



November 6, 2020

TO:

Honourable Steven Guilbeault, Minister of Canadian Heritage
Honourable François-Philippe Champagne, Minister of Foreign Affairs
Honourable David Lametti, Minister of Justice and Attorney General of Canada
Honourable Mark Furey, Minister of Justice and Attorney General of Nova Scotia

VIA Email Only

Regarding: Ten Key Actions on Civil Liberties and Human Rights for Federal-Provincial/Territorial Meeting of Ministers Responsible for Human Rights

I am writing to you on behalf of the BC Civil Liberties Association ("BCCLA"). We welcome the opportunity to participate in the panel discussion "Human Rights in Canada in Challenging Times" at the upcoming Federal-Provincial/Territorial Meeting of Ministers Responsible for Human Rights.

The BCCLA is the oldest and most active civil liberties organization in Canada, founded in 1962. Though based in BC, our work is national in scope. BCCLA is one of Canada's most frequent and successful non-government legal interveners in the country's highest courts and is a sought-out and trusted advocacy organization. Our mandate is to defend and extend civil liberties and human rights for all in BC and Canada through litigation in the courts, law and policy reform, and public legal education. The core issues we tackle include police accountability, criminal legal reform, Indigenous land rights, prisoners' and immigration detainees' rights, privacy rights, surveillance and national security, patients' rights, freedom of expression, democratic rights, and equality rights.

We remain deeply concerned about the current state of civil liberties and human rights across Canada. This is crisis that continues to deepen with the COVID-19 health pandemic and the fault lines of who is kept safe and who is not; the gendered colonial violence borne by Indigenous women, girls and two spirit people every day; the opioid drug poisoning epidemic killing tens of thousands of our neighbours; and the violent harms of policing and prisons especially against Black, Indigenous, low-income, and disabled communities across these lands.



Below we briefly outline ten key issue areas and reiterate our recommended action on human rights in Canada. We recognize and thank the many other partner organizations and frontline communities who have been putting forward these recommended actions for far too long.

Indigenous Rights, Nation-to-Nation Relationship, and Land Back

Despite claims to reconciliation and building nation-to-nation relationships with Indigenous nations, federal and provincial governments have repeatedly failed to meaningfully recognize and uphold the jurisdiction and rights of Indigenous peoples, especially for Indigenous women, girls, children, and two spirit people.

Action 1: The federal government must uphold its commitment to bring forward legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples.

Action 2: The federal government and all provincial and territorial governments must fully fund and implement all the Calls to Justice from the National Inquiry into Missing and Murdered Indigenous Women and Girls and the Calls to Action from the Truth and Reconciliation Commission.

Action 3: The federal government must immediately pay Canadian Human Right Tribunal-ordered damages to First Nations children and make the necessary changes to its funding structures. The Canadian Human Rights Tribunal has repeatedly found in favour of the First Nations Child and Family Caring Society of Canada that inequitable funding for First Nations child welfare amounts to discrimination.

Medical Assistance in Dying (MAID)

The BCCLA litigated *Carter v. Attorney General of Canada*, the case that led the Supreme Court of Canada to unanimously decriminalize assisted dying for seriously and incurably ill Canadians. In response, the federal government tabled Bill C-7, which is an overall improvement on the current law but some major flaws persist. The new proposed law is overly complex and adds additional, confusing hurdles for some patients, and flatly bars other patients – in particular, those deemed to have mental illness as their sole medical condition – from eligibility. Patients whose natural deaths are not “reasonably foreseeable” must endure a 90-day waiting period,



while the previously required 10-day waiting period has been removed for patients whose natural deaths are “reasonably foreseeable.” The patient must be suffering unbearably when the waiting period begins, which means that some patients will now be subjected to 90 days of intolerable suffering before they can have the option of an assisted death. This is cruel and unnecessary and raises serious constitutional concerns.

Action 4: The federal government must address the flaws in the new proposed MAID legislation and make amendments before the bill becomes law. Bill C-7 places many needless and confusing hurdles in front of eligible, profoundly anguished patients and undermines patients’ legal rights.

Repeal the Safe Third Country Agreement

In July 2020, the Federal Court of Canada found that the Canadian law implementing the Safe Third Country Agreement is unconstitutional. The Court determined that Canada is violating the Charter rights of refugee claimants being returned to the US under the Agreement. The Court gave Parliament six months to respond to the ruling. Instead of remedying and repealing the law, the Government of Canada is shamefully pursuing an appeal of this decision at the Federal Court of Appeal. Refugee claimants being returned to the US by Canada under the Safe Third Country Agreement face barriers to refugee protection and harsh conditions of detention.

Action 5: The federal government must respond to the ruling of the Federal Court of Canada by revising and repealing the US-Canada Safe Third Country Agreement. The Orders in Council closing the border to asylum-seekers during the pandemic must also be reversed.

Prisoners’ Rights and End to Torture of Solitary Confinement

The BCCLA and the John Howard Society of Canada (JHSC) brought historic litigation against the Government of Canada for its use of solitary confinement in federal prisons. In 2020, the federal government finally abandoned its attempt to overturn these historic decisions at the Supreme Court of Canada. However, the government’s new law, Bill C-83 enacted in 2019, will



continue to allow prolonged, indefinite solitary confinement in federal prisons under “structured intervention units,” a different name for administrative segregation and solitary confinement. Additionally, a report from the Office of the Correctional Investigator Ivan Zinger indicates that the Correctional Service of Canada is placing prisoners in solitary confinement to limit the risk of transmission of COVID-19. Most recently in October 2020, a government-mandated report authored by Anthony Doob and Jane Sprott found that most incarcerated people in SIU’s are not getting out of their cells. “We have new legislation, new words and so on, but when you look at the numbers, there are all the same old problems,” Anthony Doob told reporters. Further, prolonged solitary confinement continues to be used in provincial jails.

