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Letter From the President

Karen Mirsky (she/her), President



“I’m fiercely proud of the work our staff does in the courts and on the ground. I’m honoured to be called to the organization alongside a board capable of reflection and change. I’m humbled by the support of our community partners and pro bono counsel, without whose perspectives and expertise we would not have come to be the organization we are today.”

On December 9, 1962, a group of people met at the University of British Columbia to talk about the detention of the Doukhobors, a Russian religious sect believed to be responsible for the bombing of a mining tower in the Kootenays. Four months after conspiracy charges were dismissed, over a hundred Doukhobors, including women and children, continued to be detained at Mountain Institution. This was to become the first meeting of the BC Civil Liberties Association.

From that day, the BCCLA’s work has spanned a broad range of issues and activities: in the early 80s we argued for the recognition of Indigenous rights in the Charter; we published our first guide to privacy rights in the 90s; and our 2010 Olympic-born legal observer training has been replicated across the country and internationally. Our advocacy has helped to end solitary confinement, and fight for accountability across the country on issues such as surveillance and racial profiling.

Today, the BCCLA continues to defend and expand civil liberties in Canada.

This year, the BCCLA forced the RCMP Commissioner to address extreme delays in responding to public complaints by challenging their failure to respond to its own watchdog in a timely manner (BCCLA v. RCMP, 2021 FC 1475). We’re the only civil liberties organization at the Mass Casualties Commission in Nova Scotia and the Cullen Commission, here in BC, pushing for ever greater police and government accountability. In the courts, we continue our fight to end prison lockdowns. Our public education mandate has advanced into the digital realm, with our recent publication on digital privacy rights for youth.

Sixty years after our inception, the BCCLA does not take its role for granted. Taking a stand for human rights and civil liberties has never been an easy battle. At times, we’re called to make difficult decisions on competing rights, to advance unfavourable positions, or make difficult choices on what or who we champion.

I’m fiercely proud of the work our staff does in the courts and on the ground. I’m honoured to be called to the organization alongside a board capable of reflection



and change. I’m humbled by the support of our community partners and pro bono counsel, without whose perspectives and expertise we would not have come to be the organization we are today.

While the nature of the work remains largely constant, the impacts and circumstances have changed over the years. The constitutional conversation has evolved and the BCCLA is evolving alongside it. While we continue to defend and expand civil liberties and human rights for all, and to act in solidarity with the rights seeking groups who inform our work, the stakes have somehow never felt higher.

In hope and solidarity,

Karen Mirsky

Mass Casualty Commission: Advocating to Enhance Democratic Policing and Protect Marginalized Communities

Meghan McDermott (she/her), Policy Director

In April 2020, a man impersonating an RCMP officer killed 22 people in various locations in Nova Scotia. The public has been asking questions ever since, wanting to understand whether the state – especially police – could have better protected the communities harmed. The failure of the RCMP to send an emergency alert through cellular phones to warn Nova Scotians that a killer was at large and driving an RCMP replica vehicle is the most well-known example of police actions (or inactions) that have perplexed and angered the public.

Seeking to ask such questions and to make findings on the causes, context and circumstances giving rise to the mass casualty as well as the responses of police, the governments of Canada and Nova Scotia created the Mass Casualty Commission, an independent public inquiry that is currently underway.

The BCCLA has joined forces with the East Coast Prison Justice Society to participate in this important inquiry due to our shared interest in human rights and police accountability. The East Coast Prison Justice Society works to raise awareness of the socio-economic, political, and institutional inequalities impacting marginalized people and communities in Nova Scotia and the Atlantic Region.

The record before the Mass Casualty Commission has revealed a devastating policing failure, on April 18 - 19, 2020, and long before, that contributed to the mass casualty. One of the most disturbing aspects of this catastrophe is that the evidentiary record has revealed that some police were either unwilling or unable to perceive the perpetrator as a threat to public safety and properly investigate him. Even after receiving tips from the public about illegal weapons and violent intentions, the police failed to take appropriate action against the man whose

character exemplified many of the core characteristics of police culture itself.

