

# GRATL & COMPANY

BARRISTERS AND SOLICITORS

August 30, 2014

By Facsimile 604-660-7766 (eleven pages)

Office of the Chief Coroner  
British Columbia Coroners  
800-4720 Kingsway Ave  
Burnaby, BC V5H 4N2

Attn: Roderick Mackenzie  
Chief Counsel

Coroner Margaret Janzen  
Presiding Coroner

Re: Inquest into the death of Lucia Vega Jiménez

I am retained by the British Columbia Civil Liberties Association ("BCCLA") in respect of the death of Lucia Vega Jiménez. I write to request participant status for the BCCLA pursuant to s.31(2) of the *Coroners Act*, SBC 2007 c.15 for the inquest into the death of Ms. Jiménez.

The BCCLA is a non-profit, non-partisan, unaffiliated advocacy group incorporated in 1963 pursuant to the *Society Act*. The objects of the BCCLA include the promotion, defence, sustainment and extension of civil liberties and human rights throughout British Columbia and Canada.

BCCLA has approximately 1,200 members and donors, and employs a team of ten persons, including five lawyers. The BCCLA is governed by a volunteer board of directors that directs the BCCLA's policy and agenda. Through its board, the BCCLA taps the skills and energies of a wide range of academics, professionals and lay persons with experience and interest in the field of civil liberties.

The BCCLA achieves its goals by conducting research and preparing submissions in respect of policy and legislation at the federal, provincial and municipal levels, engaging in public education through the media, and at conference and public events, and by publishing newsletters, a website, books and other publications regarding civil liberties and human rights issues. The BCCLA also provides assistance to individuals who resort to the BCCLA to redress of violations of their civil liberties or human rights.

The BCCLA takes action in its own right when it perceives or anticipates violations of civil liberties or human rights. It launches complaints with the government or administrative agencies and takes action in the courts. It does the latter occasionally as a plaintiff or applicant, but most often as an intervener in legal proceedings at all levels of court.

The interests of the BCCLA will likely be substantially affected by the inquest into the death of Ms. Jiménez. The BCCLA has a genuine and demonstrated interest in the following areas:

1. Deaths in custody;
2. Prison conditions and treatment;
3. Civilian oversight and accountability of immigration authorities, including the Canada Border Services Agency;
4. Equal protection of the rights of persons with disabilities; and
5. The use of private contractors where fundamental liberties are restricted, including the detention and prison context.

I attach the Affidavit of BCCLA staff counsel Carmen Cheung, affirmed August 29, 2014, which sets out BCCLA involvement and enduring commitment to the issues set out above. Ms. Cheung's affidavit confirms BCCLA participation in the Braidwood Inquiry, the Arar Inquiry, the Iacobucci Inquiry and the Frank Paul Inquiry. Each of these inquiries engaged issues of public accountability and oversight into deaths or grievous injury of vulnerable persons.

The BCCLA is interested at the inquest into Ms. Jiménez' death in answers to the following critical questions:

1. Could Ms. Jimenez' death have been prevented?
2. What role did the private security company Genesis Security play in this tragedy?
3. Were sufficient accountability and oversight mechanisms for the private operator of the detention facility, and, if not, was the lack of accountability and oversight may have been a contributing factor in Ms. Jimenez' death?
4. What training did the operators of the detention facility receive and was that training adequate to prevent the death of Ms. Jiménez?
5. Whether the life and liberty interest of a person is such as to restrict delegation of responsibility to private contractors?


September 1, 2014

6. Were sufficient mental health and emergency medical services available to Ms. Jimenez at the time of her death and during the relevant period preceding her death?

In my submission, BCCLA will be in a position to make a unique and substantial contribution to the inquest. BCCLA has established a connection with an important civilian witness and, should the presiding coroner grant leave to do so, will be in a position to call expert opinion evidence into the issue of accountability and oversight of detention facilities.

Granting participant status to BCCLA will in no way interfere with the hearing schedule for the inquest into the death of Ms. Jiménez. BCCLA staff and my office have commenced a review of documents secured by means of the Access to Information Act, and we anticipate being prepared to commence the hearing at the convenience of the Coroner.

