



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



March 11, 2018

By Email

Members of the Senate Standing Committee on Transport and Communications
Members of the Senate of Canada
Senate of Canada
Ottawa, Ontario
K1A 0A4

Dear Members of Senate:

The Ontario Civil Liberties Association (OCLA) advocates for civil and human rights, including the rights of individuals to participate in the democratic functions of society.

We are writing to request the removal of harmful provisions of Bill C-49 (*Transportation Modernization Act*), which in-effect stifle public interest advocacy and undermine access to justice in the area of air transportation.

Bill C-49 would silence the critical voice of public interest advocates by restricting the right to bring a complaint to those who are "adversely affected" by the conduct or policy.¹ This is contrary to the current state of the law, which permits public interest advocacy, in that a person or group bringing a **public interest complaint** about an airline failing to respect consumer protection legislation or having unreasonable or unjustly discriminatory policies is **not required** to be personally targeted by the conduct or policy complained of.²

The current law is a sound legislative choice that fosters consumer protection and access to justice, whereas the Bill C-49 amendments are a break with the principle of public advocacy and offend the doctrine of public interest standing. This, in a Canadian context where the significant societal benefit of public interest advocacy has long been recognized.³

It is no small regression in the fabric of Canadian values that public interest advocates would be barred from bringing complaints on matters, for example, that affect the fundamental rights of vulnerable individuals, and the responsibility of law-abiding corporate citizenship.

¹ Section 17 of the Bill, proposing the addition of s. 67.3 to the *Canada Transportation Act*, and subsection 18(2) of the Bill, proposing to amend subparagraph 86(1)(h)(iii) of the *Canada Transportation Act*.

² [Delta Air Lines v. Lukacs, 2018 SCC 2](#) at paras. 19-20.

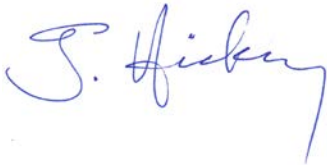
³ [Canada \(Attorney General\) v. Downtown Eastside Sex Workers United Against Violence Society, 2012 SCC 45](#).

Remarkably, the proposed erosion of public protection is in a vital sector of activity (air passenger transportation) in which there has been an abundance of successful, necessary and beneficial advocacy.⁴

We consider the impugned provisions of Bill C-49 harmful for the Canadian public, and offensive against the values of freedom of speech, freedom of association, and public participation in the democratic functions of society, enshrined in ss. 2(b) and 2(d) of the *Charter*.

We respectfully urge you to reject these provisions of Bill C-49.

Sincerely yours,

A handwritten signature in blue ink that reads "J. Hickey". The signature is fluid and cursive, with the first name "J." and the last name "Hickey" clearly legible.

Joseph Hickey
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⁴ *Aviation Practice Area Review* by Carlos Martins, WHO'SWHOLEGAL, September 2013.