

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Annual Report 2008



MEMBERSHIP CONFERENCE / AGM 2009

WEDNESDAY, MARCH 25 / 6:00 PM / VANCOUVER INTERNATIONAL FILM CENTRE
1181 Seymour Street, Vancouver, BC

REG ROBSON CIVIL LIBERTIES AWARD:

William Kuebler

Lieutenant Commander, United States Navy, Judge Advocate General's Corps

THE DEMOCRATIC COMMITMENT

MARCH 2009 / VOLUME 43 / NUMBER 1



HONOURARY DIRECTORS

David Barrett

Thomas Berger, Q.C., O.C.

Robin Blaser

Neil Boyd

The Right Honourable
Kim Campbell, P.C., Q.C.

Andrew Coyne

Bill Deverell

David H. Flaherty

John Fraser, P.C., Q.C.

Gordon Gibson

Mike Harcourt

Rev. Phillip Hewett

Art Lee

Darlene Marzari

Alex MacDonald, Q.C.

Rafe Mair

Stephen Owen P.C., Q.C.

Svend Robinson

David Suzuki

Milton Wong

BOARD OF DIRECTORS for board member bios, visit www.bccla.org

Robert Holmes, President

Jason Gratl, Vice President

John Dixon, Secretary

Alan Rowan, Treasurer

Reem Bahdi

Warren Bourgeois

Alister Browne

Michael Byers

Jamie Cameron

Bing Chan

Timothy Christie

Larry Cohen

Ann Curry

Greg DelBigio

David Eby (to Nov 2008)

Avigail Eisenberg

Michael Feld

Hamar Foster (to Apr 2008)

Tom Gore

Conrad Hadland

Shirley Heafey

Frances Henry (to Oct 2008)

Stephen Katz

John Kibblewhite

Ross Lambertson

Ed Levy

Mary McDonald

John J. McIntyre (to Apr 2008)

Stan Persky

Ann Pollak

Kent Roach

Richard Rosenberg

John Russell

Tom Sandborn

Steven Savitt

Carol Tator (to Oct 2008)

Kirk Tousaw

Reg Whitaker

Megan Vis-Dunbar

Scot Wortley

Eric Wyness

STAFF

David Eby, Acting Executive Director

Murray Mollard, Executive Director (to Nov 2008)

Micheal Vonn, Policy Director

Grace Pastine, Litigation Director

Sarah Sandusky, Director of Development

Jim Braunagel, Office Manager

Jesse Lobdell, Caseworker

Sara Dubinsky, Articled Student

Catherine Wong, Articled Student
(to Sept 2008)

British Columbia Civil Liberties Association

550 - 1188 West Georgia Street
Vancouver, British Columbia
Canada V6E 4A2
Tel: 604.687.2919
Email: info@bccla.org
Web: www.bccla.org

The Democratic Commitment is a publication of the British Columbia Civil Liberties Association. The Association was established in 1962 and is the oldest continuously active civil liberties association in Canada. Its mandate is to preserve, defend, maintain and extend civil liberties and human rights in British Columbia and across Canada.

Contents

PRESIDENT'S REPORT / ROBERT HOLMES / 4

ABOUT THE BCCLA / FIGHTING FOR FREEDOM / 5

FOCUS ON THE OLYMPICS / CITIUS, ALTIUS, FORTIUS / 6

PUBLIC EDUCATION / REACHING OUT / 7

CASEWORK / COMPLAINT ASSISTANCE AND LAW/POLICY REFORM / 8

POLICE ACCOUNTABILITY / 8

DISCRIMINATION / 10

FREEDOM OF EXPRESSION / 11

PRIVACY & ACCESS TO INFORMATION / 12

DRUG POLICY / 13

LITIGATION / OUR THANKS TO THE LEGAL COMMUNITY / 14

TREASURER'S REPORT / ALAN ROWAN / 23

AUDITOR'S REPORT / 24

FINANCIAL STATEMENTS / 25

BCCLA PEOPLE / 26

SUPPORTING THE BCCLA / ED & JULIA LEVY / 27

PRESIDENT'S REPORT / ROBERT HOLMES



Free Speech: Issues as important today as 110 years ago

Anatole France said Emile Zola's article, *J'Accuse* in *L'Aurore* on January 13, 1898, about the Dreyfuss Affair, was "a moment in the conscience of humanity."

Zola's own words – "la vérité est en marche et rien ne l'arrêtera"¹ – inspire to this day. His premonition came true when he was convicted of criminal defamation: "je n'ignore pas que je me mets sous ...la loi... qui punit les délits de diffamation. Et c'est volontairement que je m'expose."² His criticism of the establishment, including an intransigent government and a deaf judiciary, touched a raw nerve. Zola's had asserted that the court had, under governmental direction, wrongly acquitted Dreyfuss' accuser – "le crime juridique d'acquitter sciemment un coupable."³ He was sentenced and fled to England until the authorities recognized their error and sought to make amends.

"So what?" we might say more than 110 years on from Zola's article. We are even more distant in time from the wrongful conviction of Dreyfuss and the wrongful acquittal of his accuser. Yet are our authorities more inclined to justice and less disposed to conform to current mores? At the translation of Zola's remains to the Pantheon, Dreyfuss was shot by a fanatical journalist who was later acquitted of attempted murder. That parting shot underscores the ongoing struggle against corruption and injustice.

Zola's courageous article is a testament to a journalism too frequently lost in our day. Vapidity characterizes so much of the product of concentrated ownership of mass media today. The modern style engenders a yearning for critical voices speaking of real issues and conscience as Zola did. We need more voices speaking out about government action and inaction. Whether in the Dziekanski case, the Basi/Virk case, the detention and prosecution of Omar Khadr, the imprisonment of Maher Arar and other victims of rendition, the rendition of Afghan

detainees to near-certain torture, the politicization of so-called "hate speech", the restrictions on "election advertising", the threats of defamation suits by government, or any other occasions of controversy or concern – our society needs to find voices to speak of outrage and indignation.

Now, as with 110 years ago, to speak risks so much. Those who speak outside the mainstream risk exclusion. Complacency rules. Zola eschewed that. He summoned the will to seize upon the chance that democratic society wanted right to prevail. He did what few others receiving the custom and patronage of the wealthy of his age chose to do. He spoke of injustice, of a lack of caring, and of a lapse in adherence to the ideals that served as the glue of the society in which he lived. His was a "courageous defense of the primordial rights of the citizen, he will be honored wherever men have souls that are free."

We should not be afraid. Neither should we lapse into passivity from a sense that our voice alone will not matter much. "Ma protestation enflammée n'est que le cri de mon âme."⁴ Standing up, speaking out and taking seriously membership in democratic society calls for nothing less. And defending the right of all who do so recognizes not just their dignity, but our own. In doing so, we too may find our own moment in the conscience of humanity.

"Vapidity characterizes so much of the product of concentrated ownership of mass media today"

1 Roughly translated as "Truth is on the march and nothing will stop it."

2 "I am not ignorant of the fact that I am putting myself at risk under the criminal defamation laws, and I do so voluntarily."

3 "The crime of knowingly acquitting a guilty person."

4 "My strong protest is only the cry of my soul."

ABOUT THE BCCLA / FIGHTING FOR FREEDOM

The B.C. Civil Liberties Association's success is due to an extraordinary cast of people with a singular focus – preserving citizens' freedom in a free and democratic society. Though the Association has grown from its early days of operating out of the homes of members after its formation in 1962, we remain a grassroots organization reliant on the expertise, dedication and assistance of board members, staff, volunteers and supporters.

The BCCLA is run by a volunteer board of directors of over 30 members with diverse backgrounds in academia, law and business. The board distinguishes itself not only by setting the policies of the Association, but also by actively advocating for civil liberties before government and private institutions. The Association's work comprises four program areas: public education, complaint assistance, law reform and litigation. This work is only made possible thanks to our supporters. To accomplish each of these programs, the Association devotes considerable energy to researching its positions and submissions.

Public Education (page 7)

The BCCLA's educational efforts include:

- Free publications: Our newsletter *The Democratic Commitment*, our e-news *Civil Liberties Update*, *The Citizenship Handbook*, *Rights Talk—Students and Civil Liberties at School*, and the *Arrest Handbook*.
- Free Speakers' Bureau: BCCLA representatives speak to hundreds of people each year.
- Media work: The BCCLA is a trusted source for perspectives on the latest issues.
- Website: Visit our website (www.bccla.org) for a comprehensive collection of our work.
- Public events: the BCCLA hosts public talks by leading public figures like Edward Greenspan, Q.C. and Beverley McLachlin, Chief Justice of the Supreme Court of Canada.

