

BCCLA

2014 ANNUAL REPORT



BOARD OF DIRECTORS

Lindsay M. Lyster	PRESIDENT	Fritz Gaerdes (until April)	Richard Rosenberg
Jason Gratl	SECRETARY	Tom Gore	John Russell
Alan Rowan	TREASURER	Muriel Groves (until May)	Tom Sandborn
Warren Bourgeois		Shirley Heafey	Steven Savitt
Alister Browne		Robert Holmes, Q.C.	Paul Schachter
Michael Byers		Jacob Hunter	Jeremy Shragge (until May)
Paul Champ		Stephen Katz	Kirk Tousaw
Larry Cohen		Ed Levy	Megan Vis-Dunbar
Caily DiPuma		Richard Marcuse	Reg Whitaker
John Dixon (until May)		Greg McMullen	Vanessa Wolff
Michael Feld		Stan Persky	Eric Wyness
			Fadi Yachoua

HONORARY DIRECTORS

David Barrett, O.C., O.B.C.	Bill Deverell	Darlene Marzari
Thomas Berger, O.C., Q.C.	David H. Flaherty	Rafe Mair
Neil Boyd	Hon. John Fraser, P.C., Q.C.	Hon. Stephen Owen, P.C., Q.C.
Rt. Hon. Kim Campbell, P.C., C.C., O.B.C., Q.C.	Gordon Gibson, O.B.C.	Svend Robinson
Andrew Coyne	Mike Harcourt, O.C.	David Suzuki, C.C., O.B.C.
Hugh Curtis	Rev. Phillip Hewett	
	Art Lee	

STAFF

Josh Paterson	EXECUTIVE DIRECTOR	Raji Mangat	COUNSEL
Jim Braunagel	OFFICE MANAGER	Grace Pastine	LITIGATION DIRECTOR
Carmen Cheung	SENIOR COUNSEL	Alana Prochuk	COMMUNICATIONS AND OUTREACH COORDINATOR (from Dec)
Caily DiPuma	COUNSEL (until April)	Alyssa Stryker	CASEWORKER
Jessi Halliday	LEGAL ASSISTANT (until Sept)	Micheal Vonn	POLICY DIRECTOR
Catherine Hart	DONOR RELATIONS AND DIGITAL STRATEGY COORDINATOR (from Dec)	Jasmine Yen	DEVELOPMENT DIRECTOR (until Sept)
Charlotte Kingston	DIRECTOR OF COMMUNITY ENGAGEMENT		

CONTENTS

2	PRESIDENT'S REPORT
3	2014 BY THE NUMBERS
4	VICTORIES FOR RIGHTS
6	POLICING AND CRIMINAL JUSTICE
8	NATIONAL SECURITY AND CIVIL LIBERTIES
10	WHOSE STREETS? OUR STREETS!
12	CASEWORK
14	LITIGATION
18	BCCLA SUPPORTERS
20	FINANCIAL REPORT
21	FINANCIAL STATEMENTS

PRESIDENT'S REPORT / LINDSAY M. LYSTER



IN OCTOBER 2014, BCCLA and the families we represented travelled to Ottawa for the Supreme Court of Canada's hearing of our landmark case on physician-assisted dying, *Carter v. Canada*.

Members of the families shared with us that, as they sat there in the packed courtroom, listening to lawyers making arguments and judges asking questions, something magical happened. They said that they felt as if they were heard – as if they had climbed to the very peak of the Canadian legal system, and that the system was, in that moment, truly focused on them and what they had to say to Canadians.

Four months later, in February 2015, we learned just how deeply the justices of the Supreme Court had listened to us and our co-plaintiffs, as we won the most significant victory in the BCCLA's history. In a resounding, unanimous judgment, the Supreme Court struck down the laws that made physician-assisted dying illegal in Canada.

The BCCLA has had some huge and historic wins in its more than fifty-year history. But this victory is one that could touch the life of every single person and family in Canada. This win affects us all. It gives us a critical choice at a critical moment in our lives – a choice about our life and death.

To borrow a phrase from my colleagues on the BCCLA Board, John Russell and Alister Browne: this decision is the most important legal victory affecting all Canadians in the post-*Charter* era.

The judgment rings so true and makes so much sense that you might be tempted to think that the fight was easy.

It was not.

The BCCLA took this case on at a time when the law was against us on this issue. We had a mountain to scale to get the Supreme Court of Canada to change its mind and uphold this fundamental right to self-determination at the end of life.

It involved thousands of hours of work.

It involved amassing tens of thousands of pages of evidence. It involved flying in the world's foremost medical experts on the topic to testify.

It involved a five-week trial in which we spent weeks cross-examining the witnesses whom the government tried to stack up against us.

Through legal acumen and hard work, we built a rock-solid case that could not be chipped away at, no matter how hard the government tried.

The absolute solidity of our case was reflected in our landmark win at trial and was the foundation for our ultimate victory at the Supreme Court of Canada.

We rely on the generosity of our supporters and volunteers to allow us to put in the assiduous work that produced these historic results. Right now, the BCCLA is dedicating that same energy and focus to five other major test cases, including our constitutional challenge to the practice of indefinite solitary confinement in Canadian prisons, and our lawsuit against Canada's electronic spy agency for its massive

continuous surveillance of every Canadian's online activities. We are pursuing many more cases and working on many other human rights and civil liberties issues, from police accountability to the protection of voting rights. We have been one of the loudest, best-briefed, and most consistent voices bringing sharply-honed legal criticism to the debate on new terror legislation.

On all of these issues and more, we promise that we will continue to work to give the civil liberties cause a strong, smart, and consistent

voice. A voice that is there to educate, and to advocate. A national voice, rooted in BC, that is heard and heeded just as the families in the *Carter* case were heard. That is our commitment to you. We thank you for your commitment to us.

Sincerely,



Lindsay M. Lyster

2014 BY THE NUMBERS

In our 52nd year, the BCCLA flourished! The need to protect civil liberties in Canada has never been greater. Through the support of our Board, staff, volunteers, donors, and supporters, we've accomplished more than ever before.



2014

VICTORIES FOR RIGHTS

For more than half a century, the BCCLA has been defending Canadians' rights to privacy, free expression, autonomy, and more—and holding government and police to account for infringements of our civil liberties. In 2014, true to form, we secured major victories in all of these areas.

