour Code must be interpreted in light of the guarantees for freedom of association contained in the Québec and Canadian Charters. According to CCLA, the closing of a single location within a large North American network of stores (a store closing which may be motivated by a broader anti-union agenda) can have a substantial chilling effect on the exercise of freedom of association by individuals in workplaces across the country. In striking the right balance between employees’ freedom of association on the one hand, and the employer’s legitimate business interests on the other, CCLA said, the Labour Code must take such motives into account.

The Court has reserved judgment.

[CCLA NewsNotes]

Walmart attacked for store closing

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[CCLA NewsNotes]

CCLA backs sentence reductions for Charter breaches

CCLA Special Counsel Andrew Lokan (Paliare Roland) told the Supreme Court of Canada that judges should have the ability to reduce a sentence, even below a mandatory minimum, when state agents violate Charter rights.

Lyle Marcellus Nasogaluak was severely beaten by RCMP officers in Leduc, Alberta after leading police on a high-speed chase while impaired. He was not provided with medical treatment while in police custody, but eventually required emergency surgery for broken ribs and a collapsed lung. The sentencing judge reduced his punishment because of the hardship he had already suffered, prompting objections and an appeal from the government. CCLA argued that courts should be permitted to reduce the sentences of offenders whose rights were violated, in order to properly address objectionable state behaviour.

[R. v. Lyle Marcellus Nasogaluak]
Some have said that people in democracies spend more time defending their right to free speech than they do actually using it.

The Canadian Civil Liberties Education Trust is trying to make sure the next generation of Canadians can do both. Through the Teaching Civil Liberties and Civil Liberties in the Schools programs, thousands of students, teachers, and student-teachers engage in lively workshops and seminars where they are encouraged to consider as many positions as they can on the difficult issues we must all face in democracies.

In addition to these interactive classroom experiences, CCLET’s annual Bernard Chernos Essay Competition gives high school students a chance to be rewarded for writing creative arguments on important issues. The 2009 essays are in — but if you want a good dinner table discussion, try one of these topics:

- A high school requires student groups to obtain the principal’s approval in order to hold meetings and post notices on school property. The principal decides to deny approval of the Choose Life (anti-abortion) group and the Students for Choice group on the grounds that the issue of abortion is too controversial. The principal says that both views are likely to cause offence to certain students and staff at the school. Is the principal’s decision fair? Why or why not?
- Residents of a public housing project are very concerned about violent crimes committed by young people in their community. The community council meets and passes a motion to implement a measure that would result in the eviction of families whose children or teenagers have been charged with violent offences. Is this measure fair? Why or why not?
- In certain communities, there have been many complaints about young people “loitering” or “hanging out” at all hours in public places. A device called a “mosquito” was developed to deal with this problem. It emits an unpleasant, loud, high pitched sound, but can only be heard by people under the age of 25. The communities want to purchase the devices and place them in the areas where young people gather. Is this measure fair? Why or why not?

When students can make an argument to support more than one point of view, they are learning the habits of democracy. They are becoming qualified for leadership in the next generation.

**Bernard Chernos Essay Contest**

**Winners**

**First prize:**
Merissa Elyse Michell, Westlane Secondary School
Niagara Falls, Ontario

**Second prize:**
Calvin Jury
East York Collegiate Institute, Toronto, Ontario
and
Lindsay McAllister
Mayfield Secondary School, Caledon, Ontario

To learn more about the contest, go to: [www.ccla.org](http://www.ccla.org). In the “For Students and Teachers” section on the home page, click on [CCLET Bernard Chernos Essay Competition Information](http://www.ccla.org).
**Cronenberg wins France’s Legion D’Honneur**

On April 1, 2009 Canada’s celebrated filmmaker David Cronenberg (and CCLA board member) received the Légion d’Honneur, the highest award given by the government of France. The award is usually reserved for citizens of France. Cronenberg’s films include *The Fly, Dead Ringers,* and *Eastern Promises.*

Another CCLA board member, Janet Keeping, President of the Sheldon Chumir Foundation for Ethics in Leadership, was also honoured for her work. She received the 2008 Civil Liberties Award from the Alberta Civil Liberties Research Centre. She worked closely with the late Sheldon Chumir to establish and run the Calgary Civil Liberties Association.