Our participation has been largely limited to the third and final phase of the inquiry where recommendations for the future were developed. Our submissions drew attention to the systemic and cultural nature of policing problems, stressing that current oversight mechanisms are ineffective and leave communities vulnerable. We need strong and independent civilian oversight of police rather than the current labyrinth of weak processes.

As the Mass Casualty Inquiry continues through to 2023, we will be striving alongside East Coast Prison Justice Society to ensure that the Commission does not inadvertently cause further harm to marginalized people and communities through its recommendations to the Canadian and Nova Scotian governments. 🐦



Standing with Sex Workers in their Fight for a Safer Sex Industry

By Vibert Jack (he/him), Litigation Director

This October the BCCLA appeared at the Ontario Superior Court of Justice in the case of *Canadian Alliance for Sex Work Law Reform v Canada*, the latest challenge to Canada's laws criminalizing sex work.

Back in 2013, in a case called *Canada v Bedford*, the Supreme Court of Canada decided that three major prostitution provisions violated the rights of sex workers to security of the person as guaranteed by section 7 of the *Charter*. The Court found that a ban against "bawdy houses" meant that sex workers could not work in safe, indoor environments. They also found that outlawing "living on the avails of prostitution" meant that sex workers could not access support from third parties like

(PCEPA) was introduced. The government claimed to model the PCEPA after "Nordic" regimes that criminalize clients. Canada's approach, however, not only criminalizes the purchase of sexual services, but also advertising, most third-party activities, and the sale of services in certain public places – it effectively seeks to eradicate sex work. As a result, sex workers can't openly communicate with clients, work in safe environments, or rely on third parties to help protect their health and safety. Now an alliance of sex worker rights groups from across the country has brought a new Charter challenge, arguing that the problems outlined in *Bedford* persist under the PCEPA.

We intervened in this case to argue that sex workers' section 7 rights are still being infringed. We urged the Court to apply an intersectional lens to its analysis. While all sex workers are harmed by the criminalization of their profession, the severity of those harms vary depending on the circumstances of any particular individual. These laws should be struck down because of the harm that they cause to the most vulnerable sex workers, including those who are Indigenous, Black, trans, non-binary, racialized, living with disabilities, and living in poverty.

We also pointed out that Canada's reply to this challenge was not consistent with the framework of substantive equality. For instance, the government has argued that as the purchase of sex is now illegal, the laws no longer infringe on the rights of sex workers. The government has also argued that the harms and stigmas related to sex work are inherent to that work, and not caused by any law. These arguments ignore the actual harms that sex workers keep telling us they are experiencing. The government needs to start listening to sex workers, and the BCCLA will continue to fight until they do. 🐦



Photo: Jared, Migrant Workers Alliance for Change

bodyguards, drivers, and receptionists. Finally, the Court held that the prohibition against "communicating for the purpose of prostitution" made it impossible for sex workers to properly screen clients and safely negotiate terms.

In response to *Bedford*, the federal government amended the *Criminal Code*. In 2014, under a Conservative government, the *Protection of Communities and Exploited Persons Act*

Exemption ≠ Decriminalization: A Rights-Based Path to Drug Decriminalization

Stephen Chin (he/him), Staff Counsel

When the three-year pilot project to exempt British Columbians from being charged with personal possession offences of small amounts of certain drugs under the *Controlled Drugs and Substances Act* comes into effect in January, it will be a long-anticipated step in the right direction.

This historic step – announced this year and the first in Canada – comes as the province continues to grapple with the deadly drug poisoning crisis. Since the BC Provincial Health Officer first declared the crisis a public health emergency in 2016, the number of deaths due to drug poisoning has reached record highs, with 2022 expected to match or exceed the 2236 deaths recorded last year. While time will tell if the personal possession

exemption of up to 2.5 grams of certain drugs will help to stem this devastating tide, it is time that we do not have left to spare.

