

the democratic *Commitment*

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

DEATHS



In-Custody

Deaths of civilians in the custody of or being pursued by police is a growing topic of concern for the B.C. Civil Liberties Association. Though Ian Bush's death attracted front page headlines throughout Canada earlier this year, his death is not unique. In 2004, there were 27 police related civilian deaths, 20 in 2005, 21 in 2006 and 11 civilian deaths in 2007. These statistics include deaths involving both municipal police and the RCMP in B.C. In 2005, to ensure a measure of civilian oversight into police related deaths, the BCCLA began to make complaints in as many police related civilian deaths as our resources permit.

The BCCLA believes that the system for investigation and review of these deaths is in urgent need of reform. No longer should police be allowed to investigate these deaths. A civilian agency, independent of the police, must undertake impartial criminal and professional conduct investigations of these incidents. Only then will it be possible to maintain public confidence in the police.

To promote public awareness and discussion of this topic, the BCCLA organized a public forum on Monday September 24, 2007 in Vancouver. At the forum, Linda Bush (mother of Ian

Bush), Dolores Young (mother of Kevin St. Arnaud) and Sylvia Fee (sister of Gerald Chenery) spoke of their experiences. At a second panel, the lawyers for these families – Howard Rubin, Q.C., Cameron Ward and Dave Eby – as well as the past Chair of the Commission for Public Complaints against the RCMP, Shirley Heafey and current Ombudsman of Ontario André Marin explained how the current system of police investigating police does not enhance public confidence in the police.

If you agree that the system for police accountability in these deaths is in need of change, please contact Minister for Public Safety and Solicitor General John Les and federal Minister for Public Safety Stockwell Day at:

- john.les.mla@leg.bc.ca
- day.s@parl.gc.ca

and let them know that we need an independent civilian agency to conduct investigations of the police.

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Linda Bush's speech at the Death In-Custody Public Forum: Current Experience, Future Reform September 24, 2007

Replacing Paul Kennedy

When I say replacing Paul Kennedy, I don't mean the great and irreplaceable Paul Kennedy with Ideas. I mean replacing the interim and obviously replaceable Paul Kennedy without ideas.

To be fair, the office of the Commissioner for Complaints against the RCMP is a formidable position. Not only are the 16,000 members of the RCMP accountable to the office, but there are an impressive array of political challenges to meet. The RCMP is not without its lobbyists and not without a communications strategy.

But nor is the RCMP without its scandals. Pensions, Arar, O'Neill, political meddling with the income trust investigation, Zaccardelli's lies before the Committee, Ian Bush and now the Polish taser death cover-up at YVR.

When he was appointed in October 2005 as interim Commissioner for Complaints against the RCMP, we BCCLA types gave Mr. Kennedy, QC, the benefit of the doubt. Despite his long years working inside Ottawa on behalf of the RCMP and CSIS, and despite his Committee testimony supporting the expansion of RCMP power, we thought that perhaps he would show the fortitude necessary to occupy the position.

No doubt we were worried that he was appointed just in time to dilute his office's submissions to the Arar commission about the need for oversight with respect to the RCMP's national security powers. And no doubt we were unimpressed by his choice of deputy Commissioner. But we thought that he should have a chance to prove himself. I confess, we were wrong.

Mr. Kennedy has proven to be a disappointment on all fronts. He has failed to provide criti-



cism or direction for each and every one of the major RCMP scandals. He has shown himself to be without imagination or fortitude on every issue with which he has been tasked.

A solid Complaints Commissioner could grab these scandals by the horns: chastise officers that deserve criticism, introduce new policies, and

push RCMP management in the direction of integrity.

Instead, we have nothing but silence on the most burning civilian oversight issues this country has seen since the McKenzie Commission.

Of course, Paul Kennedy has vocalized his

concern that his office be given more power. But that is no substitute for wielding the existing mandate of that office.

I am sad to report that the BCCLA have been forced to take Mr. Kennedy to the Federal Court to get him to do his job in responding to our complaint dealing with the

death of Ian Bush and our complaint about how Mr. Zaccardelli released the fact of a criminal investigation into Income Trust leaks mid-election.

