

# the democratic Commitment

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**B.C. Civil Liberties  
Association**

## Police Accountability

### Focus on Police Complaint Reform

Police accountability continues to be a top priority for the B.C. Civil Liberties Association. The police, perhaps more than any other agent of the state, have tremendous authority that can have dramatically negative consequences to citizens. The recent number of police in-custody deaths over the last few years in the province, including the highly publicized death of Ian Bush in Houston, B.C. last year, underlines the fact that this is not a mere theoretical concern.

An important means for policing accountability is a fair system for citizens to make complaints against the police. The public must have confidence that complaints will be investigated thoroughly and impartially by competent investigators. Likewise, the system must be fair to police officers as well.

Police complaint reform in B.C. and Canada is an evolutionary process. Not so long ago, there were very few legislative provisions for police complaints. It was not uncommon for complainants to arrive at the

police station to lodge a complaint and be told to go home.

Since the release of the Report of the Commission of Inquiry into Policing in B.C. chaired by former Justice Wally Oppal (now Attorney General of B.C.) in 1994, there have been major changes in the way complaints are reviewed. Before Oppal, the system was rife with problems and completely lacked any assurance that there was fair civilian review and oversight of complaints. With the changes to the *Police Act* in 1998 as a result of the Oppal Report, major reform occurred including the creation of the Office of the Police Complaint Commissioner, an independent officer of the legislature.

The BCCLA was front and center in urging both Mr. Oppal and the government to make positive changes to the police complaint system. We made influential submissions to Mr. Oppal and then consulted with government to reform the legislation. With the amendments to the *Police Act* in 1998, some would say that the

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With the tremendous intrusive authority for enforcing the law that comes with the policing job – including intrusive powers of search and seizure, detention and arrest and use of force – ensuring adequate civilian accountability of the police will always be a major focus of the BCCLA.

## TO THE CONVERTED / A message from our president Jason Gratl

In my opinion, the RCMP looks like it gives special treatment to potential homicide suspects when the homicide suspects are one of their own.

When the BCCLA initiated police complaints in four of those cases, the RCMP simply refused to investigate our police complaint. They said that they were conducting their own internal investigation, and would deal with our complaint when they were finished.

The internal investigations conducted by the RCMP into in-custody deaths often take more than a year. What could be taking so long, I wonder to myself? Investigations of civilian suspects take a fraction of the time. Time is of the essence: homicide evidence is not a fine wine.

We have heard complaints that RCMP officers are poorly trained and unsupervised. You would think the RCMP would want to clear the air of this type of allegation rather than passively erode its iconic status. So why is little or nothing being done by our elected representatives?

We have heard that Members of Parliament feel intimidated by the RCMP from time to time, although we quickly heard that retracted. But there is no doubt that RCMP investigations appear to have had serious consequences for politicians, including Glen Clark, Ralph Goodale and Greg Sorbara. Although ultimately exonerated, the investigations and resulting innuendo led to the political equivalent of a “starlight tour”.

Politicians may be afraid to say that deaths in RCMP custody in British Columbia appear to be treated internally like an embarrassing mess that needs to be cleaned up lest the public sees it. What politician would openly ask why an internal homicide investigation should take 12 months to complete when the target is clearly identified?

In theory, it should not require much political courage to address these deaths. It is a democratic truism that deaths in police custody are public

## 22 British Columbians have died in police custody in the last several years



Jason Gratl

tragedies that need to be addressed as quickly and openly as possible to ensure public confidence in a government institution that sustains a monopoly on coercive force.

More than half of all RCMP officers are based in B.C. and Alberta. But most of the RCMP's respect seems oriented towards Ottawa. Perhaps that's due to the paramilitary management structure and their failure to and honour their commitment to the community policing model. Again, perhaps they are preening to the East about their status as Canada's national police force. The headquarters of the Commissioner for Public Complaints against the RCMP, Paul Kennedy, is fixed in Ottawa. Key decisions about in custody deaths in B.C. are made in Ottawa.

It seems to me that the RCMP forgets that it is an amalgam of municipal, provincial and national forces. It often behaves as if it is one monolithic agency that has forgotten the need to pay respect to its civilian masters. If it feels it can forego civilian oversight when it comes to in custody deaths, what other powers does it arrogate to itself?

