

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION



# Annual Report 2003

DUE PROCESS

PATIENTS' RIGHTS

PRISONERS' RIGHTS

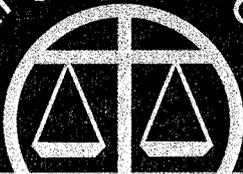
FREEDOM OF SPEECH

POLICE ACCOUNTABILITY

POLITICAL RIGHTS

ACCESS TO INFORMATION

fighting for freedom



since 1962

DISCRIMINATION

CHILDREN'S RIGHTS

PRIVACY

AUTONOMY

THE DEMOCRATIC COMMITMENT  
MARCH 2004 / VOLUME 38 / NUMBER 1

ANNUAL GENERAL MEETING 2004  
MARCH 2004, 11:00 AM, UNIVERSITY OF VANCOUVER

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

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# PRESIDENT'S REPORT / JOHN RUSSELL

THE B.C. CIVIL LIBERTIES ASSOCIATION began its fifth decade in 2003. That makes it the oldest, active civil liberties organization in the country.

It seems odd that it took so long for civil liberties organizations to emerge as a continuing presence in this country. And they remain thin on the ground. The BCCLA is one of only the smallest handful of civil liberties groups in English and French Canada



John Russell

that are independently funded and have a full-time staff who devote their energies exclusively to civil liberties issues. (You need only two or three fingers to count those organizations.)

But it is fair to say that the BCCLA's contributions to public life over its

history have been disproportionate to the institutional presence of civil liberties organizations in this country, and indeed to its own size and financial resources.

Even the briefest historical summary reveals this. The BCCLA led the way toward the creation of the first legal aid programs in B.C., the first provincial human rights legislation, the first Police Act in Canada that included a formal process for reviewing public complaints against the police, the Ombudsman's Act, the elimination of restrictive covenants. We also worked throughout the 1970s on various proposals that led to the creation of the Charter of Rights. This list goes on – and should include mention of the countless individuals who have received assistance from the BCCLA.

This work continues uninterrupted today, as this Annual Report attests.

What gives such a relatively small organization the capacity to punch so far above its weight? There is a short and long answer to this question.

The short answer is people. Over the years, the BCCLA has been fortunate to attract the energies

and commitment of some of the most gifted people who have been drawn to participate in public life in this province. Indeed, the roster of past Board members reads like a who's who of British Columbia notables: Michael Audain, Thomas Berger, Bill Deverell, Harry Rankin, Lynn Smith, Mary Southin, Josiah Wood, to name only a few.

John Dixon, the outgoing, perennial BCCLA president, is another who belongs in this company. Over the past 20 years, there is no one who has had a greater influence on civil liberties not only in this province, but in this country. All of us have been fortunate to have John's mind and commitment working for the BCCLA, and we are lucky that he continues to play a key role in this organization.

But I doubt that the BCCLA's success can be attributed only to the energy and commitment of these and other talented individuals. Part of a longer explanation must recognize that Canadians, by and large, really do care about civil liberties. There has in fact been a receptive public audience for the principles that the BCCLA has stood for, particularly since the Second World War. This has been key to the contributions we have been able to make.

That is not to say that there are no battles to be fought. There are, as these pages also attest. Clearly, Canadians depend on the vigilance of organizations like the BCCLA to fight those battles – to articulate principles which are basic to a just, democratic society and to engage the public forum and convince its institutions to adopt those principles as part of our society's conception of public reason.

As you read this report, I hope you will agree with me that the BCCLA is fulfilling this mandate.

A handwritten signature in dark ink that reads "John Russell". The signature is written in a cursive, flowing style.

JOHN RUSSELL

# ABOUT THE BCCLA / FIGHTING FOR FREEDOM

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

The BCCLA is run by a volunteer Board of Directors of over thirty members who hail from a variety of backgrounds: academics in various disciplines, lawyers, business people, students. The BCCLA Board distinguishes itself from other organizations not only by setting the policies of the Association but also by actively advocating for civil liberties before government and private institutions. To support the Board, the Association employs a small but efficient staff and increasingly relies on volunteers. Finally, our members and individual and institutional donors, such as the Law Foundation of British Columbia, provide us with the financial assistance and grassroots support that have enabled us to become widely respected by the general public, government, media and the private sector.

The Association's work comprises four program areas.

## Public Education

The BCCLA's educational efforts include:

- Publications: like our newsletter *The Democratic Commitment*, *The Citizenship Handbook*, *Rights Talk – Students and Civil Liberties at School*, and *The Arrest Handbook/Pocketbook*
- Speakers Bureau: BCCLA Board members and staff speak for free to hundreds of people and groups each year
- Media Work: Via BCCLA news releases/conferences or in response to media requests, the BCCLA is a continual source for comment in the media
- Website: we maintain a website ([www.bccla.org](http://www.bccla.org)) that provides a comprehensive collection of our positions, submissions, publications and activities
- Public Events: The BCCLA presents stimulating public talks by leading public figures. Past speakers include: Michael Ignatieff, John Ralston Saul and Beverley McLachlin, Chief Justice of Canada

## Casework

Each year, the Association provides assistance to hundreds of individuals who raise civil liberties concerns about the government, employers, or other individuals or institutions. To assist a complainant, the Association requires that the issue has an impact on a wide group of people. The Association also provides referrals to thousands of callers for legal advice or other assistance. For more information about our casework, see page 10 of this Annual Report.

## Law Reform

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

## Litigation

Occasionally, when our efforts to persuade others to respect civil liberties through principled argument have failed, the Association is able to go to court to enforce freedoms enshrined in law. Indeed, our moral suasion efforts are more successful because others know that we are willing to go to court to seek legal remedies. In this effort, we are very fortunate each year to have the assistance of lawyers who donate their services and expertise *pro bono* (see page 17).

To accomplish each of these programs, the Association devotes considerable energy to researching its positions and submissions. Good research is the key to providing a sound intellectual foundation for the principles we advocate.

# HIGHLIGHTS / THE YEAR IN REVIEW

## 40th Anniversary Celebrations

The BCCLA is Canada's oldest active civil liberties organization.

Like all its work, the BCCLA began with an idea – the need for a strong, public voice to advocate for freedom and justice. One of the controversies of the day – the arrest and detention of Doukhobors charged with arson – provided the impetus for a meeting of over 80 people at UBC in the fall of 1962. Thus, the BCCLA was born.

To honour the vision and dedication of these early freedom fighters, the BCCLA hosted a Founders' Banquet for 500 people in June 2003. Thomas Berger, O.C., Q.C. gave the keynote address on civil liberties battles throughout the world. Other speakers included B.C. Attorney General Geoff Plant, Bob Rowan, Bill Deverell and Michael Audain. The latter three were all key figures in the early life of the Association.

In addition to the Founders' dinner, the Association held other events to mark its 40th anniversary including a book reading by BCCLA founder and Honorary Director Bill Deverell and a youth dance in the summer.

The B.C. Civil Liberties Association salutes the many, many individuals who, over the years, have given their expertise, time and money to the BCCLA to further our quest for freedom and justice. A list of the founders of the BCCLA is on the back inside cover of this Annual Report.



Founder Gordon Dowding (far left), Honorary Director Dave Barrett (middle), and guests at the 40th anniversary Founders Banquet.

## The Right Honourable Beverley McLachlin Chief Justice of Canada

The B.C. Civil Liberties Association was delighted to host the Right Honourable Beverley McLachlin, Chief Justice of Canada on November 18, 2003 at the Hotel Vancouver. Despite the inclement weather, almost 700 people gathered to hear Madame Chief Justice McLachlin talk about the "democratic conversation" that continues to evolve between elected bodies and the courts in Canada as a result of the creation of the *Charter of Rights and Freedoms*.

During her talk entitled "Democracy, the Rule of Law and Judicial Activism", Ms. McLachlin described the complex nature of our mature form of democracy. In her view, democracy is much more than just one person, one vote. The *Charter* has come to play a central role in accommodating the rights and interests of minorities in the face of the majority and by doing so makes our democracy more inclusive and, ultimately, more legitimate.

Ms. McLachlin also mounted a spirited defence of the important role played by courts and judges in this "democratic conversation". She took aim squarely at those who continue to criticize "unaccountable" judges for striking down laws and undermining Parliamentary Supremacy. Noting that the independence of Canadian jurists is critical to distinguish our society as one in which we have the rule of law rather than one in which we are ruled by law (promulgated by dictators), the Chief Justice asserted that, in the age of the *Charter*, judges continue to do what they have always done – interpret and apply the law of the land.

The BCCLA salutes Madame Chief Justice Beverley McLachlin for her willingness to make herself freely accessible to the general public and for her courage in articulating a vision of democracy in which our courts continue to play a vital role.

 To view the text of the Chief Justice's talk, visit the BCCLA website at: [www.bccla.org/18NOVBCCLA\(FINAL\)21.pdf](http://www.bccla.org/18NOVBCCLA(FINAL)21.pdf)



Chief Justice Beverley McLachlin at the BCCLA.

