

# “Hate” or “Disagreement”?

## Respecting *Charter*-protected freedom of expression in a digital world

Brief to the Standing Committee on Justice and Human Rights

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## **About the Justice Centre**

Founded in 2010 as a voice for freedom in Canada's courtrooms, the Justice Centre for Constitutional Freedoms defends the constitutional freedoms of Canadians through litigation and education.

The Justice Centre is dedicated to defending a Canada where:

- each and every Canadian is treated equally by governments and by the courts, regardless of race, ancestry, ethnicity, age, gender, beliefs, or other personal characteristics
- all Canadians are free to express peacefully their thoughts, opinions and beliefs without fear of persecution or oppression
- every person has the knowledge and the perseverance to control his or her own destiny as a free and responsible member of our society
- every Canadian has the understanding and determination to recognize, protect and preserve their human rights and constitutional freedoms
- people can enjoy individual freedom as responsible members of a free society.

## **About the Author**

**Jay Cameron** – Jay Cameron is the Litigation Manager for the Justice Centre for Constitutional Freedoms. He was called to the Alberta Bar in 2008, and since that time has appeared before courts from BC to Nova Scotia, and at the Supreme Court of Canada. He testified as a witness on May 16, 2019, before the Standing Committee on Justice and Human Rights as it studies “online hate”. This paper is supplemental to the testimony on that date.

## Concerns at the Outset

This paper is submitted in assistance to the Standing Committee on Justice and Human Rights as it studies the subject of “online hate” with the expressed intention to determine “how potential amendments to the *Canadian Human Rights Act*, the *Criminal Code*, or any other Act, could help stem the propagation of hateful acts and the enticement of hate such as racism, sexism, antisemitism, islamophobia, or homophobia.”<sup>1</sup>

Section 2(b) of the *Canadian Charter of Rights and Freedoms* protects the “fundamental” right to have an opinion, and to express it.<sup>2</sup> It is apparent that the Committee’s statement of intent foresees legal amendments effecting the infringement of Canadians’ expressive rights. It is also apparent that the statement of intent communicates, or implies, an intention for the government to use public and private media such as Facebook, Twitter, Instagram etc. to supervise and censor the expression of Canadians. Since that is the obvious implication of the current study, it is incumbent on the Parliament of Canada to review carefully its authority under the Constitution concerning the fundamental rights of Canadians and the narrow parameters under which censorship is permitted.

The Justice Center has two concerns regarding the Committee’s current deliberations. First, the statement of intent on the subject of “online hate” does not mention the government’s constitutional obligation to defend and uphold freedom of speech. The Supreme Court of Canada has explained the importance of freedom of expression in the strongest of terms, for example, stating: “the very lifeblood of democracy is the free exchange of ideas and opinions,”<sup>3</sup> and that, without it, “democracy cannot exist.”<sup>4</sup> Given the obvious potential for impermissible and unconstitutional infringement of expressive rights through perhaps well-intentioned but improper legislative amendments, the Justice Centre is concerned with the omission of Parliament’s obligations to safeguard the rights of Canadians.

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<sup>1</sup>“Committee News Release - April 11, 2019 - JUST (42-1) - House of Commons of Canada”, online: *Committee News Release - April 11, 2019 - JUST (42-1) - House of Commons of Canada* <<https://www.ourcommons.ca/DocumentViewer/en/42-1/JUST/news-release/10418091>>

<sup>2</sup> Canadian Charter of Rights and Freedoms, s. 2(b), Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11 [*Charter*].

<sup>3</sup> *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 SCR 139 [Commonwealth], p. 182, citing *R. v. Kopyto*, 1987 CanLII 176 (ON CA), p. 89.

<sup>4</sup> *Edmonton Journal v Alberta (AG)*, [1989] 2 SCR 1326 at para. 3.

