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**Carter v. Canada:
the Death with Dignity Case**

WE DID IT. On October 15, 2014 the BCCLA's incredible *pro bono* counsel argued before the Supreme Court of Canada that every Canadian deserves compassion, dignity, and choice at the end of life.

When we arrived at 7:30 am, the crowd was already spilling out of the court and into the lobby, with lines down the court steps. *Carter v. Canada*, the BCCLA's death with dignity case, had captured the nation's attention.

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The Priorities We Share

Lindsay Lyster

In the last *Democratic Commitment*, we invited supporters to tell us which civil liberties issues are most important to you by responding to our membership survey. We have been so pleased by the number of responses, and by the thoughtfulness of the answers we received. Thank you for taking part.

As this organization matures, our commitment to being member driven continues to grow. For that reason, we are glad to see just how closely the work we are doing right now aligns with the priorities of our membership.

More than 36% of people who responded felt that democratic rights such as freedom of expression and assembly should be our first priority. These freedoms were central to the founding of this organization, and more than 50 years later we remain preoccupied by their protection.

When freedom of information documents revealed that Canada's government has been spying on community organizations engaged in peaceful activities related

to a resource extraction project, and sharing that information with private industry, we took action. The BCCLA filed legal complaints to the oversight bodies of the RCMP and CSIS alleging that these actions are a violation of fundamental rights to free expression and free association. We're also alleging that CSIS broke its own law – a prohibition on targeting peaceful and democratic activities of Canadians.

We're supporting individuals in the exercise of their democratic rights by teaching "Know Your Protest Rights" workshops around the province, and developing additional educational resources for Canadians as they speak up, march, and make their voices heard.

Another 18 percent of you thought issues around privacy should be top priority, while 13 percent thought our first priority should be policing and prison-related work. As our landmark legal challenge continues against CSEC, Canada's communications spying agency, we're hard at work on a number of other pieces of work related to both issues.

In September, we renewed our call for implementation of the recommendations of the Maher Arar inquiry – made over eight years ago – because Canada's law enforcement and intelligence agencies have yet to adopt as standard practice a prohibition against information disclosure where there is a substantial risk that it would result in torture. We know that privacy can be a matter of life or death. The view from here is that this is a lesson Canada is refusing to learn, despite having provided the textbook example for why safeguards are so critical.

As individuals and as an organization, we share keenly these commitments to democratic rights, privacy, policing and prisoners' rights. We know that as a hub for hundreds of *pro bono* counsel, and a rallying point for thousands more concerned Canadians, we can and will make an impact on these issues.

Thank you for sharing your priorities with us. We're right there with you.

Sincerely,
Lindsay M. Lyster
BCCLA President

FOUR

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

VICTORIES FOR RIGHTS

● BCCLA announces challenge to unjust changes to the Citizenship Act

This fall, the BCCLA announced that it will launch a legal challenge to the new citizenship amendments contained in Bill C-24. The bill delivers sweeping changes to Canada's citizenship laws that make citizenship harder to get and easier to lose. The new law will take away rights from countless Canadians, creating a two-tier citizenship regime that discriminates against dual nationals and naturalized citizens. Along with the Canadian Association of Refugee Lawyers, we expect to file our challenge in the coming months.

● RCMP oversight commission announces investigation of BCCLA spying complaints

The BCCLA has filed complaints against the RCMP, and one of Canada's spy agencies, the Canadian Security Intelligence Service (CSIS), for allegedly spying on the lawful demonstration activities of community groups. The RCMP Commission for Public Complaints has launched its own public interest investigation of the complaint against the police force, bypassing its usual practice of asking the RCMP itself to conduct an initial investigation of the complaint. It's clear that the RCMP complaints commission is taking this spying complaint very seriously, by investigating the complaint itself rather than leaving the job to the RCMP.

● BCCLA fights to hold Canada Border Services Agency to account at coroner's inquest

In early 2014, the community was shocked by the tragic death of Lucía Vega Jiménez after she hanged herself in the custody of CBSA at Vancouver airport. The more we learned, the more troubling the story became – a story that CBSA failed to disclose to the public. BCCLA asked for an inquest to be held to get to the bottom of the many questions surrounding her death, and we participated to seek answers. The inquest jury adopted nearly every recommendation put forth by the BCCLA. The inquest is a wake up call for the CBSA and highlights the urgent need for oversight.

● Investigation into RCMP police abuse allegations in northern BC

Three years after the release of BCCLA's landmark Small Town Justice report chronicling problems in RCMP policing in northern and rural BC, the Commission for Public Complaints Against the RCMP has started to carry out an investigation into the negative treatment of Indigenous people by police, policing of allegedly intoxicated people, and the poor conditions in police cells. Given our past concerns about the work of the Commission for Public Complaints, we are watching this process carefully.



