BCCLA

the democratic Commitment

THE BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION NEWSLETTER SUMMER 2016 / VOLUME 50 NUMBER 2

LAMB V. CANADA:
THE DEATH WITH DIGNITY CASE CONTINUES

On June 27, 2016, 25-year-old BC woman Julia Lamb took up the torch on behalf of sick and suffering Canadians who want the right to make their own end of life choices. In response to the passage of the government's restrictive and, we believe, unconstitutional Bill C-14, Julia joined the BCCLA as the lead plaintiff in BCCLA's legal challenge to the new assisted dying legislation.

Julia is free-spirited, independent, and creative. She has a fulfilling job as a marketing assistant for a fashion company and a close network of friends and family. Julia also has Spinal Muscular Atrophy ("SMA"), Type 2, a hereditary disease that causes weakness and wasting of the voluntary muscles. It is a progressive degenerative disease with no known cure or effective treatment. She experiences frequent pain from muscle contractures. She suffers from falls and repeated broken bones due to severe osteoporosis. She has breathing difficulties.

Julia writes "This is about agency, choice and compassion. This is about the most fundamental values that define being Canadian. Respecting each other's choices, even when those choices are different from one another. What I am asking for is essential to my wellbeing and autonomy. I am forced to suffer with this disease without a choice, a disease that inherently limits my opportunities for choice. If my suffering becomes intolerable, I would like to be able to make a final choice about how much suffering to endure."

The BCCLA's lawsuit challenges the new assisted dying law which restricts medical assistance in dying to Canadians with terminal illness. The law does not permit assistance

CONTINUED ON PAGE 6

INSIDE

LETTER FROM THE VICE-PRESIDENT

BY LINDSAY M. LYSTER

For decades, BCCLA has fought for the right to have autonomy over our own bodies. In 1994, we were commissioned to write an expert report on the legislative options for assisted dying. Seventeen years later, we launched the groundbreaking *Carter v. Canada* case, and last year we won that challenge in a unanimous decision by the Supreme Court of Canada. What we didn't expect is that new legislation would force us to start the cycle all over again.

Supporters of the Association's work will be familiar with our battle to correct the restrictive and unconstitutional aspects of Bill C-14, the government's new assisted dying legislation. Despite widespread criticism of the bill from all corners (including a nearly unprecedented battle between the Senate and the House of Commons), the government remained intransigent, forcing the bill into law. It was with heavy but determined hearts that the Association decided that this could not be the end of the story.

What we can achieve together

When we needed our community, you stepped up in a major way. Our crowdfunder campaign helped us raise more than $75,000 in two weeks to launch a challenge to the new law. Hundreds of donors rose to the occasion.

On June 27, 2016 we launched a new court case. One brave and committed young woman, Julia Lamb, will be the person to lead this new challenge back through the courts.

The women of assisted dying

Like the courageous women of this movement who have come before her—women like Sue Rodriguez, Lee and Kay Carter, Gloria Taylor and Elayne Shapray— Julia is prepared to take on the practically bottomless pockets of Canada's government to fight for autonomy over her own body.

Julia takes up the torch from these history making women at the same moment that we say goodbye to our friend, the tireless advocate and volunteer, Elayne Shapray. In 2011, Elayne became one of the most visible and outspoken advocates for the cause of physician-assisted dying. She relished her role as a spokesperson for a cause dear to her conscience, and we are so grateful for her important contributions to this work.

In May 2016, at the age of 69, Elayne died. Elayne died hoping others would take up her fight for fundamental justice. We will fight on, with Julia, in Elayne's name and in the name of all the brave advocates who have come before her.

Sincerely,

Lindsay M. Lyster

FIVE VICTORIES FOR RIGHTS

Thanks to your support, the BCCLA has celebrated many victories for rights and freedoms so far in 2016. Here are five of our favourites.

1 NEW RULES FOR TIMELY TRIALS

The Supreme Court of Canada has created new time limits for criminal trials in an attempt to shake complacency out of the justice system. The new limits are 18 months from the time a charge is laid until the trial is completed in provincial courts and 30 months in superior court. Anything longer is presumed to violate the accused's right to be tried within a reasonable time, unless the prosecution can show exceptional circumstances.

