

CANADIAN
CIVIL LIBERTIES
ASSOCIATION

90 Eglinton Ave. E., Suite 900
Toronto, ON M4P 2Y3
Telephone (416) 363-0321
FAX (416) 861-1291
E-mail: mail@ccla.org



ASSOCIATION
CANADIENNE DES
LIBERTÉS CIVILES

90 ave Eglinton, Bureau 900
Toronto, ON M4P 2Y3
Téléphone (416) 363-0321
Télécopieur (416) 861-1291
Courriel : mail@ccla.org

The Honourable Judy Foote
Minister of Public Services and Procurement
House of Commons
Ottawa, Ontario
K1A 0A6
judy.foote@parl.gc.ca

June 9, 2016

Dear Minister Foote,

We are writing on behalf of the Canadian Civil Liberties Association (CCLA) to express our serious concerns about your recent decision to issue an interim prohibitory order to Canada Post in relation to the posting of mail by James Sears (or by Mr. Sears acting through an agent, or under any other personal or firm name and/or style). We have received a copy of your letter to Mr. Sears and an order dated May 26, 2016 (“Order”). We understand that this Order relates to the publication of a newspaper circular known as “Your Ward News” of which Mr. Sears is the Editor-in-Chief.

As you may know, CCLA fights for the civil liberties, human rights and democratic freedoms of all peoples across Canada. Founded in 1964, we are an independent, national, non-profit, nongovernmental organization, working in the courts, before legislative committees, in the classrooms, and in the streets, protecting the rights and freedoms cherished by Canadians and entrenched in our Constitution. CCLA has a long history of defending freedom of expression and it is on this basis that we write to you today. CCLA supports people’s rights to disseminate content and messages, regardless of whether we support or agree with that content, provided the content is not criminal.

We are aware that there have been a number of complaints about “Your Ward News” including a recent complaint made to the Canadian Human Rights Commission. We are aware of the basis for the complaints. We are also aware that a significant number of people find the publication offensive and do not wish to receive it at their homes.

Freedom of expression is a fundamental freedom in Canada, enshrined in s. 2(b) of the *Canadian Charter of Rights and Freedoms*. For the government to intervene to prohibit the distribution of a

publication is an extraordinary measure that certainly infringes on freedom of expression. This freedom should not be curtailed absent a clear and pressing objective and in a manner that is reasonable and minimally intrusive. As confirmed time and again by our Supreme Court, the constitutional protection of freedom of expression exists not to protect popular or mainstream expression, but rather dissenting voices and unpopular views.

To the best of our knowledge, Mr. Sears has not been charged with a criminal offence in relation to the paper and the Human Rights Commission has not made a determination of whether the complaint should proceed to a hearing. We also understand from media reports that the Toronto Police Service investigated whether the paper's distribution amounted to a hate crime, and determined not to lay charges.

In such circumstances, we are concerned by the use of the interim prohibitory order provision of the *Canada Post Corporation Act* as a means of stopping delivery of the paper, and by the absence of any meaningful reasons for the order that was issued.

With respect, the fact that a Minister of the Crown has "reasonable grounds to believe" that an offence is being committed by an individual should not allow for the prior restraint of all publications distributed by that individual. Although the Act requires that an interim prohibitory order be accompanied by reasons, the Order that was sent to Mr. Sears does not provide reasons for the referenced "reasonable grounds". Further, the Order contains no articulation of which comment or comments in which issues of the publication(s) are allegedly in violation of the criminal law. As you may know, when courts have considered complaints under hate speech provisions of human rights statutes or *Criminal Code* provisions, they have been specific about which statements constitute hate speech and articulated how context may affect the characterization of certain comments. Similarly, persons charged under the defamatory libel provision of the *Criminal Code* (a rather rare charge) are advised of what comments they have made that are alleged to be defamatory. The order provides no specifics about the content that is considered criminal in past issues of "Your Ward News", and of course cannot purport to address future content that has yet to be written or reviewed.

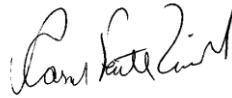
The review process established by the Act is also insufficient. First, it requires that the subject of the order seek a review within a very short time frame and deems the order permanent if, among other reasons, a review is not sought in such time. Second, if a review is requested, the Board of Review is appointed by you as Minister, the very individual who made the order in the first place. This certainly gives rise to a reasonable apprehension of bias and a concern that the Board's ability to act impartially may be compromised. Finally, the absence of clear and detailed reasons in the Order also makes it difficult for the review process to be meaningful. The person whose mail is being refused does not know which parts of the publication are alleged to violate the criminal law, and thus has no knowledge of the case he is to meet. Further, as noted above, the individual certainly can't address the issue of future publications without this information.

We urge you to reconsider your decision to issue the prohibitory order and, in particular, to revoke it. Alternatively, we request that you provide detailed reasons for the Order to facilitate meaningful review consistent with fundamental principles of natural justice and due process. We look forward to your response and will continue to monitor this matter as it moves forward.

Sincerely,



Sukanya Pillay
Executive Director & General Counsel



Cara Faith Zwibel
Director, Fundamental Freedom Program

cc. James Sears