Second, this Committee has begun a study on “online hate” without establishing necessary parameters as to what constitutes “hate,” “hateful acts” or the “incitement of hate.” This is a serious shortcoming. Section 1 of the *Charter* mandates that infringements of fundamental rights, such as freedom of expression, may only occur if “prescribed by law.”<sup>5</sup> The *Charter’s* requirement that laws be sufficiently precise is fundamental. Precise laws enable every citizen to know what her or his rights are, and provide government with the clear parameters necessary to enforce constitutional laws without abusing state authority. Laws that are imprecise and vague are unconstitutional.<sup>6</sup> It is axiomatic that imprecise laws lay a foundation for state abuse of citizens, and leave citizens without the needed clarity in order to obey the law. The beginning of a study on a subject of profound significance to Canadians without established parameters, or a consideration of the constitutional rights at play, is ill-advised and concerning. It sets the stage for potentially abusive legislation.

### **Recommendations to the Standing Committee on Justice and Human Rights**

The Justice Centre submits to the Standing Committee on Justice and Human Rights the following recommendations:

1. That the *Canadian Human Rights Act* be amended to clearly define what is and is not “hate” speech. The Supreme Court of Canada holds that expression which exposes identifiable groups to “detestation and vilification” rises to the level of hate, while at the same time holding that expression which criticizes or creates humour at the expense of others, while repugnant, does *not* amount to criminal hate.<sup>7</sup> Such a formulation should be sufficiently precise, and should qualify as a “reasonable limit” that is justified in a free and democratic society.<sup>8</sup> Human Rights legislation ought to harmonize, not be discordant, with the Court’s determination.
2. That any new legislation incorporate the defenses to hate speech in section 319(3) of the *Criminal Code*. That is,

(a) if he establishes that the statements communicated were true; or

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<sup>5</sup> *Charter*, s 1.

<sup>6</sup> *R v Levkovic*, 2013 SCC 25 at para 1.

<sup>7</sup> *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11 at para. 90-91.

<sup>8</sup> *Charter*, s. 1.

(b) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text; or

(c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or

(d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.<sup>9</sup>

The inclusion of the above defenses will help ensure that Canada remains the remarkable free and pluralistic society that it strives to be today.

3. That maximum penalties for proven violations of future potential human rights legislation be limited to \$1,000 to prevent draconian and punitive measures for the act of expressing an opinion.
4. Initiate an inquiry that encourages citizens to come forward with stories of censorship from large social media companies. Such an inquiry would allow Parliament to properly ascertain and collate most facts relevant to this issue, and help place a check on Parliament's inclination to ally with large, powerful corporations to prevent the exercise of lawful expression, including dissent and criticism of government.
5. Require the Canadian Human Rights Tribunal, where an offer of *pro bono* representation is made in the context of human rights proceedings, to communicate such an offer to respondents. Such a requirement would facilitate access to justice, and would help mitigate the risk to respondents of being victimized by a human rights process that is, in some instances, fully as stigmatizing as criminal prosecution.
6. Amend the *Canadian Human Rights Act* to permit costs to be awarded against those who initiate malicious, frivolous or vexatious human rights complaints.

### **What is “Hate” in the Context of this Study Committee?**

The requirement for clarity and specificity becomes especially necessary in the context of supposed “hate,” as the word has become ubiquitous in social debate. The term “hate” is frequently

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<sup>9</sup> *Criminal Code*, RSC 1985, c C-46, s. 319(3).

used to shut down debate on controversial issues such as the Israel-Palestine conflict, the integration of immigrants into Canadian society, dealing with anti-democratic and terrorist factions within Islam, Canada's approach to aboriginal policy and other contentious issues.

In Canada in 2019, the term "hate" is used frequently with respect to individuals who criticize religious and political ideologies. The same goes for disagreement on political subjects such as immigration levels, national security policy, natural resources management, voicing opinions about biology and science in the context of gender identity, the impact of transgenderism on women's rights, or expressing doubt about aspects of climate change theory. For example, lesbians who refuse to have sex with biological males who identify as women but who have retained their penises have been accused of "hate."<sup>10</sup> Such accusations, in turn, have been used to justify violence perpetrated against women pejoratively mislabeled as "TERFs" (Trans-Exclusionary Radical Feminists).<sup>11</sup>

