

INSIDE

- 1 Letter from the President
Lindsay Lyster
- 2 After another death in Canada Border Services custody, we can't afford to delay independent oversight
Josh Paterson
- 3 Combating discriminatory police checks in Vancouver
Dylan Mazur
- 5 Criminal justice reform for Indigenous people is a civil liberties emergency
Grace Pastine
- 6 New guide for digital privacy rights at the border
Meghan McDermott
- 7 Leaving a legacy
Mark Hosak

This cover art is a reproduction of a street check entry in a police database. While names, locations, incidents, and details are fictitious, they reflect the structure and ethnic categorizations of a police data entry.

1. Street Check [REDACTED]

Sex: MALE, **Born on** [REDACTED]

Born in [REDACTED]

Country of Birth [REDACTED]

Occupation [REDACTED]

Address [REDACTED] BC

Driver's Licence [REDACTED] BC

Ethnicity

ABORIGINAL

Height

[REDACTED] cm ([REDACTED] ft)

Weight

[REDACTED] kilos ([REDACTED] lbs)

Eye color [REDACTED]

Hair color [REDACTED]

Narrative - SYNOPSIS

On August [REDACTED] 2018 at [REDACTED] hrs. Cst
[REDACTED] and [REDACTED] were completing
morning wake ups in the [REDACTED] area
[REDACTED] and woke [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

LETTER FROM THE PRESIDENT

Lindsay M. Lyster, President



The enforcement of democratically enacted laws is a fundamental responsibility of a modern democratic state. However, the need for accountability to the public remains a constant. Without it, agencies granted enforcement powers would quickly undermine the democracy they are intended to support.



These words, from the BCCLA's 2011 report, *Small Town Justice*, stand out in my mind as our work to end bias in policing enters an exciting new phase. Our efforts to confront the structural racism that results in police bias are rooted in the lived experience of community members across BC. Our work would not be possible without them, and the other groups and individuals who have spent decades fighting for police accountability.

In *Small Town Justice*, we compiled stories from dozens of people in rural BC who had experienced negative police interactions. One of the dominant themes to emerge from this work is that racialized communities report being over policed and under protected. This manifests itself in many ways, from overuse of force by police, to the biased use of street checks on marginalized populations. But when we have called for action to end these practices, police forces have often asserted that statistical data does not exist to corroborate the lived experience of community members, and that any problems are not systemic in nature. That is, until now.

This year, despite having repeatedly denied its existence, the Vancouver

Police Department finally released street check data that included race and gender statistics. The data corroborates the stories of discrimination that we have been hearing from community members for years: street checks are disproportionately experienced by Indigenous people and Black people when compared to their percentage of the population as a whole. We know from listening to community members that experiences of bias are not isolated occurrences, so we are calling for the release of street check data from all police forces in BC to increase province-wide accountability. We are also calling on the Province to develop policies that will ensure an end to bias, and to the disproportionate use of surveillance tactics against marginalized communities.

On page 3 you can read more about our fight to end bias in policing. The time has come for police forces to lead by listening to the people most heavily impacted by their conduct and taking concrete action to end discrimination in policing.

Lindsay M. Lyster



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AFTER ANOTHER DEATH IN CANADA BORDER SERVICES CUSTODY, WE CAN'T AFFORD TO DELAY INDEPENDENT OVERSIGHT

Josh Paterson, Executive Director

In August 2018, the media reported the death of a Nigerian man in the custody of the Canada Border Services Agency (CBSA). While the precise circumstances that lead to his death remain unclear, media reports suggest that the federal government was deporting him after he lost his long legal fight to remain in Canada, and that he strongly feared he would be killed if he were deported to Nigeria.

The Calgary Police have indicated that they are investigating the incident to determine whether the man's death was the result of any crime on



There is an urgent need for an accountability body for CBSA.

the part of CBSA officers, but this investigation will not suffice given that the mandate of the police is limited to determining whether or not a crime was committed. They do not have the authority to inquire into the overall conduct of CBSA. Even if their conduct did not constitute a crime, we have the right to know if CBSA officers acted improperly in any way in their handling of this tragic situation.

