

THE
Democratic
Commitment

A stylized icon of a pair of scales of justice, positioned between the words 'Democratic' and 'Commitment'.

Journal of the British Columbia Civil Liberties Association
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Annual Report for

1998

Annual General Meeting

The Annual General Meeting of the B.C. Civil Liberties Association will be held Thursday, March 25, 1999 at 7:30 p.m. in the Segal Centre (Rooms 1400–1410) at the Downtown (Harbour Centre) Campus of Simon Fraser University 515 West Hastings Street, Vancouver, B.C.

Presentation of the **Third Annual Reg Robson Civil Liberties Award** will be made to the family of the late **Tara Singh Hayer**

Guest Speaker: Joseph Tussman, Professor Emeritus of the University of California at Berkeley

Honorary Directors

The B.C. Civil Liberties Association takes pride that prominent individuals from a variety of backgrounds and political persuasions demonstrate their belief in the importance of the work of the BCCLA by lending their names to our list of Honorary Directors.

David Barrett
Ron Basford, P.C., Q.C.
Thomas Berger, Q.C., O.C.
Robin Blaser
Kim Campbell, P.C., Q.C.
Andrew Coyne
Hugh Curtis
Bill Deverell
F.E. Devito
John Fraser, P.C., Q.C.
Gordon Gibson
Patricia O. Hall
Don Hamilton
Mike Harcourt
Walter Hardwick
Rev. Phillip Hewett
Art Lee
Alex MacDonald, Q.C.
Rafe Mair
Darlene Marzari
Harry Rankin, Q.C.
Father James Roberts
Svend Robinson, M.P.
Rev. John Shaver
Homer Stevens
David Suzuki

Contents

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.

A Brief History of the BCCLA -----	4
President's Message -----	7
Kay Stockholder, 1928-98 -----	10
Reg Robson Civil Liberties Award -----	11
Brickbats & Bouquets -----	12
1998 Highlights -----	13
New Association Positions -----	19
Casework -----	20
Board of Directors -----	30
Volunteers -----	32
Staff -----	34
Membership Report -----	35
Treasurer's Report -----	36
Auditor's Report -----	37
Financial Statements -----	38

A Brief History of the BCCLA

The 1960s

The BCCLA was launched in 1962 when a group of 80 people met to create an organization comparable to the ACLU. A few months later, we were incorporated under the *Society Act*, with a bank balance of \$227.45.

Throughout the 1960s the BCCLA operated as a volunteer organization, addressing issues of local and provincial concern, and began to publish quarterly issues of *The Democratic Commitment*.

The Board of Directors began creating a series of position papers setting out the BCCLA's views on a variety of civil liberties topics.

Among the earliest issues addressed were:

- legal aid
- minority rights
- censorship
- police misconduct.

The 1970s

During the 1970s the Association grew both in influence and in financial stability. A small office was opened, and we began to receive project grants for our work. Our work was also financed by our 400–500 members.

The Board of Directors and other volunteers continued to be the source of intellectual and public policy initiatives.

During this period the Association:

- acted as a prominent advocate for a provincial Rentalsman and a provincial Ombudsman

- played a major role in the development of civilian complaint procedures under the *Police Act*, and in the development of the *Human Rights Act* — at the time each was the most progressive legislation of its kind in Canada

- mounted a constitutional challenge to compulsory features of the *Heroin Treatment Act*

- published three widely distributed handbooks:

- *Arrest: Civil Rights and Police Powers*
- *Discrimination*
- *Youth and the Law*.

The 1980s

The 1980s saw the BCCLA come into its own, both as an organization with long-term financial viability and as a force in the public life of British Columbia. This growth was not without its ups and downs: in the mid-eighties we lost a substantial operating grant and were close to closing our doors.

A commitment of funding from the Law Foundation of B.C. – which remains to this day – staved off disaster. This commitment, together with an aggressive campaign to locate new supporters, brought the Association back to financial health.

Among the many accomplishments in the 1980s, the following stand out:

- the publication of a detailed and highly regarded study of racism in Vancouver
- a well-received submission to the Supreme Court of Canada on intervention by public interest groups in legal cases
- appearances before several Parliamentary committees, including those considering:
 - a proposed *Charter of Rights and Freedoms*
 - the activities of the RCMP (the MacDonald Commission)

- the establishment of the Canadian Security Intelligence Service (CSIS)
- production of a major brief on policing the police
- successful legal challenges to:
 - the provincial government's attempt to remove abortion from coverage under the Medical Services Plan
 - compulsory prayers in schools
 - the disparate size of electoral ridings in B.C., and
 - the lack of absentee voter provisions in the *Election Act*
- development of the concept of 'catastrophic rights' – the rights of persons with terminal illnesses to greater access to experimental therapies – and the publication of the book *Catastrophic Rights*
- publication of *Liberties*, a collection of BCCLA position papers on controversial topics
- a first of its kind study of AIDS discrimination in Canada and the publication of a widely distributed report of the study
- publication of revised versions of the handbooks *Arrest: Civil Rights and Police Powers*, *Discrimination*, and *Youth and the Law*.

1990 to 1997

Throughout this period the BCCLA's influence continued to grow as a result of our impressive track record in the courts, our taking of balanced positions on difficult issues, our willingness to act behind the scenes in a consultative role, and our increasing access to the media.

We continued to benefit from stable funding sources, including generous long term support from individuals and a substantial operating grant from the Law Foundation of B.C.

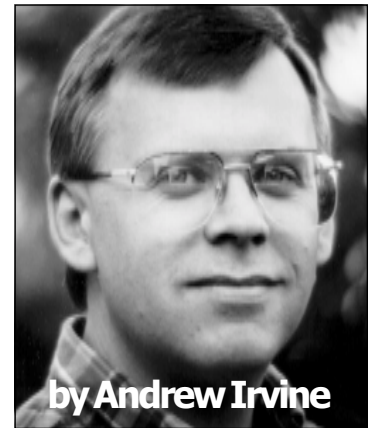
During these years we:

- intervened at the Supreme Court of Canada in:
 - *R. v. Butler*, a test of the obscenity provision in the *Criminal Code*
 - *R. v. Cuerrier*, a review of the law on consent where important information (the HIV status of the accused) is not disclosed
 - a reference regarding the constitutionality of Saskatchewan's electoral boundaries
- with co-plaintiff Little Sister's bookstore, brought a major constitutional challenge to Canada Customs' censorship powers to a 40-day trial in B.C. Supreme Court, and then to the B.C. Court of Appeal
- were closely involved in consultations concerning the new *Freedom of Information and Protection of Privacy Act*, and the creation of a new citizen complaint process under the *Police Act*
- organized a major conference on the *Charter of Rights and Freedoms*, and published the proceedings
- wrote, published and distributed *The Privacy Handbook*, a practical guide to privacy rights in B.C.
- intervened in *Trinity Western University v. B.C. College of Teachers*
- intervened in the hearing of a complaint against columnist Doug Collins before a B.C. Human Rights Tribunal
- testified before a number of government commissions and committees, including:
 - the Oppal Commission of Inquiry into Policing in B.C.
 - the Royal Commission on Electoral Reform
 - Parliamentary committees studying changes to the definition of sexual assault, the so-called "rape shield law"; amendments to the *Canadian Security Intelligence Service Act*; sentencing and corrections reform; amendments to the *Young Offenders Act*; and the regulation of new reproductive technologies
- produced and submitted to the Department of Justice two major briefs, one on euthanasia and assisted suicide, the other on the use of DNA for criminal investigation purposes
- led the fight against the non-consensual collection and disclosure of sensitive information in the PharmaNet data bank
- made a detailed submission to UBC criticizing its handling of the McEwen Report into allegations of racism and sexism on campus
- made several submissions to SFU on changes to its harassment code
- produced and distributed brochures on drug testing in the workplace and writing a letter of complaint to the police
- made submissions to B.C. Corrections on overcrowding in prisons, and the dispensing of methadone in prisons
- consulted with the Ministry of Children and Families regarding a complaints process, and with the Ministry of Finance regarding the proposed sale of BC Online
- developed and upgraded a web site containing a variety of information on the BCCLA, its positions on various issues, and placed online the full text of many position papers.

President's Message

“The most beautiful thing in the world is freedom of speech.”

Even though these words were first spoken over 2300 years ago by Diogenes, the ancient Greek Cynic, they have a distinctly modern sound. After all, without free speech and other basic civil liberties, we would lack the cornerstones of contemporary democracy.



The freedom of all people to speak openly, without fear of government reprisal, is what allows us as citizens to raise issues which we feel to be important. Freedom of speech, association, and peaceful assembly, and the freedom to exercise our franchise are what allow citizens to exercise their sovereignty over government. As a country's civil liberties are weakened, its claim to being a democracy is correspondingly diminished.

The old Republic of South Africa provides a case in point. Regardless of whether we think of it as a democracy with an extremely limited franchise, or as a democracy in name only, by the 1980s that country's government had enacted over 100 laws restricting the movement of ideas. In some respects these laws were remarkably powerful: newspaper and magazine articles were censored, journalists and writers were detained, editors were prosecuted, and papers were closed.

