



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

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September 24, 2014

By Email

Hon. Suzanne Anton
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Honourable Suzanne Anton:

**Re: Your consent for the criminal proceeding against Mr. Arthur Topham
(*R v Topham*)**

The Ontario Civil Liberties Association (OCLA) vigorously advocates for authentic and unqualified freedom of expression of individuals, on all topics and in every form, in accordance with the right to free expression enshrined in the *Canadian Charter of Rights and Freedoms*. The OCLA also advocates for unimpeded civil liberties and civil rights of all persons, in dealings with public and private institutions and corporations.

We write this letter to ask that, in order to protect civil rights in Canada, you retract your consent for the criminal proceeding that has been initiated and pursued against Mr. Arthur Topham, the accused in *R v Topham*.

The threats to civil liberties caused by the hate propaganda provisions (sections 318 to 320) of the *Criminal Code* of Canada affect all Canadians. These provisions violate the civil rights of liberty, fair procedure, and freedom of expression.

The said sections define criminal 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. As such, the possible use of such a proceeding as a political instrument is an inescapable structural feature of the law.

The political nature of charges made to date under the said sections is evident. Powerful individuals calling for or condoning wars of aggression that are actually carried out are never charged. The accused are typically politically isolated

ordinary bloggers and publicists, who express highly unpopular views that attract the political opportunism of influential lobby groups.

At the Government's whim, the accused is confronted with the unlimited 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 and agreements (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.

A conviction results in a criminal record and certain censorship, in addition to the punitive sentence.

In the instant case, Mr. Topham is a peaceful married man, a father of four, grandfather of eight, and a small business man in a rural community, who has not previously been charged with any crime. In 2012, he was arrested in front of his spouse, detained, and has been subjected to a broad house-invasive seizure, and to many preliminary court proceedings, in which he is now self-represented by necessity.

Mr. Topham has a website on which he publishes his critical views and those of others. On this website, as explained by the Crown in a preliminary court hearing held in January 2014, Mr. Topham has:

- 1) re-published the 1941 book by Theodore N. Kaufman, entitled "Germany Must Perish!";
- 2) published his expressly-satirical piece entitled "Israel Must Perish!", in which he solely changed "Germany" to "Israel", "German" to "Jew", and "Hitler" to "Netanyahu" in parts of the original book by Kaufman;
- 3) re-published "The Protocols of the Elders of Zion", (first published in Russia in 1903);
- 4) re-published the 1967 book by Eustace Mullins, entitled "The Biological Jew";
- 5) re-published the 1964 book by Elizabeth Dilling, entitled "The Jewish Religion: Its Influence Today";
- 6) published a blog post by himself, entitled "Karen Selick: Just Another Hate-mongering Germanophobe Jew".

On the basis of such internet materials, posted to a self-published website, the BC resident is being prosecuted pursuant to section 319(2) of the *Criminal Code*:

Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

Mr. Topham is a passionate communicator with unpopular views about society. Mr. Topham is open, authentic, and honest, as is evident from his postings about the proceedings against him.

The Ontario Civil Liberties Association believes that the proceedings against Mr. Topham are systemically political in nature and should not be consuming public, police, and judicial

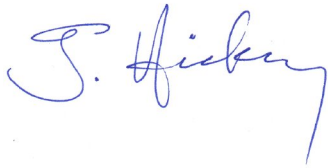
resources. We believe that the proceedings are harmful to Canadian society, in addition to being unacceptably unjust towards a citizen.

The Ontario Civil Liberties Association knows of no scientific basis (sociological or psychological) whereby the emotion of "hate" can be causally and deterministically induced in a person by a communicator of words posted to a website.

Leaving the questions of natural justice and constitutionality of section 319(2) aside, this is not a case that should be prosecuted. This prosecution is a dark stain on the Canadian justice system, and it should be revoked.

We ask that you retract your consent for the proceeding against Mr. Topham, in the interest of preserving a just and democratic Canada. We believe that the Crown will agree if you express your concern about these misguided proceedings.

Yours truly,



Joseph Hickey
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