As a charitable public interest law firm, the Justice Centre recently represented women who were the subject of human rights complaints for refusing to wax the testicles of a biological male who identified as a woman. The complainant in question had launched at least 16 human rights complaints in British Columbia against female aestheticians who refused to provide the individual with a "Brazilian" bikini wax to the female genital area.<sup>12</sup> Some of the women accused of "discrimination" worked out of their own homes, had advertised waxing services for women and were uncomfortable waxing a biological male alone in a room in their own home. The clients and anyone who supported their constitutional right to refuse to provide an intimate service of this nature against their will, were accused of "hate."<sup>13</sup>

Similarly, in the case of *UAlberta Pro-Life v Governors of the University of Alberta*,<sup>14</sup> peaceful (and university authorized) expression of a pro-life nature was termed by opponents as "hate."<sup>15</sup>

Comparable conduct is documented by Morgane Oger, a witness before this Committee, and the Vice-President of the BC New Democratic Party. Oger campaigned to cut public funding to a rape

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<sup>10</sup> See Schedule "A"; <https://www.feministcurrent.com/2017/07/08/lesbianism-attack-though-not-usual-suspects/>

<sup>11</sup> [http://dailynous.com/2018/08/27/derogatory-language-philosophy-journal-hostility-discussion/]; [https://www.economist.com/open-future/2018/06/29/transgender-identities-a-series-of-invited-essays];

<sup>12</sup> Waxing for biological males is typically referred to as a "manzillian" or "brozillian".

<sup>13</sup> See Schedule "B"

<sup>14</sup> *UAlberta Pro-Life v The Governors of the University of Alberta*, 2017 ABQB 610.

<sup>15</sup> See Schedule "C"

shelter because it refused to admit non-biological women.<sup>16</sup> Biological women who have been raped could very well suffer further trauma if forced to share quarters with, or if assigned to a biological male for trauma counselling.<sup>17</sup>

Further, Oger called a woman's sign at the Vancouver Women's March "hate speech" because the sign expressed the opinion that "trans-women are men."<sup>18</sup> Oger then campaigned on Twitter to locate the woman so that her "hate" could be addressed by the BC Human Rights Tribunal.<sup>19</sup> On January 10, 2019, Oger demonstrated in front of the Vancouver Public Library, and compared the feminist event taking place inside to a "holocaust denial party."<sup>20</sup> The event, entitled "Gender Identity Ideology and Women's Rights," considered the impact of transgenderism on biological women's rights and interests. Further still, Oger – through the Morgane Oger Foundation – has expressed the intention to create a "hate map."<sup>21</sup> The BC Civil Liberties Association has warned that the project may conflate genuine political speech with hate speech.<sup>22</sup> Taken cumulatively with Oger's presentation before this Committee, Oger's broad and entirely subjective definition of "hate" should send a strong signal to this Committee about the dangers of considering the censorship of so-called "hate" in the abstract. U.S. Senator and Democratic Presidential candidate Elizabeth Warren, for example, broadly and subjectively characterized all of Fox News as "hate."<sup>23</sup>

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<sup>16</sup> See Schedule "D"; <https://globalnews.ca/news/5071122/vancouver-rape-relief-and-womens-shelter-funding-trans-women/>; <https://twitter.com/aniobrien/status/1110646410355998720>

<sup>17</sup> *Vancouver Rape Society v. Nixon*, 2005 BCCA 601. The BC Supreme Court (affirmed by the BC Court of Appeal) overturned a finding of discrimination by the BC Human Rights Tribunal for the Society's exclusion of a transgender person providing counselling services to biological women.

