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Letter from the President

Since 1962, the BC Civil Liberties Association has worked with a singular goal – to protect and advance the civil liberties and human rights of all. Amid a global health crisis, this goal has become more imperative. COVID-19 has highlighted the deep inequities in our society, with a disproportionate impact on precarious workers, seniors, disabled people, refugees, prisoners, homeless people, women and trans people, and Indigenous communities. While many government measures to address the pandemic have been positive, others, such as Alberta's Bill 10 and BC's Bill 19 that grant extraordinary powers to cabinet ministers and limit public accountability, pose serious concerns for our democratic rights. At the same time, local and global movements are challenging systemic racism in policing, such as the militarized policing operations on Wet'suwet'en territories, and calling for significant transformation in policing practices, such as calling for an end to police street checks.

As you will read in this issue of the *Democratic Commitment*, through these uncertain times, we are persisting in our fight to uphold freedom and justice across Canada.

This summer, we celebrated 100 legal interventions before the Supreme Court of Canada – an achievement 20 years in the making that has shaped the civil liberties and human rights landscape in Canada. You can read more about one of our current interventions, Teksavvy, on p.6, and our fight to protect free expression rights against website-blocking orders. In 'The Fight to Protect Democratic Rights in Alberta', p.7, we share our battle against Alberta's dangerous and unconstitutional Bill 10, which gives broad powers to the government to unilaterally write new laws without approval or oversight. And in 'Protecting Youth Who Overdose from Coercive Treatment in BC', p.4, you will read about our successful advocacy with partner organizations in sounding the alarm on BC's coercive Bill 22. This bill proposed the



creation of a new form of detention and involuntary healthcare for youth who have experienced an overdose, which we worked together to pressure the government to put on pause.

No matter the odds, the BCCLA will stand up for civil liberties and human rights of all, particularly the most vulnerable and oppressed. As a member of the BCCLA community, your unwavering commitment allows us to stand in the face of injustice and win. Thank you for your steadfast support.

Sincerely,

A handwritten signature in black ink, appearing to be 'CD' followed by a long horizontal stroke.

Caily DiPuma (she/her/hers)
BCCLA President



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Wet'suwet'en Strong: Challenging Unlawful and Colonial Policing

By Harsha Walia (she/her/hers), Executive Director

BCCLA rang in 2020 with our eyes on Wet'suwet'en territory, where a BC Supreme Court injunction and militarized RCMP operation threatened the rights of land defenders. The RCMP also implemented an arbitrary checkpoint and exclusion zone in Wet'suwet'en territory; notably, it lay outside the scope of the enforcement power granted to them by the injunction. RCMP officers were also exercising unreasonable and overbroad powers to check identification at the checkpoint.

In response, the BCCLA, Wet'suwet'en Hereditary Chiefs, and the Union of BC Indian Chiefs filed a policy complaint to the Chairperson of the Civilian Review and Complaints Commission (CRCC) – a civilian oversight body over the RCMP - regarding the RCMP's implementation and enforcement of the checkpoint and exclusion zone.

As part of the complaint, we submitted first-hand accounts of Wet'suwet'en people, legal counsel, and media who were denied access through the RCMP checkpoint and excluded from the area. Police-enforced media exclusion zones particularly violate the *Charter* by seriously impeding freedom of the press. The Supreme Court of Canada has held, "Strong constitutional safeguards against state intrusion are a necessary precondition for the press to perform its essential democratic role effectively."

One of the first people denied access through the RCMP checkpoint was Cody Thomas Merriman, as he was bringing food and emergency supplies. Shortly after, RCMP turned away Delee Alexis Nikal as she was bringing food and winter supplies. Delee expressed, "I found the whole experience extremely frustrating, embarrassing, and dehumanizing. I could

not believe we were being denied access to our territories as Wet'suwet'en."

We argued the exclusion zone was not *Charter*-compliant, unjustifiably interfered with individual liberty, and violated constitutionally protected Wet'suwet'en rights and title.

Within a month, the CRCC chairperson released an unprecedented response, highlighting the similarity between the RCMP actions in our complaint and RCMP actions that had no legal authority during anti-shale gas protests in New Brunswick. A year prior, the CRCC had already raised legal concerns with the RCMP regarding access restrictions, exclusion zones, stop checks, and over-policing of Indigenous land defenders.

In August, we filed another CRCC complaint regarding flaws in the investigation process of Mr. Merriman's complaint. As Mr. Merriman explained, "RCMP officers who were involved in leading the police operations showed up unannounced to my home and tried to intimidate me to drop the complaint." We urged the CRCC to take independent conduct of the investigation. Such unlawful and colonial exercise of policing power cannot stand.

