

# Hate Speech Provisions in Human Rights Legislation (Saskatchewan Human Rights Commission v. Whatcott)

## BACKGROUND

- This case addresses whether s. 14(1)(b) of the *Saskatchewan Human Rights Code*, prohibiting publication of material that “exposes or tends to expose to hatred, ridicules, belittles or otherwise affronts the dignity of any person or class of persons on the basis of a prohibited ground” violates freedom of expression under s.2(b) or freedom of religion under s.2(a) of the *Canadian Charter of Rights and Freedoms*.
- Whatcott distributed flyers in Saskatoon and Regina in 2001 and 2002 that disparaged gay men, warned they wanted to “share their filth and propaganda with Saskatchewan’s children” in the school system, and were more likely to have AIDS and sexually abuse children. Four persons who received flyers filed complaints alleging the material “promotes hatred against individuals because of their sexual orientation”.
- Saskatchewan Human Rights Tribunal and Court of Queen’s Bench found that Whatcott violated s. 14(1)(b) of the *Code*, which was reversed by the Saskatchewan Court of Appeal. The Court of Queen’s Bench and the Saskatchewan Court of Appeal upheld the constitutionality of the Code based on prior jurisprudence.
- The CBA was granted intervenor status. The Supreme Court of Canada heard the appeal in October 2011. The CBA’s *pro bono* counsel was David Matas.
- The CBA factum focused on whether s. 14(1)(b) of the *Saskatchewan Code* is constitutional. The CBA argued against the Court overturning its ruling in *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892, upholding comparable federal law, CHRA s. 13, as constitutional despite violating *Charter* s. 2(b) freedom of expression. The infringement of s. 2(b) in *Taylor* was justified under s. 1 of the *Charter*. The CBA argued that *Whatcott* cannot be distinguished from *Taylor* on the basis that the provision (at the time) concerned only hate speech delivered telephonically, and the Supreme Court should not revisit *Charter* decisions simply because of the passing of time. The CBA advocated an interpretation of constitutionality based on the international context (international conventions to which Canada is a party and jurisprudence from international courts), and the historical and contemporary context, including the impact of the impugned expression on the ability of the targeted group and others in society to exercise freedom of expression and religion or conscience.
- The Supreme Court of Canada (*Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11) declared a minor element of the *Code* unconstitutional (removing speech that “ridicules, belittles or otherwise affronts the dignity of any person or class of persons on the basis of a prohibited ground” from the prohibition). It found the rest of the provision was a reasonable limit on freedom of expression. The *Taylor* principles on what constitutes “hatred” remains good law, the assessment of constitutionality of hate speech provisions should take into account Canada’s international treaty commitments, and the effect of hate speech in silencing the voice of its target group.
- Section 13 of the *Canadian Human Rights Act (CHRA)* was repealed in June 2013 ([see separate note](#)). Hate speech provisions remain in force in most provincial human rights legislation.
- The Prime Minister’s 2019 mandate letter to the Justice Minister identified developing options for legal remedies for victims of hate speech and combatting online hate and harassment as priorities.
- In October 2020, the Constitutional and Human Rights, Criminal Justice and Sexual Orientation and Gender Identity Community Sections [commented](#) on a Justice Canada consultation paper on Legal Remedies for Victims of Online Hate. The CBA Sections recommended creating a civil remedy with enhanced procedural protections compared to the former section 13 of the CHRA. They also recommended changes to enhance the effectiveness of the criminal remedy.

- Bill C-36, amending the *Criminal Code* and the *Canadian Human Rights Act* to address hate propaganda, hate crimes and hate speech was introduced in June 2021, but died on the Order Paper with the 2021 election. The bill would make it a discriminatory practice to communicate or cause to be communicated hate speech on the internet that is likely to foment detestation or vilification of an individual or group on the basis of a prohibited ground of discrimination. The bill adopts some of the CBA Sections procedural recommendations including allowing complaints that are clearly not hate speech to be dismissed at an early stage and allowing the Tribunal to order costs where there has been an abuse of process.
- In April 2023, CBA President Steeves Bujold and the Chairs of SOGIC, Criminal Justice and Constitutional and Human Rights Sections [asked the Minister of Justice](#) to reintroduce Bill C-36 to combat the recent and dramatic rise in hate crimes, particularly against Canada’s lesbian, gay, bisexual, transgender, two-spirited, queer, intersex, and otherwise gender and sexually diverse (2SLGBTQI+), religious minority, racialized and ethnic communities.
- In February 2024, [Bill C-63](#) (Online Harms Bill) was introduced. The proposed legislation seeks, among other things, to establish the Digital Safety Commission and Office, to establish a reporting mechanism for digital images shared without consent, and to create a new offence for the sharing of hateful content. In December 2024, government announced plans to split the bill and began the pre-study. The Bill died on the order paper.

## CURRENT STATUS

- In November 2025, the Sexual and Gender Diversity Alliance (SAGDA, formerly SOGIC) and the Criminal Law Section wrote to the Chair of the Standing Committee on Justice and Human Rights and testified before the Committee on Bill C-9, the *Combating Hate Act*. While the bill’s objective was to address the rise in hate crimes by amending the *Criminal Code* to target crimes against identifiable groups, the Sections raised concerns about the unintended consequences – specifically, overly broad wording, the risk of over-policing marginalized communities, and the potential negative impact on freedom of speech that is not motivated by hate.

## NEXT STEPS

- CBA Advocacy staff continue to monitor for other hate crime legislation, initiatives or issues and will respond to any bill introduced or reintroduced in the current Parliament.