The BCCLA calls on Stockwell Day, Member of Parliament and the Minister of Public Safety and Emergency Preparedness to get the RCMP back in the harness. Mr. Day, the shooting

of Ian Bush in the back of the head by an RCMP officer in Huston, B.C. is a public safety issue. Canadians are concerned about this. Go to it.

The BCCLA calls on the interim Commissioner for Complaints against the RCMP, Mr. Paul Kennedy to act on our complaints. Before being appointed as interim Commissioner for Complaints, Mr. Kennedy, a career civil servant in the Department of Justice, was an assistant deputy minister to Anne McLellan and worked with the RCMP, and before that he was counsel to CSIS. I am concerned that someone with his background is in charge of an agency whose main purpose is to protect civil liberties and human rights. His background notwithstanding, it is my hope that Mr. Kennedy will be mindful of his new role and stand up for British Columbians.

But if my hope is misplaced, perhaps it's time for British Columbia to have a police force that respects British Columbians. Perhaps we need our own Provincial Police. Ontario has one. Quebec has one. Those provinces don't need to look to Ottawa for solutions to their problems.

Perhaps it is also time for complaints against the RCMP to be dealt with locally by Dirk Ryneveld, the Police Complaints Commissioner. Surely there is no reason why he could not take over complaints made by British Columbians about officers living and working in British Columbia.

Is there any reason why British Columbians should pay someone in Ottawa to take responsibility for these local issues? That is a question for Mr. John Les, the Solicitor General of British Columbia, to grapple with.

So I say to our elected representatives: look alive, people. Public accountability is needed for every death in police custody. Timeliness matters. The law must be applied equally to police and civilian alike: that's what democracy and the rule of law is all about.

*continued from page 1*

system was the best in Canada.

Eight years on, the BCCLA believes that it is time for further change. While the current system is a significant improvement on the pre-1998 system, it continues to lack the public confidence it needs to be truly credible. This is largely due to the fact that only the police can investigate the police in response to a complaint which leads to obvious concerns about bias. But there have been a considerable number of other concerns about the operation of the legislation and whether in fact it is achieving its objectives.

These concerns prompted the BCCLA to advocate successfully for an audit of internal police investigations to assess whether they were being conducted professionally and fairly. As a result of our efforts and parallel developments involving complaints organized by PIVOT Legal Society, the provincial government agreed to appoint Joe Wood, Q.C. to review the legislation and conduct an audit of police investigations.

While we await the Wood report, due this summer, this development creates an important opportunity for the BCCLA to advocate for new law reform to further improve the complaint system. Coinciding with the Wood review, current Police Complaint Commissioner Dirk Ryneveld, Q.C. is developing recommendations to reform the *Police Act* and its complaint rules. The BCCLA has met with Mr. Wood to press for our priorities for reform. In addition, we have met with Mr. Ryneveld and written him with our concerns.

Over the next year, the BCCLA will continue to press the government to make sure that the police complaint system is improved.

The focus of our efforts for reform includes four major concerns.

- **Civilian Authority to Conduct Investigations**

The BCCLA recommends that the Office of the Police Complaint Commissioner (OPCC) should have the legal authority and sufficient resources to undertake its own investigations of police complaints. In the case of death or serious injury of a civilian in police custody or who is being pursued by police, we believe that there should always be an independent civilian investigation.

The extent of the Commissioner's investigative authority will depend on the results of the Wood audit. If current investigations are rife with problems, the OPCC should assume a lead role in investigations. If the problems are few, the Commissioner should still retain the discretion to investigate but only when it is in the public interest due to the seriousness of the case or the need for a civilian investigation to maintain public confidence.

**T**he BCCLA makes this recommendation for several reasons. First, public confidence in the process will be significantly enhanced both in the general population and with prospective complainants. We are very concerned now that many legitimate complaints are not being filed because prospective complainants simply do not believe that there will be a fair investigation. The problem of bias, whether real or perceived, is a serious impediment to the effectiveness of the current system.

Second, the BCCLA believes that if the Police Complaint Commissioner has the power to con-



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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. It's mandate is to preserve, defend, maintain, and extend civil liberties and human rights in British Columbia across Canada through public education, complainant assistance, law reform and litigations.

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duct his own investigations, police internal investigations are much more likely to be done professionally and fairly. Knowing that the OPCC has the authority and capacity to conduct its own independent investigations should, we expect, further the resolve of the police to conduct very thorough complaint investigations.