Street Checks Review Reveals Alleged Officer Misconduct

By Latoya Farrell (she/her/hers), Staff Counsel (Policy)



In 2018, the BCCLA and UBCIC launched a joint complaint against the Vancouver Police Department (“VPD”) strongly questioning the efficacy and necessity of police street checks. In response, the Vancouver Police Board (“Board”) hired Pyxis Consulting to conduct a review of street checks. Relying on the findings of the Pyxis report, the Board decided to close our policy complaint in early 2020.

Raising concerns about the methodology and findings of the Pyxis report, we filed an appeal with the Office of the Police Complaints Commission to review the Board’s decision.

The Police Complaint Commissioner revealed to us that a VPD Professional Standards investigation had been ordered into the alleged misconduct of two VPD officers during the street checks review. Researchers stated that during two separate VPD “ride-alongs” one officer made a number of “inappropriate, racially insensitive comments” and another made “inappropriate comments

about vulnerable and marginalized people, had anger issues, and was overly terse and extremely rude to a member of the public.”

These allegations were included in a draft of the Pyxis report, but were missing from the final public report; the report that the board accepted. This discrepancy bolstered our concerns about the report’s credibility. Shockingly, all Pyxis researchers declined interviews and claimed that all their field notes had been destroyed. A Notice of Discontinuance was issued since the

investigator was unable to identify the officers.

The Director of Police Services is now initiating a review of the Board’s complaints process to examine the methodology and findings of the Pyxis report, the Board’s level of independence from the VPD, and resources available to assist the Board in responding to policy complaints.

We continue to demand transparency and hold the Board and VPD accountable. Our joint effort pushing for a provincial ban on the discriminatory and illegal practice of street checks is in full swing, with Victoria and Vancouver City Council having already passed motions calling for an end to street checks. You can take action by signing the petition at bccla.org/BanStreetChecks.

This has been a long road, but we have stretched, stayed hydrated, and are wearing our comfortable shoes. Let’s go!

Protecting Youth Who Overdose from Coerced Treatment in BC

By Meghan McDermott (she/her/hers), Interim Policy Director

BC's approach to treating mental health prioritizes detention and coercion.

Given our longstanding demands for the *Mental Health Act* to be updated to respect human rights principles, we were very disappointed when Bill 22 was introduced in June 2020. Rather than modernizing our laws to end involuntary treatment, this bill authorizes hospitals to detain anyone under 19 years who has overdosed for 48 hours, up to a maximum of 7 days.

BCCLA joined many others in opposing this proposed system of involuntary treatment. Here are the main reasons why.

Bill 22 is Not Evidence-Based and May Increase Harm to Youth

Involuntary treatment for drug use is unsupported by evidence. We agree with experts such as the Chief Coroner that the bill's approach may actually increase the risk of negative health impacts for youth, including fatal overdoses, especially for Indigenous youth.

If an overdose can result in detention by the state, some youth may opt to use drugs alone, rather than amongst peers. Further, those witnessing overdoses may be less likely to call for emergency medical help. Finally, even a few days of forced abstinence from opioid use can increase the risk of overdose once a person is released.

Insufficient Safeguards Against Use of Restraints and Seclusion

The *Mental Health Act* has no criteria governing the use of restraints and seclusion, nor any oversight of such decisions. This means that youth undergoing

stabilization treatment could be tied to their beds using mechanical restraints and solitarily confined in small, locked rooms with no limit on when it can be used and how long it can last.

This approach is defective and unacceptable, given the increased medical and psychological risk that seclusion poses for children and adolescents compared to adults.



Bill is "On Pause"

The successful advocacy efforts of many have gotten the government's attention. The BC government says that the bill is on "pause," but it could still be enacted this fall. We want this bill withdrawn; nothing can remedy its fundamental defects, especially in the middle of an opioid public health emergency.

Upholding Your Rights in the Fight Against Money Laundering

By **Megan Tweedie** (she/her/hers), Senior Counsel (Litigation)
& **Ryan Carter** (he/him/his), Legal Administrative Assistant

In the wake of soaring housing prices and reports of criminals laundering cash in BC casinos, British Columbians are outraged at the inaction of the government and private sector to combat the epidemic of money laundering across the province.

In response, the BC government launched the Cullen Commission of Inquiry into Money Laundering in British Columbia in 2019. Left unchecked, we recognize that money laundering has significant social and political consequences. However, recommendations proposed to combat money laundering call for the significant expansion of police and regulatory powers and the mass collection of sensitive, private information - all without evidence that such methods will yield results.



As the only civil liberties group with full standing at the Commission, we will work to ensure that the Commission takes into account the risks on everyday British Columbians of mass data collection and intrusive police tactics with little oversight. Our opening statement at the Commission highlighted that mass

data collection poses a significant threat to privacy rights and that allowing regulators to flag transactions with a “foreign component” carries with it a real danger of racial profiling.

