



WE ARE ALL EQUAL CITIZENS

SUPPORT THE LEGAL CHALLENGE
TO END SECOND-CLASS CITIZENSHIP.

EQUALCITIZENS.CA

IN AUGUST, THE BCCLA AND THE CANADIAN ASSOCIATION OF REFUGEE LAWYERS FILED OUR CASE CHALLENGING CANADA'S NEW SECOND-CLASS CITIZENSHIP REGIME.

Since Bill C-24 was announced in 2014, we have been fighting to stop this fundamental assault on citizenship equality. As a result of this new law, dual citizens and people who are eligible for

another citizenship can have their citizenship taken away while other Canadians cannot. Bill C-24 has turned millions of Canadians into second-class citizens with reduced rights—and as a result, has reduced the value of Canadian citizenship for all of us.

Although citizenship experts and Canadians from across the country spoke out against the bill at that time, Canada's government still forced this legislation through. When that happened, we committed to fighting this law in the courts.

In the summer of 2015 part of Bill C-24 came into effect, officially bringing to life a two-tier

citizenship system. With the support of more than 115,000 Canadians who raised their voice against these changes, we filed our case to restore citizenship equality.

With your support we raised \$64,000 in two weeks. We can't thank you enough. This support is an amazing start that will help us pay the costs of preparing for trial.

The case has been referred to a judicial case management process, and it's clear the government is going to fight us on every aspect of this challenge. By the time this newsletter arrives in your mailbox, we will have much more to share with you. To keep up to date, visit www.equalcitizens.ca.

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DAILY EVIDENCE

LINDSAY LYSTER

In sitting down to write this message, it's hard to comprehend the amount of work that the BCCLA has managed to do this year. And rather than slowing down this past summer, the pace of work only took off.

Here are just a few highlights.

We faced a secret hearing into our complaint alleging that spies have broken the law by keeping tabs on community groups and First Nations. That hearing made national headlines when our Executive Director was barred from speaking about his testimony. It is impossible to ignore the irony that the free speech of BCCLA's own staff is being restricted in a hearing in which we are defending people's freedom of expression. Rest assured, we will be challenging this blatant breach of both freedom of speech and the open court principle.

The week after the secret spy hearings, the BCCLA launched its constitutional challenge of the new citizenship legislation that makes millions of Canadians

into second class citizens. Our challenge argues that the new law violates the equality, mobility and liberty guarantees under the *Charter*.

These two events happened in just two weeks in August. They came on top of a very busy winter and spring. As our supporters will know, this year the BCCLA made history with the Supreme Court of Canada's decision in *Carter* upholding the right to a physician-assisted death. We continue to work to make sure that the decision is implemented appropriately.

In January we filed a test case aimed at ending the practice of indefinite solitary confinement in Canadian prisons, a practice which has been described as a form of torture by the United Nations, and which we think violates the *Charter*. We anticipate going to trial on this case in fall 2016.

Through all of this, we continue to fight against the new anti-terrorism legislation, Bill C-51. We were the first organization to testify against the bill in Parliament – and when we did, we were essentially

accused of supporting terror.

Verbal attacks on the defenders of rights are nothing new – recently we found a letter from a legendary past president of the BCCLA, Reg Robson, who wrote to the Association's members in 1971, in response to the imposition of the *War Measures Act* that, even though it is not always popular, and even though people may “damn” us for it, we will continue to stand up and protect rights in the face of governments who use the threat of terrorism to weaken our freedoms. We have always done that, and we will continue to do that.

Reg wrote then, “life... turns up daily evidence that our rights must be affirmed and protected – or they will be eroded and diminished. So we go on – publicly affirming and protecting those rights we believe to be fundamental and you, our membership, ... are our prime source of support to continue this work.” Those words remain true today, and we thank you for being a part of the fight to protect freedom in Canada.

THREE

Thanks to your support, the BCCLA has celebrated many victories for rights and freedoms so far in 2015. Here are three of our favourites.