## Public Inquiry for Maher Arar

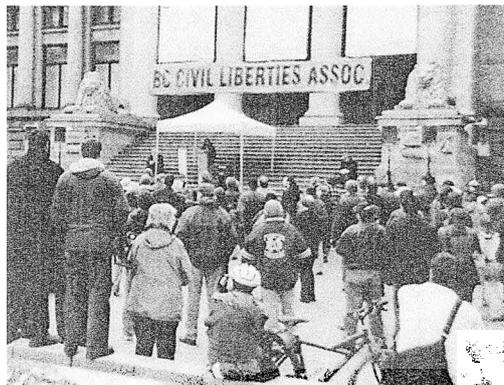
The case of Maher Arar represents the realization of civil libertarians' worst fears in the post September 11 war-on-terrorism.

Born in Syria but a Canadian citizen for much of his 33 years, Mr. Arar was detained by American border officials in September 2002. Despite contact with Canadian consular officials and in contravention of international legal norms, Mr. Arar was deported by the United States to Syria, via Jordan, ostensibly on the basis of his possible connections to al-Qaeda. Mr. Arar spent the next ten months in a Syrian jail and where, he alleges, he was subject to a variety of torture tactics by Syrian officials. Mr. Arar was set free in early fall 2003 and returned to Canada where he informed the world of his story. Since his return, information "leaks" have resulted in media reports that Mr. Arar confessed to training in al-Qaeda sponsored camps in Afghanistan, a confession Mr. Arar insists was made only to prevent further torture.

The BCCLA worked extensively throughout the fall of 2003 and early into January 2004 to establish a public inquiry to determine the extent to which Canadian agencies contributed to Mr. Arar's treatment.

The Association published an open letter to Prime Minister Martin on December 10, 2003 in the *Globe and Mail* calling for a public inquiry. We followed this up on January 17, 2004 when 300 people attended a public demonstration organized by the BCCLA at the Vancouver Art Gallery to press for a public inquiry. The Association worked closely with Amnesty International throughout this time to coordinate pressure for a public inquiry.

On January 28, 2004, Anne McLellan, Deputy Prime Minister and the Minister of Public Safety and Emergency Preparedness announced that the Honourable Dennis R. O'Connor, Associate Chief Justice of the Province of Ontario and the head of the Walkerton Inquiry, would lead a public inquiry into the Arar affair.



Over 300 people attended a BCCLA rally to press for a public inquiry for Mr. Arar.

This is a major victory for due process and civil liberties. Now the real work begins and we look forward to reporting on the BCCLA's involvement in the inquiry.

**i** To view the BCCLA's proposed terms of reference for a public inquiry into the Arar affair and our letter to Paul Martin, please visit the BCCLA website at: [www.bccla.org/antiterror.html](http://www.bccla.org/antiterror.html)

## Personal Information Protection Act

In 2004, British Columbians and Canadians will have considerably more legal protection for their personal information. The BCCLA played an instrumental role in the creation of a new provincial law, the *Personal Information Protection Act* (PIPA), designed to regulate the collection, use and disclosure of personal information in the private sector.

PIPA is a made-in-B.C. response to the federal *Personal Information Protection and Electronic*

*Documents Act* which will apply to private sector organizations in Canada where there is no provincial law. The BCCLA also had an important hand in crafting the federal law, which itself was a response to the European Community's new requirements that businesses in its member states only deal with foreign companies that are similarly regulated to protect client privacy. The big advantage of PIPA over the federal law is that it will create new protections for provincially regulated employees in B.C.

Fair Information Practices required by PIPA include requirements for

- consent to collect, use and disclose personal information notification regarding the purposes of the proposed collection, use or disclosure
- security of personal information
- citizens' rights to access their own personal information and to request corrections
- a complaint process and binding orders from the Information and Privacy Commissioner of British Columbia

**i** For more information about the *Personal Information Protection Act*, visit the website of the Office of the Information and Privacy Commissioner: [www.oipcbc.org/private/](http://www.oipcbc.org/private/)

## NEW POSITIONS / TAKING A STAND

### Roadside Drug Testing

Responding to a call for submission put out by the Ministry of Justice, the BCCLA prepared a position paper on roadside drug testing. Under the Ministry's plan, police would be trained as "drug recognition experts" (DRE) and given significant search and seizure powers. The proposed process would allow police to demand that motorists take part in roadside, and, ultimately, police station testing for drug impairment. This testing would include the requirement that drivers provide sweat, saliva, urine and/or blood samples for analysis.

The BCCLA objected to the scheme, arguing that it is unduly invasive of privacy and will lead to an increase in the number of arrests and detentions of drivers without reliable evidence that the drivers are, in fact, impaired. DRE protocols are not infallible and, indeed, there is some evidence that the DRE examination process (including testing of bodily fluids) is susceptible to significant levels of false positive results.

A key objection is that drug testing fails to answer the critical question of impairment. For example, someone who smoked cannabis a day before driving would test positive for the presence of cannabis despite not being impaired. Moreover, there exists little empirical evidence supporting the conclusion that cannabis use actually impairs one's ability to drive.

A further problem is that the Ministry's proposal would give police the power to detain drivers and require blood samples simply on the basis of an officer's determination that the person is impaired by drugs. Empirical research suggests that even trained DRE officers are wrong about 17% of the time.

Finally, blood tests can provide a variety of information other than the presence or absence of drugs in one's system. Even with today's technology, DNA testing of blood can yield reams of private information.

Of course, the BCCLA opposes driving while impaired whether caused by legal drugs, illegal drugs or even over-tiredness. But we believe that invading the privacy rights of motorists in order to perform

drug tests of questionable accuracy and relevance is an affront to our civil liberties.

**i** To read the BCCLA submission, visit: [www.bccla.org/othercontent/03roadsidedrugtesting.htm](http://www.bccla.org/othercontent/03roadsidedrugtesting.htm)

### Video Surveillance in Public Schools

A rash of school boards adopted video surveillance policies in 2003. Most often, the school boards justify the use of surveillance technology as a reaction to costly vandalism and unspecified concerns over student safety.

In response, the BCCLA crafted a position that recognizes that video surveillance may be justifiable in certain circumstances, but only if its use is tightly controlled and respectful of the privacy rights of students, staff and other legitimate users of school property.

Any school board policy on video surveillance must recognize that a central mission of our public schools is to teach values central to our free and democratic society – like privacy and the presumption of innocence – and to prepare students to become fully engaged democratic citizens. Widespread use of video surveillance technology violates both of these values. Students can be monitored all day, and would be treated as potential criminals. In our position paper we caution that "school boards and society at large must be on guard against taking away the open society of the academy and replacing it with the closed society of the reformatory. Video surveillance tends in the latter direction rather than the former."

Video surveillance has an impact on the behaviour of those falling under the watchful eye of the camera. Acclimating our youth to being watched makes them more likely to accept later intrusions on privacy.

The BCCLA recognizes that some legitimate uses for this technology exist, even in the public school context. Using cameras during limited times, and in limited places, may be an appropriate response to the problem.

**i** To view the BCCLA position, visit: [www.bccla.org/positions/privacy/03schoolvideo.html](http://www.bccla.org/positions/privacy/03schoolvideo.html)

## BCCLA Opposes National ID Cards

Despite repeated objections by civil libertarians, privacy experts and privacy commissioners, the federal government persisted in floating the idea of a national ID card for Canadians in 2003.

The BCCLA strongly criticized the concept in submissions to the Standing Committee on Citizenship and Immigration at hearings held in February in Vancouver and again in written submissions in the fall.

The government's proposal is vague with few details about the purpose of an ID card. At best, it is an ill-conceived idea that appeals to technologists but has little justifiable merit.

National ID cards pose several threats to privacy:

- *Loss of anonymity* – As occurs now with the Social Insurance Number, private sector actors would seek to use a national identifier. Combine private sector use with the ubiquitous purposes envisioned by federal and provincial governments, and national ID cards could create the conduit through which Orwellian files can be maintained on Canadians' activities.
- *Data Matching* – Given the accumulation of personal information in a national data base, there will be tremendous desire to access Canadians' files. In time, personal files will be probed and matched for countless purposes.
- *Identity Theft* – Far from providing the solution to identity theft, a national ID card will make counterfeiting and fraud all the more attractive to criminal elements, possibly creating greater risk with greater negative consequences for ID theft.

The proposed purposes of a national ID card – to fight terrorism and identity theft/fraud – make little sense. The modern terrorist does not pose as anyone but himself. Most ID theft/fraud occurs in faceless transactions. Aside from an absence of need, other problems with a proposed national ID card include the unreliability of foundational documents (birth certificates and health cards), concerns about hacking into databanks, unreliability of biometric technology, and perhaps most compellingly, the astronomical costs of creating a national ID card infrastructure.

Add it all up and national ID cards make little sense. We'll see if Mr. Martin's crew will come to their senses.

**i** To view the BCCLA's submission to government on national ID cards visit: [www.bccla.org/othercontent/03nationalid.html](http://www.bccla.org/othercontent/03nationalid.html)

## Sexual Morality Laws in the Criminal Code

In mid 2003, the Association was asked by *Xtra West*, Vancouver's gay and lesbian weekly, to support its campaign to repeal outdated sexual morality laws in the *Criminal Code*. The impetus for this campaign is concern that police use these laws selectively to harass individuals within the gay community.