Patry motions by the Commissioner to evade our case were dismissed by the Federal Court. It seems ridiculous that a democracy oriented organization such as the BCCLA should need to sue an RCMP Complaints Commissioner for recognition of a statutorily mandated complaint.

What kind of Public Complaints Commissioner is prepared to spend public funds to resist a public complaint?

But so it goes. And even with a lawsuit broiling away, our RCMP Complaints Commis-

Mr. Kennedy has proven to be a disappointment on all fronts. He has failed to provide criticism or direction for each and every one of the major RCMP scandals.

sioner does nothing about the underlying problems with the RCMP. Apparently nothing can spur Mr. Kennedy into action.

Of course, it should be no big political thing to replace Mr. Kennedy – he is only on an interim appointment that expires in short order. Surely more capable suitors are in the wings; imagine what someone like Sheila Fraser could do in that office.

At the end of his interim appointment, I am unable to fathom why Mr. Kennedy was unable to

muster even a ounce of will to deal with the intense and unremitting scandals facing the RCMP. It seems entirely out of keeping with the office he occupies.

So all things considered, I say with reluctance, that the interim Commissioner has done nothing meaningfully with his time in office. He should be replaced by a more capable and willing successor.

A watchdog should have a little less taste for the leash.

Linda Bush Shares Her Experience

i The following has been edited for The Democratic Commitment. For the full version, please visit the BCCLA website at: www.bccla.org/policeissue/bushspeech.htm

I would like to thank the B.C. Civil Liberties Association for inviting me to speak at this forum and to all those who have come to participate. I have been asked to share our family's experiences in dealing with RCMP and the inquest process following the death of my son Ian on October 29, 2005.

Ian was shot in the back of the head and killed by a rookie officer in the Houston RCMP detachment. Our lives were shattered beyond anything we could have imagined. From the beginning we have vigorously questioned the RCMP version of Ian's death.

Many times it seemed too difficult to continue, but one of us was always strong enough to hold the others up. We began to get letters and encouraging calls urging us to carry on in our struggle for the truth. Some of the people who called also had family members

We began to get letters and encouraging calls urging us to carry on in our struggle for the truth. Some of the people who called also had family members killed by police.

killed by police. Rebecca, who was Kevin St Arnaud's spouse; Julie Berg, whose brother was killed by police; Sally, Danny Posse's mother; Robert Bagnelle's family. I'm sure you all know he was tasered to death by police. Connie Varley called from Alberta. Her brother-in-law was killed in a cell. The officer was eventually charged



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Deaths In-Custody

and convicted of manslaughter, although he did very little jail time. And Joan Davis called. Her son Tommy was missing and presumed drowned at Duncan Lake near Kaslo, B.C. in 2002, but actually died of hypothermia alone in the forest. His family believes he may have been rescued if the police would have ordered a search.

Young people, even children, die every day, from accidents, horrifying disease, suicide, being hit by a drunk driver, even murdered. I have noticed, especially since Ian's death, that there are just not enough words to say about the people we love who are no longer here, for whatever reason, and the things that are true have sadly been said so often that they begin to sound clichéd. You couldn't meet a nicer young man. What else can you say about a person who genuinely liked people and was a good friend to so many, was always thoughtful of others, treated people as he liked to be treated, would help in any way he could, made people laugh. He would have been a wonderful husband and father.

What else can you say about a young man who liked and respected women, who was patient and gentle with little children, was generous with whatever resources he had, called the people who were special to him when he had something wonderful to share, (like the northern lights at two in the morning), never got too cool to

say I love you even in public, and never forgot to put the seat down, It's a shame, such a great loss. What else can you say about a young man who was just starting to find his way in the world, who was intelligent, artistic and creative, could fix almost anything, build things, was a peace-maker and could find solutions to prob-



Syliva Fee, sister of Gerald Chenery, Murray Mollard, Linda Bush, mother of Ian Bush and Dolores Young, mother of Kevin St. Arnaud.

lems and who had so much to offer the world?

