

the democratic Commitment

DECEMBER 2004 / VOLUME 38 NUMBER 3

JOURNAL OF THE BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION



The BCCLA acknowledges the generous support of the Law Foundation of BC

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BC Civil Liberties Association

MARIJUANA REFORM

The Morgentaler of dope

by John Dixon

This article first was published in the on-line news service of Dooney's Cafe

Carol Gwilt, of the Da Kine Café, is on her way to becoming the Morgentaler of dope. She was jailed for selling marijuana at her East Vancouver cafe, after an astonishing bit of retro civic theatre provided by the SWAT-style “take down” of her establishment last month by Vancouver’s finest.

That paramilitary police operation on Commercial Drive recalled me to my youth, on the Berkeley campus of the 1960s. Clouds of tear gas, mobs of Oakland cops in full riot gear charging around bashing in teeth, the sweet intermingled scent of marijuana and the medicinal Eucalyptus of that hallowed place of instruction: ah, to be young then! as AmeriKa (so dubbed by the student paper, the *Berkeley Barb*) went absolutely and completely nuts.

I don’t know if Vancouver’s Chief Constable, Jamie Graham, is a student of that storied period of culture wars, but it looks as though he is keen for us to re-live it, right through the required stages of tragedy and farce. In my one conversation with the Chief, in his office, he sternly informed me that he had never come across a heroin addict who hadn’t started out on marijuana. I responded that I had never come across a devotee of sado-masochistic sex who hadn’t started out on



Da Kine Café’s Carol Gwilt

kissing. He ordered me not to presume to lecture him on drugs. I pleaded that I was only lecturing on sex. We got along beautifully.

The Chief continues to develop his odd view of causation, opining recently that those who give money to beggars actually cause the presence of the beggars in the first place. “It’s the business

principle of supply and demand” Jamie Graham explained, because if people wouldn’t give money to beggars “they wouldn’t be there.” (*Vancouver Sun*, Oct. 5, 2004) Stay tuned for the Chief’s call to eliminate hunger by closing down the food banks.

But I digress from my theme, which is Gwilt as the Morgentaler of dope. Canadians of the boomer generation will remember Henry Morgentaler as that stubborn physician of the 1980s who set up “free-standing” clinics dedicated to the provision of no-fuss abortions.

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It seems to be a regrettable existential fact that, like books and home renovations, civil liberties cases are never really completed. Even when you think you have come to an end, there can be surprises.

An instance in point is the Surrey School Books case. In 1997, Surrey kindergarten teacher James

Chamberlain applied to the Surrey School Board to approve three picture books that portrayed children living normal lives with same-sex parents for use in Surrey schools. After heated public debate, the Surrey School Board refused to designate the books as resources, grounding its decision in the ideals of a frankly homophobic religious lobby. Chamberlain challenged that decision to the Supreme Court of Canada, with the B.C. Civil Liberties Association intervening beside him at each appeal.

Some five years later, we won a resounding victory. The Supreme Court agreed with us that public institutions cannot be used as instruments to favour specifically religious (or secular) heterosexual models of the family over other rights-respecting (i.e., Charter-protected) family models, including homosexual ones. The Court's decision confirmed a thoroughly tolerant and civilized approach to separating church from the state.

But there were loose ends. The Court required the Board to reconsider its decision, but left it no room to refuse age-appropriate books of children living with same sex parents. The Board predictably dragged its feet, but it eventually approved some relevant books.

That seemed to bring matters to a close. Or so we thought.

The hearings over which books to designate reprised the same melon-headed, but now more bitter, homophobic ranting. This time, however, some homosexual citizens who were present were offended enough that they filed a human rights complaint against the School Board for discrimination in the provision of a public service. They argue that the remarks of the homophobes silenced them and that the meeting had failed to provide them with an equal opportunity to participate in an official public forum.

BCCLA ED, Murray Mollard, and Board Member Warren Bourgeois also attended the meeting. Though dispirited by the homophobic remarks made in submissions, they report that the chair repeatedly re-

minded delegations to focus on the books and not on the morality of homosexuality or the wisdom of the Court's decision.

So we're off to the Human Rights Tribunal on a uniquely important case. This isn't a standard free speech case about censorship. There is no sign whatsoever that the chair of the meeting interfered at all with any homosexual's right to express ideas. Rather, the case raises an even more basic issue of free expression: how to preserve the very conditions that are necessary to permit citizens to speak and be heard by their official public institutions. For if those who run public deliberative processes can be held accountable for the hurt felt by hurtful ideas, then Sunday school is likely to be a more meaningful place for debating public policy than an official democratic forum.

