



**VIA EMAIL**

**December 19, 2023**

Ontario Ministry of the Attorney General  
Civil Law Division  
**Attention: Sean Kearney, Assistant Deputy Attorney General**  
[Sean.kearney@ontario.ca](mailto:Sean.kearney@ontario.ca)  
**Kikee Malik, Portfolio Director**  
[Kikee.malik@ontario.ca](mailto:Kikee.malik@ontario.ca)

Office of the Chief Justice  
Ontario Court of Justice  
**Attention: Kathleen Murphy, Executive Legal Officer**  
[Kathleen.murphy1@ontario.ca](mailto:Kathleen.murphy1@ontario.ca)

**RE: Policy violating employee freedom of expression is discriminatory and not in the public interest**

The Ontario Ministry of Attorney General (MAG), at least with respect to the Ontario Court of Justice (the “Court”) as well as other potential departments, has adopted a new policy specifically applicable to law students at the Toronto Metropolitan University (TMU) who signed onto a letter in support of Palestine (the “Policy”). This public student letter of October 20, 2023, (the “Letter”) was addressed to the Dean and other personnel of the TMU Faculty of Law.

The BC Civil Liberties Association (BCCLA) is deeply concerned with the chilling impacts of the Policy on constitutionally protected freedom of expression for TMU law students and more broadly. The BCCLA is also deeply concerned with impacts to public confidence in the impartiality and fairness of the Court.

**The Letter is legitimate political expression that is not antisemitic or hateful. On the contrary, instituting employment repercussions for this type of Charter-protected political speech is anti-Palestinian discrimination. We urge the MAG to immediately cancel this new discriminatory Policy.**

Out of respect for the privacy of the students currently involved, we are currently writing to you privately. However, as we believe that this is a matter of significant public interest, we would not hesitate to bring our concerns forward publicly in the future. Broader public knowledge of this Policy is in our view a significant concern for the public confidence in the Court.

### ***The Letter***

The Letter was written by members of the Abolitionist Organizing Collective and other members of the TMU Lincoln Alexander School of Law (LASL) law school in response to an email from the school. To summarize, the Letter discusses the settler colonial history of the state of Israel and declares solidarity with Palestine and Palestinian efforts and resistance in pursuit of liberation. It condemns statements that deny or fail to situate the attack by Hamas occurring on October 7, 2023, within the historical occupation, apartheid, and other acts of violence against Palestinians by Israel. It asserts that the cause and responsibility for the attack must be understood in this historical colonization and apartheid in Palestine. The Letter condemns the LASL for a neutral position which implicitly denies colonialism and upholds racism and Islamophobia and urges the administration to name and confront Israel's colonial violence. Stating grounds in the LASL's commitment to equity, diversity, and inclusion, the Letter requests that the school administration release a new statement with demands most notably for a ceasefire, the entry of humanitarian aid, and an end to the system of colonialism in Palestine.

### ***The Policy***

The Policy is derived from the MAG's "Statement of MAG's position on the October 20, 2023, letter by some TMU Lincoln Alexander School of Law students" dated November 2023. In the Policy, the MAG states its dedication to ensuring a safe and healthy workplace and commitment to guiding principles of equity, diversity, and inclusion, and to ensuring that our workplaces are free from all forms of discrimination, racism, hate or fear, including antisemitism and Islamophobia. It also states that MAG lawyers and law students must demonstrate these values and maintain the highest legal professional standards of integrity, fairness and dignity and inspire confidence in the administration of justice.

The Policy states that the Letter is contrary to these professional values because the signatories of this letter used their platform as students of the law to express antisemitic views, display intolerance, and excuse terrorism.

It states that students with placements with the MAG must sign an attestation that they did not sign the Letter, either publicly or anonymously. Students who do not return the signed attestation will be contacted by senior MAG staff to set up a meeting to discuss their position. Students who did not sign the Attestation are indeed being contacted to schedule these disciplinary sessions to discuss their position or specific circumstances regarding being a signatory to the letter. They are told that at this meeting they will be given an opportunity to provide any additional information and/or mitigating factors that should be considered with respect to their signing of the Letter.