While CBSA has not provided any information as to what happened on the plane, the information that has been released indicates that this man was in the care and custody of CBSA when he died. This isn't the first death in CBSA custody – there have been at least 14 deaths of persons detained by



CBSA since 2000. CBSA's duty is to do everything in its power to ensure that its detainees are safe, and this death once again raises the question as to whether CBSA failed in its duty. The public is entitled to know whether CBSA took appropriate measures to protect the safety of the deportee and the circumstances behind the altercation, even if the police conclude no crime was committed.

These recent events highlight once again the significance of the federal government's failure to fulfill its promise to provide oversight to CBSA. CBSA wields a wide range of police powers and deals with some of the most vulnerable people in Canada. In addition, CBSA plays a unique role as prosecutors for the federal government in refugee and other hearings. A federal audit recently revealed that CBSA officers have behaved inappropriately in carrying out those duties, including using inaccurate evidence and intimidating immigration tribunal members. The audit, together with the news of the death in custody, reinforces the

position that there is an urgent need for an accountability body for CBSA.

While we do not know how this tragic death occurred, it should be the job of an independent oversight agency to investigate that in a publicly transparent fashion. Instead, CBSA will investigate itself without any external review. Internal reviews have failed to provide the public with explanations into the deaths of several persons while in CBSA custody, unless there is a public and transparent review, the same is likely to occur again. Every other police agency in Canada has an independent external accountability agency and it is deeply disappointing that CBSA continues to be the exception to this rule several years after the government promised to fix that problem.

Last year, the BCCLA published a report, "Accountability at the Border," that set out a model for the government to follow in creating such an agency. Since then, the government has taken no action, despite repeated assurances that they would. The time for Ottawa to act is now.

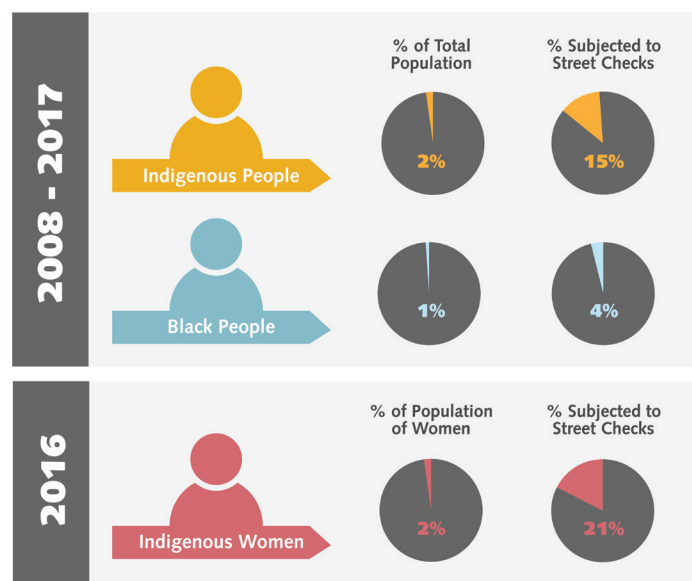
COMBATING DISCRIMINATORY POLICE CHECKS IN VANCOUVER

Dylan Mazur, Community Lawyer

For years, we have heard reports from racialized communities in BC that they are over-policed and under-protected. These experiences of over-policing have now been echoed with the release of decade-long data that starkly shows the significant over-representation of Indigenous and Black people in the rates of “street checks” or “police stops” conducted by the Vancouver Police Department. In mid-June, the BCCLA and Union of BC Indian Chiefs filed a complaint with the Office of the Police Complaint Commissioner calling for an immediate investigation of the racial disparity revealed in the VPD data. The complaint specifically concerned the policies and practices of the VPD that have led to such a significant over-representation of Indigenous and Black people in street checks.

