



## JUSTICE FOR HASSAN DIAB

### INSIDE

- 1 **Letter from the President**  
Lindsay Lyster
- 2 **A decade's ordeal: The case of Dr. Hassan Diab and the need for reform in Canada's Extradition Law**  
Josh Paterson
- 4 **Our assisted dying case is going to trial**  
Jay Aubrey
- 5 **Why the arguments against electoral reform in BC are wrong**  
Meghan McDermott
- 6 **Street checks: the next chapter**  
Dylan Mazur
- 7 **Welcome to our new staff!**

# LETTER FROM THE PRESIDENT

Lindsay M. Lyster, President



As civil libertarians, our job is often to hold governments to account when they fail to protect human rights. It's equally important that we give credit to governments when they act to strengthen the institutions that are charged with promoting human rights.

The BCCLA is delighted to give credit to the British Columbia government for introducing Bill 50, which will amend the Human Rights Code to create a new Human Rights Commission, and grant the Commissioner broad powers to promote and protect human rights. The Commission will stand alongside the Tribunal, which will continue to be the independent adjudicative body charged with hearing and deciding human rights complaints.

Throughout our 55-year history, the BCCLA has been at the vanguard of the promotion of human rights in British Columbia. We made a submission to Government as part of last year's consultation process, strongly supporting the creation of a new Human Rights Commission. We are pleased to see that many of our recommendations are taken up in the Bill.

The most crucial element of Bill 50 is the establishment of the Commissioner as an independent officer of the Legislature, appointed by and reporting to the Legislature, and not the Government. This will ensure that the Commissioner is a truly non-partisan and independent actor, specifically empowered, among other things, to examine the human rights implications of any policy, program or legislation, and to make recommendations about any aspect of them that the Commissioner considers may be inconsistent with the Human Rights Code.

Also key are the Commissioner's broad inquiry powers, enabling them to

investigate any matter they think would promote human rights, and to make any recommendations they consider appropriate. This inquiry power will allow the Commissioner to proactively address systemic discrimination that may be difficult, if not impossible, to effectively fight through individual complaints. The Commissioner's inquiry powers are given real teeth by their authority to order anyone to give evidence and produce documents, and to protect those participating in an inquiry from retaliation.

We applaud the fact that the Government has accepted the recommendation made by many, including the BCCLA, to extend the time limit for filing human rights complaints with the Tribunal from the current six to 12 months. As a human rights lawyer, I know that the six-month time limit has been a significant barrier to access to justice for many would-be complainants.

Human rights institutions in this Province are chronically under-funded. The new Human Rights Commission must be adequately funded if it is to realize the promise of this legislation. Equally essential is ensuring that there are resources to assist complainants in filing and pursuing complaints with the Tribunal. A robust system for the protection of human rights requires adequate funding not only for the Commission and Tribunal, but also for complainants who are seeking justice. We will continue to press the Government to ensure that all three arms of the human rights system in BC receive the resources they need to effectively protect and promote human rights in our Province.

Lindsay M. Lyster



Donate Today

[www.bccla.org/donate](http://www.bccla.org/donate)

# A DECADE'S ORDEAL: THE CASE OF DR. HASSAN DIAB AND THE NEED FOR REFORM IN CANADA'S EXTRADITION LAW

Josh Paterson, Executive Director



Dr. Diab (R), Dr. Tfaily (Centre), and their lawyer Don Bayne (L) accepting the Reg Robson Award at the BCCLA's 2018 Liberty Awards Gala. The Reg Robson is the highest award that the BCCLA can bestow on individuals who fight for rights and freedoms in Canada.

As I write this, we await the decision of France's Court of Appeal, which is set to determine whether the legal ordeal that has upended the lives of Dr. Hassan Diab, Dr. Rania Tfaily, and their family is finally over. Earlier this year, a lower court in France ordered that the case against Hassan Diab be dropped, determining that there was evidence that Dr. Diab was not in France at the time of a 1980 bombing, and that there was significant credible evidence excluding him as a suspect in the terrorist attack.