Ian's Aunt Kate and sister Andrea got the dreaded call in the middle of the night. Your brother is dead, Andrea was told, but not how or why, even when her husband Kelvin repeatedly asked. Renee and I were informed in Prince George several hours later, not by RCMP, but by Ian's stepmom, who still didn't know how or why.

In the afternoon a team of RCMP came to Andrea's home to talk to us. They told us what would become the official story—that Ian

had been arrested for obstruction of justice when he gave a false name to a police officer, that he was being released when he suddenly attacked the officer, and that he had been shot. Already numb with grief, we could hardly believe we were hearing them say this. All the family was gathered there in the living room, and not one of us believed that version for a moment. Immediately the officers were questioned about how they could possibly know this was true when we had just been told that Ian and Constable Koester were alone in the detachment and that video equipment had not been turned on.

A press release had already gone out, we were told, before the RCMP had been able to meet with us. The family protested the wording, but it was too late for it to be amended—it had already been picked up by one of the TV stations. That press release officially gave the media Paul Koester's story, sounding to anyone who did not know Ian as though it were true. Shortly after this we had to endure hearing on television that Ian was "known to police" and that he had become "very violent". Again, people who did not know Ian would have immediately come to the conclusion that he was a criminal who no doubt caused his own death.

Since that day, we have come to realize that "known to police" and "violently attacked the offi-



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cer” are in the script which is the media release after an in-custody death. There is only one available excuse for an officer to kill a citizen, without it being murder or manslaughter, the same as for anyone else. The officer must be able to claim to have been afraid for his or her life or of grievous bodily harm. These claims are made immediately and in Paul Koester’s case he had 3 ½ months with his lawyer before he had to make any kind of statement to support this claim.

“Who would investigate?” we wanted to know. A team of seasoned officers from several communities in the North—North District Major Crimes—was the answer.

The immediate response was that the press release has already gone out blaming Ian, so how fair was the investigation going to be? These were experienced officers, we heard, who would investigate this case just as vigorously if not more so than any other. Still the family had serious doubts. It was police investigating a police officer, and it seemed pretty obvious to us that conclusions had already been drawn.

We were told another force, perhaps New Westminster Police, would review the investigation to be sure that it had been fair and thorough. It turned out, as we all know, that the RCMP was reviewing an investigation into a death for the New Westminster Police.

Had we been aware of this we could possibly asked to have a different force do the review, but we did not, and had little expectation from the start that it would make any difference. Whatever force



Death In-Custody Forum Panel: Shirley Heafey, Murray Mollard, Dave Eby, Cameron Ward, André Marin and Howard Rubin

did a review, would be doing just that—reviewing what the RCMP investigators gave them without the benefit of being at the scene and being involved in gathering the evidence. We learned at the inquest that New Westminster did ask that Paul Koester do a re-enactment, but he declined.

After the RCMP investigation was completed it would be forwarded to Crown Counsel, who would, after reviewing the case, decide if there was enough evidence to lay charges. Again, the Crown relies on the evidence presented by the investigating police force. No doubt this works well most of the time, but there is serious doubt about how well the Crown can rely on evidence presented when the investigators

and the person who is involved in the death are both police officers, in this case, on the same force.

It was 5 1/2 long months before the investigation was finished. At the meeting with the family at the mandatory Coroner’s inquest we were told that all our questions would be answered. Not having any experience with anything remotely like this we at first thought maybe we would get some answers. What we got was many, many more unanswered questions.

How and why did things like this happen?

- Paul Koester’s training officer had only 2 ½ years experience in the RCMP, all of them in Houston.
- Paramedics were kept waiting outside the detachment after their arrival for a total of 35 minutes before only one of them was allowed to enter the building.
- Paul Koester was immediately treated as a victim by the officers on the scene and no statement was taken from him. With his wife and his lawyers help he prepared a written statement on November 17. He was not interviewed by the investigators until February 8, and then was asked questions which had been approved by his lawyer.



Deaths In-Custody

- Ian's body was left at room temperature for about 36 hours including travel time. This definitely altered blood alcohol levels, and it leaves questions regarding the quality of the examination for bruising on his face.
- No one, even Paul Koester, can explain how it would have been possible for him to reach behind and above himself to first hit Ian three times with his gun before deciding to shoot him.