The BCCLA Board examined *Criminal Code* provisions that single out sexual conduct including:

- Section 159 – makes anal intercourse punishable by up to 10 years in prison except if it is in private between a married couple of any age and between two people over 18. Thus gay youth could be charged under this section for having anal sex, or three or more people consenting to anal sex could be charged.
- Section 163 – creates obscenity offences in a performance. This provision was at the centre of the controversy about the 2003 live sex play *Public Sex, Art and Democracy*, which featured mutual oral sex between a man and a woman.
- Section 173 – outlaws indecent acts in public places or any place if there is intent to insult or offend another person. It also prohibits exposing genitals for a sexual purpose to those under 14.
- Section 175 – prohibits exhibiting an indecent exhibition in a public place.
- Section 210 – creates an offence to own, manage or use a place for prostitution or indecent acts and thus is not restricted to places where sex is bought. This provision is of particular concern to the gay community with police targeting gay bath houses. More recently, heterosexual swingers private clubs have also come under police scrutiny.

The BCCLA Board passed the following motion unanimously. "The BCCLA supports the repeal or reformulation of sexual morality offences in the *Criminal Code* to enhance the individual autonomy of adults to engage in consensual sexual activity subject to the overriding public interest in not being exposed to such acts without consent."

The Association recognizes that there is a public interest in preserving a role for criminal law where sex occurs in public on unsuspecting or uninterested individuals. However, current legislation, with its basis on immorality, is antiquated and likely unconstitutional.



# CASEWORK / ON THE FRONT LINES



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

## DUE PROCESS

### Canada Customs – Airport Interrogations

In August, the BCCLA received a tip from a Vancouver airport employee. The complainant witnessed Canada Customs officers sweeping the pre-boarding holding areas where passengers wait to leave Canada for the United States. These officers were dressed in all-black uniforms and bulletproof vests.

The officers appeared to be on “fishing expeditions” and would arbitrarily approach and question passengers in an effort to obtain consent to search their belongings. Certain officers appeared to be quite intimidating and passengers were reportedly visibly upset. All passengers would have already cleared US immigration and airport security.

The BCCLA wrote to CCRA Minister Elinor Caplan, expressing our concern over this inappropriate and intimidating behaviour. We pointed out that officers are only entitled to search

The officers appeared to be on “fishing expeditions” and would arbitrarily approach and question passengers in an effort to obtain consent to search their belongings.

passengers on reasonable grounds and that intimidating people into providing “consent” was inappropriate. We also noted that picking people randomly could lead to unacceptable racial or ethnic profiling.

In response, Canada Customs acknowledged that they use enforcement teams

to perform roving functions at the Vancouver airport. We were assured, however, that direct questioning techniques were not routinely used and that Customs would make every attempt to ensure that it fulfilled its mandate with courtesy and respect.

If you have a complaint about Canada Customs, please contact the Association.

## POLICE ACCOUNTABILITY

### Police Information Retrieval System

PIRS (Police Information Retrieval System) is the RCMP’s tool to store, update and retrieve contacts by citizens with police, including criminal charges laid against persons. By way of a complaint to us, we learned that PIRS also tracks mere recommendations to charge, even if no charges are laid.

Unlike many provinces, in BC the RCMP does not make charging decisions – it can only make charging recommendations. The complainant, in connection with a volunteer opportunity, was subject to a criminal record check. Her records came back from PIRS listing her as “charged” with an offense, even though charges were only recommended. The BCCLA assisted her in filing a police complaint about the allegedly shoddy investigation and the inaccurate PIRS entry.

We also contacted the Commissioner of the RCMP and indicated that PIRS inaccurately characterized persons as “charged” with crimes when, in fact, charges were only recommended. We also fought to obtain a copy of the PIRS User’s Guide, which confirmed our belief about the PIRS record-keeping policy. Due to our efforts, the RCMP is performing an internal review of PIRS. The results, expected shortly, will be reported in the next *Democratic Commitment*.

### Vancouver Police Department’s Stanley Park Six

Most readers should be familiar with the now notorious case of the six Vancouver Police Department officers who beat three people late at night in Stanley Park in January 2003. The six members each plead guilty to three counts of common assault after charges of obstructing justice

## Active files

	2003	2002	2001
Administrative decision-making	6	7	2
Children's rights	1	2	3
Discrimination	5	14	7
Due process	18	30	19
Freedom of speech and association	23	27	25
Native Rights	-	-	1
Patients' rights	2	3	1
Review panels	0*	109	60
Police complaints	34	40	24
Political rights	4	8	6
Prisoners' rights	5	7	3
Privacy and access to information	28	32	22
Private offences	13	12	10
Total cases	139	291	183

\*Amendments to the *Mental Health Act* have now been proclaimed. Mental health facilities and involuntary patients are no longer able to choose designates for review panels. Under the new system, the province appoints all panel members.

were dropped. Four officers received criminal records and two conditional discharges.

The shocking severity of the beatings, the apparent premeditation of these crimes and efforts to cover up the misconduct only emerged in early 2004 when VPD Chief Constable Jamie Graham released his decision regarding internal discipline. Graham recommended that two officers be dismissed and that the other four be suspended and demoted. His recommendations will go to Dirk Ryneveld, the Police Complaint Commissioner who will either confirm the discipline or order public hearings.

The BCCLA is urging that all six officers be dismissed given the level of misconduct and the need for public confidence in the police. Aside from the facts involving this particular incident, the case raises troubling questions including whether the VPD "Breach of the Peace" policy is adequate and whether this incident is isolated or more commonplace. The BCCLA has written Attorney

General Geoff Plant urging him to expand the public inquiry recommended by Mr. Ryneveld into the Frank Joseph Paul case (aboriginal man who may have died because of police misconduct) to consider these issues.

The disciplinary decision of Chief Graham can be viewed at: [www.city.vancouver.bc.ca/police/media/Disposition.pdf](http://www.city.vancouver.bc.ca/police/media/Disposition.pdf)

 The BCCLA letter to Mr. Ryneveld can be found at: [www.bccla.org/othercontent/04stanleypark.htm](http://www.bccla.org/othercontent/04stanleypark.htm)

### Weir Police Complaint

In July, 2002, the BCCLA joined with UBC professor Dr. Lorraine Weir in a complaint against two members of the VPD. Dr. Weir provided expert testimony on the issue of artistic merit in the trial of John Robin Sharpe. This testimony angered at least two members of the VPD, Staff Sergeant Andy Nimmo and Detective Noreen Waters (who had led the investigation into Mr. Sharpe for at least seven years).

# CASEWORK

Sgt. Nimmo contacted the office of UBC President Martha Piper by telephone, saying that he would be sending an e-mail to complain about Dr. Weir. In that email, also copied to Detective Waters, he expressed disgust with Dr. Weir's testimony.

Dr. Weir, and the BCCLA, complained that this conduct was totally inappropriate for a police officer and an abuse of authority. We sought an apology, a determination that the conduct of the officers was wrong and the issuance of a directive to all VPD officers clearly stating that this behaviour was unacceptable. Ultimately, the complaint against the officers did not proceed because both left the VPD while the matter was pending. Dr. Weir was given a formal apology by the Vancouver Police Board, and it acknowledged that the conduct was inappropriate. The VPD also initiated a review of its e-mail policies.

While pleased that the VPD acknowledged the wrongdoing, we have since requested that it transmit the apology directly to President Piper, as the offending e-mail damaged Dr. Weir's professional reputation. A decision on that request has not yet been made.

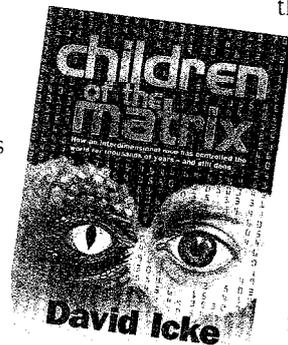
## FREEDOM OF SPEECH

### BC Library Association – Defamation Lawsuit

This case began with the publication of a book about lizards ruling the earth. In that non-fiction work (*Children of the Matrix*) John Icke, the author, allegedly defamed an Ontario lawyer named Richard Warman.

Richard Warman wrote the Kamloops library, which had included the book in their collection, alleging that the book defamed him. He requested that the library pull the book, threatening to add the library as a defamation defendant if it refused. On the advice of legal counsel, the library removed the book from circulation.

The BCCLA took swift action, contacting Attorney General Geoff Plant and expressing concern about the chilling effect that this type of prior restraint could pose. AG Plant was sympathetic and indicated that he would consider



introducing legislation to provide a qualified privilege from defamation for public libraries. As yet, that legislation has not been tabled. We continue to press for reform.

Unfortunately, the story gets worse. The BC Library Association ran, essentially, a news story about the Kamloops situation on a portion of its website titled "Censorship in BC." The Library Association reported on the content of the book and Mr. Warman's threat of suit. This came to Mr. Warman's attention and he again threatened to sue. The Library Association refused to modify its website, rightly in our view, and Warman has now filed a defamation action against it. The Library Association has retained counsel, pro bono, and intends to vigorously fight the lawsuit, with the continued support of the BCCLA.