For years, the BCCLA has joined groups like Amnesty International and the Hassan Diab Support Committee in standing up against the unjust treatment of Dr. Diab and his family. Dr. Diab's decade-long ordeal at the hands of Canada and France highlighted the deep flaws in Canada's extradition laws. These laws require Canadian courts to treat summaries of evidence provided by a foreign state as presumptively reliable, even if the evidence has not been tested or even disclosed to the federal government or to the accused. As a result, exculpatory evidence that would have eliminated Dr. Diab as a suspect was kept hidden from Canadian courts. The court considering France's extradition request held that the case was so weak that he would never be sent to trial in Canada, and yet it had no choice but to extradite Dr. Diab due to our current extradition law.



**France never had a solid case against Dr. Diab, and the Government of Canada knew it.**



Dr. Diab has been home in Canada since January, after being held without trial in France for three years, much of it languishing in solitary confinement. France never had a solid case against Dr. Diab, and the Government of Canada knew it. Despite knowing this, government lawyers played an active role in helping France's desperate attempts to bolster its flimsy and contradiction-riven case, and shockingly, in allegedly misleading Canadian courts by failing to disclose the existence of exculpatory evidence.

That is why the BCCLA and Amnesty International called on the federal government to appoint an independent inquiry into Dr. Diab's case. The federal government responded by appointing an "independent external review" in the summer that unfortunately has a much more limited scope than we had asked for.

The review is likely to leave out a number of important issues that we think need to be investigated to ensure that Dr. Diab's ordeal is never repeated. The biggest gap is the lack of an examination of the weaknesses in the *Extradition Act* that permitted this miscarriage of justice to unfold. Nevertheless, we hope that the review will at least shed light on how our government abandoned its role as a protector of its own citizens and transformed itself into active collaborators in a deeply flawed prosecution.

The BCCLA supports the Government of Canada in cooperating with partner countries to combat transborder crime, and to ensure that fugitives from justice answer for alleged crimes committed abroad. But Canada's primary

obligation is to protect the rights of people here, and that's why we are continuing to push for reform to the *Extradition Act* itself in order to ensure that individuals in Canada who are sought for trial in a foreign state benefit from a fair process - instead of their surrender being a virtual certainty. At a minimum, fairness requires that exculpatory evidence in the hands of the foreign government must be disclosed to the Government of Canada and the individual concerned, as well as to Canadian courts. Mere summaries of foreign evidence should no longer be presumed reliable - evidence-gathering in the foreign state should meet a baseline standard of reliability before it can be used to support an extradition request. Under no circumstances should unsourced evidence and evidence possibly derived from torture be used in extradition proceedings.

Scholars report that Canada's extradition laws provide the weakest procedural protections of any extradition law in the world. In September, I went to Halifax to meet with leading legal experts on extradition law from across Canada to discuss the reforms that are required. Before the end of 2018, we expect to travel to Ottawa to continue the conversation, aiming to develop a joint proposal for reform to the law that could be adopted in the next Parliament. The balance between Canada's duty to protect its citizens and residents, and its legitimate interest in cooperating with foreign states on extradition, is severely out of whack. Change is urgently needed to prevent innocent people from having their lives irrevocably overturned in the way experienced by Dr. Diab, Dr. Tfaily, and their children.



**Change is urgently needed to prevent innocent people from having their lives irrevocably overturned in the way experienced by Dr. Diab, Dr. Tfaily, and their children.**





# OUR ASSISTED DYING CASE IS GOING TO TRIAL

Jay Aubrey, Counsel (Litigation)

**Trial dates have been set in our lawsuit challenging the federal government's assisted dying laws.** *Lamb and BCCLA v. Canada* will begin on November 18, 2019 before the Supreme Court of BC in Vancouver, and is expected to take four weeks.

At trial the BCCLA and our co-plaintiff Julia Lamb will provide the Court with evidence of serious harms caused by the government's assisted dying laws, which deny the choice of medically-assisted death to all who are not already approaching their natural death. These laws dictate that medically-assisted death is not an option for those who will suffer unbearably for decades with incurable conditions like Multiple Sclerosis and Parkinson's disease, simply because they will not die soon enough.

