

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION



Annual Report

2005

FREEDOM
over **FEAR**



ANNUAL GENERAL MEETING 2006

MARCH 29 / 7:30 PM / VANCOUVER PUBLIC LIBRARY / 350 WEST GEORGIA



GUEST SPEAKER: Stephen Ward, Associate Professor of Journalism Ethics, UBC School of Journalism
Free press and responsible press? Trends and Issues in Canadian Journalism

REG ROBSON CIVIL LIBERTIES AWARD: Inspector Dave Dickson & Inspector Ken Frail, Vancouver Police Department

THE DEMOCRATIC COMMITMENT
MARCH 2006 / VOLUME 40 / NUMBER 1

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(from September 2005)

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

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PRESIDENT'S REPORT / JASON GRATL

A culture of fear is being cultivated by those who are against the empowerment of citizens: fear of terrorism if we oppose our federal government, fear of economic reprisals if we exercise our national sovereignty, fear of violence and drugs if we criticize police powers, fear of social decay if we promote individual autonomy and free expression.

Within the BCCLA fold, we know that a fearful citizen is a docile citizen, a passive citizen, an uncritical citizen – in brief, no citizen at all. Fear ripens a democracy for a turn to its opposite. A fearful citizen is less in need of democratic government, and more in need of a shepherd.

But there can no more be a war on fear than there can be a war on terror. Instead of war, we need calm appraisal of the root causes of fear. We should aim at a balanced response that is consistent with the kind of change we want to bring to this world.

In 2006, the BCCLA will aim to cultivate the habit of courage in the face of fearmongering. Not blind stupidity, mind you, not a brazen denial of the existence of dangers.

But courage as a democratic habit of healthy scepticism, of double-checking sources of information, of routinely second-guessing the government, of vocal challenge to misinformation and active denunciation of disinformation.

As an Association, we should foster individual desire to influence our collective destiny.

Much of BCCLA's work already aims at promoting liberty as a cultural practice, including seminars with high-school students, distributing leaflets and books about basic rights, and advocating on television, radio, newspaper, and Internet. In 2006, the Association and its members can do more.

This year, I am asking each and every one of our members to reach out to their family and friends, neighbours, acquaintances and co-workers. We all know someone who is apathetic, misinformed, or has broken faith with democracy. Let those you care about know why you are a member of the BC Civil Liberties Association. Relay your personal

experiences of state abuse or injustice, and your personal understanding of why democracy, as flawed as it may be, remains the best system of government.

For those BCCLA members with families – it is particularly important that you relay your stories and your convictions to your children, your nieces and nephews, and your grandchildren. Upcoming generations need to know that freedom and democracy are rarely volunteered from above. Empowerment begins at home.

We know that already you do more than most for civil liberties. This year we are asking you for a modest enhancement of your personal engagement with the BCCLA. The strength of the Association comes from the commitment of our members to the ideals of civil liberties. We should not shy away from promoting the Association and its principles, or from expanding its membership.

In the coming year, much is at stake. Mass electronic surveillance is eroding our expectations of privacy. Proposed No-fly lists threaten to undermine mobility rights. Police accountability is set for a legislative overhaul. The war on drugs is conscripting landlords against their tenants and merchants against their patrons. There has never been a stronger need for an influential Civil Liberties Association in western Canada.

For the BCCLA, the greater concern is not a vague terrorist threat, or isolated street violence, or moral degradation. The greater concern is a citizenry that delegates to a central authority their capacity to think, to feel, to judge, to criticize, and to act. While we answer to that concern, let us remain gentle in manner and resolute in action.



Jason Gratl


JASON GRATL

ABOUT THE BCCLA / FIGHTING FOR FREEDOM

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

The BCCLA is run by a volunteer Board of Directors of over thirty members with diverse backgrounds in academia, law and business. The BCCLA Board distinguishes itself not only by setting the policies of the Association but also by actively advocating for civil liberties before government and private institutions. To support the Board, the Association employs a small staff and relies on volunteers.

The Association's work comprises four program areas:

Public Education (see page 7)

The BCCLA's educational efforts include:

- Free publications: Our newsletter *The Democratic Commitment*, our e-news *Civil Liberties Update*, *The Citizenship Handbook*, *Rights Talk – Students and Civil Liberties at School*, and *The Arrest Handbook/Pocketbook*.
- Free speakers bureau: BCCLA representatives speak to hundreds of people each year.
- Media work: The BCCLA is a trusted source for thoughtful perspectives on the latest issues.
- Website: Visit our website (www.bccla.org) for a comprehensive collection of our work.
- Public events: The BCCLA hosts public talks by leading public figures like Michael Ignatieff and Beverley McLachlin, Chief Justice of Canada. We also organize seminars such as the marijuana law reform conference in 2004 and an annual seminar for high school students.

Complaint Assistance (see page 8)

Each year, the Association provides assistance to individuals whose civil liberties concerns impact a wide group of people. The Association also provides referrals for legal advice or other assistance.

Law Reform (see page 8)

The Association plays a vital role in law and policy reform by meeting with and making oral and written submissions to Ministers, legislative committees, key bureaucrats and officials. Over the years, the Association has built up extensive contacts and respect among public officials at the local, provincial and federal levels.

Litigation (see page 16)

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

To accomplish each of these programs, the Association devotes considerable energy to researching its positions and submissions.

Funding (see page 23)

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

2005


Focus on Anti-Terrorism and National Security

Aside from all the regular work we do, the BCCLA devoted considerable resources in 2005 to attacking draconian anti-terrorism legislation, proposals for a “No-Fly” list, and working on the Maher Arar Inquiry.

Review of the Anti-Terrorism Act

As part of the review of the Anti-Terrorism Act, the BCCLA made submissions to both the Senate and House of Commons committees. The BCCLA’s large brief focuses on five major themes:

- The definition of “terrorist activity”: this captures criminal activity that is not terrorism.
- RCMP INSETs: The RCMP’s crack anti-terrorism unit (Integrated National Security Enforcement Team) targets people that are not terrorists.
- National Security Confidentiality: Reforms are needed to test government claims to secrecy over documents in litigation.
- Security Certificates: “Threats to national security” may be deported without a fair hearing to countries practicing torture.
- Accountability of Security Agencies: We recommend various reforms to make our national security agencies more accountable.