VICTORIES FOR RIGHTS

1 CONSULTATION ON PHYSICIAN ASSISTED DYING

SINCE THE BCCLA'S SUPREME COURT win, upholding the right of seriously and incurably ill Canadians to seek physician assistance in dying, the BCCLA has been working hard in Ottawa and the provinces to ensure any new legislation respects the court's ruling. After months of inaction, the federal government appointed a three member expert panel in July, including two of the government's witnesses who opposed our case at the trial level.

While it appears that the federal government has now moved from inaction to obstruction, the provincial and territorial governments have responded to our call to act and are stepping up by forming the Expert Advisory Group Convened On Physician-Assisted Dying.

This group intends to complete its report by the end of 2015, and Quebec will be prepared to implement the medical practice by the end of the year.

2 MANDATORY MINIMUMS STRUCK DOWN

THE SUPREME COURT OF CANADA issued a judgment in April 2015 striking down the mandatory minimum sentencing scheme for crimes involving prohibited and restricted firearms. While the judgment left some important questions

unaddressed, the Court reaffirmed the role of judges in sentencing decisions, emphasizing that ensuring that an offender serves a proportionate sentence "is the function of one person alone – the sentencing judge."

3 MOHAMED FAHMY RELEASED FROM EGYPTIAN PRISON

AFTER A LONG ORDEAL, Canadian journalist Mohamed Fahmy is finally returning home to Canada. Fahmy and Al Jazeera colleague Baher Mohamed had been sentenced to three years in prison for airing what the court described as "false news" and biased coverage. It is a case that has been widely condemned by

the BCCLA and human rights and press freedom advocates around the world. After spending more than 400 days in prison, the journalists were among 100 people pardoned on Wednesday, September 23 by Egyptian President Abdel Fattah al-Sisi.

HOW'D THE SECRET SPY HEARINGS GO, YOU ASK? IT'S A SECRET!

BCCLA's Executive Director, Josh Paterson, reflects on one of the weirder weeks in the Association's history — the week the Security Intelligence Review Committee (SIRC) came to Vancouver to hold secret hearings.

It was a pretty unusual press conference. At our media event to inform the public about the hearings to investigate the BCCLA's complaint against CSIS for spying on community groups and First Nations, I found myself unable to say anything. I stood up at the microphone facing a wall of reporters from all the media outlets, thanked the media for coming, and said that I could not tell them anything about what had happened when I testified at the hearing the day before. I couldn't even really say why.

The Canadian Press wrote: "Secrets upon secrets surround a hearing into allegations that Canada's spy agency kept tabs on environmental groups in an effort to suss out their anti-pipeline activities — and may even have used moles to get the job done. In a story worthy of a cloak-and-dagger spy thriller, the lawyer

representing the groups was forbidden from discussing anything that took place at a restricted hearing of the Canadian Security Intelligence Service watchdog committee."

This all started when the BCCLA filed a complaint against CSIS to the Security Intelligence Review Committee (SIRC)

"In a story worthy of a cloak-and-dagger spy thriller, the lawyer representing the groups was forbidden from discussing anything that took place at a restricted hearing of the Canadian Security Intelligence Service watchdog committee."

– its unfortunately weak oversight body – alleging that CSIS interfered with the freedoms of expression, assembly and association protected by the *Charter of Rights and Freedoms* by gathering intelligence about citizens opposed to the Enbridge Northern Gateway project through a range of sources. We also alleged that CSIS broke the law by gathering information on the peaceful and democratic activities of Canadians, which it is banned by law from doing. The BCCLA has filed a similar complaint against the RCMP, which is currently being reviewed by the Civilian Review and Complaints Commission.

Our complaint against CSIS resulted in several days of secret hearings in a courtroom in downtown Vancouver, from which the media and the public were barred. Witnesses who were employees of or volunteers of the Dogwood

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The Democratic Commitment is a publication of the British Columbia Civil Liberties Association. The BCCLA mandate is to preserve, defend, maintain and extend civil liberties and human rights across Canada through public education, complainant assistance, law reform and litigation.

