



# **CLAIHR**

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**Canadian Lawyers for International Human Rights  
Juristes canadiens pour les droits internationaux de la personne**

## **ANNUAL REPORT**

### **2020-2021**

## About CLAIHR

CLAIHR is a non-governmental organization of lawyers, law students, legal academics, and other jurists, founded in 1992 to promote international human rights from a Canadian perspective through education, research, and advocacy. We are committed to advocating for and defending fundamental human rights as enshrined in the Universal Declaration of Human Rights and other international and domestic human rights instruments.

## CLAIHR's Board of Directors

James Yap (President)

Florence Au (Treasurer)

Heather Cohen

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## Community Partners

CLAIHR thanks pro bono counsel [Mark Iyengar](#), [Jennifer Klinck](#), [Joshua Sealy-Harrington](#), [Penelope Simons](#), [Daniel Sheppard](#), [Lorne Waldman](#), and [Tara McElroy](#).

CLAIHR thanks advocacy partners [Above Ground](#), [the Canadian Centre for Victims of Torture](#), [the Jur-Ed Foundation](#), [the Canadian Network for Corporate Accountability](#), [the Center for International Environmental Law](#), [the Human Rights Research and Education Centre at the University of Ottawa](#), [Human Rights Watch](#), [the International Justice and Human Rights Clinic at the Allard School of Law at UBC](#), and [the Law Union of Ontario](#).

CLAIHR thanks volunteers [Veromi Arsiradam](#), [Lwam Gebrehariat](#), [Kate McNeece](#), [Harmit Sarai](#), and [Alex Tavadian](#) for their invaluable contributions this year.

Finally, CLAIHR honours the memory of the thousands of Indigenous children whose remains were found buried on the grounds of former residential schools across Canada this past year, as well as those whose remains are yet to be found.

## Message from the President

As the second full year of the COVID-19 pandemic continued to claim lives and cause disruptions globally, human rights crises continued to proliferate around the world. Grave concerns persist around the abuse of Uyghurs in Xinjiang and atrocities committed by Ethiopian forces in Tigray, for example. Looming over it all is the climate crisis, which threatens to have a grave impact on humanity, most of all on marginalized populations.



However, here in Canada, it was a story right at home that gripped the country in grief and horror this year. Unmarked graves believed to contain the remains of thousands of Indigenous children who were taken from their homes and sent to residential schools were found at various sites across the nation. This grisly discovery reminds us of the daunting task this country faces in reckoning with its past (and present) treatment of Indigenous peoples. And the government's response - with the Prime Minister declaring a National Day of Truth and Reconciliation and then ignoring the occasion by spending the day surfing (something that would never happen on, for example, Remembrance Day) - reminds us of how much work remains to be done.

CLAIHR reaffirms its commitment to play an active role in advancing Indigenous rights in Canada, even as we continue our advocacy on other pressing human rights issues internationally, including the regulation of Canadian businesses' human rights practices abroad, detention rights in Canada, and the ever-growing threats posed by the climate change crisis.

The ongoing pandemic has meant that we've had to continue operating remotely, collaborating through online tools. Of course, we've also been greatly assisted by contributions from our volunteers, community partners, *pro bono* counsel, student chapters, and Advisory Board.

The global pandemic has exacted a terrible cost in human life and suffering. Now more than ever, organizations like CLAIHR are vital in advocating for the human rights of the most marginalized among us. I look forward to continuing to lead CLAIHR as Board President during these interesting and eventful times and I am excited to see what we will achieve together.

A handwritten signature in black ink, appearing to read 'James Yap'.

James Yap  
President

# Committee Reports

## Litigation and Advocacy Committee

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Advancing international human rights law through strategic litigation and policy reform is one of CLAIHR's highest priorities as an organization. CLAIHR's Litigation and Advocacy Committee coordinates our legal and policy advocacy projects. This work includes making intervener submissions in court cases, issuing public statements, and filing submissions with government agencies conducting policy consultations. CLAIHR's major litigation and advocacy projects undertaken this year are summarized below.