We also organize seminars such as our upcoming conference on deaths in custody and an annual seminar for high school students.

Complaint Assistance (page 8)

Each year, the Association stands alongside individuals whose civil liberties concerns engage key democratic values. The Association also provides referrals for legal advice or other assistance.

Law Reform (page 8)

The Association plays a vital role in law and policy reform by meeting with and making oral and written submissions to Ministers, legislative committees, key bureaucrats and officials. Over the years, the Association has built considerable influence among public officials at the local, provincial and federal levels as a result of our fearless championing of democratic values.

Litigation (page 14)

The Association regularly goes to court to protect citizen rights and freedoms. Our moral suasion efforts are more successful when others know that we are able and willing to go to court to seek legal remedies. In this effort, we are very fortunate each year to have the assistance of lawyers who donate their services and expertise.

Funding (page 23)

The BCCLA receives funding from three primary sources. The Law Foundation of British Columbia provides an ongoing operational grant that covers approximately one half of our budget. The Association also receives a B.C. Gaming grant each year. Finally, the BCCLA relies to a great extent on individual donors and members to financially support our work. If you are not yet a supporter of the BCCLA, please join today!

2008

CITIUS, ALTIUS, FORTIUS

FASTER, HIGHER, STRONGER

Typically in this section of our Annual Report we focus on a particular aspect of the Association's work over the previous year. This year there was no shortage of contenders for the cover story: our ground-breaking work with Amnesty International in stopping Canadian forces from turning Afghan detainees over to face torture by the Afghan government; our remarkable success in shaping the provincial government's e-health initiative to ensure patient privacy is respected; and our participation in the Frank Paul inquiry to ensure justice in a homeless aboriginal man's unnecessary death.

Despite the critical, and in some cases national, importance of those files, we didn't choose any of them for the cover. Instead we chose an issue from another year entirely. In February of 2010, Vancouver and Whistler will host up to 300,000 visitors for the Olympic Games. Ensuring these Games are a showcase of all things Canadian – in particular our country's proud tradition of protecting civil liberties and respecting different opinions and cultures – is the role and responsibility of every Canadian, but particularly the priority of that group of Canadians who gather under the banner of the B.C. Civil Liberties Association.

Already we've had notice from those planning the 2010 Olympics, and those opposed to Canada's hosting of the 2010 Olympics, of matters of significant concern. In particular, we've heard media and first person reports of:

- Olympic security forces, led by the RCMP, restricting dissenting speech to proposed "free speech zones;"
- foreign soldiers and law enforcement acting on

Canadian soil during the Games;

- VANOC restricting outdoor advertising in Vancouver exclusively to those that are financially supporting the Olympic Games through a mass advertising buy-up;
- the City of Vancouver seeking additional powers for bylaws threatening \$10,000 per day fines for illegal signs or leafleting;
- Vancouver police bylaw enforcement crackdowns targeting the poorest of the poor in an effort to displace them away from low-income areas of the city and the services they rely on;
- CSIS and RCMP intelligence officers visiting

the homes of people who are outspoken in the media on Olympic issues or associated with aboriginal or protest groups, and attending City Hall meetings and stopping individual citizens who address Council to speak against the Olympics;

- a security budget that has inflated to one billion dollars for a two week event, a cash burn rate of

almost \$100,000 per minute, 24 hours per day over the two weeks; and,

- the Integrated Security Unit using security cameras to blanket the city during the Games and leaving them as a "legacy" for Vancouver after the Games.

When you read our 2008 Annual Report, know that we've been busy, even as early as two years in advance of these Games, to ensure that 2010 does not become a four letter word among those who cherish Canada's liberties. If the Olympics violate privacy and liberty rights during Vancouver's time to shine, it won't be for lack of planning, outreach, advocacy and action on the part of the BCCLA thanks to the support and participation of our members and funders.



PUBLIC EDUCATION / REACHING OUT

Civil liberties principles can involve complex ideas. A major part of our work is to educate the public, the media and decision makers about the central role civil liberties play in a free and democratic society. Here are some of our education activities in 2008.

MEDIA WORK

Via TV, radio, print or e-media, the BCCLA is a key source for local, provincial and national media on issues relating to civil liberties. Each year, we conduct hundreds of media interviews.

PUBLICATIONS

The BCCLA is *the* source for information about civil liberties. In 2008, we distributed thousands of free publications including the *Arrest Handbook* and *Arrest Pocketbook*, *Rights Talk: Students and Civil Liberties at School*, and *The Citizenship Handbook: A Guide to Democratic Rights and Responsibilities*. We also distribute our newsletter the *The Democratic Commitment*, and our e-news bulletin *Civil Liberties Update*. Call the BCCLA for free copies of any of our publications or e-mail info@bccla.org to be added to the *Civil Liberties Update* mailing list.

i To obtain digital copies of BCCLA publications visit: www.bccla.org/05pubs.htm.

PUBLIC EVENTS

2008 was a busy year for public events hosted by the BCCLA. At our AGM, Judy Graves, Coordinator of the City of Vancouver Tenant Assistance program, spoke about housing issues and why shelters are not a viable solution to the problem of homelessness. In November, we presented our third interactive civil liberties seminar for high school students as well as a talk given by prominent Canadian lawyer, Edward Greenspan, Q.C. Our high school student forum attracted hundreds of students from across the Lower Mainland.

WEBSITE www.bccla.org

Since the late 1990s, the BCCLA website has become an important source of information about BCCLA positions, education and advocacy work with hundreds of thousands of unique visits annually.

PUBLIC SPEAKING

The BCCLA is regularly called upon to speak to groups about civil liberty issues. Contact the BCCLA to book a speaker. A sampling of talks from 2008 include:

Social Responsibility and Privacy Rights for the Prairie Health Information Privacy Conference, Winnipeg

Patient Portals, Web 2.0 and Online Care for the E-health & Decision Support Conference, Vancouver

Why the Freedom of Speech Side is Losing the Public Debate for a Public Forum, *Offensive Speech: What's Legal? What's Ethical?*, Calgary

The Falun Gong, Free Speech and Municipal By-laws, for the Opera Speaks Forum on Prisoners of Conscience in the 21st Century, Vancouver

HIV Disclosure and the Law, for an Interprofessional Elective in HIV/AIDS Care, University of British Columbia

Public Interest Advocacy: Lessons Learned (the Hard Way), for Vancouver Coastal Health

In 2008, the BCCLA also played a prominent role in teaching courses on civil liberties and tort law at the Faculty of Law at UBC.

CASEWORK

Complaint Assistance & Law/Policy Reform

The BCCLA is an important advocate for individuals seeking assistance involving civil liberties whether their complaints involve government or private institutions. Add our numerous law reform files and BCCLA casework is a major focus of the Association's work. The following cases highlight some of our work in 2008.

The BCCLA is often the last resort for individuals who feel their rights or liberties have been trampled by government or private actors. We're proud of our strong tradition, supported by our friends at The Law Foundation of BC, of offering summary advice, referrals, and advocacy to individual citizens facing the overwhelming resources of government and large companies when insisting on their rights.

In 2008, the BCCLA reached a milestone by directly assisting over 1,000 citizens (1,150 to be exact) who demanded that their rights be recognized. We were honoured to stand beside them in figuring out where to go, what to do, and how to move forward in their private fights for freedom.

Beyond our direct advocacy, the BCCLA provided resources to countless (well, actually 359,407 unique visits) people through our website, who downloaded 69 gigabytes of information, the equivalent of 34,500,000 pages of a typical book, from the BCCLA website. We also did 44 public information presentations to audiences that totaled over 2,800 people for the year. In short, we're doing everything we can to get the message of rights and freedoms out.

Police Accountability

Boycotting ineffective police complaints systems

In 2008, the BCCLA and Pivot Legal Society joined forces to boycott the province-wide police complaints system and later, the BCCLA extended our

boycott to the RCMP police complaints system. Tired of one-sided investigation reports, dismissal of serious and valid complaints, and validated complaints that resulted in no consequences for involved officers, our Association, along with the Coalition of People with Disabilities, Justice for Girls, VANDU and other non-profit organizations who deal with policing issues, withdrew our active assistance to complainants until the provincial government makes urgently needed changes to the *Police Act* to reform the police complaints process to restore public confidence in the process.

While the provincial government has promised reform of the complaints process in line with the 91 recommendations for reform made by retired Justice Josiah Wood in his audit of the police complaints system, they still have not acted. In the meantime, the BCCLA has encouraged and assisted people with the small claims civil litigation process as a preferable alternative, and raised the issue in hundreds of media interviews.

