



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](http://ocla.ca)



April 6, 2018

By Email

Andrea Horwath  
Leader, New Democratic Party of Ontario  
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**Re: Your position on protection of privacy of employees, and right to access one's own personal information in Ontario**

Dear Ms. Horwath,

The Ontario Civil Liberties Association (OCLA) advocates for civil and human rights, including the rights of all persons in dealings with public and private institutions and corporations.

The OCLA is concerned about the improper state of Ontario access to information and protection of privacy law, and we want to know your position on this matter, to make it public for the benefit of Ontario citizens.

No other province or jurisdiction in Canada excludes employee records from the protection of its access and privacy law. Ontario's exclusion of employee records from the protection of the *Freedom of Information and Protection of Privacy Act*, in particular, is unconstitutional. The exclusion amendment (s. 65(6)3) unreasonably abated the constitutional rights of privacy and freedom of expression to alter the employer-employee landscape.

For example, a government employer can capture and use the most intimate childhood, relational and personality information of an employee, without ever obtaining authorization or consent or ever informing the employee.

There is a present case in Ontario in which precisely such an abuse has occurred at a public institution. The case has given rise to a lengthy constitutional challenge of the impugned exclusion provision.

But the ultimate solution is for Ontario lawmakers to avoid such problems by simply fixing undemocratic laws, irrespective of the outcomes of constitutional challenges. The applicant in the constitutional challenge has asked the Attorney General Yasir Naqvi to do this, but has received no response.

Furthermore, there is a history of the Information and Privacy Commissioner for Ontario formally requesting that lawmakers fix the law by removing the offending provisions in two Ontario information laws. The said history is reviewed and documented in the court-filed record of the constitutional challenge. The OCLA has posted the said court-filed record on its web site here: <http://ocla.ca/wp-content/uploads/2018/03/ALL-PUB-ONDC-17-DC-2279-All-arguments-unconstitutionality-of-FIPPA.pdf>

This is not a complicated issue. Public institution employers cannot be shielded from privacy protection obligations in a free and democratic society, and employees must be allowed access to their own personal information, following universal norms among all free nations.

Ontario has gone astray in this vital area of human decency.

What is your position regarding this issue, and what actions will you undertake to rectify Ontario's defective information laws?

Please respond by April 13, 2018.

Yours truly,

A handwritten signature in blue ink that reads "J. Hickey". The signature is written in a cursive style with a large, sweeping flourish at the end.

Joseph Hickey  
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