



THE CANADIAN
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April 6, 2021

Via email: David.Lametti@parl.gc.ca; mcu@justice.gc.ca

The Honourable David Lametti, P.C., M.P.
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, ON K1A 0H8

Dear Minister Lametti:

Re: Reforms to the Federal Human Rights System

I write on behalf of the Constitutional and Human Rights Section of the Canadian Bar Association (CBA Section) to support the call for reform to the federal human rights system made by the Canadian Association of Black Lawyers and other organizations representing equality-seeking groups.

The CBA is a national association of 36,000 members, including lawyers, notaries, academics and law students, with a mandate to seek improvements in the law and the administration of justice. The CBA Section examines issues such as constitutionality of government legislation and proposed legislation, human rights codes and international human rights law.

The Canadian Association for Black Lawyers and other associations outline some compelling reasons for complainants to have direct access to the Canadian Human Rights Tribunal. The CBA recommended eliminating the Canadian Human Rights Commission's gatekeeping function almost two decades ago in comments to the Canadian Human Rights Act Review Panel.¹ The government would need to adequately fund the new model, as the benefits of a direct access to tribunal model can be undermined if the Tribunal lacks the necessary human and financial resources to deal with complaints in a fair and timely manner.

While we continue to support the direct access model in most cases, we believe there are different considerations at play for cases involving speech. Commenting on Justice Canada's 2020 consultation on legal remedies for hate speech, we recommended maintaining the Canadian Human Rights Commission's screening function for cases of online hate.²

¹ Canadian Bar Association, Submission on Canadian Human Rights Act Review, [online](#) 1999.

² Canadian Bar Association, Legal Remedies for Victims of Hate Speech, [online](#) 2020 at 4-5.

Cases involving speech require consideration of competing human rights – the right to freedom of expression and the right to freedom from incitement to hatred or discrimination. Canada previously had a civil remedy against online hate in human rights legislation. That law was repealed because, even though a screening function was in place, other factors led Parliament to conclude that it leaned too heavily against freedom of speech.

There is a need to re-enact a human rights law against hate speech that would balance rights by maintaining the previous safeguards for speech and adding some others. Our submission sets out other potential safeguards.³

When it comes to freedom from acts of discrimination, there is no comparable competing human rights value. We urge you to reform the federal human rights system to allow direct access to the Canadian Human Rights Tribunal in non-speech cases.

Yours truly,

(original letter signed by Nadia Sayed for Heather Hettiarachchi)

Heather Hettiarachchi
Chair, Constitutional and Human Rights Law Section

³ Canadian Bar Association, Legal Remedies for Victims of Hate Speech, [online](#) 2020.