The Coroner's Service did not actually investigate, other than to hold an inquest. Again, going over the material provided by the investigating police. As well as using the material presented by the RCMP, the Coroner's Service, being fact-finding, did not allow criticism or questioning of the quality of the investigation it was relying upon. Our family feels strongly that one of the facts was that the investigation was inadequate and mishandled.

At the end of the inquest the jury is asked to make recommendations which will prevent death in similar circumstances. The recommendations are not binding. They may be implemented by the agency to which they are directed, or they may be ignored. The jury is cautioned that they are not to find fault, even though fault may be why the death occurred. I think

that being called to such a jury would be a very frustrating experience, and I am now interested in seeing changes made to the *B.C. Coroner's Act* to make the process much more effective.



Death In-Custody Forum attendees

At the inquest there is a lawyer for the Coroner, who presents the case. At Ian's inquest the RCMP case was presented in such a way by this lawyer that even some of the media people seemed to leave the hall with the impression that facts had been presented. Witnesses were then questioned by the other lawyers present, if there were any questions. There is a lawyer for the RCMP, and a lawyer for the officer involved. In Houston there was also a lawyer for the Attorney General's office. All of them were paid to be there by the Province of B.C.

The family may, or may not, have a lawyer present. The family may or may not have funds to pay for a lawyer to be present. We were very fortunate, if you

can say anything was fortunate in this, that we were given the means to have Mr. Rubin at the inquest. We had some insurance money and our friends, relatives and community quickly began to contribute to a fund which has allowed us to pursue the truth about how Ian died. After he had studied the case long enough to be outraged, Mr. Rubin told us that he would be charging expenses only.

An investigator was paid to come to Houston from the fund being used for the pursuit of justice for Ian. As well, after studying the evidence provided to him by the RCMP, Mr. Rubin hired an independent pathologist to investigate a large bruise to Ian's groin which had been passed off as a possible infection in the RCMP report. Next he found an independent blood-spatter expert to review the case.

Here we come to Joe Slemko, who is a constable with the Edmonton City Police, where he became interested in the science of studying blood-spatter evidence. When his term in this unit with Edmonton City Police ended and he was rotated out to other duties, he was interested enough to start his own business as a blood-spatter consultant. He has financed most of his extensive training himself. He has been an expert witness around the globe and is proud that his work has brought the truth to light in



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many cases. On top of this, he teaches new police officers at a College in Edmonton, which he will continue to do for many years to come.

Not enough can ever be said about Joe Slemko's courage and integrity. Faced with possible disciplinary action by Edmonton City Police, he chose to come to Houston and provide an interpretation of the blood-spatter evidence which directly contradicted the RCMP conclusions. From the evidence, he says, it is simply not possible that Ian was on top of Paul Koester and in control, but rather was beneath Paul Koester, his face at or near the couch seat where he was slumped when he died.

An RCMP officer attended the inquest in order to make a report to Edmonton City Police and requested that Joe Slemko be disciplined. Despite knowing this, and despite intense questioning of his personal choices by Paul Koester's lawyer, Mr. Slemko steadfastly held his position that he would speak the truth as he saw it. Thankfully the City of Edmonton, the Province of Alberta, his own police force and media everywhere supported his right to testify as he sees fit. The Edmonton City Police chief reversed the ruling preventing him from testifying against police before the hearing. Just last week we learned that all the disciplinary charges against Mr. Slemko have been reversed. This is very good news.

The most important thing I can say about the inquest is that without the presence of the family lawyer and the interpretation of

the evidence provided by experts engaged by this lawyer, the inquest would do little other than to rubber-stamp the police investigation.

The Crown is unlikely to go to trial with a case where the evidence has been so compromised that the case is not likely winnable, so the family of the deceased is left with nowhere to turn.

We have made it known that we are interested in changes being made to recruitment and training of the RCMP. We appreciate the

Many of the in-custody deaths go practically unnoticed, except in their own community.

recommendations by the jury to the RCMP that there be constant tamper proof video and audio in police detachments, that officers should not be alone with someone in their custody, and that officer education be an on-going process.