### BC Film Classification Office

The BC Film Classification Office (FCO) is a body within the Ministry of Public Safety. The FCO screens all films intended for public viewing and all adult films destined for rental or sale in the province. Additionally, the FCO licenses film retailers, including adult film retailers. In certain instances, the FCO will require changes to a film that it deems obscene, or will outright block the film from distribution in BC. All adult films must be stickered, and retailers are required to pay a per-sticker fee.

In June, the BCCLA received a complaint regarding several aspects of the FCO scheme. The complainant believed that the FCO licensing system (i) discriminates against small-market, or niche, material, (ii) preserves a type of monopoly for the major distributors of adult material because they are able to afford the fees and (iii) acts as a system of prior restraint.

The BCCLA met twice with the Director to view clips of material that had been both permitted and blocked under the FCO's guidelines and to express our concerns. In our view, it is appropriate for a "classification" office to let British Columbians know what they are in for if they rent a certain video. But the province should not be in the business of censorship.

We were assured that the FCO was developing a new licensing scheme that would provide fee waivers for educational materials and a streamlined

process for obtaining licenses. In a letter to the Director, we emphasized that the FCO must not, intentionally or otherwise, restrict British Columbian's access to a wide range of material, including small market or niche films.

The BCCLA does not expect the FCO to change its ways, nor do we expect Solicitor General Coleman to respect these principles. We hope our direct challenge to the obscenity laws in the Little Sisters II case may provide a more comprehensive solution to government censorship.

**i** To view the website of the FCO, visit: [www.pssg.gov.bc.ca/film\\_class/](http://www.pssg.gov.bc.ca/film_class/)

## Amendments to Child Pornography Law

In an apparent response to a trial court decision in the John Robin Sharpe child pornography case, amendments to the child pornography laws were proposed in Bill C-20. These amendments would have dramatically curtailed free speech protections in Canada and would have created a new and ill-defined crime of exploiting a minor. We travelled to Ottawa to present our position to the Justice Committee.

We argued that current child pornography legislation is flawed for a number of reasons. For example, the prohibition on representations of imaginary children and the ban on depictions involving persons that look under 18, but are really adults, go too far and do not achieve the goal of protecting actual children from harm. Moreover, prohibiting representations of legal acts on the basis of potential harm is illogical; how do legal acts become harmful when expressed? Unfortunately, the proposed amendments to the law do nothing to solve these existing problems and, indeed, make the overall scheme much worse.

The amendments attempt to remove the artistic merit defense from the law and replace it with a defense of "public good." The artistic merit defense has a long history, and the child pornography laws were saved in the Sharpe case, only because the Supreme Court of Canada "read in" this defense. Removing it would likely make the overall scheme unconstitutional. Moreover, the idea that thoughts and expressions are required to meet a standard of "public good" is repugnant to the entire conception of freedom of thought, discussion, and expression

protected by the Charter.

The amendments would also have created a vague crime of "sexual exploitation of young persons." Existing law already protects young persons from sexual activity with adults under conditions of inducement, when the adults are in a position of trust or authority or when the child is dependent on the adult. The new law would have replaced these concrete situations with a general ban on sexual relations in any exploitative relationship. While the amendments proposed some factors in making a determination of exploitation, the term itself was not defined. That failure makes the validity of the legislation questionable, at best.

**i** To view the BCCLA submission on Bill C-20, visit: [www.bccla.org/othercontent/c20children.html](http://www.bccla.org/othercontent/c20children.html)

## PRIVACY

### Video Surveillance on TransLink Buses

In September, news reports suggested that the Greater Vancouver Transportation Authority, or TransLink, was considering installing hidden video surveillance technology on Vancouver buses. This is not the first time TransLink has floated the idea of spy cameras on the buses, and the BCCLA acted swiftly to nip the idea in the bud.

First, we researched the purported rationale for installing the cameras: driver and passenger safety. We learned that violent crimes on buses are on the decline. Attacks on drivers are down 25% from the 1999 levels. Next, we looked into the cost, which we calculated at approximately \$13 Million, or about twice as much as TransLink's entire security budget for 2002. Finally, armed with these facts, we sent a strongly worded letter to Surrey Mayor Doug McCallum, Chair of TransLink's Board of Directors.

We pointed out the cost of the plan and the lack of justification for installing the technology. We also emphasized that spy cameras are a drastic invasion of the privacy rights of TransLink's customers, the vast majority of whom would never engage in violent behaviour. In addition, we pointed out that installing the cameras might violate the *Freedom of Information and Protection of Privacy Act* because the cameras were not "necessary" to TransLink's operations. Finally, we noted that the deterrent value of the cameras was questionable, at best.

# CASEWORK

Much, even most, violent crime is unplanned and a product of emotional reactions. It is unlikely that cameras would have any impact on these crimes.

Within a month, Mayor McCallum responded to our concerns. He assured the BCCLA that no plan to install cameras was in place, and agreed that TransLink was sensitive to our privacy, cost and effectiveness concerns.

## PRIVATE OFFENCES

### Marijuana Decriminalization and Legal Challenge to Possession Law

There was action on two important drug policy reform matters related to marijuana in 2003. First, the federal government tabled draft legislation that would have revised the penalty structure for cannabis-related offences. Second, the Supreme Court of Canada delivered its verdict in the challenge to marijuana possession laws.

The BCCLA travelled to Ottawa in October to present our brief to the Special Committee of the House of Commons reviewing the pot bill. Though the government attempted to paint this Bill as marijuana “decriminalization”, this characterization is far from true. The Bill did not even remove

The Bill did not even remove cannabis offences from the Criminal Code, thus making “decriminalization” quite a misnomer.

cannabis offences from the Criminal Code, thus making “decriminalization” quite a misnomer.

Instead, the Bill proposed substituting fines for the possibility of jail for small possession offences. The BCCLA believes, based on similar legislative changes in Australia, that a fine structure would actually lead to more people having interaction with the criminal justice system – a “net widening” effect. In addition, the Bill would have dramatically increased the maximum prison terms for cultivation of 50 plants or more to levels higher than those imposed for sexual assault and financing terrorism. The BCCLA opposed the Bill which died on the order paper. The government, however, has announced that the Bill may be revived and possibly amended to add increased penalties for repeat offenders and mandatory minimum jail terms.

As the proposed marijuana law “reform” worked through Parliament, the Supreme Court of Canada decided the companion cases of *R. v. Caine*, *R. v. Clay* and *R. v. Malmo-Levine*. The BCCLA intervened in these cases which challenged the prohibition on possession and trafficking in marijuana. The Supreme Court held that Parliament was constitutionally able to prohibit marijuana. In so doing, the Court rejected the BCCLA’s argument that the harm principle was a principle of fundamental justice. The BCCLA were represented in their intervention by Joe Arvay of Arvay Finlay.

**i** To view the BCCLA submission on the “decriminalization” Bill, visit: [www.bccla.org/othercontent/03nonmedicaldrugs.html](http://www.bccla.org/othercontent/03nonmedicaldrugs.html)

To view the BCCLA Supreme Court arguments in the cannabis cases, visit: [www.bccla.org/othercontent/02marijuanafactum.html](http://www.bccla.org/othercontent/02marijuanafactum.html)

To view the Supreme Court decisions in the cannabis cases, visit (*R v Caine/Malmo-Levine*): [www.lexum.umontreal.ca/csc-scc/en/rec/html/2003scc074.wpd.html](http://www.lexum.umontreal.ca/csc-scc/en/rec/html/2003scc074.wpd.html)

And (*R v Clay*): [www.lexum.umontreal.ca/csc-scc/en/rec/html/2003scc075.wpd.html](http://www.lexum.umontreal.ca/csc-scc/en/rec/html/2003scc075.wpd.html)

### Safe Injection Site

The BCCLA is pleased to report that Vancouver’s first officially-sanctioned safe injection site, inSite, opened its doors in 2003. The site is officially a three-year trial that is operated under the auspices of the Vancouver Coastal Health Authority, with federal funding of \$1.5 million to cover a scientific evaluation of the project. Safe injection has long been lauded as an important harm reduction aspect of the city’s four-pillar approach to drug problems.

Opened on September 15, 2003, inSite was nearing its capacity within weeks. According to published reports, the site was serving over 450 people a day and had prevented 26 overdoses in the first two months of operation. The BCCLA recently met with inSite staff to discuss the site, the police response to it and other issues. From that meeting we determined that police were gradually more supportive of the operation.

However, as part of the meeting with inSite staff we determined that the site uses hidden video cameras for safety purposes without proper notification and consent, inconsistent with privacy principles. The inSite policy is not to share

videotapes with the police except where a crime of violence occurs. As a result of our discussions, inSite now provides clear notification for its clientele about video surveillance.

## DISCRIMINATION

### Chris Kempling: Free Speech Martyr?

Chris Kempling's case is instructive for understanding basic principles of free speech. It is equally important as a message for teachers and school boards about the boundaries of their public and private rights and duties.

