

# bccla

Annual Report 2009

BC Civil Liberties Association



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## THE RIGHT TO PROTEST

Legal Observers Maintain Watchful Eye

Challenge and controversy are the lifeblood of this organization. The Olympics presented both. Large forces were at work. Such things can sweep away many things in their path. Rights and freedoms that Canadians hold dear were at risk. Those include rights of expression and rights to hear viewpoints other than those programmed by organizers of the great event. Democratic rights of ensuring government accountability were jeopardized as well.



and freedoms. Our people knew that their participation was for a worthy cause. They participated, uncertain whether it might result in recognition of achievement or failure. Our involvement rises far above sitting things out “with those cold and timid souls who know neither victory nor defeat.” Saying that does not mean we became partisans. Quite the contrary. While some saw the BCCLA’s voice as identifying with protesters, the reality is that we identified merely with their right to protest. There is a difference. An important one.

Given the billion dollars of public money spent on security to ensure order was maintained in the name of the public, the public was and is entitled to know what methods and tools were used to do so.

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“ Given that security forces were deployed to ensure order was maintained in the name of the public, the public was and is entitled to know what methods and tools were used to do so. ”

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Our role was to maintain a watchful eye, present a sincere voice detached from partisan concerns, and keep up a telling enthusiasm for ensuring that the public knew what was going on. I marvel at the commitment shown by so many of our helpers. I marvel that so many helped knowing that their involvement came at a price. Comfortable anonymity is a norm that was shorn away from those who became Legal Observers. From the security forces, such participation resulted in being shadowed. From the more vocal protest groups, such participation resulted in being marked as someone more interested in process than outcomes. Either way, being a Legal Observer exacted a price. But it was worth it.

I want to add a personal note of gratitude to all of the staff, all interns and all volunteers. I want to do the same for the more than 400 members of the public who were trained as Legal Observers and the more than 250 who participated. They conveyed the message that Canadians watch out for, care about and value rights and freedoms.

If people were allowed to demonstrate peaceably, at least in part, that was because of all we said and did to remind those in authority of that right. If there was relative peace and order, at least in part, that was because Vancouver knew the phrase “the whole world is watching” was apt because of our Legal Observers.

Many things still require attention. The work that the BCCLA was formed to pursue is ongoing, including the legacy of Olympic surveillance cameras, and the investigation dossiers built up on activists who spoke out against the Olympics. Matters do not end with the Olympic flame going out.

During the Olympics, we built upon our tradition of responsible and principled protection of the rights of free expression for all. We lit that flame and will work to ensure it continues burning for all to see.

# ABOUT THE BCCLA / **FIGHTING FOR FREEDOM**

## The BCCLA's remarkable growth in 2009

In 2009, the BCCLA celebrated a remarkable year of growth in donations, membership, volunteers, project achievements, casework and public outreach. Here are some of the highlights of our organizational growth over 2009.

**60%** more volunteer hours in 2009: 4,851 hours (2008) to 7,785 (2009) volunteer hours donated

**7%** more court files: 30 litigation files (28 in 2008), despite significant resources going to major impact litigation rather than interventions (Afghan Detainees file, Powell River free speech file, and Braidwood Taser Inquiry party status)

**46%** more hits on our website: 1.9m hits on our website (1.3m in 2008, 1.1m in 2007)

**24%** more copies of our e-newsletter distributed: 17,990 copies of the Civil Liberties e-Update distributed via e-mail (13,640 in 2008, 8,090 in 2007)

**88%** more media interviews: 108 media releases (last year 63) and just short of 1,000 media interviews over the year (531 last year, 250 in 2006)

**51%** more people in our presentation audiences: BCCLA staff gave 68 presentations over the year to over 4,250 people (2,800 in 2008; 2,600 in 2007; 2,200 in 2006)

**30%** more members of the public assisted and cases worked on: 1,518 cases and referrals (1,165 in 2008)



Photo: Rowena Koh

A more than **threefold** increase in our roster of pro bono lawyers: from 20 (2008) to 70 (2009)

**62%** more staff capacity: 5 new full time equivalents joined the Association thanks to our innovative use of internship programs

**18%** more BCCLA members: an increase from 1,078 members to 1,242 members

**5%** increase in overall donations: not including bequests, despite the overall financial recession

Through our casework, litigation and education, the BCCLA changed the course of, or helped initiate, many policies related to free speech, democracy, and accountability for government and other powerful actors in our society. Here are ten of our favourite victories from 2009.

### **1 Worked with the CBC to open its airwaves to political advertising**

A complaint to the CRTC caused the CBC to reverse a decades old policy to refuse to accept political advertising outside of election periods.

### **2 Ended transfers of Afghan detainees to face torture and made it a national issue**

The BCCLA's joint complaint with Amnesty International that Canada had been transferring Afghan detainees to the Afghan authority without seeking assurances that the detainees would not be tortured caused Canada to announce they had ended the dubious practice and would be inspecting jails for compliance.

### **3 Convinced the BC Police Chiefs that police should not investigate themselves**

The BCCLA's advocacy around far too many in-custody deaths contributed to the decision in 2009 by the BC Police Chiefs Association to announce that the police cannot continue to investigate themselves and maintain the confidence of the public.

### **4 Caused the Province and VPD to back away from arresting the homeless**

The BCCLA broke the story of the Province's plan to authorize police to use force against the homeless who refused to stay in homeless shelters, and caused the Province and local police to back away from the controversial plan.

### **5 Encouraged the City of Vancouver to revise anti-free expression Olympic bylaws**

Litigation launched by two activists with the assistance of the BCCLA forced the City of Vancouver to withdraw and revise their Olympic bylaws to permit non-celebratory signs near Olympic venues.

### **6 Won our complaint against illegal alcohol searches during Canada day**

A BCCLA complaint resulted in a joint police complaint commissioner investigation that produced a

legal opinion that disallowed the type of searches being done by police officers of citizens attending Canada Day celebrations.

### **7 Prevented the implementation of noise devices to deter the homeless**

The BCCLA ended the plan of Easypark, the City of Vancouver parking authority, to use the Mosquito noise device to deter "vagrants" at City parking lots.

### **8 Encouraged the VPD to revise three policies**

Work by the BCCLA forced the VPD to apologize to a Vancouver Province photographer for taking his camera and caused them to revise their policy on seizing cameras and video tapes; contributed to the decision of the VPD to revise their business plan that promised 20% more tickets for the homeless in 2009; and exposed the secret purchase of the Medium Range Acoustic Device (MRAD) crowd control weapon causing the VPD to deactivate it.

### **9 Exposed systemic abuse by RCMP officers in Prince George**

Research by the BCCLA – in partnership with writer Leonard Cler Cunningham – exposed a Mountie in Prince George who had Tasered a hog-tied Clayton Alvin Willey shortly before Willey's death, and Tasered another man more than 20 times, including an allegation that videotape of the second incident had been destroyed by a sergeant at the Prince George detachment.

### **10 Trained more than 400 citizens to protect rights and freedoms during the Olympics**

The BCCLA launched Canada's first ever legal observer project which ensured free speech and other democratic and human rights were protected during the Olympic period.

## 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 2009.

### 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 2009, we distributed thousands of free publications including the *Arrest Handbook* and *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*. The BCCLA website has become an important source of information about BCCLA positions, education and advocacy work with more than one million unique visits annually.

Call the BCCLA for free copies of our publications or e-mail [info@bccla.org](mailto:info@bccla.org) to be added to the *Civil Liberties Update* mailing list.