Complaints filed before the boycott was initiated continue, including our racial profiling complaint with the Office of the Police Complaint Commissioner; various complaints against the RCMP, including the character attacks on Mr. Robert Dziekanski (the YVR taser victim) in RCMP press releases, and the unlawful seizure of Paul Pritchard's video recording of Mr. Dziekanski's death; and the unlawful seizure of alcohol from private citizens on Canada Day in Victoria.

| Active Files | | | | |
|----------------------------------|------------|------------|------------|------------|
| | 2008 | 2007 | 2006 | 2005 |
| Access to information | 8 | n/a | n/a | n/a |
| Administrative decision-making | 7 | 4 | 1 | 4 |
| Anti-terrorism/national security | 8 | n/a | n/a | n/a |
| Autonomy | 0 | 18 | 14 | 1 |
| Childrens' rights | 1 | 7 | 6 | 4 |
| Discrimination | 26 | 17 | 14 | 7 |
| Due process - legal | 21 | 38 | 31 | 36 |
| Freedom of speech & association | 34 | 30 | 25 | 24 |
| Legal precedents | 3 | n/a | n/a | n/a |
| Other | 6 | n/a | n/a | n/a |
| Patients' rights | 2 | 6 | 3 | 2 |
| Police complaints | 71 | 98 | 69 | 49 |
| Political rights | 19 | 14 | 9 | 14 |
| Prisoners' rights | 13 | 3 | 3 | 3 |
| Privacy & access to information | 46 | 76 | 58 | 48 |
| Private Offences | 1 | n/a | n/a | n/a |
| Total cases | 266 | 331 | 236 | 201 |

Case Acceptance Policy

The B.C. Civil Liberties Association accepts complaints about civil liberties violations if the issue is likely to impact a large number of individuals and if we have the resources to provide assistance. Our full case acceptance policy is on our website: www.bccla.org/05acceptance.htm

CASEWORK

Demanding Civilian Investigation of In-Custody Deaths

Simply because the BCCLA is boycotting the police complaints process doesn't mean that the Association has been inactive in working towards complete and independent scrutiny of police-involved deaths. In 2008, the BCCLA participated in the Frank Paul Inquiry, raising important issues about Frank Paul's death in an alley in the middle of winter after being dropped there, barely conscious, by a rookie Vancouver Police officer. Also in 2008, the BCCLA began work on our Deaths In Custody project, a year-long study of deaths in custody across Canada that will result in a book that studies best practices from across the world and analyzes data and reports from Coroner's services from across Canada. In 2009, we'll be hosting a panel of the authors of the various chapters of the book, including a representative from Northern Ireland's civilian investigation agency, to keep up the pressure on the provincial and federal governments to address this critical issue.

Stopping American police from acting on Canadian territory

On March 10, 2005, the BCCLA complained that Texas State Troopers had been permitted by the RCMP to engage in law enforcement activities as part of an exchange program in British Columbia focused on the drug trade called "Operation Pipeline". The BCCLA also complained that the Troopers and the RCMP did not have legal authority to stop a particular motorist or search his car. In 2008, the complaint was upheld by the Commission for Public Complaints Against the RCMP, and in a private meeting with the Commissioner, the BCCLA was assured that Operation Pipeline-like exchange programs would not be taking place in the future without adequate constitutional and Canadian sovereignty safeguards.



Ensuring our Olympics include civil liberties

In 2007 we established our arm's length "blue ribbon" task force to assist the Olympic Integrated Security Unit, led by the RCMP, in understanding and identifying civil liberties issues around the Games proactively rather than reactively. Our hopes for the task force at the time were high: we had commitments from the Vancouver Police Board, Vancouver Police Department, the RCMP and VANOC to work with the Committee. The task force, also known as the Civil Liberties Advisory Committee, met just once with the ISU before it became apparent that the ISU was not interested in their services. The group disbanded informally, and has just recently been reconstituted in response to RCMP requests for a further meeting following media stories about the issue. A second meeting is scheduled for 2009, but further meetings are not likely if the RCMP is unwilling to share security protocols and implement recommended changes.

Shutting down illegal mass searches and seizures by police officers

The BCCLA filed a complaint and raised concerns in the media after receiving several complaints from the public about four police forces in the Victoria area instituting mandatory, non-consensual searches for alcohol on Canada Day. The searches and seizures plainly violated the *Charter* rights of the attendees to be free from unreasonable search. All alcohol found during the illegal searches, including closed containers, was confiscated. Although the Victoria Police stated that the same program would be in place on BC Day, following the complaint and the media related to the Canada Day event, the searches were discontinued.

Discrimination

No pets on the Skytrain, please

A press conference held by the Transit Police drew to the attention of the BCCLA their plan to introduce drug and explosive sniffing dogs on the Skytrain in the Lower Mainland. Our quick media

response, combined with a lengthy submission on the unconstitutionality of the plan drew a quick response from the Chief of the Transit police, who advised the BCCLA that the plan was unlikely to go ahead as had been reported in the media. The BCCLA will continue meeting with the Transit Police into 2009 to ensure that this plan – that could restrict the access to transit of medical marijuana users and devout Muslims who see dogs as unclean – doesn't make it out of the doghouse.

Declaring victory on Project Civil City

In the earliest days of the Civil City proposal of mass-public funding of unaccountable private security guards, answerable only to business interests in commercial areas of the city, the BCCLA was at City Council and in the media pan-ning the plan as unworkable and undemocratic. Along with community groups, we kept up the pressure throughout 2008, causing the issue of private security guards in public space, and the entire Civil City project, to become an election issue. In early 2009, the new City Council cancelled the planned funding expansion for private security guards throughout the city and the last day of Project Civil City was February 13, 2009.

The Association will keep up our work in 2009 in ensuring that all citizens have equal access to public space, whether they are homeless, disabled, or appear to be addicted to illicit drugs, and that all police patrols of public space are accountable to the public, and not special interests.

Protecting the dignity of disabled British Columbians

The BCCLA responded quickly when it heard about a policy at the Port Alberni office of the Ministry of Employment and Income Assistance (MEIA) of making disabled clients wait outdoors while waiting to see MEIA Social Workers. Disabled clients were forced to stand for up to an hour or more and inclement weather was negatively affecting the health of some clients. The BCCLA worked with the Vancouver Island Health Authority to put an end to this bizarre practice. The office has since changed its policies.

Keeping babies and moms together, for everyone's best interests

When the BCCLA heard that the mother-child program at the Alouette Correctional Centre for Women was being closed, we jumped into action, calling on the Solicitor General and Minister for Children and Family Development to bring the program back. Even though the Government knows that apprehending newborns from female inmates causes serious harm to the children's psychological and emotional development, profound psychological stress to the parents, and that these harms disproportionately affect Aboriginal women and children because of the over-representation of Aboriginal women in Canadian prisons, they've pushed ahead, and we'll be pushing back, including examining the possibility of intervening in the lawsuit filed by five women at the prison when it goes to appeal.

Freedom of Expression

Fighting a monopoly on public space messages for the Olympics

The BCCLA filed a complaint to the federal Competition Bureau when the organizers of the 2010 Olympics (VANOC) announced that they had bought every outdoor advertising space in Vancouver for the 10 week period surrounding the Games and would be reselling the spaces only to Olympic sponsors. This buy-up prevents any messages that are not consistent with Olympic sponsorship or VANOC messaging from being expressed during the Games. The official response of the Competition Bureau is expected in 2009.

Supporting protesters against disproportionate police responses and SLAPP suits

The BCCLA worked with an activist in Victoria who was involved in the protest against the construction of the Bear Mountain Interchange. More than fifty police officers arrived at the scene to remove four people involved in a tree-sit protest. The BCCLA caseworker and the activist worked together to help protesters and frustrated residents file police complaints. Subsequently, the Mayor of

CASEWORK

Langford threatened to sue the protesters in civil court for the policing costs. Not only were the people who were involved in the tree-sit named, but protest organisers as well. The BCCLA supported the public media campaign of the activist, arguing that policing costs ought to be borne by the state and that the lawsuit was a veiled attack on freedom of expression and assembly. Langford's Mayor ultimately discontinued the suit.

Privacy & Access to Information

Fighting to keep the internet free from corporate interference: Net neutrality

In 2008, the BCCLA made a submission to the Canadian Radio-Television and Telecommunications Commission on the civil liberties implications of Bell Canada's policy of "traffic shaping" to manage its telecommunications network. Also known as "throttling", traffic shaping limits the bandwidth available to certain telecommunications customers. The Association has adopted a position that advocates for "net neutrality" (non-interference of transmission by service providers) on the grounds that traffic shaping is a serious threat to expressive freedom. The Association will make a written submission to the CRTC for its consultation and review of the Internet traffic management practices of Internet service providers that will take place in 2009.