The simple fact is that it is an expected, if sometimes challenging, part of democracy that those who hold morally opposed views, and who view each other with suspicion and even contempt, will come together and debate their differences. Thus, it is unreasonable to think this particular meeting could be run without homophobic comments, regrettable as that is.

Although it is difficult for some to see, this is not only a means for promoting greater respect between those who disagree (over the longer term...), but is itself an expression of respect between those who disagree. For the alternatives for confronting one another involve rather more distasteful behaviour; and the option of silencing ideas, even hateful ones, leaves little else but such confrontations. Thus, the restriction of speech is historically a most fecund medium for promoting hateful acts, whereas genuinely free and democratic public fora institutionalize a minimum standard of respect and dignity for all persons.

There is of course a rich irony to this. The Surrey School Board, which no doubt found our opposition in the Chamberlain case unwelcome and bothersome, now finds us on its side. It has not opposed our application to intervene.

Stay tuned. We're on another long run.



BCCLA president
John Russell

A handwritten signature in blue ink that reads "John Russell". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

JOHN RUSSELL, PRESIDENT

THE MORGANTALER OF DOPE

continued from page 1

He had to be stubborn, because he kept being arrested and tried under the abortion laws of that time, which required women to plead for abortions before special committees. Any abortions provided without the approval of one of the “therapeutic abortion committees” of that Alice in Wonderland period were criminal offences. Getting the nod of medical necessity from a committee was a chancy business, largely dependent upon where you happened to live. At the Vancouver General Hospital, at least by the final days of the system, it was fairly easy. But if you were a young pregnant girl in Hayseed, Alberta, pleading before the committee of the Hospital of the Sisterhood of the Seven Wounds, you were out of luck. A patchwork quilt of administration of justice, like the present day enforcement of dope laws in Canada, which have managed, in their endearing crazy-quilt way, to garner criminal convictions for about 600,000 Canadians so far.

Usually Dr. Morgentaler was acquitted by sympathetic juries, but eventually he wound up in jail, and the experience terrified him. Nevertheless, when he got out he just went back to setting up clinics. He was eventually vindicated at the Supreme Court of Canada, but not before his life was pretty thoroughly mangled.

Morgentaler was one of those strange people who emerge, from time to time, to embody and personalize a sea change in social morality and law. He knew, with that special kind of conviction that turns into obsessive activism, that the value Canadians put on the equality of women had become much stronger than their concerns about the morality of terminating an early pregnancy.

Carol Gwilt, the owner of the Da Kine cafe, simply believes, in her own words, that “there’s nothing criminal about marijuana.” And she is convinced that the sensible thing to do is take the marijuana

business out of the hands of bikers and other criminal gangs, and normalize its sale and use for the tens of thousands of ordinary Canadians who smoke it.

So she opened a café that didn’t make a secret of its menu, and refused to join in the comedy of pretence used by the many other cafes in the Lower Mainland that are conducting much the same business on a “don’t ask, don’t tell” basis. The Da Kine is sort of like a speak-easy in the Prohibition Era that just came right out and called itself a Bar. Or, to use a more contemporary example of social and legal hypocrisy, like an escort service that dared to advertise that its workers provided sexual services.

I’m not claiming that Carol Gwilt is a Mahatma Gandhi or Martin Luther King; but she is placing herself among those remarkable people, like Henry Morgentaler, who say to the laws: “I’m not a revolutionary, and I don’t think I fit most Canadians’ notion of a criminal, but this law is so bad that if you insist on enforcing it you will have to throw people like me in jail.”

Her plea should capture our attention, it should wake us up to the fact that these laws are hurting our community and our citizens, and it should determine us to support those who are fighting in our legislatures and courts for a saner approach to the sale and use of marijuana.

It will be a long struggle. As of yesterday – October 18th – Gwilt is out on bail... as she has been, off and on, for many months. Her lawyer, Jason Gratl, tells me that her preliminary hearing isn’t slated until January. Gratl, a member of the B.C. Civil Liberties Association board of directors, suggested that interested and concerned persons who want to help ought to join the BCCLA. I not only second that, but I’ll even provide the phone number and e-address: 604-687-2919 or info@bccla.org. This is one of those cases that will require long term support as it winds its joyless way through the courts.



