IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

IN THE MATTER OF HARVEY KANE and THE JEWISH DEFENCE LEAGUE OF CANADA v. ALBERTA REPORT, LINK BYFIELD, MICHAEL BYFIELD and TED BYFIELD

IN THE MATTER OF A SPECIAL CASE APPLICATION PRESENTED TO THE COURT FOR AN OPINION PURSUANT TO SECTION 27 OF THE HUMAN RIGHTS, CITIZENSHIP AND MULTICULTURALISM ACT, R.S.A. 1980, c. H-11.7 and amendments thereto (the "Act")

SUBMISSIONS OF THE INTERVENOR WOMEN'S LEGAL EDUCATION AND ACTION FUND ("LEAF")

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Action No. 0001 - 20032

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SUBMISSIONS OF THE INTERVENER
WOMEN'S LEGAL EDUCATION AND ACTION FUND ("LEAF")

I. INTRODUCTION

The Women's Legal Education and Action Fund ("LEAF")

1. The Women's Legal Education and Action Fund ("LEAF") is a national, federally incorporated, non-profit organization founded in April, 1985, to secure equal rights for Canadian women as guaranteed by the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11 (the "Charter"). To this end, it engages in litigation, research and public education.

2. Through its numerous interventions, LEAF has contributed to the development of equality rights jurisprudence including the legal meaning of substantive equality. As a result of its litigation, public education and advocacy, LEAF has developed expertise in articulating the relationship between the law and the inequalities experienced by women and other historically disadvantaged groups in a variety of contexts.

3. LEAF has sought the opportunity to intervene in this Special Case Application because:

a. the stated questions raise important issues regarding the interplay between freedom of expression, equality, and the right to be free from discrimination;

b. the interpretation of a number of other human rights statutes, as well as the hate propaganda provisions in the *Criminal Code*, could be affected by the answers given by this Honourable Court; and

c. a fundamental objective of LEAF is to further equality rights for women and other historically disadvantaged groups, including through the use of human rights statutes and procedures

4. Pursuant to the Order of the Honourable Mr. Justice J. D. Rooke on February 1, 2001, LEAF was granted status to intervene in the within matter.

5. LEAF takes no position on the facts of the complaint from which the Special Case Application arises. Similarly, LEAF makes no submission on whether a contravention of the Act has occurred in the circumstances of the case from which the Special Case Application arises. The submissions by LEAF address the legal interpretation which should be given to s. 2 of the Act, and what methodology a Human Rights Panel should use in approaching any complaint alleging a contravention of s. 2(1) of the Act.

The harm of expression that exposes persons to hatred or contempt

6. Courts, tribunals, public policy commissions, and academic analysts have articulated the harm effected by expression that exposes persons to hatred or contempt because of gender, gender identity, race, religious beliefs, colour, physical or mental disability, age, sexual orientation, place of origin, marital status, source of income or family status.

a. *R. v. Keegstra* (1990), 77 Alta. L.R. (2d) 193 at 234 (S.C.C.) (**TAB 1**):

> The derision, hostility and abuse encouraged by hate propaganda therefore have a severely negative impact on the individual's sense of self-worth and acceptance. This impact may cause target group members to take drastic measures in reaction, perhaps avoiding activities which bring them

into contact with non-group members or adopting attitudes and postures directed towards blending in with the majority. Such consequences bear heavily in a nation that prides itself on tolerance and the fostering of human dignity through, among other things, respect for the many racial, religious and cultural groups in our society.

b. *Canada (Canadian Human Rights Commission) v. Taylor* (1990), 75 D.L.R. (4th) 577 at 594 (S.C.C.) ("*Taylor*") (**TAB 2**):

It can thus be concluded that messages of hate propaganda undermine the dignity and self-worth of target group members and, more generally, contribute to disharmonious relations among various racial, cultural and religious groups, as a result eroding the tolerance and open-mindedness that must flourish in a multicultural society which is committed to the idea of equality.

c. British Columbia Human Rights Commission, "A Call for Action: Combatting Hate in British Columbia," November 16, 1999, at pages 5, 16 (**TAB 3**):

Hatred against First Nation's people, Blacks, Jews, Chinese, other visible minority immigrants, gays and lesbians, religious minorities and women, has unfortunately, been an enduring legacy of the Canadian experience.

...

A core principle from the beginning of human rights legislation has been that a violation of an individual's rights is more than a mere private wrong. Discrimination harms the community. Through the passage of laws to deal with discrimination and hatred, the community has said to the victims of discrimination that we will stand with you and get involved in your problem, because your problem is ours too. Discrimination undermines the very essence of our idea of community that has, at its core, the acceptance of all people as equally deserving of concern and respect.

d. *Saskatchewan Human Rights Commission v. The Engineering Students' Society* (1984), 5 C.H.R.R. D/2074 at D/2089, paras. 17722 – 17724), appeal allowed on other grounds, (1986), 7 C.H.R.R. D/3443 (Sask. Q.B.), aff'd (1989), 56 D.L.R. (4th) 604 (Sask. C.A.), leave to appeal to S.C.C. refused June 8, 1989, 57 D.L.R. (4th) viii (all at **TAB 4**):

17722 A stereotypical image of a certain protected class of persons, namely women, is presented when they are consistently depreciated as ridiculous objects and when sexual violence and other forms of discriminatory depictions and descriptions are directed at them because of their sex. The class consisting of this gender is then ridiculed, and

belittled and their dignity affronted. Discrimination like this jeopardizes their opportunity to obtain equality rights including employment, education and security of their persons on an equal footing with the dominant gender grouping.

17723 The effect of such representations is to reinforce and legitimate prejudice against women. It prolongs the existence of hangovers of prejudice against equal female participation in education, work, aspects of social life and the professions.

17724 This material promotes a consistent image of women as less than human. Once a protected class, in this case women, is represented as a less than equal member of the human family with impunity the grave evil exists that they may be treated as such. Material of this kind in these newspapers serves to perpetuate a social climate discriminatory to women who are already targets of manifold discrimination and horrible violence. No social interest is served by tolerating the free expression of such material.

e. M. Matsuda, "Public Response to Racist Speech: Considering the Victim's Story," (1989), 87 Michigan L. Rev. 2320 at 2332 – 2335 (**TAB 5**), also published in M. Matsuda, C. Lawrence III, R. Delgado and K. Crenshaw, *Words that Wound: Critical Race Theory, Assaultive Speech and the First Amendment* (Boulder: Westview Press, 1993) at 17 - 51:

In addition to physical violence, there is the violence of the word. Racist hate messages, threats, slurs, epithets, and disparagement all hit the gut of those in the target group. The spoken message of hatred and inferiority is conveyed on the street, in schoolyards, in popular culture and in the propaganda of hate widely distributed in this country. Our college campuses have seen an epidemic of racist incidents in the 1980s. The hate speech flaring up in our midst includes insulting nouns for racial groups, degrading caricatures, threats of violence, and literature portraying Jews and people of color as animal-like and requiring extermination.