Yet even in those dark days many of South Africa's censorship laws remained largely impotent. Speeches by political leaders were smuggled in and out of prisons and around the country, and it became a badge of honour to possess them, no matter how dry or boring they might be. Legal challenges to censorship were mounted, editorials against apartheid were published, and many government policies were ridiculed, until

even this became illegal. When one edition of a newspaper was banned, the paper changed its masthead, publishing the same material under a new name, free from the banning order. Rather than publish an illegal photograph of a violent police action, another paper printed a "connect-the-dots" version instead, together with explicit instructions that readers were *not* to connect the dots.

Blank spaces were also banned, as was obliterated text. Both had been used by the *Weekly Mail* to indicate the extent of censorship but, as Anton Harber, a founder and co-editor of that paper reports:

The authorities realised that nothing frightened the public more than white spaces in newspapers: vivid imaginations filled the spaces with reports far worse than those that had been removed.

Hence there was the absurdity of making it illegal to print nothing!

Other policies were equally comical yet frightening. The *Key Point Act* made it an offence to photograph or publicize so-called "key points" around the country. At the same time, the list of sites that had been designated by the government as "key" remained classified. The only way for a newspaper to discover whether it was in possession of an illegal photograph was to publish it, and then wait to see whether charges were laid.

During this time, the amount of material censored was phenomenal. The peace sign

was banned, as was the book *Black Beauty*. The film *Roots* was banned for the reason that:

a substantial number of blacks would, judged on the probabilities, substantially experience great or greater hate against the white [race] as a result of seeing this film....

Reading this, we may feel relieved that censorship of this kind does not and could not occur in Canada. Yet this is not so. Many of the cases discussed in this Annual Report indicate just how fragile our civil liberties remain, even in British Columbia. The removal of protest signs at APEC, the censorship of gay and lesbian reading material, and the encroachment upon the religious freedoms of teachers trained at Trinity Western University — all of these serve to remind us just how easy it is for governments to overstep their authority. Even worse, current law explicitly gives many Canadian governments the power to place limits on our freedom of expression, and for many of the same reasons as in the old South Africa.

Just as a South African court decided that *Roots* should be banned because failure to do so would increase the chance that one group in society would likely “experience great or greater hate” towards another, the B.C. *Human Rights Code* bans some types of speech for exactly the same reason.

Section 7(1)(b) of the *Code* states that:

A person must not publish, issue or display, or cause to be published, issued or displayed,

any statement, publication, notice, sign, symbol, emblem or other representation that . . . is likely to expose a person or a group or class of persons to hatred or contempt because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or that group or class of persons.

Thus the South African and Canadian cases differ only in the details of their application.

Without civil liberties, citizens are no longer able to exercise their sovereignty over government.

Now perhaps it is these details of application which are important. Perhaps, unlike the old South African government, Canadian governments can be trusted to censor only that speech which deserves to be censored.

Unfortunately, such trust is bound to be illusory. Not only do state agencies have a poor record with regard to censorship, our abdicating of this responsibility to the state is equivalent to throwing away the very building blocks of democracy. Without civil liberties, citizens are no longer able to exercise their sovereignty over government.

In the words of the famous U.S. Supreme Court justice, Hugo Black, “Free speech is always the deadliest enemy of tyranny.”

But the advantages of free speech do not end here. In any

society which wants to eliminate hate, it is important to know who the hatemongers are. Before electing candidates to our local school boards, it is not only interesting to know their views on evolution and multiculturalism, on history and on race, it is essential. Because censorship laws regularly push this type of information underground, it is not accidental that such laws are typically accompanied by increased degrees of state surveillance. At the same time, when this information does not go underground, it is often given even greater prominence in the media and in the public consciousness than it deserves.

Thus, censorship laws are typically either ineffective in achieving their goals, or else they tend to hamper society’s need to know who the hatemongers are, what role they play in our communities, and what type of influence they have on public policy. Given the choice between asking the state to identify these people and allowing them to identify themselves, most of us will prefer the latter.

And there is more. Not only are censorship laws both ineffective and contrary to the principles underlying democracy, they also divide a country’s population into first- and second-class citizens. If university professors and government appointees are allowed to debate the question of how many people died in the Holocaust, but Ernst Zundel and Doug Collins are not, we have in effect set up the type of division between citizens which no healthy democracy can long support. Free speech is something

we extend to the foolish as well as the wise. Once we begin to decide who may or may not be granted the privilege of free speech, we have begun the slide towards a dictatorship of either the left or the right.

Free speech means very little if it is to be extended only to those with whom we happen to agree.

This is a point which supporters of the BCCLA have recognized for over 35 years, and it is for this reason that the BCCLA has continually emphasized the nonpartisan nature of civil liberties. Free speech means very little if it is to be extended only to those with whom we happen to agree. Thus the BCCLA has consistently defended the rights of citizens, regardless of their place on the political spectrum.

We have spoken out on behalf of the free speech rights of those who advocate traditional family values, including Trinity Western University and the Citizen's Research Institute.

At the same time, we have defended the free speech rights of Little Sister's Bookstore and other well-known advocates of gay rights.

We have also committed resources to defending the free speech rights of Doug Collins and William Berscheid, as well as the very same rights of those who advocate the anti-hate laws under which Collins and Berscheid have been charged.

Of course this means that we have to tolerate words and ideas with which we may passionately disagree. Yet this is simply the price we pay for a healthy democracy. Since the BCCLA is one of the few organizations which defends the free speech rights of citizens from all points on the political spectrum, the Association has earned a high degree of respect from its critics as well as its supporters.

In closing, let me say that, since its inception, the strength of the BCCLA has always been the people who have contributed their time, resources and expertise to the Association. In my first year as President I have been continually impressed by this support—by the devotion of our financial contributors, by the high degree of expertise which our volunteer board members bring to the many issues which the Association faces, and by the high quality and professionalism of our staff.

For this reason, I would be remiss if I did not take a moment to thank our many supporters, and to mention publicly the large debt we owe to them. Without them, the Association simply could not carry on its business.

In addition, I want to acknowledge the invaluable work of two staff members for whom this Annual Report will likely be their last.

In December **Linda Shpikula**, our Office Manager, resigned for personal reasons. For three years Linda has been a mainstay of the Association and we will miss her greatly. We

wish her well and hope that she will stay in touch. Her replacement, Pam Murray, has already proved to be a very welcome addition to the office, and I am sure that she, too, will prove to be invaluable to the work of the Association.

Later this year **Russell Wodell**, our Publications Director, will also be leaving due to budget cutbacks. For ten years Russell has served the Association in a variety of capacities, and he has done so with consummate ability and style. It is no exaggeration to say that, although he has worked primarily behind the scenes—designing our publications, helping with the day-to-day administration of the Association, and establishing our web site (www.bccla.org)—the Association's public profile has benefitted enormously from Russell's hard work and attention to detail. Like Linda, Russell will be missed and I hope that he, too, will stay in touch with his many friends in the Association.

No one can doubt that the BCCLA is better off because of their time with us. I know that I speak on behalf of the entire membership when I thank them both for the years they have devoted to the cause of civil liberties in British Columbia.

Best wishes to you all,



President

Kay Stockholder 1928 to 1998



The BCCLA was deeply saddened by the death of Kay Stockholder, who passed away on June 18, 1998 after a long battle with cancer. Kay had served on the Board since 1991, most notably as our President from 1995 to 1998.

The following letter was written to Kay by former BCCLA President Phil Bryden on behalf of the Board and staff, and delivered to her in May, 1998:

Dear Kay:

It often happens that we don't tell the people we love and respect how much we appreciate them. It is sad for all of us that your illness has come to the point that we are thinking about our last goodbyes, but I hope that we can all take some small comfort in seizing the opportunity to tell you how much you have meant to the Board, the staff and the supporters of the BCCLA.

When John Dixon and I first approached you about your willingness to succeed Andrew Wilkinson as President of the BCCLA, we really had no way of knowing that you would do the job so well. All of us who have been involved in the work of the

Association have admired and respected the way you grew in your ability to lead us in our efforts to come to grips with difficult civil liberties issues and to convey our thoughts to the public. You captured not only our minds but our hearts with your relentless energy and infectious good humour.

Your courage and dedication in hanging in with the work of the Association through so much of a long and painful illness has been an inspiration to us. On behalf of all of us who treasure the work of the BCCLA, it has been an honour to have you as our president, and we will sorely miss you.

Phil Bryden

Tara Singh Hayer: 1936 to 1998



Each year this award honours a person or persons who, in the opinion of the Board of Directors, made a substantial and long-lasting contribution to the cause of civil liberties in B.C. and in Canada.

On November 17th of last year, Tara Singh Hayer was assassinated in his garage as he transferred himself from his van to a wheel-chair. Hayer was a publisher with something to say, and he wielded his Surrey newspaper — the *Indo-Canadian Times* — as a strong voice for political moderation and non-violence among Sikhs.