<sup>18</sup> See Schedule "D";

<https://www.facebook.com/photo.php?fbid=2117146715180309&set=a.1388774824684172.1073741830.100006550020969&type=3&theater>

<sup>19</sup> See Schedule "E"; <https://twitter.com/MorganeOgerNDP/status/956233647530504193>

<sup>20</sup> According to CTV News journalist, Penny Daflos; See Schedule "F";

<https://twitter.com/PennyDaflos/status/1083587358144966656>

<sup>21</sup> See Schedule "G"; <https://www.ctvnews.ca/canada/anti-discrimination-organization-wants-to-map-offenders-with-hate-atlas-1.4347219>; <https://twitter.com/aniobrien/status/1110646410355998720>

<sup>22</sup> See <https://globalnews.ca/news/5083956/anti-discrimination-group-create-mapping-tool-hatred-canada/>

<sup>23</sup> See Schedule "H"

[https://twitter.com/ewarren/status/1128314854622859265?ref\\_src=twsrc%5Eetfw%7Ctwcamp%5Eetweetembed%7Ctwtterm%5E1128314854622859265&ref\\_url=https%3A%2F%2Fwww.usatoday.com%2Fstory%2Fnews%2Fpolitics%2F2019%2F05%2F14%2FElizabeth-warren-fox-hate-profit-racket-rejects-town-hall%2F3666710002%2F](https://twitter.com/ewarren/status/1128314854622859265?ref_src=twsrc%5Eetfw%7Ctwcamp%5Eetweetembed%7Ctwtterm%5E1128314854622859265&ref_url=https%3A%2F%2Fwww.usatoday.com%2Fstory%2Fnews%2Fpolitics%2F2019%2F05%2F14%2FElizabeth-warren-fox-hate-profit-racket-rejects-town-hall%2F3666710002%2F)



None of these examples constitutes “hate” under the legal definition used in sections 318 and 319 of the *Criminal Code*. The foregoing expression does not “threaten violence”<sup>24</sup> or “detestation or vilification,”<sup>25</sup> yet various witnesses who have appeared before this Committee have urged that what is simply the lawful expression of disagreement be punishable by law.

It is therefore incumbent on this Committee to carefully consider the impact of its deliberations on the lawful exercise of constitutional rights by Canadians.

### **Sections 318 and 319 of the *Criminal Code***

Sections 318 and 319 of the *Criminal Code* contain clear boundaries that have been further clarified by the courts. In *Saskatchewan v Whatcott*, the Court stated that in defining hate speech, “the guidance provided by *Taylor* should *reduce the risk of subjective applications* of such legislative restrictions, provided that three main prescriptions are followed.”<sup>26</sup> These three prescriptions are, first, that courts must apply the hate speech prohibitions objectively. Specifically, “the question courts must ask is whether a reasonable person, aware of the context and circumstances surrounding the expression, would view [the statement] as exposing the protected group to hatred.”<sup>27</sup>

Second, the definition of “hatred” or “hatred or contempt” is “restricted to those extreme manifestations of the emotion described by the words “detestation” and “vilification.”<sup>28</sup> According to the Court, this specific qualifier “filters out expression which, while repugnant and offensive, does not incite the level of abhorrence, delegitimization and rejection that risks causing discrimination or other harmful effects.”<sup>29</sup>

Third, the Court held that the analysis of hate speech must focus on effects, specifically, “is the expression likely to expose the targeted person or group to hatred by others?” According to the Court, “the prohibition... *is not designed to censor ideas or to compel anyone to think correctly*

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<sup>24</sup> *R. v. Khawaja*, 2012 SCC 69 at para. 70.

<sup>25</sup> *Whatcott*, at para. 91.

<sup>26</sup> *Whatcott* at para 55 [emphasis added].

<sup>27</sup> *Ibid* at para 56.

<sup>28</sup> *Ibid* at para 57.

<sup>29</sup> *Ibid*, para. 58.

... the key is to determine the likely effect of the expression on its audience, keeping in mind the legislative objectives to reduce or eliminate discrimination.”<sup>30</sup>

Importantly, the Court also stated that “belittling a minority group or attacking its dignity through jokes, ridicule or insults may be hurtful and offensive” but “such expression...does not expose the targeted group to hatred.”<sup>31</sup>

### **Defenses to the charge of criminal hate speech**

Section 319(3) of the *Criminal Code* prescribes the defenses available to a defendant in the event of being charged with criminal hate speech. The defenses of truth, of good faith expression of an opinion based on a religious text, of statements that are relevant to the public interest which are believed to be true, are all necessary for the maintenance of free speech in a democracy like Canada. Truth matters, and should never be censored just because a particular truth is offensive to some people, or even to all people.