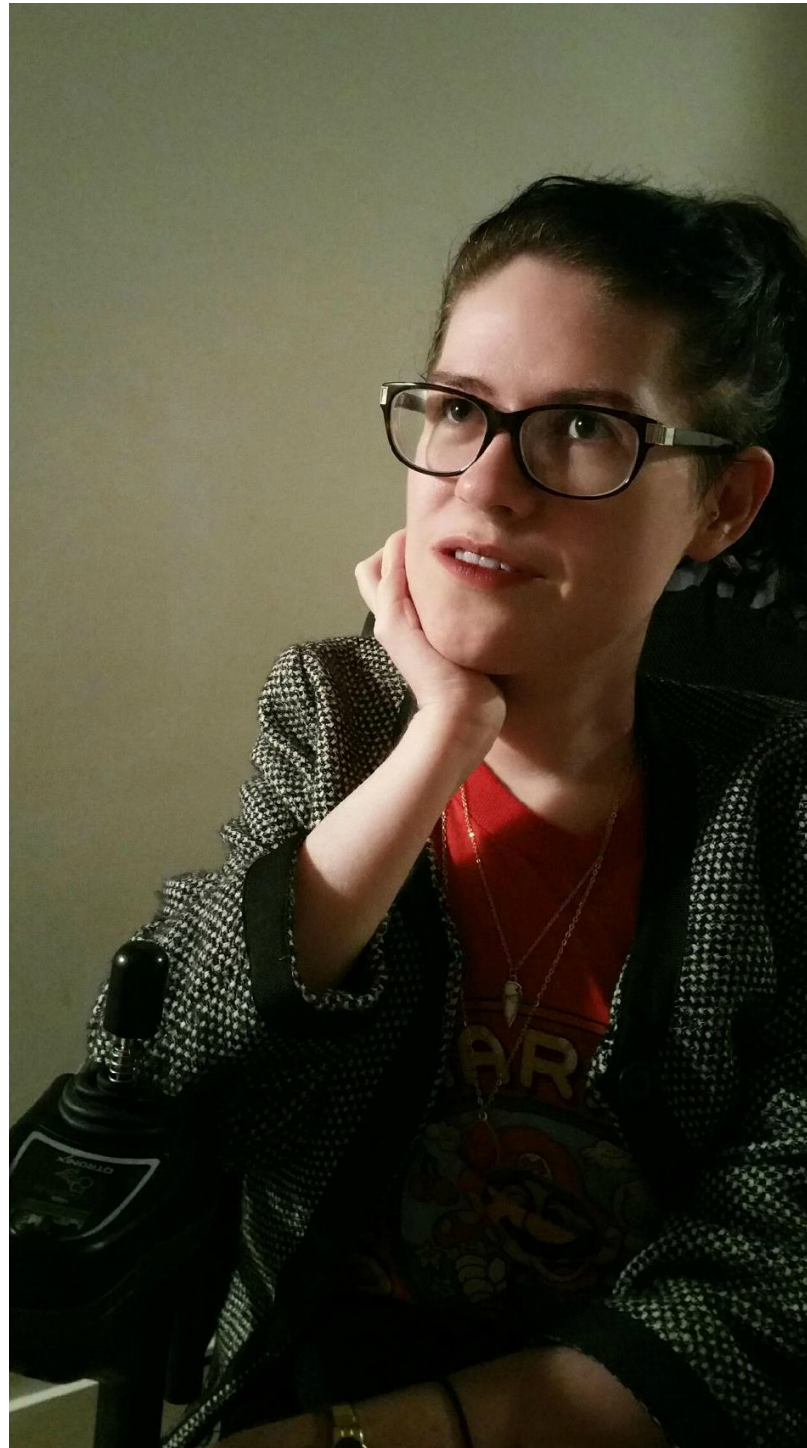
**In the face of this clear injustice, the BCCLA's legal team is busy preparing for trial.**

When their choice for medically-assisted death is denied, those who suffer unbearably are left in an impossible situation – they must either face a lifetime of unalleviated, intolerable suffering, or find a way to end their own lives before their illness takes away their physical capabilities. The BCCLA believes **no human should have to face this cruel choice at the hands of their government.**

The *Lamb* trial is one part of the BCCLA's long-standing fight for choice and compassion on behalf of sick and suffering Canadians. We fought the *Carter* case all the way to the Supreme Court of Canada in order to achieve the landmark 2015 decision that first legalized assisted dying in Canada. *Carter v. Canada* affirmed that all capable adults suffering unbearably from serious and irremediable medical conditions have a constitutionally-protected right to choose medically-assisted death. Rather than creating legislation to protect this right, in 2016 the federal government enacted the current laws that take this right away from every person who is not imminently approaching their death.

