BCCLA

the democratic Commitment

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INSIDE

PHOTO COURTESY HENRY HAGNAS

JUSTICE, NOT TORTURE

CHALLENGING SOLITARY CONFINEMENT IN CANADIAN PRISONS

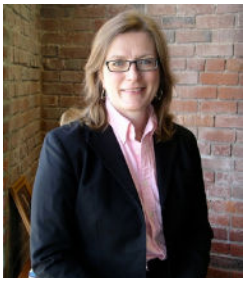
THE COUNTDOWN IS ON as we approach the trial dates for our groundbreaking case to end indefinite solitary confinement in Canadian prisons. From January 3, 2017 to February 17, 2017, the BCCLA and our partners at the John Howard Society will take the government to court in a six week trial to finally reform the practice of indefinite solitary confinement.

At any given time, there are as many as 1,800 people in solitary confinement in federal or provincial prisons. The negative effects of long-term solitary confinement are well-documented. These effects include psychosis, hallucinations, insomnia, and confusion. Solitary confinement can create mental illness where none previously existed, or exacerbate pre-existing illness. It is a risk factor for prison suicide. The suicide rate for prisoners is seven times the rate of the Canadian public, with nearly half of those suicides occurring in solitary confinement.

continued on page 4

LETTER FROM THE PRESIDENT

BY LINDSAY M. LYSTER, PRESIDENT



In 2011, the BCCLA sued the government of Canada on behalf of BobbyLee Worm, a young Cree woman from Saskatchewan who spent a total of more than three-and-a-half years in solitary confinement.

During her years of isolation, Ms. Worm spent up to 23 hours a day alone in her cell, deprived of any meaningful human contact. She was subjected to the Management Protocol, a controversial program for female prisoners deemed "high-risk". A key feature of the Management Protocol was the use of solitary confinement.

When the Protocol was designed in 2003, experts advised the Correctional Services Canada (CSC) that it was illegal. CSC leadership implemented it anyway. In 2008, the Office of the Correctional Investigator recommended that the program be rescinded, and CSC's own review agreed that the Protocol was dysfunctional, yet they did not put a stop to the program.

BobbyLee became a champion for herself when Canada's prison system continued to fail her, trapping her in a system that has led to preventable death and suffering for so many. She reached out to Prisoners Legal Services, who in turn connected BobbyLee with the BCCLA. With the assistance of an incredible and committed team of *pro bono* lawyers, we took up BobbyLee's case.

Two days after the BCCLA filed its lawsuit, Ms. Worm was removed from the Management Protocol. Shortly after that, the federal government announced it would eliminate the Management Protocol from Canadian prisons entirely.

Ms. Worm's case was one step in the fight to end prolonged, indefinite solitary confinement in Canada. Our current lawsuit is the next step in that battle.

Ms. Worm's case was one step in the fight to end prolonged, indefinite solitary confinement in Canada. Our current lawsuit is the next step in that battle. I hope you'll read more about that case, and our upcoming trial, in the pages of this issue of the *Democratic Commitment*.

Today, BobbyLee is a champion for other people who find themselves subjected to indefinite solitary confinement. She now lives with her partner James, her daughter Natanis, and has just given birth to her second child. She describes her life now as being in a good place. She stands with the BCCLA and the John Howard Society as we fight to reform the practice of solitary confinement across Canadian federal prisons.

You can hear from her in a beautiful short film made the talented filmmaker Kevin Eastwood on our website www.bccla.org.

I hope you'll check it out.

Sincerely,

Lindsay M. Lyster, President

5 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 Unfair and ineffective "mandatory minimum sentencing" laws struck down by the Supreme Court

Mandatory minimum sentences have long been understood to undermine fairness in sentencing. Yet, Canada has many such laws on the books. The BCCLA successfully intervened in two cases that resulted in aspects of the mandatory minimum sentencing regime being struck down. We argued that the Court should look at the impacts of a mandatory minimum sentence on individual rights, in particular the rights of the most marginalized and vulnerable offenders, such as low-income drug users and the drug-addicted.

2 Oversight of Canada Border Services Agency promised

After years of calls for oversight of CBSA, the federal government is finally taking action. The minister of public safety has committed to having an accountability agency in place by the time of the next federal election. We will continue to advocate with the government on what form this agency should take in order to ensure that it is effective.