**Cornwall posts lawn signs announcing drug warrants**

Police in Cornwall recently began posting signs on the lawns of houses subject to search warrants for drugs. When asked about the new program, representatives of the Cornwall Community Police Service stated the signs are intended to increase public awareness about action to curb the drug trade. Graeme Norton, CCLA’s Director, Public Safety Project, pointed to possible privacy violations raised by the sign postings, including the stigmatization of innocents, such as children whose parents are drug users. CCLA also noted out that erecting signs on private property likely exceeds the authority of search warrants and may constitute a trespass. As a result of the many defects of the sign posting policy, CCLA urged the Police Service to discontinue its use. The Cornwall Police have continued to post the lawn signs.

**New rules may limit access to justice, CCLA asserts**

CCLA has reminded the Law Society of Upper Canada of its duty to “facilitate access to justice for the people of Ontario” and urged it to modify its new rules that prevent unlicensed individuals from acting for consumers. CCLA’s Alan Borovoy and Abby Deshman drew attention to the many marginalized people who often depend on legal assistance from experienced individuals and community organizations that do not charge for their services adding that for these disadvantaged individuals, “the choice is some unpaid help, or no help at all”.

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Outgoing and incoming general counsels
Alan Borovoy and Nathalie Des Rosiers

**Moon recommends repeal of Section 13 of Canadian Human Rights Act**

The restriction on hate speech in Section 13 of the *Canadian Human Rights Act* is both too broad and too vague, according to University of Windsor law professor Richard Moon in his November report to the Canadian Human Rights Commission. Moon has urged, therefore, the repeal of the contentious provision. This resembles the position advocated by CCLA.

But Moon also recommended narrowing the hate speech section of the *Criminal Code* so that it would deal only with threatening, advocating, or justifying violence against racial and ethnic groups. The law professor said that the section should apply, even if no such violence is imminent. While CCLA applauds the direction of this recommendation, it identified certain dangers that could be created.

**Outgoing and incoming general counsels**

Alan Borovoy and Nathalie Des Rosiers
The CCLA National Board consists of the following:

1. Those elected by the membership for a two-year period - President, 12 Vice-Presidents, Secretary, Treasurer, and 35 Directors. The following are those who were last elected to fill these positions; in the case of those who are marked with an asterisk, their terms of office will expire this summer.

   **President** – *Marsha Hanen; Vice-Presidents* - Jamie Cameron, Susan Cooper, Gisele Côté-Harper, Q.C., *Michael de Pencier, Marlys Edwardh, Edward L. Greenspan, Patricia Jackson, John McCamus, Delia Opekowek, Howard Pawley, Kenneth P. Swan, Joseph Wong; **Secretary** - Sydney Goldenberg; **Treasurer** - Elaine Slater


2. All Past Presidents - the living persons in this category are John Nelligan, Q.C., Harry W. Arthurs, Walter Pitman, and The Hon. Allan Blakeney.

3. Two representatives from each affiliated chapter -- the method of selection and term of office are determined by the chapter itself. Following are the present incumbents in this category: NOVA SCOTIA - Jane Cobden, Walter Thompson; SAINT JOHN - Eric Teed, Q.C.; FREDERICTON - Jon V. Oliver; HAMILTON - Louis Greenspan; MANITOBA - Michael Connor, Ken Mandzuik; ALBERTA - Brian A. F. Edy.

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In order to fill the positions now open for election by the national membership, a National Nominating Committee was established by Board resolution. The members of the Committee are as follows: Jane Cobden (Nova Scotia), Jon Oliver (Fredericton), John McCamus (Toronto), Ken Mandzuik (Manitoba), Brian A. F. Edy (Alberta), and former CCLA Presidents John Nelligan, Q.C., Harry Arthurs, and Walter Pitman. The National Nominating Committee recommends the following candidates for the positions which are now open on the Board:

