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Enough is Enough:

We took the RCMP Commissioner to Court

By Jessica Magonet (she/her/hers), Staff Counsel (Litigation)



On September 21, 2021, pro bono counsel Paul Champ and I appeared in Federal Court to argue the BCCLA's case against the RCMP Commissioner. This lawsuit was about the RCMP Commissioner's extreme delays in responding to public complaints. In February 2014, the BCCLA filed a complaint against the RCMP for spying on Indigenous and climate advocates opposed to the Northern Gateway pipeline. The complaint was investigated by the Civilian Review and Complaints Commission (CRCC) – the RCMP watchdog. But due to the RCMP Commissioner's extreme delay in dealing with this complaint, the CRCC was only able to release its final report in December 2020, **nearly seven years after the complaint was filed.**

At the Federal Court, we argued that the RCMP Commissioner had violated her statutory obligations

and the BCCLA's constitutional rights by causing this inexcusable delay.

Unfortunately, this case is not the only example of extreme delay by the RCMP Commissioner. Indeed, delays have plagued the RCMP complaints system for over a decade. These delays have significant consequences. They undermine public confidence in the RCMP and the complaints process. They harm individuals and families waiting for accountability and justice. Complaints about very serious matters have sat on the RCMP Commissioner's desk for years. Recommendations from the CRCC for addressing RCMP misconduct are only implemented once the complaints process is complete. We told the Federal Court that the culture of complacency within the RCMP needs to change.

During the hearing, counsel for the Attorney General of Canada finally acknowledged that the RCMP Commissioner had violated her obligations under the *RCMP Act* by waiting so many years to respond to the BCCLA's complaint. This was a significant concession.

We now anxiously await the Federal Court's decision. But regardless of the outcome, we know our litigation has had a positive impact. Since the BCCLA launched this case, the RCMP Commissioner has hired additional staff members to help her respond to complaints more quickly. She has also made significant progress in dealing with the backlog of complaints. We hope the Federal Court issues a strong judgment condemning the extreme delays caused by the RCMP Commissioner, so she is finally held to account.

Raising the Alarm on State and Corporate Surveillance of Tiny House Warriors

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

In August I travelled to the Tiny House Warriors Village on a fact-finding mission to better understand the escalating intimidation and surveillance at the hands of the state of Canada and the Trans Mountain (TMX) Crown Corporation.

The Tiny House Warriors (THWs) are Secwepemc Land & Water Defenders who oppose the plan to twin the TMX pipeline. They engage in political advocacy to block the expansion of the pipeline, including the maintenance of the THW Village, which was set up in July 2018 to challenge the establishment of an industrial man camp in Blue River, BC.

After a warm welcome from Kanahus Manuel and other THW members, they showed me the idling and unmarked vehicles nearby, each pointing towards the village with a single man inside. When I approached them, I could see that the men inside were filming me and the THWs confirmed that this occurs 24/7. I asked the men who they were and why they were recording me, but they would only shake their heads.

In addition to the constant surveillance by men seeking to remain anonymous, the THWs are also subject to a robotic surveillance tower installed by TMX. This tower points directly at the village and even into the private premises of Kanahus Manuel's tiny house. This tower is arrayed with floodlights, loudspeakers, sensors and cameras.

A walk with the THWs around their village revealed additional surveillance equipment installed in public areas along a footpath leading through blueberry fields and towards the banks of the Blue River. I was alarmed to see video cameras affixed to trees on public land, without any form of notice as to which government agency is



collecting the recordings and for what purpose!

When we came across some workers in the area with video cameras on their hardhats, they too refused to discuss who they work for and why they were collecting our personal information in a public space.

This around-the-clock monitoring of the THWs is an intimidation tactic by the Canadian state to silence Secwepemc Land & Water Defenders and to continue to disregard the authority, jurisdiction and inherent Title and Rights of Indigenous peoples. While I have filed a request with TMX to find out more about what they are doing with the audio and video recordings that are being collected, the BCCLA continues to work in coalition with the THWs and others to call for an immediate suspension of permits and halt of TMX construction until the Secwepemc people give their free, prior and informed consent to the pipeline expansion.

Solitary by Another Name:

Continuing our Fight Against the Torture of Prolonged, Indefinite Isolation

By Megan Tweedie (she/her/hers), Senior Counsel (Litigation)

The BCCLA continues to fight for the humane treatment of people in prisons. We are filing a lawsuit against the federal government challenging the use of prolonged, indefinite lockdowns and restrictive movement routines in Canadian prisons. These practices can result in locking down entire institutions or setting highly restrictive schedules that isolate prisoners in their cells for weeks or months at a time, without any meaningful human contact.

