THE CANADIAN BAR ASSOCIATION

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Bill C-304
Canadian Human Rights Act amendments (hate messages)

CONSTITUTIONAL AND HUMAN RIGHTS LAW SECTION
EQUALITY COMMITTEE
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PREFACE

The Canadian Bar Association is a national association representing 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the Constitutional and Human Rights Law Section and the Equality Committee of the Canadian Bar Association, with assistance from the Legislation and Law Reform Directorate at the National Office. The submission has been reviewed by the Legislation and Law Reform Committee and approved as a public statement of the Constitutional and Human Rights Law Section and the Equality Committee of the Canadian Bar Association.

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I. INTRODUCTION

The Constitutional and Human Rights Law Section and the Equality Committee of the Canadian Bar Association (CBA Section and Committee) welcome the opportunity to comment on Bill C-304, a private member's bill to amend the *Canadian Human Rights Act*[1] (CHRA) by repealing sections 13 and 54.[2]

In 1985, the CBA recommended that human rights codes include a prohibition against the publication of statements "which create an unreasonable risk that an identifiable group will be exposed to violence or hatred or which constitute an unreasonable affront to the human dignity of an individual who belongs to an identifiable group."[3]

In a 2009 speech entitled "Human Rights and History's Judgment," the Honourable Justice Rosalie Abella of the Supreme Court of Canada lamented the world's inability to eradicate human rights abuses more than 60 years following the end of World War II. She noted that the atrocities during that conflict led to "the most sophisticated array of laws, treaties and conventions the international community has ever known, all stating that rights abuses will not be tolerated." Justice Abella stated:

> We were supposed to have learned three indelible lessons from the concentration camps of Europe. First, indifference is injustice's incubator. Second, it's not just what you stand for, it's what you stand up for. And third, we must never forget how the world looks to those who are vulnerable.

She lamented that in spite of all this, "we still have not learned the most important lesson of all: to try and prevent the abuses in the first place."[4]

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1 *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 .

2 The text of these sections is reproduced in Annex A for ease of reference.

3 Recommendation 2 of the *Report of the CBA Special Committee on Racial and Religious Hatred*, adopted by Resolution 85-05-M.

4 Schmitz, "Justice needs more than words: Abella," *The Lawyers Weekly* (June 12, 2009) at p. 8.

By repealing section 13 of the CHRA, Canada's ability to prevent the proliferation of hate speech in society will be severely hampered. For the state to intervene, hate speech, messages or communications will have to meet the threshold of a *Criminal Code* offence. Under subsection 319(1) of the *Criminal Code*, for example, the Crown must prove "beyond a reasonable doubt" that public statements by the accused incite hatred against an identifiable group to such an extent that they will likely lead to a breach of the peace. This imposes a very high burden of proof compared with the lower standard of proof that must be met under section 13 of the CHRA, i.e., the civil standard of "on a balance of probabilities." In the absence of section 13, individuals will be free to engage in hate speech without fear of state intervention as long as the speech does not rise to the level of a *Criminal Code* offence. Canadians can expect to be subjected to a plethora of hateful messages and communications, and a corresponding loss of civility, tolerance and respect in Canadian society.

While the CBA Section and Committee strongly support Canadians' right to freedom of expression (enshrined in section 2(b) of the *Canadian Charter of Rights and Freedoms*),[5] that right, as all *Charter* rights, is not absolute and may be limited by valid government action, such as laws against discrimination and slander. A carefully balanced civil remedy, such as section 13 of the CHRA, is a reasonable government limit on the right to freedom of expression and can be demonstrably justified in a free and democratic society.[6]

II. BACKGROUND

Over the years, the enforcement of human rights protections against hate speech, in particular section 13 of the CHRA, has been the subject of controversy and debate in the media. Many media outlets have advocated the abolition of section 13 with no acknowledgement of the valuable role it plays in promoting tolerance and respect in Canadian society. Consequently, the public debate that results from these media reports has not been balanced.

Human rights commissions in Canada have advanced equality and eliminated discrimination based on grounds such as race, religion, gender, disability, sexual orientation. In addition to investigating complaints and bringing those with a credible basis before the tribunal for adjudication, they have

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5 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (U.K.), 1982, c. 11 (*Charter*).