 To view the BCCLA brief, visit www.bccla.org/othercontent/curbing%20excess.pdf

No Fly Lists


Of particular concern to the BCCLA are plans for a Canadian no-fly list. The American experience demonstrates the dangers of No Fly: the U.S. program regularly flags such highly unlikely terrorist suspects as U.S. Senator Ted Kennedy, former Canadian Defence Minister Bill Graham and any number of Muslim babies. No terrorists have been caught yet thousands of innocent passengers have been routinely stopped, questioned and searched. The BCCLA has been a vocal opponent of the Canadian no-fly plan and has met with

representatives from Transport Canada. We are particularly worried about phase II of the program called Secure Flight, which will create a database of information on all passengers that is then risk scored – a system of unprecedented traveller surveillance. The BCCLA will continue to work to prevent this from happening.

 To view the BCCLA’s letter to party leaders on No Fly visit www.bccla.org/pressreleases/06nofly.htm

Arar Inquiry

To respond to allegations of Canadian complicity into the deportation and torture of Canadian Maher Arar in 2002, the federal government appointed Justice Dennis O’Connor to lead the Arar Inquiry. The Inquiry has two mandates: (1) to make findings and recommendations regarding Canadian officials’ actions and (2) to make recommendations for civilian review of the RCMP’s national security activities. The BCCLA is an Intervenor in the Inquiry. Our efforts in 2005 focused on (2) though we continued to work with groups like Amnesty International and the International Civil Liberties Monitoring Group on the Factual Inquiry. We drafted two major submissions and one jointly with other Intervenors. We recommend that a new civilian national security review agency be created to oversee the national security activities of all security agencies including the police. Look for a report from Commissioner O’Connor in 2006.

 To view the BCCLA’s submissions, visit www.bccla.org/othercontent/05ararpolicy.htm

For more information on the Arar Inquiry, visit the Commission’s website at www.ararcommission.ca/eng/index.htm

PUBLIC EDUCATION / REACHING OUT

Civil liberties principles 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 2005.

Media Work

The BCCLA is an important source for local, provincial and national media on issues relating to civil liberties. In 2005, we conducted over 300 interviews on issues ranging from the latest controversy involving police to video surveillance to censorship on the internet and beyond. BCCLA media work ensures that the public and law makers are continually reminded about the importance of civil liberties and about the work of the Association.

Publications

The BCCLA distributes thousands of free publications each year. *The Arrest Handbook* and *Pocketbook*, *Rights Talk: Students and Civil Liberties at School*, *The Citizenship Handbook: A Guide to Democratic Rights and Responsibilities for New Canadians* and other resources provide basic education about civil liberties. In addition, thousands of supporters and interested public receive our newsletter *The Democratic Commitment*, and our e-news bulletin *Civil Liberties Update*. Call the BCCLA for free copies of any of our publications or e-mail jim@bccla.org to be added to the Civil Liberties Update mailing list.

Website www.bccla.org

Since the late 1990s, the BCCLA website has become an important source for information about BCCLA positions, education and advocacy work. In 2005, the BCCLA website was revised and updated. In 2005, the website had 212,600 sessions, 419,180 pageviews, 949,960 total hits and 17.34 gibabytes of information transferred, all increases over 2004.

Public Speaking

Call the BCCLA office to book a BCCLA speaker today! Sex, drugs or reform of assisted suicide laws; no topic is off limits for the BCCLA as long as it involves civil liberties and freedom. In 2005, the BCCLA made 20 presentations to over 1,500 people including students, union members, privacy conference attendees, and public service organizations.

Public Events

Though the Association has hosted public talks by Michael Ignatieff, John Ralston Saul and the Right Honourable Beverley McLachlin, Chief Justice of Canada, in the past, in 2005 we focused on a different audience. We organized our inaugural interactive civil liberties seminar for high school students. Nearly 200 students visited SFU on April 27 to hear Wally Oppal (then a Liberal candidate) speak about youth criminal justice issues and to take part in discussions and workshops about youth and the criminal law, students' rights at school, civic participation, homelessness, and the impact of 9/11 on Muslim youth. The 2006 seminar is scheduled for April 20, again at SFU.

CASEWORK

Complaint Assistance & Law/Policy Reform

The BCCLA is an important advocate for individuals seeking assistance involving civil liberties whether their complaints involve government or private institutions. Add our numerous law reform files and BCCLA case work occupies the lion's share of our limited resources. The following cases highlight just some of our work in 2005.

Police Accountability

Arming SkyTrain Police

The Association was undoubtedly the most outspoken opponent of the B.C. Solicitor General's decision to arm the new Transit Police in 2005. The BCCLA is not opposed in principle to arming the transit police. However, we believe that there must be a compelling justification given the obvious risks to public safety of police using firearms in the SkyTrain context. There must also be specific firearms training for SkyTrain police. We raised our concerns with representatives of the Solicitor General. Regrettably, Ministry staff was unable to justify arming SkyTrain police nor reassure us that special training is being provided. Neither Toronto nor Montreal have armed transit police. We can only hope that our concerns about innocent bystanders being injured do not come to fruition.

Vancouver Jail Strip Searches

The BCCLA made a policy complaint about the Vancouver Police Department's (VPD) mandatory jail strip search policy at the jail in 2004. Their policy was unconstitutional in light of the Supreme Court's ruling that routine strip searching is illegal.

In response to our complaint, the Vancouver Police Board amended their strip search policy.

However, in 2005, we met with the VPD to discuss outstanding issues in relation to our complaint. For example, we wanted to make sure that Jail Arrest Reports, which record the grounds for strip searches, would not include criteria like "drug history". Late in 2005, we discovered that the jail staffing arrangement

(staffing is shared between the VPD and BC Corrections) was creating confusion about whether an allegation of an unjustifiable strip search was properly a police complaint under the Police Act or some other undefined process involving Corrections staff. The BCCLA is working with the VPD, the Office of the Police Complaints Commissioner and BC Corrections to resolve this accountability issue and ensure that the constitutional standards are respected. The VPD is planning to take over responsibility for all jail staffing in 2006. The BCCLA will work to ensure constitutional standards are respected and there is an adequate mechanism for complaints if civilians are employed to perform jail duties.