...

From the victim's perspective, all of these implements inflict wounds, wounds that are neither random nor isolated. Gutter racism, parlor racism, corporate racism, and government racism work in coordination, reinforcing existing conditions of domination. Less egregious forms of racism degenerate easily into more serious forms.

II. GENERAL PRINCIPLES APPLICABLE TO THE ANALYSIS

7. Two general principles provide a foundation for the analysis of the questions stated to this Honourable Court.

8. First, human rights legislation is given a purposive interpretation. Protected rights receive a broad interpretation, while exceptions and defences are narrowly construed.

   - *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Montreal (City)* (2000), 185 D.L.R. (4th) 385 at 401 – 402 (S.C.C.) (**TAB 6**).

   - *Kane v. Church of Jesus Christ Christian-Aryan Nations* (1992), 18 C.H.R.R. D/268 at D/288 – D/289 (Alta. Bd. of Inq.) ("*Aryan Nations*") (**TAB 7**)

9. Such purposive interpretation should be guided by considerations including the Preamble to the Act.

   - *Vriend v. Alberta* (1998), 156 D.L.R. (4th) 385 at 425 (S.C.C.) (**TAB 8**).

10. The Preamble to the Act states (**TAB 9**):

> WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all persons is the foundation of freedom, justice and peace in the world;
>
> WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in: dignity, rights and responsibilities without regard to race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income or family status [or sexual orientation];
>
> WHEREAS multiculturalism describes the diverse racial and cultural composition of Alberta society and its importance is recognized in Alberta as a fundamental principle and a matter of public policy;
>
> WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all Albertans should share in an awareness and appreciation of the diverse racial and cultural composition of society and that the richness of life in Alberta is enhanced by sharing that diversity;
>
> WHEREAS it is fitting that these principles be affirmed by the Legislature of Alberta in an enactment whereby those equality rights and that diversity may be protected; ...

11. Secondly, where competing *Charter* rights are at issue, a hierarchical approach, which places one right above another is to be avoided. When protected rights come into conflict, *Charter* principles require a balance to be achieved that fully respects the importance of both sets of rights.

    - *R. v. Mills* (1999), 180 D.L.R (4th) 1 at 19, para. 17, at 39, para. 61 (**TAB 10**).

III. LEAF'S POSITION ON THE QUESTIONS ASKED BY THE PANEL

Question 1: **Is the fact that an individual holds either a position on the board of Directors or as an officer of an entity that is alleged to have breached section 2(1) of the Act sufficient reason to name that individual as a respondent to the complaint? If it is sufficient reason to name the individual, would any finding of liability be based on the individual having "caused" the offending materials to be published, issued or displayed?**

12. LEAF takes no position on this question.

Question 2: Is it necessary for a statement, publication, notice, sign, symbol, emblem or other representation to be phrased, designed or structured in any particular way in order to constitute an "opinion" within the meaning of section 2(2) of the Act?

13. It is LEAF's position that there is no need to describe a statement, publication, notice, sign, symbol, emblem or other representation in any particular way in order to interpret s. 2 of the Act. "Opinion" is not a determinative category from which any consequence in relation to s. 2 flows. LEAF submits that s. 2(2) of the Act is not a categorical defence or exemption to an allegation of contravention of s. 2(1). The role of s. 2(2), as explained further below, is as an interpretive tool in relation to s. 2(1). This requires that the equality interests in s. 2(1) of the Act be interpreted in light of freedom of expression.

    - *Aryan Nations*, **TAB 7**, at D/296 – D/297.

14. Question 2, especially when read in conjunction with Question 3, appears to be premised on the proposition that s. 2(2) of the Act is a defence, and that if the statement, publication, notice, sign, symbol, emblem or other representation fits

within the category of "opinion," a defence will be made out. LEAF respectfully submits that this is not a correct interpretation of s. 2(2). A respondent to a human rights complaint cannot avoid a finding of contravention of s. 2(1) of the Act merely by establishing that the statement, publication, notice, sign, symbol, emblem or other representation constitutes an "opinion." The inquiry of the Human Rights Panel does not stop if the statement, publication, notice, sign, symbol, emblem or other representation is characterized as an "opinion." The Human Rights Panel must in each case interpret and apply s. 2(1), considering the full context of the publication, the target group affected, the community in which the publication is made, and any other relevant factors.

15. However, the phrasing, design or structure of the statement, publication, notice, sign, symbol, emblem or other representation in issue, including its characterization as fact or opinion, might be relevant to:
    a. the determination under s. 2(1)(a) of whether it indicates discrimination or an intention to discriminate against a person or a class of persons;
    b. the determination under s. 2(1)(b) of whether it is likely to expose a person or a class of persons to hatred or contempt; and
    c. the determination under s. 11.1 of whether the alleged contravention was reasonable and justifiable in the circumstances.

16. In conclusion on Question 2, LEAF respectfully submits that the characterization of the statement, publication, notice, sign, symbol, emblem or other representation as "opinion" is not a determinative matter in relation the application of s. 2 of the Act. A full inquiry by a Panel is necessary. Whether the expression is characterized as fact or opinion will be one of many questions a Panel will consider in the course of examining the full context of the statement, publication, notice, sign, symbol, emblem or other representation.

Question 3: Can a breach of section 2(1) of the Act be found in the face of a defence based on section 2(2) of the Act? That is, does section 2(2) of the Act bar the Panel

from finding a breach of section 2(1) of the Act when the alleged wrongdoer can establish that he/she is freely expressing his or her opinion?

17. LEAF respectfully submits that s. 2(2) of the Act is not a defence, and s. 2(2) does not bar the Panel from finding a breach of s. 2(1) of the Act when the alleged wrongdoer can establish that he/she is freely expressing his or her opinion.

18. As noted by Dickson C.J.C. in *Taylor*, **TAB 2**, considering a similar provision in the *Canadian Human Rights Act*, it would be incongruous for the legislature, having decided that there exists an objective in restricting hate propaganda of sufficient importance to warrant placing some limits upon the freedom of expression, to then exempt all activity falling under the rubric of "expression."