A strident voice, some might say, since he was most definitely not “politically correct” or modest or gentle in his journalistic campaign against Sikh violence. He was a passionate, outspoken, and tenacious journalist who sank his teeth deeply into his stories.

He was very aware of the danger he ran in doing this — particularly after a series of assassination attempts had left him disabled and in constant pain — but ultimately fatalistic about his chances of survival. And, it might be said, of the relative importance of survival.

He once said that it is a journalist’s job to tell the truth, no matter how many people do not wish to read it. It is hard to beat that pronouncement for straight-forward sanity and integrity, and it would also be difficult to craft a better formulation of the civil libertarian’s often unpopular role.

But Hayer did not die as a martyr for the idea or right of freedom of expression, any more than Gandhi himself died for that fundamental civil liberty. He died, as Gandhi died, for what he actually said and taught: that the deadly reflex of violence must be replaced with the habit of reasoning together.

It falls to less heroic types, such as civil libertarians, to draw out the full implications of that lesson, and to work toward its realization in our politics and laws. There can be no reasoning together without speech, and speech about public concerns that really matter is bound to cause hurt or offense. Violent and repressive reaction in the face of such pain is commonplace, and creates a demoralizing cycle.

A free civil society cannot long exist when only popularity or indifference can shield a speaker from punishment for what he says. Tara Singh Hayer lived and continued his work in the face of such a threat. We are pleased to make him the recipient of the Third Annual Reg Robson Civil Liberties Award.

Our First Annual Reporting of the Best and Worst Defenders of Civil Liberties in British Columbia

Brickbats to:

- **Andy Scott**
Canada's former Solicitor-General, for denying legal funding to complainants who appeared before the 1998 RCMP Public Complaints Commission hearings into events surrounding the APEC conference held in Vancouver
- **The B.C. College of Teachers**
For its continued refusal to certify the teacher-training program at Trinity Western University on the ground that the University's code of conduct regards homosexual acts as sinful
- **The B.C. Ministry of Health**
For B.C.'s new *Mental Health Act* which significantly expands the criteria for involuntary committal and treatment of non-violent mental patients
- **The Commissioner of Canada Elections**
For his decision to prosecute two citizens who chose to express their views on the electoral process by spoiling their election ballots
- **The City of New Westminster**
For over-stepping its authority and usurping court powers when it banned convicted drug-dealers from large areas of New Westminster, and for invoking other, inappropriate police tactics in its battle against street crime
- **The Prime Minister's Office**
For filing formal complaints with the CBC over the public broadcaster's unflattering reports of alleged political involvement of the PMO in RCMP security arrangements at APEC

- **The Surrey School Board**
For upholding its classroom ban of the books *Asha's Mums*, *Belinda's Bouquet*, and *One Dad, Two Dads, Brown Dads, Blue Dads*, despite a B.C. Supreme Court decision that found the ban to be unjustified
- **The University of British Columbia**
For its decision that only women candidates could apply for the new Assistant Professor position in the UBC Department of Physics and Astronomy

Bouquets to:

- **Rafe Mair**
For his strong CKNW editorials on free speech and freedom of assembly
- **Terry Milewski**
For his coverage of the Public Complaints Commission hearings into the RCMP crackdown at APEC
- **The Law Foundation of BC**
For its continued funding of important public interest organizations in 1998
- **The B.C. Transit Authority**
For reversing its decision to regulate the content of newspapers and other publications that may be distributed free of charge at transit stops within greater Vancouver
- *The Globe and Mail*, *The National Post*, and *The Vancouver Sun*
For their strong editorials defending the free speech rights of British Columbians and all Canadians
- **The University of British Columbia**
For its 1998 apology to the UBC Department of Political Science for the unwarranted and damaging actions taken by the University administration in response to unfounded 1995 allegations of racial and sexual harassment.

The APEC Hearings



One issue dominated the civil libertarian agenda in 1998: the on again/off again RCMP Public Complaints Commission hearings into the police stifling of student protests during the Asia Pacific Economic Cooperation conference at the University of British Columbia in 1997. As a complainant, the BCCLA played a major role in this affair, fighting a rearguard action to keep the hearings alive.

Many of the other parties wanted the hearings scuttled, for varying reasons. Many students wanted a forum for wide-ranging complaints against Prime Minister Jean Chretien, and raised motion after motion to suspend the hearings in favour of a judicial inquiry. Some protesters bringing civil suits against the RCMP threatened to withdraw unless they were granted funding for legal representation. Federal government lawyers released information suggesting that panel Chair Gerald Morin would be biased against the RCMP. The RCMP itself, long uncomfortable with the Commission's oversight role, brought a legal challenge of bias against the panel. Continually adjourned to deal with these procedural motions, the hearings were finally suspended upon Morin's resignation.

Throughout this turmoil, the BCCLA steadfastly supported the hearing

process— in legal proceedings, in the media, and in an extraordinary submission to the leaders of the House of Commons and Senate.

Included in that submission were documents which suggest that the Prime Minister's Office was concerned to strike the proper balance between the expression rights of protesters and the desire of foreign leaders not to be embarrassed. We said:

Parliament — and all Canadians — should categorically reject the idea that there is a “proper balance” to be struck here. The discomfort or embarrassment of visiting dignitaries is never a legitimate reason for restricting the expression rights of Canadian citizens.

It is essential that Canadians maintain civilian oversight of the RCMP, addressing not only individual conduct complaints but broader issues such as, in this case, allegations that the police were used for overt political purposes. We regard the APEC hearings as a benchmark test of the ability of the Commission to fill these roles.

Editor's Note: We are very pleased to say that in early 1999 Ted Hughes was appointed by the Commission to hear the complaints. Mr. Hughes is a highly respected lawyer, a former Deputy Attorney General, and B.C.'s former Conflict of Interest Commissioner. His experience and credibility give us confidence that the hearings will soon be back on track.

Discriminatory Speech

Section 7 (1) of B.C.'s *Human Rights Code* bans discriminatory speech: subsection (a) bans expressions which "indicate an intent to discriminate," and subsection (b) bans expressions likely to expose a person or group to hatred or contempt because of their race, religion, gender, or other similar factors.

In the Doug Collins case (see last year's Annual Report) the BCCLA argued before a Human Rights Tribunal that subsection (b) violates the *Charter* protection of freedom of expression. Although the Tribunal upheld the constitutionality of the speech ban, it did place tight restrictions on its application. Two further complaints about "discriminatory speech" occupied the BCCLA in 1998:

(a) Citizens Research Institute

A conservative organization, the Citizens Research Institute (CRI), distributed a pamphlet to parents encouraging them to send their children's schools a signed "Declaration of Family Rights" demanding that their children not be exposed to positive images or information about gay men or lesbians. The B.C. Human Rights Commission judged the content of the pamphlet insufficiently vilifying to warrant proceeding under subsection (b), but referred the complaint to a tribunal under subsection (a).

The BCCLA received leave to intervene in the case on the interpretation of subsection (a).

In our view, the *Code* correctly bans expressions of an intention to discriminate by *someone in a position to discriminate* – such as an employer placing an employment ad saying "No blacks will be considered" – but it should not apply to a person expressing a discriminatory attitude who has no authority to actually discriminate.

In this case neither the parents nor the CRI can intend to discriminate against gays and lesbians since neither has any control over the public school curriculum.

(b) The Berscheid Case

Before the CRI complaint could be heard, another complaint under both sections 7 (1) (a) and (b) was referred to B.C. Supreme Court. Embroiled in a bitter disagreement with the Westbank Indian Band over water rights, the respondent erected signs on his lawn which commented unfavourably (to say the least!) on the character of native persons.

The hearing into the Band's human rights complaint was adjourned while Berscheid challenged the constitutionality of Sections 7 (1) (a) and (b) in the courts.

For some time the BCCLA has sought to have the courts address the constitutional issues raised by the Code's ban on discriminatory speech, and so welcomed the opportunity to intervene in the Berscheid case. The court hearing began in November, 1998, but was adjourned before we were able to make our submission. It will resume early in 1999.

Editor's Note: Early in 1999, the Westbank Indian Band abandoned its human rights complaint, and so the constitutional issue was ruled moot. The CRI hearing will proceed.

Surrey School Board

The BCCLA played an important role as public interest intervenor in a B.C. Supreme Court challenge to a Surrey School Board decision. Three books had been banned by the Board from use in Kindergarten and Grade 1 classrooms because the books contain depictions of families with same-sex parents. The petitioners brought forward constitutional arguments to force approval of the books as part of a more general duty to protect equality rights of gays and lesbians. Our intervention concentrated on a more narrow argument: that the ban was made on the basis of religious considerations, violating section 76 of the *School Act* which requires B.C. public schools to be conducted on a purely secular basis. We argued also that the ruling contravened the requirement that public body decisions respect the value of equality set out in section 15 of the *Charter* and in the *B.C. Human Rights Code*.