DEMANDING IMPARTIAL INVESTIGATIONS OF POLICE CONDUCT

Greg Matters was a 40-year-old former Canadian peacekeeper who had been struggling with post-traumatic stress disorder for more than ten years when he was shot and killed in a tragic confrontation with RCMP on his family's property in Prince George. The BCCLA fought to ensure that the investigation into his death would meet the highest standards of transparency and accountability.

In 2013, the BCCLA noted that the report on Matters' death issued by the Independent Investigations Office (IIO)—the body tasked with investigating police-involved deaths and serious injuries in BC—contained an alarming factual error. The IIO report stated that Matters had been shot in the chest, when in fact he had been shot in the back. Troubled by this discrepancy, we joined with Pivot Legal Society and Justice for Girls in calling on the IIO to appoint a fully independent civilian monitor to review its investigation.

In June 2014, the IIO heeded our call and appointed a senior independent lawyer to review the IIO's work on the case. Four months later, this civilian monitor found that the IIO had made serious errors in its investigation

including appointing someone on the RCMP payroll as an advisor to work on the Matters investigation undermining its independence from the police.

For many years the BCCLA pressed for independent investigations of police conduct; now that these have been initiated, we are committed to ensuring that the IIO meets the highest standards of accountability.

DEFENDING PEACEFUL PROTESTERS AGAINST INTRUSIVE AND UNCONSTITUTIONAL SURVEILLANCE

The freedoms of expression, assembly, and association are the foundation of a healthy democracy. So, after evidence emerged to suggest that the RCMP and CSIS (Canada's spy agency) had illegally monitored community groups and First Nations engaged in peaceful opposition to the Enbridge Northern Gateway Pipeline project, the BCCLA filed complaints.

When CSIS denied any wrongdoing, the BCCLA responded by requesting that the Security Intelligence Review Committee (SIRC), CSIS's oversight body, investigate the complaint. We alleged that CSIS was trampling over the boundaries set by law which explicitly prohibit spying on "lawful advocacy, protest, or

dissent.” The BCCLA has learned that our complaint to SIRC will be heard in August of 2015. Our complaints against the RCMP remains under investigation.

PUSHING BACK—SUCCESSFULLY—AGAINST DUBIOUS ARRESTS ON BURNABY MOUNTAIN

In November 2014, protest rights came under threat on Burnaby Mountain. Nearly 100 anti-pipeline demonstrators were arrested and charged with civil contempt for crossing into an “exclusion zone” that was ill-defined and extended beyond the boundaries set by the original court injunction. Some arrestees were choked, thrown to the ground, and pinned down by police—as witnessed by the BCCLA’s Legal Observers—and many were deprived of their liberty for an entire weekend. The BCCLA spoke out immediately to condemn the RCMP’s unwarranted use of force and to question the legitimacy of the arrests, which hinged on injunction area boundaries that were unclear to protesters and police alike.

The day after the BCCLA issued a press release about the improper arrests, the BC Supreme Court threw out the civil contempt charges against the protesters. The Court agreed with the BCCLA that the exclusion zone’s fuzzy boundaries made it impossible to be sure whether the arrestees had in fact violated the terms of the injunction.

In the words of our Executive Director Josh Paterson, the Court’s decision was a major “victory for the constitutional right of people to demonstrate and to express themselves. We argued publicly that there was no compelling legal justification to further infringe people’s constitutional rights on Burnaby Mountain, and the Court agreed.”

WINNING THE RIGHT TO SELF-DETERMINATION AT THE END OF LIFE

The BCCLA’s most monumental victory this year—and our most monumental victory ever—was arguing and winning our historic death with dignity case, *Carter v. Canada*, before the Supreme Court of Canada. Until the February 2015 ruling that affirmed the right of seriously and incurably ill Canadians to choose physician assistance in dying, individuals facing intolerable suffering had no legal option to control the time and circumstances of their own death. Thanks to the outstanding dedication of our pro bono counsel and staff counsel, the courage of the individuals and families who shared their personal stories to support our case, and the commitment of our donors and volunteers, the BCCLA made history this year. With your continued support, we hope our next victory will be to ensure that the legally recognized right to choice and compassionate care at the end of life becomes a practical reality for all Canadians.





PHOTO BY BOB JAGENDORF LICENSED UNDER CREATIVE COMMONS 2.0

DEVELOPMENTS IN POLICING AND CRIMINAL JUSTICE

BY MICHEAL VONN, POLICY DIRECTOR

THE USE OF STATE POWERS in policing and criminal justice is always in need of civil liberties vigilance, and the last year saw very important litigation and policy work in this field.

The dubious “Mr. Big sting” has long been troubling. This is an elaborate, undercover operation where police create an entirely fictional criminal organization and befriend and lure a suspect to join the organization. Using enticements and threats, the pretend boss of the organization, “Mr. Big,” will at some point press the suspect for a confession and details of past crimes. Once that is secured, the suspect is arrested.

In the early days of these operations, Crown argued that these cases should be under indefinite publication bans. But in 2001, the

Supreme Court of Canada rejected that idea in two companion cases (*R. v. Mentuck* and *R. v. O.N.E.*; we intervened in the latter). One of the arguments rejected by the Court was that

allowing publication of these police tactics would undermine their effectiveness. The Court found that citizens of a free and democratic society have a need to know that such controversial tactics are being used.

But it was a long time later – in 2014 – before the SCC grappled with the controversial tactics them-

selves and dealt with the questions of coercion, entrapment and reliability. The case was *R. v. NLH* and again, we intervened. While the Court did not go so far as to condemn the practice outright, it did establish a critically important new common law rule of evidence specific to

“The very structure of Mr. Big operations creates circumstances that (1) compromise the suspects’ autonomy, (2) undermine the reliability of confessions, and (3) raise concerns about abusive state conduct.”

Mr. Big operations. As Justice Karakatsanis says in her reasons: “The very structure of Mr. Big operations creates circumstances that (1) compromise the suspects’ autonomy, (2) undermine the reliability of confessions, and (3) raise concerns about abusive state conduct.”

In response, the new rule is that Mr. Big confessions are presumed to be inadmissible as evidence. In order for a Mr. Big confession to be considered as evidence, the Crown must establish that the confession is reliable and not excessively prejudicial to the accused. This is a very important step in the right direction.