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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.

Publications mail
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Art for freedom

Diane Farris Gallery, Lukacs family cooperate in unique effort to support free speech

A donation from the family of renowned Vancouver artist Richard Attila Lukacs and the generous support of veteran local gallery owner Diane Farris will combine to generate much needed income to defend artistic freedom, the free press and civil liberties in Canada this year. Donated by the artist's father, Mr. Joe Lukacs, the new oil painting, "IFART" is on display at the Diane Farris Gallery, 1590 W. 7th in Vancouver, or can be viewed on the web at www.dianefarrisgallery.com/backroom/lukacs.html. All proceeds from the sale of this powerful work from one of Vancouver's pre-eminent painters will, thanks to the generosity of the gallery and the artist's family, go to support the ongoing work of the BC Civil Liberties Association.

The gallery describes the new Lukacs canvas thus:

In Attila Richard Lukacs' new "IFART" painting, SpongeBob SquarePants (normally a cheery guy full of fun and optimism) is ready to explode with

rage and frustration. Using words as his sword, SpongeBob attacks the stranglehold of major corporate entities like Shell Oil and media conglomerates like Viacom, owner of the show's production company Nickelodeon. The vehement SpongeBob stands astride a gassy sphere reminiscent of the villainous character Dirty Bubble in the popular kids' cartoon. In the foreground, the shiny seashells of SpongeBob's undersea world are mired in oily

sludge. "IFART" shares an affinity with earlier work by Lukacs in its use of heavy symbolism, images of power relationships, provocative titles and the integration of a graphic style with painterly illusionism.



Artist: Richard Attila Lukacs
Title: Untitled Size: 24" x 24"
Medium: Oils on canvas
Estimated Value: \$10,000
This work may be viewed at the Diane Farris Gallery in Vancouver.

Collection includes six Picasso etchings

The BC Civil Liberties Association has recently been given a small collection of high quality art work by Canadian and US artists, as well as the jewel of our current holdings, a set of six Picasso etchings from the 1934 Limited Editions Club edition of Aristophanes' *Lysistrata*. These are "hors-texte" etchings that have been removed from the volume and mounted handsomely together with the signature sheet signed by the artist that

was part of the original book presentation.

Artist: Pablo Picasso

Title: A series of six etchings, including *Serment des Femmes* (Oath of the Women) and *Le Festin* (The Banquet), shown above, as well as *Couple et Enfant* (Couple and Child), *Cinesias et Myrrhine* (Cinesias and Myrrhine), *Deux Vieillards et Voilier* (Two Old Men and a Sailboat), and *Accord entre les Guerriers de Sparte et d'Athenes* (Accord between the Soldiers of Sparta and Athens).

Medium: Hors-texte etchings
Price: \$35,000

Original numbered volume (source of this set of etchings) is included in this price.





Artist: Jessica Stockholder
 Title: ABC Landscape
 Medium: Collage
 Estimated Value: \$3,000



Artist: Nathan Raffla
 Title: Callalilly Burning
 Medium: Fired clay
 Estimated value: \$650



Artist: Liv Marinoff
 Title: Untitled (Man and Woman) 1992
 Medium: Acrylic on paper 31 x 23
 Estimated value: \$2,000; prices range from US \$1,000 to \$3,000
www.absolutedarts.com/portfolios/m/marinisus/



Artist: Al Neil
 Titles: Man/World #2, Untitled
 Medium: Collage
 Estimated Value: \$2,000 each

These works by Vancouver's famous jazz pianist and collage artist were created in the mid-1980s.
www.nsnews.com/issues99/w032299/neil.html



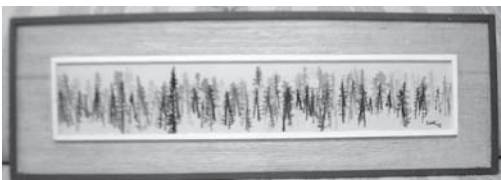
Also available

Artist: Graham Gillmore
 Title: Make Your Own Media Culture
 Medium: Collage
 Estimated Value: \$2,000
 (This work is on view currently at the Monte Clark Gallery in Toronto.)

