

CANADIAN  
CIVIL LIBERTIES  
ASSOCIATION



ASSOCIATION  
CANADIENNE DES  
LIBERTES CIVILES

The Honourable Sonia Lebel  
Ministère de la Justice  
Édifce Louis-Philippe-Pigeon  
1200, route de l'Église  
9e étage  
Québec (Quebec) G1V 4M1  
[ministre@justice.gouv.qc.ca](mailto:ministre@justice.gouv.qc.ca)

April 12, 2019

Dear Minister,

I am writing on behalf of the Canadian Civil Liberties Association (CCLA) regarding your decision to prosecute author Yvan Godbout and editor Nycolas Doucet for production and distribution of child pornography. This is a terrible exercise of your quasi-judicial powers. There are self-evident constitutional bars to such censorship by Criminal Code, and this matter clearly does not meet the second branch of prosecutorial discretion: it is not in the public interest.

The CCLA is a national, non-profit, public interest advocacy organization that has been at the forefront of promoting and protecting freedom of expression since our founding in 1964. CCLA made submissions when Parliament first introduced criminal offences relating to child pornography and has been involved in every significant Supreme Court of Canada case that interprets the child pornography provisions. We recognize the pressing need to protect children from exploitation and abuse. However, we have sought to ensure that criminal laws are not used to stifle expression, including artistic expression. This prosecution does just that.

It is our understanding that the prosecution of the author and publisher in this case stems from the description, on one page of a 270-page horror novel, of the sexual assault of a young child. Now that charges have been laid, you have managed no doubt to increase the books' readership exponentially, even though your charge suggests those in possession of it have child pornography – and are liable under the criminal law – in the eyes of your office.

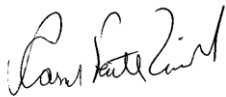
While the *Criminal Code* definition of “child pornography” does include written descriptions whose creation does not involve harming children, the provisions must be construed narrowly, as noted by the Supreme Court of Canada in *R. v. Sharpe*, 2001 SCC 2. The material must either “advocate or counsel sexual activity with a person under the age of eighteen years” that would be an offence, or have as its “dominant characteristic” the description “for a sexual purpose, of sexual activity with a person under the age of eighteen years” that would be an offence. Provided our description above is accurate, it seems clear that the material is not intended to advocate for

the sexual abuse of children. Moreover, the Court has held that the phrase “for a sexual purpose” should be understood to consider whether, reasonably perceived, the material is intended to cause sexual stimulation to some viewers. Our understanding is that this is a novel written in the horror genre, and that the relevant passage is only one page in close to three hundred. Given this context, it is straining the limits of reasonableness to suggest that the novel is “child pornography” as contemplated under the *Code*.

We also note that there are defences to the child pornography provisions which the Supreme Court has held must be liberally construed. In particular, the *Code* includes an artistic merit defence which the Supreme Court has confirmed should be interpreted broadly: “Any objectively established artistic value, however small, suffices to support the defence. Simply put, artists, so long as they are producing art, should not fear prosecution under s. 163.1(4).” (*Sharpe*, para 63)

This criminal prosecution is wrong-headed and we urge you to re-evaluate and revisit the decision in light of the foregoing, and otherwise withdraw the information. While sexual violence and exploitation of children is a wrong, so is government censorship. Artists always have and always will explore these subjects in their works. Prosecuting an author and editor for depicting such violence in a novel is contrary to the public interest, and sends a chill through literary and artistic communities. We petition you to reverse your decision and stop censoring literature through the Criminal Code.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cara Faith Zwibel', written in a cursive style.

Cara Faith Zwibel, LL.B., LL.M.  
Director, Fundamental Freedoms Program