The necessity of such defenses is highlighted by the BC Human Rights Tribunal’s decision in *Oger v Whatcott*, 2019 BCHRT 58, where the Tribunal ordered the Respondent to pay \$55,000 to Oger in relation to expression that fell far short of criminal hate speech.<sup>32</sup> What should be of significant concern to this Committee is the Tribunal’s characterization of the Respondent’s speech as “hate” despite a lack of a criminal charge against the Respondent, and the Tribunal’s refusal to import the defenses in section 319(3) of the *Criminal Code* to its analysis in the human rights context. The draconian penalty, along with the findings of the Tribunal, are the subject of an appeal.

It should be noted that without the freedom to express a religious or otherwise ideological opinion<sup>33</sup> that some find disagreeable, the state itself becomes a kind of ideological “priest” or “imam” of the nation, declaring what is orthodox and what is blasphemous, with commensurate infringements of both constitutionally-protected religious and expressive rights. Such would be a strange and ill-advised return to a paradigm where religious and political power are united, such

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<sup>30</sup> *Ibid* [emphasis added].

<sup>31</sup> *Ibid*, para. 90.

<sup>32</sup> The Respondent was not charged criminally for the flyers in question.

<sup>33</sup> *Ibid*, s. 319(3)(b).

as in parts of Europe during segments of the Middle Ages, with the well-documented abuse of dissenters.<sup>34</sup>

Further, Sections 318 and 319 contain an additional safeguard that the provincial or federal Attorney General must specifically authorize any prosecutions.<sup>35</sup> This additional protection is appropriate and necessary given the fundamental constitutional rights in interest.

### **Former Section 13 of the *Canadian Human Rights Act***

Few legislative provisions in recent memory proved as contentious as former section 13 of the *Canadian Human Rights Act*. A wide and diverse cross-section of the public was averse to this provision. As Maclean's Magazine put it, responding to a BC Human Rights complaint:

Even long-time believers in Section 13 were astounded by the spectacle of a state tribunal reviewing a newsmagazine's content, while questions of fairness abounded. With no evidence of intent, and without proving guilt beyond a reasonable doubt, critics noted, the tribunal was clearly prepared to brand someone a racist—one of the most reviled labels in Canadian society.<sup>36</sup>

### **Societal Alarm Justified**

Canadians have legitimate concerns about the work of this Committee based on the federal government's track record on fundamental rights, and specifically on section 2(b) expression rights. Over the course of the last three and a half years, this government has treated the *Charter's* protection of free expression as an inconvenience in several noteworthy instances.

The 2018 Canada Summer Jobs Program (CSJ) required businesses and non-profits that had nothing to do with abortion or reproductive rights to attest that they agreed a woman had a legal right to have an abortion. In ongoing litigation,<sup>37</sup> the Justice Centre represents an irrigation company that provides piping and infrastructure for agriculture. The company wished to hire a student for the summer of 2018 to assist with its business and applied for funding under the Canada Summer Jobs program. The company was denied funding on the basis that it refused sign the

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<sup>34</sup> Religion and state are still combined in a number of existing nations, such as Iran and Saudi Arabia, with predictable oppression of non-religious as well as religious citizens who express religious dissent. William Tyndale, and many others like him, were burnt at the stake through the religious usurpation of civil power.

<sup>35</sup> *Ibid*, s. 318(3).

<sup>36</sup> <https://www.macleans.ca/news/canada/five-years-two-tribunals-a-raft-of-secret-hearings-a-supreme-court-challenge-how-the-battle-for-free-speech-was-won/>

<sup>37</sup> *Anderson v Canada (Minster of Employment, Workforce and Labour)*, 2018 ABQB 839 (CanLII). This matter is scheduled to proceed in July 2019.

required attestation that abortion ought to be legal. The wording of the 2019 CSJ program has been changed, but is still sufficiently problematic for new court actions to be commenced.