### Events

In 2009 the BCCLA hosted: a film festival with directors and featured members of documentaries answering questions about the films; a membership conference featuring a film and American counsel for Omar Khadr; a guest speaking appearance by technology law expert Michael Geist; a progressive lawyers conference; a civil liberties day for high school students; and multiple “know your rights” workshops at UBC and many other institutions.

### Public Speaking

In 2009, the BCCLA made approximately 68 presentations to public audiences hosted by other organiza-

tions in all formats ranging from academic and professional development conferences to presentations to private groups. Audience sizes ranged from 10 or 20 individuals to audiences as large as 300 people. We estimate that BCCLA representatives spoke to over 4,250 individuals in 2009 (2,800 in 2008; 2,600 in 2007; 2,200 in 2006) during our presentations, not including the classes our staff teach as adjunct faculty at the University of British Columbia and University of Victoria.

The following are examples of talks given by BCCLA staff on privacy related issues:

*Somebody's Watching Me: Surveillance and Privacy in an Age of National Insecurity*, presented to the Center for Global Security Law and Policy Conference on Surveillance and Privacy in an Age of National Insecurity, Cleveland, Ohio.

*Privacy, Security and the 2010 Games*, presented to the 10th Annual Security and Privacy Conference, Victoria, BC.

*Criminalization and HIV*, presented to the 18th Annual Canadian Conference on HIV/AIDS Research, Vancouver, BC.

*BC's Big Opt Out of e-Health*, presented to the 9th Edition E-Health Forum, Calgary, AB.

*Tracking Consumers Online*, presented to the Personal Information and Protection of Privacy Act Conference, Vancouver, BC.

*The Threat to Health Privacy of Centralized Electronic Health Care Records*, presented to the Canadian Bar Association, BC Branch, Freedom of Information and Privacy Law Section, Vancouver, BC.

# 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. Casework and law reform files are a major focus of the Association's work. The following cases highlight some of our work in 2009.

**T**he 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. Overall in 2009, the BCCLA caseworker assisted over 1,500 individuals (1,165 in 2008), an increase of 30% over 2008.

- Information/referrals were up in real numbers from 762 to 1,125, an increase of 47%.
- Complaint Summary Services cases were down slightly from 137 cases to 120, a decrease of 14%, this number will not increase until the end of our ongoing boycott of BC and Canada's failed police complaints process.
- Case files, involving 2 hours or more of dedicated work, were up from 266 cases in 2008 to 273 cases in 2009, an increase of 3%.

As a result, we feel, of provincial cuts to legal aid and the increased profile of the Association in the media, phone calls requesting assistance have increased exponentially, and the time required simply to manage messages and e-mails received is cutting substantially into the time available for more dedicated casework.

Consequently, in 2009 the BCCLA spent more time assisting more people in finding the services and resources they are looking for, but as a result we were less able to spend the two hours or more assisting an individual that would qualify a call as a "case".

Despite the challenge of managing this overwhelming demand for legal assistance, the BCCLA registered a marginal increase in the number of cases opened thanks to the support of our volunteer intern team. We couldn't have done it without them!



### Police Accountability

#### Reversing police positions

The BCCLA's advocacy around the death of Robert Dziekanski, the Braidwood Inquiry, the Frank Paul Inquiry, and many other deaths in custody contributed to the decision in 2009 by the BC Police Chiefs Association that the police cannot investigate themselves and maintain the confidence of the public. This caused the Solicitor General to strike a committee that will, eventually, implement a new Special Investigations Unit.

#### Exposing discriminatory policy

The BCCLA broke the story of the Province's plan to authorize police to use force against the homeless who refused to stay in homeless shelters. The BCCLA's media efforts convinced the Province to water down the Assistance to Shelter Act and the VPD to implement a policy that gutted the effect of the Act, much to the relief of housing service providers, the homeless, and surely the front-line officers.

#### Protecting media rights

A timely policy complaint by the BCCLA forced the VPD to apologize to a Vancouver Province photographer for taking his camera and caused them to revise their policy on seizing cameras and video tapes. BCCLA advocacy also contributed to the decision of the VPD to revise their business plan that promised



Case Activity		
	2009	2008
Access to information	17	17
Administrative decision-making	62	86
Anti-terrorism/national security	25	23
Children's rights	17	14
Discrimination	92	94
Due process - legal	186	80
Freedom of speech & association	108	157
Legal precedents	1	4
Native rights	3	0
Other	248	60
Patients' rights	52	50
Police complaints	375	290
Political rights	47	39
Prisoners' rights	23	48
Privacy	206	136
Privacy/Access	11	8
Private offences	45	59
Total cases	1,518	1,165

### Case Acceptance Policy

The BC 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](http://www.bccla.org/05acceptance.htm)

# CASEWORK

20% more tickets for the homeless and under-housed in 2009. The VPD also disabled the weapon component on its newly, and secretly, acquired Medium Range Acoustic Device (MRAD) crowd control weapon when the BCCLA exposed the purchase and called for safety testing and policy implementation before the device was deployed.

## Ensuring accountability

Research by the BCCLA in partnership with writer Leonard Cler Cunningham exposed a Mountie in Prince George who had Tasered a hog-tied Clayton Alvin Willey shortly before Willey's death, and Tasered another man more than 20 times, resulting in four separate RCMP code of conduct investigations, including investigation into the allegation of a Provincial court judge that videotape of the second incident had been destroyed by a sergeant at the Prince George detachment.

## Changing police policy

The BCCLA has continued to expand its policy to file police complaints in cases of deaths-in-custody, police shootings or important policy decisions. The

BCCLA actively worked on or filed 13 police complaints. This includes:

- A continuing policy of mandatory searches by Victoria Police during Canada Day celebrations, despite a finding by both police complaint commissioners that the practice is illegal. The BCCLA has obtained documents through access to information requests to address the issue through public advocacy and the complaints process.
- The Taser of a 15-year-old girl in the Northwest Territories. RCMP officers deployed a Taser on a restrained, handcuffed 15-year-old female at the Arctic Tern Young Offenders Facility in Inuvik on March 13, 2007. Paul E. Kennedy reported on the case in a public interest investigation.
- The shooting of a man on Vancouver Island by an RCMP officer where evidence has surfaced that the bullet entered at a downward trajectory, perhaps confirming eyewitness testimony that the man was kneeling or in the process of kneeling when the shooting occurred.

## Ending unlawful alcohol searches

The BCCLA garnered an important victory earlier this year with the Commission for Public Complaints Against the RCMP ruling that mandatory searches by police officers in BC are not legal. The finding stemmed from a public interest investigation, initiated based on a BCCLA complaint against several police departments in the Capital Region implementing a mandatory search policy on Canada Day, and applied to both municipal forces and the RCMP. Since this victory, the BCCLA has worked to utilize the CPC report to initiate policy change in BC forces, with mixed results:

### • Cultus Lake Park Board

Complainants approached the BCCLA about bylaw officers searching coolers for alcohol. The BCCLA has attempted to convince the CLPB that mandatory searches are illegal, with little success.

### • Chilliwack RCMP

Several complainants have been searched while heading to campgrounds in the Harrison Lake area. The BCCLA has helped several complainants file individual complaints. The BCCLA has recently been approached by members of a recreational/camping group about the Chilliwack RCMP performing mandatory searches and threatening arrest or fines if complainants do not pour out their alcohol. The BCCLA hopes to work with this community to initiate an omnibus policy complaint.

