

National Press Celebrates the Prospect of Police Investigations

Promoting hatred is a criminal offence under the hate propaganda sections of Canada's *Criminal Code* (318 through 320.1).^[1] Allegations made under those sections are investigated by police officers and prosecuted by Crown prosecutors. This means that guilt in those cases must be proven at a standard of "beyond a reasonable doubt."

Complaints about discrimination can also be made to the Canadian Human Rights Commission (CHRC) under section 13 of the *Canadian Human Rights Act* (CHRA).^[2] Complaints about discrimination under the *Canadian Human Rights Act* must allege breaches of section 2 of that *Act*, which forbids:

discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.^[3]

Accusations of discrimination under the *CHRA* are interpreted on the civil standard of "reasonable probability." The few cases of discrimination by a private citizen promoting hatred, decided by the CHRC, "almost all involved expression that is so extreme and hateful that it may be seen as advocating or justifying violence against the members of an identifiable group."^[4]

In December 2007, complaints were made under the *CHRA* against two national press reporters who were accused of promoting hatred. Members of an identifiable group, as defined by section two of the *Act* (see above), complained that they had been discriminated against. The CHRC ruled that there was no discrimination; however, the commission wondered whether it should be hearing complaints that private citizens were promoting hatred. Thus, the CHRC hired law professor Richard Moon to review the situation and present a report.^[5] He came to the conclusion that the CHRC's decisions had come to duplicate the provisions of the *Criminal Code*. Accordingly, Moon questioned why the CHRC was replicating the functions of a criminal court. He recommended that section 13 be removed from the *CHRA*.^[6] His recommendations have not been implemented.

A number of editorial writers see this as a victory for freedom of the press with the result that journalists can shed the bureaucratic nightmare of answering to every complaint registered with the CHRC.^[7] On the other hand, using the police and the criminal courts to deal with accusations promoting hatred, says Mark Freiman, a lawyer with Canadian Jewish Congress, "is a blunt tool..."^[8]

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- [1] *Criminal Code*, R.S.C. 1985, c. C-46, s. 318 - 320.1.
- [2] *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, s. 13.
- [3] *Ibid.* at s. 2.
- [4] Canadian Human Rights Commission, *Report to the Canadian Human Rights Commission Concerning Section 13 of the Canadian Human Rights Act and the Regulation of hate Speech on the Internet* by Richard Moon (Ottawa: Canadian Human Rights Commission, 2008).
- [5] *Ibid.*
- [6] *Ibid.* at page 3.
- [7] Rory Leishman, "Human rights commission stifles freedom of expression" *London Free Press* (3 December 2008) online: http://lfpres.ca/newsstand/News/Columnists/Leishman_Rory/2008/11/29/7574646-sun.html. Ezra Levant, "A victory for free speech" *National Post* (25 November 2008) online. "Criminal Code the most effective tool to control hate speech on the Net" *Vancouver Sun* (26 November 2008) online. "At last, common sense on free speech" *The [Montreal] Gazette* (26 November 2008) online.
- [8] Mark Freiman, "When Free Speech Becomes Dangerous," letter to the editor *Globe and Mail* (26 November 2008) online.