Artist: Michelle Parott
 Titles: L'Aventure, Fleurs D'Eau and Les Grands Oiseaux du Paradis
 Estimated value: \$100 each

Artist: Dorcas Taylor
 Title: Untitled (Oak leaves) c. 1980
 Medium: Oil on canvas
 Estimated value: \$100

Title: Untitled (Forest and stream) c. 1980
 Medium: Oil on canvas
 Estimated value: \$300
www.briantaylor.com/dorcas2.htm



Artist: Duncan de Kergommeaux
 Title: Pine Forest Date 1957
 Medium: Oil on board 29 1/4 x 5 1/4
 Estimated value: \$5,000; prices range from Cdn \$3,000 to \$30,000
www.jamesbaird.com/ddekergo

BCCLA grappling with large deficit

The BCCLA typically faces a cash crunch at this time of the year. But a combination of increasing expenses, changes to Gaming funding procedures and less than anticipated member revenues to date make this year's crunch even greater.

So if you're a member or donor who hasn't yet paid your dues or made your annual contribution, we encourage you to send a cheque or call us with a credit card number.

And if you're not yet a BCCLA supporter but appreciate the important work we do at the BCCLA, please sign on today! Just complete the coupon attached to this newsletter and mail it to us or call us at 604-687-3013.

THE *May* CASE

Protection of habeas corpus sought by BCCLA in prisoners' rights case

Habeas Corpus – “This is the well known remedy in England and the United States for deliverance from illegal confinement, called by Sir William Blackstone the most celebrated writ in the English law, and the great and efficacious writ in all manner of illegal confinement” (Black’s Law Dictionary)

BCCLA is applying for leave to intervene in the Supreme Court of Canada case of *Terry Lee May v.*



Warden of Ferndale Institute. Terry May and four other appellants were serving life sentences at Ferndale Institution, a minimum security federal penitentiary. All five prisoners were involuntarily transferred to medium security penitentiaries as a result of a new Correctional Service of Canada policy which does not allow “lifers” to be classified to minimum security if they have not completed particular violent offender programming.

The loss of liberty in moving from minimum to medium security is significant and the remedy lies in *habeas corpus*, which determines the lawfulness of a detention. However, the British Columbia Court of Appeal in *Hickey v. Kent Institution* concluded that federal prisoners could only resort to the provincial superior courts for a remedy of *habeas corpus* if they had exhausted all alternatives or adduced persuasive

evidence that alternatives were not effective. Otherwise, the court said, federal prisoners must seek their remedy in a judicial review in Federal Court.

A habeas corpus application in the Supreme Court of British Columbia is, as of right, set down for hearing on six clear days’ notice to the respondents. A judicial review in the Federal Court takes 12 – 18 months. Thus, the removal of access to a local remedy has essentially barred federal prisoners from access to any remedy at all.

BCCLA is seeking invention in the *May* case to argue that the denial of access to a local remedy undermines the historic place *habeas corpus* has occupied in safeguarding the effective and speedy protection of the liberty of all people. The effective loss of this remedy will seriously erode any capacity to supervise the administration of penal sentences to ensure that they are lawfully implemented and that prisoners are protected from arbitrary deprivations of their residual liberty. The BCCLA has a long history of involvement with prisoners’ rights and believes that this is a precedent setting case even beyond the scope prison law.

Well known prison law expert and UBC law professor Michael Jackson, Q.C. is representing the BCCLA.

THE *KEMPLING* CASE

Free speech or a free hand to discriminate?

Chris Kempling, the former high school teacher and counsellor, is appealing to the B.C. Court of Appeal that the decision of the B.C. College of Teachers to suspend him for his public criticisms of gays and lesbian violates his free speech and religious rights.

The B.C. Civil Liberties Association will intervene to argue that, while public servants continue to enjoy freedom of expression as employees, they also must ensure that their public utterances are consistent with their professional and public duties. The *Charter of Rights and Freedoms* will not protect public employees who make statements that effectively prevent them from upholding their responsibilities on the job.

Those responsibilities are especially compelling when they involve the equality rights of vulnerable minorities like gay and lesbian youth. Regrettably, Mr. Kempling crossed this line when he clearly indicated that he would permit his personal religious beliefs

regarding homosexuality to influence his conduct at work in a way that would undermine his professional responsibilities.

The Kempling case is an interesting lesson in the important distinction between *free* speech and the responsibilities of public office.

