



Women's Legal
Education and
Action Fund

Fonds d'action et
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pour les femmes

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THE WOMEN'S LEGAL EDUCATION AND ACTION FUND (LEAF)

**TO THE HOUSE OF COMMONS STANDING COMMITTEE ON
JUSTICE AND HUMAN RIGHTS**

RESPECTING THE COMMITTEE'S REVIEW OF BILL C-13

May 20, 2014

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1. Introduction: LEAF supports s. 12 of Bill C-13 and would support further improvements to the hate propaganda sections of the *Criminal Code*.

The Women's Legal Education and Action Fund (LEAF) makes the following submission to the House of Commons Standing Committee on Justice and Human Rights (the "Committee") in support of s. 12 of Bill C-13, *An Act to amend the Criminal Code, the Canada Evidence Act, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act* ("Bill C-13"). LEAF submits that it is essential to include "sex" in the list constituting "identifiable group" protected in the offence sections 318 (advocating or promoting genocide) or 319 (inciting or promoting hatred) of the *Criminal Code*.¹ LEAF also submits that the other additions effected by s. 12 of Bill C-13, adding "national origin," "age," and "mental or physical disability" to the list constituting "identifiable group," are important improvements to the measures addressing hate propaganda. In addition, Bill C-13 should be consistent with the recent Bill C-279 and include "gender identity" in this list. Indeed, the inclusion in the *Criminal Code* list of identifiable groups protected against hate propaganda of all the groups protected under human rights legislation would be consistent and logical. However, based on the purpose of LEAF, this submission will focus on the inclusion of "sex" in the list of groups protected against hate propaganda. LEAF makes no submission on and takes no position on the rest of Bill C-13.

The purpose and effect of the hate propaganda provisions in the *Criminal Code* are to protect against the harm caused to vulnerable individuals and to the fabric of our society. Prohibition of hate propaganda against vulnerable groups is essential for the protection of equality rights as guaranteed by s. 15(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*")² and is consistent with various other sections of the *Charter*, including ss. 2(b), 7, 25, 27 and 28, as well as Canada's obligations under international law. However, the protection afforded to vulnerable groups by the hate propaganda sections of the *Criminal Code* is limited, since the list of groups in the definition of "identifiable group" in s. 318(4) (and referred to in s. 319(7)) does not include "sex." The *Criminal Code* therefore does not permit recognition of gendered hate speech *qua* women or on intersecting grounds. It prevents the courts from considering the full context of the harms that have been perpetrated. As a result, women as a group are currently not protected from the harms of hate propaganda, even though women have been and are the targets of hate propaganda. The addition of "sex" to the list of protected groups by s. 12 of Bill C-13 is therefore an important and overdue measure.

Although the recent judgment of the Supreme Court of Canada in *Saskatchewan (Human Rights Commission) v. Whatcott*³ ("Whatcott") dealt with a hate speech prohibition in human rights legislation (rather than the *Criminal Code*), the judgment reinforces the recognition that hate speech causes harm – to individuals, to the targeted group, and to society at large.⁴

The addition of "sex" to the groups protected by the hate propaganda prohibitions is consistent with the sentencing principles set out in s. 718.2(a)(i) of the *Criminal Code*. That section provides that a court imposing a sentence shall take into consideration evidence that the offence was motivated by

¹ *Criminal Code*, RSC 1985, c. C-46

² *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

³ [2013] 1 SCR 467

⁴ *Whatcott*, para 74

bias, prejudice or hate based on “race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor.”

In summary, LEAF supports s. 12 of Bill C-13. However, LEAF also submits that (1) the list in the definition of “identifiable group” should be as inclusive as the protected grounds in human rights legislation, and (2) the prerequisite consent of the Attorney General for proceedings to be instituted in the hate propaganda sections of the *Criminal Code* (as set out in s. 318(3), s. 319(6), s. 320(7), s. 320.1(8)) constitutes a barrier to access to justice for women, and such prerequisite should be removed.

2. LEAF’s expertise.

LEAF is a national not-for-profit organization dedicated to promoting substantive equality for women through litigation, law reform and public education. Central to LEAF’s commitment to substantive equality is addressing the inequalities suffered by women who experience discrimination on multiple and intersecting grounds, such as on the basis of Aboriginal identity, poverty, disability, race, sexual orientation and religion. LEAF has intervened in dozens of cases on substantive equality since it was founded in 1985 and is a leading expert in the inequality and discrimination experienced by women in Canada.