Based on this data, the disproportionate targeting of Indigenous and Black people, particularly Indigenous women, is indisputable.

Vancouver Police Department Street Checks



WHAT IS A STREET CHECK?

Typically a “street check” or “police stop” is a practice where police stop a person in public, question them, and record their personal information in a police database.

In the context of a street check, there are two competing interests. On one hand, a person’s right to liberty provides that they have the right to “do as they please”, absent a law to the contrary.¹ On the other hand, police have powers under the common law to investigate crime and keep the peace, which may include the practice of stopping and questioning a person on the street (i.e. a street check).

While police may stop and question a person on the street, **that person has the right to walk away unless they are under arrest or investigative detention.**² Furthermore, **that person has the right not to provide police with their identification unless they are under arrest or being ticketed.** A street check may transform into what is known as an “investigative detention”. Police have the power to detain a person, albeit for a brief period of time, for investigative purposes. However, police must have reasonable grounds to suspect that the person is connected to a particular crime. It’s not always clear when an investigative detention is happening. Police do not have to say, “you are under investigative detention” and they are highly unlikely to do so. But the difference between a street check and an investigative detention is important, because unlike in a street check, a person under investigative detention has rights under Section 10(a) and (b) of the Charter (i.e. the right to know the reasons for the detention and the right to speak to a lawyer and to be informed of that right).

The Supreme Court of Canada ruled that police cannot be said to “detain”, pursuant to the Charter, every time an officer stops a person for purposes of identification or questioning. While a person who is stopped by police will be “detained” (i.e. “delayed” or “kept waiting”), their constitutional rights under sections 9 and 10 will not be engaged by a stop that involves “no significant physical or psychological restraint.”³ **Simply put, a street check that involves no significant physical or psychological restraint will not violate a person’s constitutional rights, unless it is discriminatory.**

However what constitutes “psychological restraint” is broad and open to interpretation. **People may feel that they have no choice but to talk to police simply because they are in a position of authority.** Given that police are

1 R. v. Mann, 2004 SCC 52 [Mann], at para. 15.

2 See Grant, para. 21.

3 Mann, at para. 19.



We're calling on the Province to develop policies that will ensure an end to racial bias in policing.

unlikely to voluntarily say that a person is being detained, or that they are the subject of a street check and therefore do not have to share their personal information, the only way to know for sure is to ask, "Am I free to go?" Therefore people may feel like they are being detained, even when they do have the right to walk away.

Prior to the emergence of data on the over-representation of Indigenous and Black people in the rates of street checks conducted by the Vancouver Police Department, members of racialized communities in Toronto were speaking out about the practice of "carding" by the Toronto Police Service, which is another name for street check. Desmond Cole, a Toronto based activist and journalist, wrote an account of being carded more than 50 times by police in Ontario. He summed up his experience this way: "Because of that unwanted scrutiny, that discriminatory surveillance, I'm a prisoner in my own city."⁴

