

## PROTECTING PEACEFUL PROTEST

The BCCLA has been working hard to protect the rights of those who engage in peaceful protest, as the threats to dissent and expression from government continue to mount. For the last few months, we have criss-crossed the north of BC giving protest rights workshops at the request of local community groups and First Nations. We were welcomed into ten communities from Old Masset on Haida Gwaii right across to Prince George, where people packed in to better understand their rights when they express themselves through protest. People in these communities

have been raising their voices on many different issues of concern, including various oil and natural gas pipeline projects. Our job is to help educate people so they can make informed choices about how they use their rights.

In addition, the BCCLA has been actively defending the right to protest. Earlier this year, we filed complaints against the RCMP and CSIS for spying on activists and First Nations people here in BC. In June, we learned that the federal government has hatched a plan to monitor and compile information on every single protest in the country, through a little-known centralized agency called the Government Operations Centre (GOC).

It appears that the GOC thinks that lawful assembly and free speech

threatens to burgeon into a hazard of national interest. How else to explain the documents produced through access to information requests that show that the GOC monitored such 'hazardous events of national interest' as "a healing dance in Kenora, Ont., a prayer ceremony in Edmonton and an Idle No More "taco fundraiser, raffle and jam session".

We have spoken out against the GOC's practice because we think it's unacceptable to use ungrounded claims of potential for national emergencies as an excuse for blanket surveillance of all peaceful protest. All people in Canada have a constitutional right to peaceful assembly. Having that right threatened by the government is the real national emergency that we should be worried about.

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Charlotte Kingston and Josh Paterson deliver protest rights workshop in Smithers, BC



## BCCLA to Challenge New Citizenship Act that Creates Second-Class Canadians

Lindsay Lyster

As you know, the BCCLA spends its days and nights in the fight to protect rights and freedoms. The freedoms of expression, association and conscience; privacy rights and the right to be free from undue state intrusion into our personal lives; equality rights – the list goes on. Rarely are we forced into a fight to protect the very basis of those rights themselves – the right to have rights. Yet that is the position in which we find ourselves with the federal government's sweeping changes to our citizenship legislation, passed into law in June.

Canada's new citizenship law makes citizenship harder to get, and easier to lose. In an Orwellian twist, the *Strengthening Canadian Citizenship Act* does exactly the opposite of what its title proclaims. In Canada, lawfully-obtained citizenship has always been permanent. Once a Canadian, always a Canadian. Now the government is making Canadian citizenship less secure, giving itself the power to take citizenship away – but only from some Canadians. This strikes at the very heart of what it means to be a Canadian, equal under the law, by making the Canadian citizenship of some people worth less than the Canadian citizenship of others.

Everybody who is physically present in Canada, regardless of citizenship, has human rights under our *Charter of Rights and Freedoms* and human rights legislation. What makes citizenship different is that it is the right to have all those other rights, permanently here in Canada. It means you are a permanent member of our society and democracy. It means you always have the right to be here and to return here. It means you always have the right to vote. These are fundamental human rights – the very right to be a member of a society.

This law will make it harder for many people to obtain these rights. And it will destroy the fundamental rule that all Canadian citizens have all of these rights, without regard for place of origin or the manner in which we became citizens.

Instead, there will be different classes of citizen: "first class" Canadians who hold no other citizenship, whose citizenship is protected forever; and "second class" Canadians – dual citizens and even those who are simply entitled to take up dual citizenship because of their family origin – who can now be exiled from Canada if they are convicted of certain serious crimes – whether in Canada or abroad, regardless

of whether the trial respected the rules of justice.

The Canadian-Egyptian journalist Mohammed Fahmy provides a striking example of the dangers posed by this law. Mr. Fahmy was recently convicted of "terrorism" for his journalism in a trial in Egypt that has been widely condemned as unjust. He will now be vulnerable to having his Canadian citizenship stripped because he is a dual national. The government says they won't do so in his case, but that doesn't change the fact that they now have the power to do so in his case, and in the case of others like him. It is unacceptable that somebody's right to be a Canadian now depends on the discretion of a bureaucrat.

This new law takes us down a very dangerous road. It divides Canadians, saying that some are less worthy of dignity and respect than others. The BCCLA, along with the Canadian Association of Refugee Lawyers, fought against this bill for months, including launching a petition that garnered nearly 44,000 signatures. We think that this new law is unconstitutional because of the way it takes away people's rights, and we fully intend to challenge it in the courts.