Making a list of no-fly lists

The BCCLA partnered in 2008 with the International Civil Liberties Monitoring Group to document the number of people who believe that they have been mistakenly or unfairly targeted as a traveler, and the nature of incident. The purpose of the project is to investigate and generate better public understanding of the practices, programs and systems used to screen travelers and to assess the scope of their concrete impacts on civil liberties. This project will continue in 2009 and result in comprehensive reporting to the public and to decision makers, to ensure that this remarkable and exceptional power is not abused and is subject to all appropriate due process protections.

Not smiling for the cameras: keeping expensive, ineffective CCTV out of public space

With comprehensive research now coming out of the UK showing their huge public camera network to be a colossal waste of tax dollars and completely ineffective in reducing crime rates, the BCCLA is more aggressive than ever in working to ensure that CCTV does not become the norm in our public spaces. The Association continues to be among the most outspoken opponents of governments' uncritical use of video surveillance. In 2008, we responded with a full court press on the provincial government's CCTV initiative that proposed putting CCTV cameras across the province, including assessing the situation for possible test-case litigation for 2009.



Blowing the cover off of secret negotiations to infringe your privacy rights

The BCCLA swung into action when leaked documents indicated that the federal government was conducting "closed-door" negotiations surrounding the *Anti-Counterfeiting Trade Agreement* (ACTA). The proposed changes would usher in sweeping police and border agent searches and confiscations of citizens' electronic devices in the name of anti-piracy. In addition, ACTA would require Internet Service Providers (ISPs) to give customer information to police without a warrant. The BCCLA made a number of submissions on these issues over 2008 and will continue to chase this issue into 2009 to ensure that privacy and constitutional rights are not eroded simply because they involve electronic information.

Electronic Health Records – Bill 24

We have been in consultation with the government for nearly two years on appropriate privacy and patient consent provisions for electronic health records databases. Given our extensive consultation, we were deeply shocked when the government tabled e-health legislation (Bill 24) that only allowed for patients to make disclosure

directives to control the dissemination of their confidential medical information at the discretion of the Minister of Health. Working with an informal coalition of health and privacy organizations, we held a press conference, met with various officials, including the Minister of Health, and were successful in persuading the government to introduce amendments that made patient disclosure directives mandatory. However, since that time, we have learned that the type of scheme for disclosure directives proposed by the government falls far short of being effective for privacy protection. As such, our work continues on this matter as we monitor the implementation of the program.

i To view the coalition's press release and other information, visit: www.bccla.org/pressreleases/08eHealth.pdf

Drug Policy

Freeing the police up for real public safety issues: The lowest police priority initiative

In 2008, the Drug Policy Committee drafted and the Association endorsed a proposal intended to be used in jurisdictions with municipal police forces. This "lowest-police-priority" initiative would direct the police to make the enforcement and investigation of marijuana offences committed in private, where the marijuana is intended for adult personal use, the City's lowest police priority. This initiative is modeled on Seattle's recent adoption of a similar initiative. It is anticipated that a successful adoption of the policy in Vancouver will make it more likely that other municipalities will endorse similar approaches. The Association will be presenting this initiative in 2009 to the Vancouver Police Board.

Notice of proposed amendment to BCCLA bylaws pursuant to section 20 of the BCCLA constitution

At the Annual General Meeting of the BCCLA on March 25, 2009 at 6:00 p.m. at 1181 Seymour Street in Vancouver, British Columbia, the following proposed amendment to the Bylaws of the BCCLA concerning the time requirement for holding the Annual General Meeting (AGM) of the Association will be debated and voted on.

Original section of the BCCLA constitution concerning AGM timing

(11) There shall be an annual general membership meeting of the Society during the month of March. Immediately following the annual meeting and within fourteen (14) days thereafter, the outgoing Executive Committee shall prepare and file such documents and reports as are required under the Societies Act of British Columbia.

Proposed amendment concerning AGM timing

(11) There shall be an annual general membership meeting of the Society at least once in every

calendar year and not more than 15 months after the adjournment of the previous annual meeting. Immediately following the annual meeting and within fourteen (14) days thereafter, the outgoing Executive Committee shall prepare and file such documents and reports as are required under the *Societies Act of British Columbia*.

Justification for the proposed amendment

This amendment is proposed to avoid tight time restrictions placed on our auditors in performing their audit of the BCCLA's previous year's books. The BCCLA has grown significantly in size and our books have grown in complexity accordingly. Requiring our auditors to complete their audit in time for the BCCLA to mail the Annual Report to our members in sufficient time to hold an Annual General Meeting by the end of March has proved an increasingly difficult task.

LITIGATION

OUR THANKS TO THE LEGAL COMMUNITY

The BCCLA combats civil liberties abuses by advocating for the rights of individuals in the courts. As part of our historic commitment to protecting civil liberties and human rights, we use targeted litigation to achieve broad and lasting effects. Whether challenging civil liberties abuses by representing individuals whose rights have been abridged, or appearing as an intervener, the BCCLA fights to uphold fundamental freedoms.

The BCCLA significantly expanded our litigation program in 2008. We launched and participated in more legal actions in this one year period than we had in our previous ten years as an organization. In addition to a growing staff of lawyers, advocates and students, the BCCLA benefited from the significant pro bono assistance of some of Canada's finest legal counsel. Some of the highlights of our 2008 legal docket follow.

Safeguarding Access to Information

Criminal Lawyers' Association v. Ontario Supreme Court of Canada



CATHY
BEAGAN FLOOD

The BCCLA appeared as intervener before the Supreme Court of Canada in a case which concerned the right of the public to access government information. The case is a constitutional challenge to Ontario's *Freedom of Information and Protection of Privacy Act*.

Ontario's access to information legislation gives the government an absolute right to withhold government information by saying its release would compromise law enforcement activities or solicitor-client information, even when there is a compelling public interest in disclosure. The BCCLA argued that portions of Ontario's access to information legislation infringe the *Charter* right to freedom of expression, which includes a right to

an open and transparent government. The BCCLA emphasized that access to government information is critical for the functioning of a democratic society. Citizens cannot make informed democratic choices unless information about public institutions is accessible, and the activities of the government are open and transparent. The Court has reserved judgment.



IRIS FISCHER

The BCCLA is represented by **Cathy Beagan Flood** and **Iris Fischer** of Blake, Cassels & Graydon LLP.

BC Civil Liberties v. Ministry of Public Security and Solicitor General Inquiry under the *Freedom of Information and Protection of Privacy Act*

Since 2004, the BCCLA has publicly advocated for the creation of an independent audit of the Provincial Police Complaint system. In 2005, the Solicitor General announced the creation of such an audit, which eventually was headed by Joe Wood, Q.C. The BCCLA was named a member of the Stakeholder Advisory Committee, which the audit team consulted with. In the fall of 2006, the BCCLA filed a request for copies of all files reviewed, and all notes generated in the preparation of the audit report amounting to approximately 800 pages. The Ministry of Public



YONG-JAE KIM



KARIN EMOND

Security and Solicitor General denied access. Subsequently, the BCCLA launched a complaint with the Office of the Information and Privacy Commissioner of British Columbia. The matter went to a written inquiry and the BCCLA awaits a decision.

The BCCLA is represented by **Yong-Jae Kim** and **Karin Emond** of Lawson Lundell LLP.

Challenging Civil Forfeiture Laws

Chatterjee v. Attorney General of Ontario Supreme Court of Canada

The BCCLA appeared as intervener before the Supreme Court of Canada in this case, which involves a constitutional challenge to the Ontario civil forfeiture laws found in the *Civil Remedies Act*. Ontario's *Civil Remedies Act* came into effect in 2002 and allows the province to seize assets if it can prove on the balance of probabilities that the assets were obtained "in whole or in part" due to illegal activity. The BCCLA argued that civil forfeiture regimes are an extension of the criminal law masquerading as part of the provincial property regime and that this intrusion into the criminal law is offensive to the rule of law. The Court has reserved judgment.

The BCCLA is represented by **David Butcher** of Wilson, Buck, Butcher & Sears and **Anthony D. Price** of Farris, Vaughan, Wills & Murphy LLP.

Defending the Rights of the Homeless

Victoria v. Adams BC Supreme Court

In an historic judgment, the B.C. Supreme Court struck down the City of Victoria's bylaws that prohibited homeless individuals from erecting temporary shelters. Victoria's bylaws prevented the individuals from protecting themselves from the elements, which is associated with significant

and potentially fatal health risks. The BCCLA was an intervener in the case. The Court ruled that the bylaws violated the individuals' section 7 *Charter* rights to life, liberty and the security of the person. The Court found that due to insufficient capacity in Victoria's shelters, hundreds of homeless people have no choice but to sleep outside. Grace Pastine, BCCLA Litigation Director: "This decision recognizes that telling homeless people who have nowhere else to go that they can sleep outside but they can't protect themselves from the elements places the homeless in an impossible situation."