Mr. Kempling was a high school counsellor and teacher in Quesnel, B.C. He is also a minister in a local church who holds strong opinions about the immorality of homosexuality. From 1997-2000, Mr. Kempling expressed those views in various letters to the editor of the local newspaper. In one, he wrote:

"Some readers may be wondering why I am putting my professional reputation on the line over the homosexuality issue, and some are questioning my competence to counsel ... Sexual orientations can be changed and the success rate for those who seek help is high. My hope is that students who are confused over their sexual orientation will come to see me."

As a result of these publications, the B.C. College of Teachers found Mr. Kempling guilty of professional misconduct and suspended him for one month. Mr. Kempling appealed to the Supreme Court of B.C.

The BCCLA, represented by Elliott Myers, Q.C. and Craig Jones of Bull Housser Tupper, intervened in court to support a sanction against Mr. Kempling on the grounds that it is not appropriate for public school teachers to mix their personal viewpoints with their professional responsibilities where they conflict. Mr. Kempling, as a teacher and counsellor, has duties to treat his students in a nondiscriminatory manner. By airing his private views in public, and explicitly indicating that those private views would guide his professional conduct, Mr. Kempling clearly failed to understand, and was not willing to abide by, those public duties.

In early 2004, the court agreed stating: "...he was no longer writing qua private citizen, but advancing his views qua secondary school teacher and

counsellor. ... The appellant's ability to be impartial as a teacher was impaired. Homosexual students would as a result of the writings be reluctant to approach him for guidance or counselling" [at paragraphs 44 and 104].

Mr. Kempling has appealed to the BC Court of Appeal; we plan to intervene.

**i** For the BCCLA's factum, visit: [www.bccla.org/othercontent/03kempling.html](http://www.bccla.org/othercontent/03kempling.html). For the court's decision, visit: [www.courts.gov.bc.ca/jdb-txt/sc/04/01/2004bcsc0133.htm](http://www.courts.gov.bc.ca/jdb-txt/sc/04/01/2004bcsc0133.htm)

## PATIENTS' RIGHTS

### Due Process for the Incapacitated

Late in 2003, the BCCLA was informed that the provincial government planned to disband the Health Care and Care Facility Review Board. This Board's mandate included the authority to review decisions of substitute decision makers in disputes when a patient does not have the legal capacity to make health care decisions for him or herself. For example, a doctor may disagree with the health care decision of the next-of-kin regarding a critically ill patient. The Board thus plays an important role in safeguarding the rights of incapacitated patients. The government wanted to disband the Board as part of its overall goal to eliminate administrative review procedures, citing the fact that the Board had been little used.

Upon hearing of the amendments, the BCCLA immediately wrote the Minister of Health Planning and urged her to retain the Board, to find another agency to undertake the same role or to include a specific right for an interested person to appeal to the Supreme Court of B.C. to review the decision of a substitute decision maker.

Though the Board was eliminated, the effect of this amendment has not yet been proclaimed. The BCCLA appealed to the Ombudsman who also wrote to the government expressing concerns regarding the changes.

One of the important lessons of this case is the problem posed by the current legislative process in B.C. With no effective official opposition, legislation is passed – as happened in this case – in a matter of two or three days, thus precluding serious debate about legislative change. Whither democracy?

## Funding for Statutory Officers of the Legislature

After two years of deep cuts to funding for Statutory Officers of the Legislature, the BCCLA requested to meet with the Select Standing Committee on Finance and Government Services (request denied) and then wrote to protest the proposed third round of cuts to these officers' budgets. If implemented, Statutory Officers would face cuts of 35-45% over three years, effectively decimating their capacity to fulfil their mandates

The Statutory Officers of British Columbia include the Office of the Information and Privacy Commissioner, the Ombudsman, the Police Complaint Commissioner, Chief Electoral Officer and Auditor General. Each of these agencies plays a crucial, independent role in our democracy by promoting central democratic values such as accountability, fairness, the rule of law, privacy, and

transparency in government decision-making. Dollar for dollar, they are a wise investment in democracy and good government

Over the years, the BCCLA has been directly involved in creating and using these agencies. Without effective Statutory Officers, the Association would be increasingly burdened by complaints falling under their mandates. But the BCCLA has neither the resources nor the legislative authority to effectively handle these complaints

For the most part, our concerns fell on deaf ears. The government Committee did not, however, impose a third cut on the Office of the Police Complaint Commissioner (OPCC), a minor, but not insignificant, victory given the continuing controversies involving policing in B.C. Whether the OPCC and other agencies will have enough resources to truly be effective in the future is another matter

**i** To view the full text of our letter to the Finance Committee, visit: [www.bccla.org/othercontent/03statutoryofficers.html](http://www.bccla.org/othercontent/03statutoryofficers.html)

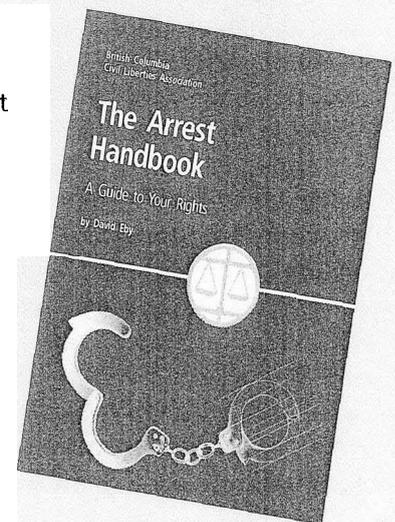
## The Arrest Handbook

*Updated for 2003*

AS PART OF THE BCCLA's ongoing public education mandate, the Association is proud to announce that the Arrest Handbook – last published in 1988 – was extensively revised and updated in 2003. Written by David Eby, the handbook covers a range of essential topics like police powers of arrest, search and questioning and includes new material such as civil disobedience and anti-terrorism legislation.

Funded by a grant from the Law Foundation of B.C., the new handbook is available in English, Vietnamese, Arabic, and Spanish. A smaller pocketbook version is also available.

All versions of the handbook are free and can be obtained by contacting the BCCLA office or by visiting our website at [www.bccla.org](http://www.bccla.org)



# THE LEGAL COMMUNITY / OUR THANKS

Occasionally, we go to court to enforce our rights and freedoms. We are able to do so only because of the countless hours lawyers and students donate to our causes. To them, and to the Vancouver Bar Association who gives us a generous grant to defray disbursements associated with these cases, our heartfelt thanks.

**Joe Arvay, Q.C.** of Arvay Finlay for his tireless work on behalf of the BCCLA, this time representing us as an intervenor in the trio of appeals to the Supreme Court of Canada in the challenge to Canada's marijuana possession laws, which were ultimately unsuccessful (see page 14). Mr. Arvay continues in his role as lead counsel for the Association and Little Sisters' Bookstore's ongoing challenge to Canada Customs censorship and Canada's obscenity laws.

**Blair Crew** of Karam Greenspon in Ottawa and of the University of Ottawa's Faculty of Law for his representation of the BCCLA and the Canadian Civil Liberties Association in our joint application to intervene before the Federal Court Trial Division in an action by the Commission for Public Complaints Against the RCMP to obtain informant information required to investigate a complaint against the RCMP.

**Nitya Iyer** of Heenan Blaikie for assistance in drafting a brief to the Human Rights Tribunal on proposed rule changes pursuant to the revised *Human Rights Code* and the new structure for human rights in B.C.

**Elliott Myers, Q.C.** and **Craig Jones**, BCCLA Board member and Past President, both of Bull Houser Tupper, for representing the Association in *Kempling v. B.C. College of Teachers* (see page 15).

**Elliott Myers, Q.C.** and **Craig Jones** of Bull Houser Tupper again for their successful application for BCCLA intervention in the same-sex marriage reference before the Supreme Court of Canada. Look for their submissions on our behalf on our website ([www.bccla.org](http://www.bccla.org)) in 2004 when the case is expected to be heard.



Elliott Myers, Q.C.



Nitya Iyer

**Michael O'Keefe, Q.C.** for his assistance with respect to various issues regarding financial matters of the Association.

**Chris Sanderson, Q.C.** and **Keith Bergner** of Lawson Lundell for their follow up assistance to the Association in the wake of the decision of the Supreme Court of Canada in *Chamberlain v. The Board of Trustees of School District #36 (Surrey)* (the same-sex parenting book ban case).