I look forward to hearing from you at your earliest convenience.

Sincerely,  
  
Jason Gratl\*

JBG/tim

*IN THE MATTER OF A CORONER'S INQUEST  
INTO THE CIRCUMSTANCES AND CAUSE OF DEATH OF LUCIA VEGA JIMENEZ  
PURSUANT TO THE CORONER'S ACT, SBC 2007, C.15*

**AFFIDAVIT**

I, **CARMEN CHEUNG**, Barrister and Solicitor, of 900 Helmcken Street, in the City of Vancouver, in the Province of British Columbia, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am Senior Counsel at the British Columbia Civil Liberties Association (the "BCCLA"), and as such have personal knowledge of the facts deposed to in this affidavit except where stated to be on information and belief in which case I verily believe them to be true.

**The British Columbia Civil Liberties Association**

2. The BCCLA is a non-profit, non-partisan, unaffiliated advocacy group. It was incorporated in 1963 pursuant to the *British Columbia Society Act*. The objects of the BCCLA include the promotion, defence, sustainment and extension of civil liberties and human rights throughout British Columbia and Canada.
3. The BCCLA has approximately 1,200 members and donors involved in various professions, trades and callings. The BCCLA has ten employees, including an Executive Director, a Litigation Director and a Policy Director. They are responsible for the day-to-day work of the organization.
4. The BCCLA has a volunteer board of directors that directs the BCCLA's policy and agenda. Through its board, the BCCLA taps the skills and energies of a wide range of academics, professionals and lay persons with experience and interest in the field of civil liberties. This gives the BCCLA the benefit of their collective expertise in considering the difficult questions raised by civil liberties-related concerns.
5. The BCCLA works in furtherance of its objects in a variety of ways:
  - a. The BCCLA prepares position papers and makes submissions to governmental bodies at the federal, provincial and municipal levels concerning the

advancement of civil liberties and human rights and the implications for civil liberties and human rights of proposed legislative and policy initiatives;

- b. The BCCLA engages in public education, by commenting on current civil liberties and human rights issues in various news media, by participating in conferences and other public events at which civil liberties and human rights are discussed, by publishing newsletters and producing books and other publications regarding civil liberties and human rights issues, and by maintaining a web site containing many of the BCCLA's position papers and other public documents;
- c. The BCCLA provides assistance to individuals who complain to us about violations of their civil liberties or human rights, including assistance in pursuing administrative and informal remedies; and
- d. The BCCLA takes action in its own right when it perceives violations of civil liberties or human rights, either by launching complaints with the government or other administrative agencies, or by appearing in court, sometimes as a plaintiff or applicant, but most often as an intervener in legal proceedings that raise civil liberties issues.

#### **The BCCLA's Interest in Public Accountability and Oversight of Public Authorities**

6. This affidavit is made in support of the BCCLA's application for leave to participate in the inquest into the death of Lucia Vega Jiminez pursuant to s.31(2) of the *Coroners Act*.

7. The BCCLA has a long-standing interest in ensuring that there exists adequate oversight of and accountability for police, prison and immigration authorities.

8. The BCCLA has acquired unique expertise in the areas of public accountability and civilian oversight from its extensive history of making submissions to governments, administrative bodies and courts on those subjects. The BCCLA has intervened or made submissions in a number of cases regarding public accountability.

9. The BCCLA has participated in several Commissions of Inquiry and has pursued other efforts to ensure there is adequate independent oversight of public authorities. For example:
- a. The BCCLA presented two extensive briefs at the Inquiry into Policing in British Columbia (the “Oppal Commission”).
  - b. The BCCLA was a participant in the Thomas R. Braidwood, Q.C. Study and Hearing Commission, which was established under the British Columbia *Public Inquiry Act* to inquire into and report on the circumstances surrounding the death of Robert Dziekanski, who died after being tasered five times by the RCMP (the “Braidwood Inquiry”). Following the close of the Braidwood Inquiry, the BCCLA participated in the Braidwood Recommendation Implementation Committee as a full committee member.
  - c. The BCCLA was a participant in the Frank Paul Inquiry, which was established under the British Columbia *Public Inquiry Act* to inquire into and report on the circumstances of the in-custody death of Frank Joseph Paul and the subsequent police investigation of that death. As part of its submissions, the BCCLA advocated for the creation of an independent office for investigating police-related deaths and serious injuries.
  - d. The BCCLA was a participant at the Commission of Inquiry into the Actions of Canadian Officials in relation to Maher Arar, which addressed the need for civilian oversight of Canada’s national security agencies, including the CBSA.
  - e. The BCCLA was granted participant status in the *Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin* (the “Iacobucci Inquiry”), a public inquiry under the *Federal Inquiries Act* that examined the role of Canadian investigators in the overseas detention and torture of Almalki, Elmaati and Nureddin. In December 2007, the BCCLA withdrew from the inquiry on the basis that the Commission’s failure to disclosure documents and hold public hearings precluded meaningful participation in the process.