There was another step in the right direction in a Supreme Court of Canada case about mandatory minimum sentences. We intervened in *R. v. Nur*, in which the Court affirmed that a mandatory minimum sentence will violate the *Charter* prohibition against cruel and unusual punishment if the sentence imposed on the offender is grossly disproportionate, or if the sentence is grossly disproportionate for a “reasonable hypothetical” offender. On the basis of this test, the Court struck down mandatory minimum sentences for “licensing offences” for prohibited and restricted firearms.

“Mandatory minimums don’t work. Punitive sentencing does not lead to safer communities, and the costs – financial, social, and human – are staggering.”

Unfortunately, this decision dealt with only one very small component of the growing mandatory minimums trend, and the Court did not address critically important aspects

of the case, including the immigration consequences of mandatory minimums.

In 2014, we published *More Than We Can Afford: The Costs of Mandatory Minimum Sentencing*, a comprehensive study of the legal, policy, and social

implications of Canada’s increasing reliance on mandatory minimums (over 50 offences and counting). This report questions the lack of evidence-based policy in the “tough on crime” approach to criminal justice. Mandatory minimums don’t work. Punitive sentencing does not lead to safer communities, and the costs – financial, social, and human – are staggering.

All of which is to say that our vigilance needs to be ongoing. The police say that they will continue to use the “Mr. Big” sting, and despite positive developments, Canada is still very much out of step with comparable jurisdictions that are moving away from mandatory minimums and restoring judicial discretion in sentencing. More work to be done.

**BCCLA
ANNUAL
GENERAL
MEETING**



**TO TAKE
PLACE
FALL 2015
STAY
TUNED
FOR
DETAILS**



NATIONAL SECURITY AND CIVIL LIBERTIES

BY CARMEN CHEUNG, SENIOR COUNSEL

LAST YEAR, governments around the world reverted to what some have described as a “post-9/11 panic” in response to domestic acts of violence and the rising threat of ISIS to international peace and security.

In September, the UN Security Council adopted Resolution 2178: a sweeping directive to all UN member states to take steps to stop the flow of fighters to ISIS in Syria. As Martin Scheinin (former UN Special Rapporteur on human rights and counterterrorism) observed, this resolution “wiped out” the incremental progress made since 9/11 to reintroduce human rights and rule of law protections in the anti-terrorism practices of countries around the world. As the BCCLA and Professor Kent Roach wrote in *The Globe and Mail*,

Governments already have a tendency to designate anything threatening the stability of the ruling power as a terrorist threat – we have seen shades of this here in Canada, with Aboriginal and environmental rights groups being subject to surveillance by Canada’s security agencies. The broad direction given by the Security Council in Resolution 2178 provides the legal justification for criminalizing travel, training and funding of the politically unpopular.

In October, Warrant Officer Patrice Vincent was targeted for vehicular homicide in St-Jean-sur-Richelieu because he was a member of the Canadian Forces. Shortly thereafter, Corporal Nathan Cirillo was fatally shot while on honour guard duty at the National War Memorial. In the aftermath of these tragic events,

the BCCLA urged restraint on the part of our elected officials, recognizing the temptation to give law enforcement and national security agencies whatever expanded powers they asked for in the hope that it would keep us safer.

Almost immediately after the October attacks, the government began talking about “toughening” Canada’s anti-terrorism laws.

The BCCLA again counseled against rushed and reactionary lawmaking, and argued that Canada already has expansive legal authority to conduct surveillance over any individual it suspects of engaging in or preparing to engage in terrorism. The *Criminal Code* contains provisions for the preventative arrest and detention of suspected terrorists. While we question the efficacy of preventative detention as a tool for combatting terrorism, the fact remains that the government already had extraordinary powers at its disposal. In our view, the question that Canadians should be asking is not what additional powers government needs to protect public safety, but how well existing powers are being used and whether existing criminal law is being properly enforced.



PHOTO: C-51 RALLY - MARY CRANDALL, LICENSED UNDER CC2.0

In November, government tabled Bill C-44, which sought to expand the powers of the Canada Security Intelligence Service (CSIS), Canada's spy agency. We cautioned against adding to CSIS's powers as a reflexive response to recent tragedy, particularly when CSIS's own review body reported that Canada's spies have not been properly accountable for their existing powers. While C-44 confirmed the power of CSIS to act in overseas operations and sought to provide blanket confidentiality for CSIS informants, SIRC – the independent body tasked with selective review of CSIS activities – reported ongoing concerns with CSIS intelligence operations outside Canada. Nonetheless, the Bill was rushed through the House of Commons with limited debate and virtually no input from non-governmental experts.

As we know now, Bill C-44 was only a precursor to Bill C-51, tabled in early 2015. Bill C-51 is an omnibus national security bill, which includes new legislation for disclosure of personal information for “security”-related purposes; a U.S.-style no-fly list regime; even lower thresholds for detention without charge; secret hearings in criminal proceedings; dramatically increased policing powers for CSIS; a warrant regime where courts are asked to authorize breaches of *Charter* rights; and amendments to the security certificate regime. This was the reflexive and reactionary lawmaking we had warned against, and the sort of “tough on terror” laws and practices that led to so many serious rights abuses in the years since the 9/11 attacks.

At the end of 2014, we were reminded of what these abuses could look like with the release of the United States Senate Select Committee on Intelligence's declassified Executive Summary of its 6,700 page study on the CIA torture program from 2001 to 2009. That the

CIA's torture program involved the assistance of many countries – including Canada – was well-known even before the Senate report. In Canada's case, this assistance came in several forms. Our country allowed flights associated with CIA extraordinary renditions to use Canadian airspace and airports. It helped identify potential targets for the CIA's extraordinary



PHOTO: WIKIMEDIA USER CPT, LICENSED UNDER CC1.0

rendition program—including Maher Arar, who was detained and deported to Syria, where he faced torture, on the basis of faulty intelligence provided by Canada. Canada has also made use of information obtained by the CIA through torture (as was the case in the security certificate proceedings against Mohamed Harkat), and Canada likely continues to rely on information obtained through torture. Canada's key national security agencies – CSIS, the RCMP, the Canada Border Services Agency, CSEC, and the Canadian military – all operate under government directives which allow for the use of information potentially derived from torture. The government has refused to heed continued calls from the BCCLA and our civil society partners for these directives to be rescinded.

There is much to do in 2015 to prevent the mistakes of the past from being repeated.

WHOSE STREETS? OUR STREETS!