3 Health Canada allows prescription heroin treatment for severe addiction

As of September 7, Canadian doctors are allowed to offer patients prescription heroin as a method of treatment for a severe addiction to opioids. The legislative change is not entirely new, but rather a return to old rules that existed before the previous government banned doctors' access to diacetylmorphine in October 2013.

4 B.C.'s speech chilling election law goes to the Supreme Court of Canada

British Columbia is the only province that does not set a minimum amount that must be spent on election advertising before a person is required to register with election authorities. The BCCLA is intervening in the case to argue that the registration requirement silences the voices of those already marginalized within the political arena: those with little money, little political power, and views that challenge the status quo. Thanks to our friends at the BC Freedom of Information and Privacy Association for bringing forward this important case.

5 Quebec judge had no legal basis for asking woman to remove hijab

In 2015, a lower-court judge told Rania El-Alloul she would not hear her case unless she removed her hijab. But this month the Quebec Court of Appeal condemned this action stating that the arguments made by the lower court judge — comparing the hijab to a hat and sunglasses — had already been rejected by the Supreme Court of Canada. Ms. El-Alloul expressed the importance of the decision: "I need everybody to feel safe and unafraid to go to court because of the way they dress, whether they are Muslim, Christian, Jewish, Indian — all the religions," she said. "It's important for everybody."

continued from page 1

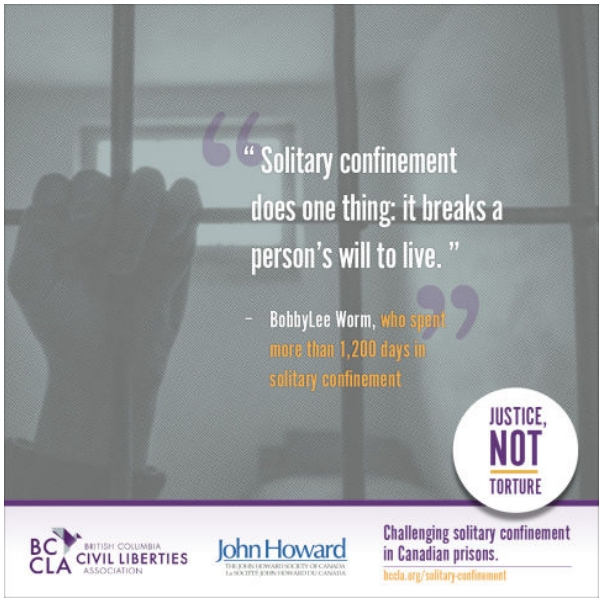
Indefinite solitary confinement has led to preventable death and suffering. It is discriminatory in its use – mentally ill and Indigenous prisoners are placed in solitary confinement at a rate higher than other prisoners. And while lengthy isolation can seriously worsen mental illness, solitary confinement is increasingly being used to warehouse prisoners with mental health issues.

The damaging effects of solitary confinement increase the longer the prisoner is kept isolated. The effects of long-term isolation can also seriously hinder a prisoner's rehabilitation. Ultimately, solitary confinement leaves many individuals more damaged and less capable of living a law-abiding life.

CHRONIC POLITICAL FAILURE

At a time when the rest of the world is scaling back the use of solitary confinement, Canada remains steadfast in its reliance on a broken and dangerous system.

Our lawsuit comes in response to chronic political failure. The Canadian government has ignored repeated calls to reform its use of solitary confinement for decades. It failed to act on the 1996 recommendations of former Supreme Court Justice Louise Arbour to place strict time limits on how long a prisoner can be isolated, and calls from the Correctional Investigator – Canada's federal prison watchdog – to prohibit solitary confinement for the seriously mentally ill.



Demand for reform intensified with the case of Ashley Smith, whose 2007 death in prison after extensive periods in administrative segregation is now a national symbol of institutional failure and legal inadequacies.

The Ontario Coroner who reviewed Smith's death concluded that the punitive culture of segregation cultivated the fatal decision of correctional officers not to intervene as she lay dying in her cell, and recommended unequivocally that indefinite forms of segregation be abolished. In December 2014, the leadership of the Correctional Service of Canada rejected that recommendation.

THE ONLY OPTION LEFT

A lawsuit based on the protections of the *Charter of Rights and Freedoms* is the only avenue that remains to remedy the chronic refusal of prison officials and legislators to subject segregation to appropriate constraints. While we have seen dozens of investigations, commissions and reports on this topic, no Canadian court has had the opportunity to adjudicate a comprehensive constitutional challenge. Until now.

