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FREE EXPRESSION IN A CLIMATE OF FEAR

We believe it is a critical time for free expression in this country.

In recent years, cities have passed laws curtailing the right to demonstrate, scientists in employ of the government have had their voices muzzled, and 'anti-terrorism' laws are being used to limit our rights to free speech. The Canadian government went out of its way to silence voices that don't share its talking points.

In 2014 the BCCLA honoured one outspoken voice with a

Liberty award for Excellence in the Arts for her refusal to sit idly by while her work was censored, and her rights were trampled.

Franke James is a Canadian artist, author and activist who has drawn inspiration from the Canadian government's attempts to silence her.

In September we hosted an exhibition of 33 pieces of Franke's original art work on Vancouver's Granville Island.

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OPPORTUNITY TO REBUILD

LINDSAY LYSTER

With a new government in Ottawa, the BCCLA faces a new and exciting challenge.

As all of our supporters know, in the past decade the federal government has passed law after law that threatened fundamental rights and freedoms. It's been difficult to simply keep up with the pace of the changes. We have fought hard, in spite of this, to uphold human rights. We have educated, advocated, and of course, litigated. We have litigated a lot, building a public interest litigation program that is the finest and most prolific in the country.

Right now, we have four active test cases directly challenging the constitutionality of federal laws and actions, to say nothing of the many court cases in which we are acting as intervenors. Our litigation capacity is a critical backstop to all of our other work, and it is the sharpest tool that we have in order to achieve our mission. This remains the case regardless of who holds the reins of government.

We are optimistic that the new government brings an opportunity to rebuild. Already, the new government has said that it will put an end to second-class citizenship – directly responding to our long advocacy against Bill C-24 and our constitutional challenge.

The Prime Minister himself used our language in his victory speech on election night: "A Canadian, is a Canadian, is a Canadian." The new Minister of Immigration, Refugees and Citizenship, when asked in an interview about whether they would act now or wait for the BCCLA to win its court challenge, said: "Why would we wait for a court challenge when we agree with that challenge?" We will make sure that any new law eliminates two-tier citizenship, period.

The government has also said it will review the forest of mandatory minimum sentences that have been put into the *Criminal Code*, which the BCCLA has argued result in significant injustice by eliminating the discretion of judges to impose fit punishments.

It has promised a national inquiry into missing and murdered Indigenous women. And of course, the government has said that it will change the "problematic elements" of the anti-terror law, Bill C-51.

We do not know yet what any of this will mean in practice, and we expect to work with the government, and act as a watchdog, to ensure that the coming changes not only respect, but advance, the protection of our constitutional rights.

We will also be focusing our attention here at home because the BC government has much work to do to ensure that this province is one that respects people's fundamental rights and freedoms.

On these and many more issues, when the federal and provincial governments do the right thing, we will applaud. Where they fall short, as all governments inevitably do, we will attempt to work with them to improve legislation. And when this fails, we will remain ever-ready to challenge our governments in the courts.

FOUR

Thanks to your support, the BCCLA has celebrated many victories for rights and freedoms so far in 2015. Here are four of our favourites.

VICTORIES FOR RIGHTS

POVERTY AND HOMELESSNESS RIGHTS

1 The BC Supreme Court recently ruled that Abbotsford's anti-homeless bylaws violate the *Charter of Rights and Freedoms*. The ruling recognized that telling individuals, who have nowhere else to go, that they cannot sleep outside or erect temporary shelters to protect themselves from the elements places them in an impossible situation. We extend a huge congratulations to Pivot Legal Society who represented their clients in successfully challenging the bylaws. We are proud to have been an intervenor.

BIG DATA UNDER BRIGHT LIGHTS

3 Big data is more than just 'more data'. It is unprecedented amounts of data, linked and analysed in ways never before imagined. The implications for individuals' rights are vast. In early October a major multi-year funded research project was announced to tackle this issue. We are delighted to be working with the country's leading scholars on this critically important project. Policy Director Micheal Vonn will lead BCCLA's work.

ZUNERA ISHAQ BECOMES A CITIZEN

2 Canadians fought long and hard to obtain a *Charter of Rights* which guarantees certain fundamental freedoms to all people. Zunera Ishaq's successful fight to be able to choose to wear a niqab at her citizenship ceremony reminds us of the importance of respect for individual rights, freedom from undue government interference, and tolerance of difference in Canada. Those are values this organization cherishes deeply. Congratulations Zunera.