PRACTICAL TIPS FOR EXERCISING YOUR RIGHT TO PROTEST

BY CHARLOTTE KINGSTON, DIRECTOR OF COMMUNITY ENGAGEMENT

AT THE BCCLA we believe that protest is a critical part of free expression and assembly rights.

For individuals, the act of protesting not only makes their dissent visible to others but also brings them face to face with people who share their concerns. Protest is first an act of expression and then an act of communion.

For our communities, the rights to protest, demonstrate, and dissent advance critical conversations about public policy and government accountability. Canadians have protected these rights in our most fundamental laws because they are the bedrocks of healthy democracies.

It's up to you whether you want to engage in protest. We aim to make sure that people are informed of their rights and are safe when they do so. That's why in 2014 we took our "Protest Rights Workshops" to communities across BC's North, the Lower Mainland, and the Gulf Islands—delivering practical tips to packed rooms.

If you're preparing to exercise your democratic right to demonstrate this summer, here are just a few tips that we cover in the workshop.

The law of protest in BC

First, please note that this piece is legal information only, not legal advice. Every arrest situation is different, and only your lawyer can provide advice. We also wish to recognize that while our workshop deals with BC and Canadian law, Indigenous laws continue to operate on the land. We recommend Leo McGrady's fantastic "Guide to the Law of Protests in BC—Cedar as Sister

Edition," for deeper discussion. Leo's guide is the inspiration for much of what we share in our workshop, and we thank him for his many years of great work on this subject.

Planning to protest – things to bring with you:

PEN AND PAPER

If there are arrests, you need to record the names of people arrested, their contact info, and the details of their arrest. You may need this information to track down arrested individuals and to reach their out to their contacts.

STILL CAMERAS AND VIDEO CAMERAS

Recording what is happening can help to calm down a situation, remind police that they are being watched, and ensure that you have useful evidence if something goes wrong. You may want a designated videographer/photographer for the event who can make photography (rather than protest) their sole focus. You have the right to record video or take photographs of police in a public place as long as you don't interfere with them. The police may ask you to stop, but you do not have to. You do not have to show the police what you have photographed or videotaped.

However, if you record or photograph something they think could be evidence, they have the right to seize your device in order to protect that evidence. If you promise to retain the evidence in your care and provide your name and address, the police are more likely to let you keep your camera. Police practices vary from region to region.



WATER BOTTLES

Not just for drinking! If police use gas, you will need water to wash your eyes. You should not wear contacts; wear glasses instead, as contacts can interfere with washing your eyes out. In the event of tear gas, adding baking soda to the water will improve its effectiveness.

PRESCRIPTION DRUGS

If you need them, bring them in their original packaging in case you're arrested and need to take medication during a lengthy detention.

IDENTIFICATION

You might want to carry photo ID like your status card or driver's license to speed the process of confirming your identity and releasing you from jail. Other than your one key piece of ID, leave the rest at home. Seized items can get lost, especially in a mass arrest situation, and you'll be glad the rest of your wallet is at home.

CELL PHONES?

On one hand, they can be valuable to contact other protesters, post to social media, and photograph or video what's going on. But if you are arrested for any reason, your phone could be seized. Right now in BC, a cellphone can be legally searched without a warrant when you

are arrested subject to certain legal criteria. So, you may wish to make sure that you don't have anything private stored in your cellphone that you wouldn't want others to see.

During a demonstration

Remember that calls and messages can easily be picked up by police, even if it's illegal for them to do that. If you suspect that you are being monitored, take the batteries out of your cellphone. Even when turned off, cell phones can pick up and transmit information if they are hacked by authorities.

Under the *Police Act* in BC, uniformed police are required to identify themselves. We suggest that protesters take down the names, badge numbers, and descriptions of crowd control officers while everything is going smoothly. It can be difficult to gather this information if the situation escalates. You are entitled to photograph officers and to ask them to identify themselves.

Be aware that undercover police officers may be present at a protest and that they are not required to identify themselves. If you suspect that someone is an undercover officer, do not expose them by shouting and pointing at them; you may be charged with obstruction. Instead, find discreet ways to inform the people around you of potential undercover police presence. Be very careful about what you say on social media, as it can be used against you in legal proceedings.

Leaving a demonstration

If you can, always leave in groups following a protest. This is the most vulnerable time for arrest. People are most often improperly targeted for arrests at the end of the demonstration.

For more information on your rights in the event of detention or arrest, look at the BCCLA's *Arrest Handbook* and *Arrest Pocketbook*, available in English, Spanish, Vietnamese, and Arabic at www.bccla.org/arrest.