In-Custody/In-Pursuit Deaths by RCMP

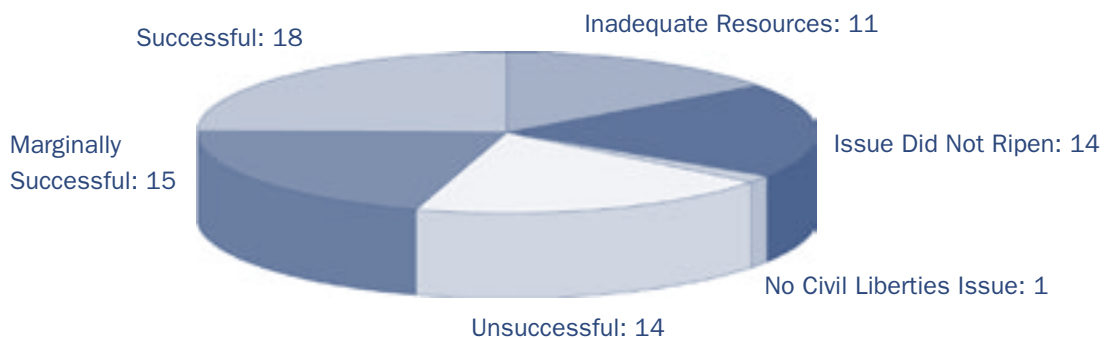
In 2005, the BCCLA made two additional RCMP complaints as a result of in-custody/in-pursuit deaths involving the RCMP in Houston, B.C. and Surrey. We had originally made one complaint after the death of Kevin St. Arnaud in Vanderhoof, B.C. late in 2004. On New Year's Eve 2005, another man died in the custody of Cranbrook RCMP. The BCCLA is deeply troubled by these deaths. We believe there needs to be automatic review by an independent civilian agency of all in-custody/in-pursuit deaths involving the RCMP. For this reason, we made complaints to the Commission for Public Complaints Against the RCMP (CPC). Regrettably, the RCMP has refused to immediately investigate our complaints citing other review procedures that are in place: criminal investigations, internal reviews and coroner's inquests. The BCCLA wrote the CPC requesting a

Active Files

	2005	2004	2003
Administrative decision-making	4	5	6
Children's rights	4	4	1
Discrimination	7	5	5
Due process	36	24	18
Freedom of speech and association	24	19	23
Aboriginal rights	-	-	-
Patients' rights	2	2	2
Police complaints	49	28	34
Political rights	14	5	4
Prisoners' rights	3	7	5
Privacy and access to information	48	22	28
Private offences	1	8	13
Total cases	192	129	139

Closed Cases

Total Closed Files: 73 cases



Case Acceptance Policy

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



CASEWORK

review of the RCMP's refusal to investigate arguing that none of these procedures is a sufficient substitute for independent civilian review. We had previously urged past CPC Chair Shirley Heafey to make it CPC policy to undertake mandatory reviews. She had declined citing a lack of resources. The BCCLA will pursue this issue with vigour in 2006.

i To view the BCCLA letter's challenging the RCMP's decision not to investigate the death of Kevin St. Arnaud, visit www.bccla.org/othercontent/05heafey.pdf

Police Act Review

In part as a result of the efforts of the BCCLA, the Solicitor General ordered a review of the police complaint provisions of the Police Act. For the last couple of years, the Association had been advocating an audit of police internal investigations to ascertain



whether police were doing a good or bad job of investigating themselves. To our surprise, even the Association of Municipal Chiefs of Police of B.C. endorsed the idea of an audit. At the same time, as a result of the resistance of the Chief Constable and members of the Vancouver Police Department to the external investigation of the PIVOT police complaints in the Downtown Eastside of Vancouver, the Police Complaint Commissioner, Dirk Ryneveld, recommended that an audit of the VPD be undertaken by the province. In the summer of 2005, Josiah Wood, Q.C. was appointed to lead a review team examining actual internal files of municipal police departments in B.C. The BCCLA expects to meet with his review team and will look forward to a

report in 2006. We also expect Wood's report to lead to reform of the Police Act.

i To view the BCCLA's proposal for an audit of police internal investigations, visit www.bccla.org/othercontent/05auditproposal.htm

Tasers

As a result of a Taser related death in Vancouver, the B.C. Police Complaint Commissioner Dirk Ryneveld commissioned the Victoria Police Department to review not only the death but the use of Tasers in general. The BCCLA's position on Tasers has been that, subject to its safety, the Taser may be an important "less than lethal" addition to police use-of-force options as long as its use is regulated appropriately. The problem has been that the Taser's safety has never been independently assessed and there has been a lack of adequate regulation with respect to training and policy. The BCCLA met with the Victoria police review team several times to query their efforts and methodology. The Victoria PD research has recommended regulation and training for police to deal with persons at risk or harm. The BCCLA will follow up to ensure appropriate training and standards are in place.

i The Victoria Police Department Taser report is available at <http://www.opcc.bc.ca/Reports/2005/Taser%20Report.pdf>

Vancouver Police Department Policy Manual

The BCCLA believes that police forces generally should make their policy and procedures manual readily available to the public. This would be an important step to promote police accountability. To encourage this, the Association made an access-to-information request for the Vancouver Police Department manual. After many months, the VPD agreed to release a vetted copy to us, but only on the condition that we not share it. We finally convinced the VPD to post their policy manual on their website for public access in 2005. In 2006 we will work to ensure that other police forces including the RCMP will follow suit.

i The VPD Policy Manual can be found at <http://vancouver.ca/police/Planning/RPM/RPM.pdf>

Police Complaint Assistance

One of the important ways the BCCLA promotes police accountability is by assisting police complainants. We do so in several ways: drafting complaints, providing information about the complaint process, and sometimes attending police interviews. 2005 was no exception. The Association's assistance extended to a variety of allegations including unlawful arrest, use of excessive force, warrantless searches, improper and prejudicial entries on the police information records database, and perjury.