Canadians are justifiably alarmed that a government that has demonstrated a willingness to compel adherence to its own progressive ideology by withholding publicly-available funds from those who disagree with existing government policy is now considering censoring “online hate.”

Does this Committee know whether it is “hate” to disagree about a legal right to abortion? Or to disagree publicly with the ethics of abortion? Does disagreement concerning abortion constitute “sexism” for the purpose of this study committee? Is “sexism” hate? None of these terms have been defined.

This Committee has also tasked itself with preventing Islamophobia, but as in the notable example of Motion 103, passed in 2017, that term remains undefined. The Justice Centre previously expressed its concerns regarding the vagaries surrounding the term “Islamophobia,” and urged Parliament to clearly demarcate its definition in order to protect lawful criticism and free expression.<sup>38</sup>

As previously submitted,

Islam is not a single, united, coherent and uniform whole. Instead, there are different factions, movements and ideologies within Islam. Which one of those factions are Canadians free to be concerned about? Canadian Muslims have the constitutional right to criticize the positions of those within their own religion, with whom they disagree. Likewise, non-Muslims also have the constitutional freedom to criticize Islam. All Canadians enjoy the freedom to criticize all religions (including worldviews and belief systems such as atheism, agnosticism and other “isms”). The Supreme Court of Canada has ruled that the state is not to make itself the arbiter of religious dogma.<sup>39</sup>

Criticism and disagreement with someone’s religion is not “hate.” Voicing concerns about practices such as female genital mutilation and the constitutional rights of Canadian girls to be free of such practices, is not hate. Ambiguity in law, however, could jeopardize and infringe this basic

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<sup>38</sup> The Justice Centre’s submissions on this issue are archived at [<https://www.jccf.ca/wp-content/uploads/2017/09/2017-09-26-JCCF-Submissions-re-M-103-1.pdf>] See also: [<https://nationalpost.com/news/politics/hearing-into-liberals-anti-islamophobia-motion-showcases-confusion-fears-of-free-speech-loss>]

<sup>39</sup> *Syndicat Northcrest v. Amselem*, [2004] 2 SCR 551 at para. 50; Jay Cameron & John Carpay, “A Threat to Democracy: Government Control over Canadians’ Thoughts, Beliefs and Opinions” (2017) Justice Centre for Constitutional Freedoms at para. 33, <https://www.jccf.ca/wp-content/uploads/2017/09/2017-09-26-JCCF-Submissions-re-M-103-1.pdf>

right, of Muslim Canadians and non-Muslim Canadians alike, to criticize religions and ideologies freely without fear of intimidation or reprisal.

Unfortunately, studies such as that of this Committee, as well as that of Motion 103, demonstrate the intent of some notable individuals to infringe the constitutional rights of Canadians.

In previous submissions on the issue of Motion 103, the Justice Centre noted that,

Michel Juneau-Katsuya appeared as a witness before this Committee [Standing Committee on Canadian Heritage] on Wednesday, September 20, 2017, and illustrated why so many Canadians are deeply concerned about M-103. Mr. Juneau Katsuya, formerly of CSIS and the RCMP, currently operates in the realm of private security. His testimony was concerning. He minimized the constitutional rights of Canadians both to speak and to hear, and advocated for the removal of broadcast licenses of radio stations that aired concerns about immigration and Islam, calling such stations “trash radio” to justify censorship (i.e. such stations have nothing legitimate to say, in his opinion, so they should be censored). He stated that there is “too much shyness and political correctness when it comes to the prosecuting process, letting it go under the blanket of free speech and letting things go too far.”<sup>40</sup> It is apparent that Mr. Juneau-Katsuya thinks the government should be far more involved in policing the expressions (and therefore the thoughts) of Canadians, and that the Charter is an inconvenient barrier to this end. Mr. Juneau-Katsuya could advance arguments as to why some radio programs are “trash,” but in a free society this determination is made by individual radio listeners, not by government.<sup>41</sup>

### **The Spectre of Punishment and Stigma**

We urge this Committee to consider the profound difficulties of those who find themselves the subject of human rights complaints. Human rights complaints are often deeply stigmatizing to the targeted individuals, and are largely devoid of the safeguards of criminal proceedings. The potential for abuse is manifest.