ONTARIO CREATES SLAPP LEGISLATION

4 In October, Ontario passed the *Protection of Public Participation Act*, aimed at stopping strategic lawsuits, commonly referred to as SLAPPs (Strategic Litigation Against Public Participation)—a tactic used by an individual or company to silence critics. We believe that SLAPPs represent a real danger to the exercise of free expression in this province and across Canada. We will work to ensure more provinces follow Ontario's lead.

SUPPORT THE BCCLA

Join the movement to protect human rights and civil liberties across this country. Become a BCCLA donor today at www.bccla.org/donate

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CENSORED, BUT NOT SILENCED: A TIMELINE

In the Spring of 2011, Franke James was preparing to send her climate change artwork to Croatia for a solo exhibition to tour numerous European cities. The exhibition was designed to inspire youth to take personal responsibility to reduce their carbon footprint and create their own climate change art work. It was just the kind of work Franke had dreamed of doing.

Then the ambitious touring show fell apart. The sponsoring NGO in Croatia informed Franke that they had been warned not to show her art and that her freedom of expression was being trampled by officials from the Canadian government. The NGO's grant for climate change education was cancelled, but far more damning for the show was that high-level bureaucrats

and Ambassadors were advising people not to assist the "Franke James" show in any way.

"If art has to agree with government policy, then art is government propaganda".
 – Franke James

When news broke about the canceled tour, the government denied any interference, telling Franke that funding was not withdrawn, but had never been promised in the first place. "That was a lie. But I couldn't say it was a lie unless I applied for Access to Information to actually get the truth" said James.

So, she did. Using all the tools available to her, Franke took on the Canadian government to find out what really happened. It took years but eventually she received over 2,000 documents, researched connections between people, deciphered email threads and relentlessly pursued answers.

Documents revealed that much of the official concern

was because of "the artist's views on the oil sands."

"They never expected that I would dig so hard to find out the truth. But to me, it's so incredibly shocking even to this day... If art has to agree with government policy, then art is government propaganda"

FRANKE JAMES IS YOUR FAULT

Unfortunately for those who aimed to silence Franke's message, their efforts backfired rather spectacularly. Franke wrote:

"Ironically, I have their heavy-handed censorship of my art to thank for lighting a fire under me and inspiring me to speak up and fight for my rights. By censoring my art they inflamed my passion and the passion of many people around the world who care about freedom of expression, democracy, civil rights and the environment..."

Franke wrote books and put information online. She crowdfunded to get the truth out and succeeded in hanging her climate change artwork on transit posters in Calgary, Halifax, Washington, DC, and right along the Prime Minister's way to work in Ottawa.

BLACKLISTED/REDACTED NO-MORE

Just days after the election Franke put out a new visual essay entitled *I am no longer 'the blacklisted artist'*. In it she expressed her "hope that Justin Trudeau can do a better job than his predecessors at defending Canadian's right to free expression".

We share Franke's hope on that front, and we also believe her story highlights a second critical area for policy reform—access to

information laws.

Ultimately, it was Franke's use of the access to information regime that allowed her to expose the truth. The laws helped to expose government misconduct even when officials tried to cover their tracks. But the process was overly restrictive, and attempts to withhold information via redaction were too far-reaching.


Canada is now ranked a dismal 59th out of 102 countries for our access

to information regime. This new government committed in their platform to reforming Canada's broken access to information system, and we will make it our priority to make sure they follow through.

Over the last year and a half the BCCLA has been honored to work with Franke, and we look forward to continuing to collaborate with her in the future on both free expression, and the public's right to know.

ART FOR A CAUSE

FRANKE JAMES is donating her art at cost to support the work of the BCCLA. To purchase Franke's art and books online please visit: <https://bccla.org/Franke>.



- **Prints!** Franke has generously done an exclusive run of autographed posters from her new Free Expression series for the price of \$25 CAD each.
- **Online auction!** Two autographed bus shelter sized pieces will be auctioned online. Winners choose from one of six designs from Franke's new series Six Easy Ways to Crush Free Expression. Bidding starts at \$400; less than half of their normal retail price.
- **Books!** In *Banned on The Hill: A True Story about Dirty Oil and Government Censorship*, Franke James tells the story, complete with her stunning visuals, of how she fought back against government censorship.





CANADA MUST WELCOME REFUGEES

AND TREAT THEM JUSTLY ONCE THEY GET HERE

Two months ago, a photograph of Syrian three-year-old Alan Kurdi lying dead on a Turkish beach captured the hearts of people around the world. While hard-working organizers across Canada have been mobilizing around migrant justice issues for years, Alan's photograph fomented support amongst a broader public.