For example, in 2005 we assisted a complainant who was concerned that the police had aided a former roommate to breach a no-contact order. The police attended the complainant's residence with the former roommate and his father, a retired Vancouver police officer, in order to allow the former roommate to collect personal belongings. The former roommate was breaching a no-contact order by visiting the complainant's residence. Rather than visit the complainant, the former roommate should have obtained a temporary injunction in court allowing for the retrieval of the belongings or have had someone attend on his behalf. The complaint was concluded as "substantiated" but no disciplinary measures were taken. Instead, an apology letter was sent to the complainant. The complainant was entirely unsatisfied because several aspects of the complaint had not been investigated or accounted for. The BCCLA assisted the complainant to request a public hearing into the police's actions. A new investigation was ordered by the Police Complaint Commissioner on the basis that not all of the complainant's concerns had been addressed and the Commissioner required more information to determine if a public hearing would be in the public interest. The matter is ongoing and we are encouraged both by the tenacity of the complainant and the order for a more thorough investigation.

Discrimination

Mandatory Retirement

Responding to a citizen's complaint, the Association developed a new position on mandatory retirement. The BC Human Rights Code defines age as more than 19 years of age and less than 65 years of age. Because of this definition, it is not discrimination under the Code to require an employee to retire at age 65. In our view, mandatory retirement is per se discriminatory and can not be justified: procedures already exist that effectively ensure competency in safety-sensitive

In our view, mandatory retirement is per se discriminatory and can not be justified: procedures already exist that effectively ensure competency in safety-sensitive positions and using advanced age as a proxy for substandard performance is discriminatory.

positions and using advanced age as a proxy for substandard performance is discriminatory.

As Board member Michael Feld wrote in his discussion paper for the Association: "To tolerate mandatory retirement is to tolerate injustice; it is to tolerate insult to what should be the dignity of older age; and such tolerance harms the community."

Surrey School Administrators Prohibit The Laramie Project

The BCCLA reacted swiftly upon learning that Surrey school administrators were prohibiting the staging of the play *The Laramie Project*. The play is a conversation between the residents of Laramie, Wyoming after the gay bashing death of resident Matthew Sheppard. Surrey school officials expressed concern about sexuality, profanity and violence in the play arguing that it wasn't appropriate as family entertainment, all dubious claims. The BCCLA immediately issued a press release condemning the administrators' decision and contacted the school board to urge them to permit the play to be performed. The play has since been staged at Lord Byng High School in Vancouver.

CASEWORK

Due Process

Civil Forfeiture

Passed in the fall of 2005, the B.C. Civil Forfeiture Act (Bill 13) places the burden of proving ownership of stolen property on the current property owner. The BCCLA opposes civil forfeiture because it circumvents Charter rights by re-characterizing what are in essence criminal proceedings as civil, thereby reversing the burden of proof, and diminishing rights to counsel and other important protections. The BCCLA was outspoken in its concerns about the overly broad definitions proposed which, in our opinion, were tantamount to an invitation to abuse of process. We also expressed serious concern about how uninvolved third parties would be affected by the legislation. Despite our objections, the legislation passed. We will continue to monitor the use of civil forfeiture legislation.



Road Side Drug Testing

The BCCLA supports prohibitions on driving while impaired. We also support effective and reasonable methods for enforcing such prohibitions. In 2005, the federal government introduced Criminal Code amendments to permit testing drivers for impairment due to drugs. The new laws would permit police to demand saliva or urine samples after sobriety tests and a breathalyzer. If these tests were positive, suspects would be taken to a police station to draw a blood sample that, if positive, could lead to charges. The BCCLA objects to the law on the basis that Drug

Recognition Expert protocols, which will be used to administer the law, are subject to significant error: 34% false positives according to one study. Protocols that are subject to such high rates of error must not be the basis for subjecting individuals to lengthy detention and further intrusive testing. We are also concerned that tests do not determine impairment but rather confirm the ingestion of a drug in the system at some past time. The BCCLA advocates that current administrative prohibitions (24 hour road side suspensions) are more appropriate. In 2005, BCCLA Board member Larry Cohen travelled to Ottawa to present our submissions to the Justice Committee.

 The BCCLA submission can be found at www.bccla.org/othercontent/05roadside.htm

Freedom of Expression

Telus Blocks Union Website

In the midst of a heated labour dispute, Telus blocked its internet service customers' access to a website operated by members of the Telecommunications Workers Union. While neutral on the merits of the labour dispute, the Association identified this action by Telus as an attack on free expression and called on Telus to remove the block. We issued a press release denouncing the blocking of the website.

 To view our press release, visit www.bccla.org/pressrelease/05telus.htm

Canadians For Safe Access Defamation Threat

The BCCLA responded to a complaint by Canadians for Safe Access (CSA) that they had been improperly threatened with a defamation suit by Prairie Plant Systems (PPS). The CSA are outspoken participants in the public debate about the quality and safety of government-issued marijuana for which PPS is the exclusive supplier. In our letter of support for CSA to the Minister of Health, the BCCLA argued that the threatened lawsuit by PPS attempts to silence critical voices in the public debate about the issue and chills the broader public debate about access to medical marijuana. We also argued that PPS, in its

role as exclusive provider of medical marijuana, is an agent of the government. It is patently wrong for a government agent to threaten legal action that seeks to quell legitimate political debate about improving the system of medical marijuana access. The Minister of Health took the position that PPS remains a private entity that is not subject to Health Canada beyond the parameters of the contract. We countered that the government may not contract out of public criticism. If silencing criticism is an inadvertent effect of the contractual arrangement in question, the government must seek a remedy for such an effect. Former Minister of Health Ujjal Dosanjh never responded to our last letter.

Access to Information and Privacy

Lawful Access

Lawful Access is a government euphemism that refers to search and seizure of information, primarily computer data. The federal government has been pitching proposals to significantly expand the capacity of the police to access Canadians' electronic communications. The BCCLA, along with every other group representing civil society, every Privacy Commissioner and every telecommunications industry representative in the country, has vigorously opposed these proposals.