### LITIGATION

#### **Canadian businesses human rights compliance abroad: *Montejo v. Canada***

Counsel: Jennifer Klinck, Joshua Sealy-Harrington of [Power Law](#) and Penelope Simons of [University of Ottawa](#)

Canadian companies operating overseas have become notorious globally for drawing allegations of human rights abuses while operating abroad. Canada has a responsibility to take action to investigate and stop these abuses. That's why CLAIHR and the International Justice and Human Rights Clinic at Allard School of Law (IJHR Clinic) [intervened](#) at the Federal Court of Appeal (FCA) in *Montejo et al. v. Canada*, a case which considers the Canadian government's international legal obligations to ensure that Canadian corporations do not violate human rights.



(L to R) CLAIHR counsel Jennifer Klinck, Joshua Sealy-Harrington, Penelope Simons, and student Chris Casimiro at the Federal Court of Appeal hearing in *Montejo v. Canada*, November 9, 2021

In 2009, Mariano Abarca, a community leader was murdered outside his home in Chiapas, Mexico. Mr. Abarca was a vocal opponent of a nearby barite mine owned by a Canadian company. Mr. Abarca's family and supporters requested that the Canadian Public Sector Integrity Commissioner investigate the Canadian Embassy's support of the mine and the mine's connection to Mr. Abarca's death. The Commissioner declined, and Mr. Abarca's family, supporters, and civil society organizations sought review of that decision in the courts.

CLAIHR and the IJHR Clinic argued that the Commissioner should have taken Canada's international human rights obligations and *Charter* principles into account in making its decision. We also argued that Canada has a duty, not only to *respect* rights, but also to *protect* rights by ensuring that certain private actors—including corporations brought into existence under its laws—do not themselves violate human rights.

**Involuntary treatment and/or detention of people with mental health disabilities: *Corless v. Fraser Health Authority***

Counsel: Mark Iyengar of [Peck and Company](#)

International human rights law affords extensive protections to people with mental health disabilities. However, laws in Canada are substantially out of step with these international standards, notably as enshrined under the *Convention on the Rights of People with Disabilities (CRPD)*. Specifically, laws grant courts and/or government agencies broad powers to order the involuntary treatment and/or detention of people with mental health disabilities, in a way that far exceeds what is permitted under the *CRPD*.

BC's *Adult Guardianship Act* empowers certain government agencies to apply for a court order providing for involuntary treatment and/or hospitalization of an individual who is deemed to be abused or neglected and unable to seek support or assistance due to an illness or condition, but who would nevertheless benefit from support or assistance. The order lasts for one year and can be renewed for a further term of one year, but the legislation contains no provision for it to be renewed beyond this two-year term, presumably to place an upper limit on the severe violation of an individual's personal liberty and security that this entails.

In *Corless v. Fraser Health Authority*, however, the British Columbia Provincial Court (BCPC) found that an order for involuntary treatment and/or detention can effectively be extended indefinitely. The respondent was held at a long-term care facility under an order under the *Adult Guardianship Act*. After the two-year term of the Order expired, however, the BCPC ruled that the Fraser Health Authority could apply for an order *de novo* under the *Adult Guardianship Act*, without any significant change in the respondent's circumstances, effectively allowing her detention to be extended indefinitely.

CLAIHR, jointly with Disability Alliance BC, is intervening to argue that the interpretation of the *Adult Guardianship Act* adopted by the BCPC is inconsistent with Canada's international human rights obligations. Notably, the BCPC's reasoning is premised on the assumption that coercive measures must always be available for people with mental health disabilities, whereas the *CRPD* is clear that coercive measures must always be exceptional. The BCPC's interpretation therefore cannot be allowed to stand, as it is well established that legislation must always be interpreted in a manner that is consistent with Canada's international human rights obligations.

## **Canada's obligations to take action on climate change: *La Rose v. Canada* and *Misdzi Yikh v. Canada***

Counsel: Daniel Sheppard of [Goldblatt Partners](#) and Tamara Morgenthau

Climate change is the most urgent existential issue facing our world today. However, the world's governments, including Canada's, have so far failed to take adequate action. This inaction has a disproportionate impact on certain disadvantaged groups, such as Indigenous people, as well as on future generations. In many countries around the world, this has given rise to a series of lawsuits over allegedly inadequate government policies on climate change.