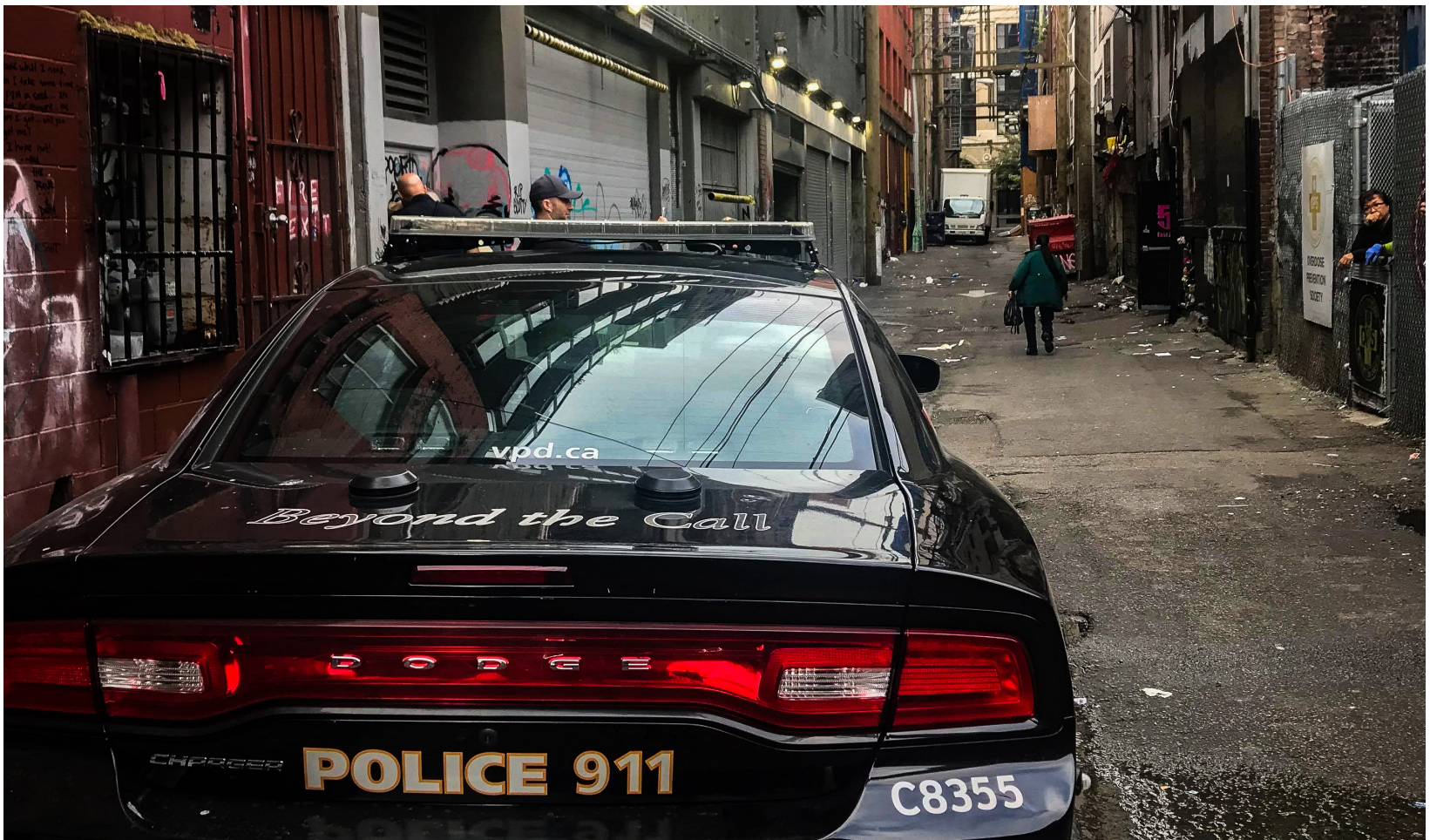
⁴ Desmond Cole, "The Skin I'm In: I've been interrogated by police more than 50 times – all because I'm black", *Toronto Life* (April 21, 2015), online: <https://torontolife.com/city/life/skin-im-ive-interrogated-police-50-times-im-black/>.