The exemption is not full decriminalization. It is not a “comprehensive strategy to address problematic substance use in Canada” as called for in the Minister of Mental Health and Addiction’s mandate letter, and it is also hard to reconcile with the federal government’s continued reliance on a damaging criminal law approach to drug use that disproportionately impacts Indigenous, Black, racialized, and low-income communities. The federal government has missed several meaningful opportunities to coordinate a comprehensive public health approach to drug use: instead, it has

opted for piecemeal, incremental adjustments that will continue to leave many people behind.

Our concern with this unacceptable status quo is why we continue to call for bold, immediate, and coordinated action as part of the civil society platform *Decriminalization Done Right: A Rights Based Path for Drug Policy*. The platform calls for the federal government to make fundamental changes to drug policy, including the full repeal of laws criminalizing simple possession and necessity trafficking. We know that a meaningful government response must reduce the stigmatization of drug use. Therefore, we call on the government to remove all criminal and administrative sanctions associated with simple possession and to expand access to the safe supply of drugs, evidence-based harm reduction services, and culturally appropriate and voluntary supports.

We also call for a particular focus on the toxic drug supply that the BC Coroners Service warns is being contaminated with fentanyl and increasingly benzodiazepines. As this unpredictable and toxic supply continues to kill people from all walks of life, in all areas of the province, and irrespective of their frequency of drug use, we recognize that the key intervention to saving lives is access to a regulated, non-coercive, and reliable safe supply of drugs. ▼



Graffiti at corner of Frances Street & Salsbury Drive, Vancouver, BC / Unceded territories of the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish) and səliłwətaɬ (Tsleil-Waututh).

A Historic Step Towards Ending Canada's Immigration Detention Regime

By Mara Selanders (she/her), Policy Staff Counsel (Community)

On July 21, 2022, the Minister of Public Safety and Solicitor General in BC announced that the province would end their immigration detention agreement with Canada Border Services Agency (CBSA).

This historic decision is a huge win for human rights and followed a sustained advocacy campaign that saw the BCCLA bring together a coalition of fellow advocates, academics, city councillors, and those with lived experience to share the experiences of detainees and expose the ways in which Canada's immigration detention regime violates international human rights law.

Our advocacy included making submissions to the BC government as part of their review and a 14 Days of Action campaign to publish all the coalition submissions and engage the public on this oft-invisible matter. The campaign culminated in a unanimous vote by Vancouver City Council to join us in urging the province to terminate its agreement with CBSA.

The agreement entrenched the tiered system of double-punishment and incarceration that defines Canadian immigration law. It allowed immigrants and refugees to be regularly hand-

cuffed, shackled, and held with little to no contact with the outside world in some of the country's most restrictive confinement conditions, including maximum security provincial jails and solitary confinement.

Immigration detainees are people who come to Canada seeking safety or a better life. Over the past five years, Canada has detained tens of thousands of individuals under immigration law while they await the resolution of their immigration or refugee matters, including children, survivors of severe trauma or persecution, and persons with disabilities.

In making their decision, the Province has prioritized the rights of these individuals and acknowledged the atrocities they have faced within this cruel, carceral system. This

decision is also a critical repudiation of immigration detention as a whole.

We are heartened that BC has taken this step, but there is still a long way to go. We will be monitoring the 12-month transition timeline given to the CBSA to phase out its use of BC jails and holding both governments to account. Now that we are seeing other provinces such as Nova Scotia and Alberta follow BC's example by terminating its agreement with CBSA, it is our hope this will in turn increase pressure on our federal government to abolish immigration detention altogether.

The BCCLA will continue to work alongside all of our coalition partners to hold state actors accountable and protect and advance the human rights of all those seeking to call this place home. 🙌



Advocates react to unanimous Vancouver City Hall vote calling on Province of BC to end CBSA immigration detention agreement; Photo: Leo Hynes, Human Rights Watch

New Digital Privacy Rights for Youth Project

By Mara Selanders (she/her), Policy Staff Counsel (Community)

This summer, we launched new animated short videos, lesson plans, and guides about youth privacy and freedom of expression rights with regards to their personal electronic devices, such as smartphones. These educational materials outline the current law and policy related to searches of these devices in school and by police, as well as limits on student freedom of expression online. They ensure that students, teachers, and guardians are aware of the legal landscape surrounding youth privacy and freedom of expression.