2 CHANGES TO IMMIGRATION DETENTION

The federal government has finally committed to changes to Canada's widely-condemned immigration detention regime. The government announced a focus on reducing the use of detention, and ensuring detainees are not housed with criminal inmates. The government also stated it is exploring alternatives to detention. Canada's immigration detention system falls significantly short of international human rights standards, and the BCCLA has been calling on the government to fix it, and to ensure detention is used only as a last resort, for several years.

3 NEW RULES FOR MEDICAL MARIJUANA

Canadian medical marijuana patients can grow their own cannabis or get someone to grow it for them under new, expanded rules. These changes reverse the previous government's requirement that patients obtain marijuana from one of only a handful of government sanctioned suppliers. The ruling came after a successful court challenge from four B.C. residents who argued the law was unconstitutional and took away affordable access to medicine.

4 TRANS INDIVIDUALS EXTENDED EXPLICIT PROTECTION

As of July 25, 2016 trans & gender-diverse individuals will be explicitly protected from discrimination under B.C.'s *Human Rights Code*. We applaud the government for acting on this long-standing demand, and Spencer Chandra Herbert and the opposition for their success in working in a cross-partisan way to make this happen.

5 ANARCHOPANDA RIDES AGAIN

"Anarchopanda", the costumed mascot of Quebec's 2012 student protest movement, has won a legal challenge of Montreal's controversial bylaw P-6, which bans masked protesters. The panda, philosophy professor Julien Villeneuve, took up costume to calm tensions between students and the police. We believe costumes and masks are lawful and can help foster uninhibited political expression.

NEITHER CONFIRM NOR DENY

THE UNFOLDING STORY OF STINGRAY SURVEILLANCE IN CANADA

BY MICHEAL VONN, POLICY DIRECTOR

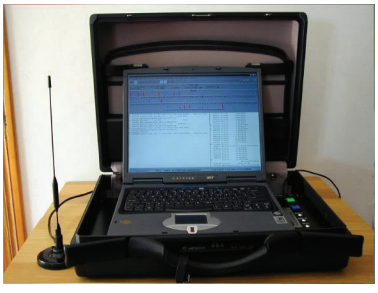
"Stingrays"are controversial mass surveillance devices that mimic cell phone towers to trick all nearby mobile devices into revealing the phone's location, texts, emails and even voice conversations. These devices can undoubtedly have legitimate policing uses, but they must be appropriately constrained to avoid abuse (recall, our *Charter* right to be free from unreasonable search and seizure requires the *prevention* of unjustified searches *before* they happen).

Unfortunately, not only does Canada not have clear limitations on the use of this device, Canadians know almost nothing about who is using Stingrays or for what.

In 2015 Pivot Legal Society filed Freedom of Information (FOI) requests to find out whether Vancouver police bought a Stingray. The answer they got brought more questions than answers.

The Vancouver Police Department (VPD) said that it would neither confirm nor deny the existence of any such records, relying on an exemption to access to information laws.

In response, the B.C. Office of the Information and Privacy Commissioner (OIPC) launched an inquiry to determine whether the VPD could refuse to respond to



the request for information. Sadly, we are not going to know the answer to that question, because the inquiry has folded. **It folded because mid-inquiry the VPD "volunteered" the information, making the inquiry moot.**

With the folding of the inquiry, we have lost the opportunity to get clarification on how the "neither confirm nor deny" provision is supposed to work. We say that the VPD should never have used it in the first place. Now, it could be years before we see a clarification of this provision, which will have to wait for another case.

Unfortunately, not only does Canada not have clear limitations on the use of this device, Canadians know almost nothing about who is using Stingrays or for what.

"WE GOT NOTHING"
Meanwhile, what did we learn from the "volunteered" disclosures? Well, here is what they said:

> In consideration of all the relevant circumstances, the Vancouver Police advises that it does not have this device and does not hold records responsive to your access request of July 23, 2015.

It turns out, the question is not whether the VPD "has" such a device, but whether it uses one. We followed up with a letter from a coalition of groups requesting that the VPD clarify whether it has access to Stingrays, and if it has used them.

SO, WHERE ARE WE NOW?
After an immensely frustrating back-n'-forth with the VPD, the answer has now been received:

> Yes, VPD have used an RCMP Stingray and yes, they would do so again.