Just before year's end, the Court decided in favour of the BCCLA's arguments and struck down the Surrey School Board ruling. Since the books were in all other respects acceptable and age-appropriate, said Madame Justice Mary Saunders, the School Board's decision was based on the religious beliefs of some parents in Surrey and of one School Trustee, thus violating Section 76. She noted also that the requirement for public schools to "inculcate the highest morality" can be viewed in part as a duty to honour *Charter* values.

This important ruling marks the first time that a Canadian court has grappled explicitly with the separation of church and state in the context of the public school curriculum.

Editor's Note: In January, 1999 the Board announced it would appeal the ruling. We plan to intervene again at the B.C. Court of Appeal.

Little Sister's

The BCCLA and our co-plaintiffs Little Sister's bookstore were very disappointed when the B.C. Court of Appeal handed down its decision in the Little Sister's Case – our 8-year-old constitutional challenge to Canada Customs' censorship powers.

In a 2 to 1 decision, the court rejected our appeal, upholding the trial judge's ruling that although Customs' seizure and prohibition of books destined for the gay and lesbian bookstore consistently violated the expression and equality rights of readers, writers, and booksellers alike,

the problem lies in the administration of the law, not in the law itself.

On a positive note, the minority opinion was very strong in its conclusion that Canada Customs' systemic violations of the *Charter* are indeed an inherent flaw in the law, one that cannot be eradicated simply by better training of Customs officers or through better appeal procedures. We have applied for leave to appeal the decision to the Supreme Court of Canada.

Editor's Note: In February 1999, the Supreme Court of Canada announced that it will hear our appeal.

Recall Challenge

Considerable controversy arose when in 1998 the BCCLA launched a constitutional challenge to B.C.'s recall legislation. Passed in 1994, the legislation permits recall campaigns against elected MLAs for virtually any reason. For example, one citizen launched a recall campaign against his MLA on the grounds that the MLA was boring and constantly whining, thus causing his constituents great embarrassment. This petition was accepted by the Chief Electoral Officer.

Although on the surface the recall legislation appears to expand the democratic rights of citizens, in our view, it has four serious drawbacks. The legislation:

- disadvantages policy solutions requiring compromise between different constituencies
- impairs the ability of MLAs to tackle controversial political issues
- undermines Caucus and Cabinet solidarity

- invites political mischief by organized interest groups.

B.C.'s recall law is not just a minor add-on to the current political structures, but represents a profound change to our system of representative democracy. Under constant threat of arbitrary recall, MLAs may become mere mouthpieces for the most vocal elements in their constituencies. This weakens the fabric of responsible and deliberative government.

Many proponents of the recall law, frustrated by the current system of governance in which MLAs vote on party lines and governments can be elected with a minority of the popular vote, would welcome radical change.

The BCCLA is open to considering alternative forms of political representation as possible improvements, but we insist that if radical changes are to be made, they must be made legally and responsibly, by changes to B.C.'s constitution after extensive and open public debate and deliberation.

Encryption and State Surveillance

Encryption devices "scramble" electronic messages so that if intercepted by a third party, they cannot be read. A federal government discussion paper suggested that all users of encryption devices be required to register them with the police. The argument is that criminals and terrorists will use encryption to make their communications immune from

legitimate government surveillance, even where warrants have been issued.

The BCCLA opposes this suggestion. Criminals and terrorists would be unlikely to comply, whereas law-abiding citizens and businesses could be subject to increased state surveillance. Where necessary, the police could always obtain a warrant to seize encryption devices to unscramble suspect communications.

Trinity Western University

In contrast to our stance in the Surrey School Board case, the BCCLA intervened at the B.C. Court of Appeal to argue that Trinity Western University could legitimately discriminate against gays and lesbians.

The reason we took (apparently) opposite stances in the two cases is that TWU is a private institution and, as such, is at liberty to limit membership to those who share its religious views or agree to live up to its Code of Conduct. It should not be punished by the state for doing so. TWU's Code requires all students to refrain from "Biblically condemned" behaviour, including extramarital and homosexual sex.

We intervened at the B.C. Supreme Court hearing in 1997 in support of TWU, and that Court agreed with our position. In 1998 the B.C. College of Teachers – which wished to withhold certification of TWU's teacher education program because of its discriminatory Code – appealed to the Court of Appeal and the BCCLA again intervened. In a 2 to 1 decision the appellate court upheld the lower court ruling and ordered the College to certify TWU's program.

Both courts were persuaded that since there was no evidence that TWU graduates are likely to discriminate against gays and lesbians students or fail to protect them, the College has no authority to enforce secular values on the private Evangelical Christian university.

The College is considering an appeal.

R. v. Cuerrier

In February, 1998 the BCCLA appeared before the Supreme Court of Canada as an intervener in *R. v. Cuerrier*, an appeal by the Crown of the dismissal of aggravated sexual assault charges against an HIV positive man who knowingly had unprotected sex with a woman.

His appalling behaviour warrants the highest moral sanctions. But in order to prosecute him for sexual assault, the law would have to regard the woman's consent to sex as nullified by his failure to disclose his HIV status. Expansion of the law against assault to include non-disclosure of information in a sexual context, such as lying to a potential

partner about one's marital status or professional position or, for that matter, age, would be extremely problematic. Additionally, it would undermine public health initiatives by encouraging irresponsible individuals to avoid HIV testing altogether.

In a split decision, the Court granted the Crown's appeal and sent Cuerrier back for trial. The majority of the Court said that where deceit places a sexual partner at risk of serious bodily harm, criminal sanctions are appropriate. We take some comfort in believing that without our submission, the Court might have taken an even broader approach to criminalizing deceitful sexual behaviour.

Citizenship Handbook

We are very proud of our major 1998 publication, *The Citizenship Handbook*. This 118-page book introduces new Canadians to their rights and responsibilities as citizens in a democracy. Written by Murray Mollard, edited and designed by Russell Wodell, and illustrated by Jane Wolsak, the *Handbook* was published in simultaneous English, Chinese, Punjabi, Spanish, and Vietnamese editions.

Response has been extremely positive, from multicultural community workers and ESL teachers and from new Canadians themselves. In 1998 we distributed virtually all 10,000 copies through workshops conducted by BCCLA staff, through multicultural agencies, and through word-of-mouth. We are now seeking funding for a second printing, and for translation into further languages.

Our web site carries an on-line version of the English edition at:

www.bccla.org/publications/Citizenship/citizens_index.html.

We are preparing the Spanish version in electronic form, and seeking hosts for the Chinese, Punjabi, and Vietnamese editions.

ਦੀ ਸਿਟੀਜ਼ਨਸ਼ਿਪ ਹੈਂਡਬੁੱਕ

ਲਹੌਂ ਨਾਜ਼ਰਿਕਾਂ ਲਈ ਲੋਕਤੰਤਰੀ ਅਧਿਕਾਰਾਂ ਅਤੇ ਜ਼ਿੰਮੇਵਾਰੀਆਂ ਦੀ ਕਾਈਡ
(Citizenship Handbook - Punjabi Version)



Conference on Hatred

The University of Victoria organized a conference on how best to prevent or respond to public expressions of hatred. The BCCLA was invited to present its views on the now infamous Doug Collins case (the hearing into whether Collins violated hate speech restrictions in the *Human*

Rights Code), the use of public facilities by “hate groups,” and responsibilities of communities and local governments. Although it is unlikely that we were able to persuade many of the conference participants of the importance of freedom of expression in this context, our presentations sparked a lively debate.

Proposed Nisga'a Treaty

Two separate issues raised by the proposed Nisga'a treaty were considered by the BCCLA Board: (a) whether the treaty violates civil liberties, and (b) whether a referendum is required or appropriate.

The Treaty

The Board expressed general support for the treaty, both as compensation for past wrongs and as recognition of the legitimate claim of the Nisga'a to their ancestral lands. It strongly supported Nisga'a title to their ancestral lands. It also supported the principle of Nisga'a sovereignty over their lands, including limiting political representation on major issues to Nisga'a citizens. The Board noted that the Nisga'a have ceded significant powers to the provincial and federal governments, including protection of individual rights under the *Charter* and the *Criminal Code*. Some concern was expressed that even though provision is made in the proposed treaty for non-Nisga'a living on Nisga'a lands to have a say in matters

which affect them, access to political representation is ultimately controlled by the Nisga'a Council. The ability of non-Nisga'a to become Nisga'a citizens – and so to partake of the full range of rights and responsibilities of citizenship – was also tagged as an issue to be monitored.

On balance, the BCCLA supported the adoption of the treaty, and will continue to examine any civil liberties issues arising from implementation of the treaty.

A Referendum

Some political commentators maintain that the treaty would make such a radical change to the political landscape of British Columbia that it cannot be left up to the government of the day to decide, and instead requires a referendum. The Board could find no civil liberties reasons for holding a referendum. Should the government decide to call a referendum, the BCCLA would not oppose this, but given our system of representational government, the Board concluded that a referendum is neither necessary nor desirable.