### • Vancouver and Victoria Police

The BCCLA received word that illegal searches would once again be done in Victoria despite the CPC report, and received reports that Vancouver police officers were performing mandatory searches during the fireworks. The BCCLA initiated a complaint against the Vancouver Police, and the BCCLA continues to exert pressure on the recalcitrant Victoria Police.

- The shooting death of a man by an RCMP officer stemming from the man calling the police to deal with a noisy neighbor. The man had a Nazi flag prominently displayed on his wall, and there is concern the man's political beliefs provoked the responding officers' aggression.

### Protecting privacy in criminal record checks

The BCCLA has been collecting complaints from people who have had to take Vulnerable Sector Searches (VSS) before employment. This section of the criminal record check includes non-criminal matters and “negative contact” which is preventing people from gaining employment or volunteer positions. The information and contacts collected in 2009 will help ground our 2010 action on this critical issue.

### Exposing key documents

The BCCLA continues to use *Access to Information* requests aggressively to gather internal government and police documents to ensure transparency and accountability. Recent files we've used this tool for include providing the public with information about how the police conduct complaint investigations, national statistics on RCMP deaths-in-custody, and internal police policy in relation to the policing of public events.

### Reforming police accountability laws

The Office of the Police Complaint Commissioner sent the BCCLA a copy of their submission to the Provincial Government asking them to reconsider a provision of the proposed changes to the Police Act that would redefine the term “serious harm” to give the Police Complaint Commissioner almost complete discretion to determine when “serious harm” had taken place, and when, therefore, a second and more comprehensive type of investigation with further safeguards would be required. The BCCLA provided a comprehensive submission to the Solicitor General opposing this amendment, and requesting that the definition of serious harm be as legislatively enshrined as possible – and rely on discretion as little as possible – to ensure complete transparency and accountability in the complaints process.

### Monitoring police dogs on public transit

The BCCLA met with Transit Police Chief Ward Clapham and a senior officer for a discussion about police sniffer dogs on public transit. The Chief assured the BCCLA that the police were training only explosive sniffer dogs, and that the dogs would not be “double deployed” dogs that would sniff for both drugs and explosives. This meeting followed media reports that the Transit Police were deploying drug sniffer-dogs.

Thanks to this meeting, the BCCLA was able to coordinate and mediate a meeting at a later date between the Transit Police and the Compassion Club concerning the same issue, a meeting that will hopefully lead to a “best practices” mandate from the Transit Police to their officers on what to do when they find someone's medical marijuana during a routine stop, investigation, or arrest. Further, the BCCLA was able to alert the Transit Police to the concerns of some in the Muslim community about the presence of dogs in spaces designated for people, in an effort to ensure accommodation for those religious beliefs and accessibility to the transit system for all.



## Discrimination

### Preventing the implementation of noise devices to deter the homeless

The BCCLA ended the plan of Easypark, the City of Vancouver parking authority, to use the Mosquito noise device to deter “vagrants” at City parking lots.

### Opening services to the transgendered community

The BCCLA responded to media reports concerning the prohibition on transgendered women using the “women only” pharmacy in the DTES called “Lu's”. The BCCLA wrote a letter to the Board at Lu's and spoke with the pharmacy's former executive director Caryn Duncan, who advised the BCCLA that because of our concern and those of community members and others, that Lu's would revisit the “women born women” only policy. In January, Lu's announced that they had changed their policy and now permit transgendered women to use the pharmacy.

## **Speaking for the voiceless**

The BCCLA was contacted by the Aboriginal Transformative Justice Society for assistance in responding to the death of homeless aboriginal man Curtis Brick in Grandview Park on the second hottest day of the summer. We worked in coalition with them, and with Grand Chief Stewart Phillip of the Union of BC Indian Chiefs (UBCIC) and Chief Bob Chamberlain of the Kwicksutaineuk Ah-Kwa-Mish First Nation, to prepare a media response, advise the family of their legal rights and the process that would unfold, and respond to allegations that Mr. Brick had been inappropriately treated by first responders.

The BCCLA, in partnership with UBCIC, United Native Nations President David Dennis, Pivot Legal Society, and Vancouver Aboriginal Transformative Justice called for a coroner's inquest and continue to press for an inquest into Curtis' death.

## **Ending discrimination against the homeless**

The BCCLA responded in the media and with a letter to Surrey City Council when the stink from their plan to distribute chicken manure in areas frequented by the homeless drifted into Vancouver. The Association noted that the plan was illegal in several ways, and urged the city to ensure that such a foul initiative would never again be pursued. BCCLA's op-ed on the issue was published in the Vancouver Sun, and Surrey immediately terminated the program and initiated an investigation to ensure the debacle wouldn't be repeated.

## **2010 Olympics**

### **Encouraging the City of Vancouver to revise anti-free expression Olympic bylaws**

Litigation launched by two activists with the assistance of the BCCLA forced the City of Vancouver to withdraw and revise their Olympic bylaws to permit non-celebratory signs near Olympic venues.

### **Training more than 400 citizens to protect rights and freedoms during the Olympics**

The BCCLA launched Canada's first ever legal observer project to ensure free speech and other democratic and human rights are protected during the Olympic period. For 2009, the BCCLA devel-

oped a new relationship with the Student Legal Fund Society and the AMS of the University of British Columbia that enabled us to deliver a series of *Know Your Rights* workshops and materials in the lead up to the 2010 Olympics.

## **Protecting free speech on campus**

We have undertaken a legal analysis of case law regarding the right of students and outsiders to protest on campus grounds. This information has been shared with students through "know your rights" workshops on campus at UBC, and will be relayed to students on other campuses throughout 2010.

## **Protecting free speech during the Games**

The BCCLA has assisted several groups in determining the right to fundraise or hand out publications during the Olympics, ranging from a local magazine, a women's charity, and numerous individual citizens. We were able to assist some more than others, such as alerting the magazine to an exception for certain publications and ensuring they were aware of forthcoming bylaw changes.

## **National Security**

### **Ending transfers of Afghan detainees to face torture**

The BCCLA celebrated with Amnesty International when our joint complaint that Canada had been transferring Afghan detainees to the Afghan authority without seeking assurances that they would not be tortured was met with the reply from Canada that they had ended the dubious practice.

### **Advocating for Canadians trapped abroad**

The BCCLA wrote letters to the federal government requesting that they refrain from appealing from and instead adhere to the rulings of various courts requiring them to repatriate child soldier Omar Khadr and Canadian citizen Abousifian Abdelrazik, and to investigate the illegal five year detention of Benamar Benatta in the United States. The BCCLA is pursuing a more formal Association policy and advocacy campaign for federal legislation requiring the Federal Government to make efforts to repatriate stranded and/or imprisoned foreign nationals.

# Data Hemorrhage: Your Medical Information Flowing out of Your Control

## e-health

The BCCLA is very pleased to be a key member of BC Opt-Out, an education campaign on patient privacy rights that has been the country's most vocal grassroots opposition to centralized electronic health records.

The centralization of citizens' health records is a radical transformation in health information with profound implications for the relationship between the patient and the health-care provider. Although the study of health information systems is now its own sub-discipline in universities, citizens have been no part of these developments and are practically barred from even venturing an opinion because of a complete failure on the part of governments to provide any meaningful information at all.