Long-term isolation causes physical, psychological, social and spiritual trauma and exacerbates mental illness – or even causes it in people who were healthy when they entered isolation.

In 2019, we secured a significant court victory when the BC Court of Appeal affirmed the unconstitutionality of federal government laws that authorized prolonged, indefinite solitary confinement in federal prisons. The Court determined that the government's administrative segregation regime allowed solitary confinement under the United Nations Mandela Rules (confinement without meaningful human contact for 22 hours or more a day). The Mandela Rules, which establish minimum standards for global prisoners, reinforce human rights principles, including recognizing the absolute prohibition of torture or other cruel, inhuman or degrading treatment or punishment. They prohibit the use of solitary confinement for any period of time for people with physical or mental health disabilities when it would exacerbate their conditions. They further prohibit the use of solitary confinement for more than 15 days for any person, as beyond that constitutes torture.

While the federal government has enacted legislation claiming to ban the practice of prolonged, indefinite solitary confinement, lockdowns and restrictive movement routines can result in exactly that for people in prison. The BCCLA is heading to court to challenge these inhumane practices, which have no place in our constitutional democracy.

Lockdowns and Restrictive Movement Routines: Solitary by Another Name

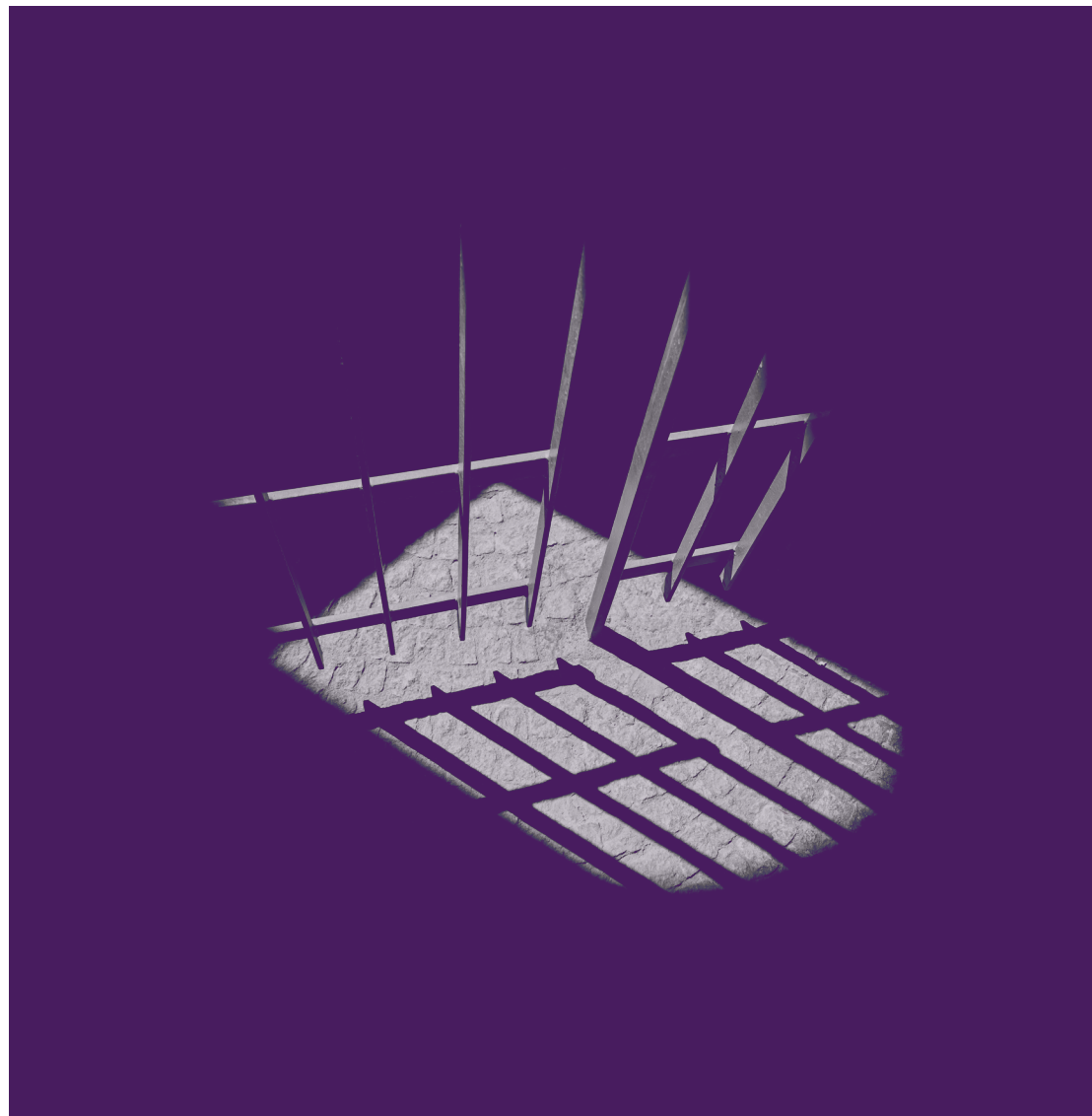
During a lockdown, all activities and privileges are suspended, and prisoners are locked in their cells, sometimes for weeks or months at a time. Lockdowns are frequent in federal prisons and can occur for a security incident, operational or administrative reasons. Restricted movement routines confine people in prison who do not have programs, jobs, or schooling to their cells for most of the day. Many lockdowns and restrictive movement routines can result in solitary confinement under the *Mandela Rules*.