Ending Warrantless Police Searches

Arkininstall v. City of Surrey BC Supreme Court

Under British Columbia's *Safety Standards Act*, municipal electrical and fire inspectors can demand entry into anyone's home to do an electrical safety inspection. The City of Surrey said those inspectors must be accompanied by uniformed and armed RCMP officers. The *Act* requires the electrical companies to share British Columbians' private electricity records with municipalities. Municipalities and the police say that these inspections were being done on homes that they believed were marijuana grow operations.

The BCCLA was concerned that the legislation was being used as a tool to conduct warrantless searches of citizens' homes, which is a clear violation of the *Charter*. The inspections were done without any judicial warrant to enter the home and the only justification given or required for the inspections is that one has "high power consumption" based on electricity consumption records that the City can compel from the utility provider.

When two residents of Surrey filed a lawsuit challenging the legislation, the BCCLA intervened in the case. The BC Supreme Court upheld the constitutionality of the *Act* and held that the safety inspections regime did not give rise to an unreasonable search or seizure. He found, however, that there was no basis for the RCMP, in the absence of a warrant, to attend a residence

LITIGATION

with the safety inspection team. The residents will appeal the judgement, and the BCCLA will seek leave to intervene at the Court of Appeal.

The BCCLA is represented by **Brent Olthuis** and **Micah Rankin** of Hunter Litigation Chambers.

Protecting the Safe Injection Facility

PHS Community Services Society v. Canada (Attorney General, Vancouver Area Network of Drug Users v. Canada (Attorney General)

BC Supreme Court, BC Court of Appeal

The BCCLA intervened in cases concerning a supervised injection facility, Insite, in the Downtown Eastside of Vancouver. Insite is jointly operated by the Vancouver Coastal Health Authority and the Portland Hotel Society. Insite provides supervised and sanitary conditions for the use of intravenous drugs. Insite has successfully reduced the health risks associated with addiction to such drugs. Research has found that the operation of Insite has prevented overdose deaths, reduced the suffering of addicts and lessened the spread of HIV and Hepatitis C. Insite operates pursuant to an exemption from the *Controlled Drugs and Substances Act*. The exemption was granted by the federal Minister of Health, and was due to expire at the end of June.

In a striking decision, the BC Supreme Court granted the facility a permanent constitutional exemption from prosecution under federal drug laws. Ryan Dalziel, counsel for the BCCLA: “This was a major victory for social justice in the Downtown Eastside. The Court has decided that the government cannot deny drug addicts access to the health care that they desperately need, and that Insite provides. This decision is an important step toward bringing to an end the criminalization of disadvantage and disease.” Canada has appealed the ruling. The BCCLA has been granted leave to intervene at the BC Court of Appeal.

Ryan Dalziel and **Daniel Webster, Q.C.** are counsel for the BCCLA. Both are from the firm Bull, Houser & Tupper LLP.

Guarding Privacy Rights

Wild Coyote Club Inquiry Inquiry under the *Freedom of Information and Protection of Privacy Act*

The BCCLA intervened in a complaint under the *Personal Information Protection Act* regarding the Wild Coyote Club’s practice of scanning and storing drivers license information and photos of patrons who enter the club. The information is collected to enforce age restrictions and deter violence. The BCCLA argued that the means used for this collection are not reasonable in law. The Information and Privacy Commissioner determined that there was insufficient evidence and argument to enable him to arrive at a decision and therefore referred the matter for further investigation. Further investigations resulted in a report being sent to the parties and further submissions being made. The BCCLA is awaiting the decision of the Commissioner.

Brian Samuels of Samuels & Co. represents the BCCLA.

Reforming the Criminal Justice System

Frank Paul Inquiry Provincial Inquiry

The BCCLA participated in the provincial public inquiry into the death of Frank Paul, a 47-year-old Mi’kmaq man who was left by Vancouver police in a Downtown Eastside alley where he died of exposure. The BC government called an inquiry into Mr. Paul’s death after years of pressure from the BCCLA and aboriginal groups. The massive probe has largely concluded. The public inquiry sought to uncover the truth of what occurred on that night and why the various agencies involved in investigating his death never adequately re-

sponded or scrutinized the officers' conduct. The Inquiry uncovered the significant role that Vancouver Police Department (VPD) officers played in Mr. Paul's tragic death and highlighted systemic failures in how various institutional agencies responded to his death. The Inquiry provided a unique opportunity for the BCCLA to uncover the truth of Mr. Paul's death and to advocate for positive reforms. The BCCLA urged the Commissioner to find that there is a fundamental flaw in the manner in which the VPD routinely investigates police-involved deaths and to recommend that in cases involving death or serious injury in which the police are involved or implicated, that the police must not investigate themselves. The BCCLA advocated for the implementation of a system of civilian oversight, in part modeled on the Ontario Special Investigation Unit, where civilians trained in investigating major crimes would take charge of all such investigations.



GRACE PASTINE

The 60-day inquiry concluded after hearing from 68 witnesses. The Commission has delivered an interim report to Attorney General Wally Oppal and will issue a final report pending a Court of Appeal decision on whether Crown prosecutors must testify like everyone else.

The BCCLA was represented by **Michael Tammen** of Harper Grey LLP and **Grace Pastine**, BCCLA Litigation Director.

Criminal Justice Branch of the Ministry of the Attorney General v. William H. Davies, Commissioner
BC Court of Appeal

The Criminal Justice Branch (CJB) of the Ministry of Attorney General brought a legal challenge to the ability of the Frank Paul Inquiry to obtain evidence from prosecutors involved in the Paul case. The BCCLA is a party in the case. We argued that it is crucial that the Commissioner should be



MICHAEL TAMMEN

allowed to fully inquire into the decisions of the CJB not to lay charges against the officers involved in Mr. Paul's death so that the public can be assured that prosecutors examine every police-related death fairly and impartially. In cases where prosecutors are called upon to investigate and lay charges in matters involving police officers, there is significant potential for real or perceived improper influence in the administration of public justice.

The BC Supreme Court held that the CJB must provide evidence in the Frank Paul inquiry concerning prosecutors' decisions not to lay charges in connection with the death of Frank Paul. The court's ruling allowed the Commissioner to direct prosecutors to provide testimony at the inquiry. The Criminal Justice Branch appealed the ruling to the BC Court of Appeal, where the BCCLA again appeared as a participant. The Court has reserved judgment.

The BCCLA was represented by **Michael Tammen** of Harper Grey LLP and **Grace Pastine**, BCCLA Litigation Director.

Ward v. Her Majesty the Queen in the Province of B.C. and Ward v. City of Vancouver
BC Court of Appeal

The BCCLA applauded the British Columbia Court of Appeal judgment in this case, which holds that damages are an appropriate remedy when police or other government agents inadvertently infringe an individual's constitutional rights. The appeals stem from a case brought by a Vancouver lawyer, Cameron Ward. Ward was wrongly jailed for several hours, strip-searched and had his car illegally seized after police authorities received a report that someone intended to throw a pie at Prime Minister Jean Chretien.

LITIGATION

The BCCLA was an intervener and argued that it was necessary to award damages to Ward in order to provide him with full and effective remedies for the violation of his *Charter* rights. This is the first appellate-level ruling that a person whose constitutional rights are violated by the state can be awarded monetary damages even if the government did not intentionally or willfully violate the person's rights.

Kent Roach, lawyer for the BCCLA: "This decision recognizes that in order for our Charter rights to be meaningful, courts must provide individuals with tangible remedies. Individuals who are not charged with an offence are extremely unlikely to commence *Charter* litigation if the only remedy that they can realistically obtain is a declaration that their rights have been violated."

Kent Roach, University of Toronto Faculty of Law and **Grace Pastine**, BCCLA Litigation Director represented the BCCLA.

Opposing Restrictions on Free Speech

BCTF and Canadian Federation of Students v. Translink and BC TransLink Supreme Court of Canada



CHRIS SANDERSON

The BCCLA intervened before the Supreme Court of Canada in this case which involves a constitutional challenge to the policies of TransLink and BC Transit. The policies prohibited political advertising on the sides of buses and SkyTrains.

The BCCLA also intervened in the BC Supreme Court and Court of Appeal and is represented by **Chris Sanderson, Q.C.** and **Chelsea Wilson** of Lawson Lundell LLP.