Purportedly for the purpose of "modernizing" the current laws, the proposal actually requires the creation of a vast surveillance infrastructure embedded within all telecommunications systems. It would allow a significant expansion of police access to information by lowering the standard of justification for certain kinds of interceptions and searches.

We met with former Minister of Justice Irwin Cotler and representatives of former Public Safety Minister Ann McLellan to discuss our opposition to lawful access. Both Ministries pointed the finger at the other as the lead ministry on lawful access. The Liberal government finally introduced the Modernization of Investigative Techniques Act in late 2005. It died on the order paper when the federal election was called but is sure to return in some guise in 2006. We will continue to oppose lawful access.

i To see our press release on Bill C-74, visit www.bccla.org/pressreleases/05modernization.htm

Canadian Tire Privacy Complaint

The BCCLA was invited to intervene in the first inquiry by the B.C. Office of the Information and Privacy Commissioner under the new private sector privacy law known as the Personal Information Protection Act (PIPA). A complaint had been made about the information collection practices of the Canadian Tire Store. At issue was whether PIPA permits the store to collect the name, home address and telephone number of customers who are returning merchandise for a refund. The store's stated rationale for the collection of this personal information was fraud prevention. Information and Privacy



Commissioner David Loukidelis held that the store's practices were largely in compliance with the Act.

Notwithstanding our disappointment with the final outcome, the Commissioner's decision provides important clarification on private sector privacy protection. In particular, the decision reaffirms the principle that personal information legitimately collected for one purpose can not be used for a different purpose. In Canadian Tire, the store had sought to use the personal information collected for refunds to also assess customer satisfaction. On this point, the Commissioner agreed with our submission that Canadian Tire's practice was not consistent with PIPA.

i To view the decision, visit www.oipc.bc.ca/orders/OrderP05-01.pdf

To view our submission, visit www.bccla.org/othercontent/05privacycommissioner.htm

CASEWORK

Municipal Bylaws Requiring Surveillance Databases

A couple of years ago, the BCCLA had made a submission to the Office of the Information and Privacy Commissioner about municipal bylaws that require the collection of personal information for sharing with the police. We oppose these by-laws on the basis that they violate constitutional standards that require prior judicial authorization for searches and are beyond municipal authority because they deal with criminal law, an exclusive federal power.

In 2005, the BCCLA learned that the Vancouver Police Department was lobbying Vancouver City Council to expand the Secondhand Dealers and Pawnbrokers By-law No. 2807 to include not only names and addresses but also collection of the race, hair, eye colour, height and weight of persons

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selling items to secondhand stores for disclosure to the police. The Association made a submission to City Council, advising them that the Officer of the Information and Privacy Commissioner had requested an opportunity to discuss the matter with City officials. We also reported on case law that has found similar bylaws to be outside the powers of a municipality to legislate. After receiving these submissions, City Council voted to defer its decision on the bylaw amendments until after consultation with the Information and Privacy Commissioner.

i Our submission to the Information and Privacy Commissioner can be found at www.bccla.org/othercontent/04loukidelis.htm

Federal Study to Merge Access and Privacy Commissioners Offices

In the summer of 2005, the federal government appointed former Supreme Court of Canada justice Gerard La Forest to study the merits of merging the offices of the Access Commissioner and the Privacy Commissioner of Canada. The BCCLA was particularly concerned that this study was a ploy to make these Commissioners less effective by merging their offices. In the fall, we met with Mr. La Forest to explain our opposition to a merger. In our view, access and privacy were conceptually distinct and there was plenty of work to keep two Commissioners very busy. Merging would water down their effectiveness for marginal cost savings. Mr. La Forest ultimately agreed and recommended against a merger.

i To view the report of Mr. La Forest, visit canada.justice.gc.ca/en/pl/index.html

To view the BCCLA's letter to Mr. Forest, visit www.bccla.org/othercontent/laforest.pdf

Autonomy/Morality Offences

Solicitation Laws

In 2005, the BCCLA made a submission to the Parliamentary Subcommittee that is reviewing solicitation laws in Canada. The work of the subcommittee received considerable media coverage and sparked much-needed public debate about prostitution offences. The BCCLA's long-standing position is that criminal laws relating to prostitution create more social harm than they prevent. Current bawdy house and solicitation laws increase the dangers to sex trade workers and contribute to their social marginalization.

The Association supports the repeal of criminal sanctions against adult prostitution (our position does not apply to children in the sex trade). We advocate the development of a regulatory system



ALL TALK, NO ACTION BCCLA Executive Director Murray Mollard speaks at the Sex Party press conference protesting the LCLB's refusal to permit alcohol at a Sex Party fundraising event.

for sex work. One popular model of reform that was proposed during the subcommittee's hearings would criminalize sex trade customers only. We opposed the 'johns only' proposals on the basis that it is unprincipled and discriminatory. In addition, available research, limited though it is, suggests that jurisdictions that have implemented this model of reform continue to see sex trade workers endangered because they are forced into more and more remote areas to allow customers to elude detection.

The Association believes that the abusive and exploitative aspects of the sex trade should be addressed using the Criminal Code prohibitions against extortion, battery and sexual assault. The protections afforded by these provisions would become real rather than just theoretical if sex trade workers could access the police without fear of prosecution for prostitution-related offences.

i To see our written submission to the Subcommittee, visit www.bccla.org/positions/privateoff/05sex%20work.htm

Sex Party Liquor License

In the 2005 provincial election, some British Columbians had a new political party to choose from: the Sex Party. This party advocates reform to laws and policies to promote a much more positive and healthier attitude towards sex. Needing money to run its campaign, the Sex Party sought to hold a fundraiser where it could sell liquor. The event was to include performance art such as allowing attendees to touch the underwear of models and giving them an opportunity to be photographed watching a couple's sex act which they could view only through slits in a wall. The Liquor Control and Licensing Branch (LCLB) refused to permit any liquor licensed establishment to host the fundraiser on the basis that the event would violate their "Entertainment" policy, designed for strip clubs and exotic dancing establishments. The BCCLA wrote to the LCLB pointing out that the Sex Party event involved an approved political party and that it was at its core a political event. As such, important rights under the Charter of Rights and Freedoms including free speech and association were implicated. The LCLB declined to respond to our concerns citing the fact that the matter was before the courts.