Lockdowns and restricted movement routines constitute a significant limitation on the liberty of people who have already had much of their liberty taken away. These practices, particularly when imposed for long periods of time, have significant adverse effects on people, including anxiety, panic, paranoia, self-harm and suicidal thoughts and behaviours. These negative effects are compounded by the fact that people in prisons do not receive the same access to ordinary occupational and programming opportunities which can assist with their rehabilitation and treatment. Rehabilitative goals are frustrated in this broken system.

Our Lawsuit

Our new lawsuit claims that Canada's *Corrections and Conditional Release Act* ("CCRA") does not authorize prolonged and indefinite use of lockdowns and restrictive movement routines. To the extent that it does, those provisions are constitutionally invalid. We argue that the administration of prolonged and indefinite lockdowns and restrictive movement routines unjustifiably infringes s. 7 (protection of life, liberty and security of the person), s. 12 (prohibition against cruel and unusual treatment) and s. 15 (protection of equality) of the *Charter of Rights and Freedoms*.

We argue that the right to life is infringed by state-imposed conditions that cause an individual to end their life. The rights to liberty and security are infringed when state-imposed conditions deny an individual meaningful human contact, and expose an individual to physical, psychological, social and spiritual trauma. Prolonged and indefinite imposition of restrictive movement routines and lockdowns violate basic standards of decency and impose particularly egregious suffering on mentally ill and/or disabled, racialized or Indigenous people in prison.



Far too many people in prison are held in conditions that threaten their health, safety and human dignity on a daily basis. The system continues to lead to preventable death and suffering for so many. We will continue to fight for more humane conditions in federal prisons with this lawsuit. If successful, we can put an end to the use of prolonged and indefinite lockdowns and restrictive movement routines in federal prisons. Thank you for standing with us against these unjust and inhumane practices.

Future Harms, Today: Upholding Young Canadians' Rights in the Face of Climate Change

By Ryan Carter (he/him/his), Litigation and Office Coordinator

While the effects of the climate crisis will be felt by all, marginalized communities including Indigenous peoples, racialized people, migrants, and the working poor will bear this burden most heavily. Among these disadvantaged groups are young people, who by virtue of their age have no say in decisions being made today to combat climate change. The case of *La Rose et al. v. Her Majesty the Queen*, at the Federal Court of Appeal brings this issue to the fore and will determine whether governments' inaction to fight climate change violates young people's *Charter* rights.



In 2020, a group of young people argued at the Federal Court that the government's failure to take meaningful action to address climate change violated their *Charter* rights. However, the Court dismissed the case on the basis that their claims were too broad for a judgment to be made. These young people appealed this case to the Federal Court of Appeal later that year.

This novel case has serious ramifications for Canada's fight against climate change. The BCCLA sought to intervene in this case to show how government action or inaction today, which leads to future harms, can form the basis of an equality rights challenge under the *Charter*. If evidence of future harms could never form the basis of a *Charter* challenge, then governments could always escape *Charter* scrutiny by off-loading the negative results of their policies on future generations. Instead, we argued that those future harms do engage the *Charter*. While we feel the effects of climate change today, these harms will only worsen in the years to come. Governments are aware that the young people will bear the burden of the increased costs of addressing an ever-deteriorating environment. The Court must therefore take age-based discrimination claims based in the *Charter* seriously.

The Federal Court of Appeal denied our application to intervene in the case because having additional parties would be inefficient. The case will continue, but a date for the appeal has not yet been set. Climate change poses an existential risk to life as we know it. It is crucial that governments not avoid their responsibilities to future generations. The BCCLA will continue to work to ensure that young Canadians' *Charter* rights are respected, both now and in the future.

