



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

November 16, 2017

[By Email](#)

The Honourable Yasir Naqvi
Attorney General of Ontario
ynaqvi.mpp@liberal.ola.org
attorneygeneral@ontario.ca

Hon. Yasir Naqvi:

Re: Attorney General's use of s. 319(2) of the *Criminal Code*

The Ontario Civil Liberties Association (OCLA) advocates for civil and human rights, including freedom of expression. It has come to our attention that criminal proceedings under s. 319(2) of Canada's *Criminal Code* have been initiated against James Sears and Lawrence St. Germaine, the editor and publisher of the cartoon print magazine *Your Ward News*. We ask that you retract your consent for these criminal proceedings.

No one in Canada should be jailed or criminally prosecuted for thoughts, inferred attitudes, speech or print expression, in the absence of proven intention to have demonstrably caused actual harm to an identified person. Victimless crimes are antithetical to democracy. Supposed capability of inducing an emotional response ("hate") in persons at large must never be the crux of a criminal prosecution. Section 319(2) of the *Criminal Code* is a violation of the *International Covenant on Civil and Political Rights*, which Canada has ratified.

The threats to civil liberties caused by the hate propaganda provisions (sections 318 to 320) of the *Criminal Code* of Canada affect all Canadians. The said sections define offences resulting in prison sentences of up to five years for speech that need not be proven to have caused physical or psychological harm to any person. The sections define crimes of expression in which the Crown is not required to prove that there was a victim, or that any person suffered actual harm. The said sections are applied at the discretion of the Government, since no proceeding can be instituted without the consent of the Attorney General. Thus, the use of such a proceeding as a political instrument is an inescapable feature of the law.

The political nature of charges made under the said sections is evident. The accused typically are isolated ordinary bloggers and publicists, who express highly unpopular views that attract the political opportunism of influential lobby groups, or are social media pundits who have a following that can be politically exploited because of its minority views that repel a majority constituency. The media context is one where there are intense societal debates involving positions that can be characterized as "anti-Muslim" or "anti-Jewish" or misogynist and such. These topics

are ones where there is a high potential for political use of the *Criminal Code*: either to placate influential lobbies or to exploit public sentiment about unpopular opinion.

At the Government's whim, the accused is confronted with the disproportionate legal resources of the Crown, and the investigative resources of the police – who will typically make a home-invasive seizure of all storage and communication equipment (mobile phones, computers, account statements, stored emails, books, etc.). The arrested individual must apply for bail release. If released from custody, bail conditions can include a partial or total gag-order about the proceedings and about the impugned expression.

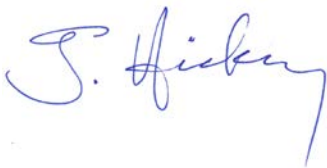
We alerted you to the unjust nature of the impugned *Criminal Code* provisions earlier, in the case of Kevin Johnston, and asked you to retract your consent for that criminal proceeding.¹ The OCLA again asks you not to use section 319(2), which here could result in jailing two citizens for unpopular published views — intentionally provocative political views about societal tensions related to religion, national-identity groups, and gender.

Instead, the government should trust a robust and wide-ranging societal debate to produce the best possible outcome, and trust the police and state prosecutors to pursue crimes having actual victims that have personally and demonstrably suffered actual harm beyond a threshold higher than the emotional-response and political-manipulation realms.

The Ontario Civil Liberties Association believes that the proceedings against Messrs. Sears and St. Germaine are systemically political in nature and should not be consuming public, police, and judicial resources. We believe that the proceedings are harmful to Canadian society, in addition to being unacceptably unjust towards two citizens.

We ask that you retract your consent as Attorney General for the proceedings against Messrs. Sears and St. Germaine, in the interest of preserving a just and democratic Canada. Please inform us how you will proceed in light of our concerns.

Yours truly,



Joseph Hickey
Executive Director
Ontario Civil Liberties Association (OCLA) <http://ocla.ca>
613-252-6148 (c)
joseph.hickey@ocla.ca

¹ The OCLA's petition of Jul. 26, 2017 to the Hon. Yasir Naqvi, Attorney General of Ontario:
<https://www.change.org/p/hon-yasir-naqvi-hon-yasir-naqvi-retract-your-consent-for-criminal-proceedings-against-kevin-johnston>.