### ***The Letter in its historical and social context***

It is essential that the Letter be contextualized within the greater Palestinian liberation movement and within the events currently happening in Palestine and Israel. Many people in Canada are outraged by the violence they are seeing by Israel against Palestinians in what international law experts continue to call a potential genocide, alongside other war crimes.<sup>1</sup> This is why so many people are currently

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<sup>1</sup> Office of the United Nations High Commissioner for Human Rights, Press Release, "Gaza: UN human rights experts call on international community to prevent genocide against the Palestinian people" (November 16, 2023).

engaging in actions of political expression like letter writing and protest to call for an end to said genocide. The Parliamentary petition calling for a ceasefire in Gaza was the most signed in history.<sup>2</sup>

The Palestinian liberation movement in Canada includes many different individuals and organisations, including Palestinians, other Arabs and Muslims, Jews, Indigenous people, and many other diverse people. The Palestinian liberation movement generally calls for the realization of the rights and freedoms of the Palestinian people, who have experienced settler-colonialism, ethnic cleansing, apartheid, and other forms of systemic oppression and violence for almost 80 years, namely since the United Nations General Assembly Partition Plan for Palestine in 1947. These facts are well documented by international human rights organizations, leaders, and scholars.<sup>3</sup> We encourage you to review these resources regarding the history of the Palestinian liberation movement and Israel's past and present violations of international law.<sup>4</sup>

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<https://www.un.org/unispal/document/gaza-un-human-rights-experts-call-on-international-community-to-prevent-genocide-against-the-palestinian-people-ohchr-press-release/>; International Commission of Jurists, "Gaza/Palestine: States have a Duty to Prevent Genocide" (November 17, 2023); <https://www.ici.org/gaza-occupied-palestinian-territory-states-have-a-duty-to-prevent-genocide/>; Office of the United Nations High Commissioner for Human Rights, Press Release, "UN expert warns of new instance of mass ethnic cleansing of Palestinians, calls for immediate ceasefire" (October 14, 2023).

<https://www.ohchr.org/en/press-releases/2023/10/un-expert-warns-new-instance-mass-ethnic-cleansing-palestinians-calls>; Amnesty International, "Damning evidence of war crimes as Israeli attacks wipe out entire families in Gaza" (October 20, 2023). <https://www.amnesty.org/en/latest/news/2023/10/damning-evidence-of-war-crimes-as-israeli-attacks-wipe-out-entire-families-in-gaza/>; Craig Mokhiber, Letter of Resignation to the United Nations High Commissioner (October 28, 2023). <https://www.documentcloud.org/documents/24103463-craig-mokhiber-resignation-letter>. Citations regarding many other allegations of war crimes are unfortunately too numerous to include here.

<sup>2</sup> Brennan McDonald, CBC News, "286K sign e-petition urging Trudeau to demand immediate ceasefire between Israel and Hamas" (November 24, 2023). <https://www.cbc.ca/news/politics/petition-ceasefire-hamas-israel-most-signed-1.7039579>.

<sup>3</sup> Human Rights Watch, "A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution" (April 2021). [https://www.hrw.org/sites/default/files/media\\_2021/04/israel\\_palestine0421\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/media_2021/04/israel_palestine0421_web_0.pdf); Human Rights Watch, "Israel: 50 Years of Occupation Abuses" (June 4, 2017). <https://www.hrw.org/news/2017/06/04/israel-50-years-occupation-abuses>; John Reynolds, "Apartheid and International Law in Palestine," in *Prolonged Occupation and International Law*, 2023. [https://www.academia.edu/77788362/Apartheid\\_and\\_International\\_Law\\_in\\_Palestine](https://www.academia.edu/77788362/Apartheid_and_International_Law_in_Palestine); B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, "A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid" (January 2021).