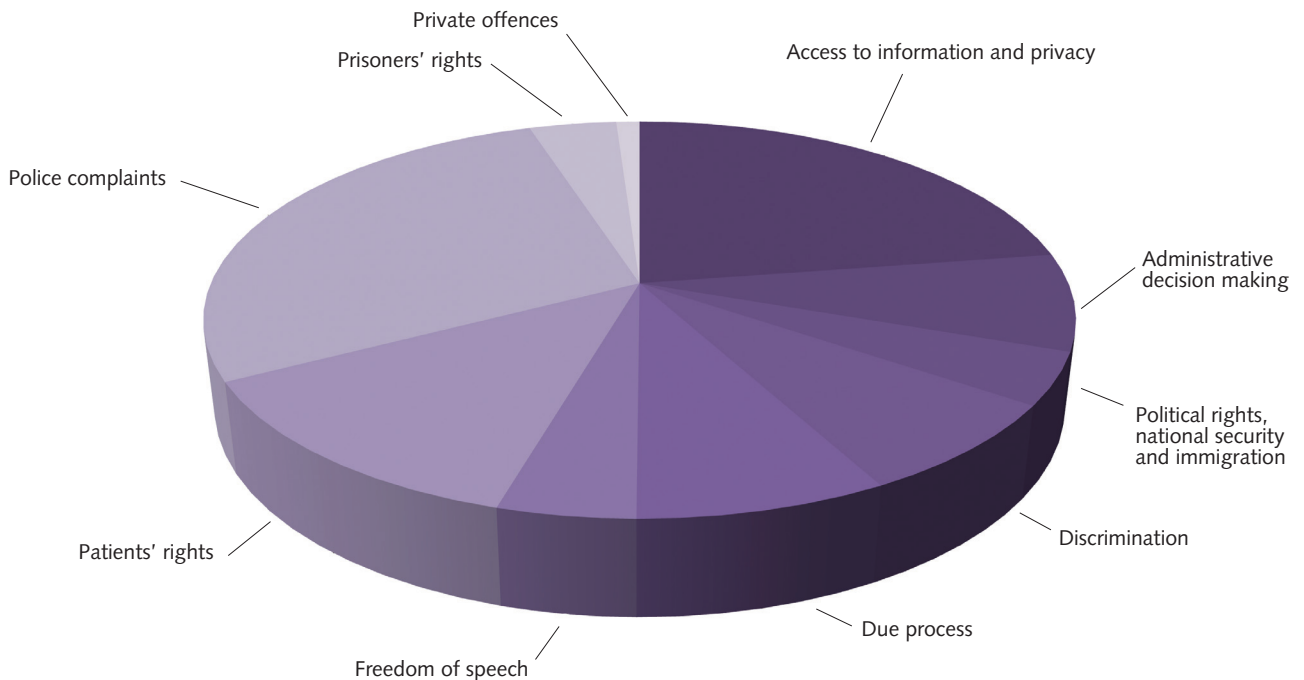
CASEWORK

COMPLAINT ASSISTANCE / **HELPING PEOPLE**

In 2014, the BCCLA was a resource for over 1,700 individuals seeking assistance or direction with their civil liberties concerns. While the majority of these requests came from within British Columbia, they also included 140 requests from other parts of Canada and a record 27 international inquiries. As we become more well-known outside our own backyard, individuals throughout the country - and increasingly the world – have come to see us as a leader in our field and a source of guidance as they struggle to defend their own civil liberties on a day-to-day basis.

The cases that we dealt with in 2014 spanned every conceivable area of our civil liberties mandate, from police issues and prisoners' rights to free speech and access to information. Our assistance included providing guidance with police complaints and access to information requests, writing letters of support for

individuals to make use of while advocating on their own behalf and helping with referrals to other organizations when we did not have the ability to assist directly. While some complaints were not easily categorized, the chart below provides a general idea of the distribution of the casework we handled in 2014.



CASEWORK HIGHLIGHTS

POLICING

YEARS OF HARD WORK ON POLICE INFORMATION CHECKS FINALLY PAYS OFF – BUT MORE REMAINS TO BE DONE

For years, we've been struggling to assist people who have been denied employment or volunteer opportunities because of non-conviction information released on police information checks. Early in 2014 – thanks in part to our ongoing advocacy – the Office of the Information and Privacy Commissioner for BC (OIPC) announced an investigation into this issue, and we seized the opportunity to step up our efforts. We were rewarded in April when the OIPC released its report, calling for dramatic and urgent legislative change. The government responded by releasing a new province-wide policy (not law), ending the disclosure of mental health information on all police information checks. While this is a significant victory for civil liberties, we were disappointed to learn that 'adverse police contact' will still appear on vulnerable sector checks, and doubly disappointed that the government declined to enshrine these reforms in legislation. Going forward we will build on our partial success by calling for government implementation of the rest of the recommendations from the OIPC report.

PRIVACY

FIND OUT IF THE GOVERNMENT IS KEEPING A FILE ON YOU!

Helping people assert their access to information rights has always been an area where our direct assistance program shines.

Individuals and their advocates seek our assistance when they wish to formally request personal information and other documents that they have been unable to access any other way. We routinely help people figure out the appropriate type of access request to best meet their particular information needs, and support them in requesting a review if they are unsatisfied with the response. In light of the shocking evidence suggesting that CSIS and the RCMP have been illegally monitoring the peaceful and democratic activities of community groups and First Nations opposed to the Enbridge Northern Gateway Pipeline project, we decided to create a new plain-language resource to make it easier for individuals to find out whether the government is keeping a file on them. This resource will help our caseworker offer more in-depth assistance with access to information requests going forward.

VOTING RIGHTS

FIGHTING FOR THE ABILITY OF MARGINALIZED VANCOUVERITES TO EXERCISE THEIR VOTING RIGHTS

In the October lead-up to Vancouver's municipal election, our caseworker received several calls from those concerned about the lack of advance polling places in several low-income, heavily Indigenous neighbourhoods. We shared their concern that individuals in these parts of the city whose participation in democratic and political processes is already limited by other factors would be excluded from advance voting opportunities. Thanks to the individuals who brought the issue to our attention, we were able to add our voice to the chorus of community groups speaking out on this issue.

IN THE COURTS

OUR THANKS TO THE LEGAL COMMUNITY

In partnership with pro bono counsel across Canada, the BCCLA upholds fundamental rights and freedoms in precedent-setting strategic litigation. In 2014, the BCCLA litigated over 30 cases on a broad range of civil liberties issues, including freedom of expression, mandatory minimum sentencing, search and seizure, police accountability, and national security. Our lawyers argued our landmark death with dignity case before the Supreme Court of Canada, and we launched a second case against the Communications Security Establishment Canada to challenge its warrantless spying programs. The following is a small selection of our cases from 2014.

SECURITY CERTIFICATES

MINISTER OF CITIZENSHIP AND IMMIGRATION, ET AL. V. HARKAT, ET AL.

Supreme Court of Canada

This case focuses on the security certificate process which is used by the government to detain or remove non-citizens believed to be threats to national security. At issue is the constitutionality of the current security certificate regime and the use of special advocates as a substitute for full disclosure in open court. In 2007, the Court struck down a previous version of the regime as unconstitutional.

The BCCLA is an intervener in the case and argued that the current security certificate process fails to provide adequate procedural protections and therefore violates the *Canadian Charter of Rights and Freedoms*. A person named in a security certificate faces prolonged or indefinite detention or removal from Canada. Yet, despite these serious consequences, the government can rely on secret evidence – never seen by the person in question – in the hearing to validate security certificates. A hearing process which allows a person to be detained indefinitely on the basis of secret evidence is unacceptable. The Association argued that

even with the appointment of a “special advocate” to represent the interests of the person, the liberty interests at stake are so important that the current process is unconstitutional.

The Supreme Court of Canada rendered its decision in May 2014, upholding the security certificate regime as constitutional. In doing so, however, it emphasized the importance of the judge’s role in ensuring the fairness of the security certificate proceedings. The Court clarified that judges hearing security certificate cases have a duty to ensure that individuals named on the security certificate be provided with an “incompressible minimum amount of disclosure” to know and meet the case against them, and be adequately informed about all the evidence on the record. Importantly, it found that the security certificate scheme “must be interpreted as precluding the Minister from bringing a case in respect of which the named person cannot be kept reasonably informed,” such that the Minister “must withdraw the information or evidence whose non-disclosure prevents the named person from being reasonably informed.”