LEAF intervened before the Supreme Court of Canada in *Whatcott, R. v. Keegstra*⁵ (“*Keegstra*”), *R. v. Andrews*⁶ (“*Andrews*”), and *Canada (Canadian Human Rights Commission) v. Taylor*⁷ (“*Taylor*”) to argue that hate speech and hate propaganda inflict harm and fundamentally erode the equality rights of members of the targeted groups. LEAF has also made submissions on the role of equality and other *Charter* rights in interpreting limitations on hate speech and discriminatory notices, signs and symbols in *Kane v. Alberta Report*⁸ and *Kane v. Church of Jesus Christ Christian-Aryan Nations*.⁹

3. Hate propaganda causes deep harm.

Hate messages cause harm to the individuals within vulnerable groups, to the groups, and to society at large. As stated by one of the leading writers on this issue, “The negative effects of hate messages are real and immediate for the victim.”¹⁰ The Supreme Court recognized the wide and deep effects of hate speech in *Keegstra, Andrews, Taylor* and *Whatcott*.¹¹ The effects of hate speech include a profoundly negative effect on an individual’s sense of self-worth, an increase in social discord, and increasing discriminatory acts.¹² Hate speech lays the groundwork for later broad attacks on vulnerable people.¹³ The unanimous Supreme Court in *Whatcott* noted the history of harm from the

⁵ [1990] 3 SCR 697

⁶ [1990] 3 SCR 870

⁷ [1990] 3 SCR 892

⁸ 2001 ABQB 570

⁹ (1992), 18 CHRR D/268 (Alta. Bd. of Inq.)

¹⁰ M.J. Matsuda, “Outsider Jurisprudence: Toward a Victim’s Analysis of Hate Messages,” in M.H. Freedman and E.M. Freedman, eds., *Group Defamation and Freedom of Speech* (Westport, Conn.: Greenwood Press, 1995), 87-120, page 91

¹¹ *Keegstra*, pages 746-47; *Taylor*, pages 918-19; *Whatcott*, para 73

¹² *Whatcott*, paras 71, 74

¹³ *Whatcott*, para 74

dissemination of messages of hate – from the harm unleashed by fascism in Italy and National Socialism in Germany to more recent examples of attempted cleansing or genocide on the basis of religion, ethnicity, or sexual orientation in the former Yugoslavia, Cambodia, Rwanda, Darfur, or Uganda.¹⁴

The importance and justification for legislative provisions (in human rights legislation and under the *Criminal Code*) to deter hate messaging targeting vulnerable groups has consistently been recognized by the courts in judgments over many years, including *Keegstra*, *Taylor*, and *Andrews* in 1990, and more recently in *Whatcott*, and by the unanimous Federal Court of Appeal in *Lemire v. Canadian Human Rights Commission*.¹⁵ These proceedings under the hate propaganda provisions of the *Criminal Code* show that hate against vulnerable groups is a continuing reality in Canada. Further examples include:

- *R. v. Krymowski*:¹⁶ participation in a demonstration including chants and placards expressing hatred against Roma/gypsy refugees
- *R. v. Noble*:¹⁷ posting on and participating in the “Exterminance” website and other websites expressing hatred against Jews, gays and lesbians, racialized groups
- *R. v. Harding*:¹⁸ pamphlets and telephone messages expressing hatred against Muslims
- *R. v. Mahr*:¹⁹ messages written on walls promoting hatred against Jews
- *R. v. Bahr*:²⁰ creation of and posting to a website expressing hatred against Jews, gays and lesbians, racialized groups
- *R. v. Castonguay*:²¹ creation of a YouTube site and messages expressing hatred against Jews, Muslims, gays and lesbians, and racialized groups
- *Mugesera v. Canada (Minister of Citizenship and Immigration)*:²² the Supreme Court of Canada interpreted and applied the hate propaganda provisions in the *Criminal Code* in the context of a deportation order issued against Mugesera based on a speech in Rwanda which constituted incitement to murder, genocide and hatred against the Tutsi people.

