

Fundamental Freedoms and Jehovah's Witnesses

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by

Gary Botting

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For Doris Windrim,
who made the improbable possible
and the impossible probable

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Preface

When my family immigrated to Canada from England in 1954, Jehovah's Witnesses in Canada were in the midst of a series of important court battles that were to change the legal landscape of Canada forever. At that time my world was small and as an active Jehovah's Witness my world view even smaller. There were not many Witnesses in Canada in the 1950s, and I came to meet most of the principals involved in the Supreme Court of Canada cases which now are touted as being of central importance to the establishment and preservation of civil liberties in Canada. I met and heard first hand the experiences of Frank Roncarelli, Laurier Saumur, Leo Greenlees, Louise Lamb, and Aime Boucher. Saumur and Greenlees stayed with us frequently during their visits as "district overseers" for Jehovah's Witnesses. W. Glen How, still the official legal counsel of Jehovah's Witnesses in Canada, and his wife Margaret became close family friends.

Although most officially condoned persecution of Jehovah's Witnesses was a thing of the past by the 1950s, it persisted unofficially in the streets. Rarely did a day pass when I was not tormented by classmates for being a devout Jehovah's Witness. Teachers and students alike were unsympathetic with my bid to avoid cadet training and my steadfast refusal to sing or even stand for *God Save the Queen*. The recital of the Lord's Prayer with persons of other faiths was frowned upon by my religion, for although rival faiths called themselves Christian, we were taught that they were really members of "Christendom"—part of "Babylon the Great," the symbolic scarlet harlot governed by Satan the Devil. Whenever a new blood transfusion case surfaced I could be sure to suffer a beating at the hands of my schoolmates, who did not respect the right to be different in matters as serious as religious belief. Intolerance was the order of the day.

Yet never far beneath the surface of my awareness of the world was the knowledge that Jehovah's Witnesses had had a hand in shaping the

officially recognized civil liberties that gave me the right to express anomalous thoughts, the right to be different.

Perhaps more than anyone else, Glen How was a great inspiration to my family during our first decade in Canada. He kept us informed of each victory in the Supreme Court of Canada, often coming to the Kingdom Hall in Peterborough, Ontario to visit and to give special addresses with respect to developments in Ottawa. In 1959, shortly after the *Lamb* and *Roncarelli* cases had been settled finally in favour of Jehovah's Witnesses, I worked with Glen as a volunteer at a major Jehovah's Witness convention in Ottawa; we wrote and distributed news releases, and during that time I came to meet most of the main officers of the Watch Tower Bible and Tract Society, the legal corporation representing Jehovah's Witnesses. Glen and I hit it off so well, in fact, that in 1961 Glen invited me to travel to London, England for another convention, where again we formed a team in the public relations department. Subsequently I travelled first to Spain and then to Hong Kong as a pioneer missionary for Jehovah's Witnesses, doing a two-year stint overseas.

Upon my return to Canada in 1964, Glen wrote letters of reference on my behalf to Osgoode and University of Toronto Law Schools, and introduced me to the two deans and to law professors of his acquaintance. He suggested that, although university was generally inappropriate for Jehovah's Witnesses, nonetheless the organization needed lawyers. Should I finish law school, he said, there would be a place for me at his side. However, by the time of my graduation from Trent University, I had become so enamoured of English literature, particularly such Renaissance writers as Christopher Marlowe, that I decided to pursue graduate studies in literature rather than a law degree.

The Jehovah's Witnesses generally impugn university education as a threat to faith, and in this they are quite correct. I can vouch for the fact that there is no greater challenge to blind faith than a liberal education.

It was understandable that the governing body of Jehovah's Witnesses should frown when the dispensation I had received to go to university in order to effect a pragmatic training in the law was put to more personal and "esoteric" ends. After completing a masters degree in English language and literature at Memorial University of Newfoundland, I enrolled in the Ph.D. program in English at the University of Alberta; by 1972 I was teaching university level English, drama and creative writing in Alberta.

In 1982, my wife Heather completed her Ph.D. on the cultural anthropology of Jehovah's Witnesses. Her analysis of our former religion led both of us to do some soul-searching and together we researched and wrote *The Orwellian World of Jehovah's Witnesses*, published by University of Toronto Press in 1984. By then, Canadian civil liberties once again

faced a crisis, not only by the passage of the *Canadian Charter of Rights and Freedoms* as part of the *Constitution Act, 1982*, but with the pressing of criminal charges against James Keegstra, an Alberta school teacher who used his Eckville classroom to teach vitriolic propaganda against the Jews, and Ernst Zundel, an Ontario graphic designer who published a Canadian edition of a revisionist tract questioning the traditional six million casualties of the Holocaust. Of course, I found their ideas untenable and distasteful. Yet, in my view, an important principle was being violated by their prosecution: the principle of freedom of expression, including academic freedom and freedom of the press. I therefore expressed support, not for their ideas, but for their right to express these ideas without fear of criminal prosecution.