- f. The BCCLA participated in the RCMP Public Complaints Commission hearing chaired by Ted Hughes, QC, which examined allegations of police misconduct during the Asia Pacific Economic Conference in Vancouver in November 1997.
  - g. The BCCLA had significant involvement in the development and implementation of British Columbia's Independent Investigation Office ("IIO"). For example, the BCCLA was consulted by the Province on the legislative amendments required to implement the IIO. The BCCLA was also consulted on developing the Memorandum of Understanding between the IIO and police departments.
10. The BCCLA provides assistance through its caseworker to individuals seeking to make complaints about police conduct. The BCCLA also conducts advocacy relating to police accountability. Recent examples of such work include advocacy concerning the police shooting deaths in British Columbia of Alvin Wright, Paul Boyd, and Eugene Knight.
11. In addition, the BCCLA has published reports and handbooks relating to police accountability and the rights of individuals interacting with the police. Examples include:
- a. *Police Involved Deaths: The Need for Reform*, published in 2012, is a collection of essays examining police involved deaths from several perspectives: statistical, academic, legal and procedural. This collection specifically addresses best practices for establishing civilian oversight of policing.
  - b. *Small Town Justice*, published in 2011, documents the experiences of individuals interacting with the RCMP in northern and rural British Columbia.
  - c. *Police Involved Deaths: The Failure of Self-Investigation*, published in 2010, reports on deaths in police custody.
  - d. *The Arrest Handbook*, first published in the 1970s and most recently updated in 2010, informs individuals about their rights in relation to dealings with the police.

## The BCCLA's Experience in the Supreme Court of Canada

12. The BCCLA has intervened in a number of cases regarding accountability for the conduct of law enforcement agencies. Most recently at the Supreme Court of Canada, the BCCLA intervened in *Wood v. Schaeffer*, 2013 SCC 71, which involved the duty of police officers to prepare independent and contemporaneous notes following incidents involving the use of police force causing death or serious injury. The Supreme Court of Canada has also granted the BCCLA leave to intervene in the following cases:

- a. *R. v. Fearon*, SCC File No. 35298 (heard May 23, 2013, judgment reserved);
- b. *Sask. Federation of Labour, et al. v. Her Majesty the Queen*, SCC File No. 35423 (heard May 16, 2014; judgment reserved);
- c. *Wakeling, et al. v. United States of America*, SCC File No. 35072 (heard April 22, 2014; judgment reserved);
- d. *Kazemi, et al. v. Islamic Republic of Iran, et al.*, SCC File No. 35034 (heard March 18, 2014; judgment reserved);
- e. *Mounted Police Association of Ontario v. Attorney General of Canada*, SCC File No. 34948 (heard February 18, 2014; judgment reserved);
- f. *R. v. Hart*, 2014 SCC 52;
- g. *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37;
- h. *R. v. Carvery*, 2014 SCC 27;
- i. *Mission Institution v. Khela*, 2014 SCC 24;
- j. *Canada (Attorney General) v. Whaling*, 2014 SCC 20;
- k. *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401*, 2013 SCC 62;
- l. *Canada (Attorney General) v. Bedford*, 2013 SCC 72;