Of course the focus of the cases under or pertaining to the hate propaganda provisions of the *Criminal Code* relates to religion, ethnic origin, colour, race, and sexual orientation because these are the *protected* identifiable groups in s. 318(4) (and referred to in s. 319(7)) of the *Criminal Code*. LEAF submits that in Canada there has been, and there is, hate propaganda against other vulnerable groups, including women, and that hate propaganda against such groups should be included in the offences within the ambit of the *Criminal Code*.

4. Women are targeted by hate propaganda.

Hate expression has targeted and continues to target women, increasingly on the Internet and social media. Against lesbians, hate propaganda has included portrayal as predators, intending to lure and

¹⁴ *Whatcott*, para. 72

¹⁵ 2014 FCA 18

¹⁶ 2005 SCC 7

¹⁷ 2008 BCSC 215

¹⁸ 2001 CanLII 21272 (ONCA)

¹⁹ 2010 ONCJ 216

²⁰ 2006 ABPC 360

²¹ 2013 QCCQ 4286

²² 2005 SCC 40

abuse children.²³ Black women have been portrayed as oversexed, diseased, prostitutes, animal-like, and stupid;²⁴ Aboriginal women as degraded and dispensable “squaws,”²⁵ Muslim women wearing niqabs as terrorists intending to destroy and debase our society and as “sick[ening].”²⁶ Against persons with disabilities, hatemongers have advocated eugenics and euthanasia.²⁷ Anti-women messages were displayed on posters and transmitted through e-mails, resulting in the closing of a university women’s centre.²⁸

The portrayal of Aboriginal women as dispensable, degraded, runaway-prostitutes has been connected to the disappearance or murder of Aboriginal women.²⁹ Similarly, in 1991 the Manitoba Aboriginal Justice Inquiry into the murder of Helen Betty Osborne concluded that the men who abducted and killed her were driven by “vicious stereotypes borne of ignorance and aggression... [T]hey believed that young Aboriginal women were objects of no human value beyond sexual gratification.”³⁰ The Inquiry relied on evidence that “[t]he portrayal of the squaw is one of the most degraded, most despised, and most dehumanized anywhere in the world...she has no human face, she is lustful, immoral, unfeeling and dirty. Such a grotesque dehumanization has rendered all Native women and girls vulnerable to physical, psychological and sexual violence.”³¹

In *Whatcott*, the Court also recognized the proliferation of hate speech on the Internet.³² The Internet has become a popular forum among hate groups because of its ease, effectiveness, low cost, wide reach, and anonymity for the speaker.³³

In 2013, Facebook finally bowed to an outcry over content promoting violence against women after advertisers pulled ads in protest.³⁴ The company announced it would update its policies on hate

²³ *Schnell v. Machiavelli Emprize Inc.*, 2002 CanLII 1887 (CHRT) at para 40[*Schnell*]; E. Faulkner, “Homophobic Hate Propaganda in Canada” (2006/07) *Journal of Hate Studies* 5:63, <http://guweb2.gonzaga.edu/againsthate/journal5/GHS107.pdf> at 77-79; see *Pardy v. Earle*, 2011 BCHRT 101 (CanLII) for an example of a vitriolic, profanity-laced attack against lesbians

²⁴ *Warman v. Guille*, 2008 CHRT 40 at paras 83,119; *Association of Black Social Workers v. Arts Plus* (1994), 24 CHRR D/513 (NS Bd Inq)

²⁵ *Warman v. Western Canada for Us*, 2006 CHRT 52 at para 19; see also Amnesty International, “No More Stolen Sisters” (London, U.K., 2009), <http://www.amnesty.ca/amnestynews/upload/AMR200122009.pdf> at 5-6; Aboriginal Justice Inquiry of Manitoba, *The Changing Image of Aboriginal Women*, ch 13, vol 1 (Manitoba: The Aboriginal Justice Implementation Commission, 1999), <http://www.ajic.mb.ca/volumel/chapter13.html#5>

²⁶ *Warman v. Kouba*, 2006 CHRT 50 at para 47; *Warman v. Beaumont*, 2007 CHRT 49 at paras 16, 18

²⁷ *Warman v. Northern Alliance*, 2009 CHRT 10 at para 22

²⁸ L D’Amato, “Two UW centres closed following anti-female messages,” *The Record*, February 19, 2011, <http://www.therecord.com/news/local/article/489999--two-uw-centres-closed-following-anti-female-messages>