6 See CBA's factum to the Supreme Court of Canada in *Saskatchewan Human Rights Commission v. Whatcott*, 2010 SKCA 26. The factum provides a *Charter* analysis on the constitutionality of para. 14(1)(b) of the *Saskatchewan Human Rights Code,* a provision similar to section 13 of the CHRA. The CBA Section believes that section 13 is constitutional, and recommends that the recently added penalty provision be repealed from the CHRA (i.e., para. 54(1)(*c*), as well as section 54(1.1)).

"collaborative and educational responsibilities [that] afford [them] extensive awareness of the needs of the public."[7] The contributions that human rights bodies like the Canadian Human Rights Commission make in protecting human rights and in educating the Canadian public cannot be overstated.

Contrary to denigrating criticisms leveled against them, human rights tribunals play an equally important role by providing a forum where valid complaints from individuals and target groups who have suffered discrimination can be heard and justice dispensed in a fair and sensitive manner. They also play a significant role in public education and addressing discriminatory behavior, such as hate speech, before it rises to the criminal level.

The 2005 Tribunal decision in *Warman v. Warman (Warman)*[8] provides some insight into the type of hate speech that exists in Canada (and is accessible from anywhere outside of Canada via the Internet) and of the fair and careful way the Tribunal makes its decisions.

The case concerned messages and material posted by Eldon Warman on the Internet and on his website. The Tribunal noted that the messages "portray the Jewish people as enemies … [and] traces a number of ills to the Jewish people … from abortion clinics to the Rwandan genocide. The Talmud is referred to as 'hate literature' and the 'evil trash of the Rabbim of the Synagogue of Satan'."[9] Most offensive was Warman's posted Internet response to a critic:

> Joe the JewBoy, Thanks [sic] for bringing back this reminder for the People of Canada and the United States to read and refresh their memory of what your NAZI-ZIONIST JEWS have done to the People of America. It's too bad we don't have a greater need for soap and lampshades, but, I suppose it would be difficult to get the stench of pig shit out of that slimy fat.[10]

The Tribunal noted that soap and lampshades were a reference to the fact that these items were made from the bodies of Jews who died in the WWII concentration camps of the Third Reich. It concluded that Warman used these racial slurs to advance his political agenda.[11]

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7 *Bell Canada v. Canadian Telephone Employees Association*, [2003] 1 S.C.R. 884 at para. 41, speaking specifically about the Canadian Human Rights Commission.

8 *Warman v. Warman*, 2005 CHRT 36.

9 *Ibid* at para. 19.

10 *Ibid* at para. 22,

11 *Ibid* at para. 23.

The Tribunal observed that it is a mistake to view section 13 of the CHRA as an independent legal restriction, but rather its purpose is to place necessary and reasonable limits on Canadians' freedom of expression. No human right is unlimited: All rights must be balanced against countervailing rights. Section 13 serves to qualify Canadians' freedom by placing ***only*** those restrictions on expression that are necessary "for respect of the rights or reputations of others."[12] In the Tribunal's words, when analyzing cases it begins with the premise that individuals are free to express themselves. It acknowledges that the difficult task is to determine the limits of that freedom, which requires a careful balancing of the constitutional values at stake.[13] The Tribunal's responsibilities consist primarily in keeping the channels of free speech clear of messages, such as hate speech, that threaten the normative foundations of Canadian society.[14]

The Tribunal held that Warman's postings were offensive under section 13, and the complainant and the Commission had met the required standard of proof (on a balance of probabilities) to substantiate the complaint. Warman was ordered to "cease and desist" the posting of such messages, and the offensive messages were removed from the Internet. The Tribunal thus concluded that the fundamental purposes of the CHRA had been met.[15]

The section 13 complaints dealt with by the Commission and Tribunal show that hate speech directed at identifiable religious and other groups is alive and well in Canada. Without section 13, hate speech similar to that in *Warman*, vilifying target groups on the basis of their religious beliefs and ethnic origin, will proliferate. Because cases involving hate speech may not meet the higher threshold of a *Criminal Code* offence, it is foreseeable that without section 13 this type of speech will flourish and spread unchecked.