Where we would hope for comprehensive, balanced information we have received what amounts to advertising slogans from the PR department: Viagra will save your marriage, iPods will make you groovy and e-Health will make you safer, cheaper. Where exactly would a citizen look for a foothold to enter such a non-debate?

The presentation is so relentlessly one-sided that there is no discussion of the profound risks that these systems present to health privacy and data security, let alone available alternative systems.

To be clear, we are not against electronic health care records per se. If a doctor records patient data electronically and that data is stored on the doctor's server, there is not much difference between that and paper files locked in a filing cabinet. The doctor is the guardian and custodian of that information in the same way and can send it to other practitioners within the patient's circle of care as needed and appropriate with the patient's consent. That is the system as it should be. But that is not what "e-health" is all about.

E-health is about centralization: vast repositories; massive, linked databases of all citizens' health information planned to ultimately be accessible across the entire country. This national project costing billions is proceeding without any compelling evidence that a vast centralization of citizen health data improves health care outcomes and/or saves money. Meanwhile, the evidence against centralization of health records is growing rapidly with e-health systems in other jurisdictions increasingly subject to fierce criticism for failure to deliver promised benefits, failure to provide reasonable security, failure to protect patient privacy and massive cost overruns.

Even worse, BC's centralized electronic health information infrastructure is meant to anchor a vast integration project called the *Information Access Layer*. This is a massive information-sharing project meant to encompass the entirety of social services in British Columbia and link information about us from the Ministries of Employment and Income Assistance, Children and Families, Health, Education, Justice and the private sector contractors for all of the above.



This is a disaster for patient privacy rights and a potential public health catastrophe as well. Patients' loss of control over disclosures of their data in a centralized electronic health records erodes trust in health care and creates formidable barriers to access. There are excellent, cost-effective models of electronic health records that give control to patients and their health care providers, not the government. But those are not the models being built. And we need to ask ourselves why.

To learn more about e-health and what you can do to protect your right to medical privacy, see [www.bccla.org](http://www.bccla.org) and [www.bcoptout.ca](http://www.bcoptout.ca)



## Privacy

### **Reforming foster care application processes**

In 2007 the BCCLA assisted a foster care provider to address privacy issues uncovered in the application process. The BCCLA believed that the privacy practices involved might have broader application with the way the Ministry of Children and Family Development maintains and uses historical records. The case involved significant resources over the years, and a detailed privacy complaint led to changes to the application process in 2009. The BCCLA is continuing to address the issue in the hope of seeking further changes.

### **Ending tenant database privacy violations**

The BCCLA filed a privacy complaint against a company operating across Canada that offered, for a membership fee, access to tenant information. Tenants had been forced to sign agreements, prior to rental, to submit to a background check and allow the company to retain indefinitely the information garnered and to release it to members. The complaint investigation is ongoing.

### **Ensuring ICBC records' accuracy**

The BCCLA initiated privacy and police complaints after information surfaced that victims of identity theft were unable to renew drivers' licenses due to poor record-keeping by the Vancouver Police and ICBC. The privacy complaint was dismissed as the Office of the Information and Privacy Commissioner of BC ruled that the BCCLA lacked standing to make the complaint. The police complaint continues to be investigated.

### **Promoting patient privacy**

We continue to work extensively, in our own right and in partnership with other groups in the BC Health Privacy Coalition, to promote patient privacy rights that are threatened by the introduction of centralized electronic health records. Our e-health work includes a podcast for Canadian EMR [Electronic Medical Records] and meetings with the College of Physicians and Surgeons and the BC Medical Association, as well as with government representatives, including the Assistant Deputy Minister of Health and the Chief Data Steward, on a range of e-health privacy and patient autonomy issues, including failure to require

express consent for disclosures of personal health information to the Chronic Disease Management Database, and failure to educate the public on the use of the limited privacy tools available for the first designated health information bank.

### **Protecting internet privacy**

In the spring, the Federal Government introduced two new lawful access bills that give police the right, almost at will, to violate people's privacy in their internet activities: Bill C-46, the Investigative Powers for the 21st Century (IP21C) Act and Bill C-47, the Technical Assistance for Law Enforcement in the 21st Century Act (TALEA). The Association is a long-time opponent of the government's efforts to substantially decrease privacy rights under the guise of investigation "modernization" and worked hard in 2009 to educate the public, and decision makers, about the impacts of this legislation on privacy.



## Freedom of Expression

### **Working with the CBC to open its airwaves to political advertising**

A complaint to the CRTC caused the CBC to reverse a decades old policy to refuse to accept political advertising outside of election periods. The BCCLA sees political speech as the most protected form of speech, and this was a great victory for democratic discourse in Canada.

### **Launching the "Free to Speak" Campaign**

The BCCLA was part of the coalition that launched the *Free to Speak Campaign* in response to the Bill 42 amendments to the BC Election Act. These amendments required ordinary citizens spending even a few dollars for photocopying a flyer or a bulletin board notice to register with Elections BC if the substance of the message fell within the broad and vague definition of "election advertising." We are now on the advisory committee for a research project by the Canadian Centre for Policy Alternatives. The research will assess the impacts of Bill 42 on social movement groups' (charities, non-profit organizations, advocacy networks) participation in democratic debate during the election period.

# 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. Here is a selection of our litigation from 2009.

### **Protecting Free Speech**

#### **Shaw and Westergaard Thorpe v. City of Vancouver**

In the lead-up to the 2010 Olympics, the City of Vancouver passed bylaws stating that only “celebratory” signs that increased positive feelings and festive spirit around the Olympics would be permitted in large areas of the downtown core. The BCCLA assisted two activists in bringing a lawsuit to challenge the bylaws. The City revised the bylaw to permit individuals to carry non-commercial signs in the designated areas, and the litigants agreed to withdraw the suit.

The BCCLA was represented by **Jason Gratl** of Gratl and Associates.

#### **Dixon v. Powell River**

During the debate over a controversial development in Powell River, three citizens publicly criticized the City’s decision-making process. The City sent letters to the citizens threatening that the City would sue and demanding apologies and retractions in return for the possible reduction of their damages in libel lawsuits. The BCCLA joined Mr. Dixon, a BCCLA board member and Powell River resident, in seeking a declaration that the importance of political expression means that the City of Powell River could not take action against members of the public for defaming its

governing reputation. The case was a clean win for civil liberties, breaking new ground in finding that Charter values supersede the old law, which gave municipalities and other governments the same rights as individual persons to sue for defamation.

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

#### **B.C. Transit v. Canadian Federation of Students**

The case was a constitutional challenge to the advertising policies of Translink and BC Transit which allowed for commercial advertising but not political advertising on government-controlled public transit vehicles. The BCCLA appeared as an intervener in the case at all levels of court including the Supreme Court of Canada.

The Court held that BC Transit and Translink, corporations that operate public transportation systems in British Columbia, are substantially controlled by the government and therefore their policies must conform to the Canadian Charter of Rights and Freedoms. The Court also held that the transit authorities’ policies infringed freedom of expression, and reaffirmed that the content of someone’s message cannot be a basis for determining whether or not that message is permissible in a public place.

**Chris Sanderson, Q.C.** and **Chelsea Wilson** of Lawson Lundell represented the BCCLA.

## Defending the Poor

### Victoria v. Adams

The BCCLA intervened in this homeless rights case before the BC Court of Appeal and at the BC Supreme Court. The case challenged the City of Victoria's bylaws that prevented homeless individuals from erecting shelters to protect themselves from the



Photo: Chris Johnson

elements when sleeping outside. 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. The BC Court of Appeal agreed with the lower court and held that denying homeless individuals a place to sleep and the ability to protect themselves from the elements was a violation of the Charter.