**Jeff Smith** of Lindsay Kenney for general legal assistance.

THE ASSOCIATION WAS ALSO THE beneficiary of significantly more financial support from the legal community in 2003. The following law firms and organizations provided

significant assistance to stage our 40<sup>th</sup> Anniversary celebrations in June and for the public talk by The Right Honourable Beverley McLachlin, Chief Justice of Canada in November:

- |                                  |                           |
|----------------------------------|---------------------------|
| Alexander Holburn                | Heenan Blaikie            |
| Beaudin Lang                     | The Law Society of BC     |
| Arvay Finlay                     | Lidstone, Young, Anderson |
| Borden Ladner Gervais            | Lawson Lundell            |
| Bull Houser & Tupper             | Lindsay Kenny             |
| Crossin Coristine Wodall         | McCarthy Tetrault         |
| Farris, Vaughan, Wills & Murphy  | McGrady, Baugh & Whyte    |
| Fiorillo Glavin Gordon           | Nelson Vanderkruyk        |
| Fraser Milner Casgrain           | Owen, Bird                |
| Granville & Pender               | Peck and Company          |
| Labour Law                       | Ratcliff & Company        |
| Guild, Yule, Sullivan, Slivinski | Rosenbloom & Aldridge     |
| Harper Grey Easton               | Shortt, Moore & Arsenaull |
|                                  | Singleton Urquhart        |
|                                  | Vick, McPhee & Liu        |

# STAFF & VOLUNTEERS

## STAFF

**Murray Mollard**, Executive Director  
**Kirk Tousaw**, Policy Director (from April 2003)  
**Vince Gogolek**, Policy Director (to March 2003)  
**Lil Woywitka**, Membership Secretary  
**Jim Braunagel**, Office Manager  
**Tom Sandborn**, Development Officer  
**Andres Hannah-Suarez**, Summer Law Student  
**Mike Singleton**, SFU Co-op Student

## CONTRACTORS

**Roedy Green** of Canadian Mind Products, Database consultant  
**Tompkins, Wozny, Miller & Co.**, Auditor  
**Katherine Ruffen** of Dragomir Breckner, Bookkeeper  
**Nadene Rehnby** of Hands on Publications, Desktop Publisher for The Democratic Commitment

## VOLUNTEERS

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

**Lynda Hird** who provided yeowoman's work in conjunction with the 40th anniversary of the BCCLA.

**Jessica Plescia** for recruiting volunteers and coordinating their work.

**David Aaron** for principally organizing the Beats of Liberty youth dance.

**Herlenda Basas** for assistance with donation records.

Thanks also to the following volunteers:

Mehdi Ali	Chris Hardcastle	Devon Page	Roger Sanche
Tim Beamish	Laura Huey	Rebeka Zoe Penberg	DJ Shankini
Chris Bennett	Lucy Hugh	Jessica Plescia	Kurt Sharpe
Renee Boje	Rowena Jones	Ritchie Po	David Spratley
Raymond Cushing	Jo Karhein	Christopher Pollon	Mia Taghizadeh
Helen Daniels	Hanif Karim	Glenna Pollon	Lara Tessaro
Nicola Fairweather	Rahat Kurd	Deelia Jane Ramsbotham	Will Wang
Alec Fernandez	Anna Murray	Bram Rogachevsky	Alf Wilson
Dan Gawthrop	Pam Murray	Katherine Ruffen	John Wilson
Rob Grace	Steven Oldridge		Timothy Wisdom
			Garth Yule

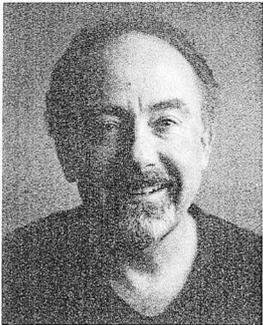
## LAW STUDENTS

Thanks to the following law students for their assistance in legal research.

Martin Abadi	Chris Hardcastle
David Eby	Oliver Wilson

# TREASURER'S REPORT / ALAN ROWAN

IT IS WITH THE BEST OF INTENTIONS that we set off each year, never sure what will ensue. Casting a budget is, at times, not so removed from fancy. Of some things one can be reasonably confident, of others one ventures forth on trust. And so it was that as we laid 2003 to rest, our trust was both well, and poorly, served. Our members and donors have done us proud. We trust that those who could, or wished to, were able to join us for our wonderful 40th anniversary dinner at Floata Restaurant in June, or Chief Justice McLachlin's delightful talk at the Hotel Vancouver in November.



Treasurer Alan Rowan  
PHOTO: ALISTAIR EAGLE

This is one way we can say thanks, and we shall continue to arrange such events. We want to keep the community in touch with those people we believe have important things to say, and also to honour you all, if you will.

Looking back, I want to say that we had a lot of fun last year, dammit; the life

of advocacy and reflection and argument should not be all work – and it behooves us as an organization to make things entertaining when we can. The events we sponsored served many functions, bringing members of the community together to celebrate, listen, think, and to protest. While the costs of staging special events in 2003 was large, these undertakings allow us to make our positions available to a larger audience, to raise the profile of civil rights and liberties generally, and also (the part I like especially) to enhance our fundraising efforts. And believe me this task knows no slumber.

With this in mind, early last year the Association hired Tom Sandborn as a part-time fund-raiser. Tom has been a great pleasure to work with, and his efforts on our behalf have now begun to pay off, both in terms of some long-term financial commitments by some non-traditional groups, but also in terms of community work and good P.R. The BCCLA Executive Committee sees Tom's efforts evolving into a permanent staff position within two years. There is no question we must continue to

adapt to changing realities in the funding world. The wonderful support of the Law Foundation alone isn't sufficient to keep us "competitive."

Meanwhile, the beat goes on. As usual, I want to thank the individual members and donors who continue to support our work with their dollars. In addition, I'd like to make special mention of the following groups and individuals who provided financial assistance, good work, advice and gifts in kind to the BCCLA in the past year:

B.C. Federation of Labour  
BC Gaming Policy and Enforcement Branch  
Canadian Farmworkers' Union  
Michael Audain  
Pulp Paper & Woodworkers  
Retail Wholesale Union  
Telecommunications Union  
The Illahie Foundation  
The Law Foundation of B.C.  
Union of B.C. Performers  
VanCity Savings Credit Union  
West Coast Title Search

Special events allow us to make our positions available to a larger audience, to raise the profile of civil rights and liberties generally, and also (the part I like especially) to enhance our fundraising efforts.



A handwritten signature in black ink, appearing to be "Alan Rowan".

ALAN ROWAN

# AUDITOR'S REPORT

To the Board of Directors and Members, British Columbia Civil Liberties Association

We have audited the statement of financial position of the British Columbia Civil Liberties Association as at December 31, 2003 and the statements of operations and changes in fund balances, financial position and cash flows for the year then ended. These financial statements are the responsibility of the Association's management. Our responsibility is to express an opinion on these financial statements based on our audit.

Except as explained in the following paragraphs, we conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In common with many not-for-profit charitable organizations, the British Columbia Civil Liberties Association derives revenue from memberships, donations and grants, the completeness of which is not susceptible of satisfactory audit verification. Accordingly, our verification of those revenues was limited to the amounts recorded in the records of the organization and we were not able to determine whether any adjustments might be necessary to memberships, donations, grants, excess of revenue over expenses, assets and net assets.

In our opinion, except for the effect of adjustments, if any, which we may have determined to be necessary had we been able to satisfy ourselves concerning the completeness of the memberships, donations and grants referred to in the preceding paragraph, these financial statements present fairly, in all material respects, the financial position of the Association as at December 31, 2003 and the results of its operations for the year then ended in accordance with Canadian generally accepted accounting principles. As required by the Society Act of B.C., we report that these principles have been applied on a basis consistent with the prior year.

The comparative figures for the year ended December 31, 2002 were examined by another accountant who expressed an unqualified opinion thereon in his report dated February 22, 2003.

**TOMPKINS, WOZNY, MILLER & CO.**  
CHARTERED ACCOUNTANTS

Vancouver, Canada  
February 6, 2004

# FINANCIAL STATEMENTS

## British Columbia Civil Liberties Association

### STATEMENT OF OPERATIONS AND CHANGES IN FUND BALANCES

As at December 31

	2003				Total 2002
	General Fund	Stabilization Fund	Little Sister's Fund	Total 2003	
<b>REVENUES</b>					
Membership & donations	127,528	—	—	127,528	110,775
Law Foundation – operating grant	134,300	—	—	134,300	134,300
Specified grants & donations earned	81,579	—	—	81,579	27,759
Gaming revenue earned	25,100	—	—	25,100	33,986
Investment revenue	461	9,747	—	10,208	11,620
Endowment income [note 6]	4,871	—	—	4,871	1,703
Miscellaneous and special events [note 10]	17,163	—	—	17,163	3,498
Amortization of deferred contributions related to capital assets [note 7]	3,184	—	—	3,184	4,373
	<b>389,315</b>	<b>9,747</b>	<b>—</b>	<b>403,933</b>	<b>328,014</b>
<b>EXPENSES</b>					
Salaries & benefits	180,984	—	—	180,984	204,006
Rent & utilities	31,075	—	—	31,075	26,558
Office operating	17,416	—	—	17,416	18,104
Contract services [note 8, 11]	57,438	—	—	57,438	10,262
Insurance, interest & bank charges	4,400	—	—	4,400	2,613
Fundraising	6,516	—	—	6,516	10,576
Publications & printing [note 9]	46,824	—	—	46,824	11,548
Legal defence	2,988	—	—	2,988	43,485
Miscellaneous and special events [note 10]	37,562	16,146	—	53,708	12,894
Amortization	5,310	—	—	5,310	6,030
	<b>390,513</b>	<b>16,146</b>	<b>—</b>	<b>406,659</b>	<b>346,076</b>
<b>Excess (deficiency) revenue over expenses</b>	<b>3,673</b>	<b>(6,399)</b>	<b>—</b>	<b>(2,726)</b>	<b>(18,062)</b>
Fund balance, beginning of year	5,617	243,462	1,625	250,704	362,766
Transfer of Endowment to Vancouver Foundation	—	—	—	—	(94,000)
Transfer of current year excess of revenue	(3,673)	3,673	—	—	—
<b>Fund balance, end of year</b>	<b>5,617</b>	<b>240,736</b>	<b>1,625</b>	<b>247,978</b>	<b>250,704</b>