Citizenship by Birth Threatened

Since 2009, the Canadian government has been waging a campaign to make citizenship harder to get and easier to lose. There are three ways to get citizenship: (1) birth on Canadian soil (known by the Latin legal term *jus soli*, translating to “law of the soil”), (2) birth to a Canadian citizen who is abroad (*jus sanguinis*, or “law of the blood”) and (3) naturalization, which is when a newcomer to Canada applies for and is granted Canadian citizenship.

In 2009, the government made it harder to pass Canadian citizenship by descent from parent to child (*jus sanguinis*). This year, Bill C-24 and its citizenship-stripping provisions targeted those who obtain citizenship by naturalization as well as dual citizens. Having weakened citizenship by naturalization and by descent, the government has also let it be known that citizenship by birth on

Canadian soil (*jus soli*) will be next on its list.

Immigration-restriction rhetoric relies heavily on fear, and those who would argue against *jus soli* citizenship typically conjure up the spectre of “birth tourism” – pregnant women who come to Canadian hospitals, use Canadian medical resources, and take advantage of Canada’s birthright citizenship to have Canadian babies. After giving birth, mother and child return to the country of origin, taking the child’s Canadian birth certificate home as a kind of citizenship souvenir. According to some, this ‘gaming of the system’ by pregnant women makes us a nation of suckers.

We don’t have a ‘birth tourism’ problem

But how serious an issue is birth tourism? Statistics Canada reports that of the 377,913 live births recorded in Canada for 2011, only 277 of those were by mothers who lived outside

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of Canada. The numbers were slightly higher in 2010 – 305 babies born to non-resident mothers out of 377,518 live births. That is less than one tenth of one percent of all births in Canada. By any measure, the number of babies born to non-resident non-Canadian mothers is negligible.

What of the money that Canada spends on health care, public education, or subsidized university tuition for babies born to birth tourists? These particular benefits of citizenship, however, are only available to individuals who live in Canada. Non-resident parents don't get to stay in Canada simply because their babies are citizens – when they leave Canada, voluntarily or otherwise, they take their Canadian children with them.

Expensive hysteria

Eliminating birthright citizenship would impose enormous and perpetual public expense that will be borne by all of us. Currently, a Canadian birth certificate serves as proof of citizenship for birthright citizens. But if being born in Canada does not automatically confer citizenship, then the provinces and federal government will eventually have to come up with another system for verifying

citizenship. A passport proves citizenship, but the government makes us pay for them and about a third of Canadians don't possess one. Whatever the verification system, it will be staggeringly expensive to develop and maintain. By way of example, a national identification card system – which is itself fraught with privacy and surveillance concerns – has been estimated to cost between \$3 billion to \$5 billion just to implement. Talk about a sledgehammer to deal with a flea.

Born equal: a valuable legacy

Protecting citizenship by birth on Canadian soil makes economic and practical sense. It is also true to our identity as a nation dedicated to freedom and equality. Canada's First Nations were once denied citizenship unless they surrendered their Indian status. Less than a century ago, Canada had explicitly racist anti-Chinese restrictions on entry, citizenship and the vote. Immigrants have always worried about whether they are recognized as full citizens. But since 1946, every child born in Canada is born equal: a full citizen, no matter what race, ethnicity or ancestry. That is a legacy to be proud of, and we would be suckers to squander it.

This holiday season, give the gift of freedom



Perhaps you know someone with an active and inquiring mind who would be interested in issues affecting their rights and freedoms.

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 British Columbia and Canada.

The recipient of your gift will receive a special introductory package to the BCCLA, with information about our freedoms in Canada, recent publications, and a card welcoming them to the Association. Visit www.bccla.org/gift to send your gift today.



Sharing the journey with the Carters and Taylors

The heart and soul of this case has always been the families at the centre of it. We would like to extend our sincere gratitude to our courageous and inspiring clients the Carters, the Johnsons, the Taylors, the Shaprays, and the many other individuals who shared their personal stories in this case so that other Canadians might have the right to choose.

When our plaintiff Gloria Taylor died in 2012 we promised to continue this fight as her legacy. It was our honour to stand before the Supreme Court of Canada in memory of Gloria and so many other Canadians who have been denied their right to die with dignity.

A momentous change

In the years since we launched this case, there

has been a momentous shift in support of the right to physician-assisted dying for the seriously and incurably ill. We started this case to ensure that the law respects the rights of Canadians. In the process we've also changed the country.