This revelation was followed closely by an admission by the Edmonton Police Service that they actually own their own device. Okay… so now we're getting somewhere. Here is a short summary of the Good News and the Bad News based on everything we know to date.

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.

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GOOD NEWS
The VPD provided some context for its previous use of a Stingray and on the basis of the information they gave us, we can vouch that their past use (and they say there's only been one) was legitimate, appropriate and properly authorized.

BAD NEWS
Not only has it taken *years* to get the most partial of information, but we are still largely dependent on the good will of the police to use these devices responsibly because protection from illegitimate or abusive use is next to nil.

Contrast this with the case of Germany, which has had federal regulation since 2002 which specifies that:

- a warrant is required;
- Stingrays can only be used for investigation of serious crimes;
- Stingrays can only be used to determine suspects' geolocation (not communication's content);
- the process must limit the collection of non-suspects' data;
- non-suspects' data must be deleted without delay;
- police use of Stingray is subject to reporting requirements for oversight and review.

So, let's sum this up. **Canada is way, way behind in crafting a constitutionally-compliant approach to the use of Stingrays.** How do we fix this? I suggest we take our cue from Germany. Why, there oughta be a law… In fact, it is arguable that for appropriate constitutional protection, there *must* be a law.

PROJECT CLEMENZA

What little we know about Stingrays comes in the main from a recent court case out of Quebec about a 2010 RCMP operation codenamed Project Clemenza. Over three thousand heavily redacted pages of the Project Clemenza documents and media reports on those documents tell us most of what we currently know. Check out more in the online blog about stingrays at www.bccla.org/stingray

CONTINUED FROM PAGE 1

in dying for those who are suffering with no immediate end in sight.

Last year in the BCCLA's groundbreaking *Carter v. Canada* case, the Supreme Court of Canada confirmed that grievously and irremediably ill Canadians who are suffering unbearably have the right to choose a dignified and peaceful death. But the federal government's new bill leaves many seriously ill Canadians, like Julia, behind. These individuals have been left no choice but to go back to court to fight for a right they have already won. As we always have, the BCCLA will stand with them.

Canadians with diseases like spinal muscular atrophy, multiple sclerosis, spinal stenosis, locked-in syndrome, traumatic spinal injury, Parkinson's disease and Huntingdon's disease are not eligible for medical assistance in dying under the new law. This deliberately excludes an entire class of Canadians who, according to the Supreme Court's ruling in *Carter v. Canada*, have a right to access medical assistance in dying.

> "This is about agency, choice and compassion . . . What I am asking for is essential to my wellbeing and autonomy"

If the government's new law stands, it will trap patients in intolerable suffering and take away their hard-won *Charter* right to choose assistance in dying. The new law denies individuals the right to have control over choices that are fundamental to their lives and will have the perverse effect of forcing seriously ill Canadians to resort to violent methods or the 'back alley.' People will find ways to end lives that have become unbearable, even if that means choosing a violent, risky death. No one should be forced to make that cruel choice.

We are deeply disappointed to have to take this issue back to court. We had hoped that the government would see how very cruel it is to send sick Canadians back to court to fight for their rights, but we are thankful for people like Julia, and the thousands of Canadians who have risen up to make her case possible, that this unjust law will not be the end of the story.

The same legal team that won the *Carter* case is working with

the BCCLA to protect Julia's rights and the rights of all Canadians: Joseph Arvay, Q.C. and Alison Latimer of Farris, Vaughn, Wills & Murphy LLP and Sheila Tucker of Shapray Cramer Fitterman Lamer LLP. This is a team that has given thousands of hours for free, and who have just agreed to do so again.
Our thanks go out to Julia, the pro bono team, and every person who has joined us in this renewed fight for compassion and choice at the end of life.

YOUR RIGHTS ON TRIAL

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

HARM REDUCTION BEHIND PRISON BARS

Needle and syringe exchange programs save lives – and the BCCLA continues to be on the forefront of advocating for their widespread use. The BCCLA is currently intervening the case of *Simons v. Canada*, a groundbreaking legal case spearheaded by the Canadian HIV/AIDS Legal Network which challenges the fact that Canadian federal prisoners are denied access to sterile injection equipment.

