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Industry News



Summer Scare

David F. Sutherland

Since 1983, David F. Sutherland & Associates has provided a full range of media law advice to journalists, editors and publishers.

Rod Link is the publisher of the Terrace Standard and he likes to keep up-to-date on media law. During his summer vacation he saw a news report that the Supreme Court of Canada had decided a media case. What was it, he wonders, and what does it mean to B.C. newspapers?

In August of 2003, an agricultural investigator with the Ontario government swore six Informations to obtain search warrants for various locations linked to Aylmer Meat Packers Inc. The Informations alleged violations of provincial legislation regulating the slaughter of cattle.

On August 21st and 22nd, officers searched the locations and seized evidence.

On August 26th, widespread media reports questioned the suitability of Aylmer Meats for human consumption. This was not long after the Walkerton water disaster and there was real public concern.

On August 27th, police started a criminal fraud investigation. On September 2nd, the Crown applied without notice to the media for an Order sealing the Informations used to obtain the search warrants, claiming that public disclosure could identify a confidential informant and interfere with an ongoing criminal investigation. The London Free Press got wind of the sealing application and requested a brief adjournment so that its lawyer could attend and argue against the sealing order. Madam Justice Livingstone denied the adjournment application and temporarily sealed the Informations for three months.

A consortium of media (Torstar, Sun Media, CBC) immediately applied to another Superior Court Judge, Mr. Justice McGarry. Their application was heard on September 15 and 16th and on September 24th McGarry, J. quashed the Sealing Order, except for one

portion of one Information that could disclose the identity of an informant. He directed that the rest of the Informations be released to the public and the media within 2 days unless the Crown appealed within

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that time. The Crown did, indeed, appeal, keeping the Informations from the public. At the Court of Appeal, Mr. Justice Doherty, edited slightly more of the Information to avoid identification of the informant, but otherwise he ordered disclosure. In the absence of a stay, the Crown disclosed the edited Informations on October 29, 2003, less than two months after the original Sealing Order. However, the Crown also applied for Leave to Appeal to the Supreme Court of Canada. The disclosure issue was moot and the law appeared to be clear. Nevertheless, the Supremes granted Leave to Appeal.

A few useless facts about Halloween

The National Confectioners Association scared up new information on how adults and kids alike will enjoy their treats this year. The following Halloween habits and plans were unearthed in a national survey:

- Plastic pumpkins with handles remain the trick-or-treating container of choice, followed by plastic bags and pillowcases.
- Personal favourites will dominate candy purchases with 35% of adults planning to hand out their candy favourites, 21% planning to buy what is on sale and 16% buying their children's favourites.



- Almost half of those planning to hand out candy said they decide how many pieces each trick-or-treater receives, followed by 40% who said they would leave it up to trick-or-treaters to make their own selections.

- Almost half of all parents have a plan worked out for allotting their kids a few pieces of candy per day after Halloween, 31% planned to have their kids share in the decision, and 8% planned to let co-workers reap the benefits of their kids' trick-or-treating after keeping a certain amount for the house.

- "90% of parents plan to snag a few goodies from their kids, so the debate is up for who really enjoys the day the most," said Larry Graham, president of the National Confectioners Association.

Columns for Hire

"On the Bright Side"



Guaranteed to make you chuckle, "On the Bright Side" is a joyfully cheeky look at life in regards to family and relationships. Written with wit and no shortage of dramatic flair, humour columnist Arlena de Bruin has the ability to find laughter in even the most mundane of life experiences. She lives in Kelowna, BC with her husband and twin eight-year-old sons.

And if you don't think that's a recipe for therapy, then you haven't lived in a house with three boys. Arlena's philosophy: Life is comedy in motion... there's never a disaster you can't find humor in!

Click here for a sample column.

COST: \$25 per column for one-time rights exclusive to your circulation area.

CONTACT: Arlena de Bruin by email at arlenadebruin@hotmail.com

If you're looking for a new columnist or feature to include in your paper, look no further! Well, except maybe on the BCYCNA website... You'll find a complete list of new ideas for syndicated columnists at www.bccommunitynews.com/members/syndicated.html. If you know of a columnist or feature writer that you think deserves exposure to all members, let us know at the BCYCNA office, and we'll include them here!

This is when the case got scary. Why did the Supremes grant Leave? They had recently restated the principles of law in the Mentuck decision. Were they going to retreat from the rule that judicial proceedings are presumed to be open and public? Mentuck held that the Court could only exercise discretion to limit freedom of expression in relation to judicial proceedings when such an order is a necessary order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk.

Was the Court going to change this?

Media lawyers across the country became very worried that the Supremes were going to retreat and that the Crown must know something. The Canadian Association of

Journalists intervened and argued strenuously for open courts. The decision came down on

June 29, 2005 and it was an anticlimax.