In the words of Erika Feller, Assistant High Commissioner for Protection at the Office of the High Commissioner for Refugees (UNHCR), "The refugee problem is, very centrally, an issue of rights – of rights which have been violated and of rights, as set out in international law, which are to be respected. A refugee, classically defined, is someone who is persecuted, denied security of person or freedom from discrimination on account of race or ethnicity, or is unable to exercise fundamental human rights like freedom of expression, association, political

opinion or belief." These are the very same rights that the BCCLA has fought for in Canada for over 50 years.

As a signatory of the *UN Convention Relating to the Status of Refugees*, 1951, and its Optional Protocol, 1967, Canada has a legal obligation to provide refuge for those fleeing persecution – but we must also advocate for a system that treats them justly once they get here.

Below are five wrongs we must right if we are serious about offering real sanctuary for those fleeing persecution.

1 We must stop conflating refugees – especially Muslim refugees – with terrorists.

In a recent Facebook Q&A, former Prime Minister Stephen Harper wrote, "We cannot open the floodgates and airlift tens of thousands of refugees out of a terrorist war zone without proper process.

That is too great a risk for Canada."

There is no evidence that terrorists are trying to enter Canada by pretending to be refugees. The events in Paris do not change this.

Protecting individuals from violent crime is a legitimate public safety objective; restricting rights in ways that have no discernible link to real public safety objectives is not.

2 We must end mandatory, unreviewable, warrantless detention.

Groups of refugees who arrive in ways that are perceived to be 'irregular' by the Minister of Public Safety can face mandatory, unreviewable, warrantless detention – a horrifying welcome that flies in the face of the constitutional principle that nobody can be arbitrarily detained. Those over the age of 16

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The Democratic Commitment is a publication of the British Columbia Civil Liberties Association. The BCCLA mandate is to preserve, defend, maintain and extend civil liberties and human rights across Canada through public education, complainant assistance, law reform and litigation.

RETURN UNDELIVERABLE
CANADIAN ADDRESSES TO:
BC Civil Liberties Association
900 Helmcken Street, 2nd floor
Vancouver, BC V6Z 1B3

are subject to a minimum of two weeks of mandatory imprisonment, possibly in a medium-security prison; in certain circumstances they may be detained for an entire year.

3 We cannot arbitrarily and discriminatorily divide refugees into groups of 'more' or 'less legitimate' claimants.

The Minister of Immigration, Refugees and Citizenship has the power to classify particular countries as Designated Countries of Origin (DCOs) based on a set of vague and arbitrary criteria supposedly demonstrating that these countries "do not normally produce refugees". But this system does not adequately take into account the fact that in some comparatively stable countries, particular minority groups face incredibly severe oppression. The new government has said it will review this unjust practice.

4 Unrealistic timelines and unfair lack of appeal options must end.

Claimants must be given ample time and support to make the strongest possible case, and robust appeal options if their case is rejected. But some classes of refugee claimants

currently have no right to appeal if their claim is denied, and are subject to immediate removal from Canada. Those from DCO countries have a mere 30 days to prepare for their hearing. In June, the Federal Court ruled that denying a right of appeal to claimants from DCO countries was unconstitutional and "serves to further marginalize, prejudice, and stereotype refugee claimants from DCO countries." The federal government should not appeal this ruling.

5 The Canadian Border Services Agency (CBSA) must be held accountable.

The CBSA (enforcers of the *Immigration and Refugee Protection Act*) have massive police powers, and yet lack any form of independent oversight. There is no formal complaints process or independent civilian investigatory body that can look into cases where someone is injured or dies while in CBSA custody.

The BCCLA is committed to fighting for a refugee system that is ready to respond justly and equitably to people of all nationalities who may seek refuge here.

MEET OUR NEW TEAMMATES

The BCCLA is a small organization with just nine staff members. This year we were very sad to say goodbye to a number of our wonderful staff as they moved on to new and exciting opportunities, and we've been very lucky to welcome three new dynamic members to our team.

On behalf of the staff and board, the Association would like to extend our deepest gratitude to the staff members who have moved on including Carmen K. Cheung, Raji Mangat, Jasmine Yen, and Alana Prochuk. Their work has left an indelible mark not only on this Association, but on the fight to protect rights in Canada. We are so pleased to welcome:



Laura Track, Counsel

Laura Track has dedicated her legal career to social justice work, and joined the BCCLA in 2015 after many years of experience in non-profit legal organizations. Laura joins our team from West Coast LEAF, where she served as Legal Director from 2011 through 2014. Before that, Laura was the Housing Campaigner at Pivot Legal Society.