Statistically, we have been told, the number of in-custody or in-pursuit deaths is very low, but from this side of the statistics, it is far too high. Many of the in-custody deaths go practically unnoticed, except in their own community and their own family, so I know many people would disagree with the statement on statistics if they

knew the true numbers. Sadly in the month of August there were 4 more deaths, and there will be 4 more investigations by the same police force where the death occurred.

Ian's loved ones, the people of Houston, and many other Canadians who now know about him will remember Ian, but we need Canadians to remember what happened to Ian. We need people to know how often deaths occur, and the manner in which they are investigated.

Before Ian died all of us had a healthy respect and appreciation for police, and we still do. There are a few bad cops, some maybe not well enough trained, easily panicked cops, and a lot of dedicated intelligent cops with good sense. We hope to see changes made which will keep people who should never become a police officer from being there, provide better and on-going training for those who should be, and find ways to support officers doing a very difficult job. It should not be us against them, which is how I think police feel now. We hope that police will remember that we, too, are almost all good guys.

What we want most, and it seems that what most Canadians want, is that accountability be brought to policing in Canada. We need independent qualified investigators on the scene immediately after a death, and we need laws which will support their investigation. Only with accountability will solutions be found, and they may very well start with recruitment and training.



BCCLA Board Profile



Michael Byers was recently appointed to the board of the BCCLA. He holds a Canada Research Chair in Global Politics and International Law. In addition to being a tenured professor in the Political Science Department at the University of British Columbia, he serves as Academic Director of the Liu Institute for Global Issues. Dr. Byers' work focuses on the interaction of international law and politics, particularly with respect to human rights, international organizations, the use of military force and Canada-United States relations. Dr. Byers recently released the book, *Intent for a Nation – A relentlessly optimistic manifesto for Canada's role in the world*. He spoke with independent journalist Am Johal. What follows is an excerpt from the interview.

How did you come up with the idea to write a contemporary response to George Grant's iconic *Lament for a Nation*?

Like many Canadians, I had internalized George Grant's message: Canada as an independent country had ceased to exist. Grant based that conclusion on what he called "continental capitalism"—the increased integration of the Canadian economy into the US economy—and "global modernism"—the overwhelming cultural hegemony of things like Hollywood and Motown. For people of my generation, that thesis and explanation seemed pretty compelling. When I left Canada in 1992, there was no reason to think Grant was wrong. We did a couple of significantly independent things—for instance, we stayed out of the Vietnam War—but the fear of being subsumed by the American project was always prevalent and widely accepted, and certainly felt in the 1988 Free Trade debate. But then, something happened that made me rethink my assumptions. Prime Minister Jean Chrétien's decision to stay out of the Iraq War was a direct contradiction of Grant's thesis. At that time, in 2003, George W. Bush was a remarkably popular and powerful president. It seemed inconceivable that Canada could have said no to the US. But we did.

I interviewed Stephen Lewis recently, Canada's former Ambassador to the UN, and he mentioned that peace and security, which he viewed as very important, was getting too much attention under the international system – in other words, that other UN areas such as human rights and development were underdeveloped financially and organizationally. What do you think about that?

He's absolutely right. It is one of the scandals of Canadian foreign policy. We are not even half way towards the goal that Lester Pearson set of directing 0.7% of GDP to overseas development assistance. Our economy has grown enormously since the 1970's. We certainly have the capacity—we have the eighth largest economy in the world, with a population of only 32 million people.

Anyone who studies these issues knows that an ounce of prevention is worth a pound of cure. Putting money into overseas development assistance is an important responsibility for a country like Canada. And not doing so constitutes a moral failure on the part of successive Canadian governments.

Trudeau was more independent and Mulroney moved closer to the US. In terms of



BCCLA Board Profile

how Canada has engaged as a player in the international system, what do you see as the broad trend which reflects how Canada has misdirected its foreign policy?

