BC CLA

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YOUR RIGHTS AT THE US BORDER

BY MEGHAN MCDERMOTT, STAFF COUNSEL

INSIDE

If you've ever had to clear US customs in a Canadian airport prior to boarding your flight, you can thank the *Preclearance Act*. It's a law based on a 1974 agreement between Canada and the US and allows US border guards to administer American preclearance laws in certain areas of designated Canadian airports. Our government signed a new agreement in 2008; Bill C-23 is the law that will implement this agreement.

We are very worried about the new and expanded powers that US border guards will have under this law and the lack of recourse for travellers whose rights are violated.

Recent news reports suggest very extensive questioning by US border officials is becoming increasingly common, which is worrying because Bill C-23 violates the rights of travelers to withdraw from a preclearance area if they choose. Currently a person can leave a preclearance area at any time and has no obligation to answer questions. If Bill C-23 becomes law, US border officials will be able to question someone who chooses to withdraw. This change essentially enables US border officials to detain people who should be free to leave, which is especially worrying because we don't think US border guards can be held properly accountable.

In May we voiced these concerns to the House of Commons Standing Committee on Public Safety and National Security. While some minor changes were made to the bill, they don't resolve the key issues that we have raised. We expect the bill to go to the Senate this fall and will continue our efforts to bring its shortcomings to light.

LETTER FROM THE PRESIDENT

BY LINDSAY M. LYSTER, PRESIDENT

Fifty-five years ago, the BCCLA was born in Vancouver. Today, our work is often national in scope and impact, but our home remains here in British Columbia, and we are deeply committed to the rights and liberties of the people living on these lands. For the first time in sixteen years, there is a new government in power in British Columbia. This is an opportunity to address the many weak spots in our justice system, and in the protection of human rights and civil liberties in this province.

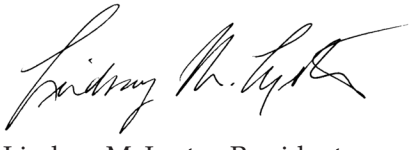
Some of this work is already happening, such as the restoration of the B.C. Human Rights Commission after a fifteen-year absence. While BC's Human Rights Tribunal has done vital work adjudicating individual complaints, there has been no government agency tasked with educating the public, systemic advocacy and promoting anti-discrimination. The reinstatement of the Commission is just one of many urgently needed reforms.

BCCLA will be working hard to ensure that the new government respects civil liberties and human rights, and rebuilds the justice system. That is why we have come together with West Coast LEAF, Pivot Legal Society, and the Community Legal Assistance Society (CLAS) to put forward a Justice Reform Agenda for BC. Our organizations are dedicated to strengthening our justice system and ensuring that the principles of equality, freedom and human dignity are respected. In addition to the full realization of the rights of Indigenous peoples, our joint priorities for the new provincial government include the following:

1. Ensure genuine access to justice by strengthening legal aid and legal services.
2. Ensure that provincial policing respects the rule of law and the human dignity and rights of all people, and take systemic action to eliminate racial discrimination against First Nations and racialized minorities by police, both in the RCMP and municipal police services.
3. Reform the provincial correctional system to ensure the just and humane treatment of those who are incarcerated, promoting rehabilitation and reintegration of prisoners into society.
4. Reform the laws dealing with information rights, including long-needed reforms to access to information.
5. Reform our electoral system to ensure that every vote counts.
6. Enact anti-SLAPP legislation to protect the freedom of expression of those who participate in the political life of their communities, and to stop people from being intimidated into silence when they speak out on matters of public interest ("SLAPP" is an acronym for a strategic lawsuit against public participation).
7. Ensure the just treatment of people with mental illnesses and addiction. Pursue serious action and find effective and rights-respecting means to address the overdose crisis.

A change in government brings new opportunities, and new challenges. These priorities are not ranked by importance. Each of them is critical, and they are just the beginning of our goals for BC. While the new government will have a lot they want to accomplish, we will be working to ensure that these critical changes to advance human rights and civil liberties stay squarely at the top of their agenda.

In solidarity,



Lindsay M. Lyster, President

5 VICTORIES FOR RIGHTS

Thanks to your support, the BCCLA has celebrated many victories for rights and freedoms so far in 2016. Here are five of our favourites.