Your continued attention and support is appreciated at this crucial time. Please stay tuned for further updates as we continue to fight for the choice to be free of unbearable suffering.

Learn more about the case at [bccla.org/lamb](https://bccla.org/lamb)



Julia Lamb

# WHY THE ARGUMENTS AGAINST ELECTORAL REFORM IN BC ARE WRONG

Meghan McDermott, Counsel (Policy)

As we speak, an electoral reform referendum is underway in British Columbia. The BCCLA is excited for this opportunity to shift to a proportional representation (“prorep”) system, as it would enhance the influence of each individual vote.

This article will explain why the three arguments commonly used to argue against prorep don’t add up.

## ARGUMENT #1: PROPORTIONAL REPRESENTATION WILL EMPOWER EXTREME FRINGE PARTIES

In fact: There is no correlation between the proportionality of electoral systems and political party extremism. Though it is true that prorep systems have been shown to enable a greater spectrum of ideologies among political parties, that doesn’t translate into extremism, because these systems also promote public negotiation to enable coalition governments.

Many systems of prorep – including all models proposed for BC – require a party to get a certain number of votes (5%) to have any parliamentary seats. This mechanism keeps out extremist parties because they have a harder time passing the threshold.

## ARGUMENT #2: PROPORTIONAL REPRESENTATION IS UNFAIR BECAUSE IT WILL ROB VOTERS OF LOCAL REPRESENTATIVES

In fact: Those opposed to prorep claim that if the referendum succeeds, we will no longer have a local MLA to represent our views. All three systems proposed for the province, however, are hybrid systems. This means that all potential reform models will continue to ensure that everyone in BC has a local MLA.

## ARGUMENT #3: YOUR VOTE WILL GET LOST IN THE CONFUSION OF PROPORTIONAL REPRESENTATION

In fact: Under first-past-the-post, it’s common for more than half the votes to be wasted (because if you do not vote for the front-runner in your riding, then your vote does not count towards electing anyone). With prorep, most votes do help elect someone – when your vote doesn’t help elect the front-runner, it can still help elect the second or third most popular candidate.

## BONUS FACT: THERE IS AN ESCAPE CLAUSE!

If BC opts for a prorep system, a second referendum will be held following two election cycles. At that point we will have another opportunity to choose whether to keep that system or revert to the first-past-the-post voting system. So if we regret adopting the electoral system that most democratic nations use, we can always revert back to the system that we’ve always known. We are wonderfully positioned to give our electoral system a major democratic upgrade, with built-in safe guards. We should go for it!

Learn more at [bccla.org/why-pr](https://bccla.org/why-pr)



I  
Voted



# STREET CHECKS: THE NEXT CHAPTER

Dylan Mazur, Community Lawyer



(L-R) Chief Bob Chamberlin, Dylan Mazur, and Josh Paterson after the Police Board meeting.

Since the spring of this year, we have been working on the issue of police street checks (or “carding”) in Vancouver. On June 14, 2018, we, along with the Union of BC Indian Chiefs, filed a complaint against the Vancouver Police Department (“VPD”) on the subject of street checks. Our complaint cited statistics that demonstrated an overrepresentation of Indigenous and Black people in the number of street checks conducted by the VPD over a ten-year period.

In response to our complaint, the VPD conducted an investigation and released a 60-page report detailing its position on the practice of street checks. While we knew that the VPD would be conducting the initial investigation into our complaint, we requested that the Vancouver Police Board initiate an

independent study into the practice of street checks. This study would not only inquire into the efficacy of street checks as a law enforcement practice, but would also inquire into the effect of street checks on racialized and marginalized communities. Trust and confidence in the police by the community is what gives police a mandate to operate. With this in mind, any conversation about the efficacy and effect of street checks must include the perspectives of communities, namely members of racialized and marginalized communities.