CHELSEA WILSON

BCTF et al. v. AG of BC BC Supreme Court

The BCCLA intervened in this case which concerns restrictions on third party advertising that are imposed by the *BC Election Act* R.S.B.C. 1996, c.106 ("Bill 42"). Bill 42 restricts individuals and organizations from engaging in political expression through election advertising in the 60-day period leading to the calling of an election and 88 days prior to election day. The BCCLA argued that Bill 42 infringes individuals' guarantee of freedom of expression, freedom of association and the right to vote, and that the restrictions are not reasonable, are not prescribed by competent law and are so vague and incoherent that they cannot possibly be considered "prescribed by law." The Court has reserved judgment.

The BCCLA is represented by BCCLA President **Robert Holmes** of Holmes and King.

Dixon and the BCCLA v. City of Powell River BC Supreme Court

The BCCLA filed a lawsuit in the Supreme Court of British Columbia against the City of Powell River for violation of the free expression rights of citizens to criticize their government. The lawsuit arises out of public criticism of the City of Powell River and its officials over the way in which they managed the approval process for a proposed harbour project. As a result of public comments, three citizens – new City Councillor Patricia Aldworth, Winslow Brown and Noel Hopkins – were sent "cease and desist" letters from the City's solicitors threatening to sue for defamation and demanding a retraction and apology. After the Mayor of Powell River made it clear that the City would not withdraw its unlawful threat to sue the individuals, the BCCLA sought a remedy through the courts. The matter has been heard by the Court and judgment is reserved.

The BCCLA is represented by **Robert Holmes** of Holmes and King.

Simpson v. Mair and WIC Radio Supreme Court of Canada

The BCCLA celebrated a victory after the Supreme Court of Canada released its reasons for judgment in *Simpson v. Mair* and WIC Radio. The BCCLA was an intervenor in the case. The Court dismissed an action for defamation against Rafe Mair, ruling that the statements at issue were protected by the law as comment. 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.

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."

The BCCLA was represented by **Robert Holmes** of Holmes and King and former BCCLA articulated student, **Christina Godlewska**.

El Masry and Habib v. Rogers Publishing and MacQueen BC Human Rights Tribunal

The Canadian Islamic Congress filed a human rights complaint against Maclean's magazine for publishing an article by Mark Steyn, entitled "The Future Belongs to Islam." The article is an excerpt from Steyn's book *America Alone: The End of the World As We know It*. A group of law students filed a similar complaint. The complaints were filed with the B.C. Human Rights Tribunal

and alleged discrimination on the grounds of religion. The BCCLA intervened at the hearing and argued that the hate speech provisions of the *Human Rights Code* infringe the right to free expression, as guaranteed by s.2(b) of the *Charter* and that this infringement cannot be justified in a free and democratic society.



JASON GRATL

The BCCLA argued that a proper interpretation of the *Code* must view hate speech, not as a free standing right to be free from deeply offensive material, but rather as a reinforcement of the other rights protected by the *Code* and the *Charter*. Consequently, a violation of the hate speech provisions of the *Code* should only be found where there is proof that the hateful or contemptuous statement caused or is likely to cause individual recipients of the communication to change their behavior so as to preclude the exercise of rights recognized in the *Code* or *Charter*. The BCCLA celebrated a victory after the BC Human Rights Tribunal determined that the publishers of the article did not violate the *BC Human Rights Code* and that the Tribunal did not have jurisdiction over Maclean's website.

The BCCLA was represented by **Jason Gratl** of Gratl & Company and **Micah Rankin** of Hunter Litigation Chambers.

Preventing Torture

Amnesty International Canada and BCCLA v. Chief of Defence Staff for the Canadian Armed Forces, General Rick J. Hillier, Minister of National Defence and Attorney General of Canada Federal Court of Appeal Canada

In 2007, the BCCLA and Amnesty International launched an application for judicial review with respect to the transfers of individuals detained by the Canadian Forces deployed in the Islamic Republic of Afghanistan.

LITIGATION



PAUL CHAMP

The BCCLA and Amnesty criticized the transfers for not providing adequate safeguards to ensure that individuals captured or detained in Afghanistan would not be tortured by Afghan forces. Our organizations had strong grounds to believe that Afghan forces are torturing detainees.

An extensive record of pervasive and widespread torture in Afghanistan has been well documented by international organizations monitoring human rights issues.

The BCCLA and Amnesty sought a declaration that sections 7, 10 and 12 of the *Charter* apply to individuals detained by the Canadian Forces in Afghanistan. By order of March 12, 2008, the Federal Court dismissed our application for judicial review. Although the Court failed to grant the relief that our organizations sought, the ruling powerfully and unequivocally confirmed all of the serious human rights concerns that our two organizations have repeatedly raised with respect to prisoner transfers in Afghanistan. The decision confirms the prevalence of torture in Afghan prisons and sets out a list of deficiencies the government must resolve before resuming transfers.

The BCCLA and Amnesty appealed the ruling to the Federal Court of Appeal. In a judgment released on December 17, 2008, the Federal Court of Appeal affirmed the reasons of the lower Court. The BCCLA and Amnesty will seek leave to appeal to the Supreme Court of Canada.

The BCCLA and Amnesty International are represented by **Paul Champ** of Raven, Cameron, Ballantyne & Yazbeck LLP.

In the matter of two complaints under section 250.18 of the National Defence Act, R.S.C. 1985, as amended, against one identified and other unidentified Canadian Forces military police members
Federal Court of Appeal Canada

The BCCLA and Amnesty filed complaints with the

Military Police Complaints Commission (MPCC) over the failure of the military police to investigate officers having command responsibility for directing the transfer of detainees to Afghan authorities, in the face of a known risk of torture. The failure of military police to investigate whether any members of the Canadian Forces should be charged for their role in facilitating the transfer of prisoners to face the possibility of torture in violation of the Geneva Conventions is at the core of the complaint.

The MPCC investigated the complaints and has ordered a full public hearing into the matter. The action follows an earlier complaint by the groups, accepted by the MPCC on 16 February 2007, to review the conduct of members of the military police in these transfers. The hearing is scheduled to begin in 2009.

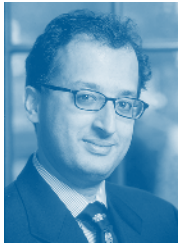
Since the filing of the initial complaint, more information about the conditions for these prisoners has been made public. Amnesty International and the BCCLA are calling on the Chairman of the MPCC to expand the scope of the original complaint to include transfers up to the present date. Evidence from a report by a Canadian official visiting the Afghanistan National Directorate of Security prison in Kandahar, on 5 November, 2007 noted that implements of torture described by a prisoner were discovered in his cell. Transfers were suspended after that discovery but officers in the chain of command ignored much evidence of a substantial risk of torture until the implements were found. The delay in officers acting on the issue at the very least shows wanton or reckless disregard for the lives and safety of others.

The BCCLA and Amnesty International are represented by **Paul Champ** of Raven, Cameron, Ballantyne & Yazbeck LLP.

Minister of Justice, et al. v. Omar Ahmed Khadr
Supreme Court of Canada

Omar Khadr is a Canadian citizen who has been detained by the United States in Guantanamo Bay

since 2002 and has been put on trial in a proceeding before a Military Commission that is in violation of international law. Prior to charges being laid, Canadian officials interviewed Mr. Khadr in Guantanamo Bay and passed on summaries of the information collected to the American government.



SUJIT CHOUDHRY

The question raised by the appeal is what constitutional duties Canada owes Mr. Khadr under the *Charter* in light of the flagrantly illegal conduct of the American government. The BCCLA argued that by gathering evidence from Mr. Khadr and sharing it with American military authorities for use against him in the proceedings in Guantanamo Bay, Canada has become “constitutionally complicit” in those proceedings. The BCCLA also argued that the *Charter* places Canada under a duty to fully disclose to Mr. Khadr evidence that may be relevant to his defense in the proceedings against him in Guantanamo Bay. The Supreme Court of Canada released a judgement unanimously deciding that Canada’s complicity in the process at Guantanamo Bay violated Canada’s binding obligation under international law.

Sujit Choudhry, counsel for the BCCLA: “The Supreme Court has unequivocally confirmed that the *Charter* binds Canadian officials when operating abroad, where Canada would also be acting in contravention of its obligations under international human rights law. This has broad significance beyond Mr. Khadr’s appeal, and extends to the whole range of ways in which Canada cooperates with foreign governments in the national security context.”

Joe Arvay, of Arvay Finlay Barristers, and **Sujit Choudhry**, Faculty of Law, University of Toronto, represented the BCCLA.

Take Your Journey Further with a Legacy Gift to the BCCLA

A legacy gift, or planned gift, is a charitable donation that you plan now so that the BCCLA will benefit from it in the future. It is usually given from assets, not from current cash flow. A legacy gift enables you to potentially make a larger charitable donation than you thought possible during your lifetime.