The Supreme Court also recognized that judges hearing security certificate cases will have to take an active role in ensuring that only truly sensitive information is withheld,

and to “ensure throughout the proceedings that the Minister does not cast too wide a net with his claims of confidentiality.” The Court made clear that the judge has a duty to be both “vigilant and skeptical” when it comes to government claims of confidentiality, noting “government’s tendency to exaggerate claims of national security confidentiality.”

The BCCLA was represented by **Nader Hasan** and **Gerald Chan** of Ruby Shiller Chan Hasan Barristers.

FREEDOM OF ASSOCIATION

MOUNTED POLICE ASSOCIATION OF ONTARIO, ET AL. V. ATTORNEY GENERAL (CANADA)

Supreme Court of Canada

This case concerns the ability of RCMP members to unionize. The RCMP is the only major police force in Canada that does not have a union. Two professional organizations formed on behalf of RCMP officers – the Mounted Police Association of Ontario (MPAO) and the BC Mounted Police Professional Association (BCMPPA) – have brought a challenge to laws that prohibit RCMP members from collective bargaining. A Staff Relations Representative Program is currently in place to resolve labour disputes; however, that program is not structurally independent of management, and final decisions rest with RCMP management.

The MPAO and the BCMPPA brought a *Charter* application before the Ontario Superior Court of Justice challenging the validity of provisions governing the labour relations regime for RCMP members. They argued that the regime violates sections 2(b), 2(d) and 15 of the *Charter*. The focus of their argument was on how the provisions prevent RCMP members from forming labour unions to engage in collective bargaining.

The judge at the Ontario Superior Court of Justice found that the current regime violates RCMP officers’ section 2(d) right to free association. The decision was overturned on appeal to the Ontario Court of Appeal. The Court of Appeal found that it was not “effectively impossible” for RCMP members to meaningfully exercise the right to free association because they can and do form voluntary associations.

The BCCLA intervened in this case before the Supreme Court of Canada. The BCCLA argued that the regime in place for RCMP labour concerns is an unjustifiable violation of RCMP members’ right to freedom of association because it prohibits RCMP members from taking any meaningful collective action. The public interest is not served when RCMP officers have no meaningful access to workplace democracy or to effective, independent grievance procedures.

The Supreme Court of Canada agreed and issued its decision in January 2015 declaring the regime to violate s. 2 of the *Charter* and to be unjustified under section 1. It confirmed that section 2(d) guarantees “the right of employees to meaningfully associate in the pursuit of collective workplace goals,” which includes the right to collective bargaining. Collective bargaining is a “necessary precondition” to exercising free association in the workplace, and the government cannot enact regimes that substantially interfere with meaningful collective action. The Supreme Court of Canada issued a suspended declaration of invalidity and gave Parliament 12 months to amend the offending legislation.

The BCCLA was represented by **Lindsay M. Lyster** and **Jessica Derynck** of Moore Edgar Lyster.

JUSTICE FOR PRISONERS

MISSION INSTITUTION V. KHELA

Supreme Court of Canada

This case concerns the critical role that the provincial superior courts play in ensuring that prisoners have access to meaningful judicial review when their rights are violated inside prison walls. Among the issues in this case is whether the “great writ of *habeas corpus*” should be construed narrowly or broadly. A *habeas corpus* application is a legal action that allows a prisoner to challenge in court conditions of his confinement, such as placement in solitary confinement. The BCCLA was an intervener in the case and argued that a robust interpretation of the right to *habeas corpus* is essential to maintaining the rule of law in the Canadian prison system. The BCCLA’s position is that the right to *habeas corpus* is necessary to safeguard the human rights and civil liberties of prisoners and to ensure that the rule of law is applied behind prison walls.

The Supreme Court of Canada released its decision in the case in March 2014. In a victory for prisoners’ rights, the Court granted prisoners wide scope to challenge the conditions of their imprisonment, such as placement in solitary confinement or transfer to a maximum-security facility. The Court determined that the writ of *habeas corpus* should be broadly construed to allow prisoners to bring a prompt and thorough challenge in provincial superior court. The Court stated that if prisoners are denied the ability to review a loss of liberty under an application for *habeas corpus*, they will have to wade through the lengthy grievance procedure in order to have their concerns heard. “No one should be deprived of their liberty without lawful authority,” Justice Louis LeBel said in an 8-0 ruling.

The BCCLA was represented in this case by Professor **Michael Jackson, Q.C.** of the University of British Columbia Faculty of Law and **Joana Thackeray** of Gall, Legge, Grant & Munroe LLP.

A PRO BONO LAWYER'S FIRSTHAND REFLECTIONS

BY NADER R. HASAN

Serving as *pro bono* counsel to the BCCLA has been one of the highlights of my legal practice. What distinguishes the BCCLA is not only its zealous and effective advocacy on civil liberties and human rights issues, but also its courage to champion such causes in an increasingly hostile political climate.

The BCCLA took up the battle against the prohibition of doctor-assisted dying before it was fashionable to do so. It spoke out against overreaching anti-terror laws when public opinion supported them. And for many years,

the BCCLA has taken principled positions against mandatory minimum sentences and solitary confinement despite ongoing stigmatization of prisoners and disregard for their rights.

HAVE HAD THE PRIVILEGE of serving as counsel to the BCCLA in a number of Supreme Court of Canada interventions. In each of those cases, the legal team was given a mandate from the BCCLA to push for a robust approach to constitutional rights:

- In *R. v. Yumnu*, we argued that the Crown should never have any kind of advantage over the defence in selecting a jury in a criminal trial.
- In *R. v. Vu*, we argued that our understanding of privacy needed to evolve to keep pace with digital technology. Accordingly, it was not good enough only to require a search warrant in order for police to search a computer or other electronic device. The *Charter* demands that infringements of privacy in electronic searches be no more obtrusive than necessary to accomplish law enforcement objectives.
- In *Canada v. Harkat*, we argued that detainees held under Canada's security certificate regime had even fewer procedural rights than the inmates detained by the U.S. military in Guantanamo Bay and that the security certificate regime needed to be struck down on constitutional grounds.
- In *R. v. Fearon*, we argued that law enforcement must satisfy the requirements for obtaining a wiretap authorization under Part VI of the *Criminal Code* before searching emails or text messages on a cell phone.
- And most recently, in *R. v. Nur*, we proposed a new framework for assessing the constitutionality of mandatory minimum sentences — one that is flexible enough to account for the disproportionate

"When I represent the BCCLA, I take pride in knowing that I represent the interests of all Canadians who care about living in a free and democratic society."