19. Rather than a defence, s. 2(2) is an interpretive aid in relation to the interpretation and application of s. 2(1) of the Act. Section 2(2) gives guidance that the important equality interests must be given careful attention in the balancing with the freedom of expression. Properly understood, s. 2(2) does no more than state expressly what is in any event an implicit requirement for the interpretation of s. 2(1) and for any remedial direction by a Human Rights Panel: that s. 2(1) must be interpreted in a *Charter*-sensitive manner, taking into account the equality and expression interests involved. As stated by Dickson C.J.C. in *Taylor*, quoted by the Board of Inquiry in *Aryan Nations* (**TAB 7** at D/297, para. 317):

> Perhaps the so-called exemptions found in many human rights statutes are best seen as indicating to human rights tribunals the necessity of balancing the objectives of eradicating discrimination with the need to protect free expression: see e.g. *Rasheed v. Bramhill* (1980), 2 C.H.R.R. D/249 at p. D/252).

20. As noted by authors and decision-makers, s. 2(2) is probably superfluous.

- *Aryan Nations*, **TAB 7** at D/297, para. 315.

21. The "true" defences available to a complaint of contravention of s. 2(1) are either s. 2(3) or s. 11.1 (**TAB 9**). In contrast with the language of s. 2(2), the language of these sections shows how the defences operate:

2(3) Subsection (1) does not apply to:

(a) The display of a notice, sign, symbol, emblem or other representation displayed to identify facilities customarily used by one gender,

(b) The display or publication by or on behalf of an organization that

(i) is composed exclusively or primarily of persons having the same political or religious beliefs, ancestry or place of origin, and

(ii) is not operated for private profit,

of a statement, publication, notice, sign, symbol, emblem or other representation indicating a purpose or membership qualification of the organization, or

(c) the display or publication of a form of application or an advertisment that may be used, circulated or published pursuant to section 8(2),

if the statement, publication, notice, sign, symbol, emblem or other representation is not derogatory, offensive or otherwise improper.

...

11.1 A contravention of this Act shall be deemed not to have occurred if the person who is alleged to have contravened the Act shows that the alleged contravention was reasonable and justifiable in the circumstances.

(Emphasis added.)

22. Section 2(2) (in the predecessor *Individual's Rights Protection Act*) was interpreted by the Board of Inquiry in *Aryan Nations*, and the extensive consideration in that decision is apposite here. The Board of Inquiry stated (**TAB** 7 at D/296 – D/297, paras. 310 – 319):

[310] Section 2(2) of the *IRPA* provides:

2(2) Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject.

[311] What does this mean? A similar, "so-called exemptions" clause, as it is described by Dickson C.J.C. in *Taylor v. Canadian Human Rights Commission* (1990), 75 D.L.R. (4th) 577 at 604 [13 C.H.R.R. D/435 at

D/457] is found in the human rights statutes of every jurisdiction except the Yukon, Quebec and Canada. The clause was present in the first statute which prohibited the display of signs or symbols "indicating discrimination or an intention to discriminate": the 1944 Ontario *Racial Discrimination Act*, S.O. 1944, c. 51. The "exemption" clause in that statute provided:

> 2 This Act shall not be deemed to interfere with the free expression of opinion upon any subject by speech or in writing and shall not confer any protection to or benefit upon enemy aliens.

[312] The reference to "enemy aliens" not only dates the clause but dramatically reminds us it was written during the Second World War, before bills of rights and long before the *Charter of Rights and Freedoms*. If the words are interpreted in that context the literal meaning is easier to appreciate. The legislator was defining the limits of free expression. The clause underlined the fact prohibiting discriminatory notices, signs, symbols, emblems or other representations was not an interference with free expression. Read in this way, the "so-called exemptions" clause provides no "exemption" at all.

[313] This has been recognized in several cases. In *Bramhill*, *supra*, the Board of Inquiry held at D/252, s. 12(2) of the Nova Scotia *Human Rights Act*, R.S.N.S. 1969, c. 11, as amended which was very similar to s. 2(2) of the *IRPA*:

> ... should not be read as imposing an absolute limit upon s. 12(1) but, rather, in the context of a right of expression that is not absolute and which must, in some circumstances, give way or be curtailed in order to make other rights effective. It could be interpreted as a declaration that the Provincial legislature did not intend, by virtue of Section 12(1) to go beyond the bounds of what is necessary in order to prevent discrimination by signs, symbols, etc.

[314] This theme was elaborated upon by a Manitoba Adjudicator in *Linklater v. Winnipeg Sun (sub nom. Warren v. Chapman)* (1984), 5 C.H.R.R. D/2098. The issue was how s. 2(2) of the Manitoba *Human Rights Act*, C.C.S.M. c. H175 which was identical to s. 2(2) of the *IRPA* should be construed. The Adjudicator reviewed the decision in *Bramhill*, *supra*, and concluded at D/2103 [para. 17830]:

> It would appear unrealistic that on the one hand the legislature would enact enlightened legislation whose object was to lessen discrimination of all types and on the

> other hand would concurrently enact in the same statute legislation which would permit absolutely any type of discriminatory remark or comment and excuse same under the guise of freedom of expression.

[315] In coming to this conclusion he adopted the views of Professor Tarnopolsky, as he then was, in his text, *Discrimination and the Law in Canada*, at 338 as follows:

> Thus one has to conclude that although these prohibitions of discriminatory messages are *intra vires* the provinces, the exemption provisions are probably superfluous. On the one hand, whether these messages indicate discrimination or an intention to discriminate, prohibition of them is a valid restriction on speech and expression and therefore cannot be said to infringe either of those freedoms. On the other hand, if the prohibition were to touch the essence of free speech, free press or free expression, in the sense that it is not related to discrimination and those matters covered by provincial Human Rights Acts, then it is *ultra vires* the provincial legislature. In either case, the exemption provision is superfluous, unless it is intended merely as an indication to Human Rights Commissions that it is necessary to balance, on the one hand, the importance and the seriousness of the communication and, on the other hand, its effect on discrimination against those groups protected by the legislation.

[316] The Adjudicator said at p. D/2103 [para. 17829]:

> I am of the view that the conclusions of Professor Tarnopolsky are correct and that Subsection 2 should not be read as "imposing an absolute limit on Section 2(1)" but rather in the context of a right of expression that is not absolute and which must, in some circumstances, give way or be curtailed in order to make rights effective.

[317] In *Taylor v. Canadian Human Rights Commission, supra*, Dickson D.J.C. commented on the effect of "so-called exemptions" clauses in human rights statutes. He was considering the argument that the absence of such a clause in the *Canadian Human Rights Act* (S.C. 1976 – 77, c. 33) can make that statute overly broad.