III. SECTION 13: PROTECTION AGAINST HATE MESSAGES

The CBA Section and Committee recommend retaining section 13 in the CHRA. We recommend repealing other provisions to maintain the CHRA's original purpose "as an instrument especially designed to prevent the spread of prejudice and to foster tolerance and equality in the community," instead of becoming an instrument designed to impose punishment.[16]

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12 *Ibid* at paras. 27 and 28.
13 *Ibid* at para. 27.
14 *Ibid* at para. 78.
15 *Ibid* at para. 83.
16 *Citron v. Zundel*, [2002] C.H.R.D. No. 1, at para. 256.

Section 13 plays a significant role in protecting and promoting equality in Canada. The Tribunal has noted that section 13 and related provisions uphold the principle of equality by preventing the promotion of hatred and removing legally offensive material from the Internet.[17] In addition:

> Section 13 characterizes the communication of hate messages as a form of discrimination. There are reasons for this. The laws that prohibit the dissemination of hatred derive from the right of individual persons to live their lives, free from hatred and inequality. I think Parliament has taken the position that the good relations that provide the foundations of civil society rest on the belief that the people in different groups are equal. This is a fundamental legal and political tenet. Any other view is illegitimate.[18]

Ironically, section 13 also protects the freedom of expression of targeted groups. Hate speech erodes their ability to publicly defend themselves against discriminatory stereotypes by undermining their status as legitimate and truthful social commentators.[19]

The CBA Section and Committee believe there is a need for both civil and criminal prohibitions on hate speech. The *Criminal Code* prohibitions in section 319 contain a high evidentiary threshold.[20] This is appropriate since a criminal conviction for hate speech, like any other criminal offence, carries social stigma and a criminal record. Because a conviction under section 319 may result in a term of imprisonment not exceeding two years, the burden of proof for a conviction is onerous. Canada is not alone in having both civil and penal prohibitions in law.

Section 13 of the CHRA and section 319 of the *Criminal Code* serve very different purposes. Section 13 applies to conduct that falls short of criminal behavior but that nevertheless poses harm to vulnerable target groups. It protects minorities from psychological harm caused by the dissemination of racial views which inevitably result in prejudice, discrimination and the potential of physical violence.[21]

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17 *Supra* note 8, at para. 35.

18 *Ibid*.

19 See *Ross v. New Brunswick School District No. 15,* [1996] 1 S.C.R. 825 at para. 91. The Supreme Court says about anti-Semitic speech: "Such expression silences the views of those in the target group and thereby hinders the free exchange of ideas feeding our search for political truth." See also Sneiderman, "Holocaust Bashing: The Profaning of History," (1999) 26 *Man. L.R.* 319 at para. 19, where he notes that Holocaust denial trades on and reinforces the supremacist portrayal of Jews as liars. See also Delgado and Stefancic, "Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills" (1992), 77 *Cornell Law Rev.* 1258 at 1278-1279, maintaining the potency of hate speech is that it responds to existing racial narratives in society, that work to discredit target groups.

20 See especially *R. v. Ahenakew*, 2008 SKCA 4 and *R. v. Ahenakew*, 2009 SKPC 10, where the accused was acquitted from promoting hatred contrary to *Criminal* Code s.319(2). Among the comments at issue were those the accused made in a speech indicating the Jews created WW II, and to a reporter indicating that Jews were a "disease" and Hitler was attempting to ensure Jews did not take over Europe.

21 *Supra* note 8, at para. 36.

Civil remedies for hate speech exist in other civil and common law jurisdictions as a supplement to the criminal law.[22] Given the importance of freedom of expression, it is appropriate to have a range of options for society to consider when responding to expression that causes harm. Criminal sanctions are available for only the most extreme cases.