A legacy gift is a personal statement about the values you have embraced throughout your life. It is an exciting opportunity to make a real difference in protecting civil liberties and human rights in Canada.

Legacy gifts can also offer favourable tax advantages during your lifetime and/or on final estate returns. They can generate a charitable income tax reduction or they can reduce or eliminate capital gains taxes. Your lawyer or financial advisor will help ensure the type and timing of your gift is appropriate to your financial situation and that it maximizes the advantages to you.

Please help the BCCLA continue to build upon its proud history that you will be a part of forever. There are many ways to leave a legacy gift. The most common are:

- Bequests
- Life insurance
- Trusts
- A gift of RRSP or RRIFs
- Real property
- Publicly traded securities

For more information on each type of legacy gift and how you can take your personal journey farther, please contact Sarah Sandusky, Director of Development at sarah@bccla.org or 604-630-9750.



BC Civil Liberties Association protecting rights and freedoms

Membership Conference / March 25, 2009 / 6:00 pm
VanCity Theatre 1181 Seymour Street / Vancouver, BC



Guest Speaker
Omar Khadr's lawyer
William Kuebler
Winner of the 2009
Reg Robson
Civil Liberties
Award

www.bccla.org

Admission is free to BCCLA members! Non-members: \$10

To register to attend contact Sarah Sandusky at
events@bccla.org or 604.630.9750

| Time | Event | |
|---------|---|---|
| 6:00 pm | Reception | |
| 6:10 pm | Leaving a Legacy Workshop – Genevieve N. Taylor |  |
| 6:30 pm | Civil Liberties and Privacy – Micheal Vonn | |
| 6:50 pm | The Olympics and Civil Liberties – David Eby |  |
| 7:10 pm | Prevention of Torture Act – Jason Gratl Afghan Detainees – Grace Pastine | |
| 7:30 pm | Annual General Meeting – Rob Holmes |  |
| 7:50 pm | Guest Speaker & Reg Robson Award Winner – William Kuebler |  |
| 8:30 pm | Intermission | |
| 9:00 pm | Taxi to the Dark Side (seating for 176) Directed by Alex Gibney, 106 min Winner of the 2007 Academy Award for documentary feature. <i>Some viewers may find some scenes in the movie to be disturbing.</i> | |

TREASURER'S REPORT / ALAN ROWAN

The year just finished was marked by significant change, as the world's financial systems were rocked. This has affected everything, not only what we read and heard about on the global stage, but also the well-being of charities like ours, that are so dependent on the generosity of individuals and foundations for their funding.

Overall, our results for 2008 were favourable, as we ended the year with a surplus of some \$97,000. A closer reading of the financial report reveals two items of note. The first of these is our fundraising total for the year—\$185,000. We were very successful here; this number represents a 5% increase over 2007. Truth is we fell far short of our (admittedly) ambitious target. How then did we achieve a surplus, you may ask?

The second notable item in our year-end statement is the line that reads *Bequest: \$115,000*. We received our largest single gift ever from the estate of the late Bryce Waters of Victoria. This extremely generous and unexpected gift allowed us to finish the year on a positive note as mentioned. What is left unsaid is the fact that without Mr. Waters' thoughtfulness, we would have ended the year with sizeable five-figure deficit.

What can we take constructively from this? For one, we have lowered our sights for fundraising in 2009. A more realistic target equal to our results of 2008 has been set. I feel we will have been very successful if we can match last year's amount.

In order for the Association to maintain our efforts, with no cuts to staff or programs, we have elected to draw \$15,000 from the Stabilization Fund. Coupled with the second installment of Mr. Waters' bequest—some \$60,000—we will be able to achieve a balanced budget for the year. We are hopeful the present financial crunch will ease heading into 2010, and further fundraising opportunities will ensue.

At this time, I would like to again thank The Law Foundation of BC, our single largest benefactor. We have received on-going, unrestricted, core

funding from the Foundation for many years, and qualified for a large increase which was phased in over the last two. I hasten to report that we have received the very good word that this funding is secure for three years, through 2011. In addition,



ALAN ROWAN

we requested and received an increase in funding in 2008. We discovered an enormous increase in clerical work associated with the work of our Litigation Director, and this further grant has allowed us to hire a Legal Assistant on a full-time basis. Join me in welcoming Shannon Lindal to the office team.

In closing, I wish to salute Sarah Sandusky, for her hard work and positive spirit in the face of all the gloom of the recent months. Our Director of Development continues to bring good ideas and high standards to her job, which will be tested over the next year. Our members and donors came through for us in 2008, and I salute them, and their generosity. May we continue to enjoy their unflinching support. Lastly, I'd like to refer back to the fact that bailed us out this year, namely, someone thoughtfully included us in their will. This is a simple act, which has long-reaching effects. I encourage all our members and donors to call Sarah Sandusky for ways to make the BC-CLA part of your planned giving.

A handwritten signature in blue ink, appearing to read 'Alan Rowan'.

ALAN ROWAN

AUDITOR'S REPORT

To the Members
British Columbia Civil Liberties Association

We have audited the statement of financial position of the **British Columbia Civil Liberties Association** as at December 31, 2008 and 2007 and the statements of operations and changes in fund balances, financial position and cash for the years then ended. These financial statements are the responsibility of the Association's management. Our responsibility is to express an opinion on these financial statements based on our audits.

Except as explained in the following paragraphs, we conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In common with many not-for-profit charitable organizations, the British Columbia Civil Liberties Association derives revenue from memberships and donations, the completeness of which is not susceptible of satisfactory audit verification. Accordingly, our verification of those revenues was limited to the amounts recorded in the records of the organization and we were not able to determine whether any adjustments might be necessary to memberships and donations, excess of revenue over expenses, assets and net assets.

In our opinion, except for the effect of adjustments, if any, which we may have determined to be necessary had we been able to satisfy ourselves concerning the completeness of the memberships and donations revenue referred to in the preceding paragraph, these financial statements present fairly, in all material respects, the financial position of the Association as at December 31, 2008 and 2007 and the results of its operations for the years then ended in accordance with Canadian generally accepted accounting principles. As required by the *Society Act of B.C.*, we report that these principles have been applied on a basis consistent with that of the preceding year.

TOMPKINS, WOZNY, MILLER & CO.

CHARTERED ACCOUNTANTS

Vancouver, Canada

February 6, 2009

FINANCIAL STATEMENTS

British Columbia Civil Liberties Association STATEMENT OF OPERATIONS AND CHANGES IN FUND BALANCES For the year ended December 31

| | 2008 | | | | 2007 | |
|--|----------------|--------------------|-----------------|-----------------|----------------|----------------|
| | GENERAL FUND | STABILIZATION FUND | TRUST FUND | LITTLE SISTER'S | TOTAL 2008 | TOTAL 2007 |
| REVENUES | | | | | | |
| Membership & donations | 187,259 | — | — | — | 187,259 | 176,165 |
| Bequests | 115,000 | — | — | — | 115,000 | — |
| Law Foundation of BC - operating grant | 302,350 | — | — | — | 302,350 | 238,391 |
| Specified grants earned | 94,392 | — | — | — | 94,392 | 73,179 |
| Gaming revenue earned | 30,262 | — | — | — | 30,262 | 45,292 |
| Investment income | 739 | 10,632 | 6,478 | — | 17,849 | 12,683 |
| Realized gains on sales of investments | — | 8,549 | 6,872 | — | 15,421 | 11,530 |
| Adjustment of investments to market value | — | (39,210) | (76,762) | — | (115,972) | (4,514) |
| Endowment distributions | 5,407 | — | — | — | 5,407 | 5,326 |
| Contract and court awarded costs | 119,117 | — | — | — | 119,117 | 40,872 |
| Miscellaneous and special events | 7,902 | — | — | — | 7,902 | 3,027 |
| Amortization - deferred capital gains | 9,448 | — | — | — | 9,448 | 1,438 |
| | 871,876 | (20,029) | (63,412) | — | 788,435 | 603,389 |
| EXPENSES | | | | | | |
| Salaries & benefits | 467,321 | — | — | — | 467,321 | 378,423 |
| Rent & utilities | 38,648 | — | — | — | 38,648 | 38,541 |
| Office operating | 35,194 | — | — | — | 35,194 | 35,903 |
| Contract services | 19,493 | 462 | 769 | 1,890 | 22,614 | 20,964 |
| Insurance | 1,223 | — | — | — | 1,223 | 1,223 |
| Bank charges | 4,121 | — | — | — | 4,121 | 2,224 |
| Fundraising | 28,377 | — | — | — | 28,377 | 7,336 |
| Newsletter | 9,450 | — | — | — | 9,450 | 8,450 |
| Litigation costs | 124,152 | — | — | — | 124,152 | 40,152 |
| Meetings, publications, events | 36,555 | — | — | — | 36,555 | 29,384 |
| Amortization | 12,359 | — | — | — | 12,359 | 4,277 |
| | 776,893 | 462 | 769 | 1,890 | 780,014 | 566,877 |
| Excess of revenue (expenses) for year | 94,983 | (20,491) | (64,181) | (1,890) | 8,421 | 36,512 |
| Fund balances, beginning of the year | 87,718 | 231,357 | 132,979 | 1,890 | 453,944 | 374,268 |
| Interfund transfers | (85,000) | (136,342) | 221,342 | — | — | — |
| Adjust. of prior years' market value | — | — | — | — | — | 43,164 |
| Fund balances, end of year | 97,701 | 74,524 | 290,140 | — | 462,365 | 453,944 |

