



Ontario
Civil Liberties
Association

“The OCLA takes a vigorous and highly principled approach to defending free speech rights, which is an approach that is sorely needed in Canada today.”

— John Carpay,
President,
Justice Centre for
Constitutional Freedoms

“I am very pleased to learn of the Ontario Civil Liberties Association, and wish it the greatest success in its work, which could not be more timely and urgent as elementary civil rights, including freedom of speech, are under attack in much of the world, not excluding the more free and democratic societies.”

— Noam Chomsky,
Institute Professor, MIT

“Freedom of expression is our most fundamental and most precious freedom. It has been under attack in Canada for years. The Ontario Civil Liberties Association has taken a position on freedom of expression that is both courageous and principled. The OCLA now stands alone and its position should be supported by all Canadians who cherish democracy and freedom.”

— Robert Martin,
Professor of Law,
Emeritus,
Western University

ocla.ca



May 24, 2015

By Email

Tasleem Thawar
Executive Director
PEN Canada
Email: tthawar@pencanada.ca

Re: PEN Canada's improper use of “Censorship Tracker”

Dear Tasleem Thawar:

I'm writing you to draw public attention to the fact that, in the instance described below, PEN Canada acted in a way that harmed efforts to protect the right of freedom of expression in Canada.

In the struggle to protect freedom of expression, civil society organizations must particularly seek to protect individuals whose rights are most at risk from being attacked using disproportionate means wielded by governments and large institutions or corporations.

In the present political climate in Canada, cases that clearly fall in this category include those where the expression can negatively impact public opinion about Canada's diplomatic and military support for US and Israel policy and actions in the Middle East, or where state suppression of targeted expression supports the geopolitical goals of the US and Israel in the Middle East. In this regard, there is evidently a material systemic push towards: criminalizing expression against the state of Israel (including BDS), criminalizing revisionist expression about The Holocaust, and criminalizing critical expression about Jewish identity politics.

Canada is at war, and civil rights organizations must act accordingly to absolutely oppose state-sponsored suppression of dissent, state-run witch hunts, and laws that violate fundamental principles. Freedom of opinion and expression is a human right.

In particular, civil rights organizations must never sacrifice an individual who is targeted by the state using an overtly political instrument such as the “hate speech” *Criminal Code* provisions, no matter what the particular expression may be. Throwing the accused under the proverbial bus can never be an option, because this invites the courts to condone a fundamentally unjust law. The said *Criminal Code* provisions do not require proving any actual harm to any actual person, and each individual prosecution is required to be expressly approved by the government (Attorney General). These are victimless crimes, and the accused are politically selected.

I wrote to you on May 13, 2015, expressing a grave concern in a particular case. I wrote:

PEN Canada publishes the website “Censorship Tracker” that is at URL <https://censorshiptracker.crowdmap.com/>, according to that website and to public announcements that your organization has made.

That website contains a description of the case of Mr. Arthur Topham, which PEN Canada has authored, which reads:

“Arthur Topham, Publisher & Editor of the website RadicalPress.com based out of Cottonwood, British Columbia, has been criminally charged with “Hate Propaganda” for anti-Semitic comments posted on his website. The arrest came after several hate crime related complaints in the previous years. The Ontario Civil Liberties Association has condemned his charge as a violation of free speech and is circulating a petition against it.”

This description is at the URL <https://censorshiptracker.crowdmap.com/reports/view/24>.

Your organization’s description of Mr. Topham’s case can reasonably be interpreted to mean that your organization has determined and is of the position that Mr. Topham has made “anti- Semitic comments” on his website, and that he was criminally charged “for anti-Semitic comments posted on his website”.

The Ontario Civil Liberties Association (OCLA) is of the position that this description is misleading, unjust and unnecessarily harmful to Mr. Topham’s case.

While your organization does oppose the “hate crime” provisions of Canada’s *Criminal Code*, in doing so, your apparent position on anti-Semitic content on the targeted website is both (1) not relevant to your principled opposition to the problematic *Criminal Code* sections, and (2) harmful to Mr. Topham’s case, thereby making it more likely that a court would not overturn the said sections on constitutional grounds.

The OCLA urges you to make the needed correction to your description of Mr. Topham’s case, and to refrain from such practices in all future cases. The OCLA notes that Mr. Topham’s case is the only case out of 50 cases presently on the Censorship Tracker website that involves the subject of Zionism, so it should not be difficult to make these changes.

Furthermore, we remind you of international law on such matters:

“Laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the Covenant imposes on States parties in relation to the respect for freedom of opinion and expression. The Covenant does not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events. Restrictions on the right of freedom of opinion should never be imposed and, with regard to freedom of expression, they should not go beyond what is permitted in paragraph 3 or required under article 20.” — General comment No. 34, *International Covenant on Civil and Political Rights*, Human Rights Committee, 102nd session, CCPR/C/GC/34, para. 49.

Your first response (May 13) was, in part:

“As you’ll note, the Censorship Tracker is a partnership between four organizations: PEN Canada, BCCLA, CCLA, and CJFE. So, I need a bit more time than usual to respond to your letter.”

Your next response (May 15) was, in part:

“Just a update. it seems we had an administrative oversight in the office last November. We had been in touch with Arthur to work on a brief description of his case for the site, and after our last exchange, neglected to perform the update. We are just drafting a new description now (in conversation with Arthur), and will update early next week, hopefully Tuesday.”

And, on May 19, you changed the description in Censorship Tracker to:

“Arthur Topham, Publisher & Editor of the website RadicalPress.com based out of Cottonwood, British Columbia, has been criminally charged with "Hate Propaganda" for comments posted on his website referencing the Jewish people and the Zionist movement. The arrest came after two hate crime related complaints initiated by B’nai Brith Canada, one in 2007 and one in 2011. The Ontario Civil Liberties Association has condemned his charge as a violation of free speech and is circulating a petition against it.”

The description that we complained about was expressly marked “VERIFIED” on the Censorship Tracker web site, and stood for some six months until the OCLA complained, despite an early complaint to you by Mr. Topham.

Although you have now corrected the posted description, the fact remains that PEN Canada publicly made prejudicial findings against a citizen charged with a criminal offence that could entail imprisonment (for a thought crime, where no actual harm to any person need be proven in court).

In the OCLA’s opinion, PEN Canada’s self-described actions, while appealing to an unexplained “administrative error”, appear to constitute negligence that has caused harm to a citizen whose right of freedom of expression should be defended.

These are exactly the type of circumstances, involving geopolitical interests, where civil liberties organizations must be particularly vigilant to protect those most likely to be targeted by disproportionate means. The best that PEN Canada found to do was to appear to help the state along, rather than to rigorously and fairly insist on fundamental principles.

The OCLA asks that PEN Canada make a strong and categorical public statement against the “hate speech” provisions of the *Criminal Code*, and against government-sponsored witch hunts using the said provisions, including the on-going witch hunt against Mr. Arthur Topham.

Yours truly,

A handwritten signature in blue ink that reads "J. Hickey". The signature is written in a cursive style with a large, sweeping "H" and a long, trailing "y".

Joseph Hickey
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