IV. SECTIONS 13(2) AND 54: PENALTIES

The precursor to section 13 of the CHRA has been found constitutional by the Supreme Court of Canada in *Canada (Human Rights Commission) v. Taylor.*[23] However, since *Taylor*, provisions added to the CHRA have renewed concerns about section 13's constitutionality. Paragraph 54(1)(*c*) and section 54(1.1) were added in 1998 and subsection 13(2) was added in 2001 to prohibit the posting of hate messages on the Internet.[24]

The addition of section 13(2) has raised concerns about breadth and difficulties with enforceability. The CBA Section and Committee do not share these concerns. The rapid development of computer technology and the explosion of the Internet have created unique challenges for law enforcement generally, and there are practical difficulties in enforcing national and provincial legal standards with respect to the Internet. However, these challenges do not provide sufficient rationale for repealing section 13 and its application to Web-based hate.

The Tribunal has found certain Internet postings to contravene the CHRA. For example, in *Warman v. Lemire*,[25] the Tribunal found that a posting on the Internet contravened the CHRA, prior to holding

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22 For example, Part IIA of Australia's *Racial Discrimination Act, 1975* (Cth.) prohibits hate speech (defined as an act reasonably likely to "offend, insult, humiliate or intimidate"), which may form the basis of a complaint to the Australian Human Rights Commission. While most complaints are resolved through a conciliation process, remedies recommended by the Commission can be enforced through the federal court. In France, individuals or associations dedicated to opposing racism can sue perpetrators of hate speech for "group defamation" racial incitement and racial injury (*Loi sur la liberté de la presse du 29 juillet 1881*, articles 24, 24bis, 32, 33, and Article 1382 of the *Code Civil),* and can be added as a party to a criminal trial and receive damages by "constitution de partie civile." In California, individuals or the City Attorney, District Attorney or California Attorney General on their behalf, can sue for breaches of the Ralph (Civ. Code § 51.7) and Bane (Civ. Code § 52.1) Civil Rights Acts. The Ralph Act provides that it is a civil right to be free of violence or its threat because of a person's race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute. The Bane Act's Civil Code section 52.1 provides a civil remedy whenever a person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the federal or state Constitution or laws. Damages, injunctive and equitable relief is available for breach of either provision (Civ. Code § 52).

23 *Canada (Human Rights Commissions) v. Taylor*, [1990] 3 S.C.R. 892.

24 This subsection was added by the *Anti-Terrorism Act*, S.C. 2001, c. 41, s.88 to provide that, "for greater certainty", the *Act* applies to a "matter that is communicated by means of a computer or a group of interconnected or related computers, including the internet."

25 *Warman v. Lemire*, 2009 CHRT 26.

section 13 constitutionally inapplicable to the complaints.[26] This and other cases, such as *Warman v. Warman*, illustrate that the unique enforcement issues relating to the Internet are not insurmountable. Human rights commissions deal effectively with these complaints.

The Tribunal has developed a body of jurisprudence identifying contextual factors which should assist in determining whether a particular article, book or Web posting could be characterized as hate speech. This jurisprudence enables section 13 to be applied in a manner consistent with its purpose, taking into account the dynamics of ever evolving forms of telecommunications.

In 1998, a penalty provision was added to the CHRA. Paragraph 54(1)(*c*) allows the Tribunal to award a monetary penalty for a violation of section 13, and section 54(1.1) specifies the criteria for imposing the penalty. While the CBA Section and Committee support retaining the existing civil remedies in section 54 of the CHRA, the compensatory awards and "cease and desist" orders in paragraphs 54(1)(*a*) and (*b*), we recommend repealing the two penalty provisions from the CHRA (para. 54(1)(*c*) and section 54(1.1)).

The addition of a penalty provision (para. 54(1)(*c*)) to the CHRA is not consistent with its core remedial and conciliatory function, a function highlighted by the Supreme Court in the *Taylor* decision. In 2009, a Tribunal member declined to apply section 13 to complaints because, in his view, the penalty provisions meant that the section could no longer be justified as a reasonable limit on freedom of expression, as found in *Taylor*.[27]

The addition of penalties is also contrary to the underlying philosophy of human rights legislation, which is to eradicate discrimination and to enhance and encourage equality. By repealing these two penalty provisions, Parliament would respond to the need to protect the right to freedom of expression and underscore that remedies for violations of section 13 are purely civil.[28]

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26 The Tribunal significantly concluded in *Warman v. Lemire, ibid,* that the majority judgment in *Taylor* remained good law, unaffected by amendments to the CHRA, except for para 54(1)(c).