Let's look at climate change, the number one challenge facing humanity today. Brian Mulroney did very little, though he recognized it as an issue. Chrétien used Kyoto to burnish his image, but, in fact, did very little. Now Stephen Harper is doing very little and engaging in smoke-and-mirrors with his emissions intensity policy.

With climate change, Canada has consistently refused to lead. We are just coasting along in the slipstream of the United States and the Bush Administration. This issue, that lends itself to Canada's multilateral and compassionate place in the world, this opportunity to be a leader, is being lost.

We have been flaunting our legal obligations under the Kyoto Protocol and done very little to develop policies that differ from those of the United States.

The Rwandan mission in the nineties and other peacekeeping missions have had challenges for Canada. Has Canada rethought its role and lessened its international contributions due to the controversy of some of these missions in the nineties? How would you explain other areas of activity related Canadian foreign policy including actively attempting to sabotage the Universal Declaration on Indigenous Peoples?

I actually did some work on the draft declaration on Indigenous peoples in 1991 as a summer student in the Department of Justice. I sat in on meetings of a working group with government bureaucrats. The work we were doing was essentially to steer the document so it did not cause serious problems for the Canadian government. Canada was

remarkably effective at driving that agenda—the end result was that, although the Canadian government did not achieve a 100% victory, the final document was significantly altered as a result of a decade and a half of active Canadian diplomacy.

At the end of the day, I don't see anything objectionable in the document. It also has no legally binding force. Canada should have supported the Declaration because the vast majority of countries were comfortable ratifying it and did not view it as a threat. In the end, it is an aspirational document which sets out general principles. The countries that have voted for it are doing something important—in that they are acknowledging that they are conscious of the predicament of aboriginal peoples.

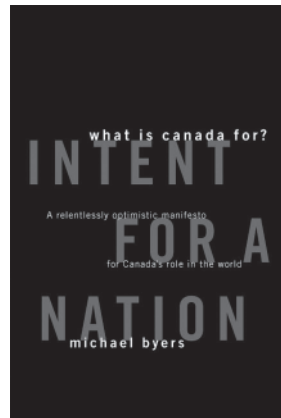
Canada's current stance is a slap in the face for indigenous people in Canada. The government is doing a number of things which are seriously contrary to the interests of indigenous peoples in this country. The most striking is the

refusal of the Harper Government to even meet with Tom Berger regarding his conciliator's agreement concerning the implementation of the 1993 Nunavut Land Claims Agreement. And the Inuit are now suing the government over that.

The government is basically saying that they don't really give a damn. One sees that in the international policy just as one sees it at home.

I wrote *Intent for a Nation* to shake people up. I was being intentionally, provocatively optimistic. I wanted to write a book that was kind of American in its approach, in that I wanted to present my country as a glass half full.

If we could shake up the old stereotypes of subservience, we could actually be a leader on the world stage. To some degree, we have different values from the United States, and we should start behaving in a manner that reflects those distinct values. And not just talking. For the truth is, we do much less than we claim.



Iacobucci Inquiry: Secrecy Undermining Public Confidence

The federal inquiry into the torture and imprisonment of three Canadian Muslim men is underway, however, troubling questions concerning the secret nature of the Inquiry have called the credibility of the process into doubt.

The Iacobucci Inquiry is examining the role of Canadian officials in the cases of Ahmad El Maati, Abdullah Almalki, and Muayyed Nureddin, men who, like Maher Arar, were of interest to Canadian investigations before being detained and tortured overseas. While this is in “internal” inquiry, there are clear provisions in the inquiry’s Terms of Reference that allow for a public component when necessary to ensure the effective conduct of the inquiry.

The BCCLA, as well as other public interest organizations, have intervenor status at the Iacobucci Inquiry, however, since the inquiry began its work, the only two sessions that have been open to the public were the sessions dealing with the applications for standing and the rules of procedure. Since those sessions and the subsequent rulings on those matters, there has been no communication with the public about the process.

In October, the BCCLA, the other intervenors, and Messrs. El Maati, Almaki and Nureddin, filed an application with the Iacobucci Commission to pry open the inquiry. The BCCLA sought the names of all witnesses interviewed, release of thousands of documents, and public hearings on issues that do not involve national security. A month later, the Commission released a highly unsatisfactory ruling declaring that it was unnecessary to either grant or deny the application because the Commission intended to provide opportunities in the future that would give the participants the opportunity for participation.