We highlight two additional matters:

- 1) The Correctional Service Canada Commissioner’s Directive 022 violates the *Charter* by denying prisoners access to the media. CD 022 infringes the right to freedom of expression under s. 2(b) of the *Charter*. CD 022 also infringes the rights to freedom of the press under s. 2(b) of the *Charter* and freedom of association under s. 2(d) of the *Charter*.
- 2) Section 52(b) of the *Corrections and Conditional Release Act* gives prison management the authority to hold prisoners in a “dry cell” for an indefinite period of time. This law is contrary to s. 12 and s. 7 of the *Charter* as the practice of “dry celling” a person is cruel and unusual punishment and contrary to one’s rights to life, liberty, and security of the person. Further, this law discriminates against women and those with disabilities contrary to s. 15 of the *Charter* as it is premised on a prisoner being required to expel contraband from their body cavities.

Action 6: The federal government and provincial/territorial governments must end the unconstitutional use of prolonged and indefinite solitary confinement – under any name – in Canada. During the COVID-19 pandemic and beyond, we also call for the immediate release of prisoners who are releasable and an immediate reduction in the number of people in prisons, jails, juvenile detention facilities, and immigration detention centers. Further, CD 022 and section 52(b) of the *Corrections and Conditional Release Act* must be struck.

Police Accountability

In the wake of brutal and, in many cases, deadly examples of police violence against Black and Indigenous people, there has been a wave of public outcry calling for immediate action to



address anti-Black and anti-Indigenous policing practices across Canada. Demands have included defunding the police, robust civilian oversight bodies to hold police accountable, and serious legal questions about the jurisdiction of colonial policing forces on Indigenous lands.

Action 7: The federal government and provincial/territorial government must immediately reduce the scale and scope of policing, including ending police wellness checks; ending all police street checks; implementing a no-carry policy in Indigenous, Black and low-income communities and neighbourhoods; ending the criminalization of Indigenous land defenders; and shifting resources toward community safety. In addition, potential police reforms must not result in growing resources in invasive policing technologies such as body-worn cameras or algorithmic policing. Further, civilian oversight over policing agencies must be truly civilian, independent, transparent, and able to make enforceable recommendations, including a National Indigenous-led Police oversight body as called for by the National Indigenous Justice Summit.

Ban on Facial Recognition for all law enforcement and intelligence agencies

With revelations about Clearview AI's controversial facial recognitions services being used in Canada, there has been widespread concern amongst Canadians about the use of facial recognition technology by law enforcement and intelligence agencies. Clearview announced it is ceasing its facial recognition services in Canada after a joint investigation by federal and provincial privacy commissioners. This is welcome news; however, all levels of government must ban the use of all facial recognition surveillance by law-enforcement and intelligence agencies. Facial recognition technology poses a threat to fundamental privacy rights. Further, studies have shown there are structural anti-Black racial biases in facial recognition surveillance. At a time when society is pushing to address systemic racism in policing, adopting a technology that is known for its racial biases is a move in the wrong direction.

Action 8: Enact federal and provincial bans on facial recognition surveillance by federal and provincial law enforcement and federal intelligence agencies.



End the Criminalization of Sex Work in Canada

BCCLA intervened at the Supreme Court of Canada in the historic *Bedford* case to argue against three criminal laws that prohibited various aspects of adult sex work. We argued against the criminalization of adult sex work to ensure that adult sex workers have safety and control and the ability to determine the circumstances of their work.

Unfortunately, little has changed. The COVID-19 pandemic has further exposed stark health and labour inequities for sex workers. Many sex workers remain out of work, and all of those who continue are working in precarious conditions. But unlike workers in other industries, sex workers have largely been unable to access emergency income supports because the criminalization of sex work isolates sex workers from formal income reporting mechanisms like filing taxes, and because many live and work in poverty and do not meet the income thresholds for emergency benefits. Still others will not engage with institutions for fear of repercussions due to criminalization and stigma.

Action 9: The federal Minister of Justice and Attorney General should issue a federal directive not to prosecute sex work-specific offences in the *Criminal Code of Canada*. The federal directive could direct the Director of Public Prosecutions to not prosecute s. 213, s.286.1, s. 286.2, s. 286.3, and s. 286.4 of the *Criminal Code of Canada*.

Full decriminalization of simple drug possession in Canada

There is an urgent need to adopt evidence-based policies to support the health and safety of people who use drugs. Since 2016, over 14,700 people have died by accidental overdose in Canada. In April 2018 at its National Convention, the Liberal Party of Canada adopted a policy resolution to address drug use as a health and not criminal justice issue, including by removing the criminal sanction for low-level drug possession. Now, the concurrent effects of two public health emergencies—the COVID-19 pandemic and the overdose crisis—have escalated the crisis of overdose deaths. There are decisive steps you can take to protect the health of people who use drugs in Canada, including by fully decriminalizing simple drug possession. Full decriminalization removes all criminal sanctions and other regulatory measures, such as administrative penalties or fines, for the possession of substances for personal use.



Action 10: Whether it takes the form of a ministerial exemption or a Cabinet regulation, all people in Canada should be exempted from the criminal prohibition on simple possession in section 4(1) of the *Controlled Drugs and Substances Act* (CDSA). The federal Minister of Health, under section 56(1) of the CDSA, can immediately exempt all persons in Canada from the criminal prohibition on simple drug possession.

We strongly urge the federal and provincial/territories governments to uphold our international and legal obligations to civil liberties and human rights by taking immediate and decisive action on these ten key recommendations. Please do not hesitate to contact me to discuss further via email at harsha@bccla.org or at 778-885-0040.

Sincerely,

Harsha Walia
Executive Director