**T**hird, the current legislation doesn't provide enough options for the Commissioner to ensure an investigation is fair and professional. External police agencies may not want to do investigations of other agencies or the OPCC may not have confidence that they will be done adequately. Since so few public hearings occur (12 since 1998) because they are expensive and reserved only for the most serious cases, the Commissioner does not have enough options to maintain confidence in the system.

Fourth and finally, the professionalism of internal police investigations is still too dependent on the personalities that lead internal investigation sections and their staff. Though some police agencies may be better at doing good investigations than others, all it takes is for new leadership in internal affairs at a police agency to return to resistance to police accountability.

### • **Authority to Make Decisions Regarding Conduct and Discipline**

The BCCLA recommends that the Commissioner have the authority to substitute a Chief of Police's decision regarding a complaint in specific cases. Currently, the Police Complaint Commissioner can only order new investigations or external police investigations if he is



Police Complaint  
Commissioner  
Dirk Ryneveld, Q.C.

dissatisfied with a particular investigation. Or he can order an expensive and time consuming public hearing. Yet, there may be cases in which the Commissioner believes the evidence justifies a finding of misconduct or greater discipline yet doesn't warrant a full public hearing.

### • **Outreach and Assistance to Complainants**

The BCCLA recommends that legislation be amended to ensure that the Office of the Police Complaint Commissioner has the legal obligation to conduct education and outreach to inform the public about this mandate and authority. Everyone in the complaint system must have a duty to assist complainants to bring complaints forward. The BCCLA's experience is that there are many barriers to accessing the system including a lack of confidence in the system, a lack of education, literacy, or language skills, or cultural or status barriers. There are likely many legitimate complaints that are not lodged because of these barriers. There must be a legal mandate to conduct outreach and assistance. Furthermore, it must be adequately funded.

### • **Jurisdictional Problems**

The BCCLA recommends that the RCMP should come under the authority of the OPCC. In addition, any state regulated agent who is performing policing functions should be subject to the complaint authority of the Commissioner. Currently neither of these groups fall under the Commissioner's powers. Yet millions of B.C. residents are subject to policing by the RCMP which has a different and less effective complaint system. Meanwhile special provincial constables who might be performing strip searches in jails and other duties aren't covered by the complaint system. Neither are many other state agents who arrest and detain people, conduct searches and seizures and use force in the lawful execution of their duties. This must change.

**W**hile there are many more details up for discussion regarding complaint reform, these are the priorities for the BCCLA. We believe they are major issues that require reform to improve police accountability via a complaints system.

**i** To read a copy of the BCCLA's Letter to Dirk Ryneveld, Q.C. B.C. Police Complaint Commissioner, visit: [www.bccla.org/othercontent/06ryneveld%20letter.pdf](http://www.bccla.org/othercontent/06ryneveld%20letter.pdf). The BCCLA provides assistance to police complainants by explaining the system, attending interviews and giving feedback on draft letters of complaint. Please call the BCCLA office for more details.

To view a copy of the BCCLA's complaint brochure, visit: <http://www.bccla.org/othercontent/police%20complaint%2006.pdf>

# Larry Cohen

brings a wealth of experience to the BCCLA

Executive Committee and is currently Chair of the Association's Police Committee.

A long-standing member since the 1960's, he joined the BCCLA while attending UBC law school. Civil liberties issues just seemed like a "no brainer" in accordance with the rule of law. In Larry's view, lawyers should be concerned with protecting the rights of all individuals, not just those of paying clients. Throughout his various hobbies and careers, educating and defending people's rights and freedoms has always been an important part of his life. The Association is a tremendous beneficiary of the life-long commitment Larry has shown to civil liberties and his passion for rational debate.

With a background in criminal law, Larry has spent much of his time as a lawyer representing a wide array of cases. He has also done administrative work for the Legal Services Society of B.C. (legal aid) where he was appointed to the Board of Directors. Additionally, he has taught at UBC in the legal clinic program for new law students. Presently, Larry is enjoying the retired life. When not in the city, Larry can be found fishing, creating artwork or eating ice cream, all of which he enjoys on a secluded island.