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RETURN UNDELIVERABLE

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Initiative, ForestEthics Advocacy, Leadnow.ca and Sierra Club BC testified about their own experiences. We had understood beforehand, from legal advice, that we would be able to speak about the proceedings afterwards. Obviously, SIRC had other ideas. We think SIRC went too far, and the BCCLA is preparing to directly challenge this restriction on our speech. Until then, we are bound to abide by it, and I can't tell you how I think the hearing went.

This whole episode, for me, underlines a few things. First of all, we still have no answers as to whether, and to what extent, CSIS was involved in spying on community groups in BC. Second, with great respect to the member of SIRC who is hearing our complaint and to the staff of SIRC, the BCCLA has said for years that SIRC has not been given the power and capacity to properly

keep tabs on CSIS. Its process, as we have seen here, is overly opaque and that hurts public confidence in oversight of Canada's spies. Of course there are times when sensitive national security information must be shielded from public disclosure. But what public interest is served by the BCCLA, and the other witnesses at the hearing, being effectively muzzled?

I hope that, very soon, the other witnesses at the hearing and I will be able to tell you more about how it went. For now, I hope you'll take my assurance that – although you aren't allowed to see what happened behind the closed doors of the hearing, the BCCLA, its pro bono lawyers Paul Champ (a BCCLA board member) and Bijon Roy, and the other groups involved in the hearing worked hard to see that Canada's spies are held to account.



STAND UP AGAINST SPYING

"As citizens we should be encouraged to get involved in issues that affect our communities. Instead, we are spied on by our own government."

CAITLYN VERNON
Campaigns Director of Sierra Club BC
Witness in secret spy hearings

WWW.SECRETSPYHEARINGS.CA
#secretspyhearings



MICHEAL VONN

THE BC HEALTH PROFESSIONS ACT AND UNINTENDED CONSEQUENCES

FOR MANY YEARS the BCCLA has been banging the drum calling for evidence-based policy making. Some civil liberties issues are about social goods that are in tension with each other, but other times everyone agrees on the goal, but disagrees on how to get there. Unintended consequences are legion in the policy field and good intentions can nevertheless pave the road to rotten outcomes. So we need to know not just what is intended, but that it works.

This has been top of mind as we advocate for changes to BC's *Health Professions Act*. This act contains a number of provisions that require mandatory reporting of health professionals whose mental or physical condition may render them a danger to the public. There is no question that we need robust protections of this kind and putting a mandatory reporting obligation on co-workers and employers is a very thorough monitoring. The question is whether we

are achieving the goal of public protection by also having hospitals report to regulators when health care professions enter care and treatment for mental health or addiction. Does hospitals' reporting promote public health or needlessly stigmatize certain health conditions? Does it strengthen public safety or undermine it, by deterring health professions from seeking needed care and treatment?

Unfortunately, we don't know of evidence that addresses this question four-square in the Canadian context. But we do know that research on health professions the world over shows that they have higher suicide rates than the average population and unique barriers to accessing mental health and addiction treatment, most prominently fear of lack of confidentiality and career consequences for even seeking effective treatment. Some years ago the Royal College of Physicians and Surgeons in the UK reported a

staggering 79% of over 3,500 surveyed physicians would not seek mental health treatment from the local National Health Service, the majority citing concerns about medical confidentiality.

So, what does policy work on an issue like this look like? This issue of hospitals disclosing select admissions of health professions was brought to us by an affected person. We teamed up with the Canadian Mental Health Association to raise the issue with the Ministries of Justice and Health. The Ministry of Health was responsive, met with us and brought the issue to the association of BC health regulators. The association of regulators asked us to present to them on the issue. And that's where we are now: working with the regulators to try to fashion a non-discriminatory, rights and public safety protective law. Because the lion's share of our policy work isn't just pointing out what's wrong, it's vetting the evidence to figure out how to make it right.

YOUR RIGHTS ON TRIAL

The BCCLA is intervening in a variety of cases aimed at protecting rights and freedoms. Here are two cases we are working on.