- m. *R. v. Vu*, 2013 SCC 60;
- n. *R. v. Chehil*, 2013 SCC 49 and *R. v. MacKenzie*, 2013 SCC 50;
- o. *Divito v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 47;
- p. *R. v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43;
- q. *Agraira v. Minister of Public Safety and Emergency Preparedness*, 2013 SCC 36;
- r. *Penner v. Regional Municipality of Niagara Regional Police Services Board, et al.*, 2013 SCC 19;
- s. *R. v. Pham*, 2013 SCC 15;
- t. *R. v. J.F.*, 2013 SCC 12;
- u. *R. v. Manning*, 2013 SCC 1;
- v. *R. v. Davey*, 2012 SCC 74 and *R. v. Yumnu*, 2012 SCC 73;
- w. *Sriskandarajah v. United States* and *Nadarajah v. United States*, 2012 SCC 70; and *R. v. Khawaja*, 2012 SCC 69;
- x. *A.B. v. Bragg Communications*, 2012 SCC 46;
- y. *Attorney General (Canada) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45;
- z. *R. v. Mabior*, 2012 SCC 47 and *R. v. D.C.*, 2012 SCC 48;
- aa. *R. v. Tse*, 2012 SCC 16;
- bb. *R. v. Ladue*, 2012 SCC 13;
- cc. *Les éditions Écosociété Inc., et al. v. Banro Corporation*, 2012 SCC 18;

- dd. *Richard C. Breeden, et al. v. Conrad Black, et al.*, 2012 SCC 19;
- ee. *PHS Community Services Society v. Canada (Attorney General) and Vancouver Area Network of Drug Users v. Canada (Attorney General)*, 2011 SCC 44;
- ff. *Crookes et al. v. Newton*, 2011 SCC 47;
- gg. *Société Radio Canada c. Quebec (Procureur Général)*, 2011 SCC 2 and *R. v. Dufour*, 2011 SCC 3;
- hh. *R. v. Sinclair*, 2010 SCC 35; *R. v. Willier*, 2010 SCC 37; *R. v. McCrimmon*, 2010 SCC 36;
- ii. *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23;
- jj. *National Post v. Her Majesty the Queen*, 2010 SCC 16;
- kk. *Chatterjee v. Ontario (Attorney General)*, 2009 SCC 19;
- ll. *WIC Radio Ltd. v. Simpson*, 2008 SCC 40;
- mm. *Canada (Justice) v. Khadr*, 2008 SCC 28;
- nn. *Harkat v. Canada (Citizenship and Immigration); Almrei v. Canada (Citizenship and Immigration); Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9;
- oo. *May v. Ferndale Institution*, 2005 SCC 82;
- pp. *Reference re Same-Sex Marriage*, 2004 SCC 79;
- qq. *R. v. Malmø-Levine, R. v. Caine*, 2003 SCC 74;
- rr. *R. v. Clay*, 2003 SCC 75;
- ss. *Chamberlain v. Surrey School District No. 36*, 2002 SCC 86;


- tt. *Sauvé v. Canada (Chief Electoral Officer)*, 2002 SCC 68;
- uu. *Babcock v. Canada (Attorney General)*, 2002 SCC 57;
- vv. *R. v. O.N.E.*, 2001 SCC 77;
- ww. *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31;
- xx. *R. v. Sharpe*, 2001 SCC 2;
- yy. *R. v. Cuerrier*, [1998] 2 S.C.R. 371;
- zz. *R. v. Butler*, [1992] 1 S.C.R. 452; and
- aaa. *Reference re Provo Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158.

13. The BCCLA is fundamentally concerned with the preserving of Canadians' constitutional and *Charter* rights. The BCCLA believes these rights are contingent upon the existence of adequate oversight of and accountability for public conduct, especially the actions of public officials and agents in respect of detention. The BCCLA believes that state-involved injuries and deaths significantly engage core constitutional values of life, liberty and security of the person. I believe that the submissions of the BCCLA will bring a different and useful contextual understanding to the issues in this inquest.

AFFIRMED BEFORE ME at the City of )  
 Vancouver in the Province of British )  
 Columbia, this 29<sup>th</sup> day of August, )  
 2014. )

  
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 A Commissioner for taking Affidavits for  
 British Columbia

M. VONN  
 BC Civil Liberties Association  
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 Vancouver, BC V6Z 1B3

  
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 Carmen Cheung