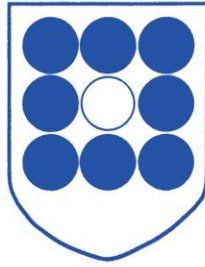


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Honourable Mark Furey  
Department of Justice  
1690 Hollis Street  
P.O. Box 7  
Halifax, NS  
B3J 2L6  
Via email [JUSTMIN@novascotia.ca](mailto:JUSTMIN@novascotia.ca)

April 22, 2018

Dear Mr. Attorney,

I am writing you regarding the Crown's prospective prosecution of a teenager charged last week by Halifax Regional Police with unauthorized use of computer contrary to Criminal Code section 342.1. The Canadian Civil Liberties Association has been freedom-fighting in our courts, legislatures and communities, for over fifty years. We urge you and the Nova Scotia Public Prosecution Service to withdraw the charges against this young man, if only on the basis that it is contrary to the public interest.

As you know, the most commonly cited test for determining whether to prosecute or withdraw an information is taken from the *Report of the Attorney-General's Advisory Committee on Charge Screening, Disclosure and Resolution Discussions* (the Martin Committee Report) (1993), (chaired by the Honourable G.A. Martin, Q.C.), cited by the Nova Scotia Supreme Court, among other courts. The two-part test is axiomatic. For a prosecution to be commenced or continued, the assigned Crown must answer both in the affirmative: is there a reasonable prospect of conviction (objective test), and is it in the public interest? Given the absence of disclosure, CCLA cannot speak to the first matter of reasonable prospect of conviction.

We are urging the withdrawal of the charge in particular with respect to the public interest. The Martin Committee Report concluded that age may be a factor in determining the public interest, for the very young and the elderly, albeit it cannot be determinative. This is certainly relevant in the case before you and your agents.

Public confidence in the administration of justice is paramount in this consideration of "public interest." As the Martin Committee Report concluded: "Prosecutorial discretion ought to be exercised in a manner consistent with the community's desire to have a justice system that protects them, through the apprehension and punishment of offenders, but does not oppress them, through heavy-handed prosecution of trivial matters."

Based on published reports, the latter is exactly what has taken place. Multiple police officers descending upon a family residence to seize computers and charge a young man with a criminal offence, if accurate, amounts to an oppressive, heavy handed reaction to a trivial matter.

By trivial, I am referring to what allegedly took place: downloading the contents of a server configured, rightly or wrongly, for public access. As our Privacy Director Dr. Brenda McPhail has stated: “This wasn’t a hack. This wasn’t someone stealing a password. This was just someone changing a number at the end of a URL to go through it and download a batch of documents.”

Whether the evidence lends itself to a reasonable prospect of conviction is not our point. Our point is that public confidence in the administration of justice is seriously diminished when a teenager is prosecuted for changing a number at the end of a URL, because that is an oppressive, heavy handed response to a trivial action.

Lastly, your Premier’s public remarks that the teenager was “stealing” data violates the *sub judice* rule, further eroding public confidence in the administration of justice, should the prosecution continue. Leaving aside the fact that downloading publicly available data is no crime, indeed no theft, it is not in the public interest to prosecute a young man in the foregoing circumstances.

I understand well your job, and that of the NS PPS, having been a provincial Attorney General myself. Regardless of who is precisely responsible for the decision to prosecute or not, you are accountable for that decision. Thank you for considering this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Bryant", with a stylized flourish at the end.

Michael Bryant  
Executive Director and General Counsel  
Canadian Civil Liberties Association