NADER HASAN WITH GERALD CHAN

impacts of mandatory minimum sentences on disadvantaged minorities as well as the risk of deportation for non-citizens facing lengthy criminal sentences as a result of mandatory minimums.

The Court has not always adopted the BCCLA's proposals for upholding rights and interpreting the law in a progressive way, but its judgments always carefully consider our arguments. I often find that the Court saves its most challenging questions for the BCCLA's lawyers during oral argument. Across the country, there is an implicit acknowledgment of the BCCLA's expertise on matters of civil liberties and human rights, as reflected in the high frequency with which BCCLA is granted leave to intervene and to present oral argument at the Supreme Court of Canada and the provincial appellate courts.

Nader R. Hasan is a Partner at Ruby Shiller Chan Hasan, Barristers, and an Adjunct Professor at the University of Toronto Faculty of Law.

With gratitude, the BCCLA would like to recognize the more than 50 pro bono lawyers who have generously contributed their time and expertise to our legal cases this year. Our work would not be possible without them!

Greg Allen	Hunter Litigation Chambers	Mark Jetté	Sutherland Jetté Barristers
Anne Amos-Stewart	Bull, Housser & Tupper LLP	Craig Jones, Q.C.	Faculty of Law, Thompson Rivers Univ./Branch MacMaster LLP
Joseph Arvay, Q.C.	Farris Vaughan Wills & Murphy LLP	Lisa Kerr	New York University School of Law
Jeffrey Beedell	Gowling Lafleur Henderson LLP	Emily Lapper	Bull, Housser & Tupper LLP
Mark Benton, Q.C.	Legal Services Society	Alison Latimer	Farris Vaughan Wills & Murphy LLP
Alexander Boland	Farris Vaughn Wills & Murphy LLP	Lindsay M. Lyster	Moore Edgar Lyster Lawyers
Ward Branch	Branch MacMaster LLP	Emily MacKinnon	McCarthy Tétrault LLP
Paul Champ	Champ & Associates	Elder Marques	McCarthy Tétrault LLP
Gerald Chan	Ruby Shiller Chan Hasan Barristers	David Martin	Martin + Associates Barristers
Neil Chantler	Chantler & Company	Brock Martland	Martland & Saulnier Criminal Defence Counsel
David Crerar	Borden Ladner Gervais LLP	David McEwan	Hunter Litigation Chambers
Ryan Dalziel	Bull, Housser & Tupper LLP	Reidar Mogerman	Camp Fiorante Matthews Mogerman
Caily DiPuma	Hunter Litigation Chambers	Joel Morris	Harper Grey LLP
Tim Dickson	Farris, Vaughan, Wills & Murphy LLP	Matthew Nathanson	MN Law
Jocelyn Downie	Schulich School of Law at Dalhousie University	Brent Olthuis	Hunter Litigation Chambers
Tamara Duncan	Martin + Associates Barristers	Eileen Patel	Hunter Litigation Chambers
Marlys Edwardh	Sack Goldblatt Mitchell LLP	Monique Pongracic-Speier	Ethos Law Group LLP
Bruce Elwood	Gall Legge Grant & Munroe LLP	Susan Precious	Branch McMaster LLP
Michael Feder	McCarthy Tétrault LLP	Micah Rankin	Thompson Rivers University Faculty of Law
Fritz Gaerdes	Elgin, Cannon & Associates	Bijon Roy	Champ & Associates
David Gibbons	Blake, Cassels & Graydon LLP	Justin Safayeni	Stockwoods LLP Barristers
Julie Gibson	Harper Grey LLP	Daniel Sheppard	Sack Goldblatt Mitchell LLP
Mathew Good	Hordo Bennett Mounteer LLP	Elin Sigurdson	Janes Freedman Kyle Law Corporation
Jason Gratl	Gratl & Company	Michael Tammen, Q.C.	Michael Tammen Law Corporation
Nader Hasan	Ruby Shiller Chan Hasan Barristers	Joana Thackeray	Gall Legge Grant Munroe LLP
Ludmilla Herbst	Farris Vaughn Wills & Murphy LLP	Jamie Thornback	Camp Fiorante Matthews Mogerman
Sean Hern	Farris Vaughan Wills & Murphy LLP	Sheila Tucker	Davis LLP
Claire Hunter	Hunter Litigation Chambers	Emily Unrau	Branch MacMaster LLP
Craig Jones, Q.C.	Thompson Rivers University Faculty of Law	Brendan Van Niejenhuis	Stockwoods LLP Barristers
Robert Janes	Janes Freedman Kyle Law Corporation	Catherine J. Wong	Catherine J Wong Law Corporation

BCCLA VOLUNTEERS

Event planning. Legal research. Fundraising. Community outreach. Online communications. Our stellar volunteers do it all! Virtually all of the BCCLA's daily activities depend on the talent, dedication, and energy of individuals who donate their time to advance our work for human rights. With deep gratitude, we would like to recognize the following volunteers who worked in our office in 2014:

VOLUNTEERS			LEGAL INTERNS	NORTHERN CHAPTER STEERING COMMITTEE
Katarina Bogosavljevic	Vicky Law	Jessica Saunders	Menachem Freedman	Steve Butte
Sarah Clark	Kevin Masse	Kassie Seaby	Sandie Janicki	Francisco Cabanas
Brooke Fowler	Nevin Massing	William Skinner	Stephanie Skinner	Tara Kirkpatrick
Amy Gill	Marta Miazek	Lu Zhao		Sandra Nadalin
Esin Gozukara	Micheal Robson	Christine Zhou		
Kevin Hennessy	Humza Sayed			

TELL US WHAT YOU THINK

2015 Supporter Survey



YOUR SUPPORT makes our work possible. That's why it's so important to us to know what you think about the BCCLA and what issues are important to you.

What civil liberties issues matter most to you? What pressing Canadian issues do you think we should be working on? How do you want your donation dollars spent?