See accompanying notes

# Financial statements

## British Columbia Civil Liberties Association STATEMENT OF FINANCIAL POSITION As at December 31

	2003				Total 2002
	General Fund	Stabilization Fund	Little Sister's Fund	Total 2003	
					<i>[restated note 13]</i>
<b>ASSETS</b>					
<b>Current</b>					
Cash & short-term deposits	69,710	5,348	—	75,058	72,018
GST, interest and other receivables	4,631	1,117	1,625	7,373	3,998
Due to/from other funds	(50,120)	31,195	18,925	—	—
Prepaid expenses	15,351	—	—	15,351	11,618
<b>Total current assets</b>	<b>39,572</b>	<b>37,660</b>	<b>20,550</b>	<b>97,782</b>	<b>87,634</b>
Investments, at cost <i>[note 3]</i>	—	203,076	—	203,076	196,259
Capital assets <i>[note 4]</i>	7,784	—	—	7,784	10,936
	47,356	240,736	20,550	308,642	294,829
<b>LIABILITIES AND NET ASSETS</b>					
<b>Current liabilities</b>					
Accounts payable and accrued liabilities	34,993	—	—	34,993	6,006
Deferred contributions <i>[note 5]</i>	2,782	—	18,925	21,707	31,272
Due to Endowment fund <i>[note 6]</i>	425	—	—	425	125
Deferred contributions relating to capital assets <i>[note 7]</i>	3,539	—	—	3,539	6,722
Total liabilities	41,739	—	18,925	60,664	44,125
<b>Net assets</b>					
Invested in capital assets	4,245	—	—	4,245	4,215
Internally restricted	—	240,736	1,625	242,361	245,087
Unrestricted	1,372	—	—	1,372	1,402
Total net assets	5,617	240,736	1,625	247,978	250,704
	<b>47,356</b>	<b>240,736</b>	<b>20,550</b>	<b>308,642</b>	<b>294,829</b>
Contingent liability <i>[note 12]</i>					
See accompanying notes					

## British Columbia Civil Liberties Association

### STATEMENT OF CASH FLOWS

Year ended December 31

	2003				Total 2002
	General Fund	Stabilization Fund	Little Sister's Fund	Total 2003	
<b>OPERATING ACTIVITIES</b>					
Cash received from					
General contributions	127,528	—	—	127,528	110,775
Specified donations – due to Little Sister's	—	—	7,103	7,103	11,822
Law Foundation – operating	134,300	—	—	134,300	134,300
– other	64,000	—	—	64,000	21,000
Gaming	25,011	—	—	25,011	30,720
Publication, special events and other	18,163	—	—	18,163	11,497
Investment income received	461	—	—	461	436
Endowment income received	4,871	—	—	4,871	1,703
Cash paid for salaries and benefits	(178,720)	—	—	(178,720)	(204,006)
Cash paid for materials and services	(184,146)	(15,976)	—	(200,122)	(116,479)
	11,468	(15,976)	7,103	2,595	1,768
<b>FINANCING AND INVESTING ACTIVITIES</b>					
Cash contributions for Endowment Fund	400	—	—	400	675
Paid to Endowment Fund	(100)	—	—	(100)	(550)
Paid/received on behalf of other funds	(8,873)	15,976	(7,103)	—	—
Income received on investments	—	6,413	—	6,413	11,735
Purchased investments	—	(241,772)	—	(241,772)	(309,869)
Proceeds on sale of investments	—	237,662	—	237,662	302,606
Cash paid for services from lawyers' trust	—	—	—	—	(29,092)
Cash paid for capital acquisitions	(2,158)	—	—	(2,158)	(4,842)
Cash provided by (used for) financing and investing activities	(10,731)	18,279	(7,103)	445	(29,337)
Increase (decrease) in cash and short-term deposits	737	2,303	—	3,040	(27,569)
Cash and short-term deposits, beginning of year	68,973	3,045	—	72,018	99,587
<b>Cash and short-term deposits, end of year</b>	<b>69,710</b>	<b>5,348</b>	<b>—</b>	<b>75,058</b>	<b>72,018</b>

See accompanying notes

## Notes to financial statements

### 1. PURPOSE OF THE ORGANIZATION

The British Columbia Civil Liberties Association ("BCCLA") is a provincial organization operating programs and providing services to promote, defend, sustain and extend civil liberties and human rights. The BCCLA is incorporated under the Society Act of British Columbia as a not-for-profit organization and is a registered charity under the Income Tax Act.

### 2. SIGNIFICANT ACCOUNTING POLICIES

The BCCLA follows the deferral method of accounting for contributions.

#### Fund Accounting

Revenues and expenses related to program and service delivery, administrative activities, special projects, legal services and capital assets are reported in the General Fund.

Revenues and expenses related to the litigation regarding Little Sister's Book & Art Emporium and Canada Customs lawsuit are reported in the Little Sister's Fund.

The Stabilization Fund was established on December 31, 2001 and originally represented the accrued interest and earnings on bequests and gifts of Endowment contributions to that date. The Stabilization Fund may be used in any manner decided by the Board of Directors to assist the BCCLA in accomplishing its purpose. The fund may be used for important special projects that the BCCLA would not otherwise be able to undertake or to cover an operating deficit in a fiscal year. The Stabilization Fund will normally receive the income earned and received from Endowments unless designated otherwise by the board, and will receive any excess of revenue of the general fund in any fiscal year.

#### Revenue Recognition

Restricted contributions and grants are recognized as revenue of the appropriate fund in the year in which related expenses are incurred. Unrestricted contributions are recognized as revenue of the appropriate fund when received or receivable if the amount to be received can be reasonably estimated and collection is reasonably assured.

Endowment contributions are recognized as direct increases in the Endowment Fund balance.

Externally restricted investment income, if any, is recognized as revenue of the appropriate fund in the year in which the related expenses are incurred. Internally restricted, unrestricted and endowment investment income is recognized as revenue when earned in the appropriate fund.

Other revenue is recognized when a sale has occurred, the service has been performed, or an event

has taken place and there is a reasonable expectation of collection.

Membership and Donation revenue is recognized when received.

#### Capital Assets

Purchased capital assets are recorded in the General Fund on the Statement of Financial Position at cost less accumulated amortization. Contributed capital assets would be recorded in the General Fund at fair value at the date of contribution. Amortization is provided on a straight-line basis over an asset's estimated useful life, which is six years for furniture and equipment, and three years for computers. Amortization expense is reported in the General Fund.

#### Investments

Investments are recorded at cost. The cost of non-interest bearing coupons is increased by the annual amortization of discounts.

#### Contributed Services

Volunteers contribute a significant amount of hours and services per year to assist the BCCLA carry out its program and service delivery and administrative activities. Because of the difficulty in determining their fair value, contributed services are not recognized in the financial statements.

#### Statement of Cash Flows

The statement of cash flows is prepared on a net cash basis and cash flows from operating activities are presented using the direct method.

#### Use of Estimates

The preparation of financial statements in conformity with Canadian generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenditures during the reported period. Actual results could differ from the estimates.

### 3. FINANCIAL INSTRUMENTS

The Association's financial instruments consist of cash and short-term deposits, accounts receivable, accounts payable and accrued liabilities, deferred contributions and investments. The fair values of the financial instruments, except the investments, approximate their respective carrying values. The fair market value of the investments is approximately \$227,561 [2002 - \$197,961].

It is management's opinion that the Association is not exposed to any significant credit or interest risk from these financial instruments except for interest risk associated with earnings from its investments.

## 4. CAPITAL ASSETS

	2003	2002
Furniture, equipment and computers	66,079	63,922
Less: accumulated amortization	58,295	52,985
Net book value	<u>7,784</u>	<u>10,937</u>

## 5. DEFERRED CONTRIBUTIONS

Deferred contributions reported in the General Fund are restricted funding that was received in the current period or a prior period, but which will be earned in a subsequent period. Deferred contributions in the Little Sister's Fund are unspent donations designated for the Little Sister's Fund. Changes in deferred contribution balance reported in the General Fund are as follows:

	2003	2002
Balance, beginning of year	31,272	22,799
Amounts received in the year	97,114	70,218
Specified grants and donations earned	(81,579)	(27,759)
Gaming revenue earned	(25,100)	(33,986)
Balance, end of year	<u>21,707</u>	<u>31,272</u>

## 6. ENDOWMENT

The Association established an Endowment Fund in 1986 to provide a permanent source of revenue for work to protect civil liberties in British Columbia. In 2002, the amount of original bequests and gifts to the endowment fund were transferred to the Vancouver Foundation, to manage the funds in perpetuity. Accrued interest and earnings from the fund was used to establish the Stabilization Fund which continues to be managed by the Association. As the funds at the Vancouver Foundation are no longer under the control of the Association, they are not reflected on these financial statements. The Association continues to receive the income from the Endowments.