LITIGATION

Our Thanks to the Legal Community

Going to court is one of the most effective ways to protect civil liberties. BCCLA litigation capacity also helps our moral suasion efforts. The BCCLA is indeed fortunate to be the beneficiary of the generous assistance we receive from volunteer lawyers. As a small token of our gratitude, the Association invited all lawyers who had assisted us over the years to an event in their honour in November 2005. A review of 2005 court cases follows.

Kempling v. B.C. College of Teachers


B.C. Court of Appeal

Where does free speech end and the right to be free from discrimination begin? The case of Chris Kempling is a case in point. Mr. Kempling, a religious minister as well as high school teacher and counsellor, wrote scathing letters to the local Quesnel, B.C. newspaper objecting to gay pride parades and homosexuality. Identifying himself as a school counsellor, he encouraged young students to visit him for therapy that he claimed could save their lives by reorienting them away from homosexuality. He also preached that teaching his religious beliefs on homosexuality in the schools was authorized under the Schools Act. The B.C. College of Teachers disagreed and cited him for conduct unbecoming the profession. The BCCLA intervened before the B.C. Court of Appeal to argue that free speech has its limits: you can't express your religious beliefs in ways that will effectively prevent you from honouring your public duties. Public schools are refuges for tolerance. The B.C. Court of Appeal agreed and upheld the authority of the College to sanction Mr. Kempling. The BCCLA was represented by Elliott Myers, Q.C. (recently appointed to the B.C. Supreme Court) and BCCLA Past President Craig Jones of



Elliott Myers

Bull Houser Tupper. Look for this one to go to the Supreme Court of Canada.

 BCCLA's factum is available at our website at www.bccla.org/othercontent/04kemplingappeal.pdf

The Court of Appeal decision is at <http://www.courts.gov.bc.ca/jdb-txt/ca/05/03/2005bccca0327err1.htm>

Davidson v. Attorney General of B.C.

B.C. Supreme Court

Gail Davidson, a member of the international group of jurists Lawyers Against the War, brought a private prosecution against George Bush for allegedly counselling, aiding and abetting the commission of torture in connection with Abu Ghraib prison in Iraq and the prison facilities at Guantanamo Bay, Cuba. The BCCLA intervened to oppose a publication ban granted earlier in the proceedings. The Association argued that the ban stifled public debate without advancing the public interest. Davidson raised profound issues of Canada's complicity in torture, an issue of keen public interest that the public has a right to know about. A case that brings forward our international obligations to prosecute the offence of torture is clearly at the very core of freedom of expression values. After the BCCLA presented our preliminary arguments contesting the rationale for



Micheal Vonn

applying the publication ban, the Crown withdrew its application for the ban and the ban was lifted. BCCLA President Jason Gratl and Policy Director Micheal Vonn represented the Association.

Arar Inquiry: Factual Inquiry

Federal Inquiry

The BCCLA was granted intervenor standing in the Factual Inquiry at the Arar Inquiry in 2004. Represented by Joe Arvay, Q.C. in our application, the BCCLA had asked for significantly greater standing than we received (we had sought funding to



Jason Gratl



Murray Mollard

attend hearings in Ottawa for the duration of the hearing). Given our limited standing, we had an attenuated involvement in the Factual Inquiry. Through cooperation with other intervenors and parties (in particular, Amnesty International and the International Civil Liberties Monitoring Group), the BCCLA was able to play a role, albeit limited. Our submissions focused on topics such as the role of “caveats” (limitations security agencies place on information they share with other security agencies) and information sharing. BCCLA President

Jason Gratl and Executive Director Murray Mollard represented the Association. Former Arvay Finlay counsel Matt Pollard also assisted.

Little Sisters v. Canada Customs

Various court levels

This is a challenge to Canada Customs and Revenue Agency designation of materials as obscene, but also to the obscenity provisions in the Criminal Code. The actual hearing of the merits of this case is delayed until the resolution of the advanced cost award application which will be heard in April 2006 by the Supreme Court of Canada. Joe Arvay, Q.C. continues his longstanding representation of the bookstore and the BCCLA.

Pegura and Forster v. Surrey School Board

B.C. Human Rights Tribunal

The BCCLA is intervening to argue that public agencies that hold public consultative meetings should not be held liable for hateful speech expressed by the public at such meetings. This matter was adjourned for a considerable portion of 2005 due to the unavailability of the Human Rights Tribunal member presiding but it will reconvene in 2006. The BCCLA is represented by Tony Saunders of Guild Yule.

BCTF and CFS v. TransLink and BC Transit

B.C. Supreme Court

The TransLink case involves a constitutional challenge to identical policies of TransLink and BC Transit that prohibit political advertising on buses and SkyTrain. The BCCLA had written the TransLink Board in 2004 urging them to rescind their policy to no avail. In court, the BCCLA argued that the policies contravened the Charter’s guarantee to free expression. Furthermore, we argued that the policies were not reasonable limits that could be demonstrably justified in a free and democratic society. In our view, the transit authorities failed to demonstrate what harm would be caused by political ads, partisan or not. The court has reserved judgement. Chris Sanderson, Q.C. of Lawson Lundell ably represented the BCCLA.