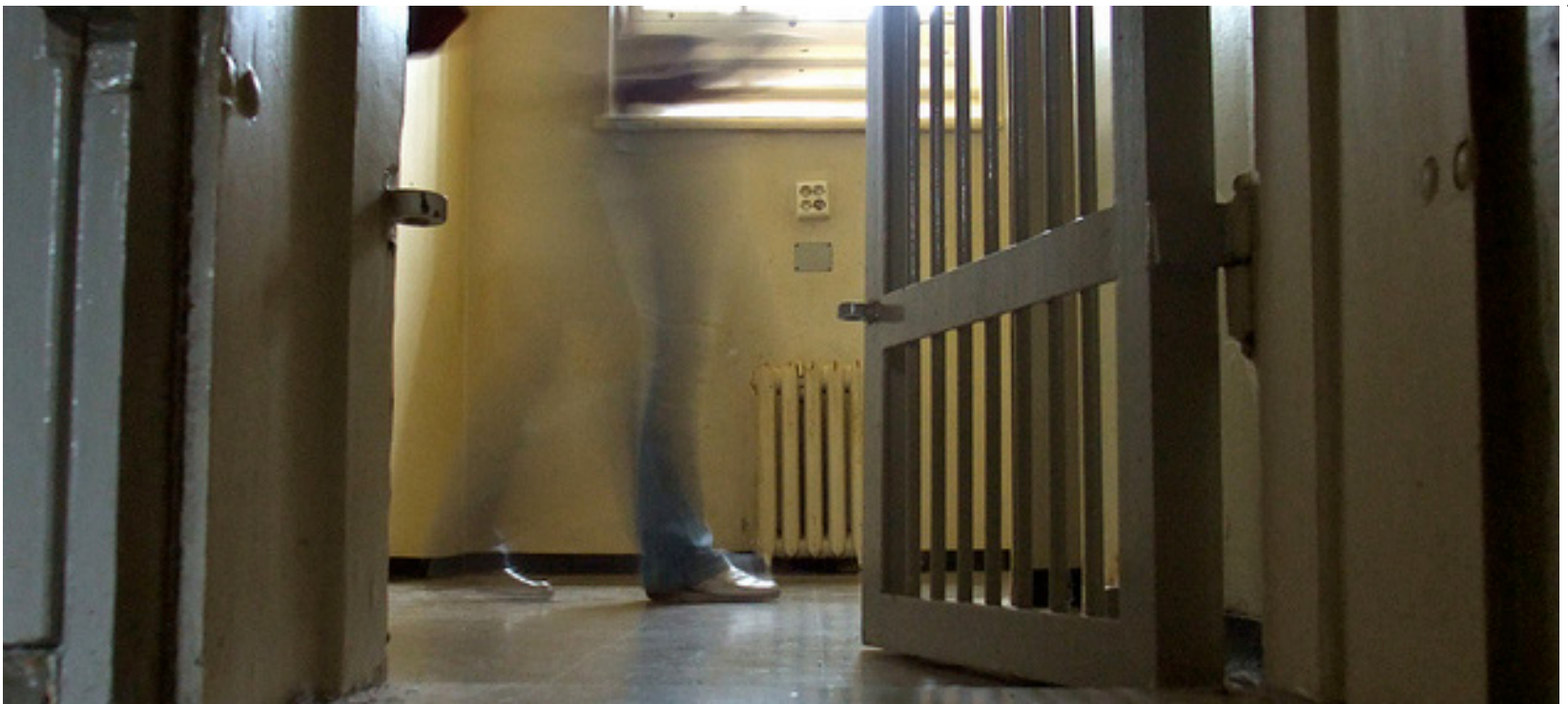
As a result of the tireless work of members of racialized communities, the provincial government of Ontario passed a regulation to limit the practice of carding. The regulation imposes a positive duty on police officers to tell a person being street checked that they do not have to provide their personal information to the officer.

Currently, there is no provincial regulation in British Columbia, but we believe that the provincial government has an important role to play in regulating policing practices. That's why we're calling on the Province to develop policies that will ensure an end to racial bias in policing and the disproportionate use of policing tactics against marginalized communities being street checked that they do not have to provide their personal information to the officer.

Currently, there is no provincial regulation in British Columbia, but we believe that the provincial government has an important role to play in regulating policing practices. That's why we're calling on the Province to develop policies that will ensure an end to racial bias in policing and the disproportionate use of policing tactics against marginalized communities.