Endowment Assets held by the Association:

	2003	2002
Balance, beginning of year	125	93,377
Transfer from Stabilization Fund	—	623
Contributions received	400	675
Transfer to Vancouver Foundation (100)	(100)	(94,550)
Balance, end of year	<u>425</u>	<u>125</u>

Assets held at the Vancouver Foundation:

Contributed principal	94,650	94,550
Market Value	95,669	91,017
Distributions in the year	<u>4,871</u>	<u>1,703</u>

During the 2003 year, the Board approved the allocation of the Endowment Income to the General Fund.

## 7. DEFERRED CONTRIBUTIONS RELATING TO CAPITAL ASSETS

The deferred contributions related to capital assets in the General Fund represent the unamortized portion of capital assets acquired with restricted contributions.

	2003	2002
Balance, beginning of year	6,723	11,095
Less: amounts recognized as revenue in the year	3,184	4,373
Balance, end of year	<u>3,539</u>	<u>6,722</u>

## 8. CONTRACT SERVICES

Increased contract expenses for 2003 are attributable primarily to expenses for a Development Officer and professional fees for translation of the Arrest Handbook.

## 9. PUBLICATIONS AND PRINTING

Increased expenses for printing and publication are primarily due to the expenses related to printing of the four versions of the revised Arrest Handbook.

## 10. MISCELLANEOUS AND SPECIAL EVENTS

As part of its 40<sup>th</sup> Anniversary celebrations, the Association organized various special events including a 40<sup>th</sup> Anniversary dinner, a youth dance, a book reading by Bill Deverell, and a talk by The Right Honourable Beverley McLachlin, Chief Justice of Canada. Miscellaneous expenses funded through the Stabilization Fund are for a national ad in the Globe and Mail calling for a public inquiry for Maher Arar.

## 11. RELATED PARTY TRANSACTIONS

During the year, a director received \$2,400 [2002 – Nil] for contract services. The amount was received in the normal course of business and is measured at the exchange amount, which is the amount of consideration established and agreed to by the parties.

## 12. CONTINGENT LIABILITY

The BCCLA involves itself in selected court actions involving civil liberties. In many cases there is a possibility that the courts order the BCCLA to pay costs. There are no outstanding orders to pay costs and the amount that may become a liability of the BCCLA cannot be determined.

## 13. COMPARATIVE NUMBERS

Certain of the comparative numbers for the year ending December 31, 2002 have been restated to conform to the presentation adopted in the current year. The comparative numbers have also been restated to remove Endowment Funds arranged and controlled by the Vancouver Foundation.

# MEMBERSHIP REPORT / SUPPORTERS

	2003	2002	2001	2000	1999
Special	252	218	223	213	197
Individual	324	342	330	311	284
Family (two people)	198	190	180	146	140
Organization	11	9	7	6	6
Total memberships	785	759	740	676	627
Donors only	354	272	223	334	451
Total supporters	1,139	1,031	963	1,010	1,078

## Memorials and Bequests to the BCCLA Endowment Fund

The BCCLA Endowment Fund provides long term financial stability for the Association and allows us to take on special projects that we could not otherwise afford. In 2002, we completed a major restructuring of the Endowment Fund by placing it in the capable hands of the Vancouver Foundation who manage it for minimal cost while returning income to us. We acknowledge with gratitude bequests and gifts in memory of the following people:

### Bequests

Francis Earl Bertram (1997)  
Roderick Lionel (1994)  
Winona Grace MacInnis (1993)  
David Bruce Morgan (1990)  
Dr. Cecil K. Stedman (1989)  
Accelerated Dr. Cecil K. Stedman (1984)

### In Memoriam

John B. (Jack) Bryan (1993)  
Gordon H. Dowding – Founding Member (2003)  
Robert E. Jefferson (1993)  
Merril Lathan (1994)  
Chrysta McCarron (1999)  
David Bruce Morgan (1990)  
Mr. R. E. (Lefty) Morgan – Founding Member (1987)  
Roger Robson (1990)  
R.A.H. (Reg) Robson – Founding Member and Past President (1996)  
Karl Siegfried (1994)  
Homer Stevens- Honourary Director (2002)  
Kay Aronstam Stockholder – Past President (1998)  
Harry Rankin – Honourary Director (2002)  
Rev. John Shaver – Honourary Director (2001)

## A Word About BCCLA Supporters

Our members and supporters are the backbone of the BCCLA. They provide a major source of the financial wherewithal to do our job; they also give the Association credibility in approaching funding agencies and dealing with civil liberties violators. It is always a challenge to attract large numbers of supporters because we tackle controversial issues. However, those who do support us tend to stay on board for the long term, and increase their support as time goes on. For the BCCLA to continue its work, we will need to significantly increase the number of our supporters in the coming years.

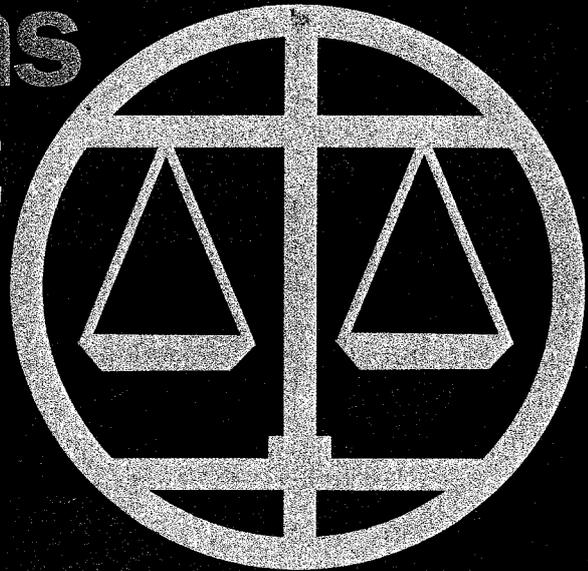
## FOUNDERS of the B.C. Civil Liberties Association

On December 9th, 1962, a meeting was convened at the University of British Columbia's International House to discuss the state of civil liberties in British Columbia. As a result of this meeting, the B.C. Civil Liberties Association was incorporated under the *Societies Act* on February 27, 1963. The following individuals were instrumental in founding the BCCLA.

Helen Andersen	Dr. James Foulks	Alex B. MacDonald	Dr. Samuel Rothstein
Michael James Audain	Elspeth Munro Gardner	D. McDonnell	Mary Edna (Rosie) Rowan
Dr. Cyril S. Belshaw	Peter A. Gibb	Angus MacPhee	Dr. Robert Rowan
Denise A. Bowers	John E. Gibbard	David H. Manley	Paul Scherle
Fritz Karl Bowers	William Giesebrecht	Rosemary Manley	L.S. Scoffham
Donald G. Brown	Paul Goud	Adrian J. Marriage	Sidney B. Simons
Mr. & Mrs. C. Burchill	Pat Graber	Geoffrey H. Mitchell	Eve Smith
Robert Campbell	Duncan Graham	R. E. "Lefty" Morgan	Mr. & Mrs. E. Sopo
Joan Carpenter	Audrey E. Graham	Margaret T.C. Morgan	John B. Stanton
Reginald Clarkson	Robert Gregory	Joan Morison	Alice B. Stark
Werner Cohn	Gowan T. Guest	Brian Murphy	Dorothy G. Steeves
William Deverell	Jean Hamilton	James C. Murphy	Marney M. Stevenson
William G. Dixon	Hugh Herbison	Eric Nichol	Julia Stockett
C.R. Douglas	Rev. Phillip Hewett	Mary Norton	P. R. Stratton
Gordon H. Dowding	Dr. & Mrs. Norman B. Hirt	Pat O'Neill	Koozma J. Tarazoff
R. W. Dunning	Barbara Hughes	Ann-Marie Orno	Watson Thomson
Dr. & Mrs. F. E. Ellis	Raymond Hull	Mrs. D.E. Priestman	George E. Trasov
Graham Elliston	Terrence G. Ison	Howard Rafferty	J.S. Tyhurst
Mrs. S. Embra	N.B. Kahn	Harry Rankin	Mrs. H. L. Vanderveen
Tony Emery	Robert E. Koerner	Peter Remnant	E.L. Walker
Norman Epstein	D. Lawson	Ann Reynolds	E. L. Watson
Marilyn Epstein	R. P. Legge	Reg Robson	Sheila Young
Bonnie Erickson	Dr. Stanford Lyman	Duncan C. Ross	
Margaret Erickson	Clare McAllister		
John Fornataro	Mrs. J. S. McCracken		
Irene Forester	D.R. McDiarmid		



Protecting the  
**freedom**  
of **Canadians**  
since **1962**



**THE MANDATE** of the B.C. Civil Liberties Association is to promote, defend, sustain and extend civil liberties and human rights in the province of British Columbia.

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

  
**THE LAW**  
FOUNDATION  
OF BRITISH COLUMBIA

  
BRITISH  
COLUMBIA

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

[www.bccla.org](http://www.bccla.org)