



Justice Centre for Constitutional Freedoms

January 27, 2017

Chief Rod Knecht
Edmonton Police Service
9620 103A Avenue
Edmonton, AB, T5H 0H7

Dear Sir,

**Re: Smeding, Nehemia – Violation Ticket A38483281R (the “Charge”)
and Noise Bylaw 14600 14(1)**

We write to follow up with you in regard to the above captioned matter and previous communications between us, namely our letter of June 2, 2016 to you, and your response of June 15, 2016.

You may recall that we represent Mr. Smeding in regard to the Charge, and that Mr. Smeding’s activities involve street preaching on public sidewalks in the City of Edmonton.

On May 20, 2016, Nehemia Smeding was sharing the gospel on the sidewalk at Whyte Avenue and 105th Street, with the assistance of a small amplifier. While Mr. Smeding was preaching, EPS Constable Yee and Sergeant Elliot issued him a ticket under Bylaw 14600, 14(1) for “noise that disturbs the peace of another” (the “Noise Bylaw”).

Both Constable Yee and Sergeant Elliot explained to Mr. Smeding that the ticket was being issued simply on the basis of an individual’s complaint, without any independent assessment by them, and without any effort made by them to ascertain whether there were actually sufficient grounds to justify the issuance of a ticket. Constable Yee stated that he did not believe Mr. Smeding’s preaching was above the traffic noise, and stated that an amplified guitar player across the street was at least as loud. In short, the officers informed Mr. Smeding the summons was only being issued because they had received a complaint, and not because of any objective analysis by EPS.

In February 2016, City prosecutors withdrew an identical charge in a substantially identical situation against Mr. Warren Schacher. At the very same location where Mr. Smeding was issued a ticket, Constable Jamieson had issued Mr. Schacher a ticket in response to the complaint of one individual who disliked, or disagreed with, the contents of the message that Mr. Schacher had been sharing.

On June 3, 2016, Dale Malayko, another street preacher our office represents, was issued ticket number A39182916R by Constable Strickland for allegedly preaching too loud. However, Constable Yee, who also attended, acknowledged the lack of any substantiation for the noise complaint and in fact noted the loudness of an electric guitar, which can be heard in the recording. Rather, Constable Yee explained “it’s not up to me, you know that.” Instead, Constable Yee stated “it’s up to him [the Complainant], what he says in court.” He stated that “my hands are tied, we don’t do anything here so.”

On October 31, 2016, Mr. Malayko was notified by the Municipal Prosecutor that the prosecution of his charge would not proceed.

Mr. Malayko advises us that EPS officers on two separate occasions in the past two weeks have ordered him to stop preaching. We are informed that no reason was provided for these demands, and no ticket was issued.

An independent observer of this trend could reasonably conclude that it is convenient for the EPS to issue summonses to Mr. Smeding, Mr. Malayko, Mr. Schacher, and others in order to temporarily silence them, even when EPS is aware that such charges are meritless and unlikely to proceed. Knowingly improper conduct, such as the foregoing, by a police officer would violate the *Charter* rights of Mr. Smeding and others, and would also be a grossly improper exercise of an officer's authority, perhaps actionable in tort.

The actions of EPS officers in these situations in silencing expression based on the unpopularity of the expression's content amount to government censorship of expression, based purely on the content of the expression. Such *de facto* censorship cannot be permitted to continue in a free society protected under the *Charter*.

We have been informed that the Crown has also stayed the Charge against Mr. Smeding as of January 9, 2017.

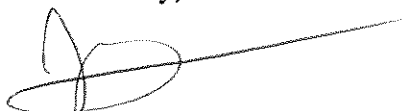
In our letter of June 2, 2016, we went to some lengths to outline Mr. Smeding's constitutional rights of freedom of expression. In your response to us, you indicated that you had referred Mr. Smeding's case to your Legal Advisor's Section.

We hereby request that you inform us as to what further steps, if any, have been taken by EPS since June 15, 2016, to educate its officers in regard to the protections that the *Charter* affords for the peaceful expression of opinion on public sidewalks and in other public places.

While I am pleased that the Charge against Mr. Smeding has been withdrawn in the instant case, I am concerned about the issuance of multiple improper summons to our clients. I write to ask what specific measures EPS has taken to ensure that this practice is discontinued.

I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Carpay', with a long horizontal line extending to the right.

John Carpay, B.A., LL.B.
President

cc. Shelly Bykewich, Edmonton Chief Crown Prosecutor