Prison-based needle and syringe programs are desperately needed. Access to sterile injection equipment is a proven harm reduction strategy which has been widely adopted in communities across the country. When people are imprisoned, they often find that harm reduction services are unavailable to them. They face far greater risk of HIV and hepatitis C infection because they are denied access to sterile injection equipment. The failure to provide essential harm reduction services in prison has a stark impact on Indigenous people, who make up about 4% of the population in Canada, yet represent approximately 23% of the federal prison population.

Prison exchange programs have been successfully implemented in numerous other countries. However, the Correctional Service of Canada (CSC) refuses to permit their introduction into Canadian prisons. This case aims to change that by forcing CSC to make this vital health service available to prisoners. Good prison health is good public health. The BCCLA is working in partnership on this case with **Byron Shaw** and **Jordan Katz** of **McCarthy Tétrault LLP.**

SECRET SPYING ON CANADIAN CITIZENS

Today our government keeps more of us under surveillance, tracks more of us, and extracts more personal information about us from more sources than ever before. After 9/11, the Canadian government asserted sweeping powers to conduct the dragnet collection and analysis of Canadians' private communications, including phone calls and emails. The BCCLA is the first and only organization in Canada to challenge these sweeping surveillance powers by challenging the activities of the Communications Security Establishment (CSE), Canada's secretive spy agency.

This year, through our lawsuit, we forced the public release of hundreds of pages of documents that prove that CSE is conducting sweeping surveillance of Canadians' international and domestic communications and that the rules that supposedly protect Canadians' privacy are being broken. Newly released documents reveal that CSE's surveillance activities include the warrantless review of the emails and Internet activities of millions of ordinary Canadians.

The BCCLA appeared in federal court on two separate occasions to challenge the government's suppression of more documents related to CSE's activities – documents that we believe will reveal that CSE's broad and unchecked surveillance is unconstitutional.

The Federal Court has convened top-secret hearings at an undisclosed, secret location to determine whether the documents should be released. The BCCLA will continue to fight this case because we believe that the CSE's mass surveillance violates citizens' rights to privacy, freedom of speech, and freedom of association, and poses a grave threat to a free and democratic society. The BCCLA is litigating the case in partnership with **Joseph Arvay, Q.C.** of **Farris, Vaughan, Wills & Murphy LLP** and **David Martin, Tamara Duncan** and **Casey Leggett** of **Martin & Associates.**

MEET A SUPPORTER: JON LEVITT!

We chatted recently with Jon Levitt, one of our fantastic monthly donors and volunteers, to ask why he's involved with the BCCLA. Thank you, Jon! We really appreciate you and your hard work. Here's Jon's story:

I consider myself to be a bit of an activist. In the early 1990's I came out as the first openly gay manager working for the City of Vancouver and registered my partner for health benefits. In March 1996, at a time when panic, fear and stigma of AIDS was rampant, I was interviewed by the Vancouver Sun about being a gay man living with AIDS, discussing cutting edge treatments, and my full name and photo were featured on the front page. And over the years I've written letters to all levels of government protesting against issues such as censorship, income tax inequality and access to new pharmaceuticals.

I became a volunteer with the BCCLA after attending the event on free expression last fall. I was blown away by Franke James and the staff of the BCCLA and I thought, I really want to be involved. I was inspired by such a small organization having such a huge impact on issues that were important to me. And I know that without volunteers you couldn't do it, so that means a lot to me.

I'm also a monthly donor. My spouse and I don't remember what inspired that first gift; I just remember that every time something happened to erode personal freedoms, it seemed like the BCCLA was always there. I like organizations that aren't afraid of standing up and saying what's right, and I don't know many others. So we discussed it and it was almost as if we *had* to support the BCCLA.

Being involved with the BCCLA is an expression of my gratitude. It's to help out but also to say thank you for so many things you've done over the years. So I want to continue to give back; there are so many issues that we're still fighting - I want to stay involved and to help as much as I can.

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THE LAW FOUNDATION OF BRITISH COLUMBIA

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

WE'RE HIRING!

We are looking for lawyers who are passionate about using their legal skills to uphold civil liberties and human rights in Canada. The BCCLA is hiring for three positions: Staff Counsel (Policy), Staff Counsel (Litigation), and Acting Litigation Director. If you are a passionate lawyer committed to realizing a more free, just, and equal Canada, we'd love to hear from you. Learn more at www.bccla.org. Applications are due by September 16.

Publications mail agreement 40045354