Chris Sanderson

i The BCCLA’s factum is available at www.bccla.org/othercontent/translink1.pdf and [translink2.pdf](http://www.bccla.org/othercontent/translink2.pdf)

May v. Ferndale Institution

Supreme Court of Canada

Though little reported, May represents a major victory for the ancient legal remedy of habeas corpus which guards against unlawful detention or imprisonment by the state. May involved five inmates who were involuntarily transferred to higher security institutions for purely administrative reasons, as opposed to misconduct, thus losing some of their

LITIGATION



Michael Jackson

“residual” liberty along the way. The BC Court of Appeal had concluded that federal prisoners could only apply for a remedy of habeas corpus after they had applied for judicial review at the Federal Court, a lengthy, drawn out process. The BCCLA argued that such a delay effectively undermines the historic place that habeas corpus has occupied in safeguarding the effective and speedy protection of liberty. If inmates are obliged to proceed through federal court before invoking habeas corpus in a superior court, the ancient remedy would effectively be null and void. The Supreme Court of Canada agreed with us. Prison law expert and UBC Law Professor, Michael Jackson, QC represented the BCCLA.

i Our legal argument is online at www.bccla.org/othercontent/05mayfactum.htm

The Court’s decision is at www.lexum.umontreal.ca/csc-scc/en/rec/html/2005scc082.wpd.html

operating a common bawdy house for sponsoring a “swingers” sex club. The BCCLA application in both cases was rejected without reasons. The Court’s decisions were released late in 2005 and found that behaviour can be criminalized as indecent only when there is sufficient harm or risk of harm to others, to society or to oneself based on sufficient evidence.



Joe Arvey

The Court found that the swingers clubs were not indecent under this revised legal test. Much turned on the fact that the swingers’ clubs were private members’ clubs. The Court’s decisions significantly reflect the draft factum we submitted as part of our unsuccessful intervenor application. Joe Arvey, Q.C. of Arvey Finlay represented the BCCLA with assistance from Brent Olthuis.

i The Court’s decisions can be found at www.lexum.umontreal.ca/csc-scc/en/rec/html/2005scc080.wpd.html and www.lexum.umontreal.ca/csc-scc/en/rec/html/2005scc081.wpd.html

R. v. Labaye and R. v. Kouri

Supreme Court of Canada

The BCCLA sought leave to intervene before the Supreme Court of Canada in both these cases which examined the proper interpretation of indecency in the Criminal Code. Mr. Labaye was charged with

Law Students

The BCCLA would also like to thank the following law students for their volunteer assistance during the year: Eleana Swift, Adam Perry, Angela Shen and Jessica Lott.

Lawyer Appreciation Event

On Thursday, November 24, 2005, the BC Civil Liberties Association held its first ever Lawyer Appreciation event at the law offices of Bull, Housser and Tupper.

The night was a great success with over 40 lawyers from 25 firms in attendance. The Association was also grateful for the chance to acknowledge, in person, the incredibly important contribution our volunteer lawyers make in our effort to protect civil liberties.



BCCLA President Jason Gratl and Executive Director Murray Mollard with Rebecca Smyth and The Honourable Mr. Justice Elliott Myers.

TREASURER'S REPORT / ALAN ROWAN

It's a good thing I'm a resilient man. I need to be – when faced with a \$30,000 deficit in 2004, I resisted the urge to heap copious quantities of abuse on others. Instead, I demurred, and recognized that, well, these things can happen. Now, confronted with an unexpected surplus of \$23,000 for 2005, I have counselled restraint, resisting the urge to order leather for the reception area, and having wine tastings for the staff and executive Friday afternoons. In the end we did the right thing, repaying the Stabilization Fund most of what we owed from '04. So it seems to go for the BCCLA – up, down, sexy, forgotten.



Treasurer Alan Rowan
PHOTO: ALISTAIR EAGLE

Our dramatic turnaround in fortunes was chiefly attributable to three events. First, we were unable to fill Tom Sandborn's position as Development Officer until September, resulting in a large saving on budgeted salary. Second, later in the year, we received an unexpected

\$10,000 bonus to our basic grant from the Law Foundation. Third, at year-end, we received an exceptionally generous, out-of nowhere, gift-in-kind of securities valued at \$15,000. The donor was Mr. Win Zacherl of West Vancouver, who first became aware of the Association by attending the talk we sponsored in 2002, given by John Ralston Saul. It heartens us greatly that such public events can resonate in the community to produce such generosity. Clearly, Mr. Zacherl values the work we do, and is proud to support us this way, in the belief he may inspire others to respond similarly.

It would seem timely now to introduce our new Development Officer, Ms. Sarah Frew. Sarah joined us full time last autumn, and has now embraced her position, and some BCCLA culture. She has firmly embarked on her mission to raise our profile, improve

our member and donor relations, and successfully mine the human sea to produce the positive results we need from our fundraising efforts. Sarah is a civil libertarian at heart, and a native British Columbian. Most recently, Sarah was with Kids Help Phone here in Vancouver, and before that with UNICEF, in Toronto. Please join me in welcoming Sarah to the BCCLA, and call her regarding any fundraising issues, or queries about donating you might have.

At this time, it gives me pleasure to salute all the other supporters of the Association, members and donors alike, who gave in 2005 to assist us in our work. As well, big thanks to all the people who volunteered time to the Association, including the members of the Board, who are so generous. Last, but not least, I want to give special mention to The Law Foundation of BC, The Vancouver Foundation, The Notary Foundation, The Gaming Policy and Enforcement Branch of the government of British Columbia, and all our individual members and supporters who provided financial assistance, advice, and other gifts-in-kind to the BCCLA in the past year.

ALAN ROWAN

AUDITOR'S REPORT

To the Board of Directors and 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, 2005 and 2004 and the statements of operations and changes in fund balances, financial position and cash flows 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 audit.

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 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, 2005 and 2004 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 the prior year.

TOMPKINS, WOZNY, MILLER & CO.