**Ron Skolrood** and articulated student **Elizabeth Clarke** of Lawson Lundell LLP represented the BCCLA.

### Henry et al. v. AG Canada and the Chief Electoral Officer of Canada

The BCCLA was granted leave to intervene in a challenge to Canada Elections Act amendments that require voters to produce personal identification at



polling stations in order to vote. The BCCLA believes that these requirements will disenfranchise otherwise eligible voters who do not have identification, especially those who are homeless, addicted and/or have mental health problems, or those who may not

have the required identification including students, seniors, disabled persons and transient persons. The case was heard in June 2009 and judgment is reserved.

**Dan Burnett** of Owen Bird represented the BCCLA.

### Downtown Eastside Sex Workers United Against Violence et al. v. Canada (Attorney General)

The BCCLA sought leave to intervene in this case, which involves a constitutional challenge to the Criminal Code provisions making adult prostitution illegal. A trial was set for February 2009, but the BC Supreme Court determined that the plaintiffs did not have standing to bring the claim. SWUAV appealed to the BC Court of Appeal on the issue of public interest standing. The BCCLA argued that the Court should widen the current test for granting public interest standing to bring Canada in line with other jurisdictions.

If the case proceeds and the BCCLA is granted leave to intervene, the BCCLA will argue that the provisions subject sex workers to increased risks of physical and sexual violence, psychological injury, kidnapping, and death, as well as other threats to security, health and safety.

The BCCLA is represented by **Jason Gratl** of Gratl & Company and **Megan Vis-Dunbar**.

## Protecting Safe Injection

### Protecting the Safe Injection Facility PHS Community Services Society v. Canada, VANDU v. Canada

The BCCLA intervened at the BC Court of Appeal in companion actions concerning Insite, a supervised injection facility in the Downtown Eastside of Vancouver. The operation of Insite has prevented overdose deaths, reduced the suffering of addicts and lessened the spread of HIV/AIDS and Hepatitis C. The BC Court of Appeal granted the facility a permanent exemption from prosecution under federal drug laws,



finding that provincial authority over health care could allow it to trump federal criminal powers. In February 2010, the federal government announced its intention to appeal the BC Court of Appeal ruling to the Supreme Court of Canada. The Supreme Court of Canada has not yet decided if it will hear the case.

**Ryan Dalziel** and **Daniel Webster, Q.C.** of Bull, Houser & Tupper LLP were counsel for the BCCLA at both the BC Supreme Court and the BC Court of Appeal.

## Guarding Privacy Rights

### Wild Coyote Club Inquiry

The Privacy Commissioner of BC asked the BCCLA to make submissions on a complaint they received about the Wild Coyote Club, which had been photographing customers and scanning their drivers' licenses to a database as a part of the Barwatch program. The Privacy Commissioner ruled that the existing system violated customers' privacy, leading to major changes in how long Barwatch keeps photos and scanned licenses in its database.

The BCCLA was represented by **Kieran Bridge** and **Brian Samuels** of Samuels and Company.

## Preventing Torture

### Amnesty International and BCCLA v. Chief of Defence Staff & the Afghanistan Public Interest Hearings

The BCCLA has long been concerned with the treatment of prisoners apprehended by Canadian Forces during military operations in Afghanistan.

As early as 2002, when Canada first entered into the current conflict in Afghanistan, the BCCLA called for a halt to the transfer of prisoners to U.S. custody, given the serious human rights concerns about the treatment of prisoners in U.S. detention facilities in Afghanistan and the troubling likelihood that prison-

ers would be further transferred to Guantánamo Bay. In 2005, the Canadian forces began transferring prisoners to the custody of Afghan officials. We voiced our concerns about this arrangement, given the widespread use of torture in Afghan prisons. Along with Amnesty International, we instead urged that Canadian forces work with the Afghan government and NATO allies to develop a system for handling detainees which would ensure that prisoners would be protected from torture and abuse.

The BCCLA continued its work on this issue in 2009 in several venues.

First, the Supreme Court of Canada declined to hear an appeal of the Federal Court of Appeal's decision



in *Amnesty International and BC Civil Liberties Association v. Canada (Defense Chief of Staff)*. That decision found that the Charter

does not apply to the actions of Canadian Forces in Afghanistan, because Afghanistan has not consented to the application of the Charter to Canadian Forces there.

The BCCLA and Amnesty International filed complaints challenging detainee transfers with the Military Police Complaints Commission (MPCC), and after more than a year of procedural manoeuvring, hearings got underway in 2009. The Afghan Public Interest Hearings continue to face opposition from the government at every turn, from the government's refusal to provide documents and witnesses to numerous procedural and jurisdictional roadblocks thrown up by government lawyers. The hearings are scheduled to resume in March 2010.

Richard Colvin, a Canadian diplomat who was stationed in Afghanistan, brought his own counsel and delivered an affidavit to the MPCC detailing memos that he had sent to various levels of government that all suggested that detainees faced a significant risk of torture if transferred. His testimony led to

further hearings in the House of Commons by the Parliamentary Special Committee on the Canadian Mission in Afghanistan. The BCCLA and Amnesty are calling for a public inquiry into the transfer of Afghan detainees to torture.

The BCCLA has been represented by **Paul Champ** and **Khalid Elgazzar** of Champ and Associates, and **Grace Pastine** and **Carmen Cheung** of the BCCLA.

## **Prime Minister of Canada et al. v. Omar Khadr**

The BCCLA appeared at the Supreme Court of Canada to argue that the Government of Canada must take steps to seek the repatriation of child soldier and Guantanamo detainee Omar Khadr. The Supreme Court ruled that Canada had violated Mr. Khadr's Charter rights and that seeking repatriation could be an effective remedy. The court stopped short of upholding the Court of Appeal's orders to seek immediate repatriation, but found that the Charter breaches should be remedied.

The BCCLA was represented by **Joe Arvay** and **Elin Sigurdson** of Arvay Finlay Barristers, and **Sujit Choudhry** of the University of Toronto Faculty of Law.



## **Access to Information**

### **CanWest MediaWorks Publications Inc. v. Horizon Publications**

The BCCLA was granted leave to intervene in a lawsuit launched by Canwest MediaWorks, the publisher of the Vancouver Sun, over an alleged trademark infringement based on a mock edition of the Vancouver Sun. The publication parodied the layout of the Vancouver Sun while mocking the paper's perceived bias in favour of the state of Israel and against Palestinians. The BCCLA will argue that the CanWest lawsuit is an attempt by CanWest to use the courts to silence satirical criticism and constrain fair comment. A trial date has not yet been set.

The BCCLA is represented by **Monique Pongracic-Speier** of Schroeder Speier.

### **R. v. National Post**

This case concerns the Charter right to freedom of the press, especially the ability of the media to protect the confidentiality of sources. The National Post received a document from a confidential source, but there were allegations that the document was a forgery. The RCMP obtained a search warrant and assistance order requiring The Post to produce the document for forensic analysis. The BCCLA appeared as an intervener before the Supreme Court of Canada, which has reserved judgment in the case.

The BCCLA was represented by **George Macintosh Q.C.** and **Tim Dickson** of Farris, Vaughan, Wills & Murphy LLP.