The BCCLA also opposed the creation of new policing units and regulatory bodies without serious research to determine what their potential role and impact would be. Even more concerning are recommendations allowing the government to seize innocent Canadians’ property through civil forfeiture or the invasive remedy of unexplained wealth orders. These orders have profound implications for civil liberties, including the erosion of privacy rights, doing away with the presumption of innocence, and subverting the rights that shield people from unreasonable search and seizure.

Money laundering in BC is a legitimate crisis and the BCCLA supports the Commission’s work to address this problem. However, effective remedies cannot simply reflect government and private sector desires for more invasive police powers, broader disclosure of sensitive and highly prejudicial information, and more resources for policing. This fall, our lawyers will be back before the Commission to ensure that the voices of everyday citizens like you are heard and that your rights are upheld.



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Freedom of Expression in the Age of the Internet

By **Megan Tweedie** (she/her/hers), Senior Counsel (Litigation)
& **Ryan Carter** (he/him/his), Legal Administrative Assistant



Our latest legal intervention, *Teksavvy Solutions Inc. v. Bell Media Inc.*, at the Federal Court of Appeal will decide whether Canadian courts have the power to force internet service providers (ISPs) to block access to websites or internet services by issuing a “site blocking” order. The case involves streaming television services that infringed on the copyrights of major Canadian media companies. In 2019, the Federal Court ordered Canadian ISPs to block access to the infringing sites. This was the first time that a Canadian court had ordered an ISP to block access to a website.

One of the ISPs, Teksavvy, appealed, saying the Court does not have the authority to issue a site blocking order. If the Court does grant a site blocking order to prevent copyright infringement, it could open the door to site blocking for other purposes as well.

We are intervening in this novel case to argue that site blocking orders limit the *Charter*-protected free expression rights of website operators, ISPs’ customers, and the entire public. These extraordinary orders should

only be issued when the harm of not blocking the site outweighs the harm of blocking them.

If the Court does issue site blocking orders, the BCCLA argues that the Court should minimize the infringement of *Charter* rights by making the order as narrow as possible and laying out strict limits on how they are used. The Court should consider the reason the site blocking order is being requested, the nature of the expression being blocked, and whether any other steps could limit the harms of a blocking order. Our free expression rights must be taken into account when considering whether to introduce website blocking orders.

The consequences of broad site blocking orders are severe, and the rights of Canadians, including journalists, artists, scientists, and politicians, to express themselves freely online are at stake. The BCCLA will continue to work to ensure that our rights are taken into account as new technologies change the landscape of free expression and impact other critical societal interests and values.

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The BCCLA's main office is located
on the unceded and ancestral territories
of the xwməθkwə'yəm (Musqueam),
Skwxwú7mesh (Squamish) and
səlilwətaəŋ (Tsleil-Waututh) Nations.

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The Fight to Protect Democratic Rights in Alberta

By Grace Pastine (she/her/hers), Litigation Director

This fall, the BCCLA sought leave to intervene in a case that is challenging changes to the law enacted by Alberta's Bill C-10, *The Public Health Emergency Powers Amendment Act, 2020*.

Bill C-10 is a dangerous and unconstitutional new law that gives sweeping powers to Alberta's premier and cabinet ministers – allowing them to make new laws on the fly without the approval of the legislative assembly.

The Albertan government claims that these sweeping powers are necessary to allow the government to respond quickly to the COVID-19 health crisis. However, Alberta's *Public Health Act* already gives broad legal powers to the government; for example, the power to force quarantines and order physical distancing. There is not even a requirement in the legislation that the government publicize changes to the law. How can Albertans hold officials accountable for invisible laws?

Bill 10 became law in Alberta in March 2020. Alberta's conservative government rushed the bill through the legislature in less than 48 hours in a vote that fractured along party lines.

Since the Bill was enacted, government Ministers in Alberta have rushed to decree

new laws – with at least nine ministries enacting more than 35 new orders and amending over 20 pieces of legislation, all without any legislative debate or oversight.

Some of these changes are the types of health orders you might expect during a health crisis – such as mandating stricter quarantine requirements. Others appear more opportunistic – such as granting industry a blanket suspension on environmental reporting requirements. Still others raise serious civil liberties and privacy concerns – such as an order allowing police to access the private COVID-19 test results of people with which they have had contact.

The Alberta government's rush to declare new laws, without debate or oversight, threatens the rights of all people, but especially the most vulnerable. The legislative process of introducing, publishing, and debating bills protects minority rights by demanding that democratically elected representatives, the media, and the public scrutinize all potential laws.

Our civil liberties are often imperilled in times of fear and uncertainty. That is why the BCCLA is going to court to stop this unconstitutional law.



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The Democratic Commitment is a publication of the British Columbia Civil Liberties Association. Established in 1962, the BCCLA 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.

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