In Canada, two such lawsuits are currently under appeal at the FCA: [La Rose v. Canada](#), a lawsuit filed by a group of young people, and [Misdzi Yikh v. Canada](#), a lawsuit filed by members of the Wet'suwet'en First Nation. Both lawsuits alleged that the federal government's failures to take adequate measures to address climate change violated the claimants' constitutional and other rights, and both were dismissed by the Federal Court on grounds of non-justiciability.

On appeal to the FCA, CLAIHR sought leave to intervene in both lawsuits, intending to draw the Court's attention to jurisprudence from similar cases around the world, where courts in other countries have generally found similar lawsuits to be justiciable. CLAIHR also intended to demonstrate to the Court how the right to life under international law encompasses a positive obligation to protect against the threat of climate change.

Unfortunately, CLAIHR's motion to intervene was not granted. CLAIHR is disturbed by the recent trend at the FCA not to accept input from civil society in dealing with cases that raise matters of high public importance. In this case, climate change is an immensely important issue and merits careful consideration by the Court. The perspectives of foreign courts and international law are clearly relevant to this matter. CLAIHR hopes that the FCA will reconsider its outlook towards the value of receiving submissions from interveners in cases of public importance.

## **Accountability for corporate human rights abuses abroad: Brief to the Supreme Court of the United States in *Doe, et al. v. Nestlé USA, Inc./Cargill, Inc.***

In *Doe, et al. v. Nestlé USA, Inc./Cargill, Inc.*, the United States Supreme Court considered the question of whether corporations enjoy immunity from liability for violations of international law. CLAIHR was one of fifteen international human rights organizations that submitted an [amicus curiae brief](#) arguing that this was not the case.

In *Doe v. Nestlé*, the plaintiffs claimed that as children, they were trafficked from Mali to the Ivory Coast to work on cocoa farms where they were tortured, enslaved, and forced to work under

gruesome conditions. The plaintiffs filed a claim under the US Alien Tort Statute (ATS), a law which gives US federal courts jurisdiction over civil claims for violations of international law. In response, Nestlé and Cargill argued that corporations are not liable under international law.

In 2020, CLAIHR and fourteen other international human rights organizations filed an *amicus curiae* brief at the United States Supreme Court, submitting legal arguments to refute Nestlé and Cargill's position. The brief outlined how international law recognizes that companies can and should be held accountable for human rights violations under the principles of corporate liability and aiding and abetting liability.

In June, the United States Supreme Court released its decision in [Doe v. Nestlé](#). Although the Court did not decide the issue, five of the nine judges agreed with the position of CLAIHR and its partner *amici* that corporations have no special immunity against liability for violations of international law. However, the Court ultimately dismissed the plaintiffs' claim on the basis that the corporate conduct alleged was not sufficiently connected to the United States to establish jurisdiction under the ATS.

### **Canada's International Commitment to Refugees: *Canadian Council for Refugees v Canada (Safe Third Country Act)***

Counsel: Lorne Waldman and Tara McElroy of [Waldman & Associates](#).

Although the poor treatment of asylum seekers in the United States has become an international human rights scandal, Canada continues to consider the US a "safe country" for asylum seekers, under the *Agreement between the Government of Canada and the Government of the United States of America For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries* (the Safe Third Country Agreement or STCA). Except under narrow exceptions, the STCA denies asylum to refugees who enter Canada by way of a US land port of entry. Refugees who arrive in Canada this way are handed over to US authorities, who in turn imprison the asylum seekers.

A number of individuals and public interest organizations challenged the constitutionality of the STCA at Federal Court, arguing that the STCA violated the asylum seekers' *Charter* rights. The Federal Court agreed with the Applicants in part, finding that the STCA violated the asylum seekers' *Charter* right to life, liberty and security of the person. However the Court did not agree that the STCA violated the asylum seekers equality rights under the Charter. In response, the Canadian government appealed the decision to the Federal Court of Appeal and the applicants cross-appealed.

In partnership with the [Canadian Centre for Victims of Torture](#) (CCVT), CLAIHR sought leave to intervene in this appeal, intending to argue that the STCA violates principles of international

human rights law and exposes asylum seekers to the threat of torture, and cruel, inhuman or degrading treatment, both in the US and in their home countries.