He said at 601 – 2 (D/ 456 – D/457, paras. 62 – 64):

> As the norm is to include in human rights statutes an exemption emphasizing the importance of freedom of

> expression, the appellants forcefully argue that the absence of such a provision in the federal statute contributes to its being overbroad.
>
> Though not wishing to disparage legislative efforts to bolster the guarantee of free expression, for several reasons I think it mistaken to place too great an emphasis upon the explicit protection of expressive activity in a human rights statute. First ... it is worth noting that the Canadian, Quebec and Yukon Territory human rights statutes contains no such protective element, and that in any event the exemptions referred to by the appellants are found in provisions which appear to be radically different from s. 13(1) [which prohibited using the telephone to spread hate propaganda]). Second, having decided that there exists an objective in restricting hate propaganda of sufficient importance to warrant placing some limits upon the freedom of expression, it would be incongruous to require that s. 13(1) exempt all activity falling under the rubric of "expression."
>
> Perhaps the so-called exemptions found in many human rights statutes are best seen as indicating to human rights tribunals the necessity of balancing the objective of eradicating discrimination with the need to protect free expression: see e.g. *Rasheed v. Bramhill* (1950, 2 C.H.R.R. D/249 at p. D/252.

[318] In her reasons in *Taylor*, *supra*, McLachlin J. referred to the "so-called exemptions" clauses and said (at D/481, para. 156):

> The *Act* does not, as other human rights Codes do, admonish the tribunal to have regard to the speaker's freedom of expression in applying the provision.

[319] Given these recent opinions from the Supreme Court of Canada, it appears we should regard s. 2(2) as an "admonition" to "balance" the necessity for eradicating discrimination with the need to protect expression.

(Emphasis added.)

23. The Board of Inquiry in *Aryan Nations* went on to balance the *Charter* interests of "eradicating discrimination" and protection of freedom of expression, "out of an abundance of caution" (at D/298) by following an *Oakes* test. This should not be

necessary where there has been no challenge to the constitutionality of the section. Rather, the *Charter* interests can be applied, as was done by the Supreme Court of Canada in *Taylor* and by other tribunals, by giving an interpretation to "likely to expose to hatred and contempt" in s. 2(1) recognizing that only representations likely to expose persons to extreme emotions will be caught by the section.

24. The Saskatchewan Court of Appeal in *Saskatchewan (Human Rights Commission) v. Bell* (1994), 114 D.L.R. (4th) 370 at 382 (Sask. C.A.) (**TAB 11**), dismissing the appeal and allowing the cross-appeal in (1992), 88 D.L.R. (4th) 71 (Sask. Q.B.) considered the following language in the Saskatchewan *Human Rights Code*:

> 14(2) Nothing in subsection (1) restricts the right to freedom of speech under the law upon any subject.

25. The Saskatchewan legislation also contained a section not contained in the Alberta legislation (*Bell* at 382):

> 5. Every person and every class of persons shall, under the law, enjoy the right to freedom of expression through all means of communication, including, without limiting the generality of the foregoing, the arts, speech, the press or radio, television or any other broadcasting device.

26. Relying on the statement of Dickson C.J.C. in *Taylor*, the Saskatchewan Court of Appeal interpreted these sections as indicating to human rights tribunals the necessity of balancing the objective of eradicating discrimination with the need to protect free expression.

27. The application of *Charter* protections and values to the interpretation of the equivalent of s. 2(1) was carried out by the B.C. Human Rights Tribunal in *Canadian Jewish Congress v. North Shore Free Press Ltd.* (1997), 30 C.H.R.R. D/5 at D/24, para. 109 (**TAB 12**), and quoted in *Abrams v. North Shore Free Press Ltd.*, [1999] B.C.H.R.T. No. 5 (QL), **TAB 13** at 7, para. 26:

> [109] In approaching the task of statutory interpretation in light of the *Charter*, the objective is to give the statute that meaning it can reasonably bear which is most consistent with the *Charter*'s values. That is, the

> statute should be read in such a way as to increase the likelihood that it would be found to be constitutionally valid, if assessed against the *Charter*. As I noted earlier, this was the approach to interpretation taken by the Supreme Court of Canada in *Butler*, *supra*. However, the statutory language cannot be stretched beyond what is reasonable. Interpreting legislation in light of the *Charter* is confined to reading the language as drafted; it is not the equivalent of a "reading in" or "reading down" remedy that is available once legislation has been found to be unconstitutional.
>
> (See also *R. v. Sharpe*, [2001] S.C.J. No. 3, at para. 33, discussing the interpretation of statutes and noting that "[i]f a legislative provision can be read both in a way that is consitutional and in a way that is not, the former reading should be adopted," and at para. 114, applying the distinct doctrine of reading in.)

28. The decision-maker must consider the *Charter* interests protected by s. 2(1) of the Act (equality (s. 15), gender equality (s. 28), aboriginal rights (s. 25), multiculturalism (s. 27), freedom of religion (s. 2(a)) (**TAB 14**), as well as freedom of expression.

29. In this balancing, Courts should consider the subject of the expression in relation to the core values underlying the freedom of expression. The Supreme Court has been clear that hate propaganda and expression harmful to women stray far from the core values underlying freedom of expression. As stated by Chief Justice Dickson in *R. v. Keegstra*, *supra*, **TAB 1**, at 249:

> As I have said already, I am of the opinion that hate propaganda contributes little to the aspirations of Canadians or Canada in either the quest for truth, the promotion of individual self-development or the protection and fostering of a vibrant democracy where the participation of all individuals is accepted and encouraged. While I cannot conclude that hate propaganda deserves only marginal protection under the s. 1 analysis, I can take cognizance of the fact that limitations upon hate propaganda are directed at a special category of expression which strays some distance from the spirit of s. 2(b), and hence conclude that "restrictions on expression of this kind might be easier to justify than other infringements of s. 2(b)" (*Royal College*, supra, at p. 247).

30. See also:

- *Taylor, supra*, **TAB 2**, at 596.

- *Ross v. New Brunswick School District No. 15* (1996), 133 D.L.R. (4th) 1 at 35 – 36, paras. 89 - 94 (S.C.C.) (**TAB 15**).

- *R. v. Butler* (1992), 89 D.L.R. (4th) 449 at 488 (S.C.C.) (**TAB 16**).

31 It is not only a respondent's freedom of expression which must be considered by a Panel. A communication that is discriminatory or likely to expose to hatred or contempt will profoundly affect the expression rights of the target group. In a context of inequality, disadvantaged groups do not have equal access to expression. A climate of discrimination, hatred or contempt is a powerful inhibitor of expression for the members of disadvantaged groups.

- *R. v. Keegstra* (1984), 19 C.C.C. (3d) 254 at 268 (Q.B.) (**TAB 17**), recognized similarly at the Supreme Court, *supra*, **TAB 1** at 234).