To date, the inquiry has been entirely lacking in transparency. No documents or even parts of documents have been disclosed to the three men, their counsel, intervenors or the public. Nor have they received any summary, detail or abbreviated, of the information that has been gathered through interviews with RCMP, CSIS, and Foreign Affairs officials.

The Arar commission, which reviewed 21,500 documents for national security concerns, released cen-

sored versions to the public. By contrast, the Iacobucci commission has collected more than 26,000 documents but has not made public a single page. Even the fact that the three men, the BCCLA and other intervenors had complained to the commission about its secrecy was kept secret until late October when the BCCLA and others made their application to the commission.

While no one expects the government to share its national security secrets, the inquiry’s doors have been shut so tightly that its secrecy undermines public confidence in the outcome. The

inquiry is being conducted in the wake of revelations made public through the Arar Inquiry that national security confidentiality is often used to mask significant problems and inappropriate conduct on the part of our police and security forces.

If the Iacobucci Commission fails to add a significant public dimension to the work of inquiry, it will reinforce public concern that our present national security practices are standing in the way of protecting both human rights and public safety.

For example, when previously censored portions of the Arar Commission’s report were released in August, the newly released information was alarming. We learned that Canadian officials had used information from Syrian interrogators to justify warrants in Canada, information that was likely the product of the torture of a Canadian citizen, Mr. El Maati. The government had argued in court that those portions of the Arar Commission’s report should be kept secret in order to safeguard national security -- but it was apparent that this secrecy was really about shielding public agencies and officials from embarrassment and accountability.

If the Iacobucci Commission fails to add a significant public dimension to the work of inquiry, it will reinforce public concern that our present national security practices are standing in the way of protecting both human rights and public safety. **Paul Champ** of Raven, Allen, Cameron & Ballantyne, **Shirley Heafey**, and **Warren Allmand** are representing the BCCLA. The BCCLA has also been assisted by **Adam Zanna**.

i For information on the Iacobucci Inquiry, visit: www.bccla.org/antiterrorissue/antiterrorissue.htm

BCCLA's New Litigation Director

The BCCLA welcomes Grace Pastine as the new Director of Litigation. Grace directly litigates and oversees the management of the legal activities of the BCCLA



Grace Pastine

on a broad range of civil liberties cases. Prior to joining the BCCLA, Grace was a lawyer with Bull, Housser & Tupper LLP in Vancouver, B.C. Before relocating to Canada, Grace practiced litigation in the U.S. with an emphasis on complex civil litigation and civil and human rights law. Grace has a history of public interest activism, including serving on the

BCCLA's board of directors and acting as *pro bono* counsel for the BCCLA.

Grace is currently an Adjunct Professor at the University of British Columbia Faculty of Law where she co-teaches a seminar on Class Actions and Mass Torts. The BCCLA wishes to thank the Law Foundation of B.C. for funding to make this position possible.

Database By-Law Struck Down

The BCCLA successfully intervened in *Royal City Jewellers & Loans Ltd. v. The City of New Westminster*. In this case the B.C. Court of Appeal struck down a New Westminster by-law that required second-hand stores and pawnshops to collect personal information on all their customers to forward to the police. The Association has long been concerned about these kinds of by-laws and the proliferation of surveillance databases. The lawfulness of this type of surveillance database, in which law-abiding citizens find themselves on police databases, was also challenged recently in Ontario. The Ontario Privacy Commissioner made a landmark ruling that ordered the destruction of personal information collected and stored in breach of Ontario privacy law.