Unfortunately, in a brief and cursory decision written by Justice Stratas of the FCA, the motions to intervene of CLAIHR and CCVT and five other groups of applicants were dismissed en masse. Justice Stratas' reasons contained no mention or discussion of the submissions of CLAIHR and CCVT. Once again, CLAIHR is deeply disappointed and concerned at the developing trend in the FCA towards closing proceedings off from any form of public participation or input in cases that raise matters of broad public importance.

## **ADVOCACY**

### **Campaign for Mandatory Human Rights Due Diligence (mHRDD) Legislation**

CLAIHR is deeply concerned by the failure of the Canadian government to regulate Canadian companies operating abroad. Other countries, such as France and Germany, have enacted legislation to impose human rights due diligence obligations on their corporations doing business overseas. That's why CLAIHR supports the campaign, led by the Canadian Network for Corporate Accountability and Above Ground, to enact mandatory human rights due diligence legislation in Canada.

CLAIHR has supported the initiative in various ways, such as by hosting an educational webinar on the topic in April, where interested stakeholders learned about the latest developments with legislation in Europe and strategies for implementing similar legislation in Canada. CLAIHR has also signed onto organizational letters in support of such legislation.

### **Letter to PM Trudeau re WTO Intellectual Property Waiver on COVID-19 Vaccines**

The response to the COVID-19 pandemic has exposed - and exacerbated - vast global inequities in the distribution of wealth and resources. Notably, countries in the developed world have been able to secure preferential access to vaccines that have drastically abated the severity of the pandemic. On the other hand, poorer countries have been left behind, unable to secure enough vaccines to fully vaccinate significant percentages of their populations, even as developed countries begin to administer booster shots.

This uneven access to vaccines is inconsistent with the protections of the right to health under international law. For this reason, CLAIHR wrote [a letter to Prime Minister Justin Trudeau and then-Minister of International Development Karina Gould](#), urging them to support a petition to the

World Trade Organization (WTO) to waive intellectual property rights and patent laws on all COVID-19 vaccines and treatments until global herd immunity is achieved.

## **Canada Day Statement on Residential Schools**

2021 forced Canadians to grapple with one of the grimmest chapters in their country's past, as the discovery of unmarked graves of Indigenous children at residential schools across the country jarred the nation's psyche. For that reason, CLAIHR felt it was important this Canada Day to issue [a statement remembering all the children who perished in residential schools throughout the country](#), and calling on the Canadian government to take action to rectify this historic injustice.

CLAIHR firmly believes that Indigenous people's rights in Canada are international human rights, and is committed to expanding its own work in this area.

## **Education Committee**

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CLAIHR's Education Committee is responsible for organizing and promoting educational events and discussions, as well as building CLAIHR's relationships with students and student groups at Canada's law school campuses.

### **STUDENTS**

CLAIHR strongly believes in the importance of supporting the development of the newest generations of human rights advocates. CLAIHR has made it an organizational priority to engage with law students on campus. We currently have student chapters at the [University of Ottawa](#) and [Osgoode Hall Law School](#).

*CLAIHR Ottawa* advocates for and leads discussions on international human rights. The organization's theme this year is Human Rights and the Environment, an emerging and exciting field that has many facets. CLAIHR Ottawa held an AGM in October where it welcomed new general members as well as a handful of wonderful additions to the executive team. Earlier in the school year, CLAIHR Ottawa hosted the first event in its Beers with Peers speaker series by welcoming Insiya Mankani, a Senior Coordinator at Human Rights Watch Toronto. For the Winter Semester, CLAIHR Ottawa has more speakers lined up. In addition, it is planning a larger panel event for March with experts in the field of Human Rights and the Environment. For more information about CLAIHR Ottawa please contact [claihr.ottawa@gmail.com](mailto:claihr.ottawa@gmail.com).

CLAIHR Osgoode suspended operations during the pandemic, but hopes to resume activities soon. For more information about CLAIHR Osgoode please contact [claihr.osgoode@gmail.com](mailto:claihr.osgoode@gmail.com).

Where CLAIHR does not have a student chapter, CLAIHR is nonetheless connected to law schools through its Advisory Board, which includes members affiliated with the law schools at Osgoode Hall Law School, the University of Calgary, the University of Toronto, and the University of Windsor.