Elliott Myers, Q.C. and Craig Jones of Bull Houser Tupper will represent the BCCLA.

i To view the BCCLA legal argument, visit: www.bccla.org/othercontent/04kemplingappeal.pdf

U.S. PATRIOT ACT

The privacy of British Columbians' health information

The BCCLA is one of the founding members of the Right to Privacy Campaign, which is comprised of diverse community groups concerned about the provincial government's outsourcing of the administration of the Medical Services Plan and Pharmacare to a U.S.-linked company. The privacy concern is that the *USA Patriot Act* could provide American authorities access to British Columbian's personal information through the affiliated U.S. company.

The *USA Patriot Act* allows a special court to secretly issue an order requiring "the production of any tangible things" to the FBI. An American corporation could be required to produce information held by an affiliate in another country if the American corporation had access to the information.

While the Right to Privacy Campaign brought this matter to the attention of the public, British Columbia Information and Privacy Commissioner, David Loukidelis, announced that he would conduct an inquiry into the privacy implications of outsourcing to U.S.-linked in light of the *USA Patriot Act*. The vast majority of the submissions opposed the plan to contract out MSP and Pharmacare because of privacy concerns.

The BCCLA's submission to the Privacy Commissioner made the following points:

1. The personal information at issue requires the highest order of privacy protection, not only under the *Freedom of Information and Protection of Privacy Act* ("FOIPPA"), but as engaging constitutionally protected privacy rights.
2. Contrary to the Province's assertions, the potential for American authorities to access databases like MSP and Pharmacare is real and significant.
3. The Province's proposal for contractual and corporate structuring means of preventing access to the records do not appear feasible.
4. Where there are credible legal opinions and arguments to both justify and oppose the proposed outsourcing, the Commissioner should employ a precautionary approach which would prohibit putting the personal information of British Columbians at risk.



The Privacy Commissioner received over 500 submissions from across Canada, the US and Europe. The Privacy Commissioner's report was released on October 29, 2004. The report affirmed that the risk of exposure of private information through the *Patriot Act* is a significant risk. The Commissioner did not call for a ban on outsourcing to U.S.-linked companies, but he did indicate that the Province's recent amendments to privacy legislation do not go far enough in protecting information from unauthorized disclosure under the *Patriot Act*.

The Commissioner made 16 recommendations, including compliance audits, audits on all data-sharing agreements with the U.S., the extension of protective measures into private sector privacy legislation and ultimately, that Canada seek a comprehensive North American data protection standards agreement.

BCCLA lauds the Privacy Commissioner for his careful and thorough report and supports the report's recommendations.

i The Privacy Commissioner's report can be found at: www.oipc.org/sector-public/usa_patriot_act/patriot_act.htm

SAFE STREETS ACT

Street sweeps a discriminatory solution to an uncomfortable reality

The BCCLA has come out swinging against the Liberal government’s *Safe Streets Act*, which became law on Oct. 26, 2004. The law prohibits “aggressive solicitation” and soliciting of “captive audiences.” Solicitation is defined as asking for money or anything of value with or without something provided in return. The law prohibits actions such as obstructing the path of the solicited person or using abusive language where the action is done “in a manner that



would cause a reasonable person to be concerned for the solicited person’s safety or security.” Solicitation of any kind is prohibited for “captive audiences,” which is defined as people waiting for a bus or coming or going from a bank machine, pay phone, public toilet or parking lot. A peace officer may make an arrest without warrant on reasonable and probable grounds. The Attorney General is currently developing a regulation regarding penalties which will likely include fines.

The BCCLA has opposed every incarnation of the Act, from earlier anti-panhandling municipal bylaws, to Lorne Mayencourt’s private member’s bill to its final status as government legislation. The BCCLA believes that the law will inevitably be applied in a discriminatory manner and that its true purpose is to sweep the streets of people some are uncomfortable seeing or meeting in public places. There is no ques-

tion that the law is aimed at panhandlers and not, say, the veteran who is offering Remembrance Day poppies to “captives” at a bus stop. Clearly targeting vulnerable groups, the legislation limits the public spaces that the poor and the homeless may ask for assistance.

A similar law has been in effect in Ontario since 2000. The constitutionality of that law has been challenged and the decision of the Ontario Court of Appeal on the matter is expected before the New Year.