 The complete 2007 BCCLA audited financial statements are available at www.bccla.org/05annual.htm

BCCLA PEOPLE

| MEMBERSHIP REPORT / SUPPORTERS | | | | | |
|--------------------------------|------|------|------|------|------|
| | 2008 | 2007 | 2006 | 2005 | 2004 |
| Senior | 225 | 188 | 215 | 214 | 206 |
| Students | 112 | 78 | 17 | - | - |
| Individual | 444 | 320 | 320 | 342 | 327 |
| Family | 292 | 226 | 251 | 234 | 232 |
| Organization | 5 | 4 | 6 | 1 | 11 |
| Total memberships | 1078 | 816 | 809 | 791 | 776 |
| Donors only | 179 | 186 | 155 | 146 | 354 |
| Total supporters | 1257 | 1002 | 964 | 937 | 1130 |

Volunteers

The BCCLA salutes the following volunteers who, through their dedication and generous contributions are an enormous help to the BCCLA. Volunteers contributed a total of 4,851 hours with 2,870 of these being provided as legal services from lawyers. Many thanks to:

- | | |
|-----------------------|--------------------------|
| Ian Brown | Bruce Ketchum |
| Romi Chandra | Nancy Ketchum |
| Hennie Choy | Kevin Love |
| Maria Chuletta | David MacAllister |
| Kris Constable | Michael McCubbin |
| Devyn Cousineau | Don McKinnon |
| Aly de la Cruz | Kevin Millsip |
| Andrew Cudmore | Stephen Owen |
| Jenna Desormeaux | Michael Rosenberg |
| Katerina Giles | Gertie Rubio |
| Christina Godlewska | Jim Sayre |
| Andrea Hankins-Palmer | Stephanie Skinner |
| Chris Hardcastle | Vanessa van den Boogaard |
| Tim Hinkson | Shaheena Virani |
| Paul Holden | Catherine Wong |
| Am Johal | Jerry Young |
| John Kehler | |

PHOTO CREDITS

Jay Black: page 6, cover photo
(megaphone)

Committee Members

Thanks to the following individuals who sit on committees and provide their time and expertise to the Association's work:

- | | |
|------------------------------|-----------------------------|
| POLICE ACCOUNTABILITY | PRIVACY & ACCESS |
| Larry Cohen | Richard Rosenberg, Chair |
| Jason Gratl | Kris Constable |
| Shirley Heafey | Darrell Evans |
| Robert Holmes | Paul Holden |
| Am Johal | Laura Huey |
| David MacAllister | Vance Lockton |
| Megan Vis-Dunbar | Jim Sayre |
| | |
| DRUG POLICY | FUNDRAISING |
| Kirk Tousaw, Chair | Rob Holmes |
| Rielle Capler | Bruce Ketchum |
| Jacob Hunter | Nancy Ketchum |
| Steven Savitt | Tom Sandborn |
| Nicole Seguin | Eric Wyness |
| Ken Tupper | |
| Eric Wyness | |



SUPPORTING THE BCCLA

Ed and Julia Levy

We are honoured to be associated with the BCCLA. For many years we have been financial contributors and for the last few years one of us has served on the Board.

The BCCLA not only plays an extremely important role in BC, but also it is an increasingly influential and respected voice on the national stage. Although the BCCLA has a province in its name, the nation is its scope.

Almost from its inception, the BCCLA has had national impact by virtue of the more than twenty cases it has intervened in at the Supreme Court of Canada. However, in recent years the Association has taken a leadership role in a number of other national arenas as well. In particular, the BCCLA was one of the first civil society organizations to take a public principled stand against the Canadian government's complicity in the incarceration and torture of Maher Arar and subsequently participated in the O'Connor Commission's Inquiry into the Arar case.

More recently, the BCCLA was an intervener in the Khadr case where Canada's highest court agreed with the BCCLA that, by gathering evidence from Mr. Khadr and sharing it with American military authorities, Canada's complicity in the proceedings violated Mr. Khadr's *Charter* rights to life, liberty and security of the person. And the BCCLA, in partnership with Amnesty International has also filed suit against the Canadian military for handing over detainees to Afghan Forces when there is a serious risk of torture.

In the area of policing, the BCCLA has documented concerns raised by UN committees about repeated inappropriate methods used by Canadian federal and provincial police forces during demonstrations. Among other initiatives, the BCCLA and others monitored the Security and Prosperity Part-

nership summit in Quebec in 2007 and documented the fact that undercover officers were engaged in potentially wrongful or illegal conduct.

The BCCLA is currently pursuing a number of additional national issues including these initiatives: gauging the impact of no-fly lists on civil liberties, privacy rights and mobility rights; presenting to Parliamentary committees its concerns that the new federal voting rules are unjustly depriving citizens of their right to vote; and raising serious questions about some of the provisions of the Anti-Counterfeiting Trade Agreement – which amends the *Copyright Act* – and about closed-door processes surrounding the legislation.

We are proud to be associated with the BCCLA. We were first attracted to the Association because it was willing to take considered positions and make stands based on principle. Doing so often meant that it was “going against the grain”, supporting people or causes that had few other supporters or resources, but at the same time effecting systemic changes in our legal fabric. Those features of the BCCLA continue unabated as its influence and effectiveness have increased and its scope has expanded. We urge you to support the Association in whatever way you can. In addition to all the other reasons we have mentioned, we can assure you that the BCCLA has an uncanny ability to stretch your dollars while protecting your rights and freedoms.

Ed Levy, PhD
Julia Levy, PhD, OOC

ILLAHIE Foundation



2009 REG ROBSON CIVIL LIBERTIES AWARD WILLIAM KUEBLER

Two years ago, Lieutenant Commander Kuebler was appointed by the U.S. Navy to represent Canadian-citizen Omar Khadr before the U.S. military commissions at Guantanamo Bay. His advocacy continues to this day.

“Giving this award to Lieutenant Commander Kuebler is a departure from our tradition of awarding the Reg

Robson award to a Canadian,” acknowledged BCCLA president Robert Holmes. “However, he has gone above and beyond the call of duty, including through his efforts to raise Canadians’ awareness of the lack of due process in the American proceedings involving Canadian child soldier Omar Khadr.”



Mr. Khadr was detained at the age of 15 in Afghanistan and subjected to prolonged sleep deprivation and other abuses that violated his fundamental human rights. In the course of defending him, Lieutenant Commander Kuebler conducted a Canadian speaking tour to encourage the Canadian government to intervene and prevent the flawed American military tribunal process from proceeding against a Canadian citizen.

“Lieutenant Commander Kuebler’s efforts are all the more remarkable given that he was defending a foreigner against a prosecution brought at the instance of his Commander in Chief, the President of the United States,” notes Holmes. “Lieutenant Commander Kuebler’s fearless advocacy for his client against the enormous resources of the state is an excellent example of the importance of having an independent bar. His obvious commitment to due process and the rule of law as essential components of democratic society deserves international recognition.”

The Reg Robson Award is given annually to those who have demonstrated a substantial and long-lasting contribution to civil liberties in B.C. and Canada. The award is named after long-time BCCLA President Reg Robson. Past recipients include Maher Arar and Monia Mazigh, Joe Arvai, Q.C., Tara Singh Hayer (posthumously), Murray and Peter Coren, Kim Bolan and Janine Fuller, among others.

THE MANDATE of the B.C. Civil Liberties Association is to promote, defend, sustain and extend civil liberties and human rights in the province of British Columbia and across Canada.

THE BCCLA WISHES TO THANK The Law Foundation of B.C., other funders and all our members and donors for their continued support for the preservation of civil liberties for British Columbians and for all Canadians.



B.C. Gaming Policy and Enforcement
Branch of the Ministry of Public
Safety and Solicitor General