Child Prostitution

Troubled by the apparent failure of police to arrest those buying sex from children on the streets, the BCCLA considered whether this social evil raises a civil liberties issue. The Board decided that it does. By reason of immaturity and inexperience, children are less than fully capable of appreciating the consequences of their actions or of engaging in practical reasoning. They thus possess less than

full autonomy and deserve our protection. Furthermore, street kids are often engaged in behaviours — such as quitting school and using drugs — which limit their capacity to become autonomous moral agents as they grow older. For these reasons, the BCCLA regards both the buying of sex from children and the failure of authorities to act strongly to curb this activity as attacks on children's autonomy, and so as attacks on their rights.

BCCLA Casework by Category

	1998	1997	1996
Administrative Decision Making	7	4	8
Children's Rights	7	5	5
Discrimination	5	5	2
Due Process:Legal	20	20	19
Freedom of Speech & Association	40	16	17
Patients' Rights	1	2	2
Patients' Rights:Review Panels	49	58	53
Police Complaints	35	28	51
Political Rights	8	9	3
Prisoners' Rights	8	5	7
Privacy & Access to Information	42	34	37
Private Offences	5	5	5
Total Cases	227	191	209

Case Acceptance Policy

Our Association receives well over 2,000 telephone calls or e-mail messages each year requesting advice and/or assistance. Given our scarce resources, we are able to accept only a small percentage of these as cases. Our acceptance policy is quite straightforward:

First, we assess whether the complaint involves a clear civil liberties issue. Traditionally civil liberties issues focus on the relationship between the citizen and the state, but the BCCLA also assists with certain complaints against private organizations. When a complaint does not in our opinion involve a civil liberties issue, we usually refer the complainant to another agency which could help with the issue, such as the Ombudsman of B.C. or the B.C. Human Rights Commission. Where no such agency exists, we offer practical advice about how the complainant

might resolve the matter or deal with an unfair policy.

Second, even where a complaint does raise a clear civil liberties issue, if another, larger and better funded agency is equipped to handle the complaint, we normally refer the complainant to that agency.

Third, we look to see whether the complaint involves a law or policy affecting many individuals. If not, we usually refer the complaint to another agency, or offer advice. Concentrating our efforts to address laws or policies allows us to maximize the effect of our scarce resources. Exceptions to this policy are police complaints.

Finally, where considerable resources will be required to address an issue, we assess the likelihood of success. Where prospects are dim and the resources needed considerable, we are sometimes forced to reject the complaint.

Political Rights

Prosecution of Ballot Shredders

Two complainants shredded their own ballots during the 1997 federal election to publicize their view that voting in the election undermined democracy by giving legitimacy to prevailing power structures. They were investigated by Elections Canada and charged under paragraph 249(1)(b), which makes it an offence to fraudulently alter a ballot if doing so is likely to result in the reception of a vote that should not have been cast or in the non-reception of vote that should have been cast.

While recognizing that it should be an offence to try to fraudulently alter

the outcome of an election, this law should not be used to penalize shredding one's own ballot, which is a legitimate form of political speech.

We issued a press release criticizing Elections Canada for the prosecution. We wrote to the Commissioner of Elections Canada, who must approve the charges, asking that he rescind his approval. That request was denied because "the matter is before the courts." We also wrote to the Chief Electoral Officer, who has a general supervisory responsibility over the Commissioner, who noted our concern.

The trial is set for 1999, and we will monitor its outcome.

Challenge to the Elections Act

In advance of the last provincial election, the government overhauled the *Election Act*.

Two amendments of particular interest to the BCCLA are restrictions on third party advertising spending during an election campaign and a requirement to include certain information in the publication of election polls. Ostensibly to make election campaigns more fair, these changes are major incursions into the freedom of expression of individuals and groups at a time when free speech is arguably most needed – during an election. They create an almost complete oligopoly for partisan political parties to define and direct public debate during an election campaign, to the exclusion of the viewpoints of smaller groups and of individuals.

Pacific Press, together with a citizen charged under the *Act* for defying the restrictions, raised a constitutional challenge to these laws. As part of a preliminary legal skirmish, the provincial government sought to have the case thrown out of court because, in its view, the legal issue had already been decided by the Supreme Court of Canada.

The BCCLA intervened in this case at the B.C. Court of Appeal to argue that the law setting advertising spending limits during elections is far from settled and a legal challenge could proceed. When the Court of Appeal agreed, the government sought leave to appeal to the Supreme Court of Canada. Assuming the government's appeal fails, a trial is set for June of 1999.

We plan to intervene.

Freedom of Speech and Association

Billing Demonstrators for Police Services

After mounting public demonstrations in 1998, the International Women's Day Committee and the Canadian Federation of Students were billed by the Vancouver Police Department for police presence during these events. A City of Vancouver policy requires permits for holding public events, but it is not clear under what authority the police can bill for connected services.

Paying for police services would seriously undercut the ability of non-profit groups to stage public demonstrations of any kind. Public demonstrations sometimes involve modest costs which, like the electoral process, should be borne by the state. Though some regulation and notice requirements are appropriate, billing

demonstrators for police services only discourages political participation at a time when society needs to find ways to overcome citizens' increasing alienation from the political process.

A coalition of concerned organizations and individuals approached the BCCLA for advice and assistance. We wrote to the Mayor and City Council pointing out that the democratic right to demonstrate on public property is protected under the *Charter of Rights and Freedoms*, and recommending that the City revise its policy to distinguish between purely cultural events like the Symphony of Fire, which are legitimately billed for police protection, and political demonstrations in the public interest.

We will continue to press for such a policy in 1999.

Free Speech for Police

Two instances of public comments by police officers attracted our attention in 1998.

In the first, Constable Gil Puder, a long-serving officer with the Vancouver Police Department, publicly criticized the police role in Canada's criminal enforcement approach to the problem of drug abuse. His controversial comments included harsh words about the internal police culture created by the "War on Drugs."

In the second instance, official police spokespersons spoke disparagingly about protesters at Vancouver City Hall who were demonstrating against panhandling bylaws, calling them a "rent-a-crowd."

Like any employer, the police can place reasonable limits on their

employees' speech if it would interfere with the employees' duties. But Puder's statements did not appear to do so. His comments were "insider" information and added an important dimension to public debate about how best to deal with drug use and trafficking.

With regard to the "rent-a-crowd" comments, the BCCLA is concerned that police appeared to take sides on a political question, while denigrating the value of political participation through demonstrations. Neither message is appropriate.

We wrote the Police Board, and later met with the Chief Constable. We agreed to disagree regarding the comments of Mr. Puder, but we did agree that the police should remain impartial in political and private disputes.

Due Process

Criminal Record Checks

Intended to prevent the physical and sexual abuse of children, the *Criminal Records Review Act* requires every public sector employee or prospective employee who works with children, and a host of professionals (such as physicians and dentists), to undergo a criminal record check. Certain criminal offences are defined as “relevant” for assessing the risk which an employee may pose, and the *Act* specifies a process for assessing that risk.

The BCCLA supports the underlying goal of the *Act*, but cautions that it cannot and should not be viewed as a comprehensive preventive tool. Most sexual abuse of children is committed by persons with no prior criminal record.

Since the *Act* came into force, 313,250 persons have been forced to undergo a criminal record check. Of these, 227 have been found to have a “relevant” criminal record and were

subjected to an adjudication. Only 10 of these were deemed to pose a risk to children. In response to concerns raised by these statistics about the effectiveness of the *Act*, Lynn Smith, a UBC law professor, was appointed to conduct a review. The BCCLA was invited to make a submission. We recommended to Professor Smith that:

- The class of “relevant” offences should be narrowed, since the current class catches too many individuals who pose no risk to children.
- Persons who have received a pardon for all relevant criminal offences should not be subject to a risk assessment.
- Changes should be made to the way employers are notified regarding employee checks in order to better safeguard privacy.
- Amendments should be made to the risk assessment process to promote fairness and independence of adjudicators.

Professor Smith’s report addressed all of the recommendations we made, accepting some but rejecting others.

Coalition for Access to Justice

Cutbacks in funding to the Legal Services Society of B.C. have resulted in an alarming reduction in the ability of many deserving persons to access legal aid.

These cutbacks are politically suspect: when the government introduced a tax on legal services several years ago, it promised to use the tax revenues to fund legal aid, yet the revenue generated by this tax now exceeds the total government funding for legal aid.

Legal aid must compete with other important objectives for scarce government resources. But as Kay

Stockholder, Past President of the BCCLA, argued:

In the long term, rendering the poor legally helpless allows the agencies of government to grow indifferent about the ways in which they wield their power, and erodes the limits to the ways the rich can in practice deny the rights of the poor.

We pressed the Attorney General on this issue in 1998.

We also joined the Coalition for Access to Justice, a non-partisan group whose goal is to ensure stable, adequate funding for legal aid. Its activities include the Journey for Justice, which portrays the plight of individuals who need yet are denied legal aid.

The BCCLA will continue to work with the Coalition to fight for adequate legal aid funding.

Private Offences

Bylaws Against Panhandling

In 1998 New Westminster, Vancouver, and Kelowna created bylaws to ban asking for money on public property within 10 metres of a bank, automated teller machine, bus stop, bus shelter, or liquor store. A similar Winnipeg bylaw is now being challenged in the courts. Victoria enforces a bylaw prohibiting asking for money while sitting on a sidewalk.