The BCCLA has always taken the position that there is no freedom to panhandle in a threatening and violent manner. However, the criminal law is adequate to deal with those who do so thus making the new law simply redundant. We believe the underlying reason for the law is to allow private security and the police to have a free hand in moving panhandlers off of the streets.

The BCCLA looks forward to a legal challenge of the law. We believe that it is an unjustifiable breach of expressive freedom which criminalizes merely asking others for financial help. Whatever the government’s stated justification for the law, we believe that the law’s intent and effect is less about safety and more about placating those who are uncomfortable having to say ‘no’ to panhandlers.

i The legislation can be viewed by visiting: www.legis.gov.bc.ca/37th5th/3rd_read/gov71-3.htm

WAR ON DRUGS

Abbotsford school ponders drug dogs

As reported in the last edition of the *Democratic Commitment*, the Association is hot on the heels of the Abbotsford School Board, urging them to not move forward with a proposal to introduce drug dogs in schools. Representatives of the BCCLA recently met with the school board’s Chair, Joanne Field, as well as board member Uultsje DeJong and Secretary-Treasurer George Murray to remind them that random checks using drug dogs will result in an 80 per cent failure rate. We followed up the meeting with the constructive suggestion that rather than spend money on dogs, students and the school community would be much better served by hiring drug and alcohol counsellors to assist students with education, prevention and treatment. Regrettably, the Board continues

to pursue this war-on-drugs approach though still have yet to make a final decision. To the best of our knowledge, no school board yet has approved dogs prowling the corridors of schools for drugs. We'll continue to work to make sure Abbotsford is not the first.

TASERS

Weapon may have place, but standards must be enforced

The BC Civil Liberties Association is keeping a close eye on the current investigation by the Victoria Police Department regarding the use of Tasers. The taser is relatively new weapon technology that uses electric volts to shock suspects into submission. The shock is supposed to temporarily incapacitate subjects with no ill-effects. Many police forces throughout Canada now use this weapon. The Victoria Police Department were asked by Police Complaint Commissioner Dirk Ryneveld, Q.C., to assess the tasers for safety and standards in the wake of several deaths in British Columbia that have recently occurred in proximity with the use of tasers.

The BCCLA has always advocated that the provincial government must ensure that the taser is a safe use-of-force option for police and that it is adequately regulated to protect the public safety through provincial standards for training, use and accountability. Regrettably, the government had not set these standards, thus resulting in different standards for police forces. This problem was evident when Vancouver Chief Constable Jamie Graham indicated that he will now be requiring his officers to keep track of the use of the taser when deployed. Chief Graham made this statement after one of his officer's had used the taser to subdue Robert Bagnell. Mr. Bagnell subsequently died. A coroner's inquest is also in process to determine the cause of Mr. Bagnell's death.

Subject to a determination that tasers are safe and if so, rigidly regulated by the province, the BCCLA has also been open to their use as an important addition to the use of force options available to police. Given that the alternative may be lethal force (guns), we have recognized that the taser may be an important tool for the police to deal with difficult cases such as individuals with mental health problems who pose

a danger to themselves, the public and/or the police.

With a rising number of deaths in the U.S. and Canada that implicate the taser, there is a growing concern about the use of the taser when a person has consumed drugs and/or alcohol. To the Victoria Police Department's credit, they have retained medical experts to assist them in the assessment regarding the taser's safety.

The BCCLA has met with Victoria Police Department officials who are investigating and will continue to provide input and monitor the investigation.

i To view the Victoria Police Department's interim report, visit: www.opcc.bc.ca/Reports/TASER%20Report%20-%20photos.pdf

ARAR INQUIRY

Hearing continues

The inquiry into the deportation of Maher Arar has continued throughout the fall of 2004. Mr. Arar, a Canadian of Syrian descent was deported by US officials to Syria over two years ago where he faced torture as an alleged terrorist. The government of Canada appointed Justice Dennis O'Connor to make findings into allegations of Canadian complicity in his deportation. Despite Commissioner O'Connor's desire to make quick findings of fact, the inquiry has been bogged down in closed hearings where the government is arguing that crucial evidence should not be released for national security reasons. A critical juncture in the inquiry looms when the Commissioner will make a determination about documents to release publicly. If the government objects to his ruling, it will proceed to federal court to prevent disclosure, a process that could take months to resolve rendering the hearing increasingly irrelevant.