### **Canadian Broadcasting Corporation v. Quebec (Attorney General), et al.**

The BCCLA was granted intervener status in this Supreme Court of Canada case, which will consider the constitutionality of restrictions on media access to Quebec courts imposed by Quebec judges and Quebec's Minister of Justice. The new rules ban the broadcast of court recordings, limit interviews to designated areas, and prevent reporters from following people with cameras and microphones. The BCCLA argued that these restrictions violate Charter rights to freedom of the press.

The BCCLA is represented by **Simon Potter** and **Mike Feder** of McCarthy Tétrault LLP.



## **Challenging Forfeiture Laws**

### **Chatterjee v. Attorney General of Ontario**

The BCCLA intervened in this Supreme Court of Canada case, which tested the constitutionality of certain provisions of Ontario's Remedies for Organized Crime and Other Unlawful Activities. This "civil forfeiture" legislation allows the government to seize the property of individuals suspected of being involved in organized crime, even if they have not been convicted of criminal acts. The Court found

the civil forfeiture law to be constitutional because it deals with an area of provincial jurisdiction, but also warned provinces that they should not use this powerful legislation improperly,

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

## Fighting Police Abuse

### R. v. Cornell

The BCCLA argued in the Supreme Court of Canada that the Calgary Police Services used excessive force and violated the “knock and announce” rule when its Tactical Enforcement Unit used a battering ram to break down Ms. Cornell’s door and charged in, officers’ guns drawn and faces covered by ski masks. The police were executing a search warrant targeting Jason Cornell, who lived in his mother’s home along with his mentally challenged brother, Robert, and 17-year-old sister. Police were met by Robert, who was handcuffed and left terrified and lying prone while they continued to break down doors in the house. Police found and arrested Jason Cornell at his place of work later that evening. The Supreme Court of Canada will determine whether these tactics ran afoul of Charter prohibitions against unreasonable search and seizure. The Court has reserved judgment.

The BCCLA is represented by **Daniel Webster, Q.C.** and **Ryan Dalziel** of Bull, Houser & Tupper LLP.

### The Braidwood Inquiry

The BCCLA was granted full standing to participate in the Braidwood hearing and study commission, which was established to inquire into and report on the death of Mr. Robert Dziekanski. Mr. Dziekanski was an immigrant who arrived at Vancouver International Airport to be reunited with his mother. He died after being confronted by four RCMP officers who Tasered him five times. The Commission heard

more than 80 witnesses over 60 days of hearings. The BCCLA cross-examined witnesses and made final written and oral submissions.

The BCCLA focused its closing arguments on the RCMP interaction with Mr. Dziekanski at YVR, the subsequent investigation, and the need for independent civilian investigations of police-related deaths. The BCCLA argued that the use of force employed by the officers was grossly excessive, unreasonable and



unjustified. Commissioner Braidwood asked the BCCLA several questions on independent investigations, inquiring as to how a civilian

investigative body would function and how civilians could be trained to do police-style work. The BCCLA suggested that Commissioner Braidwood consider the findings of the Davies Commission on the death of Frank Paul, which recommended in 2008 that BC put an end to the practice of police investigating police, and the Ontario Special Investigations Unit, a Canadian model of an independent investigative body.

The Braidwood Commission’s first report on Taser use was issued in July 2009. It made 19 recommendations for deployment of conducted energy weapons like the Taser, resulting in police forces across Canada adopting stricter guidelines for the use of these weapons.

The Commissioner’s second report is expected to be released in June 2010 and will address the circumstances of Robert Dziekanski’s death at the Vancouver International Airport and make recommendations that the Commissioner considers necessary and appropriate.

The BCCLA was represented by **Grace Pastine**, BCCLA Litigation Director.

## R. v. Willier, R. v. Sinclair, R. v. McCrimmon

The BCCLA appeared as an intervener before the Supreme Court of Canada in three companion cases concerning the Charter rights of the accused to speak with a lawyer. Of the many protections afforded by the Charter, those triggered by an individual's arrest or detention are among the most critical. The BCCLA argued that people who are detained by the police have an ongoing right to speak to counsel. Providing an individual with a one-time opportunity to speak to his or her lawyer at the beginning of a detention is not enough. The Court has reserved judgment.

The BCCLA was represented by **Warren Milman** and **Mike Feder** of McCarthy Tétrault LLP.

## British Columbia (Attorney General) v. Davies

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, and also appeared in the case before the BC Supreme Court. We argued that it is crucial that the Commissioner be allowed to fully inquire into the decisions 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 a significant potential for real or perceived improper influence in the administration of public justice.

The BC Court of Appeal held that the CJB must provide evidence in the Frank Paul inquiry. The CJB has sought leave to appeal to the Supreme Court of Canada.

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

## Ending Government Misconduct

### City of Vancouver, et al. v. Ward

The BCCLA and the David Asper Centre for Constitutional Rights jointly appeared as interveners in the Supreme Court of Canada in this case. The court will decide whether monetary damages are available to Canadians whose Charter rights have been violated, even if the government did not intentionally or willfully violate the person's rights. This case could have a dramatic effect on the legal options Canadians have when their Charter rights have been breached.

Cameron Ward is a prominent Vancouver civil rights lawyer. Police investigating a tip that someone was planning to throw a pie at former Prime Minister Jean



Chretien stopped Mr. Ward near the Vancouver Art Gallery. He was wrongly jailed, strip-searched, and his car was illegally seized by the Vancouver Police Department.

He asked for an apology, but when the VPD refused, he brought this lawsuit against the City.

The government argued that a declaration from a court saying that Mr. Ward's rights had been breached should be enough, and that monetary damages would limit government's flexibility in setting policy. Police officers were acting in accordance with jail policy when they searched Mr. Ward, but that policy ignored previous court decisions limiting strip searches to prisoners who might pose a threat.

The BCCLA and Asper Centre argued that unless monetary damages are available, most people in Mr. Ward's situation—innocent Canadians who have done nothing wrong—could not go to court to vindicate their rights. Mr. Ward is a lawyer who was able to bring his own case forward on principle alone, but for most people the time and expense of a Charter lawsuit would put litigation out of reach. Judgment has been reserved.

**Kent Roach** of the University of Toronto Faculty of Law, **Cheryl Milne**, Executive Director of the Asper Centre, and **Grace Pastine**, BCCLA Litigation Director, represented the BCCLA and the Asper Centre.

## Warrantless Police Searches

### Arkininstall v. City of Surrey

This case tested the constitutionality of provincial “grow-op” legislation requiring electrical companies to share British Columbians’ private electricity records with municipalities, and allowing municipalities to share those records with the police. It also allows



municipal electrical and fire inspectors to demand entry into anyone’s home to do an electrical safety inspection without a warrant. The City of Surrey argued that inspectors must be accompanied by armed RCMP officers.

The lower court determined that the legislation is valid, but that RCMP officers could not come along for inspections if the homeowner does not consent. The decision was appealed by the City of Surrey. Arguments will be heard in March 2010.