CHARTERED ACCOUNTANTS

Vancouver, Canada

February 10, 2006

FINANCIAL STATEMENTS

British Columbia Civil Liberties Association

STATEMENT OF OPERATIONS AND CHANGES IN FUND BALANCES

As at December 31

	2005				Total 2004
	General Fund	Stabilization Fund	Little Sister's Fund	Total 2005	
REVENUES					
Membership & donations	136,761	—	—	136,761	148,080
Law Foundation – operating grant	144,300	—	—	144,300	134,300
Specified grants & donations earned [note 6]	21,181	—	10,385	31,566	30,045
Gaming revenue earned [note 6]	52,574	—	—	52,574	20,968
Investment revenue [note 8]	217	37,466	—	37,683	4,420
Endowment distributions [note 5]	—	4,159	—	4,159	4,043
Miscellaneous and special events	1,066	—	—	1,066	24,011
Amortization of deferred contribution related to capital assets [note 7]	771	—	—	771	1,985
	356,870	41,625	10,385	408,880	367,852
EXPENSES					
Salaries & benefits	210,723	—	—	210,723	197,000
Rent & utilities	37,762	—	—	37,762	30,746
Office operating	26,018	—	—	26,018	38,711
Contract services	20,347	—	10,385	30,732	68,149
Insurance	1,222	—	—	1,222	4,450
Bank charges	2,087	—	—	2,087	3,003
Fundraising	6,963	—	—	6,963	9,155
Publications & printing	14,110	—	—	14,110	6,905
Legal defence	6,008	—	—	6,008	6,760
Miscellaneous and special events	6,038	—	—	6,038	16,655
Amortization	2,726	—	—	2,726	4,458
	334,004	—	10,385	344,389	385,992
Excess (deficiency) of revenue over expenses	22,866	41,625	—	64,491	(18,140)
Fund balances, beginning of year	8,166	220,047	1,625	229,838	247,978
Fund balances, end of year	31,032	261,672	1,625	294,329	229,838

 The complete 2005 BCCLA Audited Financial Statements are available at www.bccla.org or upon request.

BCCLA PEOPLE

Membership Report / Supporters					
	2005	2004	2003	2002	2001
Special	214	206	252	218	223
Individual	342	327	324	342	330
Family (two people)	234	232	198	190	180
Organization	1	11	11	9	7
Total memberships	791	776	785	759	740
Donors only	146	331	354	272	223
Total supporters	937	1107	1139	1031	963

Staff

Murray Mollard, Executive Director
 Micheal Vonn, Policy Director
 Lil Woywitka, Membership Secretary
 Jim Braunagel, Office Manager
 Sarah Frew, Director of Development
 (from September 2005)
 Daryl Johnson, SFU co-op student
 (January to March 2005)
 Joe Pangan, SFU co-op student
 (September to December 2005)
 Joe Paulin, SFU co-op student (May to July 2005)
 Jessica Lott, Summer law student

Professional Services

Katherine Ruffen of Dragomir Breckner, Bookkeeper
 Nadene Rehnby of Hands on Publications,
 Desktop Publisher for The Democratic Commitment
 Laura Moodie for organizing the BCCLA Student Civil
 Liberties Seminar

Volunteers

The BCCLA salutes the following volunteers who, through their dedication and generous contributions, are an enormous help to us in running a smooth and sound organization. Many thanks to:

Herlenda Basas and Rosalia Bermejo for assistance with donation records.

Jesse Frank, Naomi Lazarus, Spencer Herbert and Christopher Pollon for assistance with our security certificate street theatre demonstration.

Lynda Hird and Jack Choules for assistance with organizing BCCLA archives.

Mark Pospisilik of Vermette & Co for his help with the submission rules and guidelines for the logo competition.

Peter Valbonesi, John Kehler, Laura Slack, Romi Chandra, Spencer Herbert, Sumayya Kassamali, Shadaab Rehmtulla, Hassan Allam, Francisco-Fernando Granados, Lauren Graham, Johanna Mazur, The Honourable Wally Oppal, Chris Hardcastle, Pam Murray, Eleana Swift, Dave Eby, BCCLA Board members and others for their assistance with the BCCLA Student Civil Liberties Seminar.

SUPPORTING THE BCCLA



BCCLA president Jason Gratl, Win Zacherl
and BCCLA Treasurer Alan Rowan

“For some time I have greatly admired the tireless dedication of the BCCLA to the defense of civil liberties. When I recently learned about the possibility of contributing to the BCCLA in kind (mutual funds, stocks or such) rather than in cash, a more tax efficient source for giving allowed me to contribute far more generously than before.” — Win Zacherl

A planned gift is a wonderful way to leave a legacy for the civil liberties of future generations. If you are inspired by Mr. Zacherl’s gift to the BCCLA, we’d like to remind you of the many options for planned giving:

BC Civil Liberties Association Endowment Fund

Gifts to the BCCLA Endowment Fund with the Vancouver Foundation maintain their capital in perpetuity while providing stable income for BCCLA operations.

Cash or Property

You can make a planned gift in the form of cash or capital property such as real estate.

Remember the BCCLA in Your Will

A bequest to the Association is a wonderful way to leave a legacy for freedom. You can make a bequest to support current work or you can again support our Endowment Fund.

Securities: Stocks or Bonds

Gifts of publicly traded stock can create very attractive tax benefits for a donor, cutting capital gains tax payable on any increase in value by half.

Life Insurance Policy

You can name the BCCLA as the beneficiary of your life insurance policy, or you can assign ownership of an existing policy to the Association.

Monthly Giving

Help us plan ahead... give the gift of monthly giving. Many of our members and supporters have already made this decision to sign up to donate a pre-designated amount each month.

If you have any questions about any of these options or the tax benefits of planned giving, contact Sarah Frew at 604-687-2919 or by email at sarah@bccla.org.



2006 REG ROBSON CIVIL LIBERTIES AWARD

Inspector Dave Dickson & Inspector Ken Frail, Vancouver Police Department

Without the rule of law, civil liberties are not possible. The men and women who serve in our police forces possess a unique commitment to the rule of law.

In 2006, the BCCLA bestows the Reg Robson Award on two unique police officers who have demonstrated an outstanding commitment to the rule of law and civil liberties through their work in and on behalf of the community in Vancouver's Downtown Eastside (DTES).



Dave Dickson has spent most of his career working in the DTES and was an early influence in the Missing Women's Taskforce. He has won numerous

awards including Vancouver Police Officer of the Year in 2004.



Former Vancouver Mayor Larry Campbell singled out Ken Frail for his compassion and commitment to his work and the people he served over his 27 year

career, noting that Ken's efforts have truly saved lives in the DTES.

The Reg Robson Civil Liberties Award is given annually to those who have demonstrated a substantial and long-lasting contribution to civil liberties in B.C. and Canada. The award is named after long time BCCLA President and civil libertarian Reg Robson.

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.

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



BC Gaming Policy and Enforcement
Branch of the Ministry of Public
Safety and Solicitor General



VANCOUVER
FOUNDATION



www.bccla.org