The BCCLA is an intervenor in the inquiry. Recently, along with other intervenors, we met with Commissioner O'Connor to discuss several matters to ensure meaningful participation by intervenors. In addition, we sought information about amicus legal counsel. Given the secret nature of the evidentiary portion of the hearings, his role is particularly important to ensure full public disclosure of as many documents as possible. We will continue to pursue these issues and will be making submissions in 2005.

i For more information about the inquiry, visit www.ararcommission.ca

LIBRARIES

BCCLA lauds Attorney General for protections

The B.C. Civil Liberties Association is praising Attorney General Geoff Plant, Q.C. and the provincial government for new legal protections for libraries that distribute materials that are alleged to be defamatory.

Bill 62, the *Attorney General Statutes Amendment Act, 2004*, among other things, amends the *Libel and Slander Act* to create a legal immunity for libraries that distribute materials which are subject to a claim of defamation. Previously, the state of the law made libraries that were subject to notification of a claim of defamation liable if they continued to distribute the materials and there was a legal finding that the materials were defamatory. The new legislation will how-

ever require libraries to respect court orders for injunctions prior to trial.

BCCLA Board member Ann Curry: “This is a vital new protection for ensuring the integrity of library collections and a victory for freedom of expression against efforts to impose prior restraint on materials even before any court finds that there is defamation. The ultimate winner here is the public who’ll be able to continue to access controversial but not illegal materials.”

The BCCLA had called on the Attorney General to reform defamation law in B.C. to protect libraries because of situations such as the legal wranglings between Richard Warman and David Icke, author of *Children of the Matrix*. Mr. Warman had sued Mr. Icke alleging that the book is defamatory. Before going to trial, Mr. Warman had written library officials in Kamloops, Victoria and Vancouver notifying them of his lawsuit and requesting the libraries pull the book from their shelves. Upon consulting legal advice, the library boards all removed *The Children of the Matrix* from circulation.

Dr. Curry, also a member of the B.C. Library Association and Associate Professor at UBC, adds: “In the Warman case, libraries had to comply with Mr. Warman’s request or possibly face liability. This law will remedy that problem and ensure continued public access unless there is an injunction or finding of defamation. We believe this legislation is unique in

North America and the B.C. government is to be congratulated.”

i The new legislation can be viewed at: www.legis.gov.bc.ca/37th5th/3rd_read/gov62-3.htm

ANTI-TERRORISM WATCH

No-fly lists

In late September, Transport Canada announced its plan to implement a ‘no-fly’ list, one of the counter-terrorism tools endorsed by the new *Public Safety Act, 2002* (the “Act”). Essentially, the no-fly list will contain names of individuals barred from boarding commercial airlines on the basis that the Transport Minister believes they pose an immediate threat to aviation security. The list would apply to all Canadian embarkments, domestic and international.

Proponents of the Act claim that it is designed to improve Canada’s capacity to prevent terrorist attacks. In addition to creating a no-fly list, the Act makes several amendments to existing legislation, including the *Aeronautics Act*, which now contains provisions requiring air carriers to divulge passenger information, without the passenger’s consent, to the authorities for the purpose of disclosure for reasons of national security. In 2003, the BCCLA advocated, without much success, significant changes to this anti-terrorism legislation.

There has been considerable concern expressed in the United States over the no-fly list. Since its implementation in 2001, there have been reports of thousands of innocent passengers routinely stopped, questioned and searched by police and airport personnel. The ACLU has recently filed a class action challenge against the Transport Security Administration, the department responsible for the no-fly list. Some highlights of the problems with the no-fly list in the United States include, no clear criteria for creating the list, passengers are denied due process because no meaningful opportunity to appeal their status exists, and innocent passengers are often subjected to unreasonable search and seizure.

In light of the privacy and due process concerns arising from the no-fly list, the BCCLA is seeking to provide input into the Transport Minister plans.

i To see the BCCLA submission on the *Public Safety Act*, visit: www.bccla.org/othercontent/03publicsafety.html. To review the ACLU’s concerns about no-fly lists in the U.S., visit: www.aclu.org/SafeandFree



COMMITMENT TO LIBERTY

Ann Curry brings passion for intellectual freedom to board

Ann Curry, an Associate Professor at UBC's School of Library, Archival and Information Studies, understands the difference access to information makes.