Laura completed her law degree at UBC in 2006 and clerked at the BC Supreme Court. In 2012, she earned a Masters degree in International Human Rights Law from Oxford University. She is also an adjunct professor at the University of British Columbia law school.



Nathanel Lowe,
Communications and Outreach Coordinator

Nathanel comes to us from his previous position as the Community Outreach Coordinator for Asian Americans Advancing Justice-LA, the USA's largest Asian American civil rights organization.



Catherine Hart,
Donor Relations and Digital Strategy Coordinator

Catherine Hart joined the BCCLA in January of 2015. She brings a background in communications, outreach and fundraising from her previous work at the Freedom of Information and Privacy Association (FIPA), and OpenMedia.ca. Catherine has a Masters in Communication from Simon Fraser University. Her academic research focused on surveillance; national security; privacy and civil liberties.

Catherine is the person to contact if you have any questions related to donating or tax receipts. You can reach her at Catherine@bccla.org, or at 604.630.9757.

While there, Nathanel spearheaded the Community Engagement Academy, and ran the country's most linguistically diverse phone bank (working in 17 languages).

Nathanel is the person to contact to find out more about volunteer opportunities. You can reach Nathanel at nathanel@bccla.org, or 604.630.9750.

PROFILE OF A BCCLA SUPPORTER – PAUL ST. PIERRE

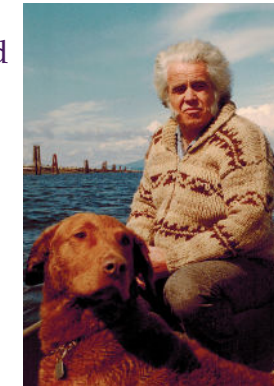
Paul St. Pierre dedicated his life to character, lies, and storytelling; to privacy, relentless resistance to rules and rulers, and to freedom.

Acclaimed writer, reporter, member of parliament, diplomat, Vancouver Sun editor, BC cowboy legend, world's last living non-economist, wild goose chaser and duck plucker, freeman of Williams Lake, BC police commissioner, scofflaw, inventor of the country gate husband and wife team competition in the Anahim Lake Rodeo, Paul supported the BC Civil Liberties Association right up to his death in 2014, and even after, through a legacy gift. Why? Let Paul tell you:

A monstrous idea has gained wide acceptance – that you and I were not born to be free and have no natural rights; that our only rights are those that somebody wrote on a piece of paper.

Born free, I died a criminal. Everyone is a criminal now. More laws make more criminals. Now not an acre of Canada can be walked without putting a foot into three or four cowflaps of law.

Laws are passed “for the good of the people”. In all history, no other reason to enchain mankind has ever been offered.



Bureaucrats are not bad, cruel, or wicked people. No matter, know your enemy and fear his inefficiency even more than his malevolence.

Support the Civil Liberties Association. Future generations will see it as a lonely champion of liberty during long, dark years.

Be brave. You are more powerful than you realize. Despite Big Brother's awesome and growing power, ordinary men and women retain hopes, dreams and high ethics. Out of that fathomless, still pool of the soul, freedom will emerge again, some day.

Read more: www.bccla.org/PaulStPierre

YOUR LEGACY
OUR FUTURE

Support the BCCLA for generations to come

Leaving a gift to the BCCLA in your will allows you to provide long-term support to defending human rights and civil liberties in Canada, and is a meaningful contribution to the future of the organization.

If you'd like more information about planned giving, please contact Charlotte Kingston, Director of Community Engagement at 604.630.9745 or via email at charlotte@bccla.org

YOUR RIGHTS ON TRIAL

The BCCLA is intervening in a variety of cases aimed at protecting rights and freedoms. Here are two cases we are working on.

INNOCENT UNTIL PROVEN GUILTY

Goodwin, et al. v. British Columbia (Superintendent of Motor Vehicles)

The Supreme Court of Canada issued its decision in this case on October 16. The Court ruled that changes to BC's drinking and driving law do not violate the presumption of innocence protected by section 11 of the *Canadian Charter of Rights and Freedoms*, but do violate the right to be free from unreasonable search and seizure for drivers who blow a "fail" on a roadside screening device.