The Justice Centre represented a woman who stated online that she offered waxing services only to women. Specifically, our client communicated that she was not prepared to wax someone’s testicles, because she offered intimate waxing services to women only. This communication was not an act of hatred. It was the assertion of a lawful right to security of the person, protected by section 7 of the *Charter*, and also an act of protected expression. This Committee must ask itself

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<sup>40</sup> <http://parlvu.parl.gc.ca/XRender/en/PowerBrowser/PowerBrowserV2/20170920/-1/27874?useragent=Mozilla/5.0>

<sup>41</sup> Jay Cameron & John Carpay, “A Threat to Democracy: Government Control over Canadians’ Thoughts, Beliefs and Opinions” (2017) Justice Centre for Constitutional Freedoms at para. 21, <https://www.jccf.ca/wp-content/uploads/2017/09/2017-09-26-JCCF-Submissions-re-M-103-1.pdf>

how it proposes to distinguish actual criminal hate speech from philosophical, political, religious or other disagreements.

Upon being served with the complaint against her, our client contacted 26 different lawyers, each of whom refused to represent her. Their reasons varied. Some lawyers informed our client that they declined due to their fear of trans activists stigmatizing them personally for representing a woman who had been publicly accused of “transphobia.” Irrespective of their reasons, their refusal to represent the individual in question increased her difficulties and anxiety and showcases one of the emerging problems with Human Rights tribunal proceedings: they are high-stakes proceedings featuring typically unrepresented Respondents who either cannot afford, or otherwise obtain, counsel. It is too easy for the credulous public to believe a citizen-initiated complaint of discrimination is really tantamount to a conviction.

Finally, in the case in question, the complaint was withdrawn. No costs or damages were provided to the Respondent despite months of suffering and anxiety. Nothing prevents the filing of duplicative harassing and improper human rights complaints. Under the *Canadian Human Rights Act*, no mechanism exists for the Tribunal to order costs against a complainant who commences a complaint on malicious, frivolous or vexatious pretenses.

The Complainant in that case successfully applied to have their name anonymized, but the Respondent’s name was publicly displayed by the BC Human Rights Tribunal. When the Complaint was withdrawn, what was the impact on her reputation? How should she be compensated? Is that something this Committee is prepared to include in this study?

### **The Masters of the Universe**

Large tech companies are increasingly using their platforms and public power over discourse to silence and marginalize voices with which they disagree. The prospect of governments uniting with such entities, and thereby enforcing their preferred ideology and opinion, have already become more fact than speculation.

In 2015, Dr. Robert Epstein published a study entitled, *The Search Engine Manipulation Effect (SEME) and its Possible Impact on the Outcomes of Elections*.<sup>42</sup> The study demonstrated that “biased search rankings can shift the voting preferences of undecided voters by 20% or more.”<sup>43</sup> The threat to democracy from alliances between powerful and vote-hungry political parties and tech companies is obvious. There is also evidence of existing industry bias. An analysis by Wired.com of more than 125,000 tech workers showed that in 2018, the ratio of their donations to Democrat groups versus Republican groups in the United States was twenty-three to one.<sup>44</sup>

Not surprisingly, incidences of censorship occurring amongst social media companies are also occurring with greater frequency. For example, the movie “Unplanned” is the true story about a former director of a Planned Parenthood clinic named Abby Johnson. The movie details how the protagonist’s views change regarding abortion. According to the movie’s public relations team, both Google and Facebook refused to sell advertising to promote the movie. On the weekend of the film’s release, Twitter temporarily blocked the “Unplanned” promotional Twitter account, reinstating it later. A short time later, over 100,000 followers inexplicably disappeared from the account.<sup>45</sup> The foregoing was the subject of a US Senate Judiciary hearing on April 19, 2019 into the abuse of power and resulting infringement of constitutional rights by big tech.<sup>46</sup> Canada is not immune. Google, Twitter and Facebook operate on similar principles and with similar biases. It should be noted that other media providers have displayed a similar willingness to censor: Cineplex Odeon has refused to screen “Unplanned.”<sup>47</sup>