[https://www.btselem.org/publications/fulltext/202101\\_this\\_is\\_apartheid](https://www.btselem.org/publications/fulltext/202101_this_is_apartheid); The Centre for Constitutional Rights, "The Genocide of the Palestinian People: An International Law and Human Rights Perspective," 2016. <https://ccrjustice.org/sites/default/files/attach/2016/10/Background%20on%20the%20term%20genocide%20in%20Israel%20Palestine%20Context.pdf>; Michael Lynk, UN General Assembly, "Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967" (August 12, 2022); Riyad Mansour, Permanent Observer of Palestine to the United Nations, General Assembly Security Council, "Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory" (June 6, 2022). <https://www.un.org/unispal/document/palestinian-people-continue-to-be-deprived-of-their-freedom-dignity-and-rights-by-israel-letter-from-state-of-palestine-a-es-10-903-s-2022-452/>; <https://www.un.org/unispal/document/report-of-the-special-rapporteur-on-the-situation-of-human-rights-in-the-palestinian-territories-occupied-since-1967-report-a-hrc-49-87-advance-unedited-version/>; Riyad Mansour, Permanent Observer of Palestine to the United Nations, General Assembly Security Council, "Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory" (June 6, 2022). <https://www.un.org/unispal/document/palestinian-people-continue-to-be-deprived-of-their-freedom-dignity-and-rights-by-israel-letter-from-state-of-palestine-a-es-10-903-s-2022-452/>.

<sup>4</sup> See *ibid*; further: John Reynolds, "Apartheid and International Law in Palestine," in *Prolonged Occupation and International Law*, 2023. [https://www.academia.edu/77788362/Apartheid\\_and\\_International\\_Law\\_in\\_Palestine](https://www.academia.edu/77788362/Apartheid_and_International_Law_in_Palestine).

Further, state action to specifically oppress Palestinian voices or calls in solidarity with respect to Palestinian human rights is itself a form of discrimination and oppression against Palestinians.<sup>5</sup> Given the history of the events in Palestine, Palestinians are a vulnerable group constituting 1 in 3 of the world's refugees<sup>6</sup> and already experience intersecting anti-Arab racism and Islamophobia. Anti-Palestinian racism ("APR") has been defined as "a form of anti-Arab racism that silences, excludes, erases, stereotypes, defames or dehumanizes Palestinians or their narratives."<sup>7</sup> The report, "Anti-Palestinian Racism in Canada," contextualizes the historical landscape of APR in Canada and documents the sharp rise in APR since October 2023. 2022 data shows 70% of APR included defamation of Palestinians as "anti-semitic," "terrorist sympathizers," or "anti-democratic."<sup>8</sup> This is directly pertinent to the allegations in the Policy.

Over the years, we have been watching attempts to specifically suppress criticism of Israel in Canada alongside suppression of Palestinian freedom of expression.<sup>9</sup> This is why, for example, we have engaged in advocacy against government adoption of the International Holocaust Remembrance Alliance definition of antisemitism.<sup>10</sup> We have also issued a public statement regarding concerning rise in anti-Palestinian discrimination and silencing in all areas of society, and most concerningly by state actors, since October 7, 2023.<sup>11</sup>

### ***Violations of freedom of expression and equality rights***

The BCCLA is deeply concerned about the chilling effect that this Policy has had and will continue to have on freedom of expression not only for impacted students, but more broadly as we understand word of the Policy has spread throughout student, legal, and civil society communities, and likely among government employees generally.

Following a wave of backlash against the signatories of the Letter, the BCCLA joined the ranks of 11 other civil society organizations and 725 legal professionals and academics who signed an open letter entitled "Open Letter to the Legal Community on Pro-Palestine Speech." It bears repeating in part here:

We reject the notion that it is antisemitic, hateful, or illegitimate to contextualize the October 7th, 2023 attack. Similarly, we reject the notion that it is antisemitic, hateful, or illegitimate to

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<sup>5</sup> Dania Majid, Arab Canadian Lawyers Association, "Anti-Palestinian Racism: Naming, Framing and Manifestations" (April 2022). <<https://static1.squarespace.com/static/61db30d12e169a5c45950345/t/627dcf83fa17ad41ff217964/1652412292220/Anti-Palestinian+Racism--Naming%2C+Framing+and+Manifestations.pdf>>; Lucy El-Sherif, The Conversation, "The high cost of advocating for Palestine" (May 30, 2021). <<https://theconversation.com/the-high-cost-of-advocating-for-palestine-161160>>; Canadians for Justice and Peace in the Middle East (CJPME), "Anti-Palestinian Racism in Canada: CJPME's 2022 Report" (December 2023). <[https://assets.nationbuilder.com/cjpme/pages/7820/attachments/original/1701964321/EN\\_-\\_APR\\_in\\_Canada\\_2022\\_-\\_FINAL.pdf?1701964321](https://assets.nationbuilder.com/cjpme/pages/7820/attachments/original/1701964321/EN_-_APR_in_Canada_2022_-_FINAL.pdf?1701964321)>.

