



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



April 22, 2022

By Email

Canadian Members of Parliament and Senators  
Ottawa, Canada

**Re: Criminalizing “Holocaust denial” will damage Canadian democracy**

Dear Canadian Members of Parliament and Senators,

The Ontario Civil Liberties Association (OCLA) has become aware of the government’s intention to make “Holocaust denial” a criminal offence in Canada.

The federal government’s Budget 2022 document states the following, under the heading “Prohibiting the Promotion of Antisemitism”:<sup>1</sup>

“In Budget 2022, the government proposes to amend the *Criminal Code* to prohibit the communication of statements, other than in private conversation, that willfully promote antisemitism by condoning, denying or downplaying the Holocaust.”

As OCLA has previously expressed on several occasions,<sup>2</sup> the criminalization of thought and opinion, including via the so-called “hate speech” provisions of the *Criminal Code*, is incompatible with a free and democratic society, and incompatible with the *International Covenant on Civil and Political Rights*, which Canada has ratified.

“Hate speech” in Canada is a victimless crime, because no evidence of any kind is needed for conviction, beyond the impugned expression itself and the context of the expression. There need be no evidence of actual harm or actual threat of harm to any actual person, in the as-designed statutory provisions. This is a recipe for arbitrary impression-based state censorship.

<sup>1</sup> “2022 Budget”, Her Majesty the Queen in Right of Canada, F1-23/3E-PDF, at pg. 275, <https://budget.gc.ca/2022/pdf/budget-2022-en.pdf>.

<sup>2</sup> Letter from OCLA to the Hon. Caroline Mulroney, Attorney General of Ontario, 24 July 2018, <https://ocla.ca/wp-content/uploads/2018/07/2018-07-24-Letter-OCLA-to-AG-Ontario-Mulroney.pdf>; Letter from OCLA to the Hon. Jody Wilson-Raybould, Attorney General of Canada, and the Hon. Chrystia Freeland, Minister of Foreign Affairs, 16 July 2018, <https://ocla.ca/wp-content/uploads/2018/07/2018-07-16-Letter-to-Ministers-Freeland-and-Wilson-Raybould.pdf>; Letter from OCLA to The Hon. Justice Butler, Supreme Court of British Columbia, 13 January 2016, <https://ocla.ca/wp-content/uploads/2016/01/2016-01-13-Letter-OCLA-re-R-v-Topham.pdf>.

Regarding the state imposing such provisions against individuals, the *International Covenant on Civil and Political Rights* requires states to establish a “direct and immediate connection” to an actual “threat” when implementing laws that restrict freedom of expression:<sup>3</sup>

“When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”

The proposed new provision criminalizing “condoning, denying or downplaying the Holocaust” is explicitly and directly contrary to international law, as expressed in U.N. General Comment No. 34:<sup>4</sup>

“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.”

The proposed new crime would make it illegal to publicly express opinions, questions, conflicting evidence, or alternative views about one aspect of the Second World War, a major world-defining event.

By its false logic, the government could equally criminalize expression, including questions and calls for independent investigations, about other events of national or global significance, such as wars, public health crises, and natural disasters.

All statements of fact and opinion about all historical events must be open to questioning, otherwise we are inhabiting a regime of dogma. In such a regime, there can be no authentic search for truth, and no democracy. The criminalization of expression on state-controlled or taboo topics does not belong in any free and democratic society.

The government’s project to criminalize “the communication of statements, other than in private conversation, that willfully promote antisemitism by condoning, denying or downplaying the Holocaust” should be abandoned. It is structurally harmful to society, and unjustifiably unjust to individuals.

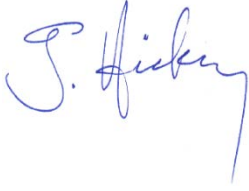
Additionally, OCLA asserts that measures, such as the proposed *Criminal Code* provision, that *prima facie* violate fundamental freedoms guaranteed in the *Canadian Charter of Rights and Freedoms*, must never be implemented through “omnibus” legislation as the government is doing, because it will in-effect bypass the requisite Parliamentary debate, which must be focused and specific to the proposed measure.

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<sup>3</sup> General comment No. 34, International Covenant on Civil and Political Rights, Human Rights Committee, 102nd session, CCPR/C/GC/34, para. 35, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

<sup>4</sup> *Ibid.*, para. 49.

Sincerely,

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

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