1 The end of second-class citizenship

The passage of Bill C-6 by the federal government undoes changes that were discriminatory and anti-immigrant. Changes to the *Citizenship Act* passed by the previous government through Bill C-24 had created two classes of Canadian citizens, leaving dual citizens with fewer rights than other Canadians. We are thrilled that after three years of fighting, multiple lawsuits, and over a year of wrangling in Parliament, second-class citizenship has been put to an end. The government has followed through on its promise to restore citizenship equality for all Canadians.

2 Restoring the right to a fair hearing

Bill C-6 was passed with a critical amendment restoring the right to a fair hearing for people at risk of losing their citizenship under allegations of misrepresentation. Previously, individuals could be stripped of their citizenship without ever having the right to a hearing, consideration of humanitarian concerns, or the ability to see all the evidence. Close collaborations with Senators Ratna Omidvar, Elaine McCoy, and several others helped to ensure that the amendment was secured.

3 Supreme Court of Canada upholds strong protections against warrantless search and seizure

The Court confirmed in *R. v. Paterson* that police cannot rely on 'exigent circumstances' to enter and search a premises where no urgency actually exists. The Court reminded police that obtaining a warrant is a matter of necessity, not convenience.

4 Court Challenges Program restored

The re-establishment of the Court Challenges Program, which provides financial assistance for court cases that advance Charter rights, will further access to justice in Canada. The previous program covered only equality and language rights, whereas the modernized program will now expand to additionally cover challenges to federal laws that potentially violate democratic rights, fundamental freedoms and the rights to life, liberty and the security of the person.

5 BC Human Rights Commission restored

BC has been without a human rights commission for 15 years. It's been a huge gap. While the human rights tribunal has done critical work by responding to individual complaints, there has been no government agency tasked with education or promoting anti-discrimination, and that's really vital.

"By keeping Indigenous people in solitary confinement, Canada inflicts new forms of trauma on those already suffering from the traumatic legacy of its own residential schools."
– Grand Chief Stewart Phillip

STOP THE RESIDENTIAL SCHOOL TO SOLITARY PIPELINE

BY GRAND CHIEF STEWART PHILLIP, President of the Union of BC Indian Chiefs

SURVIVORS CARRY THE TRAUMA of residential schools. But the trauma is also inter-generational: when a child's parents, grandparents, aunts, and uncles are hurt by a genocidal system, the trauma is passed on to that child. Hurt persists in families and communities when people are denied access to the vital resources they need to heal.

Canadian prisons are filled with people who carry the deepest of traumas from a young age. Many of the incarcerated are disproportionately Indigenous people, and about a third of all prisoners who are isolated in segregation cells are Indigenous.

Bobby Lee Worm, for example, is a young Indigenous woman who spent a total of 1,123 days in solitary confinement. There, she attempted to take her own life.

Bobby Lee was a witness against Canada in a recent lawsuit by the BCCLA and John Howard Society challenging solitary confinement in the federal prison system. She is a member of the Daystar Band, and her family are residential school survivors. Unfortunately, for Bobby Lee, inter-generational trauma meant growing up surrounded by rampant substance abuse, entrenched poverty, and violence. She told the court, she experienced ongoing sexual abuse from a young age, and did not have access to the supports she needed to heal. At age 12, she ran away from home, and started getting into trouble with the law:

> *"Since childhood, my sense of being able to control my life has been shattered again and again. This feeling of powerlessness worsened during the years that I spent in segregation. While in segregation… I was literally powerless; every aspect of my every movement was controlled and under scrutiny. I felt like I had been thrown in a hole and left to rot."*
>
> – Bobby Lee's testimony

"Administrative segregation" is a vicious code-word Canada uses for solitary confinement when it takes people who are already incarcerated, and further contains them in isolated cells. Right now, these decisions to segregate prisoners are made in the absence of evidence, with no independent oversight, and there are no limits to how long someone like Bobby Lee can be kept in solitary confinement.

According to the United Nations, prolonged solitary confinement is a form of torture. Experts agree that it worsens mental illness, and increases the risk of suicide. By keeping Indigenous people in solitary confinement, Canada inflicts new forms of trauma on those already suffering from the traumatic legacy of its own residential schools.

PHOTO: DABARTI CGI, SHUTTERSTOCK

If Canada continues on this path, how is healing possible? How can reconciliation be realized?