Our lawsuit claims that Canada's "administrative segregation" regime violates s. 7 (protection of life, liberty and security of the person), ss. 9 and 10 (protections against arbitrary detention), s. 12 (prohibition against cruel and unusual treatment) and s. 15 (protection of equality) of the *Charter of Rights and Freedoms.*

If successful, the suit would compel the government to reform the "administrative segregation" provisions of the *Corrections and Conditional Release Act*, which allow prisoners to be locked in cells for up to 23 hours per day.

BobbyLee Worm, who spent more than 1,200 days in solitary confinement, addressing the BCCLA Liberty Awards Gala. PHOTO: MING LIN

Currently, there are no time limits on the practice and no external oversight.

THE CHANGES WE'RE CALLING FOR

This case recognizes that prison officials may need to separate prisoners from one another. It recognizes that prisons are difficult places and that prison employees do not ask for the complicated problems that we hand to them. But it asks for limits on the practice of keeping individuals locked in cells. It asks the judiciary to order what so many experts have recommended before: time constraints, external oversight, and special protections for the mentally ill. If segregation beyond specified time periods is necessary, the prison service should be obligated to seek judicial approval in advance.

At the BCCLA, we believe that the time is long past due to end the abuse of solitary confinement in Canadian prisons. We are calling for rehabilitation, not isolation, and justice, not torture. As we approach this extremely important trial, I hope we can count on your support to finally reform this cruel and unusual practice.

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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.

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NATIONAL SECURITY CONSULTATIONS

A DIFFERENT SHADE OF GREEN PAPER, BY MICHEAL VONN, POLICY DIRECTOR

In response to overwhelming public pressure, the government of Canada has promised to review and revise elements of "Bill C-51", the *Anti-Terrorism Act 2015*, and to engage in a public consultation on national security writ large, including Canada's national security oversight and accountability structures.

The BCCLA is committed to ensuring that Canadians, collectively and individually, have a way to meaningful contribute to this unprecedented opportunity to reshape our national security landscape. People took to the streets in the tens of thousands to protest the radical changes introduced by Bill C-51 and we know that these issues are important to Canadians. These issues are also complex.

We are determined to help people navigate these issues in order to be able to engage in this vital process. (JEREMY BOARD/CREATIVE COMMONS)

We were singularly unimpressed with the government's Green Paper, written to help people understand national security in the current Canadian context. It reads like it was written by a PR firm tasked with selling the current state of extraordinary and unaccountable powers and if anything, pitching for even more such powers without effective oversight.

In response, we have issued our own National Security Different-Shade-of-Green Paper. This is a blog series explaining in plain language what the government forgot to mention in relation to the human rights and civil liberties issues involved in everything from government surveillance to 'no-fly' lists.

It is imperative that people have the information they need to send a clear message to the government at this critical moment in shaping our national security framework. It is essential that we get this right. While every aspect of government requires accountability, national security accountability faces a combination of challenges that are entirely unique. It is unique in the secrecy that is often associated with its operations and its reporting. It is unique in the seriousness of the consequences that flow from failure to adequately monitor performance and efficacy. And it is unique in the seriousness of the human rights violations that flow from failures to mitigate abuses by security and intelligence agencies.

We have been working in concert with civil society partners to ensure that the government does not take a check-box approach to what would merely be the optics of accountability. As we've long said, a Parliamentary Committee alone is not going to achieve meaningful accountability. Especially not the one that is currently proposed which is without robust access to secret information. The devil is always in the detail, in the fine print, in the breadth of exceptions and the exclusions. We are determined to help people navigate these issues in order to be able to engage in this vital process.

The online consultation is open until Dec. 1st. See our in-progress blog series: www.bccla.org/greenpaper

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.

PROTECTING INDIGENOUS SPIRITUAL FREEDOM

In December, the BCCLA will argue in the Supreme Court of Canada for the right of Indigenous communities to protect their sacred sites from desecration. In *Ktunaxa Nation v. Minister of Forests*, the issue is whether the destruction of an Indigenous sacred site violates freedom of religion.

In 2012, the B.C. government approved the development of a ski resort in the southeastern Purcell Mountains of B.C. The Ktunaxa Nation calls the area Qat'muk and say the area is of paramount spiritual significance as home of the Grizzly Bear Spirit. The B.C. government argued that limiting the use of Crown land because of the religious beliefs of one group would be detrimental to development. The Ktunaxa Nation lost in the lower courts.