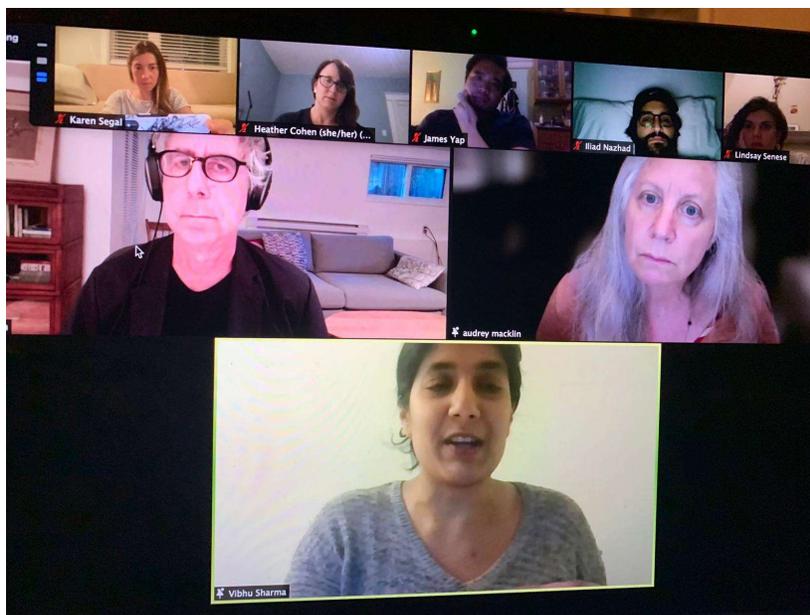
## EVENTS

Each year, CLAIHR typically hosts various events on international human rights topics of interest to Canadian lawyers. These events often qualify as continuing legal education programming. Previously, CLAIHR has worked with [law firms](#), the [Law Society of Ontario](#), and even [Nightwood Theatre](#) on these events.

This year, CLAIHR hosted four virtual events: a film screening of Joel Bakan's latest film, *The New Corporation*, a webinar on careers in international human rights, and two events on the rights of detainees - one in the mental health context and the other in the immigration context.

### Film Screening: *The New Corporation*, with Q&A with Director Joel Bakan

In 2003, UBC professor Joel Bakan released his first film, *The Corporation*, which profiled the behaviour of corporations in pursuing profit for shareholders above all else, regardless of any harm caused to the public interest. In 2020, Professor Bakan released a sequel, *The New Corporation*, which critically examines the growing trend which has seen many corporations make efforts to reinvent themselves as socially responsible global citizens, while continuing their relentless pursuit of profit.



Filmmaker Joel Bakan answers questions at CLAIHR's screening of his latest film *The New Corporation*, June 17, 2021.

In June, CLAIHR hosted a film screening of *The New Corporation*, complete with a Q&A session with the filmmaker Joel Bakan moderated by University of Toronto law professor and CLAIHR Advisory Board member, Audrey Macklin. The event was presented with support from the [Law Union of Ontario](#) and the [Jur-Ed Foundation](#).

### **Building a Career in Human Rights**

In September, CLAIHR hosted a back-to-school webinar on building a legal career in international human rights. Our guest was Vicki Prais, an international human rights lawyer and consultant with 25 years' experience as a human rights practitioner. The event was presented in partnership with the [Law Union of Ontario](#).

### **Dignity Behind Bars: The Impact of Prisons on Mental Health**

In October, CLAIHR hosted a panel on the mental health impacts of prison and particularly solitary confinement.. The discussion was moderated by Zoë Paliare, creator and host of The Field podcast, featuring guests Mark Iyengar, associate at Peck and Company, Johnny Perez, Director of the U.S. Prisons Program for the National Religious Campaign Against Torture, and Vicki Prais, human rights consultant and lawyer. The event was presented in partnership with the [Law Union of Ontario](#).