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

## Abolishing the Death Penalty

### MJCK v. Minister of Justice

In 2009 the BCCLA was granted leave to intervene in this case before the Supreme Court of Canada. The case concerns the proposed extradition of a Canadian citizen to Thailand, a country with the death penalty. Except in “exceptional circumstances”,

Canada cannot extradite to countries with the death penalty without an assurance from the country that the death penalty will not be applied. Thai law does not allow such assurances. The Supreme Court of Canada initially decided to consider whether the fact that a requesting nation cannot provide a death penalty assurance is an “exceptional circumstance”. However, the Court dismissed the case because the Thai government provided the Minister with a death penalty assurance. Once the Appellant has had an opportunity to make further submissions on the effectiveness of the death penalty assurance recently provided by Thailand, the Minister will decide whether to still surrender him to that country. If the Minister decides to go ahead with the surrender, his decision will again be subject to judicial review by the BC Court of Appeal. The BCCLA will continue to monitor the case,

The BCCLA is represented by **David Crossin, Q.C.** of Sugden, McFee & Roos LLP and **Fritz Gaerdes** of Alexander Holburn.

### Another Way to Support the BCCLA

**Did you know** that losing money on certain investments may reduce your income taxes? You can donate depreciated securities to the BCCLA, realize the capital loss and apply the loss against past and future capital gains. You will also receive a charitable tax receipt for the value of the donated securities, which can be used as a tax deduction.

For more information on methods of giving, please contact your financial advisor or call Sarah Sandusky, Director of Development at 604-630-9750.

# BCCLA MEMBERSHIP CONFERENCE

April 19, 2010 / 6:00 pm  
Vancity Theatre 1181 Seymour Street / Vancouver, BC

Admission is free to BCCLA members!  
Non-members: \$10 or \$30 for admission and membership

## time event

- 6:00 pm **Registration and screening of Legal Observer short films**
- 6:30 pm **Welcome and opening remarks**  
Rob Holmes, President
- 6:40 pm **Annual general meeting**
- 7:10 pm **Intermission and screening of Legal Observer short films**
- 7:25 pm **Reg Robson Civil Liberties Award presentation**  
Grace Pastine, Litigation Director
- 7:40 pm **Exporting Abuse: Canada's failing human rights record**  
Paul Champ, a human rights and constitutional lawyer in Ottawa, has committed in excess of 2,000 pro bono hours since 2006 to represent the BCCLA and Amnesty International in groundbreaking work to eradicate torture – and uncover Canada's complicity in torture – in Afghanistan. Now, it has become one of the biggest issues in the country, as the federal government attempts to avoid answering tough questions on who knew what, and when.
- 8:25 pm **Worldwide premiere of *Finding Fountains: The Right to Water*,**  
A BCCLA short film
- 8:45 pm **Closing remarks**



Paul Champ



Carmen Cheung



David Eby



Rob Holmes



Grace Pastine



Micheal Vonn

## TREASURER'S REPORT / ALAN ROWAN



There are times when we manage to succeed even when all signs may point toward danger, or even failure.

To me this well sums up the financial experience of the BCCLA in 2009. Historically low interest rates combined with the shellacking taken by equities in the bourses of the world directly impacted the foundations and donors who help pay for the work of the Association and provided us with genuine concern for our financial health for the year.

In form, the year started darkly. We budgeted conservatively, anticipating a major downturn in donations and grants, and allocating \$80,000 of our reserve funds to steer our budget into the black. But the next twelve months would reveal three major interventions that rewrote the budgetary story for the Association, showing the depth of the commitment of the donors, funders and staff and volunteers of the Association to our critical work.

First, we reduced our overall administrative expenses without reducing the quality or quantity of our work. We instituted some useful and fairly simple cost-cutting measures for the office, and scaled back planned initiatives, resulting in real savings for the year of almost 10% of our total office budget. These cost efficiencies were accomplished in spite of greater numbers of staff, students, interns and volunteers in the office, and significant increases in the number of people assisted and issues taken on over the year. We must salute all the staff and volunteers for this great effort.

Second, our donors remained unflagging in the face of downturns in the stock market and relentlessly bad economic news, almost certainly due to their confidence in the continuing and very visible presence of the Association in the media and the

courtrooms of British Columbia and Canada on the democratic issues that matter. Innovative programs, like our Legal Observer program, were funded by foundations like the Vancouver Foundation and the Student Legal Fund Society despite the fact that these organizations were stretched to the max by the stock market's fluctuations.

And finally, although we were greatly saddened to hear of his passing, we were very honoured that a lifetime friend of the Association remembered us in his will and offered the Association a very generous bequest of \$60,000.

As the last quarter of 2009 wound down, these various factors contributed to produce a budgetary surplus of almost exactly the amount we had budgeted to spend out of our reserve funds, just slightly more than \$75,000. Our budget had balanced on the year without making a dent in our contingency funds, and showed strength and resilience in the most challenging of economic circumstances, thanks to our committed members, donors and funders.

At this time, I would like to extend our gratitude to all of our members and donors. We are as well very thankful to the Law Foundation of BC and the Gaming Commission of BC. We thank them for their continued support. To all of those organizations and individuals whose generosity benefitted us last year, we extend our gratitude. We could not do our work without you.

Onward.

A handwritten signature in black ink, appearing to be 'Alan Rowan', written in a cursive style.

# 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, 2009 and 2008 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, 2009 and 2008 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 4, 2010



# FINANCIAL STATEMENTS

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

	2009			2008	
	GENERAL FUND	STABILIZATION FUND	TRUST FUND	TOTAL 2009	TOTAL 2008
<b>REVENUES</b>					
Membership & donations	202,608	—	—	202,608	187,259
Bequests	120,000	—	—	120,000	115,000
Law Foundation of BC - operating grant	313,600	—	—	313,600	302,350
Specified grants earned	99,669	—	—	99,669	94,392
Gaming revenue earned	47,759	—	—	47,759	30,262
Investment income	883	5,919	12,063	18,865	17,849
Realized gains on sales of investments	—	74	(584)	(510)	15,421
Adjustment of investments to market value	—	9,006	63,174	72,180	(115,972)
Endowment distributions	2,728	—	—	2,728	5,407
Contract and court awarded costs	—	—	—	—	119,117
Miscellaneous and special events	2,761	—	—	2,761	7,902
Amortization - deferred capital gains	9,888	—	—	9,888	9,448
	<b>799,896</b>	<b>14,999</b>	<b>74,653</b>	<b>889,548</b>	<b>788,435</b>
<b>EXPENSES</b>					
Salaries & benefits	494,603	—	—	494,603	467,321
Rent & utilities	44,061	—	—	44,061	38,648
Office operating	49,844	—	—	49,844	35,194
Contract services	20,847	338	798	21,983	22,614
Insurance	1,225	—	—	1,225	1,223
Bank charges	3,509	—	—	3,509	4,121
Fundraising	19,271	—	—	19,271	28,377
Newsletter	11,159	—	—	11,159	9,450
Litigation costs	16,932	—	—	16,932	124,152
Meetings, publications, events	51,941	—	—	51,941	36,555
Amortization	11,429	—	—	11,429	12,359
	<b>724,821</b>	<b>338</b>	<b>798</b>	<b>725,957</b>	<b>780,014</b>
Excess of revenue for year	75,075	14,661	73,855	163,591	8,421
Fund balances, beginning of the year	97,701	74,524	290,140	462,365	453,944
Fund balances, end of year	<b>172,776</b>	<b>89,185</b>	<b>363,995</b>	<b>625,956</b>	<b>462,365</b>

 The complete 2009 BCCLA audited financial statements are available at [www.bccla.org/05annual.htm](http://www.bccla.org/05annual.htm)

# BCCLA PEOPLE

BCCLA Membership					
	2009	2008	2007	2006	2005
Senior	257	225	188	215	214
Students	126	112	78	17	-
Individual	522	444	320	320	342
Family	334	292	226	251	234
Organization	3	5	4	6	1
Total memberships	1242	1078	816	809	791
Donors only	169	179	186	155	146
Total supporters	1411	1257	1002	964	937

In 2009, volunteers contributed a total of 7785 hours with 3361 of these being provided as legal services from lawyers.