CRIMINALIZATION OF POVERTY

BC/Yukon Association of Drug War Survivors v. City of Abbotsford / Supreme Court of BC

The BCCLA intervened in this six-week trial to argue that bylaws preventing homeless people from sheltering themselves in public spaces constitute an unjustifiable infringement of liberty rights. Homeless people in Abbotsford have been repeatedly pushed out of public spaces in what one City Councillor referred to as an unfortunate game of whack-a-mole. Without

access to private space of their own, many rely on accessible public spaces to fulfill their basic needs for sleep and shelter.

The BCCLA intervened to argue that the bylaws unreasonably restrict access to public spaces that are held in trust by governments for the benefit of their citizens. The exclusion from public space violates liberty rights

and significantly interferes with homeless people's ability to participate in a meaningful way in the democratic life of their communities – an important aspect of liberty. We expect a decision from the trial court in the coming months.

The BCCLA is represented by **Alison Latimer** of Farris, Vaughan, Wills & Murphy LLP.

ACCESS TO JUSTICE

R v. Jordan; R v. Williamson / Supreme Court of Canada

At the heart of these appeals is the issue of how and when "institutional delay" caused by a shortage of judges, courtrooms or essential court staff breaches an accused's right to be tried within a reasonable time under section 11(b) of the *Charter*.

Delay is a huge problem in BC's justice system. In 2010, the Provincial Court issued a report documenting severe resource shortages in the Provincial Court system. It warned of a significant

decrease in the court's judicial complement since 2005 and its resulting inability to keep pace with the volume of new cases. The report noted that, as of March 31, 2010, more than 2,000 criminal cases had been pending for more than 18 months and were at risk of being stayed for unreasonable delay.

The BCCLA will argue that institutional delay must be considered from a systemic perspective. The fact that a long delay may not cause any identifiable harm to a particular accused is

no reason for the courts to excuse it. Systemic delay undermines a broad range of societal interests associated with timely and fair trials, and corrodes the community's faith in the system. A central function of s. 11(b), therefore, must be to ensure that governments commit sufficient resources to the justice system.

The BCCLA is represented by **Tim Dickson** and **Martin Twigg** of Farris, Vaughan, Wills & Murphy LLP.



TOUGH SUMMMER FOR VOTING RIGHTS

THE ONTARIO COURTS released two decisions with troubling implications for Canadians' constitutionally protected right to vote. The rulings raise the risk that hundreds of thousands of citizens will be disenfranchised in the upcoming, hotly contested federal election, with disproportionate impacts on some of the most vulnerable members of our society.

First, the Ontario Superior Court of Justice denied an application by the Council of Canadians and Canadian Federation of Students for an injunction to suspend the operation of controversial provisions

of the *Fair Elections Act*, which became law in 2014. The applicants claim that changes to the identification requirements and "vouching" procedures violate section 3 of the *Charter*, which protects the right of every citizen to vote, and section 15, which protects equality rights. Importantly, these changes will disproportionately impact students, elderly people, people with disabilities, homeless and Indigenous people, who are all less likely to possess the identification required by the *Act*.

On July 17, the injunction was denied. A full hearing of the constitutional challenge is scheduled for next year, and the BCCLA will continue its intervention in this important case.

Just a few days later, the Ontario Court of Appeal issued its decision in *Frank v. Canada*, in which the BCCLA also intervened. The Court of Appeal overturned a lower court decision and decided, by a margin of two to one, that it is constitutional to deny the right to vote to Canadians who have lived outside Canada for more than five years.

While the majority acknowledged that this breaches Canadians' *Charter*-protected voting rights, they found the breach permissible under section 1 of the *Charter* as a reasonable limit on the right to vote. The applicants have sought leave to appeal to the Supreme Court of Canada and the BCCLA expects to be there if the top court hears the challenge.

SUPPORT THE BCCLA

Join the movement to protect human rights and civil liberties across this country. Become a BCCLA donor today at www.bccla.org/donate

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



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