27 *Supra* note 25, per Vice Chair Hadjis. On October 1, 2009, the CHRC filed in the Federal Court of Canada an application for judicial review of this ruling.

28 The Commission's Special Report, to Parliament in June 2009 recommends only that para. 54(1)(c) be repealed (*Freedom of Expression and Freedom from Hate in the Internet Age*, see: http://www.chrc-ccdp.ca/pdf/srp_rsp_eng.pdf). However, section 54(1.1) is contingent on a tribunal's authority to impose a penalty under para. 54(1)(c). If the penalty provision is repealed, then section 54(1.1) must also be repealed.

The penalty provisions, not section 13, have been found unconstitutional. If the two penalty provisions were repealed, concerns about the constitutionality of section 13 would have no basis.

V. INTERNATIONAL OBLIGATIONS

Canada, as a signatory to the *International Covenant on Civil and Political Rights* (ICCPR),[29] and other international and regional human rights conventions and treaties, is obliged to implement domestic measures to prevent the spread of hatred, while at the same time protecting the right to freedom of expression.

Article 19 of the ICCPR, establishes the right to freedom of expression. The ICCPR also requires states to balance the right against other countervailing rights.[30] For example, Article 20(2) obliges states to prohibit any advocacy of racial or religious hatred that would constitute incitement to discrimination. Article 26 states that all persons are equal before the law and that the law "shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground…" Rights in the ICCPR are not absolute, but rather are subject to the same balancing and limiting by the state as *Charter* rights in Canada.

By carefully balancing freedom of expression against other rights and values, Canada remains compliant with its obligations in ICCPR Articles 19 and 20 and other international and regional human rights treaties. Is this, however, the extent of Canada's international obligations?

The CBA Section and Committee believe it is not. If section 13 is removed from the CHRA, one tool in the state's "toolbox" for combatting discrimination in Canadian society will be lost. Section 319 of the *Criminal Code* is a blunt tool with a high threshold that can address only a small portion of hateful messages and communications. The emergence of the Internet and other forms of telecommunications means that the unchecked proliferation of hate speech in Canada will easily spread within our country

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29 *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, arts 9-14, (entered into force 23 March 1976, accession by Canada 19 May 1976) [*ICCPR*].

30 Article 19 of the ICCPR states: …

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to … impart information and ideas of all kinds, regardless of frontiers… ;

(3) The exercise of the right provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals.

and beyond our borders. Preventing the spread of hate speech domestically, helps prevent its spread globally.

In 2011, the US Ambassador-at-Large for International Religious Freedom, Suzan Johnson Cook, highlighted the duty that political leaders have to inform civil society about religious tolerance and to act on legislation.[31] She believes that states have the "tools at their disposal to combat religious intolerance" but often need the political will to use them. In her view, preventative measures are the key to combating religious intolerance because "it is better to create a climate that seeks to prevent discrimination and violence before it happens."[32]

Section 13 of the CHRA is an example of one of the essential tools Ms. Johnson Cook referred to as necessary for a state to combat religious and other forms of intolerance in civil society before it spreads unchecked and ignites into acts of violence.

Canada, unlike other states, had the foresight and political will to enact section 13 of the CHRA to foster a peaceful and tolerant society. In fact, Canada has been viewed as an international leader in the promotion of human rights and an example of a peaceful multicultural society.

It seems ironic that, at a time when "[i]ntolerance, including anti-Semitism, islamophobia and christianophobia, is on the increase,"[33] Parliament would consider removing an effective tool for combating discrimination on the basis of religion, in the form of hate speech, while the government is establishing an Office of Religious Freedom in the Department of Foreign Affairs to promote and protect religious freedom and minorities abroad.[34] Ironically, repealing section 13 would lead to less religious tolerance, protection and freedom for those living in Canada.

International proceedings have recognized that hate speech is often the precursor to hatred and violence against target groups in society. International tribunals have upheld hate speech prohibitions

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31 United Nations News, "Practical Measures to promote a culture of tolerance", (15 July 2011) online: http://www.ohchr.org/EN/NewsEvents/Pages

32 *Ibid*.

