

Canada: Mistrial declared in trumped-up case against anti-poverty activists

David Adelaide**15 May 2003**

The Ontario Tories' politically motivated prosecution of three anti-poverty activists has ended in a mistrial—a blow to the Eves regime and their big business backers and a qualified victory for the activists. Judge Lee Ferrier of the Superior Court of Ontario was compelled to declare a mistrial when the jurors failed to reach a verdict after almost five days of deliberations.

The trial arose out of a June 2000 protest organized by the Ontario Coalition Against Poverty (OCAP) against the Tories' cuts to public housing and to welfare, which was held on the lawns of the provincial legislature at Queen's Park. Police allowed the demonstrators to overturn a flimsy line of barricades, then mounted a vicious attack on the protestors with pepper spray, batons and horses.

John Clarke, OCAP's principal organizer, was charged with "counselling to participate in a riot" and "counselling to assault police" and faced a potential five-year jail term. The two other defendants, Gaetan Heroux and Stefan Pilipa, were on trial for "participating in a riot." The charges against the activists represent a direct attack on the right to protest. By casting OCAP—a homeless and welfare advocacy group—as a violent, quasi-terrorist organization, the government hoped to associate any militant opposition to its right-wing policies with criminality.

OCAP responded to the trumped-up charges by waging a political defense, arguing that the police had used a legitimate political protest as an excuse to provoke a riot. The defense also highlighted the attacks on the homeless carried out by successive Tory regimes.

In Canada jurors are prohibited from discussing their deliberations with the press, but it is clear that the jury was sharply polarized, with at least a minority steadfast in their opposition to the legal attack on OCAP. On

their fourth day of deliberations, the jurors wrote the judge, "We are frustrated, exhausted and extremely emotionally upset, resulting in the hospital visit of one juror, a panic attack of another, a fainting, migraine headaches and emotional outbursts amongst the group"

The Eves Tory government devoted large resources to the prosecution of the OCAP activists. Defense lawyer Peter Rosenthal estimates that the trial cost the government in the neighborhood of a million dollars. And it was preceded by a massive and lengthy police investigation.

In their attempt to bolster a case that was patently short on evidence, the police executed search warrants on 14 media organizations to seize materials pertaining to the demonstration. Although the media organizations appealed the warrants to the Supreme Court, they were ultimately forced to hand over thousands of documents, videotapes and photographs relating to the event. According to the *Toronto Star*, for a full four months four police officers were assigned to studying the material with the aim of identifying "violent" protesters. Police also subpoenaed community radio station CKLN-FM, demanding tapes of interviews with the OCAP activists.

Despite this enormous expenditure of public money and effort, the prosecution failed to satisfy a jury that OCAP—and not the police—were the instigators of the June 15, 2000 riot. Indeed, there was much testimony, including some of it elicited from police officers under cross-examination, that pointed to deliberate and systematic police brutality and provocation. For instance, Inspector Wes Ryan, in charge of coordinating officers at the scene of the demonstration, testified that he had told officers at the front of the police perimeter to carry canisters of pepper spray. Ryan told the court that to have protestors thinking they

might be attacked by police with pepper spray was “exactly what” he “wanted people to think” Throughout the trial, photo and video footage of police officers manhandling, beating and kicking protestors was shown.

After the jury began its deliberations, Judge Ferrier removed a publication ban on his pre-trial ruling that the three defendants had been abused by the police. Prior to the trial, Ferrier ruled that Clarke, Heroux and Pilipa were unlawfully detained and strip-searched following their July 21, 2000 arrest, but found the abuse was not serious enough to warrant dismissing the charges against them.

Following the mistrial ruling, Clarke told the press: “The authorities assumed they could pull together a case that consisted of video evidence and police witnesses and that 12 people drawn from Ontario society would automatically assume our guilt. The reality is that the divisions that the Harris and Eves governments have created in Ontario society showed up in that jury room. There is political polarization in this province and the assumption that this was going to be some prosecutorial cakewalk for them was misplaced.”

The Crown has not ruled out seeking another trial and the chair of the Toronto Police Services Board, Norm Gardiner, has publicly demanded that the legal vendetta against OCAP continue.

According to official statistics, more than 90,000 families are on the waiting list for subsidized housing in the Greater Toronto Area. And a recently released Statscan report on the 2001 census shows that Toronto has the dubious distinction of being the Canadian city where income inequality is most extreme—the lowest 10 percent of households had an average income of \$9,600, while the wealthiest 10 percent of households had an average income of \$261,000.

Against this backdrop of ever-widening social inequality, the Toronto police have been pushing for the right to “regulate and control” demonstrations. The police and Police Services Board were banking on a conviction of the OCAP leaders to bolster their demands for police-issued permits to be mandatory for all protests and demonstrations on public property and for protest organizers to have to post bonds to cover any damages.

The Crown has until June 18 to decide whether to drop the charges against the OCAP three or press ahead

with its attempts to criminalize dissent.



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