²⁹ Amnesty International, “No More Stolen Sisters,” cited above, at 5- 6

³⁰ *Ibid.*

³¹ Emma LaRocque, Department of Native Studies, University of Manitoba, in a presentation to the Inquiry, quoted in Amnesty International, above, at 5 and in Aboriginal Justice Inquiry of Manitoba, *The Changing Image of Aboriginal Women*, ch 13, vol 1, (Manitoba: The Aboriginal Justice Implementation Commission, 1999), <http://www.ajic.mb.ca/volumel/chapter13.html#5>

³² *Whatcott*, para 72; see also *Lemire*, para 62

³³ R. Delgado and J. Stefancic, *Understanding Words that Wound* (Boulder: Westview Press, 2004), page 125, referring to E. Phillips Marsh, “Purveyors of Hate on the Internet: Are We Ready for Hate Spam?” (2000) 17 Ga. St. U.L. Rev. 379, 387. See also D. Matas, *Bloody Words: Hate and Free Speech* (Winnipeg: Bain & Cox, Publishers, 2000), page 149

³⁴ Rory Carroll, “Facebook gives way to campaign against hate speech on its pages,” *The Guardian*, May 29, 2013, <http://www.theguardian.com/technology/2013/may/29/facebook-campaign-violence-against-women>

speech. As noted in *The Guardian*, examples included a photograph of the singer Rihanna's bloodied and beaten face, captioned with "Chris Brown's Greatest Hits," a reference to the assault by her ex-boyfriend. A photograph of a woman in a pool of blood had the caption "I like her for her brains."³⁵

Gender-based hatred online can have devastating real-life consequences not only for women's sense of safety and security, but for their careers and reputations as well. In 2007, well-known blogger and software developer Kathy Sierra was subject to threats of rape and strangulation on her blog and via email, and doctored photos of her being suffocated by lingerie and lying with a noose beside her were widely circulated online.³⁶ Other posters revealed her home address and Social Security number. Terrified, Ms. Sierra cancelled public appearances and shut down her blog, missing out on potential career opportunities and putting her livelihood at risk. As she explained to the BBC: "I will never feel the same. I will never be the same."³⁷

Other women who have dared to take a public stance on feminist causes have also been subjected to extreme hatred, misogyny and abuse online. After leading an ultimately successful campaign to ensure that a woman stayed on British currency after Elizabeth Fry's replacement by Winston Churchill, Caroline Criado-Perez was subjected to rape and death threats via Twitter, receiving some 50 abusive tweets an hour at the height of the abuse.³⁸ Criado-Perez spoke out against the hatred and harassment, and helped bring about arrests and a change to Twitter's policy on reporting abuse.³⁹ But too often women victimized by hatred and misogyny online are simply pushed out of online spaces; like Kathy Sierra, they shut down their blogs and websites, stop participating in online forums, and deactivate their social media accounts. Like all victims of hate speech, "the negative effects of hate messages are real and immediate for the victim."⁴⁰ And while men also experience abuse online, the gendered, sexualized nature of the vitriol directed at women cannot be ignored.

In the Statistics Canada 2009 General Social Survey on Victimization, 16% of hate content on the Internet was reported as targeting women.⁴¹ A 2006 study showed that individuals writing under female names received twenty-five times more sexually threatening and malicious comments than posters writing under male names,⁴² and a Pew Internet and American Life Project study attributed a nine percent decline in women's use of chat rooms to menacing sexual comments.⁴³ As one victim

³⁵ *Ibid.*

³⁶ D.K. Citron, "The changing attitudes toward cyber gender harassment: Anonymous as a guide?" *Forbes* 27 April 2014, <http://www.forbes.com/sites/daniellecitron/2014/04/27/the-changing-attitudes-towards-cyber-gender-harassment-anonymous-as-a-guide/>

³⁷ "Blog death threat sparks debate" *BBC News*, 27 March 2007, <http://news.bbc.co.uk/2/hi/6499095.stm>

³⁸ Gavia Baker Whitelaw, "How can Twitter make it easier to report hate speech?" *The Daily Dot*, 29 July 2013, <http://www.dailydot.com/lifestyle/twitter-hate-speech-rape-threats/>