Aside from his legal background, Larry has a Masters of Fine Arts. He especially enjoys sculpture. Larry

believes people in the artistic community, notably literary and visual artists should be more interested in organizations like the BCCLA because we promote and protect the fundamental value upon which art relies – freedom of expression. Public education is one of the ways in which this message can be transmitted and is one of the mandates of the BCCLA.

LARRY COHEN



As Chair of the BCCLA Police Committee, Larry Cohen oversees all aspects pertaining to police and civil liberties. Currently there is a large focus on police accountability in Canada, and the police complaints system. The future of policing raises concerns about partnerships between the police and other agencies and the monitoring of citizens' lives as technology accelerates the ease of information collection. Larry Cohen will continue to make sure the BCCLA evolves and adapts to monitor and respond to such changes.

## The BCCLA Annual General Meeting

On Wednesday, March 29th the BCCLA held its 44th Annual General Meeting at the Vancouver Public Library. It was great to see long-time members joined by new members for a drink and a bite, as well as some rousing conversation.

The featured guest speaker was Stephen Ward, Associate Professor of Journalism Ethics from the UBC School of Journalism who discussed the Mohammad cartoon controversy.

The Reg Robson Civil Liberties award was presented to Ken Frail and Dave Dickson of the Vancouver Police Department.



BCCLA past president John Dixon (left) and board member Laura Huey present the Reg Robson Civil Liberties award to Ken Frail (middle) and Dave Dickson (right) of the Vancouver Police Department for their work in the Downtown Eastside community.

**A**n abiding passion for justice and human rights is the thread that runs through the multi-coloured fabric of Shirley Heafey's career.

The indomitable and outspoken Ottawa lawyer, who last October completed an arduous and occasionally controversial eight-year term as chair and CEO of the RCMP Complaints Commission, accepted the invitation of the B.C. Civil Liberties Association (BCCLA) to join its board of directors in March.

She will be a resource for a special committee of the association charged with keeping tabs on policing issues, a role in which the RCMP's former watchdog is uniquely versed.

The BCCLA "is an organization that I have revered since I was at the commission," Heafey explained. "They are so responsible. They never go overboard in their positions they take. They are always very reasonable, and they are really oriented to human rights and trying to help people in all areas. It's a very, very good organization..."

Heafey said vigilance over police and defending civil liberties is more important than ever since 9/11 "There is so much potential for abuse, and I've seen [abuses] when I was back at the Security Intelligence Review Committee [which oversees CSIS], and I saw it with the RCMP, and it really bothers me."

"I have children and grandchildren ... and I am concerned about the kind of world that we are going to be creating with all the fear that there is over terrorism, and civil liberties that are going to be denied and, perhaps, lost. And once you lose these freedoms you don't get them back generally."

Heafey, 60, is looking for new challenges to sink her teeth into after a six-month hiatus to recharge after completing her all-consuming task leading the RCMP Complaints Commission. There she reviewed a large variety of complaints, including allegations of illegal search warrants, botched criminal investigations, illegal



## Shirley Heafey joins B.C.'s Civil Liberties board

By Cristin Schmitz

"There is so much potential for abuse, and I've seen [abuses] when I was back at the Security Intelligence Review Committee [which oversees CSIS], and I saw it with the RCMP, and it really bothers me."

arrests and detentions, invasions of privacy and inappropriate strip searches, and abuse of power by peace officers. Her role required her to deal with complex, cutting-edge criminal law and Charter issues, many of which had generated conflicting appellate case law and were not yet addressed by the Supreme Court. For example, she had to provide guidance to the RCMP on the emerging concept of "investigative detention" and its limits.

Among her achievements was a successful "public interest" investigation she launched into 180 complaints made to the Commission in 1997 after the RCMP swooped down with helicopters, tactical units and police dogs on parents who were protesting the closure of their French-language schools in the two small villages of Saint-Simon and Saint-Sauveur in New Brunswick. The protesters marched down the highway, obstructing traffic and lit small protest fires. In the aftermath, commission staff interviewed 300 RCMP officers and complainants, generating 11,000 pages of transcript.

"The vast majority of my recommendations were accepted and a formal apology was delivered to these communities by the RCMP," Heafey recalls with

satisfaction. "The whole approach to the policing of such events was changed by the RCMP."

At age 43, Heafey began to work her way through law school at the University of Ottawa after deciding, when she was a single parent of 10 and 12-year-old daughters, to give up a good job as head of appeals and principal investigator with SIRC. She clerked with the Ottawa city solicitor's office and then practiced for five years, mostly doing advocacy on human rights, civil liberties, employment, labour, quasi-criminal and municipal advocacy.