## COMMITTEES

### Police

Larry Cohen  
Jason Gratl  
Shirley Heafey  
Robert Holmes  
Am Johal  
David MacAllister  
Zygmunt Riddle  
Megan Vis-Dunbar

### Drug Policy

Kirk Tousaw, Chair  
Rielle Capler  
Jacob Hunter  
Steven Savitt  
Nicole Seguin  
Ken Tupper  
Eric Wyness

### Privacy & Access

Richard Rosenberg, Chair  
Kris Constable  
Darrell Evans  
Vince Gogolek  
Paul Holden  
Jim Sayre

### Fundraising

Rob Holmes  
Bruce Ketchum  
Laura Landy  
Murray Mollard  
Tom Sandborn  
Eric Wyness

### Interns

Ariane Asselin  
Sarah Beckwermert  
Cameron Funnell  
Susan Ip  
Hasan Junaid  
Stephen Kahng  
Silvana Lovera  
Christopher Maughan  
Alexandra Rapcea  
Fiona Rayher  
Johanna Schnackenburg

### Volunteers

John Ames  
Maegan Chase  
Ryan Copeland  
David Dennis  
Rose-Helene Franson  
Julie Geremia  
Christina Godlewska  
Anne Marie Goodfellow  
Jessica Goodman  
Jess Hadley  
Hamida Hajee  
Stephen Handel  
Kelsey Hannan

Chris Hardcastle  
Tim Hinkson  
Shaker Jamal  
Harvey Larochelle  
Celeste McCann  
Michael McCubbin  
Kristin McHale  
Kendra Milne  
Heather Mitchell  
Michael O'Keefe  
Sameer Popat  
Aliza Premji  
Maria Russell

Roja Seddiq  
Esther Shannon  
Jeremy Shragge  
Colin Simkus  
Brian Smith  
Pamy Teja  
Samantha Thompson  
Laura Track  
Larry Truong  
Don Wheeler  
Gwyneth Williams  
Winfried Zacherl

# IN MEMORIAM

## Mary B. McDonald Memorial Essay Prize



This prize was established by the BCCLA in 2009 to honour the memory of Mary B. McDonald, a director of the board and retired librarian, in recognition of her personal dedication to protecting civil liberties and human rights. A prize

of \$500 will be awarded annually to one Canadian full-time post-secondary student who submits the best essay on any aspect of civil liberties or human rights that is a current focus of the BCCLA.

The intent of this essay prize is to promote student interest in current civil liberties and human rights issues in Canada. The deadline for submission is June 1, 2010. The winner of the prize in 2009 was Laura Atkinson. Her essay, *Finding a Home for Social and Economic Rights in Canada*, can be found on the BCCLA website.

## Saeko Usukawa



Saeko Usukawa passed away on July 5, 2009, at the age of 63.

Saeko was born in 1946, in the Lemon Creek Internment Camp in BC. As a young woman, Saeko was drawn to alternative culture; she joined the protests against Apartheid and the Vietnam War, and became engaged in the Women's Movement.

In the 1970s she came out, and moved to Vancouver and joined the Pacific Women's Graphic Arts Co-operative, an all-woman publishing and design collective. Saeko and her partner, Peggy wrote *Hard-boiled: Great Lines from Classic Noir Films* and *Tall in the Saddle: Great Lines from Classic Westerns*, which were published by Arsenal Pulp Press and then by Chronicle Books. Saeko also compiled *The Little Lavender Book of the Love that Once Dared Not Speak Its Name*.

### Leaving a legacy to the B.C. Civil Liberties Association

**Designating the BCCLA** as a beneficiary in your will gives you the opportunity to make a real difference in protecting civil liberties and human rights in Canada that will have ripple effects for generations to follow.

If you have ever considered leaving the BCCLA a memorial bequest in your will, the BCCLA is glad to offer information, including clauses that can be added to existing wills without difficulty, to make this type of lasting legacy gift easy to give.

While bequests are private and between you, your family and your financial advisor, if you let us know your intentions we can make sure to direct your gift in the way that you prefer - ensuring that your legacy funds the work that matters most to you. Any information you provide will be treated in complete confidence.

# PAUL CHAMP 2010 REG ROBSON CIVIL LIBERTIES AWARD



In 2006, Ottawa lawyer Paul Champ came to the BCCLA and Amnesty International with an idea—a legal challenge to the Canadian Forces’ transfers of Afghan detainees to a substantial risk of torture by applying the Charter to the actions of Canadian officials working abroad. Champ had troubling information that the use of torture was widespread in Afghan prisons. The BCCLA and Amnesty decided to commit to the litigation, seeing it as an opportunity for Canada to assist Afghanistan in reforming its notorious prison system and to play an important role in furthering the goal of eradicating torture worldwide.

Since then, Paul Champ has committed countless pro bono hours, in excess of 2,000 hours over several years, to representing the BCCLA in this groundbreaking work. The government sought to have the Federal Court application dismissed, and was successful in its argument that the protections of the Charter of Rights and Freedoms did not apply to Canadian forces acting in Afghanistan. However, during the course of that litigation, Champ and the BCCLA learned important evidence of Canada’s knowledge of torture in the Afghan prison system and the risks faced by prisoners transferred by Canadian forces to Afghan custody.

Champ’s legal efforts for the Association directly led to a halt in the transfer of Afghan detainees to the Afghan authority by Canadian troops in 2007, and a new transfer agreement that provided increased protections for detainees. The documents that Champ uncovered in the course of the litigation paved the way for important advocacy work that Champ has tirelessly championed – the Military Police Complaints Commission’s Afghanistan Public Interest Hearings and the Parliamentary hearings into the issue of transfers to torture – and may yet lead to

accountability for government officials who knew about potential torture but failed to act.

During the course of his work on the Afghan detainee issue, Champ has demonstrated extraordinary courage, integrity, tenacity and a profound commitment to justice. He is an impressive advocate and an outstanding model of public service and engaged citizenship.

Champ was recently interviewed by the BCCLA, and stated his reasons for working to protect Afghan detainees: “On a lot of issues, people won’t step forward. They’ll complain about it or talk about it, but they don’t necessarily take that next step of spearheading the issue. I was interested because the weight of the evidence that just made it so obvious to me that what Canada was doing was so wrong, and the novelty of the legal issues. I thought, ‘Here is an opportunity that I have to use the law to really make a difference on a very important issue.’”

Champ is a human rights and constitutional lawyer in Ottawa, where he runs a busy litigation practice with a focus on labour and employment law, often with human rights dimensions. A significant portion of his practice now is dedicated to public interest cases dealing with Afghanistan detainees, national security, and civil liberties. Champ represented the BCCLA in the Iacobucci Inquiry into the torture of three Canadians abroad, and before the Supreme Court of Canada in *Canada v. Khadr*. Champ will continue to represent the BCCLA at the Afghanistan Public Interest Hearings.

*The Reg Robson award is given annually to individuals who have demonstrated a substantial and long-lasting contribution to civil liberties in BC and Canada. The award is named after long time BCCLA president and civil libertarian Reg Robson and Paul Champ is a remarkably deserving candidate.*



B.C. Gaming Policy and Enforcement  
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