33 *Ibid* (Navi Pillay (UN Human Rights Chief) at a panel discussion in Geneva on the promotion of a culture of tolerance, June 2011.

34 "Religious freedom office defended by Baird," *Canadian Press* (2 January 2012) online: http://www.cbc.ca/news/politics/story/2012/01/02/pol-baird-religious-freedom.html: Mehdi Rizvi, "The new Office of Religious Freedom: Protecting religious minorities should start at home, not abroad," *Straight Goods* (12 April 2012) online: http://www.straightgoods.ca/2012/ViewArticle.cfm?Ref=24&Cookies=yes.

as balancing freedom of expression with freedom of religion, often citing Canadian law and jurisprudence. The United Nations Human Rights Committee (UNHRC) has upheld section 13 of the CHRA against allegations that it violated Article 19 of the ICCPR.[35]

Canada has an obligation to future generations and to the international community to remain vigilant, to retain all the tools necessary to combat intolerance and to stop hate speech before it rises to the criminal level of incitement to, or promotion of, hatred. Once it is at that level, irreparable harm will have been done to individuals, target groups and society at large.

Section 13 of the CHRA allows Canada to meet its international treaty obligations and commitments under the ICCPR, as well as other international and regional commitments. It ensures that Canada is in compliance with the objectives of the international community to advance human rights by providing appropriate protection under the law from the proliferation of hate speech and the resulting incitement of hatred and violence.

RECOMMENDATION

The CBA Section and Committee recommend that:

1. **section 13 of the CHRA be retained, and**
2. **paragraph 54(1)(*c*) and section 54(1.1) be repealed from the CHRA.**

VI. CONCLUSION

Justice Abella's sobering assessment of the state of human rights protections should give us all pause. Section 13 is an important tool to prevent discrimination and promote human dignity and equality. The CBA Section and Committee strongly recommend its retention. By repealing section 13 from the CHRA, Parliament will have failed both Canadians and the international community. We trust our comments will assist the Committee in its deliberations on this critically important matter.

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35 *International Covenant on Civil and Political Rights,* **Communication No. 736/1997***:* Canada (Jurisprudence) U.N. Documents CCPR/C/70/D/736/1997 (2000); and *International Covenant on Civil and Political Rights,* **Communication No. 104/1981***:* Canada (Jurisprudence), U.N. Docs. CCPR/C/18/D/104/1981 (J.R.T. & the W.G. Party v. Canada) (declared inadmissible April 6, 1983). In **Communication No. 104/1981,** the plaintiff claimed that section 13 (1) of the CHRA violated Article 19 of the ICCPR. The UNHRC noted, however, that the opinions which Mr. T. (the plaintiff) sought to disseminate through the telephone system clearly constituted the advocacy of racial or religious hatred which Canada has an obligation under article 20 (2) of the ICCPR to prohibit. The plaintiff's communication was declared incompatible with the provisions of the ICCPR and inadmissible.

ANNEX A: CANADIAN HUMAN RIGHTS ACT

Section 13

Hate messages

13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

Interpretation

(2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.

Interpretation

(3) For the purposes of this section, no owner or operator of a telecommunication undertaking communicates or causes to be communicated any matter described in subsection (1) by reason only that the facilities of a telecommunication undertaking owned or operated by that person are used by other persons for the transmission of that matter.

Section 54

Orders relating to hate messages

54. (1) If a member or panel finds that a complaint related to a discriminatory practice described in section 13 is substantiated, the member or panel may make only one or more of the following orders:

(a) an order containing terms referred to in paragraph 53(2)(a);

(b) an order under subsection 53(3) to compensate a victim specifically identified in the communication that constituted the discriminatory practice; and

(c) an order to pay a penalty of not more than ten thousand dollars.

Factors

(1.1) In deciding whether to order the person to pay the penalty, the member or panel shall take into account the following factors:

(a) the nature, circumstances, extent and gravity of the discriminatory practice; and

(b) the wilfulness or intent of the person who engaged in the discriminatory practice, any prior discriminatory practices that the person has engaged in and the person's ability to pay the penalty.