

VICTORY in Court
by Gary McHale

Judge Marshall delivered his ruling that will no doubt send shock waves through the OPP and McGuinty Government. Two weeks ago my Regional News editorial was entitled 'Will the Court limit the authority of the Crown'. On Thursday, July 2, 2009 Judge Marshall seriously limited the authority of the Crown and ordered a new hearing for me to present evidence that three Government officials should face criminal charges for failing to protect Sam Gaultieri.

In seven months two founding members of CANACE, Jeff Parkinson and Gary McHale, have now created three separate Case Law rulings that ensure the Rights of citizens throughout Canada are protected against the abuse of power by Government officials including the discretionary authority of the Crown. Judge Marshall quoted from Alexander Hamilton in this ruling regarding the view that no man may know whether tomorrow he will be a 'victim of the spirit of injustice'.

Freedom is never free and when the battle is won everyone shares in the blessings of Freedom while only a few pay the price. What must citizens do when those in positions of authority no longer respect the Rule of Law or the very values that our democracy has been built upon? Do you hide?

When average citizens stand face to face against the Goliath of Injustice you are declaring, that although your numbers are small, you will never surrender your Rights and Freedoms. The primary purpose of private prosecution in Canada is to be the last line of defence of democracy which enables citizens to charge government officials.

The following are quotes from Judge Marshal's ruling.

"Mr. McHale asks the court to find that the justice of the peace made jurisdictional errors by refusing to hear his evidence and denying him certain procedural rights. Moreover, he argues that, in any event, the crown does not have the discretion to withdraw a private information during a section 507.1 hearing."

"The issue [before the court] is deceptively simple but as will be seen, it raises broader policy implications and touches on matters of fundamental importance to the administrations of justice and private prosecutions in particular."

"The court [Supreme Court] reasoned that the power to stay, while necessary, encroaches upon a citizen's fundamental and historical right to inform under oath a justice of the peace of the commission of a crime. Parliament, the court found, has seen fit to impose upon the justice an obligation to 'hear and consider' the allegation and make a determination. The court concluded that in the absence of a clear and unambiguous text taking away that right, the right [of the citizen] should be protected."

"The Law Reform Commission of Canada in 1986 published Working Paper 52 on private prosecutions. The commissioner endorsed the desirability of maintaining private prosecutions, saying, 'In any system of law, particularly one dealing with crimes, it is of fundamental importance to involve the citizen positively. The opportunity for a citizen to take his case before a court, especially where a public official has declined to take up the matter, is one way of ensuring participation... The power of private prosecutions is **undoubtedly right and necessary in that it enables the citizen to bring even the police or Government officials before the criminal courts**, where the government itself is unwilling to make the first move.'"

"...in my view the right to set out before an independent judicial officer allegations such as these (in camera) is no effete formality. Indeed, it may be seen as the **bulwark of democracy**... In my respectful view, the matter before the court is an important one and one that has not been directly addressed in the jurisprudence. This case raises the important issue of a citizen's right to lay criminal informations against public officials and for those informations to be heard before an independent judge. This is a long held and hard fought right."

"For all of these reasons, I would answer the question raised here - that yes there has been an excess of jurisdiction on the part of the justice of the peace and the crown attorney - such that mandamus should issue."

"I therefore allow the application. The matter will be returned to a justice of the peace for a hearing pursuant to section 507.1 of the Criminal Code on the various charges contained in the informations of Mr. McHale."

End of quotes from Judge Marshall.

In all true democratic societies there is no one above the law. This includes senior OPP officers, elected officials or the Prime Minister himself. If you do a crime you better be willing to do the time.

Allow me to describe, as an example, of what may be considered a criminal offense if the evidence proves it. From April 20, 2006 until after the events on June 9, 2006 the situation in Caledonia could be defined as a riot. The criminal definition of a riot is "A riot is an unlawful assembly that has begun to disturb the peace tumultuously." I think we can all agree that when you have roads being dug up, a bridge burnt down, tire fires and other fires occurring, the destruction of the power station, attempted murder of a police officer etc. that the peace has been disturbed tumultuously.

What people may not know is that section 69 of the criminal code states, "A peace officer who receives notice that there is a riot within his jurisdiction and, without reasonable excuse, fails to take all reasonable steps to suppress the riot is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years."

Also we have section 180 which states, "...every one commits a common nuisance who does an unlawful act or **fails to discharge a legal duty** and thereby (a) endangers the lives, safety, health, property or comfort of the public; or (b) obstructs the public in the exercise or enjoyment of any right that is common to all the subjects of Her Majesty in Canada."

How many crimes have senior OPP officers and government officials committed by having a policy that has endangered the public? By allowing an illegal native occupation at Stirling, after all the violence that occurred at DCE, the OPP and government knew full well that the public would be endangered. Sam Gaultieri was almost killed directly because of Government Race Based Policing Policies.

CANACE has always believed it is not just the Native Protester who chooses to use violence that should face criminal charges but our elected officials and senior OPP officers who enable such violence to continue. Government officials think they are untouchable but now that the Crown can no longer interfere with citizens laying charges these officials will soon learn they are not above the law.

If you have a duty and fail to do it which endangers the public then you will face charges.

In the same week we had to pay \$623 for transcript for another case, we had our internet and phone service disconnected. Over the next few months transcripts themselves will cost another \$1000.

This is not a part time battle. It is very costly in time, energy and money to win in court. We cannot do it without the public helping. Please contact Merlyn 905-765-5131 or make a deposit directly into CANACE account at any Scotia bank - acct # 30882-019216. Please consider giving Merlyn a series of post-dated cheques.

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