Businesses and civic politicians defend these bylaws as necessary to deal with overly aggressive panhandlers. Yet even the police – defenders of the bylaws generally – acknowledge that we already have criminal sanctions against threatening behaviour, harassment, and “causing a disturbance” which can be used to deal with truly aggressive individuals.

Almost comically, the Vancouver bylaw carries a maximum fine of \$2,000 and a minimum fine of \$100 for each violation. Given the usual financial

situation of those who panhandle, the Vancouver Police have sensibly decided not to ticket individuals who offend, but say they will respond to third party complaints by seeking a court order barring offenders from any area where they panhandle. This would result in an even greater restriction on liberties, and open the door to arbitrary enforcement.

Although a minor nuisance, non-aggressive panhandling does not unreasonably interfere with others’ freedom and should not be illegal. Society must address the issues of poverty, addiction, and mental illness rather than trying to sweep the streets of their consequences.

We made submissions to city councils and took our case to the media. Despite our efforts and the efforts of many poverty advocates, the offensive bylaws remain on the books. This issue is likely headed for the courts in 1999.

New Westminster “Nuisance” Bylaw

When we heard that the City of New Westminster was considering another bylaw to ban convicted drug dealers from large sections of the city, we produced a brief setting out our concerns and met with a delegation from the City (the Mayor, planning staff, and the City’s solicitor).

Although they responded positively to our approach by making some of the changes we recommended, they did not rescind the ban. We appeared

before City Council to press our views, but to no avail.

It is proper for judges and parole boards to place reasonable limits on individuals’ freedoms when released from custody, balancing society’s interests against the right to liberty and the particular circumstances of the individuals.

But a municipality should not have authority to automatically ban persons – even convicted drug dealers – from large areas of the city without a hearing. The BCCLA is considering a legal challenge to the bylaw.

Hemp B.C.

A small store in Vancouver called Hemp B.C. sells pipes and bongs and other smoking instruments. Owner Sister Icee is an unabashed supporter of the legalization of marijuana. Police raided the store twice in 1998 and as a result of criminal charges against her for selling drug paraphernalia, Sister Icee was refused a business licence by the City.

Many other stores quietly but openly sell the same wares without pressure from the police or the City; it is clear that Hemp BC is being brought under special scrutiny. Police Chief Bruce Chambers admitted as much on a radio news broadcast, saying Hemp BC was raided because it was “flaunting it.” The Chief was referring to the store’s success locally, nationally, and internationally in promoting

both its wares and Sister Icee’s views on decriminalization of marijuana. In August, Vancouver Mayor Phillip Owen told the *New York Times* that Hemp BC “will be toast by September” (referring to the date of a license hearing). After strong criticism from the BCCLA and the store’s lawyer, the Mayor agreed to withdraw from the licence hearing.

Hemp B.C. is apparently being targeted by the City and the police solely because of its success in promoting its business and its views (which, insofar as they concern decriminalization of “soft drugs,” the BCCLA shares). This makes it a free speech issue.

We organized a press conference with the store to publicize our concern, and we continue to monitor the situation.

Cominco’s No Smoking Policy

Organizations, institutions, and employers are increasingly less tolerant of those who smoke. While it is clearly legitimate to protect others from unwanted second-hand smoke, employers can go too far, punishing people simply for being smokers.

In the company town of Trail, B.C., Cominco Ltd. banned the use and possession of tobacco products on company property. It would be impractical to create designated smoking areas, the company claimed, dangerous to allow smoking at all, and mere possession of tobacco could pose a health risk to employees who smoke.

Upon receiving complaints, the BCCLA wrote to Cominco pointing out that their policy was both punitive (it

would be virtually impossible to smoke during breaks on such a large property), and paternalistic (according to Cominco, “power smoking” is unhealthy, therefore the company shouldn’t allow employees to do it).

We argued that a ban on possession reaches too far into employees’ private lives, raising the spectre of searches and informants.

After two months of silence we issued a press release. Cominco finally responded, dismissing our concerns outright. The policy continues in force and has, apparently, caused some smokers considerable distress. We have learned that the union local has filed a grievance to be arbitrated in 1999, and we will report on the results.

Regulation of Private Security

The number of private security personnel has mushroomed in British Columbia over the last twenty years. Businesses and private individuals concerned about property crimes have turned to private security guards to do what police are unable to do: keep a watchful eye over their property.

Private security personnel have strictly limited legal authority to arrest, detain, search, and question people. Most citizens remain unaware of the limits on security guards' powers, often confusing them with police officers. Combined with the huge increase in private security, this increases the likelihood that innocent citizens' rights and freedoms will be violated. Municipalities' recent reliance on nuisance and panhandling bylaws – often enforced by private

security personnel – exacerbates the problem.

Citizens are free to protect their property within the limits of the law, and we don't oppose citizens hiring private security personnel to do the job. Given the potential for abuse of authority, on the other hand, adequate training, accountability, and oversight mechanisms should be in place. Citizens also need to be better educated about the limits on the powers of private security. These recommendations echo those of the 1994 Oppal Commission inquiry into policing.

In 1998, the BCCLA provided assistance and advice to groups concerned about the activities of private security personnel in their neighbourhoods. We also met with the Attorney General and Ministry officials, urging them to follow up on the Oppal Commission's recommendations.

Censorship

BC Transit Periodical Policy

BC Transit removed a periodical from distribution in boxes on its property, on the grounds that its content might offend some transit users. The free publication, a Christian monthly newspaper, contained an article opposing abortion. We criticised this decision both in the media and in a letter to BC Transit, arguing that no state agency should play a censorship role. BC Transit agreed, and created a policy to prohibit Transit officials from

considering the content of legally permissible material when deciding whether or not to allow distribution. We applaud BC Transit's recognition of the civil liberties principle involved, but remain sceptical that this policy will in fact prohibit censorship.

Judging that pressing for further change to the policy would be fruitless, we decided instead to monitor Transit's actions in this regard over the coming year.

Privacy

B.C. Benefits Consent Form

No single issue in recent memory generated more calls to the BCCLA office than the welfare consent form introduced by the provincial government in 1998. To assess eligibility for welfare benefits and to deter welfare fraud, the Ministry of Human Resources now requires recipients and applicants to sign a comprehensive consent form to collect personal information. The Ministry can then obtain and verify any “relevant” information regarding eligibility from sources which include: Revenue Canada, any federal or provincial public agency, any financial institution or credit service, landlords, employers, and family members. “Relevant information” is not defined.

This form thus provides a blanket authorization to the government to delve into the private lives of benefits applicants.

Worse, the form fails to distinguish between information needed to establish eligibility and investigations regarding alleged fraud.

Statistics show that welfare fraud is a relatively minor problem and cast doubt on the justification for the breadth of the consent demanded. In our view, the government bears the onus of proving why it needs such sweeping authority to invade privacy.

After we and others protested this regime to the relevant Ministers and in the media, the government revised the consent form to make it marginally more sensitive to the privacy interests of applicants. A legal challenge to the form brought by a welfare recipient was unsuccessful. An appeal to the B.C. Court of Appeal by lawyers from the Community Legal Assistance Society will be heard in 1999.

Watching the Nanny

Video surveillance as a solution to perceived problems of crime and misconduct is a growing trend throughout Canada. Public and private institutions increasingly turn to new technologies for monitoring citizens’ activities.

An example was brought to us by the West Coast Domestic Workers Association, an organization that strives to improve the working conditions of nannies: Should parents have the right to monitor the behaviour of nannies through home video cameras?

Video surveillance has a profound impact on the privacy interests of nannies (as, indeed, on those of most employees subjected to it, whatever the workplace). In addition, it undermines the trust necessary for a successful nanny-parent-child relationship. If parents have sufficient concern that they are considering surveillance as an option,

they might better simply retain other help.

That said, the BCCLA Executive Committee did not categorically rule out use of video surveillance in the home, but judged that at a minimum the following restrictions should apply for spying on domestic workers:

- (1) Notification must be given before any surveillance is used.
- (2) Surveillance should not be used where the employee has a reasonable expectation of privacy (e.g. private bedroom, personal bathroom, etc.).
- (3) Surveillance should be used only if there are reasonable grounds for believing that employee misconduct will occur.
- (4) Surveillance should not be used for assessing productivity generally.

The BCCLA will examine these issues further in a full Board discussion on video surveillance in 1999.

Access to Information

Submission on the FOI Act

Heralded as one of the best examples of information and privacy legislation in Canada, B.C.'s *Freedom of Information and Protection of Privacy Act* provides citizens with a right of access to government-held information and a right of privacy with respect to personal information controlled by government. The BCCLA played a significant role in the development of the Act in the early 1990s.

In 1998 a special all-party committee of the Legislature undertook a mandatory review of the legislation. Regrettably, members of the Committee – especially government members – have exhibited

woeful disinterest in their task. Combined with recent painful funding cuts for the operation of the *Act*, this leaves us worried that the government is prepared to weaken citizens' information and privacy rights.