<sup>6</sup> Middle East Monitor, "Statistic: One among three refugees in the world is Palestinian" (May 15, 2023).

<<https://www.middleeastmonitor.com/20230515-statistic-one-among-three-refugees-in-the-world-is-palestinian/>>.

<sup>7</sup> Majid, *supra* note 5.

<sup>8</sup> CJPME, *supra* note 5.

<sup>9</sup> Sheryl Nestel and Rowan Gaudet, Independent Jewish Voices, "Unveiling the Chilly Climate: The Suppression of Speech on Palestine in Canada" (October 2022). <[https://www.ijvcanada.org/wp-content/uploads/2022/10/Unveiling-the-Chilly-Climate\\_Final-compressed.pdf](https://www.ijvcanada.org/wp-content/uploads/2022/10/Unveiling-the-Chilly-Climate_Final-compressed.pdf)>.

<sup>10</sup> BC Civil Liberties Association, Letter to Mayor Ken Sim and Vancouver City Council (November 7, 2022) <<https://bccla.org/wp-content/uploads/2022/11/Vancouver-IHRA-Letter-2022.pdf>>.

<sup>11</sup> BC Civil Liberties Association, "BCCLA statement on attempts to suppress support for the people of Palestine" (October 23, 2023). <<https://bccla.org/2023/10/bccla-statement-on-attempts-to-suppress-support-for-the-people-of-palestine/>>.

express support for Palestinians in the face of ongoing Israeli [apartheid](#) and [genocide](#). This is legitimate *Charter*-protected political expression. This speech echoes the United Nation's [Secretary General](#) (the October 7<sup>th</sup> attack "did not happen in a vacuum"), the [Executive Director](#) of Jewish Voice for Peace ("The Israeli government has lost any semblance of humanity as they wage a genocide against the people living in Gaza"), and numerous UN General Assembly resolutions affirming the right of the Palestinians to resist their demise (UNGA Resolution 45/130 (1990); Resolution 37/43 (1982); Resolution 3314 (1974)).

This chilling effect on freedom of expression and academic freedom has the hallmarks of a new McCarthyism. A failure of those of us in the legal profession to voice our opposition to this conduct will only accelerate the erosion of the very protections that make dissent – and therefore democracy – possible. It is vital that the space for scholarship, speech and activism in defence of basic human rights be preserved.<sup>12</sup>

**We are unaware of any legal basis permitting the MAG to terminate or alter the terms of an employee's employment due to legitimate political expression made outside the workplace, and in the case of many students, where the employee has not even begun their employment. Given the intent of the Policy to target employees voicing solidarity with Palestine outside of the workplace, the Policy constitutes action by the state that is inconsistent with *Charter* rights and may provide grounds for constitutional and human rights remedies against the MAG.**

Allegations of antisemitism are serious and should be taken incredibly seriously. This underscores the importance of ensuring that antisemitism is properly understood, including the distinction between it and criticism of the state of Israel. The Letter is free from any hateful meaning, stereotypes, prejudice, or dehumanization of Jews as a group or as individuals. The Letter provides the contextual history for its comments and demands, regarding which we would again refer you to the resources above.

The BCCLA stresses this distinction between criticism of the state of Israel and expression that is antisemitic or hateful towards Jewish people as people. On the contrary, the conflation of Jewish people as a whole with the state of Israel is itself antisemitic.<sup>13</sup> Suppression of criticism of the state of Israel also suppresses such criticism by Jewish and Israeli people in Canada. Jewish organisations are also speaking out against criminalization and state actions under the false claim of antisemitism that are "specifically designed to silence all who oppose genocide and support a Free Palestine" and make similar calls to action as the Letter.<sup>14</sup>

It is essential to our democracy that freedom of expression for everyone in Canada includes the right to criticize the activities of all foreign states and foreign militaries. No state or military should be exempted from democratic freedom of expression just because of its official religion. Discussion of the history of a

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<sup>12</sup> "Open Letter to the Legal Community on Pro-Palestine Speech" (November 2023). <https://docs.google.com/document/d/e/2PACX-1vR5d4qAEKPBRh3tVnZEX7LdbCNZxyf-KVIR56tlbJyMF9P5m1WOz9uooNvni7M5W0kFk3iwGAzoeN7E/pub>.