*This profile first appeared in The Lawyers Weekly published by LexisNexis Canada Inc. Reprinted with permission.*

## New BCCLA Policing Committee: police in-custody deaths a priority

The Association has formed a new committee that will focus solely on policing issues. Chaired by BCCLA board member Larry Cohen, other members include BCCLA president Jason Gratl, board members Dominique Clement and John McIntyre, articulated student Chris Hardcastle, BCCLA Executive Director Murray Mollard and new board member Shirley Heafey. Ms. Heafey is the past chair of the Commission for Public Complaints Against the RCMP.

The Committee is focussing on civilian deaths while in the custody of or being pursued by police. The death of Ian Bush in Houston, B.C., who was shot in the back of the head while in RCMP custody for alleged obstruction of justice, is perhaps the most prominent of recent deaths receiving considerable media attention. However, there have been by some counts up to 22 civilian in-police custody deaths in the last four years in B.C.

The BCCLA's position is that all in-custody/in-pursuit deaths or serious injury involving civilian interaction with the police should be automatically reviewed by a civilian authority. Given that any in-custody death will almost always involve forensics expertise in a criminal investigation, the BCCLA is proposing that the civilian professional standards investigator participate only as an observer of the criminal investigation, that the civilian review agency receive the complete criminal investigation file and that the professional standards investigators have immediate access to interview police respondents. Use and derivative

use immunity must be included in legislation to ensure protection for police respondents against self-incrimination.

Regrettably, the BCCLA's position is far from reality. There may never be any civilian review of an in-custody death, let alone an automatic one. In order to ensure that there is civilian review, the BCCLA has made complaints in the four most recent RCMP deaths in British Columbia. Unfortunately, the Commission for Public Complaints Against the RCMP has ruled that the RCMP does not need to investigate our complaints until all other

review procedures are complete including the criminal investigation and coroner's inquest, neither of which assess whether the police officer breached any professional standards. This decision, coming from the agency that is supposed to be the guardian of the public interest in ensuring RCMP accountability, represents a serious abdication of responsibility.

The BCCLA will continue to press for reform though we expect this to be a considerable challenge given the police's intransigence at accountability and transparency.

### BCCLA in Court of Appeal Over Complainant Participation in Public Hearings

The BCCLA was in the BC Court of Appeal in the spring to argue that complainants in public hearings under the *Police Act* should, as a matter of natural justice, be entitled to participate in the evidentiary portion of a public hearing. Public hearings are administrative hearings to assess the conduct of a police officer as a result of a complaint. They often involve the most serious of complaints. In the Berg case, the complainant Julie Berg, sister of Jeffrey Berg who died in an altercation with police, wished to participate in evidentiary portion of the hearing through her legal counsel. She was not permitted to do so by the adjudicator and she appealed. The BCCLA also argued that the standard of review to assess conduct should be on the balance of probabilities and not a higher standard.

The Court of Appeal rejected our arguments and found that the proper interpretation of the statute meant that complainants have very limited rights in public hearings. Importantly however, the Court did find that an adjudicator possesses a residual discretion to permit greater participation if necessary to assist the adjudicator to fulfill his or her statutory mandate. The Court declined to deal with the arguments regarding standard of review. The BCCLA was represented by BCCLA past president Craig Jones.

**i** To view the argument of the BCCLA, visit: <http://www.bccla.org/othercontent/06berg.pdf>. To view the Court of Appeal's decision, visit: <http://www.courts.gov.bc.ca/jdb-txt/ca/06/02/2006bccca0225err2.htm>

## LAUNCH OF NEW PRIVACY AND ACCESS COMMITTEE

The BCCLA is developing a committee structure for some of our major substantive areas of work. The committee structure allows us to more directly benefit from the expertise of our board members and volunteers and pro-actively develop capacity in discrete fields.

Our newly launched Privacy and Access Committee is chaired by **Richard Rosenberg**, Professor Emeritus, Department of Computer Science, University of British Columbia. Richard's research into how technology affects society focuses particularly on privacy, free speech, intellectual property and universal access.