The Judgment starts with the words:

"In any constitutional climate, the administration of justice thrives on exposure to light - and withers under a cloud of secrecy."

Mr. Justice Fish speaking for the unanimous Court went on to set an even tougher test for closing a court or sealing any court proceedings. He stated: "Public access will be barred only when the appropriate court, in the exercise of its discretion, concludes that disclosure would subvert the ends of justice or unduly impair its proper administration"

[emphasis is the Court's, not

mine]

The Crown had argued that the Mentuck test ought not to be applied when the Crown seeks to seal search warrant application materials. The Court stated "This argument is doomed to failure by more than two decades of unwavering decisions in this Court repeatedly and consistently ... applied to all discretionary judicial orders limiting the openness of judicial proceedings." There was no retreat or wavering and the Court made the test even tougher on the Crown.

Furthermore, this is "news you can use" in the words of George Affleck of BCYCN. The unanimous Supremes went back to the events of September 2, 2003 when the London Free Press had sought an adjournment so as to argue against the Sealing Order. The

Supremes noted that the Ontario Court of Appeal had suggested "There was no good reason to deny

the London Free Press an opportunity to make submissions." The Supremes noted that the Ontario Court of Appeal suggested that failure to allow the adjournment to allow argument against the Sealing Order amounted to a denial of natural justice and resulted in a loss of jurisdiction. While it was unnecessary to express a decided view on this branch of matter, not squarely before the Supremes on this case, the Court did refer to its earlier decisions setting guidelines for notice to the media and media standing. In other words, in future, Crown and the Courts should give notice to the media of applications for Sealing Orders and should afford the

media an opportunity to argue that the test has not been met. As I say, the test is a tough one for the Crown to discharge. Crown must establish by real evidence and not speculation that disclosure would subvert the ends of justice or unduly impair its proper administration.

So when Rod Link learns that there has been search warrant issued, and a search completed, in connection with newsworthy crime in Terrace, he can trot along to the Court Registry and ask for access to the Informations employed to obtain the search warrant. This will typically reveal a treasure trove of information about the case. The case is a new weapon in Rod's arsenal that ought to ensure that he gets access to the materials in all but the most extraordinary situations, and a right to argue for access in all cases.

The Crown may argue that the meat packing case concerned a search warrant under Provincial legislation and not a search warrant seal under section 487.3 of the Criminal Code, however, that argument should also be "doomed" because the principles are over-arching constitutional principles which inform and define the test in all contexts.

The case can be found at <http://www.canlii.org/ca/cas/scc/2005/2005scc41.html>.

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BNC considers member feedback

CCNA's Better Newspapers Competition (BNC) Committee thanks all CCNA participants and judges who provided feedback on the 2005 awards. The Committee has taken your comments and is currently evaluating changes and updates to the entry rules and judging guidelines to ensure that the 2006 BNC is better than ever. Announcements for next year's competition will be made in November on the CCNA website (www.communitynews.ca) and in the December edition of The Publisher. Entry packages will be sent to all members in early December.



Cool e-newsletter of the week.

Media In Canada is a biweekly e-news service and site geared to keeping media and marketing execs up to speed on the Canadian media scene.

From research and audience measurement innovation to ratings impact and spend trends, Media in Canada covers the gamut of media biz news and identifies new media opportunities. The e-newsletter also has a ComBase column in each edition; it's a great source of info for anyone working in our industry. To sign up for the newsletter, visit www.mediaincanada.com/subscribe/

Black Press Appoints Randy Blair & Bruce McAuliffe

Excerpts from Rick O'Connor's October 12 announcement:

Randy Blair and Bruce McAuliffe have been appointed to the positions of Vice-President, Black Press Lower Mainland effective immediately. Both Randy and Bruce will retain their current positions as Publishers of the Abbotsford News and Surrey Leader respectively, but will assist in helping to manage most of the remaining divisions

in the fast growing Lower Mainland group. Specific areas of responsibility will be formulated and announced at a later date. In addition to their current publishing roles, Randy is responsible for the day to day operations of the Abbotsford Press and Bindery Centre as well as the Mission City Record, Hope Standard and Agassiz Harrison Observer. As part of this appointment, Chilliwack Progress Publisher, Andrew Franklin, will become the publisher of the Standard and Observer. Bruce is also currently responsible for the Classified Call Centre. While all publishers will continue to report to Black Press Lower Mainland President, Rick O'Connor, Blair and McAuliffe will assist in all areas of newspaper operations including finance.

Congratulations to both Randy and Bruce on their well deserved promotions.



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**Publisher: George Affleck
Writer/Editor: Kerry Burgess
Creative: Renee Schisler**

**BC and Yukon Community Newspapers
Association**

**122-1020 Mainland Street
Vancouver, BC V6B 2T4
tel: 1-866-669-9222
fax: 604-684-4713**

email: info@bcccommunitynews.com

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