- W. Wiegers, "Feminist Protest and the Regulation of Misogynist Speech: A Case Study of *Saskatchewan Human Rights Commission v. Engineering Students' Society* (1992), 24 Ottawa L. Rev. 363 (QL at pages 36, 56) (**TAB 18**).

- K. Mahoney in "Language as Violence v. Freedom of Expression: Canadian and American Perspectives on Group Defamation," (1988/89), 37 Buffalo L. Rev. 337 at 345 – 346 (**TAB 19**).

- M. Matsuda, "Public Response to Racist Speech: Considering the Victim's Story," *supra*, **TAB 5**, at 2337.

32. The language of provisions addressing discriminatory communications or hate/contempt messages differs in the various jurisdictions (Fact Brief of the Alberta Human Rights and Citizenship Commission Panel, Tabs 6 – 15). Whatever the text used in the provisions referencing expression, a human rights tribunal will have to interpret and apply the prohibition sections and the expression sections in a manner that recognizes *Charter* equality interests and the expression interests (*Mills, supra*, **TAB 10**).

33. An important difference between Alberta's legislation and legislation in other jurisdictions is the presence of s. 11.1 of the Act. The section in the predecessor

legislation (the *IRPA*) has been interpreted by the Supreme Court of Canada in *Dickason v. University of Alberta* (1992), 95 D.L.R. (4th) 439 at 490 – 493, 496 per Cory J. (S.C.C.) (**TAB 20**). A respondent may seek to rely on s. 11.1 to justify any conduct or practice which is alleged to contravene the Act. The Court clearly established in *Dickason* that the respondent seeking to justify a discriminatory practice bears the onus of demonstrating that the discriminatory practice furthers a substantial objective and is proportional to that objective. No deference is given to the policy choice of the respondent. The minimal impairment that must be established by the respondent is in relation to the equality rights protected by the Act. This is the appropriate *locus* for a respondent's defence to an alleged contravention of s. 2(1) of the Act. Section 11.1 also places the onus appropriately on the respondent.

34. Because s. 2(2) should be understood as an interpretive aid to s. 2(1), and <u>not</u> as a defence, the approach of the Panel should be to include the examination of the nature of the statement, publication, notice, sign, symbol, emblem or other representation in a full, contextual, and *Charter*-sensitive inquiry leading to a determination of whether or not there has been a contravention of s. 2(1). It would be erroneous for the Panel to set up an inquiry whereby the first question is whether the respondent was freely expressing his or her opinion, and if established, was a full answer to the complaint. In other words, s. 2(2) does not act as a bar, or absolute defence to a finding of contravention of s. 2(1).

35. The harm caused by discriminatory and hate/contempt-based expression is well-recognized. The Supreme Court of Canada affirmed in *Keegstra*, *Taylor*, and *Ross* that protection from discriminatory and hate/contempt-based expression is a pressing and substantial objective, and is justified in a free and democratic society. The Preamble of the Act speaks of the inherent dignity and inalienable rights of all persons, of the importance of multiculturalism as a fundamental principle and a matter of public policy. Such guarantees and eloquent statements would be hollow if s. 2(2) is interpreted as an absolute defence, with the respondent merely having to establish that his or her expression was "opinion."

Question 4: If section 2(2) of the Act is not a bar to finding a breach of section 2(1) of the Act, can section 2(2) be used after a finding of breach of section 2(1) in order to justify that breach?

36. As noted above, LEAF respectfully submits that s.2(2) is an interpretive tool in the interpretation and application of s. 2(1). The equality, gender equality, multiculturalism, aboriginal rights, and freedom of religion interests expressed in the *Charter* must be considered along with freedom of expression. A decision of a Panel will have to be consistent with ss. 15, 25, 27, 28, and 2(a) of the *Charter*, along with s. 2(b) of the *Charter*.

37. The means for a respondent to seek to justify a breach of s. 2(1) of the Act is s. 11.1 of the Act. The appropriate test, including onus, is set out in *Dickason* (**TAB 19**).

Question 5: What standards must the Panel apply to determine whether a representation "is likely to expose a person or a class of persons to hatred or contempt"? Are different considerations applied to questions of "contempt" as opposed to questions of hatred?

38. LEAF respectfully submits that the standard to be applied in relation to s. 2(1) should be constructed on a foundation including:

    a. a contextual and non-hierarchical analysis of equality, non-discrimination and freedom of expression;
    b. the underlying purpose of the Act;
    c. the applicability of *Charter* jurisprudence and analysis; and
    d. the need to ensure protection to socially disadvantaged groups in Alberta.

39. Two approaches have evolved in the determination of whether a message is "likely to expose a person or class of persons to hatred or contempt" – one in the Federal jurisdiction, the other in British Columbia. The test in the Federal jurisdiction is a unitary test; in British Columbia it is a two-part test. LEAF submits that either the unitary test from the Federal jurisdiction or the two-part test as interpreted in *Abrams*

(but not as interpreted in *CJC*) would provide a method of interpreting and applying s. 2(1) that is *Charter*-sensitive and fulfills the purposes of the Act.

The unitary test interpreting and applying s. 13 of the *Canadian Human Rights Act*

40 Section 13 of the *Canadian Human Rights Act* provides that it is a discriminatory practice for a person or a group of persons to communicate telephonically "any matter that is likely to expose a person or persons to hatred or contempt." The tribunals under the Federal legislation apply a unitary test, interpreting and applying the terms "hatred," "contempt," and "expose." In applying the terms, the tribunals takes into account factors such as the full context of the message's meaning (whether overt or subtle), the nature of the publication, the target group, the audience, and the effect.

41. In *Taylor*, **TAB 2**, the Supreme Court confirmed a template used by subsequent tribunals. The Court approved of the approach taken by the human rights tribunal in *Nealy v. Johnston* (1989), 10 C.H.R.R. D. 6450 at D/6469 (C.H.R.T.) (**TAB 21**). That tribunal stated (*Taylor* at 600):

> In defining "hatred" the Tribunal [in *Taylor*] applied the definition in the *Oxford English Dictionary* (1971 ed.) which reads [at p. 28]:
>
> "active dislike, detestation, enmity, ill-will, malevolence."
>
> The Tribunal drew on the same source for their definition of "contempt". It was characterized as [at p. 28]:
>
> "the condition of being condemned or despised; dishonour or disgrace."
>
> As there is no definition of "hatred" or "contempt" within the [*Canadian Human Rights Act*] it is necessary to rely on what might be described as common understandings of the meaning of these terms. Clearly these are terms which have a potentially emotive content and how they are related to particular factual contexts by different individuals will vary. There is nevertheless an important core of meaning in both, which the dictionary definitions capture. *With "hatred" the focus is a set of emotions and feelings which involve extreme ill will towards another person or group of persons. To say that one "hates" another means in effect that one finds no redeeming qualities in the latter.* It is a term, however, which does not necessarily involve the mental process of "looking down" on another or others. It is quite possible to "hate" someone who one feels is superior to