³⁹ Dera Kerr, "Twitter 'report abuse' button now live on all platforms" *CNET*, 28 August 2013, <http://www.cnet.com/news/twitter-report-abuse-button-now-live-on-all-platforms/>

⁴⁰ Matsuda, *supra* note 10

⁴¹ M. Allen and J. Boyce, "Police-reported hate crime in Canada, 2011" (Statistics Canada catalogue no. 85-002-X *Juristat*), <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11822-eng.pdf>, page 13

⁴² Robert Meyer and Michael Cukier, *Assessing the Attack Threat due to IRC Channels*, in Proceedings of the International Conference on Dependable Systems and Networks 467 (2006) <http://www.enre.umd.edu/content/rmeyer-assessing.pdf>

⁴³ Female bloggers face harassment, *Women in Higher Education*, 1 June 2007, at 5

explained, it does not take many rape threats to “make women want to lay low.”⁴⁴ Highlighting the gendered and sexualized nature of the abuse, another victim noted that “men may be told that they’re idiots, but they aren’t called ‘whores’.”⁴⁵

The Council of Europe’s Commissioner for Human Rights recently stated “Hate speech against women should be specifically tackled.”⁴⁶ The statement addresses the proliferation of hate speech against women, particularly on the Internet, with daily calls for violence against women and threats of murder, sexual assault or rape. The Commissioner urges national action to prohibit gender hatred, noting “Hate speech against women is a long-standing, though underreported problem in Europe that member states have the duty to fight more resolutely.”

The reality of hate messaging targeting women is recognized in academic research, in human rights organizations, and in the media, but the current hate propaganda provisions in the *Criminal Code* do not address this deeply harmful reality for women. With the repeal of the section in the federal human rights legislation that dealt with hate on the Internet, and included women within its protective ambit, it is now ever more important for inclusion of “sex” as an identifiable group in the hate propaganda provisions of the *Criminal Code*.

5. Section 15(1) of the *Charter* supports adding “sex” to the list of groups protected against hate propaganda.

The list in the definition of “identifiable group” includes and therefore protects certain groups vulnerable to hate, but not others. LEAF submits that the exclusion of the ground of sex from the list of identifiable groups in the hate propaganda sections denies equal protection and equal benefit of the law to women, contrary to s. 15 of the *Charter*. In other words, in its current form, the *Criminal Code* hate propaganda provisions discriminate against women on the ground of sex. The discrimination here is analogous to the discrimination through legislative exclusion of sexual orientation as a protected ground in human rights legislation, found to be discriminatory and unjustifiable in *Vriend v. Alberta*.⁴⁷ The Supreme Court held that the exclusion in that case was discriminatory in two ways. First, Alberta’s human rights legislation at that time treated gays and lesbians differently, imposing disadvantage, compared with other disadvantaged groups protected by the legislation.⁴⁸ The second distinction was between gays and lesbians and heterosexuals: the exclusion of protection based on sexual orientation had a disproportionate effect on gays and lesbians as compared with heterosexuals, given the social reality of discrimination against gays and lesbians.⁴⁹

Similarly in relation to the exclusion of sex from the list of protected groups in the hate propaganda sections of the *Criminal Code*, discrimination occurs in two ways. Women suffer disadvantage compared with other disadvantaged groups in that women have no recourse or protection under the

⁴⁴ Jessica Valenti, “How the web became a sexists’ paradise” *The Guardian* 6 April 2007, <http://www.theguardian.com/world/2007/apr/06/gender.blogging>

⁴⁵ *Ibid.*

⁴⁶ Nils Muižnieks, “Hate speech against women should be specifically tackled,” The Council of Europe Commissioner’s Human Rights Comment, posted March 6, 2014, <http://humanrightcomment.org/2014/03/06/hate-speech-against-women/>

⁴⁷ [1998] 1 SCR 493

⁴⁸ *Ibid.*, para 81

⁴⁹ *Ibid.*, para 82

Criminal Code when targeted by hate propaganda, whereas other disadvantaged groups do have recourse or protection. Further, women suffer disadvantage compared with men in that women are disproportionately targeted by gender-based hate, yet the *Criminal Code* fails to address this.