   **President** - Marsha Hanen, former President, Sheldon Chumir Ethics Foundation, Calgary
   **Vice-Presidents** - Michael de Pencier, publisher; Edward L. Greenspan, Q.C., criminal lawyer; Patricia Jackson, former counsel to Arbour Commission on the Penitentiary for Women; Delia Opekowek, former Executive member, Saskatchewan Federation of Indians; Kenneth P. Swan, labour arbitrator.
   **Board of Directors** - Warren Allmand, Q.C., former Solicitor General for Canada; Frédéric Bachand, CCLA Special Counsel in Quebec; Joseph Boyden, Giller Prize winning author; Leah Casselman, former president, Ontario Public Service Employees Union; The Hon. Saul Chernecki, Q.C., former Treasurer, government of Manitoba; Dominique Clément, sociology professor, University of Alberta; Bernard Daoust, former President, Quebec Federation of Labour; Susan Eng, former Chair, Toronto Police Services Board; Mel Finkelstein, former Chair, Jewish Board of Education; Robert Fulford, author and columnist; Vicki Gabereau, broadcaster; The Hon. Constance Glube, Q.C., former Chief Justice, Nova Scotia Supreme Court; Katherine Govier, author, former President, PEN Canada; Louis Greenspan, philosophy professor emeritus, McMaster University; Janet Keeping, President, Sheldon Chumir Ethics Foundation; Andrew Lokan; constitutional lawyer; A. Wayne MacKay, former president, Mount Allison University, New Brunswick; Paul Schabas, counsel for the Ontario Association for the Deaf; Marvin Schiff, former director, Nova Scotia Human Rights Commission; The Hon. Lois Wilson, former independent Senator and former Moderator, United Church of Canada.

Additional nominations may be made of members in good standing if they are signed by the candidate and 2 nominators, also members in good standing, and received at the CCLA office no later than Friday, 19 June 2009, 12:00 noon EDT. Additional nominations should be accompanied by short biographical notes on the candidate.
Groups Speak Out Against “Enhanced” Driver’s Licenses

“Enhanced” Driver’s Licenses (EDL) will use potentially privacy invasive devices, such as radio frequency identification and facial recognition technology according to CCLA and others. In late March, CCLA co-sponsored a national public forum to draw attention to the many privacy concerns associated with the soon to be introduced cards. At the Ottawa forum, CCLA was represented by Public Safety Project Director Graeme Norton, who appeared as a panelist alongside representatives from other citizen groups, various Privacy Commissioner’s offices, and a speaker from the American Civil Liberties Union.

The new cards will be an acceptable form of identification for Canadians crossing into the United States by land and sea. The forum offered the public and media an opportunity to learn about the many concerns that have been raised about the new licenses. To date, several provinces had dropped their plans to implement the EDL.

Everyone must be protected by reasonable defence against defamation, says CCLA

Two cases before the Supreme Court of Canada in February and April have raised the potential for a new defence against defamation in Canadian law. Originally fashioned by British courts, and initially accepted in Canada by the Ontario Court of Appeal, the new defence would protect against defamation law suits in cases of “public interest responsible journalism.” CCLA Special Counsel Patricia Jackson, Andrew Bernstein, and Jennifer Conroy (Torys) argued that the defence should apply to all reasonable communications in the public interest. CCLA maintained that the defence should protect anyone who takes reasonable steps to ensure the reliability of their communication. SCC approval of the defence would, in CCLA’s view, bring the law of defamation more in line with the Charter guarantee of freedom of expression.

The court has reserved judgment in both cases.


Greater transparency of police records urged

The Toronto Police Services Board's record retention policy creates an unacceptable risk that innocent people will be treated like criminals, according to CCLA Public Safety Project Director Graeme Norton. CCLA recently urged the Board to ensure greater transparency of the Toronto Police Services' treatment of records of people who are charged, but not convicted of crimes. These records, which are frequently required by potential employers, can reveal criminal charges that do not lead to convictions, resulting in significant unwarranted stigmatization for some innocent people.

From the Board’s data it appears that more than a third of requests for destruction of such records are still being rejected. This situation raises questions about whether the Toronto Police’s policy accords with the retention standard of “highly exceptional circumstances” laid down by the Ontario Court of Appeal. Norton made several suggestions about how transparency surrounding the policy’s operation could be improved, calling on the Board to provide more detail about the criteria used by police when determining whether or not to comply with requests to destroy an individual’s non-conviction criminal history. In the absence of such information, it is difficult to assess the extent to which the policy may be unduly affecting innocent people. To date, the requested action has not been taken.
Over 600 people gathered at the Royal York Hotel in Toronto on April 28 to celebrate Alan Borovoy’s more than 40 year career of raising hell without breaking the law. The event successfully raised funds to support the Canadian Civil Liberties Education Trust.