Join us in calling the province to end discriminatory policing by taking action today: bccla.org/endcarding





CRIMINAL JUSTICE REFORM FOR INDIGENOUS PEOPLE IS A CIVIL LIBERTIES EMERGENCY

Grace Pastine, Litigation Director

Canada's crime rate has been dropping for decades, but our prison population is rising at an alarming rate.

Indigenous people are the fastest growing prison population. In the last decade, the incarceration of Indigenous women has gone up by 112%. Indigenous people account for 22.8% of the total incarcerated population, despite making up just 4% of the total population.

In fact, at every step of the criminal justice process, Indigenous people receive harsher and more unfair treatment. They are exposed to racially biased street checks, more often denied bail, receive longer and harsher prison sentences, and are more frequently shunted to solitary confinement, for longer periods of time.

Criminal justice reform is an urgent priority, and thanks to our members and supporters, the BCCLA recently helped change our country's misguided policies. In a joint intervention, the BCCLA and the Union of B.C. Indian Chiefs (UBCIC) won a victory at Canada's highest court in *Ewert v. Canada*. The Supreme Court of Canada ruled that the prison system has failed to ensure that psychological tests are not racially biased against Indigenous inmates.

We argued that the psychological tests that prisons used to determine the likelihood to reoffend are invalid and

inaccurate for Indigenous prisoners. In short, the tests lead to incorrect conclusions, present a high risk of misuse, and are unreliable. This is crucial because a bad test rating means an Indigenous prisoner is less likely to get parole, less likely to be allowed to access rehabilitative programs such as education or therapy, more likely to be imprisoned in maximum security and be held in solitary confinement.

The Supreme Court found that Correctional Services Canada had failed to take steps to ensure that the security steps are valid and accurate for Indigenous prisoners. The decision says that if prisons want to continue to use the psychological tests, they must conduct research into "whether and to what extent they are subject to cross-cultural variance when applied to Indigenous offenders."

The consequences of the systemic discrimination of Indigenous people in the criminal justice system cannot be overstated. Unequal enforcement of our laws erodes the public's faith in the criminal justice system, which undermines safety and security. It is time for us to demand a different future.

The BCCLA and UBCIC were represented in *Ewert v. Canada* by Paul Champ, Bijon Roy and Christine Johnson of Champ and Associates



NEW GUIDE FOR DIGITAL PRIVACY RIGHTS AT THE BORDER

Meghan McDermott, Counsel (Policy)

Earlier this summer, we launched an online guide about privacy rights related to electronic devices at the border. The guide outlines the current law and policy related to device searches, best practices for travellers to protect their privacy, and what to do if you've had your device searched at the border.

The *Charter of Rights and Freedoms* applies at the border, but courts have found that the Canadian Border Services Agency (CBSA) is given more power to search people and their possessions than police have in other settings. CBSA search powers extend to the content – the files, photos and videos – on digital devices. These files are “goods” under the *Customs Act*, and border officers can search them without a warrant – even if they have no reason to suspect that the device contains contraband.

CBSA officers conduct initial searches of the contents of a device by browsing images, videos and files. This cursory look is to determine that they do not contain contraband – such as child pornography or hate literature – or evidence of an offence. Initial searches can be random or targeted. Information found during an initial search may be used to justify a more detailed examination of the device.

CBSA officers can only look at content already stored on the device. They should put the device in airplane mode and only look at local content (including emails and text messages). If the CBSA wants to search information only accessible with internet access, they need a warrant.

If you are asked to disclose your password and you choose not to, you risk increasing the CBSA's suspicion about the contents of your device, denial of entry if you are not a Canadian citizen or permanent resident, detention or seizure of the device for more detailed inspection by forensic specialists (which could take months), or arrest.

Thanks to the *Canadian Internet Registration Authority* for the financial support that made this project possible.