The committee also benefits from the experience and expertise of the following members:

BCCLA vice-president **Ann Curry**, Associate Professor in the School of Library, Archival and Information Studies at the University of British Columbia whose research focuses on access to information issues; **Darrell Evans**, long-standing Executive Director of the Freedom of Information and Privacy Association; **Paul Holden**, software engineer and board member of the Freedom of Information and Privacy Association; BCCLA board member **Laura Huey**, sociologist newly appointed Assistant Professor

at Concordia University, who has published extensively in the areas of policing, surveillance and cybercrime; **Vance Lockton**, Master's student with an extensive research background in privacy issues including surveillance technologies; **Jim Sayre**, staff lawyer with the Community Legal Assistance Society and President of the Vancouver Community Network, an organization promoting public space on the internet and on-line privacy; and, BCCLA Policy Director, **Micheal Vonn**, whose work in the privacy field includes medical privacy and confidentiality issues and the privacy implication for Canadians of the U.S.A. *Patriot Act*.

## PLANS FOR VIDEO SURVEILLANCE IN PUBLIC PLACES RESURRECTED

It's déjà vu all over again as Vancouver's Chief of Police, Jamie Graham, pitches a plan to introduce extensive video surveillance in public places. The Vancouver Police Department has put forward previous proposals for video surveillance in public places, but had abandoned them due to research from Britain's Home Office that found there is little evidence to support the argument that the UK's extensive network of surveillance cameras actually prevents crime, except in very limited circumstances.

The BCCLA's position on video surveillance in public places is that citizens continue to enjoy privacy rights even in public space and

that video surveillance has not yet been proven to actually prevent or reduce overall crime. That said, we recognized that there may be



specific situations in which cameras can be justified. We lauded the VPD's decision to abandon its previous proposal in light of the research that showed it was not a justifiable program.

VPD Chief Graham has justified the current proposals based on the need for enhanced security during the 2010 Olympics. Yet, he has also alluded to cameras going up everywhere from the Granville Mall entertainment district to the Downtown Eastside for purposes that would appear to have nothing to do with the Olympics or terrorist threats. While Chief Graham has prom-



ised “public consultation” on this contentious issue, he has nevertheless been given the green light by the Vancouver Police Board to submit a business plan for the proposal. Given that a business plan is already committed to, there are naturally concerns that public consultation is unlikely to be very meaningful.

**T**he BCCLA has written to the Vancouver Police Board asking for assurances that the promised consultation will be genuine. We have asked that the consultations occur in the context of a concrete proposal that outlines where cameras would be placed, for what purpose, at what cost, and what research supports the use of cameras in the circumstances proposed. We have also asked that we be able to present the police board with a written response to the concrete proposal.

**i** To view the BCCLA’s position on video surveillance in public space, visit <http://www.bccla.org/positions/privacy/99videosurveillance.html>

We encourage readers to write the Vancouver Police Board or send them an e-mail objecting to the current process and video surveillance. They can be contacted at:

312 Main Street  
Vancouver BC V6A 2T2  
e-mail: [office@vancouverpoliceboard.ca](mailto:office@vancouverpoliceboard.ca)

## **SECRECY BILLS DEFERRED, PRIVACY PROTECTIONS UNDERMINED**

The Association opposed two recent provincial government bills

that undermine access to information and public transparency and accountability in public inquiries. Both bills have been deferred but we expect to see them in some form in future legislative sessions.

We spoke out against the proposal to roll back access to information laws by creating massive exemptions for government contracts. Tucked away quietly in a miscellaneous amendments bill (now, there’s transparency for you) the province pitched an amend-

**The Association had to move very quickly to intercept a proposal to radically alter the rules for public inquiries, in essence, making them not only less public, but less inquiring.**

ment to shield a broad range of government partnerships and business dealings with the private sector from freedom of information requests. Such a proposal would be disastrous for open and accountable government, especially in the current political environment of increasing public sector outsourcing. We also noted the dark irony of such a bill being introduced when the country is still reeling from the federal sponsorship scandal.

The government also proposed amendment to the Public Inquiry Act. The Association had to move very quickly to intercept a proposal to radically alter the rules for public inquiries, in essence, making them not only less public, but less inquiring. Among other items, the proposed amendments would have limited the range of investigative powers of some inquiries and given Cabinet the ability to decide whether or not to even release the report of a “public” inquiry. In our view, the amendments would have thwarted independent oversight and government accountability and we were pleased that the amendments did not proceed. Again, we may see the proposal revived in the fall.