In 1969, with a University of Alberta Arts degree in hand, Ann headed overseas to Malaysia to volunteer as an English and Math teacher. Ann was profoundly struck by the inequity she witnessed there. Students, desperate to win scholarships to British universities, were often denied entry because their schools lacked adequate learning resources, primarily books. Ann felt compelled to help her students achieve their dreams, so she established a school library, which she filled with donated books from Canada.

It has been this kind of extraordinary commitment that makes Ann a valued member of the BCCLA's Board of Directors.

As BCCLA Executive Director Murray Mollard recalls, she is a rare breed of academic willing to stand up for free speech: "I first met Ann at a UVic conference on hate speech. Usually when I show up at this type of conference I am the token defender of free speech. Having Ann there saying the same things the BCCLA fights for – censorship is wrong in principle and practice – was a refreshing change. What a find for the BCCLA!"

Now on the Board for over three years, Dr. Curry exemplifies the courage and commitment of BCCLA Board members by her willingness to take on advocacy roles for the Association's positions. Her latest

work on securing better protections for libraries that distribute materials that are the subject of defamation allegations is the just latest example. She is also a vital member of the B.C. Library Association.

After Malaysia, Ann obtained Bachelor and Masters degrees in Library Science, the latter at UBC. She then obtained her doctorate in Information Studies from the University of Sheffield. Ann teaches graduate courses at UBC, her favourite being a course on intellectual freedom and censorship. Her civil liberties interests not only include her longstanding advocacy for public access to information for gay and lesbian groups, but also child pornography legislation and legal protections for libraries.

According to Ann, the Board meeting experience is akin to being "intellectually gob smacked," a British term referring to being hit in the face. She explains that often times, the dialogue around the table challenges her comfortably held beliefs. Nonetheless, she makes it clear that there is no party line: "The meetings can be an intense free-for-all. But, they are always done respecting the opinions of others."



Students at the BCCLA Office

Every year, the BCCLA is fortunate to have a number of talented students to assist in research and office tasks. The fall of 2004 is no exception. The BCCLA would like to acknowledge the efforts of:

- Melissa Dahabieh – a 4th year Criminology student at SFU completing her field practice requirements by spending the semester with the BCCLA
- Chris Hardcastle – a 3rd year UBC law student who is also responsible for starting up a fledgling UBC civil liberties group on campus
- Scott Somers – a 4th year SFU Criminology honours student who has a particular interest in prisoners' rights
- Ileana Smith – a 1st year UBC law student, volunteering through Pro Bono UBC

STUDENT NEWS

Students and Civil Liberties Conference, April 2005

With funding from the Law Foundation of B.C. and Vancouver Foundation, the BCCLA is organizing a one day seminar for high school students on civil liberties and citizenship. For more information, contact the BCCLA office or watch for updates on the BCCLA website

NEW SUPPORTER

The BCCLA welcomes Womyns' Ware Inc. to our family of supporters.



DONATIONS IN KIND

Thanks to the following companies for donations to equip our new office:

- Office Depot
- Staples
- Heritage Furniture
- Global Furniture
- Re-Boot
- Computers/Trade Works
- Bull Housser Tupper

UNITED WAY DONATIONS



Don't forget that you can designate the BCCLA as a specific recipient of your United Way donation!

WE'VE MOVED!



Our new address is:

#550 - 1188 W. Georgia (at Bute)
Vancouver B.C., V6E 4A2

JOIN THE BCCLA

Give the gift of freedom!

"MEMBERSHIP HAS ITS PRIVILEGES," runs a famous advertising slogan.

At the BCCLA, we believe that's true enough, but it only captures part of the truth. As a member of the Association you get three issues of the *Democratic Commitment* each year and early notice when we host important public education events such as last year's address by Chief Justice McLachlin of the Supreme Court of Canada. But living in a real, if imperfect, democracy also generates a responsibility for all of us as citizens – the obligation to defend and extend fundamental rights, a never ending and daunting task. If you are already a member of the BCCLA, you have made good on that duty. If not, please join now.

For current members, we need your help. Please use the attached form in this newsletter to give a gift of the *Democratic Commitment* to two people this holiday season. The BCCLA needs to expand its membership base and this is an ideal way to introduce your friends, family or associates to the important work of the BCCLA.

We thank you for your choice to join the BCCLA, and thank you in advance for whatever you can do to persuade people in your life to join with us in that crucial commitment to democracy.

The B.C. Civil Liberties Association wishes to thank the Law Foundation of B.C. for its generous, ongoing support for our core programs.



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