The Supreme Court of Canada has determined that an individual student's right to privacy while at school must be balanced by the responsibility of school administrators to ensure the safety and well-being of the student body as a whole. This means that school administrators are permitted to search students in a variety of contexts, within reason. Further, the *School Act* in BC authorizes schools and school boards to make rules and Codes of Conduct to which students must adhere. In BC, some Codes of Conduct explicitly authorize searches of personal electronic devices.

However, this does not mean that a high school principal is automatically authorized to access the vast amount of personal information available on a student's phone in any circumstance. The extent of any search must be



Illustration: David Kativu

justified by the gravity of the suspected threat or rule infraction and based on evidence of a possible violation. For police officers, the standard allowing for a search of a cell phone is much higher and they cannot use teachers and principals to search a student on their behalf.

We encourage concerned parents and students to reach out to their school or school district and inquire about a technology use policy or whether their

code of conduct specifically addresses search and seizure of personal electronic devices. If it doesn't, share what you've learned and encourage them to establish a policy so that all students and administrators are clear on their respective rights and responsibilities! 🐦

Watch the video and download 'Digital Privacy Rights for Youth' at bccla.org/edevices

Thanks to the Canadian Internet Registration Authority and the Law Foundation of Ontario for their support in making this project possible.

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Meet Our New Staff

By Leila Toledo (she/her), Director of Operations and People

The fight for equality, freedom, and justice is a team effort. The BCCLA's work to defend civil liberties and human rights wouldn't be possible without our brilliant staff. This year, we were excited to welcome new staff to our small, but mighty crew.

Mara Selanders joins us as **Policy Staff Counsel (Community)**. Mara completed her undergraduate degree in English literature at the University of Saskatchewan before moving to Ottawa to complete a Master of Journalism at Carleton University. After volunteering for a year in Sri Lanka, she moved to Vancouver to attend law school at the University of British Columbia. Mara is committed to community organizing and justice for racialized and oppressed people.

Vibert Jack joins us as **Litigation Director**. Vibert completed an undergraduate degree in engineering at the University of British Columbia (UBC) before changing paths to follow a career that better aligned with his core values. He returned to UBC, this time to study law. Vibert has practiced criminal and administrative law; he spent the last few years working tirelessly to defend the civil liberties and human rights of incarcerated people at Prisoners' Legal Services.

Ga Grant joins us as **Litigation Staff Counsel**. Ga previously clerked with the BC Supreme Court, assisted with legal aid work on Gitksan and Wet'suwet'en territories, among other community justice work. Ga holds her Juris Doctor from the University of Victoria following her Bachelor of Music from the University of Ottawa. She was called to law to find

creative and strategic use of the colonial legal system as a tool for justice.

Safiyya Ahmad joins us as an **Articling Student**. Throughout her education, Safiyya developed a special interest in interdisciplinary studies, criminal and constitutional law, and social justice. Safiyya completed a B.A.Sc and a M.A. from McMaster University before finishing her law school education at the University of Ottawa. She interned at the immigration branch of the Community Legal Services of Ottawa, and at the education branch of the University of Ottawa Community Legal Clinic.

Niki Bains joins us as **Policy Staff Counsel**. She completed her undergrad at the University of Alberta in political science and obtained her law degree from the University of Victoria. After completing a clerkship at the Provincial Court of Alberta, she was called to the bar in 2019. Niki seeks to integrate an anti-racist and anti-colonial framework in her legal work. Alongside her work with BCCLA, Niki practices in the areas of Aboriginal and constitutional law, serving Indigenous Nations.

While we're excited to welcome our new team members, we are also sad to bid farewell to our former Director of Engagement & Development Sambriddhi Nepal, Supporter Engagement & Development Manager Greta Lin, Litigation Director Grace Pastine, Litigation Staff Counsel Jessica Magonet and Megan Tweedie, and Interim Executive Director Stephanie Goodwin. We are grateful for their dedication and expertise and cheer them on as they move on to new endeavors.