### **A Conversation on Immigration Detention**

Canada incarcerates thousands of people, including those fleeing persecution and seeking protection, on immigration-related grounds every year in often abusive conditions. A recent report from Human Rights Watch and Amnesty International documents how people in immigration detention are regularly handcuffed, shackled, and held with little-to-no contact with the outside world. Those with mental health conditions experience discrimination throughout the process. With no set release date, they can be held for months or years. The Canada Border Services Agency remains the only major law enforcement agency in Canada without independent civilian oversight.

In November, CLAIHR hosted a conversation on immigration detention, moderated by Human Rights Watch's Samer Muscati, about immigration detention in Canada and how we can collectively push for an end to these abusive practices. Guests included Hanna Gros, consultant in the Disability Rights Division at [Human Rights Watch](#), Molly Joeck, lawyer at [Edelmann & Co.](#), and João Velloso, professor at University of Ottawa. The event was presented in partnership with Human Rights Watch and the University of Ottawa's Human Rights Research and Education Centre.

## Outreach and Communications Committee

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This year our Communications and Media Committee has been active in ensuring that CLAIHR supporters are well informed of the hard work we are doing. The Committee's first priority in this regard has been to expand the organization's online visibility. To this end, we have made major upgrades to our [website](#) to resolve some glitches, improve the design and navigation, and ensure that CLAIHR's work is easily accessible online. We have also dedicated more resources to CLAIHR's [social media presence](#).

CLAIHR also has an email listserv to support our outreach and communications strategy. This listserv advances the objectives of (1) providing a forum for news and discussion of international human rights issues from a Canadian legal perspective, (2) cultivating a community of Canadian legal advocates for international human rights, (3) facilitating effective communication between CLAIHR and its members, and (4) strengthening the relationships between CLAIHR and its student chapters.

CLAIHR's members have also been active in commenting on human rights matters in the media to help educate the public about their international human rights. For example, in the past year, representatives of CLAIHR have commented in the media on [allegations of forced labour in PPE supply chains](#) and spoken on panels on various topics such as [Canadian government complicity in human rights abuses linked to Canadian corporations operating abroad](#).

## Financial Statements

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### Canadian Lawyers for International Human Rights

#### Unaudited Balance Sheet (as of March 31 2021, in Canadian Dollars)

	31-Mar <u>2021</u>	31-Mar <u>2020</u>	31-Mar <u>2019</u>
<b>Assets</b>			
Cash	2,770	3,679	4,373
Holdbacks Recoverable	0	0	0
Other Receivables	58	0	0
Prepaid amounts	0	0	0
<b>Total Assets</b>	<b>2,828</b>	<b>3,679</b>	<b>4,373</b>
<b>Liabilities</b>			
Accounts Payable	0	0	0
Unearned Revenue	0	0	0
GST Recoverable	0	0	0
<b>Total Liabilities</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Retained Earnings</b>	<b>2,828</b>	<b>3,679</b>	<b>4,373</b>
<b>Total Liabilities and Retained Earnings</b>	<b>2,828</b>	<b>3,679</b>	<b>4,373</b>

## Canadian Lawyers for International Human Rights

### Unaudited Income Statement

(for period ended March 31, 2021, in Canadian Dollars)

	31-Mar <u>2021</u>	31-Mar <u>2020</u>	31-Mar <u>2019</u>
<b>Revenue</b>			
Membership donations	775	350	525
Other donations	5	39	
<b>Total Donations</b>	<b>780</b>	<b>389</b>	<b>525</b>
Gross Fundraising	180	0	0
Less: Expenses			
<b>Net Fundraising Income</b>	<b>180</b>	<b>0</b>	<b>0</b>
Interest Income	0	0	0
General Income	0	0	0
<b>Total Other Income</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Revenue</b>	<b>960</b>	<b>389</b>	<b>525</b>
<b>Expenses</b>			
Insurance	1,040	1,056	1,001
Email/Web	750	0	0
General Expenses	0	20	20
Transaction Fees	20	8	12
<b>Total Expenses</b>	<b>1,810</b>	<b>1,084</b>	<b>1,034</b>
<b>Net Income</b>	<b>-850</b>	<b>-695</b>	<b>-509</b>
<b>Beginning Retained Earnings</b>	<b>3,679</b>	<b>4,373</b>	<b>4,882</b>
<b>Ending Retained Earnings</b>	<b>2,828</b>	<b>3,679</b>	<b>4,373</b>