In many respects, the Holocaust denial cases of the 1980s seemed a replay of the Jehovah's Witnesses cases of the 1950s—except that now the charges were “promoting hatred” or “spreading false news” rather than straight “sedition,” and the target of the quasireligious vitriol was Jews rather than Roman Catholics. As Alan Borovoy has pointed out, many of the old issues raised by the Jehovah's Witness cases were once more resurrected in the *Keegstra* and *Zundel* cases. Distasteful as “Holocaust denial” may be, the issue involved the right of the individual to state his beliefs with respect to a rival religious and ethnic group.

Perhaps because of my Jehovah's Witness roots, I was dumbfounded that the average Canadian did not seem to realize that the principle of freedom of expression outweighed in importance the understandable rancor of a highly vocal Jewish minority. After all, without freedom of expression, the Jewish minority would not so much as have an opportunity to be vocal, as the earlier experience of Jehovah's Witnesses had borne out. In pressing criminal charges against Keegstra and Zundel, the Attorneys-General of Alberta and Ontario unleashed a whole new era of uncertainty as to the threshold of freedom of expression in Canada. Yet, as with Jehovah's Witnesses decades ago, few lawyers appeared prepared to represent these men. The reputation of any who did so would be tainted.

Douglas Christie was one of the brace of lawyers who steadfastly pursued the legal question before the courts, shuttling back and forth between British Columbia, Alberta, Ontario and New Brunswick to defend the right of his clients to express their genuinely-held beliefs. The broad geographical scope of his well-reported activities bears mute testimony to the fact that no other barristers in the land seemed prepared to represent the new pariahs of western democracy. It was largely for this reason that I decided in 1986 to return to law school—exactly 20 years after submitting my first applications in Ontario. Upon graduating from the University of Calgary Faculty of Law, I applied to article for Doug Christie at a time when the *Keegstra*, *Zundel*, *Finta*, *John Ross Taylor*, and

Malcolm Ross cases—all of them important constitutional cases, in my view—wended their way towards the Supreme Court of Canada, some for the second time, for final resolution.

Perhaps because of my association with Christie, I too was lambasted by a hostile press, despite the fact that from the beginning I was unambiguous of my disavowal of the validity of the ideas held by some of his clients. However, for me the principle of freedom of expression was at stake, a principle fought for long and hard by fellow Jehovah's Witnesses during my youth. Accordingly, after I was called to the bar in 1991, I adopted Voltaire's flamboyant statement as my credo: "I may not agree with what you say, but I'll fight to the death for your right to say it!"

For me the most inspiring law professor at the University of Calgary was Alastair Lucas, an expert on the Constitution who volunteered to supervise my independent research into the role of Jehovah's Witnesses in the formation of the *Canadian Bill of Rights* and the *Charter*. At last I was able to come to grips with the true legal significance of the cases I had heard so much about in my youth. That research formed the basis for this book on the relationship between my former faith and civil liberties.

Civil liberties or fundamental freedoms form the fragile warp of democracy—a warp which supports and sustains the colourful weft of Canadian multicultural society, including the principles of legal and equal rights. Both warp and weft are needed to sustain the complex fabric of a multicultural society, I realized, but most authorities concede that civil liberties are more "fundamental" than other rights. Indeed, even the *Canadian Charter of Rights and Freedoms* makes the distinction between "fundamental freedoms" and legal and egalitarian rights. Walter Tarnopolsky, addressing the Special Joint Committee on the Constitution in 1971, expressed the view that the two kinds of rights should be kept separate, and that "fundamental freedoms" were of a higher order than egalitarian rights. Civil liberties form a "condition precedent" to the existence of egalitarian rights that most Canadians hold dear. Unfortunately in later years Tarnopolsky moved away from this early unambiguous position.

In my view, it is myopic for governments and the courts to hack away at the warp of fundamental freedoms simply because a tiny minority in Canada has the temerity to spout distasteful slogans or pose questions that the majority believes to be nonsense anyway. In the broader context of the development of civil liberties, it is retrogressive in the extreme, taking us back to the era when Jehovah's Witnesses were persecuted for their vitriolic verbal attacks on Roman Catholics. How does a tract such as *The Watchtower* differ from a tract of similar length called, provocatively, *Did Six Million Really Die?* This newfound propensity to prosecute—and indeed to persecute—individuals for expressing

their anomalous beliefs compels us to look once again at the parallel situation of Jehovah's Witnesses in the past.

I wish to thank the lawyers who have been a particular inspiration to me in the area of civil liberties, despite their both being indisputable "black sheep" of the legal profession in their time: W. Glen How and Douglas H. Christie. How, as I have said, was the first person to interest me in the law. Christie, an equally persuasive orator, helped revive that early interest. Both men were counsel, thirty years apart, in what I firmly believe to be among the central civil liberties cases of this century.

*Gary Botting
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Victoria, 1 January 1993*