> one in intelligence, wealth or power. *None of the synonyms used in the dictionary definition for "hatred" give any clues to the motivation for the ill will. "Contempt" is by contrast a term which suggests a mental process of "looking down" upon or treating as inferior the object of one's feelings. This is captured by the dictionary definition relied on in Taylor ... In the use of the terms "despised", "dishonour" or "disgrace". Although the person can be "hated" (i.e. actively disliked) and treated with "contempt" (i.e. looked down upon), the terms are not fully coextensive, because "hatred" is in some instances the product of envy of superior qualities, which "contempt" by definition cannot be.* (Emphasis in *Taylor*.)

42. The Court in *Taylor* held (at 600 and 601) that there would be no conflict between providing a meaningful interpretation of s. 13(1) of the *Canadian Human Rights Act* and protecting freedom of expression:

> ...so long as the interpretation of the words "hatred" and "contempt" is fully informed by an awareness that Parliament's objective is to protect the equality and dignity of all individuals by reducing the incidence of harm-causing expression.

43. The Court noted (at 600 – 601) that the approach taken in *Nealy*, interpreting both "hatred" and "contempt" as involving unusually strong, and deep-felt emotions, gave full force to the purpose of the legislation while remaining consistent with the *Charter*.

44. The above definitions of "hatred" and "contempt" approved by the Supreme Court of Canada provide a Panel with the different considerations to be applied to determining "hatred" or "contempt."

45. The Tribunal in *Nealy* went on to adopt (**TAB 21** at D/6470) the meaning of "expose." The *Nealy* tribunal considered the definition used by the tribunal in *Taylor*:

> "Expose" is an unusual word to find in legislation designed to control hate propaganda. More frequently, as in the *Broadcasting Act* Regulations, *Post Office Act* provisions and in the various related sections of the *Criminal Code*, the reference is to matter which is abusive or offensive, or to statements which serve to incite or promote hatred.

> "Incite" means to stir up; "promote" means to support actively. "Expose" is a more passive word, which seems to indicate that an active effort or intent on the part of the communicator or a violent reaction on the part of the recipient are not envisaged. To expose to hatred also indicates a more subtle and indirect type of communication than vulgar abuse or overtly offensive language. "Expose" means: to leave a person unprotected; to leave without shelter or defence; to lay open (to danger, ridicule, censure etc.). In other words, if one is creating the right conditions for hatred to flourish, leaving the identifiable group open or vulnerable to ill-feelings or hostility, if one is putting them at risk of being hated, in a situation where hatred or contempt are inevitable, one then falls within the compass of s. 13(1) of the *Human Rights Act*.

46. However, the *Nealy* tribunal disagreed with the *Taylor* tribunal on the interpretation of "likely to." The *Nealy* tribunal stated (at D/6470):

> We note, as the excerpt suggests, that there is no need for the complainants to prove an active effort or intent on the part of the respondents to produce the adverse consequence contemplated by the section. Moreover, the use of the wording "likely to expose a person or persons to hatred or contempt" means that it is not necessary that evidence be adduced that any particular individual or group took the messages seriously and in fact directed hatred or contempt against another or others, still less that anyone has in fact been victimized in this way. <u>It is enough to prove that the matter in the messages is more likely than not to spark a positive reaction amongst some of the listeners to it which will likely in turn manifest itself in "hatred" or "contempt" towards the targets of the messages. Furthermore, in making the case on the potential impact of the matter on recipients of it, the test is not "the reasonable listener" but whether there is anybody, even the most malevolent or unthinking person, who might be inspired to treat the targets with hatred or contempt.</u>
>
> (Emphasis added.)

47. Subsequent tribunals have adopted the definitions set out in *Taylor* (tribunal decision), *Nealy*, and the Supreme Court in *Taylor*:

- *B'Nai Brith v. Manitoba Knights of the Ku Klux Klan* (1993), 18 C.H.R.R. D/406 at D/412 - 413 (C.H.R.T.) (**TAB 22**): following the definitions of "hatred," "contempt," and "expose" from *Taylor* (tribunal).

- *Khaki v. Canadian Liberty Net* (1993), 22 C.H.R.R. D/347 at D/380 – D/381 (C.H.R.T.) (**TAB 23**): referencing the definitions by the tribunals in *Taylor* and *Nealy*, and the Supreme Court of Canada in *Taylor*.

- *Chilliwack Anti-Racism Project Society v. Scott*, [1996] C.H.R.D. No. 6 at 6 – 7 (C.H.R.T.) (QL) (**TAB 24**): referencing the definitions by the tribunals in *Taylor* and *Nealy*, and the Supreme Court of Canada in *Taylor*.

- *Payzant v. McAleer* (1994), 26 C.H.R.R. D/271 at D/277 – D/278, paras. 29 – 32 (C.H.R.T.), aff'd (1996), 132 D.L.R. (4th) 672 (Fed. T.D) (*sub nom. McAleer v. Canada (Canadian Human Rights Commission)*, aff'd (1999), 175 D.L.R. (4th) 766 (Fed. C.A.) (all at **TAB 25**): referencing portions of the definitions by the tribunal in *Taylor*.

48. The tribunals adopting the definition of "expose" given by the tribunal in *Taylor* recognized that exposure to hatred or contempt may be effected by a more subtle and indirect form of communication, not only by overtly offensive language.

49. Drawing from the tribunal decisions and from the decision of the Supreme Court of Canada in *Taylor*, the following is an articulation of the test applied to s. 13 of the *Canadian Human Rights Act*: Is the matter in the messages more likely than not to spark a positive reaction among some of the listeners to it, which will likely in turn manifest itself in "hatred" (extreme ill will; finding no redeeming qualities) or "contempt" (looked down upon, despised) towards the targets of the messages?