Our submission urged the committee to preserve, and expand on, the strengths of the legislation. We made recommendations on many issues, including the mandate and authority of the Information and Privacy Commissioner, records management, funding for administration of the *Act*, justification for collecting personal information, exemption to disclosure for legal advice, problematic requests, and fees for access.

We anticipate the Committee's report in 1999.

Freedom of Religion

Bible Distribution in Public Schools

An Abbotsford parent complained about the local School Board's Gideon Bible distribution policy, which permits school principals to arrange for the distribution of "bible consent cards" to Grade 5 students. When signed by a student's parents, the card allows the student to be excused from classes to meet with a member of the Gideon Bible Society, who will then give the student a bible. According to our complainant, a Gideon member, accompanied by the school principal, met with the students to explain the distribution program before handing out the consent cards.

Separation of church and state is an essential democratic principle. Section 76 of the *School Act* says that public schools must not promote religious dogma or creed. In our view, the Abbotsford policy clearly violates that principle, giving official sanction to the distribution of Christian resources. We recommended to the School Board an alternative policy that respects this principle yet permits distribution of religious materials after school hours.

We received a short, polite, but noncommittal letter from the school board thanking us for our interest and comments. We will pursue this issue in 1999.

Patients' Rights

Changes to the Mental Health Act

For the past three decades the BCCLA has expressed concern over involuntary committal of individuals under the *Mental Health Act*. As a public service, we provide a list of persons willing to serve as patient appointees on review panels, which assess whether individuals should continue to be detained involuntarily.

Until 1998 the *Act* permitted detention of mentally ill persons for treatment against their will only when detention was deemed necessary for their own protection or for the protection of others. The BCCLA supports this criterion. Last year, however, the provincial government introduced amendments expanding the criteria for involuntary committal, which would henceforth be allowed whenever a doctor stipulated it is necessary to prevent a patient's substantial mental or physical deterioration. The amendments allow continued involuntary committal if, in the opinion of a doctor, there is a significant risk that a patient would fail to follow a treatment plan upon release.

It is natural to sympathize with family or friends of mentally ill persons whose quality of life is deteriorating

because they choose not to take their medication. Yet detaining such persons against their will – and forcing unwanted treatment on them – is a heavy instrument which should be reserved only for the most drastic of circumstances. We think the old law struck the right balance. We met with Ministry officials to express our opposition to the proposed amendments, and our concern about the lack of independent advice for patients about their rights. Despite our efforts, the amendments passed.

The revised *Act* does not distinguish between those who are and are not competent to make their own treatment decisions. Competency plays no role in detention decisions, and the state has the right to impose treatment whether or not detained persons are legally competent to refuse treatment. The BCCLA Board considered this issue in December, entertaining representations from the Schizophrenics Society, the Canadian Mental Health Association, and the Community Legal Assistance Society (an organization which provides legal representation to patients). In 1999 the Board will consider a motion to withdraw our opposition to the expanded criteria where the patient is not competent to make treatment decisions.

Board of Directors

The major role of the BCCLA Board of Directors is to debate and set the Association's policies on substantive issues. Although the Board is responsible for approving the budget and extraordinary expenses, supervision of the day-to-day operations is left to the Executive Committee, the Finance Committee, and the Executive Director.

At its regular monthly meetings the Board considers various civil liberties issues to establish policy. Sometimes it reviews proposed position papers, canvassing arguments pro and con and recommending a stance. At other times it looks at preliminary discussion papers, and at citizen complaints referred to the Board by the Executive Committee. In setting policy, the Board determines the intellectual direction of the Association.

Some Board members are regular attendees at Board meetings, and participants in ongoing debates on civil liberties matters. Others make themselves available for advice in areas of expertise, take on special projects, or represent the BCCLA and/or its clients before administrative tribunals and the courts.

We welcomed one new member to the Board in 1998:

- **Bob Lane**, a philosophy instructor at Malaspina College.

Two Board members stepped down during 1998:

- Past President **Andrew Wilkinson** resigned to stand for election as President of the Liberal party of B.C., and

- **Charlie Singer** (who moved to Ottawa).

We are very grateful for the large contributions these two Board members made over the years.

Executive Committee

In addition to serving on the Board, nine dedicated individuals sit on the Executive Committee, which meets monthly but is also active on a daily basis in directing the work of staff, interpreting Board policy as it applies to the many cases we handle each year, and allocating our scarce resources. Executive Committee members also write letters and submissions, meet with government officials, and represent the BCCLA in the media.

The major change to the Executive Committee in 1998 was the resignation as President of **Kay Stockholder** for health reasons (see page 10).

At the May Board meeting, **Andrew Irvine** was elected as our new President. An Associate Professor of Philosophy at UBC, Andrew has been an active BCCLA Board member for three years. He brings a wealth of knowledge and experience to his new post. Aside from many academic publications, Andrew has co-authored with fellow Executive member **John Russell** a series of articles on public policy issues for *The Vancouver Sun*. He has written separately on such topics as censorship, voting rights, academic freedom, and employment equity. Andrew lives in Richmond with his wife Joan and two children Katherine and David.

In other Executive Committee changes:

- **Conrad Hadland** stepped down as Vice-President after serving in that position for three years with grace and skill. We are grateful that Conrad agreed to remain on the Executive Committee, and continue to benefit from his experience and commitment.

- **Craig Jones**, a young civil liberties advocate who has just completed his Law degree at UBC, was elected as our new Vice-President.

On December 31, 1998, the BCCLA
Board of Directors consisted of:

Executive Committee

Andrew Irvine, *President*
Craig Jones, *Vice President*
John Dixon, *Secretary*
John Cox, *Treasurer*
Sam Black
Steven Davis
Harbans Dhillon
Conrad Hadland
John Russell

Phil Bryden
Greg Delbigio
Avigail Eisenberg
Hamar Foster
Tom Gore
Gordon Ingalls
Ross Lambertson
Bob Lane
John J. McIntyre
Alan Rowan
Martin Schechter
Bob Seeman (on leave)
Patrick Smith
David Sutherland
Tanya West
James M. Williams

Members at Large

Dale Beyerstein
Walter Block
Warren Bourgeois
Alister Browne



Legal Counsel

In recent years the BCCLA has become increasingly active in the courts. Several factors played a role in this change: maturation of the *Charter* as an instrument for protecting rights and freedoms, development of our capability as an organization to conduct litigation, growth in the number of citizens who call on the BCCLA to assist them via court actions, and increasing numbers of lawyers willing to donate their time and expertise to our work.

Far and away the most important of these factors is the generosity of lawyers who work for us *pro bono*. This is a terrific asset for the BCCLA, in attempting to persuade governments to protect civil liberties, in placing civil liberties issues on the public agenda, and in seeking court-ordered changes to offensive laws and policies.

Some of this work is carried out by lawyers on our Board who offer their services *pro bono* as part of their Board responsibilities. In 1998, the following non-Board lawyers also made important contributions on a *pro bono* basis to the BCCLA:

■ **Chilwin Cheng** of Davis & Co. provided assistance on several civil liberties matters.

■ **Tim Delaney** of Lindsay Kenney represented the BCCLA before the B.C. Court of Appeal as intervenor in *Trinity Western University et. al. v. British Columbia College of Teachers*.

■ **John Dives** of Bull Housser & Tupper represented the BCCLA before the Supreme Court of Canada in *R. v. Cuerrier*.

■ **Ron Eichler** of the Department of Justice gave general assistance.

■ The **B.C. Public Interest Advocacy Centre** represented the Association as a complainant before the RCMP Public Complaints Commission in the APEC inquiry. The lawyers involved were: **Dick Gathercole, Michael Doherty, Pat McDonald,** and **Jim Quail**.

■ **Art Grant** of Grant Kovacs Norell represented the Association as an intervenor before the B.C. Court of Appeal in a challenge to the third party advertising restrictions in the B.C. *Elections Act*.

■ **Russell MacKay** of Vertlieb Anderson gave general assistance.

■ **Michael O'Keefe** of Thorsteinssons advised the Association regarding our charitable status and other Revenue Canada matters.

■ **Richard Peck, Q.C.** of Peck & Tammen and **John McAlpine, Q.C.** of McAlpine Gudmundseth Mickelson advised the Association regarding a challenge to the New Westminster nuisance bylaw.

■ **Chris Sanderson** and **Chris Gora** of Lawson Lundell Lawson and McIntosh represented the BCCLA before the B.C. Supreme Court as intervenors in *James Chamberlain et al. v. School Board #36 (Surrey)*.



*Volunteer counsel
Chris Sanderson*

Audit

Carrying on a tradition established over a dozen previous years, **John S. Wilson Jr.** again gave generously of his time and expertise to conduct the 1998 audit of the BCCLA's books. Some readers may not appreciate the enormous amount of labour this entails: collecting necessary

information, examining various financial, administrative and substantive practices, producing audited financial statements, and submitting a report to the Executive Director. John Wilson's contribution is comparable to that of the most active members of our Board. We are deeply grateful to him for this contribution.