# FIVE

Thanks to your support, the BCCLA has celebrated many victories for rights and freedoms so far in 2014. Here are five of our favourites.

## VICTORIES FOR RIGHTS

### ● Privacy Commissioner Demands Changes to BC's Non-Conviction Disclosure System

Routine police information checks don't just turn up conviction information. Mental health and non-conviction information continues to be disclosed through this system. In January, BC's Privacy Commissioner demanded a much-needed and long-overdue change. Read more on page 6.

### ● Civilian Review of the Matters Case

In October of last year the BCCLA called on BC's police watchdog, the Independent Investigations Office (IIO), to appoint a third-party review of its investigation into the death of retired soldier Greg Matters who was shot by RCMP in Prince George. We did this because the IIO's public report into the circumstances of Mr. Matters' death left out description of a key detail, revealed in evidence at a coroner's inquest, that he had been shot in the back – not the chest – by the RCMP. We asked for the review in order to ensure the highest public confidence in the IIO. In early June, the Chief Civilian Director said that he would not appoint a civilian monitor. We were surprised and encouraged that, a few days later, the IIO reversed its decision and has appointed a civilian reviewer of its work in the Matters case. We think that this is the right step to take to keep public confidence in the IIO.

### ● 44,000 Stand Up for Equal Citizenship

The support across Canada for stopping changes proposed by Bill C24 to Canada's

*Citizenship Act* has been overwhelming! Although the bill has now passed into law, the BCCLA and the Canadian Association of Refugee Lawyers (CARL) have committed to challenging the constitutionality of the law. We're standing up for equal citizenship, and tens of thousands of Canadians are standing with us.

### ● Cell Phone Searches: Come Back With a Warrant

The law concerning searches of cell phones in Canada is murky. On June 18, 2014, the BC Court of Appeal released its judgment in *R. v. Mann*, delivering one step towards clarity, and a win for privacy! The Court decided that the law no longer permits police to conduct warrantless searches of the entire contents of an individual's cell phone. The Court did not rule on whether a "cursory search" of a cell phone would be permissible without a warrant – a question the Court is likely to address in the case of *R. v. Fearon* (see back page).

### ● Control Over Your Information Just Got Easier!

The *Access to Information Act* allows individuals and groups to access information held by federal government bodies, but preparing an Access to Information (ATI) request and the follow-up process can be confusing. With help from Mike Larsen, who wrote the book on ATI requests, we've created a step-by-step guide to simplify the process and help people get useful and informative results from their ATI requests. The guide is available at: <http://bccla.org/?p=10388>.

## Meet Our 2014 Liberty Award Winners

Liberty Award recipients are devoted to the cause of protecting and expanding hard-won democratic rights and freedoms; their collective contributions are invaluable—and essential—to the work of the BC Civil Liberties Association.

More than 300 people joined us to celebrate. Thank you to our sponsors and a very special thank you to our keynote speaker Dr. Cindy Blackstock.



### Reg Robson Award

**Dr. Jennifer Wade** has worked tirelessly for human rights locally and globally for the rights of the wrongfully convicted and the unfairly treated. Among her many activities, Jennifer is the co-founder of Amnesty International's Vancouver chapter, and a member of the Board of Directors for the Elizabeth Fry Society.



### Unsung Hero Award

**Dr. Muriel Groves**, a BCCLA Board member since 2011, has quietly but powerfully guided the Association's work on mental health issues, including stewarding our work on involuntary admission and treatment in non-criminal cases. We owe her a debt of gratitude for her leadership on this issue, and are pleased to honour her.



### Excellence in Legal Advocacy – Individual

**John Conroy, Q.C.** has spent his entire career fighting for prisoners' rights. It would be difficult to imagine what the state of prison law would be in BC and Canada without his contribution. The same can be said for his work on drug policy. John has worked

extensively to improve the marijuana medical access regulations, as well as serving as counsel to the Vancouver Area Network of Drug users (VANDU) in the historic effort to keep safe injection site Insite open.

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Elin Sigurdson,  
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## Excellence in Legal Advocacy – Firm

**JFK Law Corporation** is being honoured for their pro bono work on the BCCLA's *Worm v. Canada* case. JFK Law Corporation worked tirelessly alongside the BCCLA to expose the

unconstitutional practice of prolonged solitary confinement in the Canadian prison system and to obtain justice for our client BobbyLee Worm. Two days after the suit was filed, prison officials released Ms. Worm from the program. Later that same month, Correctional Services Canada announced that it would end its use of the program across Canada.