The two-part test from British Columbia

50. The British Columbia Human Rights Tribunal in *CJC* (**TAB 12**) crafted a two-part test, but its approach was subsequently modified in *Abrams* (**TAB 13**) so as to provide a more context-inclusive approach. The two-part test articulated by the Tribunal in *CJC* involved (**TAB 12** at D/46 – D/47, para. 245):

> *First, does the communication itself express hatred or contempt of a person or group on the basis of one or more of the listed grounds? Would a reasonable person understand this message as expressing hatred or contempt in the context of the expression?*
>
> *Second, assessed in its context, is the likely effect of the communication to make it more acceptable for others to manifest hatred or contempt against the person or group concerned? Would a reasonable person consider it likely to increase the risk of exposure of target group members to hatred or contempt?*

51. The Tribunal in *Abrams* (**TAB 13**) accepted the general approach of a two-part test as constructed in *CJC*, but modified it to give greater consideration to context in the first part of the test. The Tribunal in *Abrams* stated (**TAB 13** at 14 – 15, para. 59):

> In the CJC case, Tribunal Member Iyer asked the question: "Would a reasonable person understand this message as expressing hatred and contempt?" In answering this question, she considered the content and tone of the message and the vulnerability of the target group. While I accept both the objective standard reflected in the question and the factors considered by Ms. Iyer, in my view, the question to ask is: Would a reasonable person, informed about the context, understand the message as expressing hatred or contempt? Context formed part of Ms. Iyer's analysis of the meaning of the message. Her "reasonable person" was someone assumed to share the characteristics of the message's audience and who would, therefore, be informed about at least the community and cultural contexts (see D/47, para. 247). Where we may part is on the importance of context at this stage of the analysis. Ms. Iyer placed significantly more weight on context in the portion of her analysis dealing with the impact of the message (see D/47, para. 248). I do not make that distinction. In my view, context is critical in understanding the meaning of the message. The meaning conveyed by an expression may vary depending on its context. An expression that appears neutral or innocuous out of context may take on a very different meaning when put in its proper context. Context for this purpose includes not only the publication context but also the social and historical contexts. The "reasonable person" is not a purely abstract entity. The person is someone of this place and this time, with knowledge of the past and present. The reasonable person brings with him or her a set of social and personal characteristics (albeit characteristics that are unknown). What a reasonable person will understand will depend on the extent to which they are informed of the context of the message. Accordingly, that context must be a consideration in this part of the test.
>
> (Emphasis added.)

52. For the second part of the test, the Tribunal in *Abrams* accepted the approach of the Tribunal in *CJC* that this part of the test requires (*Abrams*, **TAB 13**, at 16, para. 66):

> ... an objective and contextualized assessment of the likely impact of the impugned publications in terms of whether it will legitimize the expression or other manifestation of hatred or contempt by others against the particular person or group.

53. LEAF submits that the approach of the Tribunal in *Abrams* is more consonant with the purpose of human rights legislation and with a *Charter*-sensitive interpretation than is the decision in *CJC*. LEAF agrees with the observations of the Tribunal in *Abrams* that "context is critical in understanding the meaning of the message." It is respectfully submitted that the formulation and explanation of the test as set out in *Abrams* should be preferred, and the formulation of the test as set out in *CJC* should be rejected.

54. Whether a two-part inquiry is used as in *Abrams*, or a unitary approach is used as in the Federal jurisdiction, it is submitted that all contextual elements must be examined.

Factors to be considered by a Panel

55. Whether in the context of a unitary test or a two-part test, the tribunals have considered the following factors in relation to the communication, the target group, the method of publication:

- content of the communication: *Kane*, *Khaki*, *The Engineering Students' Society*, *CJC*, *Abrams*
- tone of the communication: *The Engineering Students' Society*, *CJC*, *Abrams*
- the image conveyed, including whether the use of quotations or reference sources gives the message more credibility: *Nealy*
- vulnerability of the target group: *Nealy*, *The Engineering Students' Society*, *CJC*, *Abrams*
- the degree to which the expression reinforces existing stereotypes: *Kane*, *Khaki*, *Abrams*, *Nealy*
- the circumstances surrounding the message, including whether the messages appeal to well publicized issues: *Nealy*
- the medium used to convey the message: *Nealy*, *CJC*, *Abrams*
- circulation of the publication: *CJC*, *Abrams*, *Nealy*
- credibility to be accorded to the communication: *Abrams*, *Nealy*

- the context of publication – for example, whether it is part of a debate or whether it is presented as news or a purportedly authoritative analysis: *Khaki*, *CJC*, *Abrams*
- the purpose of the publication – for example, was it to criticize discrimination: W. Wiegers, "Feminist Protest and the Regulation of Misogynist Speech," at 39.

56. The above list of factors for consideration is not exhaustive. The full context of each case must be considered by a Panel in arriving at a determination of whether s. 2(1) of the Act has been contravened.

Evidence to be considered by a Panel

57. The jurisprudence shows an important pattern in relation to what evidence should be considered by a human rights tribunal before it makes its determination of whether a representation is likely to expose a person or group of persons to hatred or contempt. The tribunals have considered the evidence of expert witnesses and of members of various communities, including members of the target group.

58. Evidence from members of the community, including members of the target group, assists the tribunal in making its determination:
    - *Aryan Nations*, **TAB 7** at D/283, para. 162 ff.: evidence of the reaction to the signs and symbols was given by residents of the community and the complainants.
    - *Abrams*, **TAB 13**, at 12, para. 47.
    - *Chilliwack* **TAB 24**, at 7.
    - *Saskatchewan (Human Rights Commission) v. Bell*, **TAB 11**, at 374.
    - *Rasheed v. Bramhill* (1980), 2 C.H.R.R. D/249 (N.S., Bd. of Inq.), at para. 2150 (**TAB 26**).

59. Expert evidence was helpful in determining factors including the meaning and effect of the representations, the vulnerability of the target group, the distribution of the communication, the credibility of the message in the following decisions:

- *Aryan Nations*, **TAB 7**, at D/285 ff. an anthropologist qualified as an expert on racial discrimination, the history and meaning of symbols, and the anthropological effect of symbols in race relations; an applied psychologist qualified to give expert evidence on the effect of signs and symbols and the public's perceptions and reactions to signs and symbols; an expert in Canadian ethnic history; a business expert testifying on discriminatory practices in business; a legal expert on equality and freedom of expression.
- *Abrams*, **TAB 13**, at 11, para. 46 ff., and at 17, para. 70 ff.: a professor of anthropology specializing in race relations; an expert in sociolinguistics; a professor of sociology; a professor of history on the history of anti-Semitism; the head of the Communication Department at Simon Fraser University on the impact of the newspaper columns.
- *Chilliwack Anti-Racism Project Society v. Scott*, *supra*, **TAB 24**: an expert in linguistics and discourse analysis.
- *Saskatchewan Human Rights Commission v. The Engineering Students' Society*, *supra*, **TAB 4**, at D/2085 ff.: an expert in philosophy and women's studies giving evidence on the meaning of representations; a professor of engineering who had researched the subject of women in the engineering profession.
- *Association of Black Social Workers v. Arts Plus* (1994), 24 C.H.R.R. D/513 at D/514 (N.S. Bd. of Inq.) (**TAB 27**): an expert in race and gender issues involving black women and sexuality.
- *Saskatchewan (Human Rights Commission) v. Bell*, *supra*, **TAB 11**, at 374, referencing the expert evidence adduced at the tribunal: a sociology professor specializing in race and ethnic studies; a professor of education with expertise in multiculturalism.