The BCCLA intervened in this case to argue that the drinking and driving law has a penal impact on drivers and engages the presumption of innocence protected by s. 11 of the *Charter*. We argued that

where the purpose of sanctions is punitive and aimed at redressing a wrong done to society at large, the protections of s. 11 of the *Charter* apply. Here, the BCCLA argued that the sanctions clearly include aspects aimed at punishment rather than mere compliance with traffic regulations, including a 90 day license suspension and significant fines and fees. The regime stigmatizes offenders and promotes specific deterrence of future conduct, as well as punishment of past conduct.

The Supreme Court disagreed, finding the regime to be administrative

rather than criminal, and the consequences not to be true penal consequences. The Court upheld the BC Supreme Court's decision that the regime is unconstitutional insofar as it applies to people who blow a "fail". Given the serious consequences of registering a "fail" and the inability of drivers to challenge the basis on which those consequences are imposed, the Court found a violation of the right to be free from unreasonable search and seizure.

The BCCLA is represented by **Claire Hunter** and **Eileen Patel** of Hunter Litigation Chambers.

PRE-TRIAL INCARCERATION

R. v. Safarzadeh-Markhali

The Supreme Court of Canada heard this appeal on November 4. At issue was an amendment to Canada's sentencing laws brought about by the 2009 *Truth in Sentencing Act* that changed how time spent in pre-sentence custody is credited.

In the normal course, a person denied bail may receive up to 1.5 days of credit for each day spent in pre-sentence custody. The underlying rationale for this enhanced credit is to reflect the fact that pre-trial custody time does not count towards parole eligibility and statutory release, and local detention

centres do not provide educational, retraining or rehabilitation programs to accused persons in pre-trial custody.

However, under the new s. 719(3.1) of the *Criminal Code*, a person denied bail primarily because of a previous conviction is ineligible for enhanced credit – credit for time served in pre-sentence custody is limited to 1:1.

The BCCLA intervened in this case to argue that the denial of enhanced credit for pre-sentence custody serves none of the legitimate purposes of sentencing

law. To the contrary, it creates a structural impediment against proportionate sentencing, which undermines the purposes and principles of sentencing and will result in grossly disproportionate sentences in reasonably foreseeable circumstances. Moreover, it will disproportionately impact poor and otherwise disadvantaged accuseds, whose personal circumstances may prevent them from getting bail.

The BCCLA is represented by **Nader Hasan** and **Gerald Chan** of Stockwoods LLP.

UPDATE: END SECOND-CLASS CITIZENSHIP CASE

THE NEW GOVERNMENT OF CANADA committed during the election campaign to repeal changes to the *Citizenship Act* that allow for citizenship stripping, exile, and unequal treatment of Canadians based on where they or their family comes from.

While Canada's new Minister of Justice settles into her work, the Department of Justice has requested an adjournment of our case so that they can get new instructions from the new government. We've agreed to give the Department of Justice some time to receive new instructions. Meanwhile, the Prime Minister has instructed the Minister of Immigration, Refugees and Citizenship to repeal the parts of the law that create second class citizenship. We will be back in court on December 7 for a case management conference with the Federal government to ensure these provisions will be repealed, and repealed quickly. We'll have further updates after December 7. Stay tuned.



THE BLACK HOLES IN THE ACCESS TO INFORMATION ACT

A strong access to information system is vital to maintaining a healthy democracy. Access to Information laws are needed to hold politicians and public institutions accountable, to keep the public informed and to ensure that the truth can be uncovered and exposed.

The public has the right to obtain the information it needs to participate meaningfully in the democratic process, while also holding Canada's public officials and Members of Parliament accountable. The current system is failing Canadians.

"When the *Access to Information Act* was adopted

over 30 years ago, Canada was a world leader on this important democratic right," said Toby Mendel, Executive Director of the Centre for Law

and Democracy. "But decades of stagnation have left us in a miserable 59th position globally, far behind countries like India, Mexico, South Africa and Slovenia."

That's why the BC Civil Liberties Association has joined a coalition of organizations from across

the country to push for urgent reform to our access to information regime. Canada's newly sworn in government has committed to reforming the broken system, and organizations across the country will be watching to make sure that happens.

"It is long past time these changes were made," said Vincent Gogolek, Executive Director of Freedom of Information and Privacy Association. "The black holes in the *Access to Information Act* have to be closed." Combined with deep access to information problems at the provincial level, there is much work to do.

WHAT YOU
DON'T KNOW
CAN HURT
YOU

DEMAND
#ATIREFORM

We acknowledge the financial support of the Province of British Columbia and the generous support of the Law Foundation of BC

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