Just one week before we stood in front of the Supreme Court of Canada, the most comprehensive Canadian survey ever undertaken on the public's perception of dying with dignity reported that more than 84% of Canadians support assisted dying.

The poll was followed up soon after by a call to action by one of the most important civil rights figures of our time. Archbishop Desmond Tutu, spoke out from the other side of the world to support this case. In his

opinion-editorial entitled *Revere the sanctity of life, but not at all costs* he wrote "I have been fortunate to spend my life working for dignity for the living. Now I wish to apply my mind to the issue of dignity for the dying."

What now?

On average, the Supreme Court of Canada takes six months from the date of the hearing to issue a judgment, but it could take longer. After more than three years of continually fighting to get to this point, now we wait.

We want to thank everyone who helped make this happen. Together we have given the nation a clear message: it's time for Canada to adopt a new approach to dying that respects compassionate choice.



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.

PRIVACY AND UNLAWFUL SEARCHES

Monaco v. City of Coquitlam / Supreme Court of Canada

This class action litigation challenges the warrantless inspections conducted on Coquitlam residents' homes between March 2007 and June 2013. Like many municipalities throughout British Columbia, Coquitlam enacted a "tough on crime" bylaw that purportedly authorized electrical and fire inspectors to enter suspected marijuana grow operations. The problem with the bylaw? The inspectors were authorized to bring RCMP officers

along for the search – and they didn't have to obtain a warrant.

If the homeowner refused to comply with a request to inspect, the homeowner faced sanctions and fees. The City charged residents \$5,000 for the search even if the inspection team found no evidence of a grow-op.

Coquitlam was one of 10 municipalities in Metro Vancouver with bylaws that enabled warrantless grow-op inspections. Many

of these municipalities, including Coquitlam, continued to operate warrantless inspection regimes even after the BC Court of Appeal in *Arkininstall v. Surrey* found that Surrey's warrantless grow-op inspection program was an infringement of owners' and residents' rights under s.8 of the *Charter*.

The BCCLA is represented by **Reidar Mogerman** and **Jamie Thornback** of Camp, Fiorante, Mathews and Mogerman.

POLICE ACCOUNTABILITY AND THE PUBLIC RIGHT TO KNOW

R. v. Nuttall / Supreme Court of BC

The BCCLA challenged a publication ban order in a case involving a Surrey couple, John Stuart Nuttall and Amanda Korody, who are accused of plotting to bomb the Victoria legislature last year on Canada Day.

The BCCLA successfully varied the broadly worded publication ban, arguing that the ban must minimally impair the right of the public to have access and information about the courts. The existing ban barred reporting any

materials disclosed in the hearings, including details of the Crown and defence's arguments and evidence. One effect of the BCCLA's challenge to the ban was that it allowed the media to report that the defence brought an application for alleged abuse of process by the authorities.

The BCCLA became involved in the case because we strongly believe that the public has a right to know about the special vulnerabilities of the

accused individuals, and the possible police methods and actions used in this case in the lead-up to their arrest. The BCCLA plans to bring a further application seeking to allow the public and media greater access to the evidence and information in this important case as more information comes available.

The BCCLA is represented by **David Crerar** of Borden Ladner Gervais.

Mandatory Minimums: Costly and Ineffective

Mandatory minimum sentencing in Canada is now at an all-time high. Since 1999, the number of offences attracting mandatory minimum sentences has jumped from 29 to over 50, even as the crime rate has been falling steadily.

Canada is now second only to the United States in the numbers and scope of offences carrying a mandatory minimum sentence. Unlike other comparable countries with mandatory minimums, Canadian judges have

no residual discretion to sentence below the minimum where it would be proportionate and just to do so.

This fall, the BCCLA released *More Than We Can Afford: The Costs of Mandatory Minimum Sentencing*, an important new report that finds that mandatory minimum sentences are ineffective at deterring or reducing crime, work to obscure the sentencing process, and adversely affect certain communities, including

Aboriginal persons and the mentally ill.

The BCCLA has long spoken out against mandatory minimum sentencing. We call for evidence-based policy reform that is so urgently needed in the criminal justice system. Our work on this issue continues as we intervene before the courts in *R. v. Nur* and *R. v. Charles*, which provide the first opportunity for the Supreme Court of Canada to rule on mandatory minimum sentences since 2008.

Standing for Democracy on Burnaby Mountain



While hundreds of committed people gathered on Burnaby Mountain to exercise their constitutional right to demonstrate, BCCLA Legal Observers stood on the mountain for a different reason.

Our first goal is to make sure that the fundamental rights of Canadians are protected. Through recording, witnessing and documentation, Legal Observers work to safeguard the right to assemble and demonstrate for all Canadians. **Learn more at www.bccla.org**



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