- *Khaki v. Canadian Liberty Net*, *supra*, **TAB 23**: an expert on the themes expressed in the communications and an expert in semiotics (the study of the means, media and context of communications).
- *B'Nai Brith v. Manitoba Knights of the Ku Klux Klan*, *supra*, **TAB 22** at D/413, para. 31 ff.: a professor of linguistics, and a professor of social anthropology
- *Payzant v. McAleer*, 26 C.H.R.R. D/271 at D/277, para. 27 ff., **TAB 25**: a professor of linguistics.
- *Nealy v. Johnston*, *supra*, **TAB 21**: an expert in communication theory.

60. In some instances, the tribunal may be able to take judicial notice of history of discrimination, harm suffered by a target group, the meaning of words or images, or other elements which are part of the determination.

61. LEAF respectfully submits that the approach to interpretation and application of s. 2(1) which would fulfill the purpose of the legislation and the requirements of the *Charter* involves:

a. a full, contextual analysis on a case-by-case basis, using either the unitary test from the Federal jurisdiction or the two-part test as applied in *Abrams*;

b. a methodology by which factors relevant to the message itself, the target group, the means of communication, the persons likely to receive the communication, and other relevant factors are considered; and evidence from experts and community members may be received in addition to evidence from complainants and respondents.

IV. CONCLUSION

62. In summary, LEAF respectfully submits that a full, contextual inquiry is necessary where there is a complaint alleging contravention of s. 2(1) of the Act. Section 2(2) does not provide an absolute defence or bar to s. 2(1). The role of s. 2(2) is to serve as a reminder to the Panel to interpret s. 2(1) in a manner that takes all applicable *Charter* interests into account. An interpretation of "hatred" or "contempt" in s. 2(1)

as requiring strong feelings of ill-will or looking down upon will ensure that the section is interpreted in conformity with expression interests. However, such strong feeling can be evoked by subtle language. Whether a unitary test or a two-part test is applied, similar factors should be considered by a Panel. The determination of each case will depend on the evidence adduced. Evidence from persons in the target group, from community members, and from experts may be sought.

63 Throughout this important process, a Panel must keep in mind the guiding principles of concern for the dignity and equality of all persons. "As the harm flowing from hate propaganda works in opposition to these linchpin Charter principles, the importance of taking steps to limit its pernicious effects becomes manifest."

- *Taylor*, **TAB 2**, at 595.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28th DAY OF FEBRUARY, 2001.

CHIVERS GRECKOL & KANEE	**MCBEAN BECKER**
Per: Jo-Ann Holmes for **Sheila J. Greckol** Co-counsel for Women's Legal Education and Action Fund (LEAF)	Per: Jo-Ann Holmes for **Renee Cochard** Co-counsel for Women's Legal Education and Action Fund (LEAF)

LIST OF AUTHORITIES

TAB NO.	
1	*R. v. Keegstra* (1990), 77 Alta. L.R. (2d) 193 (S.C.C.)
2	*Canada (Canadian Human Rights Commission) v. Taylor* (1990), 75 D.L.R. (4th) 577 (S.C.C.)
3	British Columbia Human Rights Commission, "A Call for Action: Combatting Hate in British Columbia," November 16, 1999
4	*Saskatchewan Human Rights Commission v. The Engineering Students' Society* (1984), 5 C.H.R.R. D/2074, appeal allowed on other grounds, (1986), 7 C.H.R.R. D/3443 (Sask. Q.B.), aff'd (1989), 56 D.L.R. (4th) 604 (Sask. C.A.), leave to appeal to S.C.C. refused June 8, 1989, 57 D.L.R. (4th) viii
5	M. Matsuda, "Public Response to Racist Speech: Considering the Victim's Story," (1989), 87 Michigan L. Rev. 2320, also published in M. Matsuda, C. Lawrence III, R. Delgado and K. Crenshaw, *Words that Wound: Critical Race Theory, Assaultive Speech and the First Amendment* (Boulder: Westview Press, 1993), excerpts
6	*Québec (Commission des droits de la personne et des droits de la jeunesse) v. Montreal (City)* (2000), 185 D.L.R. (4th) 385 (S.C.C.), excerpts
7	*Kane v. Church of Jesus Christ Christian-Aryan Nations* (1992), 18 C.H.R.R. D/268, (Alta. Bd. of Inq.)
8	*Vriend v. Alberta* (1998), 156 D.L.R. (4th) 385 (S.C.C.), excerpts
9	*Human Rights, Citizenship and Multiculturalism Act*, R.S.A. 1980, c. H-11.7, excerpts
10	*R. v. Mills* (1999), 180 D.L.R (4th) 1 (S.C.C.), excerpts
11	*Saskatchewan (Human Rights Commission) v. Bell* (1994), 114 D.L.R. (4th) 370 (Sask. C.A.)
12	*Canadian Jewish Congress v. North Shore Free Press Ltd.* (1997), 30 C.H.R.R. D/5, (B.C.H.R.T.)
13	*Abrams v. North Shore Free Press Ltd.*, [1999] B.C.H.R.T. No. 5 (QL).
14	*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11, excerpts
15	*Ross v. New Brunswick School District No. 15* (1996), 133 D.L.R. (4th) 1 (S.C.C.)
16	*R. v. Butler* (1992), 89 D.L.R. (4th) 449 (S.C.C.)
17	*R. v. Keegstra* (1984), 19 C.C.C. (3d) 254 (Q.B.)
18	W. Wiegers, "Feminist Protest and the Regulation of Misogynist Speech: A Case Study of *Saskatchewan Human Rights Commission v. Engineering Students' Society* (1992), 24 Ottawa L. Rev. 363 (QL)
19	K. Mahoney in "Language as Violence v. Freedom of Expression: Canadian and American Perspectives on Group Defamation," (1988/89), 37 Buffalo L. Rev. 337
20	*Dickason v. University of Alberta* (1992), 95 D.L.R. (4th) 439 (S.C.C.)
21	*Nealy v. Johnston* (1989), 10 C.H.R.R. D. 6450 (C.H.R.T.)
22	*B'Nai Brith v. Manitoba Knights of the Ku Klux Klan* (1993), 18 C.H.R.R. D/406 (C.H.R.T.)