<sup>13</sup> NDN Collective, "Position Paper: The Right of Return is Landback" (March 2022). [https://drive.google.com/file/d/1qrSjkS2Wgg2LID2J59\\_17kHDRmsin4jP/view](https://drive.google.com/file/d/1qrSjkS2Wgg2LID2J59_17kHDRmsin4jP/view). Jewish Voice for Peace, *On Anti-Semitism: Solidarity and the Struggle for Justice*, April 2017, pp. 8, 36-7.

<sup>14</sup> See for example, World Beyond War, "In Toronto: Jews Say No to Genocide Coalition Condemns Arrests In Regards to Indigo Postering, Calls for All Charges to be Dropped" (November 23, 2023) <https://worldbeyondwar.org/in-toronto-jews-say-no-to-genocide-condemn-arrests-in-regards-to-indigo-postering-call-for-all-charges-to-be-dropped/>.

country or the causes of political movements or parties in that country—even those that some states define as terrorism—is legitimate political expression. Discussion of what constitutes a state or terrorism are themselves questions open to important political debate.

In the BCCLA’s view, the Letter expresses solidarity with a marginalized group and represents political expression made in the name of MAG’s expressed values of equality, diversity, and inclusion. The Policy attempts to pervert a government commitment to equality and inclusion into a vessel of discrimination and suppression against students and employees. This “witch hunt” on free expression sets an extremely dangerous precedent. The real injustice is that we are continuing to see expressions of solidarity with Palestinians being vilified or criminalized by different Canadian state actors.

### ***Public interest and the role of the MAG and the Court***

People in Canada should not fear consequences to their employment when they exercise their constitutionally-protected right to freedom of expression, regardless of whether it is the preferred political expression of their employer. This is of the utmost importance when the employer is the government itself.

The chilling impact of the Policy is not in the public interest. The public interest lies always in open political debate, as it is fundamental to our democracy, particularly in the context of challenging times like the present. The public interest is not served in shutting down that debate by employer retaliation for political speech that MAG, members of the Court, or other MAG employees may not agree with.

MAG and the Court have no role in interfering with freedom of expression. It is crucial that Canadian government bodies act impartially as employers and servants of the justice system. They must never act to protect or act under the influence of any foreign state or its lobbying bodies here in Canada. Nor should the MAG or the Court be swayed by public political opinion, external bodies, or the media.

Public confidence in the proper administration of justice requires the MAG and the Court to act impartially, fairly, transparently, and without discrimination. It is in the public interest that all members of the public be able to expect impartial and dignified treatment when facing the Courts.

**It is disturbing to imagine the extent of this Policy’s chilling effect should it become broader public knowledge.** How could Palestinians and the diverse people in Canada who have spoken for Palestinian liberation ever feel like they would be received by an impartial Court? How could Palestinians experiencing discrimination for their political expression feel that they can receive an impartial remedy before the Courts? Rather, this Policy presents the appearance of a partial court that would replicate the anti-Palestinian discrimination they experience in Canadian society.

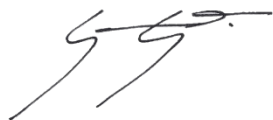
Of course, the public interest in an impartial court applies more broadly than just Palestinians and those in solidarity: the public perception of an impartial court is impacted by *any partiality*—against any group or political expression.

### ***Urge immediate cancellation of the Policy***

Given the chilling and discriminatory impact of the Policy, it must be immediately cancelled and impacted students be allowed to continue in their employment without consequence.

Thank you for your consideration in your role as public servants.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ga Grant', with a horizontal line extending from the end of the signature.

Ga Grant (she/her)  
Staff Litigation Counsel  
BC Civil Liberties Association