If there were some “wins” in these deferrals, there were also losses. Some important privacy protections were rolled back this spring when the legislature approved amendments to public sector privacy legislation that will now allow the personal information of British Columbians held by the government to be taken outside of Canada for temporary access or storage.

**T**hese amendments undermine the privacy protections that were designed to guard against unauthorized access to our personal information by U.S. authorities under the U.S.A. *Patriot Act*. These important privacy protections were introduced with much fanfare in 2004. We note, there was no fanfare and no real transparency in the government’s rescinding the protections it congratulated itself on so recently.

## BCCLA Completes Major Study of Private Sector Privacy Law Enforcement

The BCCLA has recently completed a major study evaluating the enforcement of the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA). PIPEDA creates legal obligations to protect the personal information of individuals collected, used or disclosed by federally regulated private sector. The B.C. Personal Information Protection Act is a similar law that protects personal information in B.C.

With funding from the Office of the Privacy Commissioner of Canada, the Association reviewed the legislation's enforcement

provisions, both in the statute and in their actual application, and compared and contrasted the PIPEDA regime to other jurisdictions both within and outside of Canada. The report identifies two areas for reform: the first assumes no legislative amendments; the second set of recommendations to improve enforcement would require PIPEDA to be amended. The most compelling recommendation is for the Privacy Commissioner of Canada to have the authority to issue binding orders, a power she does not currently have given the law's Ombudsman model. The

report will serve as an important source of research as the BCCLA prepares its submission for the Parliamentary review of PIPEDA scheduled for 2006.

The principal researcher and author of the report is past BCCLA Policy Director Kirk Tousaw with BCCLA Executive Director Murray Mollard acting as project supervisor.

**i** View the BCCLA report at: [www.bccla.org/othercontent/FINAL%20REPORT.APRIL06.pdf](http://www.bccla.org/othercontent/FINAL%20REPORT.APRIL06.pdf)  
View PIPEDA at: <http://laws.justice.gc.ca/en/p-8.6/text.html>

### Freedom in Action: Youth & Civil Liberties Seminar

The second annual Freedom in Action event was held on April 20 at Simon Fraser University's Burnaby Campus. High school students were introduced to civil liberties issues through sessions on criminal law and civil liberties in the schools. Students also participated in workshops such as: Homelessness and Youth, Student Activism 101, What Should Democracy Look Like? and Aboriginal Justice.



Students are shown at the second annual Freedom in Action event held at the Simon Fraser University Campus listening to opening remarks and participating in one of several workshops.



Thanks to the Vancouver Foundation and the Law Foundation of BC for providing funding for the event.

## Charkaoui, Harkat and Almrei: the Security Certificate Cases

The Association has appeared before the Supreme Court of Canada in June in three cases challenging the security certificate provisions of the *Immigration and Refugee Protection Act*. Security certificates allow for the deportation of non-citizens who are believed to be threats to the security of Canada.

The Association has advocated for reforms to these provisions which currently lack basic due process protections, and allow deportations to the risk of torture.

The Association argued that there are constitutional limits to the power of the government and the judiciary to rely on secret evidence to the prejudice of non-citizens' right to life, liberty and security.

While it is beyond dispute that Canada can deport non-citizens believed to be security threats, our argument is focused on the interpretation of the statute. The deportation process must be compatible with the values and principles that define our constitutional democracy. These principles must in-

clude the presumption of evidence disclosure and the opportunity to be heard, which could be achieved even in matters of national security by a system of security-cleared lawyers acting on behalf of detainees.

Board member, Greg DelBigio and BCCLA President, Jason Gratl represented the Association.

**i** To view our legal argument, visit: [www.bccla.org/othercontent/06security.pdf](http://www.bccla.org/othercontent/06security.pdf)

## Hayes v. Vancouver Police Department and Barker

The Association has successfully intervened in a judicial review of a BC Human Rights Tribunal decision. Mr. Hayes has alleged that he was discriminated against by the Vancouver Police Department on the basis of a minority sexual practice (BDSM – bondage, domination, sadomasochism) when the police refused to grant Mr. Hayes a chauffeur's permit.

While the BC Human Rights Code expressly bans discrimination on the basis of "sexual orientation", the term is commonly understood to refer to gender preferences. Mr. Hayes's claim that it should include other aspects of sexuality, successful or not, will be precedent setting.