Other Legal Advice and Assistance

Several lawyers and students demonstrated their support for the BCCLA in 1998 by generously donating their time and talents. We are grateful to **Alayne Fleishman, Csaba Nikolenyi,** and **Jonathon Yuen** for their able assistance in conducting

research for some of the BCCLA's legal cases.

We are grateful also to **Kensi Gouden, Alison Sawyer,** and **Leslie Stalker,** who acted as patient designates from the BCCLA on mental health review panels.

Casino

Proceeds from our casino events have provided an important source of revenue for the BCCLA. Each event requires a number of volunteers willing to be trained, and to brave the smoky room and late nights. We salute the following casino volunteers for 1998:

Dale Beyerstein

Conrad Hadland
Craig Jones
Dino Rossi
Alan Rowan
Linda Shpikula
John Westwood
Russell Wodell
Lil Woywitka

Office Volunteers

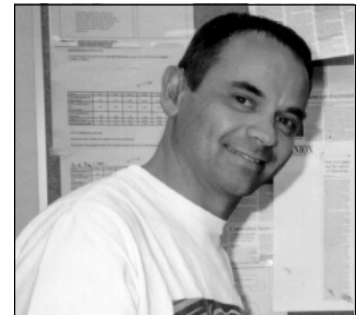
We rely heavily upon volunteers to carry out various office tasks, both on an ongoing basis and for special projects.

Once again this year we extend our thanks to **Helen Daniels,** who over more than two decades has visited the office regularly to process

membership records and issue income tax receipts.

In 1998, **Steven Park** was a great help in organizing the mailing of our *Citizenship Handbook,* and **Dino Rossi** donated many hours to organizing and distributing a fund raising appeal to university and college teachers.

*Office volunteers
Helen Daniels
and Steven Park*



Staff

As our substantive caseload increases each year, and as more and more fund raising duties are carried out in-house, our talented and dedicated staff are called on to shoulder a heavier and heavier burden. The fact that they are able to get the job done at all is no small miracle. That they do it with typical patience, good humour, and a spirit of co-operation makes the Board's job that much easier. There is no question but that our staff are a huge asset of the Association.

In 1998, BCCLA staff members were:

John Westwood, *Executive Director*

Murray Mollard, *Policy Director and Caseworker*

Linda Shpikula, *Office Manager*

Lil Woywitka, (part time) *Membership Secretary*

Russell Wodell (part time) *Publications and Web Site Co-ordinator*

In addition to our regular staff, several people worked on a contract basis in various capacities. In 1998 these were:

Lynda Hird, *Community Outreach Worker*

Eli Basas, *Computer Consultant*

Anthony Santiago, mailing of *The Citizenship Handbook*

Stephen Young, a law student who worked in the office for the summer handling intake and doing casework.



Lynda Hird



Stephen Young



Anthony Santiago



Above, Russell Wodell

Left, John Westwood, Helen Daniels, Murray Mollard, Lil Woywitka, and Linda Shpikula

Membership Report

	1998	1997	1996
Special	172	206	210
Individual	255	333	323
Family (2+ persons)	154	220	174
Organizational	9	11	16
Memberships	590	770	723
Donors only	514	483	571
Total Supporters	1,104	1,253	1,294

Our members and donors are the backbone of the Association. Over the years their financial contributions have provided a substantial portion of the BCCLA's operating budget. Moreover, such a wide base of support from citizens of B.C. is extremely valuable when approaching institutional funders, and gives us added credibility when

communicating with officials in the public and private sector.

"Members" are those individuals who allocate a small portion of their donation as a membership fee. Memberships are now fully tax-creditable. Both members and donors receive quarterly issues of *The Democratic Commitment*. We are very grateful for their support.

Memorials and Bequests

In 1986 the BCCLA established an Endowment Fund to provide for the long term viability of the Association, to smooth out bumps in our year-to-year operational funding, and to allow us to take on special projects otherwise not affordable.

Gifts to the Endowment Fund are placed in the Capital Account, and held in perpetuity. Only the interest is available for the Board of Directors to assign to fund special projects or offset unexpected drops in revenue.

Two of the most important sources of donations to the Endowment Fund are bequests and "In Memoriam" gifts. We acknowledge with gratitude the following:

Bequests

Bequest: Francis Earl Bertram

Bequest: Roderick Lionel

Bequest: Winona Grace MacInnis

Bequest: David Bruce Morgan

Accelerated Bequest: Dr. Cecil K. Stedman

Bequest: Dr. Cecil K. Stedman

In Memoriam

In memory of John B. (Jack) Bryan

In memory of Robert E. Jefferson

In memory of Merrill Lathan

In memory of David Bruce Morgan

In memory of R.E. Morgan (Founding Member)

In memory of Roger Robson

In memory of R.A.H. (Reg) Robson (Founding Member)

In memory of Karl Siegfried

In memory of Kay Aronstam Stockholder

Treasurer's Report

“With caution” is the phrase that best describes the BCCLA’s approach to financial matters in 1998.

In January we anticipated that we would have to raise \$113,000 in donations in order to break even by the end of the year. Since it was not at all clear that we could raise this amount of money, we delayed certain budgeted-for expenditures until we could be sure we could afford them. In retrospect, this turned out to be a prudent decision. Even though our revenues from casino nights were above expectations, we fell \$24,000 short of the target for donations and memberships. By keeping expenses at a minimum and by utilizing special project grants, we were able to keep our 1998 deficit at a manageable level.

Our two main sources of revenue are our long term supporters and the Law Foundation of B.C. I want to take this opportunity to express the appreciation of the entire Board and staff for this support.

Despite record low interest rates, the Law Foundation was able to maintain its support for funded groups at 1997 levels. The commitment of the Law Foundation to funding the work of the BCCLA is of immense importance to us, not only in balancing the books each year, but in having confidence that we will be able to operate at somewhere near current levels for the foreseeable future. This allows us to take on longer-term projects, to make commitments to our hard-working staff, and to concentrate on the job that our supporters want us to be doing.

Our supporters play the other key role in our financial stability. We are truly fortunate to have attracted to the Association supporters who not only believe that protecting and enhancing civil liberties is important, they are willing to do their part to ensure that we have the resources to do our job. I take my hat off both to our valued and dedicated long-term supporters, and to those new supporters who joined us in 1998.

I also give special thanks to the Vancouver Bar Association, which again in 1998 made a substantial donation of \$5000 to support the BCCLA’s administrative and research expenses for our legal cases. Over the past two years, we have been extremely fortunate to have been able

to draw on the legal community for lawyers willing to represent the BCCLA and its clients before the courts. The donation of these lawyers’ time and talents is a major contribution to our work. However, it is not without costs: the disbursements for these cases and the staff time involved in case management are a drain on the scarce resources of a small organization such as ours. The VBA’s donation makes a big difference.

As I look ahead to 1999 and beyond (as Treasurers are wont to do), I can see a continuing need to expand our sources of financial support and to carefully conserve our resources.

The government’s takeover of casinos and creation of a fund for gaming proceeds from which grants will be made leaves in question our income from this source in 1999 and in succeeding years.

The slow erosion of our supporters list needs to be addressed. Attrition is to be expected — people move from the province, find themselves in difficult financial situations, or die. We will have to work harder to locate those individuals who are natural BCCLA supporters, if only they were given information about our work and asked for support.

We will have to negotiate a new lease for our office in 1999, and whether we stay at the present location or move, we will face increased rent expenses.

Revenue Canada announced just before year’s end that they will be conducting an audit of the Association in 1999. It may be that we will have to look at restructuring our operations in order to comply with recent judicial interpretations of the *Income Tax Act*.

All in all, I am confident that with the help of my fellow Board members, our dedicated staff, and committed supporters, we will weather any storm.



John Cox, *Treasurer*

Auditor's Report

To the members of the British Columbia Civil Liberties Association:

I have audited the statement of financial position of the British Columbia Civil Liberties Association as at December 31, 1998, the statement of operations and changes in fund balances, and the statement of cash flows for the year then ended. These financial statements are the responsibility of the organization's management. My responsibility is to express an opinion on these statements based on my audit.

Except as explained in the following paragraph, I conducted my audit in accordance with generally accepted auditing standards. These standards require that I plan and perform and 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, donations and grants, the completeness of which is not susceptible of satisfactory audit verification. Accordingly, my verification of these revenues was limited to the amounts recorded adjustments might be necessary to memberships, donations, grants, excess of revenue over expenses, assets and net assets.

In my opinion, except for the effect of adjustments, if any, which I might have determined to be necessary had I been able to satisfy myself concerning the completeness of the memberships, donations and grants referred to in the preceding paragraph, these financial statements present fairly, in all material respects, the financial position of the organization as at December 31, 1998, and the results of its operations, the changes in its fund balances, and its cash flows for the year then ended in accordance with generally accepted accounting principles applicable to not-for-profit organizations.

John S. Wilson, Public Accountant
February 11, 1999



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