HERE ARE SOME TIPS FOR HOW TO PROTECT YOUR PRIVACY AT THE BORDER:

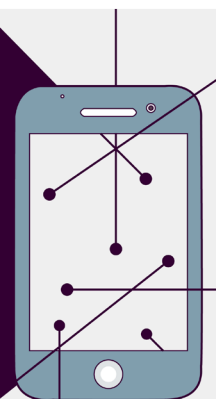
- Leave your devices at home
- Make a backup of your data and leave it home
- Securely delete data you do not need to travel with
- Require a password to access your device
- Create a strong password
- Turn off your device before crossing the border
- Use two-factor authentication in the event that the border officer seizes one device but not the other.
- Use full-disk encryption
- Encrypt specific critical documents

TO READ THE FULL HANDBOOK
VISIT [BCCLA.ORG/EDEVICE](http://bccla.org/edevice)

Electronic Devices Privacy Handbook

A GUIDE TO YOUR RIGHTS AT THE BORDER

Learn more at bccla.org/edevice



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Return Undeliverable Canadian Addresses to:

BC Civil Liberties Association
306 – 268 Keefer Street
Vancouver, BC V6A 1X5

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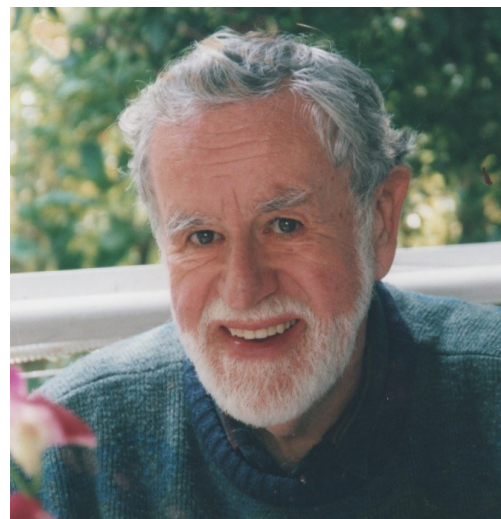


LEAVE A LEGACY

Mark Hosak,
Director of Community Engagement

The BCCLA is honoured to be to be included in the legacy of our supporters. People who understand that making a bequest to the BCCLA in their will is an opportunity to advance the values that have been most important in their lives. These gifts allow the BCCLA to continue our fight for equality, liberty, freedom and justice for future generations.

We received one such gift this year from Jack C. Hallam who supported the BCCLA up until his death in 2015 and included us in his will as part of his legacy. Jack said he would like to be remembered as a caring and compassionate gay man who always worked to improve the lives of marginalized peoples. He started his work in university, mobilizing petitions to confront racism, then as a Salt Spring Island resident he continued to fight for those who were unfairly denied compassion to end their suffering and in support of Omar Khadr. Jack was a founding member of GLOSSI, gays and lesbians of Salt Spring Island. He was on its executive for three years, a co-grand marshal for its second Pride Parade in 2008 and again in 2009. He was also a devoted



animal lover and maintained a hobby farm. Over his life he was the proud owner of six dogs and seventeen cats; a family of donkeys, two pigs and a number of pygmy goats. In his life he established multiple scholarships and endowments to improve access to universities for indigenous peoples and improve public understanding of gender and human rights.

We are humbled to be included as part of Jack's legacy and are thankful for his gift that will help us continue his fight.

LEGACY 2020

20 new legacy donors by 2020 to support our
work for a more free, just, and equal Canada

Including the BCCLA as a beneficiary in your will today will ensure advancing equality and human rights are part of your enduring legacy. By becoming a confirmed legacy donor by 2020, you help secure the financial future of the most active civil rights organization in Canada.

We'd love to talk about making a gift that is meaningful to you. If you would like to get in touch, you can contact Mark Hosak, Director of Community Engagement at mark@bccla.org / 604-630-9745 or fill out the attached legacy card and slip it into the reply envelope with your donation card, and we'll be in touch soon. For more information you can visit www.bccla.org/legacy