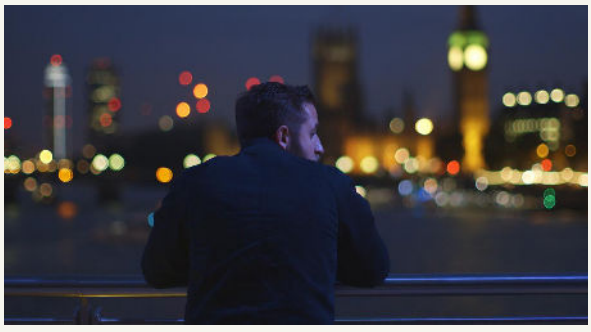
The way in which this case deals with religious freedom rights will have significant impacts on indigenous communities across Canada. The BCCLA will argue that the *Charter* right to freedom of religion must appreciate the centrality of sacred sites to Indigenous spirituality. A failure to acknowledge the infringements that result from state actions denies Indigenous spiritual traditions meaningful *Charter* protection. The BCCLA is represented by Jessica Orkin and Adriel Weaver of Sack Goldblatt.

SHIELDING PRESS FREEDOM AND CONFIDENTIAL SOURCES

The case of *R. v. VICE Media Canada Inc. and Ben Makuch*, which will be heard at the Ontario Court of Appeal, raises important questions about freedom of expression, freedom of the press, and the right to be free from unreasonable search and seizure.

In 2015, an Ontario court ruled that a *VICE News* reporter must hand over all communications between him and a source who was under investigation for terrorism-related offences to the RCMP. Three stories in 2014 were based on conversations the reporter had with the source.

The court's decision signals a turning point in Canadian law as similar production orders could become more common if police know they can easily obtain notes and recordings from journalists. *VICE* has appealed the decision and the BCCLA is seeking leave to intervene in the case.



The appeal seeks to overturn the court ruling that VICE reporter Ben Makuch must hand over communications with his source. (VICELAND)

The media, especially in national security cases, serves as an essential check against the government and can function only when the safety and anonymity of sources are guaranteed. The BCCLA has historically played a central role in defending freedom of the press – and this case is another opportunity to protect media freedom and, by extension, the public's right to know.

The BCCLA is represented by Tae Mee Park and Andrew MacDonald of Bersenas Jacobsen Chouest Thomson Blackburn LLP Barristers, Solicitors.

NO GAG

BC'S SPEECH-CHILLING ELECTIONS LAW NEEDS TO GO

The Supreme Court of Canada heard an important case in the past month on issues of freedom of expression, privacy, and our right to speak out about political issues that matter to us.

The case was launched by our friends at the British Columbia Freedom of Information and Privacy Association (BC FIPA), and the issue is this: election law prohibits unregistered "election advertising" during an election campaign, but B.C. is the only province that does not set a minimum amount that must be spent on election advertising before a person is required to register.

If you communicate your political views to the public during an election campaign on an issue that a candidate or party is associated with (and really, can you think of an issue that a candidate or party is *not* somehow associated with?), you're required to register this "election advertising" with the Chief Electoral Officer.

Other provinces recognize that while it's important to prevent big spenders from dominating the conversation and drowning out smaller voices during an election campaign, it's not necessary to impose onerous registration requirements on people who spend little to no money to express their political views. The BCCLA is intervening in the case to argue that the registration requirement silences those already marginalized within the political arena: those with little money, little political power, and views that challenge the status quo.

We're proud to have joined BC FIPA at the nation's highest court to argue for broad public participation in our democratic dialogue, unfettered by unnecessary and privacy-violating restrictions.

WELCOME TO OUR ACTING LITIGATION DIRECTOR!

CAILY DIPUMA joins the BCCLA this month as Acting Litigation Director while current Litigation Director Grace Pastine departs on maternity leave. Caily has previously served the Association as staff legal counsel, and as President of the Board. You may recognize her as the main spokesperson for the BCCLA's case against the Communication Security Establishment (CSE) that aims to stop mass warrantless surveillance of Canadians's communications. We're so please to welcome Caily back to our team!

GIVE THE GIFT OF FREEDOM

When you give someone a BCCLA membership, you're not only inviting them into a special community of people who protect freedom, stand up for equality, and defend justice—you're helping to educate and to protect the rights of everyone in

Visit www.bccla.org/gift to send your gift today.

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