The judicial review focused on the Tribunal's decision to accept the complaint for filing. The VPD argued that it should be dismissed on a narrow interpretation of "sexual orientation". The Association's counsel, Rebecca Smyth and articling student, Grace Pastine, of Bull Housser Tupper argued that the Tribunal was correct in determining that it should hear full

evidence and submissions on the question to assist in exploring the interpretation of "sexual orientation" and that the Tribunal proceeded properly in requiring evidence on the question, given that human rights legislation requires a fair, large and liberal interpretative approach.

In a recent oral decision, the Court agreed with Hayes and the BCCLA that Tribunal had not erred in deciding the complaint should be filed and determined.

**i** The argument of the BCCLA can be viewed at: [www.bccla.org/othercontent/06Hayesfactum.pdf](http://www.bccla.org/othercontent/06Hayesfactum.pdf)

## Correns Force Provincial Government to Include Sexual Orientation in the Curriculum

Past Reg Robson Civil Liberties Award winners Murray and Peter Corren have recently agreed to settle their human rights complaint against the provincial government.

The Correns



They had complained that the province had discriminated against gays and lesbians by not including education regarding sexual orientation issues in the provincial education curriculum. In contrast, the curriculum includes information about a variety of other minority groups as a way of teaching tolerance. In agreeing not to pursue their complaint, the government has agreed to review the entire curriculum to ensure that classroom discussions around diversity include sexual orientation, gender identity as well as race, ethnicity and gender equality.

The BCCLA was an intervenor in the Human Rights Tribunal complaint in support of the Correns. The BCCLA was represented by Tony Saunders of Guild Yule.



## The Federal Government makes it easier to donate to the BCCLA!

Tuesday, May 9th, 2006  
*The Federal Government announces the elimination of capital gains tax on gifts of securities (stocks or bonds). The change is effective immediately.*

This announcement came much to the delight of charities and donors across the country and is expected to have a huge impact on the non-profit sector.

As a result it is now easier than ever to donate to the BCCLA; making a gift of securities has an even greater return for you the donor while still providing the BCCLA with the important funding for our current and future programs.

If you are considering a gift to the BCCLA and have shares that you may wish to donate, we recommend obtaining legal advice before making the donation. The BCCLA would be happy to arrange for a free legal consultation. Please feel free to contact Sarah Frew, Director of Development at 604.687.2919.

## How You Can Give...

With the Federal Government's recent announcement of the elimination of capital gains tax on gifts of securities we thought it timely to mention the many ways you can give to the Association. Making a planned gift has fast become a preferred method of supporting charities because it is a chance to both provide support to the organization as well as benefit your own estate.

When choosing to give please consider contributing to the BCCLA Endowment Fund, which maintains the capital in perpetuity, paying only the interest to the BCCLA or to our current work.

There are many ways you can give to the Association's Endowment Fund or to our current work. One option is to make a gift of cash or property such as real estate. Another valuable way to support us is to remember the BCCLA in your will.

With the elimination of capital gains tax on gifts of securities, donating stocks or bonds is now more ap-

pealing than ever.

Do you currently hold a life insurance policy or are you planning on taking one out? Did you know 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?

Membership is a huge part of why we continue to work so effectively with government, law enforcement, media and other groups.

Have you considered monthly giving? You only have to sign up once, but it is the gift that helps the Association all year long. It's a hassle free way to support the BCCLA.

The after tax effects for a planned gift can vary depending on the form of the gift. We recommend you confer with your own financial planner or lawyer once you have decided to give to the Association.

Please don't forget about membership! When you become a member you ensure the financial growth and influence of the Association. For more information on ways to give, please call Sarah Frew at 604.687.2919 or e-mail sarah@bccla.org.

## Thank You for Making a Difference!

We don't say it enough so we wanted to take this opportunity to say "Thank You"! Your continued and generous support means a great deal to us and to the people who are affected by the work we do. Over the years, your gifts have enabled us to work tirelessly on important issues such as due process, access to information and privacy, freedom of expression, police accountability and discrimination. We wanted to let you know your contributions are making a difference in the lives of British Columbians and Canadians.

## UNITED WAY DONATIONS



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

The B.C. Civil Liberties Association wishes to thank the Law Foundation of B.C. and our other funders for their financial support.



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