For Amanda, another witness in the case, healing came through sheer heroism and finding her own connections to her culture. Amanda is Métis, and her grandparents are survivors of the residential schools. Amanda's earliest memories include violence and substance abuse. She was sexually abused from ages 3 to 10.

Amanda testified that Canada's response was to place her in a lock-up facility when she was just 10 years old. By age 14, she had already experienced long stretches of forced isolation:

> *"Because they couldn't keep me in a foster home, they decided that the best thing for me was to keep me incarcerated."*
>
> —Amanda's testimony

Amanda was recently kept in solitary confinement because of something prison officials eventually acknowledged she didn't do.

Andre, for example, was once isolated for 363 days "for his own safety" because the guards said he was attacked by other prisoners. Andre testified that his own voice mattered little when decisions were made to place him in solitary:

> *"When I objected to the allegations against me on the basis that there was no proof, the officer told me that he did not have to prove anything, it was not a court of law, and there was nothing I could do about it."*
>
> —Andre's Testimony

Born in Toronto to Jamaican-born parents, Andre's childhood was also marked by inter-generational trauma. His father was murdered in prison when Andre was about one year old.

Like Indigenous people, black people are over-represented in Canadian prisons and solitary cells. In total, Andre has spent 637 days in solitary confinement.

Each of the witnesses who testified about their experience of isolation described the serious harms it caused them – for many, it aggravated pre-existing trauma.

> *"I realized that I was acting out because I had so much pain stored up inside me. I understood that in order to move out of solitary… I had to contain all of my emotion. I became paranoid about how much emotion I was showing... I had to shut myself off emotionally."*
>
> — Bobby Lee's testimony

Doubly contained, Indigenous minds, bodies and spirits are denied the space they need to heal.

Canada recently responded to criticisms of its segregation practices with Bill C-56, but the proposed fix is meaningless. On paper, the bill would initially limit a person's stay in solitary confinement to 15 days; however, prison officials could still extend the duration of the stay at their sole discretion. This bill does little more than create more paperwork to be checked off in order to keep a person isolated in solitary confinement.

Justin Trudeau's government speaks of reconciliation for past wrongs, but doesn't seem to recognize its responsibility for the traumatic legacy it actively perpetuates within its own prisons.

If Justin Trudeau's government truly wants to be responsible for the trauma Canada has inflicted and *continues* to inflict on Indigenous peoples, he must put forward *real change*, not what's in C-56.

RESHAPING THE NATIONAL SECURITY LANDSCAPE

BY MICHEAL VONN, POLICY DIRECTOR

In 2016, Canada engaged in an unprecedented project for reshaping the national security landscape in a months-long, public and expert consultation on a sweeping array of national security issues. Although chances are you didn't hear about the results, they were amazing. The consultation report, released on the Friday before a long weekend for maximal non-exposure, contains finding that are clear beyond any dispute: Canadians want to see their rights upheld and restored in the context of national security.

From the report:

> *… a majority of stakeholders and experts called for existing [measures] to be scaled back or repealed completely, particularly Bill C-51, the Anti-terrorism Act, 2015…*
>
> *A clear majority of stakeholders consider current oversight to be inadequate…*
>
> *… a clear majority of participants have an expectation of privacy in the digital world that is the same or higher than in the physical world…*
>
> *On balance, therefore, most participants in these Consultations have opted to err on the side of protecting individual rights and freedoms rather than granting additional powers to national security agencies and law enforcement.*

The obvious "response" by the government is Bill C-59, An Act respecting national security matters. This is a huge, omnibus bill that will take time to appropriately analyse but at first blush gets mixed reviews. Certainly the bill contains an all-agency review body for national security, and this has been needed for a very long time. Whether all the pieces are in place we have yet to determine. On the other hand, we can say that all the pieces are definitely not in place in areas like fixing the no-fly list and

The government has heard loud and clear that reforms to expand digital investigative powers would be very unpopular. However, the calls for those expansions from law enforcement are not going to go away.

the sweeping surveillance powers granted under Bill C-51. This fall we will be urging amendments where C-59 falls short or gets it wrong.