Other sections of the *Charter* support inclusion of “sex” as an “identifiable group” in the hate propaganda provisions of the *Criminal Code*: sections 7 and 28. Section 7 of the *Charter* guarantees security of the person; LEAF submits that legislative failure to protect women from gender-targeting hate propaganda undermines security of the person. As in *Bedford*, state action (or inaction in this case) can be seen as causally connected to the harms women suffer from hate speech.⁵⁰ Section 28 of the *Charter* reinforces the importance of addressing discrimination against women; women have an equal right to security of the person.

Inclusion of “sex” (along with other vulnerable groups) as an “identifiable group” in the hate propaganda provisions of the *Criminal Code* has been recommended for years.⁵¹ LEAF submits that there is no justification for excluding women from the protection of the hate propaganda provisions of the *Criminal Code*. It is therefore timely and appropriate for this omission to be remedied through s. 12 of Bill C-13.

6. Canada’s international obligations support adding “sex” to the list of groups protected against hate propaganda.

Canada has signed and ratified the *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW),⁵² which provides that State Parties shall adopt legislative and other measures, including sanctions, prohibiting discrimination against women and ensuring the full development and advancement of women (Articles 2 and 3) and shall take all appropriate measures to eliminate prejudices and practices based on the idea of the inferiority or superiority of either of the sexes (Article 5(a)).

Canada has acceded to the *International Covenant on Civil and Political Rights* (ICCPR),⁵³ which provides for equal and effective protection against discrimination on grounds including sex (Articles 2, 3, 17(1), 26).

These international commitments support legislative measures, including sanctions, to prohibit discrimination and harm to women through hate propaganda. The guarantee in ICCPR Art. 26 of equal and effective protection against discrimination on any ground such as sex is consistent with the guarantee in s. 15 of the *Charter* to equal protection and benefit of the law without discrimination based on grounds including sex. Women do not have equal protection or benefit of the hate propaganda provisions of the *Criminal Code* in its current form. Section 12 of Bill C-13,

⁵⁰ *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at paras 75-76

⁵¹ For example, Canada, Minister of Supply and Services, Special Committee on Pornography and Prostitution, 1985, Recommendation 38, page 27; Law Reform Commission of Canada, Report on Recodifying Criminal Law, Revised and Enlarged Edition (Report No 31). Supply and Services Canada, Ottawa, 1987, pages 11, 100. See list in P. Rosen, “Hate Propaganda,” Paper prepared for the Library of Parliament, 24 January 2000, pages 4-6, <http://www.parl.gc.ca/Content/LOP/researchpublications/856-e.htm>

⁵² G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981. Canada signed 17 July 1980 and ratified 10 Dec. 1981

⁵³ 19 December 1966, 999 UNTS 171 (accession by Canada 19 May 1976)

responds to Canada's commitment to and obligation to women as expressed in the *Charter* and in its international treaty obligations.

7. Protection in the *Criminal Code* is now more important because of the repeal of s. 13 of the *Canadian Human Rights Act*.

Prior to repeal of s. 13 of the *Canadian Human Rights Act*,⁵⁴ there were two avenues to address hate speech on the Internet: through human rights legislation and through the *Criminal Code*. Section 13 of the *Canadian Human Rights Act* prohibited hate messaging against protected groups including women. The repeal of s. 13 of the *Canadian Human Rights Act* – which repeal LEAF did not support – leaves only one avenue to address the harm caused by Internet hate targeting vulnerable groups. With recognition of the importance and justification of legislative measures to deter hate messaging against vulnerable groups, inclusion of “sex” in the list of identifiable groups, through s. 12 of Bill C-13, is now of pressing concern.

8. Expressing society's repudiation of hate propaganda through the law.

A societal statement through law repudiating messages of hate is an important affirmation of equality and an educational tool. A legal response to hate propaganda is a statement that members of protected groups “are valued members of our polity.”⁵⁵ Law educates the public about what is socially harmful and what is inappropriate behaviour.⁵⁶ And it allows the harmed party to see herself as harmed.⁵⁷ As noted by Danielle Keats Citron, an authority on cyber gender harassment, “Law played an important expressive role in detrialing workplace sexual harassment and domestic violence during the last quarter of the twentieth century.”⁵⁸