In our case, here in B.C., we argued that the New Westminster by-law contravened provincial privacy legislation, *Charter* rights and the division of powers. However, the Court did not have to consider the privacy and constitutional arguments because it determined that the municipality did not have the authority to enact such by-laws under its governing legislation. Although the decision turned on who has the authority to do what according to the statute, our privacy arguments were reflected in the Court's expresse con-

cern about technology-driven incursions into citizens' privacy. **Brent Olthius** of Hunter Litigation Chambers was our *pro bono* counsel in the case.

i To read the court's decision, visit:
www.courts.gov.bc.ca/Jdb-txt/CA/07/03/2007BCCA0398.htm

Watching the Watchdogs: BCCLA in Court to Pressure the CPC on Police Accountability

The Commission for Public Complaints Against the RCMP (CPC) is the federal Ombudsman for accountability of the RCMP. Unhappy with the CPC's decisions in two complaints we lodged against the RCMP, we have taken the CPC to Federal Court. First, we have taken the CPC to court for their ruling that the RCMP were justified in dismissing the BCCLA's complaint in Ian Bush's death. The CPC argued that our complaint was unnecessary because of an existing criminal investigation and Coroner's Inquest, neither of which address the BCCLA's concern for an investigation of professional conduct responsibility in a timely way. The Federal Court recently ruled that the BCCLA can proceed with our arguments after ruling against the Attorney General's preliminary objection to our judicial review application. **David Harris**, Q.C. and **Mike Stephens** of Hunter Litigation Chambers are representing the BCCLA.

Second, the BCCLA has launched a challenge in Federal Court over the CPC's refusal to review the RCMP's decision to investigate our complaint in the Income Trust matter. The BCCLA had asked for an investigation about whether any RCMP officers had discussed the income trust controversy with any member with connections to any political party, thereby undermining the RCMP's independence. The CPC has deferred reviewing our complaint until their "self-initiated" complaint in the same matter has been dealt with, effectively removing our status as a complainant. **George Glezos** and **Kirk Stevens** of Lerner's law firm in Toronto are representing the BCCLA.

i To view the decision of the Federal Court in the Bush matter, visit:
<http://decisions.fct-cf.gc.ca/en/2007/2007fc901/2007fc901.html>

BCCLA News



The BCCLA welcomes **Catherine Wong** as our new Articled Student. Catherine has a Master's degree in Human Rights from the London School of Economics and recently graduated with a Law degree from UBC. With a strong commitment to social justice, she is very excited to be working at the BCCLA.

New Board Members

The BCCLA welcomes the following new board members:

Frances Henry

Professor Emerita, York University, Toronto

Carol Tator

Department of Anthropology, York University, Toronto

Reg Whitaker

Distinguished Research Professor Emeritus, York University, Toronto & Adjunct Professor of Political Science, University of Victoria

Scot Wortley

Centre of Criminology, University of Toronto



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

Learn how giving to the BCCLA helps you eliminate capital gains tax!

Have you considered making a gift to the BC Civil Liberties Association? Would you like to reduce your capital gains taxes? You can do both by donating stocks, bonds or mutual funds to the BCCLA.

Since May 2006 the Federal Government has eliminated capital gains tax on donations of appreciated shares of publicly listed securities to public charities. Donating this way now offers an even greater return for you.



How it works...

Imagine that two years ago, 1,000 shares of Suncor Energy Inc. were purchased at \$50 per share for a total cost of \$50,000. Today these same shares are valued at \$90,000 or \$90 per share. Prior to May 2006, if the donor wanted to donate these shares they faced paying taxes on half of the \$40,000 capital gains. Paying the tax of \$8,740 (43.7% on \$20,000) was not something this donor was eager to do,

especially since they were trying to make a difference with their donation.

Happily since May 2006, our investor can now donate the \$90,000 worth of shares and get an additional tax benefit. Not only do they get a tax receipt for the entire \$90,000, they completely eliminate having to pay any tax on the capital gain saving themselves \$8,740!

If you are considering a gift to the BCCLA and have shares you are thinking of donating, we recommend obtaining legal advice before making the donation. We are fortunate to have access to financial and legal experts who are willing to help guide you through the process at no cost. If interested contact Sarah Frew at sarah@bccla.org or by phone at 604-630-9750 and she will arrange a free legal consultation for you.

Company	Quantity	Each	2005 Value	2007 Value	Capital Gain	Tax
Suncor	1000	\$50	\$50,000	\$90,000	\$40,000	\$8,740

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