The BCCLA was represented by Neil Abraham and Gib van Ert of Gib van Ert Law.



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Police & Log:

Rights Violations Abound at Ada'itsx (Fairy Creek)

By **Veronica Martisius (she/her/hers)**, Staff Counsel (Policy)

The movement to protect some of the last remaining ancient old-growth forests from destruction at Ada'itsx (Fairy Creek) and the surrounding area has become known as the largest act of civil disobedience in the history of so-called Canada. This movement involves the convergence of two interested parties: Indigenous land defenders exercising their inherent rights and responsibilities to the land and people exercising their rights to protest irreversible logging activity permitted by the BC government, carried out by Teal Cedar, and upheld by the BC Supreme Court through the granting of an injunction order.

Shortly after the RCMP began its enforcement of the injunction, the BCCLA once again sounded the alarm on the RCMP's unlawful use of exclusion zones and checkpoints – even though the injunction order specifically allowed for any member of the public to access the injunction area and to participate in peaceful, lawful and safe protest. In a letter to RCMP Commissioner, Deputy Commissioner, BC's Premier, and Minister of Public Safety, we asserted that exclusions zones in this context constituted an illegal exercise of power to block members of the public, including legal observers and media, from accessing the area and to monitor police enforcement tactics.

On June 8, 2021, while on location in Ditidaht territory, I questioned two RCMP officers at a checkpoint on Caycuse Main Road, which was blocking public access to an area where active enforcement was **not** taking place (but logging was). They wrongly advised that their authority for doing so was the injunction and the common law. They told us that we could fight the matter in the courts or, if we chose to pass, be arrested for obstruction under s. 129 of the *Criminal Code*. In that situation, the RCMP boiled our constitutionally protected rights down to



“opinions,” and we were left with no reasonable choice.

On July 20, 2021, Justice Thompson of the BC Supreme Court, ruled that the RCMP's broad exclusion zones and checkpoints were unlawful. Unfortunately, that did not stop the RCMP. Instead, the RCMP doubled-down on its enforcement tactics by continuing to use broad exclusion zones, impeding the media, violently targeting Indigenous land defenders, assaulting protestors with pepper spray, and ripping off protestors' COVID-19 masks. What's more, RCMP officers did so while intentionally concealing their identities. This egregious behavior effectively forced Justice Thompson to deny Teal Cedar's application to extend the injunction because the extent of the RCMP's infringement of civil liberties put the Court's reputation at risk.

The BCCLA is grateful to the members of the public who challenged RCMP enforcement tactics in court. Yet, we are deeply disturbed that costly litigation has seemingly become the only way to attempt to hold the police accountable for unlawful and oppressive conduct. This is not indicative of a free and democratic society, is an affront to the rule of law, and does not result in real consequences or change.

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Unceded Coast Salish Territories

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

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Welcome New BCCLA Staff!

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

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

Amy Kim joins us at the **Donor Relations Coordinator** in our Engagement Department. Amy recently completed her BA in Philosophy at Simon Fraser University, and prior to joining the BCCLA, worked at Pivot Legal Society as an urban researcher focused on urban planning and youth engagement in civic education.

Our second addition to the Engagement Department is **Greta Lin**, who joins us as the **Supporter Engagement and Development Manager**. Prior to the BCCLA, Greta was the Communications and Development Coordinator at Megaphone Magazine and volunteered with grassroots organizations in the Downtown Eastside in Vancouver.

Also joining our team as the **Operations Manager** is **Darcie Dyer**, who comes to the BCCLA from the arts and cultural non-profit sector. Darcie has a BA in Art and Design and an Honours Post-Graduate Diploma in Art History from the University of British Columbia. She brings a diverse skill set in project management, programs, accounting, facility management, and even keeping the office plants alive.

We were also delighted to have **Stephen Chin** join us as an **Articling Student** in October 2020. Stephen has received degrees in science, commerce, and law from the University of Alberta. Informed by his prior experience at a small governmental commission and a university ombuds office, Stephen is attentive to the space where fairness, privacy, and institutional policies intersect and collide with community interests.

While we're excited to welcome our new team members, we are also sad to say goodbye to our former Executive Director Harsha Walia, Outreach and Communications Coordinator Amy Gill, Policy Director Aisha Weaver, and Operations Manager Jessi McCallum. We are incredibly grateful for their leadership, dedication, and expertise, and will deeply miss them at the BCCLA.

To learn more about our staff team, go to bccla.org/staff.



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The Democratic Commitment is a publication
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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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