The argument that the marketplace of ideas will provide the necessary balance to resolve the harm is unpersuasive – particularly in the Internet age. Parliament protects the Canadian public in many areas involving expression and does not leave the problem to counter-speech. An example is regulation of tobacco advertising.⁵⁹ Hate expression distorts the marketplace by muting or devaluing the expression of the targeted groups.⁶⁰ There is no certainty that the marketplace will result in truth.⁶¹ And “[e]ven if tolerance will eventually rise to the top, the harms victims experience while waiting for justice to burgeon are too heavy a price to pay.”⁶²

While the *Criminal Code* expresses society's repudiation of hate propaganda through the law, it does so only in relation to certain vulnerable groups, omitting other vulnerable groups. Section 12 of

⁵⁴ *An Act to Amend the Canadian Human Rights Act (Protecting Freedom)*, S.C. 2013, c. 37, Royal Assent June 26, 2013 and coming into force one year after

⁵⁵ M.J. Matsuda, “Public Response to Racist Speech: Considering the Victim's Story,” in M.J. Matsuda *et al.*, *Words That Wound: Critical Race Theory, Assaultive Speech and the First Amendment* (Boulder: Westview Press, 1993), pages 18, 25, 49; *Vriend v. Alberta*, above, paras 100-101

⁵⁶ D.K. Citron, “Law's Expressive Value in Combating Cyber Gender Harassment,” 108 *Michigan Law Review* 373-416, pages 375-376, page 407

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Canada (Attorney General) v. JTI Macdonald Corp.*, [2007] 2 SCR 610

⁶⁰ *Keegstra*, pages 762-63

⁶¹ *Ibid.*

⁶² A. Tsesis, *Destructive Messages: How Hate Speech Paves the Way for Harmful Social Movements* (New York: New York University Press, 2002), page 137

Bill C-31 is an important step in expanding the groups protected by the hate propaganda provisions. The current omission of “sex” in the list of identifiable groups conveys a message of trivialization of the harm directed to and suffered by women through hate propaganda,⁶³ and it conveys a devaluation of women as compared to other targeted groups.⁶⁴ The labeling of gender-based hate attacks as “harassment” or “bullying” rather than a “crime” has contributed to the failure to date to address this serious harm targeted at women.⁶⁵

LEAF therefore supports the addition by Bill C-13 of “sex” and other grounds to the list of identifiable groups in s. 318(4) (and through s. 319(7)) of the *Criminal Code*, and urges that all groups protected through human rights legislation be added to the list of identifiable groups in the hate propaganda provisions of the *Criminal Code*.

9. Other improvements to the hate propaganda provisions are needed.

While LEAF supports the additions that s. 12 of Bill C-13 would effect, LEAF submits that including groups protected under human rights legislation in the *Criminal Code* list of identifiable groups protected against hate propaganda would be consistent and logical. These groups have been recognized as vulnerable to discrimination and therefore warrant protection from hate propaganda as well.

LEAF’s second concern relating to the hate propaganda provisions of the *Criminal Code* is the requirement of consent by the Attorney General to instituting a proceeding (ss. 318(3), 319(6), 320(7), 320.1(8))). LEAF submits that this is a barrier to access to justice for vulnerable groups targeted by hate propaganda. This extra and discretionary step constitutes a potential hurdle and denial to groups vulnerable to hate. The assessment of instituting a proceeding should be left to the usual safeguards. Concern over this aspect of the hate propaganda provisions has been expressed over time and in a number of contexts.⁶⁶

10. Conclusion.

In conclusion, LEAF supports s. 12 of Bill C-13. However, LEAF submits that:

- (1) the list of grounds in “identifiable group” should be as inclusive as the protected grounds in human rights legislation, and in particular, should include “sex,” “national origin,” “age,” “mental or physical disability”, and “gender identity”; and
- (2) the prerequisite consent of the Attorney General for proceedings to be instituted in the hate propaganda sections of the *Criminal Code* constitutes a barrier to access to justice for women, and such prerequisite should be removed.

⁶³ D.K. Citron, above, pages 375-376, 395-401

⁶⁴ *Vriend v. Alberta*, [1998] 1 SCR 493

⁶⁵ D. Halder and K. Jaishankar, *Cyber Crime and the Victimization of Women: Laws, Rights and Regulations* (Hershey, PA: Information Science Reference, 2012), page 16

⁶⁶ P. Rosen, “Hate Propaganda,” cited above, pages 4-6