Let us know what you think by completing our online survey at:

www.bccla.org/survey

YOUR LEGACY

OUR FUTURE

Support the BCCLA for Generations to Come

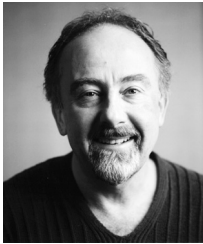
LEAVING A GIFT TO THE BCCLA in your will allows you to provide long-term support to defending civil liberties and human rights in Canada, and is a meaningful contribution to the future of the organization.

To leave a bequest, all you need to do is add a simple clause into your will. You can choose to leave a specific sum, or a percentage of your estate. Here is an example of a will clause:

I hereby give the residue (OR ___% of the residue OR the sum of ___ dollars) of my estate to the British Columbia Civil Liberties Association (BN: 888466844RR0001), if it is in existence at the date of my death, to be used for such purposes as the Board of Directors of the British Columbia Civil Liberties Association shall decide in their discretion.

If you would like to discuss leaving a gift in your will, please contact Charlotte Kingston, Director of Community Engagement at 604-630-9745 or email charlotte@bccla.org.

FINANCIAL REPORT



THE PAST YEAR has brought both successes and challenges in the finances of the BCCLA. Thanks to our wonderful supporters, we experienced more than ten percent growth in our

individual donations. Our aim is to continue to grow in this area with a focus on monthly giving, as this reliable form of long-term support is increasingly critical to us as we carry out our work. We are also grateful to several loyal supporters who remembered us in their wills and provided generous bequests that we have put to good use in support of civil liberties and human rights.

Individual donations are more vital to our work than ever before, as we learned in 2014 that the Law Foundation of BC would be cutting our continuing operating grant nearly in half—a cut of over \$140,000 per year starting in 2015. The historic low interest rates that have persisted since the economic downturn of 2008 have significantly cut the Law Foundation's income, and as a result, it has been forced to deplete its cash reserves in order to fund the BCCLA and other legal organizations across BC. In order to stabilize its reserve funds, the Foundation needed to make serious cuts to its grant portfolio. We were one of many organizations to experience such a cut.

For the first time in many years, the BCCLA will have a modest operating deficit in 2014. In order to continue the Association's important work, our Board of Directors

planned to run a deficit in 2014 which would be funded by a portion of our accumulated surpluses saved over the years. Spending in 2014 included extraordinary expenses, including costly travel, that we incurred as a result of our physician-assisted dying case at the Supreme Court of Canada. Meanwhile, the BCCLA has been transitioning to a future in which we will have a reduced continuing grant by cutting a range of costs—including, unfortunately for our work, our staff complement. In 2015 we are operating with one fewer lawyer than we have in the last number of years. Our aim is to restore our strength in the coming years, but in order to do that, we need your support more than ever.

With a combination of your generosity, prudent management, and the Board's stewardship of assets, we are confident that we can deal with the challenge posed by the loss of such a major portion of our core funding. We have more work to do than ever, as governments pass bill after bill that multiply the restrictions on and threats to our rights and freedoms. We are working hard to continue to defend civil liberties in a way that is financially sustainable. Much of that will depend on the help of our supporters. Thank you for your generosity and your dedication to our common cause.

A handwritten signature in black ink, appearing to read 'Alan Rowan', with a long horizontal flourish extending to the right.

Alan Rowan
Treasurer

FINANCIAL STATEMENTS

British Columbia Civil Liberties Association

STATEMENT OF OPERATIONS AND CHANGES IN FUND BALANCES for the year ended December 31, 2014

	2014				2013
	GENERAL FUND	STABILIZATION FUND	TRUST FUND	TOTAL 2014	TOTAL 2013
REVENUE					
Membership & donations	401,238	—	—	401,238	357,816
Law Foundation of BC – operating grant	313,600	—	—	313,600	313,600
Specified grants earned	112,594	—	—	112,594	67,044
Gaming revenue earned	52,577	—	—	52,577	53,331
Bequests	51,796	—	—	51,796	—
Miscellaneous and special events	50,952	—	—	50,952	35,603
Investment income	55	4,523	31,999	36,577	31,815
Realized gains (losses) on sale of investments (net)	—	(905)	30,755	29,850	2,253
Adjustment of investments to market value	—	6,049	55,989	62,038	92,161
Endowment distributions	4,516	—	—	4,516	4,271
Amortization – deferred capital grants	441	—	—	441	3,283
CLE registrations	7,700	—	—	7,700	285
	995,469	9,667	118,743	1,123,879	961,462
EXPENSES					
Salaries and benefits	692,270	—	—	692,270	705,203
Fundraising	60,585	—	—	60,585	25,349
Rent and utilities	58,489	—	—	58,489	58,801
Office operating	56,492	—	—	56,492	50,948
Travel and accommodation	48,882	—	—	48,882	18,595
Contracting	39,462	—	—	39,462	1,903
Professional fees	28,915	—	—	28,915	29,906
Meetings, publications, events	21,112	—	—	21,112	13,739
Litigation costs	17,653	—	—	17,653	27,213
Amortization costs	14,416	—	—	14,416	16,390
Newsletter	11,134	—	—	11,134	10,011
Bank charges	9,009	—	—	9,009	6,686
Strategic planning	6508	—	—	6508	—
Contracting	2,135	—	—	2,135	1,715
Insurance	331	—	—	331	6,377
	1,067,393	—	—	1,067,393	972,836
Excess of revenue (expenses) for year	(71,924)	9,667	118,743	56,486	(11,374)
Interfund transfers	29,114	(4,779)	(24,335)	—	—
	(42,810)	4,888	94,408	56,486	(11,374)
Fund balances, beginning of the year	140,441	125,708	822,644	1,088,793	1,100,167
Fund balances, end of year	97,631	130,596	917,052	1,145,279	1,088,793

The complete 2014 BCCLA audited financial statements are available at www.bccla.org.

This statement is subject to final audit approval and adoption by our members at the 2015 Annual General Meeting.

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



The Democratic Commitment is a publication of the British Columbia Civil Liberties Association. The Association was established in 1962 and is the oldest continuously active civil liberties association in Canada. Its mandate is to preserve, defend, maintain, and extend civil liberties and human rights in British Columbia and across Canada.

BN: 888466844RR0001

BC CIVIL LIBERTIES ASSOCIATION
900 Helmcken Street, 2nd floor
Vancouver, B.C. V6Z 1B3
Tel: 604.687.2919
Email: info@bcccla.org

www.bcccla.org