Meanwhile, the non-obvious "response" to the national security consultation is that no bill has been introduced for the new digital investigative powers that police agencies and government worked so hard to "sell" during the consultation process. Government proposals had already been developed for how, for example, to give police greater access to telecommunications' customers' data and then came the consultation results:

> *Perhaps the most revealing result of the online consultations is that seven in 10 responses consider their Basic Subscriber Information (BSI) – such as their name, home address, phone number and email address – to be as private as the actual contents of emails, personal diary and their medical and financial records.*

The government has heard loud and clear that reforms to expand digital investigative powers would be very unpopular. However, the calls for those expansions from law enforcement are not going to go away and these issues are still likely to be very much with us. But the sense is that that can has been kicked a little further down the road.

YOUR RIGHTS ON TRIAL

R. V. PATERSON

Bottom line: a warrant is a matter of necessity, not convenience.

BY CAILY DIPUMA, Acting Litigation Director

Imagine, the police knock on your door. The officers don't have a warrant, but they say they smell marijuana. You admit to having smoked recently.

The officers tell you they aren't going to arrest you but they want to do a "no case seizure," meaning that the police want to confiscate the drugs without laying charges or taking any legal action against you. You agree and turn around to retrieve your stash. As the door is falling shut, one officer pushes the door open and comes inside your home. Another officer follows him. They have a look around and notice that you have some other illegal items. What happens next?

PHOTO: BLACKBIRD HOLLOW

Unless there is a sufficiently pressing justification for the warrantless search, such as a risk to a person's life, such a search should not be permitted. In March, the Supreme Court of Canada issued its judgment agreeing with Mr. Paterson and with the BCCLA.

This happened to Brendan Paterson. He ended up in front of the Supreme Court of Canada to argue that the police should not have entered his home.

The BCCLA intervened in Mr. Paterson's case to argue that a "no case" seizure does not justify a warrantless search of a home. Canadians have the Charter-protected right to be free from unreasonable search and seizure, particularly in their homes. When police seize drugs in a "no case" seizure, they do so for the sole purpose of destroying them. Accordingly, preservation of evidence cannot justify a warrantless search in those circumstances. Unless there is a sufficiently pressing justification for the warrantless search, such as a risk to a person's life, such a search should not be permitted.

In March, the Supreme Court of Canada issued its judgment agreeing with Mr. Paterson and with the BCCLA. The Court held that police may perform a warrantless search of a home only where exigent or urgent circumstances make it effectively impossible to obtain a warrant. Exigent circumstances include where a person's life may be at risk, in cases of "hot pursuit" or where there is imminent danger that evidence will be destroyed.

Bottom line: the police cannot perform a warrantless search of your home unless there is a real risk to the preservation of evidence, or protect the safety of an officer or the public. A warrant is a matter of necessity, not convenience.

MEET OUR NEW STAFF

We've been fortunate to welcome several new staff members this year including **Jay Aubrey**, who joined the BCCLA as staff counsel at the end of 2016 and who has been an invaluable addition to our litigation team. In March of this year, we also welcomed **Meghan McDermott** as staff counsel. Her expertise have been a great addition to our policy department.

This fall we're excited to welcome several more new staff members. **Iman Baobeid** is our newest Outreach and Communications Coordinator, and is an alum of the Association's Outreach and Development volunteer program. She joins us from UBC's Centre for Equity and Inclusion, where she is also in the process of completing her Masters in Gender, Race, Sexuality, and Social Justice. In her spare time she organizes events and panels on Islamophobia, immigration issues, and runs a feminist book club.

Also joining our team is **Dylan Mazur**, our new Community Lawyer. Dylan has just finished articling at the Community Legal Assistance Society, and comes to us with a wealth of community experience. He was until recently the executive director of a local refugee-serving agency, the Vancouver Association for Survivors of Torture (VAST). He was also the program manager at QMUNITY, BC's Queer, Trans, and Two-Spirit Resource Centre. Dylan has worked with Indigenous nations in rural BC, and has valuable experience working with the complexities of police-Indigenous relations in the north and interior.

While we're excited to welcome these new members of our team, we are also sad to say goodbye to our former Outreach and Communications Coordinator **Nathanel Lowe**, and Community Lawyer **Laura Track**, who have moved on to exciting new opportunities. We are so thankful for all their hard work over the last few years, and look forward to continuing to collaborate with them in the future.

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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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