## Excellence in Journalism



From left, Barton Gellman, Ewan MacAskill, Laura Poitras and Glenn Greenwald

**Ewen MacAskill, Laura Poitras, Barton D. Gellman, and Glenn Greenwald**, the journalists who first revealed the extent of global surveillance activities, are the recipients of this year's award for Excellence in Journalism. Their work not only brought to public attention the information gathered by whistleblower Edward Snowden, but it continues to inform and fuel the public discourse around surveillance and privacy issues. Edward Snowden himself showed up at the awards via video to congratulate the winners on their award.



## Excellence in the Arts

**Franke James** has spent years producing original artwork inspired by social and environmental justice. Outspoken on environmental issues, her works have come

into conflict with the federal government. Her experiences as an artist facing muzzling and censorship by the federal government led to the publishing of her third book, *Banned on the Hill*.

## Excellence in Youth Activism



Fraser Valley Youth Society  
Liberty Award winners

The **Fraser Valley Youth Society** took initiative, demonstrated their bravery and leadership, and organized Abbotsford's first LGBTQ+ Pride Parade. Their hard work and determination meant that the May 25th, 2013 event was a success, attracting hundreds of marchers, hundreds more spectators, and paving the way for LGBTQ+ expression, inclusion, and pride in the city.



Presenters and Liberty Award winners

# Non-Conviction Disclosure

For years we've been raising awareness about the issue of non-conviction information being disclosed on police information checks – and it's finally paying off.

You're applying for a job. Your prospective employer asks you to get a background check done at the police station. "No problem," you think. "I don't have a criminal record." What many people don't know, however, is that the type of background check typically used in British Columbia today is not a criminal record check at all – these *police information checks* actually turn up far more than just someone's criminal record. It might note that you got a ticket for drinking in public, or that you were "investigated for assault" when your unfriendly neighbour made a malicious and unfounded report to the police. It might even disclose that you called 911 when you were feeling suicidal.

Once this information is on your police record there's very little that you can do about it: it is almost impossible to get such information removed or suppressed once the police have chosen to disclose it on a record check. Information like this commonly prevents people from accessing employment or volunteer opportunities. The routine disclosure of such information, we believe,

constitutes an unwarranted invasion of privacy, violates an individual's right to be innocent until proven guilty, and opens people up to discrimination based on their mental health.



In January, we learned that the Office of the Information and Privacy Commissioner for BC was conducting an investigation into the use of police information checks. In addition to making our own submission, we encouraged those who have been negatively impacted by non-conviction information to tell their stories. In mid-April the OIPC released their report, and we're thrilled to say that they call for urgent changes to the practice.

The report directs police to immediately stop providing mental health information on police information checks. It also directs police to stop releasing any non-conviction

information on record checks for positions outside the vulnerable sector (people working with children and vulnerable adults). Furthermore, it recommends that police agencies adopt a record check model that treats different kinds of conviction information differently, so that employers are only able to access conviction information that is relevant to the specific position for which an individual is applying.

But the Privacy Commissioner went even further than that. She said that it is not enough for her to issue recommendations or for the police to change their policies. She calls on the government to enact legislation that enshrines these changes in law, ensuring that they become mandatory and enforceable throughout BC.

We've been waiting a long time for these changes and we don't want to wait anymore. We've written letters to every MLA urging them to enact the legislation recommended by the Privacy Commissioner as soon as possible. We'll be pushing hard on this issue in the coming months as the legislature considers adopting the OIPC recommendations.

# Your Rights on Trial

The BCCLA is intervening in a variety of cases aimed at protecting rights and freedoms. Here are just some of the cases we're working on.