At a meeting of the Service & Policy Complaint Review Committee of the Vancouver Police Board on September 26, 2018, the Committee responded to our request, and ordered a third-party independent study into the

**Any conversation about the efficacy and effect of street checks must include the perspectives of communities, namely members of racialized and marginalized communities.**

VPD’s practice of street checks. This study will include a community-based research component, whereby members of racialized and marginalized communities will be interviewed to better understand the effect of street checks on them and their community.

At the moment, the independent study is set to start in January 2019 and conclude in July 2019. A report on the study will be presented to the Vancouver Police Board shortly thereafter. We will be watching.

## Board of directors

Lindsay M. Lyster, President  
Paul Champ, Vice-President  
Alan Rowan, Treasurer  
Steven Savitt, Secretary  
Derek Brackley, Member-at-Large  
David Fai, Member-at-Large  
Richard Marcuse, Member-at-Large  
Paul Schacter, Member-at-Large  
Hasan Alam, Lindsey Bertrand, Ian Bushfield, Paul Champ, Michael Friedlaender, Sarah Hamilton, Lisa Kerr, Jonathan Levitt, Melody Mason, Kevin Millsip, Karen Mirsky, Ayendri Riddell, Tom Sandborn, Paul Tétrault, Maureen Webb, Vanessa Wolff.

## Staff

Josh Paterson, Executive Director  
Grace Pastine, Litigation Director  
Micheal Vonn, Policy Director  
Maggie Knight, Operations Director  
Mark Hosak, Director of Community Engagement  
Jay Aubrey, Counsel (Litigation)  
Iman Baobeid, Communications & Outreach Manager  
Latoya Farrell, Articling Student  
Amy Gill, Executive Coordinator  
Jessi Halliday, Litigation & Operations Coordinator  
Catherine Hart, Supporter Relations Manager  
Emily Lapper, Senior Counsel (Litigation)  
Dylan Mazur, Community Lawyer  
Meghan McDermott, Counsel (Policy)  
Kate Oja, Counsel (Litigation)

## Contact us:

T: 604.687.2919, F: 604.687.3045  
E: [info@bccla.org](mailto:info@bccla.org)

Return Undeliverable Canadian Addresses to:

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

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



[bccla.org](http://bccla.org)



[@bccla](https://twitter.com/bccla)



[@BCCivLib](https://www.facebook.com/BCCivLib)

# WELCOME TO OUR NEW STAFF!



Left to right: our new staff Kate Oja, Emily Lapper, Amy Gill and Latoya Farrell.

We've been fortunate to welcome several new staff members! This Fall, Amy Gill, Emily Lapper, Latoya Farrell, and Kate Oja joined our team.

**Amy Gill** is joining us as our Executive Coordinator after completing a BA at the University of British Columbia with a Double Honours in English Literature and Political Science. Amy has experience working as the President and Letter Writing Coordinator for the UBC Chapter of Amnesty International, where she was active in organizing events and activism opportunities to raise awareness about human rights abuses in Canada and abroad.

Also joining our team is **Latoya Farrell** as our 2018/2019 Articling Student. She graduated from the University of Saskatchewan College of Law in 2018, completing her final year of law abroad at the University of Birmingham in England, where she focused on Human Rights and Criminal Justice. Prior to that, Latoya worked as a Multicultural Liaison with the Fort McMurray Catholic School District helping Aboriginal and newly immigrated students to successfully complete high school.

**Emily Lapper** joins the BCCLA as Senior Counsel in Litigation. A graduate of the

University of Victoria Faculty of Law, Emily worked at Norton Rose Fulbright Canada LLP where she maintained a civil litigation practice encompassing both commercial and public law. Emily has acted as counsel in cases involving Indigenous consultation, administrative law and procedure, local government law, unreasonable search and seizure, right to access to medical marijuana, and criminal sentencing.

Last, but not least, **Kate Oja** joins us as Staff Counsel in Litigation. Prior to joining the BCCLA, Kate was a practising criminal defence lawyer - more recently in Yellowknife where she worked as staff counsel for the Legal Aid Commission of the Northwest Territories, often travelling to remote communities to represent Indigenous clients facing criminal charges. Kate has always been drawn to legal work that advances the rights of marginalized people, and has significant experience litigating Charter cases that engage search and seizure rights, the right to counsel, and limitations on the arrest and detention powers of police.

Please join us in welcoming our new team members and learn more about them at [bccla.org/staff](http://bccla.org/staff).