## DEATH WITH DIGNITY

**Lee Carter, et al. v. Canada, et al.** / *Supreme Court of Canada*

The BCCLA is beginning its landmark journey to the Supreme Court of Canada to fight for the right for physician-assisted dying for the seriously ill. Last month, we filed our written arguments in the case. Plaintiffs Lee Carter and Hollis Johnson and family

members of the deceased lead plaintiff Gloria Taylor gathered in Vancouver to mark the legal milestone. Elayne Shapray, a woman who suffers from multiple sclerosis, who provided evidence in the case, joined them. The BCCLA's lawsuit argues that the laws

that criminalize doctors for helping competent, seriously ill individuals who wish to hasten death are unconstitutional. It has been twenty years since Canada's highest court looked at the issue, dismissing a challenge to the law in the Sue Rodriguez case. The BCCLA argues that since that time, there has been a sea change in social thinking on these issues. Many countries now allow for assisted dying, and their experience reveals that the fears are unfounded. Canada's highest court will hear oral arguments in the case on October 14, 2014. **Joseph Arvay, Q.C.** and **Alison Latimer** of Farris, Vaughan, Willis and Murphy LLP and **Sheila Tucker** of Davis LLP represent the BCCLA.



Left to right: Jason Taylor, Anne Fomenoff, Hollis Johnson, Lee Carter, Elayne Shapray, BCCLA Litigation Director Grace Pastine, Howard Shapray, BCCLA counsel Sheila Tucker and Alison Latimer

## PRISONERS' RIGHTS

**Simons, Canadian HIV/AIDS Network, et al. v. Minister of Public Safety, et al.** / *Ontario Superior Court of Justice*

This case is a constitutional challenge under sections 7 and 15 of the *Charter* to the government's refusal to make sterile injection equipment available to individuals incarcerated in federal prisons. The applicants seek an order directing the implementation of sterile needle and syringe programs in all federal prisons to provide reasonable and effective access to sterile

injection equipment for inmates. Steven Simons, a former prisoner who was infected with the hepatitis C virus (HCV) and exposed to the risk of infection with HIV during his imprisonment because another prisoner used his injection equipment, brought the application. In the community, hundreds of needle and syringe programs serve as essential health

services that improve harm reduction and sterile injection equipment is a widely accepted prevention measure. The BCCLA is a strong advocate for the use of public health mechanisms to reduce the harms associated with addiction and will seek leave to intervene in the case. **Elder Marques** of McCarthy Tétrault represents the BCCLA.

## PRIVACY RIGHTS

**R. v. Fearon** / *Supreme Court of Canada*

The Supreme Court of Canada heard arguments in this case in May. The main question on appeal is whether the common law power to search upon a lawful arrest includes the authority for police officers to search the contents of cell phones. Mr. Fearon's cell phone was seized during a pat-down search incident to his arrest

for armed robbery. The phone was searched immediately and was searched several times over the following days. The police obtained a search warrant after the fact and photos and text messages taken from the phone were entered into evidence at trial. The BCCLA is an intervener and argued that a search warrant

is required before a search of a cell phone, even if it is seized upon a lawful arrest. Moreover, because the search of a cell phone is similar to a wiretap, the police must show investigative necessity before a search warrant is issued.

**Gerald Chan** and **Nader Hasan** of Ruby Shiller Chan Hasan represent the BCCLA.

## One Year after Snowden: What's Changed?

One year after Edward Snowden first revealed the extent of the secret national security surveillance network, the activities of national security agencies and the value of privacy are in the global spotlight like never before. There is no question that civil society has been empowered by this. But are we seeing meaningful reform?

The answer is 'not yet'. That is the conclusion drawn by a new report that compiles twenty country and sector analyses on responses to the Snowden revelations. The BCCLA joined with Tamir Israel from CIPPIC and Chris Parsons from Citizen Lab to add Canada's report card to this landmark research. The constant refrain from around the globe is governmental inaction, denial and evasion. The report can be found at: <http://bccla.org/?p=11195>.

It is vital that we take stock to know how to proceed in our fight. One of the interesting findings of the report is that litigation frequently appears as the best hope for the next stage of the battle.

This past year, the BCCLA launched two lawsuits challenging the domestic surveillance activities of CSEC, Canada's electronic spying agency. CSEC's wide-ranging powers include the ability to read Canadians' emails and text messages, and to listen in on their phone calls when they're communicating with someone outside of Canada.

This domestic spying is done without a warrant, without any judicial oversight, and without very much public understanding of who is being watched and what is being done with our private information. The BCCLA has brought these lawsuits in an attempt to get some answers and to ensure that Canada's national security practices respect our constitutional rights.



[www.bccla.org/gala2014](http://www.bccla.org/gala2014)

Hear Edward Snowden discuss the importance of a free press in this video he made just for the BCCLA!

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