Dr. Ray Blanchard, a psychologist, was briefly banned on Twitter<sup>48</sup> for expressing his clinical opinion and his views on social policy related to transgenderism. He posted on Twitter that “the sex of a postoperative transsexual should be analogous to a legal fiction. This legal fiction would

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<sup>42</sup> Robert Epstein & Ronald E. Robertson, “The Search Engine Manipulation Effect (SEME) and its Possible Impact on the Outcomes of Elections”, Proc Natl Acad Sci U S A. 2015 Aug 18; 112(33): E4512–E4521, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4547273/>

<sup>43</sup> *Ibid.* at para. 1.

<sup>44</sup> <https://www.wired.com/story/tech-workers-overwhelmingly-support-democrats/>

<sup>45</sup> <https://www1.cbn.com/cbnnews/entertainment/2019/april/twitter-reinstates-unplanned-movie-account-after-suddenly-banning-film-from-platform>

<sup>46</sup> <https://www.washingtontimes.com/news/2019/apr/9/unplanned-anti-abortion-film-subject-of-senate-hea/>; <https://www.breitbart.com/tech/2019/04/11/unplanned-director-talks-to-senate-about-highly-unusual-and-discriminatory-blanket-refusals-for-films-advertisement/>

<sup>47</sup> <https://grandinmedia.ca/blockbuster-pro-life-movie-unplanned-banned-from-canadian-movie-theatres/>

<sup>48</sup> <https://pjmedia.com/trending/expert-psychologist-blocked-on-twitter-for-expressing-clinical-opinion-on-transgenderism/>

apply to some things (e.g., sex designation on a driver's license) but not to others (entering a sports competition as one's adopted sex)."<sup>49</sup> Dr. Blanchard, an adjunct professor at the University of Toronto, served on the working group for gender dysphoria for DSM V. Is he guilty of hate?

A Parliamentary inquiry should be established to determine the extent of the censoring of online speech by large tech corporation, in order to understand the potential effects of any new laws regarding online hate. Liberal democracy cannot survive collusion between governments and giant private entities aimed at silencing unpopular views.

### **Conclusion**

In order to preserve Canada's liberal democracy, federal and provincial governments must pay closer attention to their constitutional obligations. The intent to protect the constitutional right of freedom of expression must begin to be "fundamental" to governments, not an afterthought, or an inconvenience. As Professor Moon noted in 2019,

Freedom of expression has little substance if our trust in the 'autonomous' judgment of the individual is the exception (a condition that must be established); it has no substance if it is protected only when we agree with its message or consider the message to be harmless. The problem with this approach to free speech protection - an approach that formally acknowledges the premises of free speech but supports limits on speech that carries a harmful message - is that it puts the whole edifice at risk.<sup>50</sup>

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<sup>49</sup> See Schedule "I";

[https://twitter.com/BlanchardPhD/status/1127287093661765633?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwtterm%5E1127287093661765633&ref\\_url=https%3A%2F%2Fpjmedia.com%2Ftrending%2Fexpert-psychologist-blocked-on-twitter-for-expressing-clinical-opinion-on-transgenderism%2F](https://twitter.com/BlanchardPhD/status/1127287093661765633?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwtterm%5E1127287093661765633&ref_url=https%3A%2F%2Fpjmedia.com%2Ftrending%2Fexpert-psychologist-blocked-on-twitter-for-expressing-clinical-opinion-on-transgenderism%2F)

<sup>50</sup>[https://journals.library.ualberta.ca/constitutional\\_forum/index.php/constitutional\\_forum/article/download/29373/21372](https://journals.library.ualberta.ca/constitutional_forum/index.php/constitutional_forum/article/download/29373/21372)



## SCHEDULE “A”

🏠 <https://www.feministcurrent.com/2017/07/08/lesbianism-attack-though-not-usual-suspects/>

Alberta No results < > Options ▾

IST  
NT

[Lesbianism is under attack, though not by the usual ...](#)

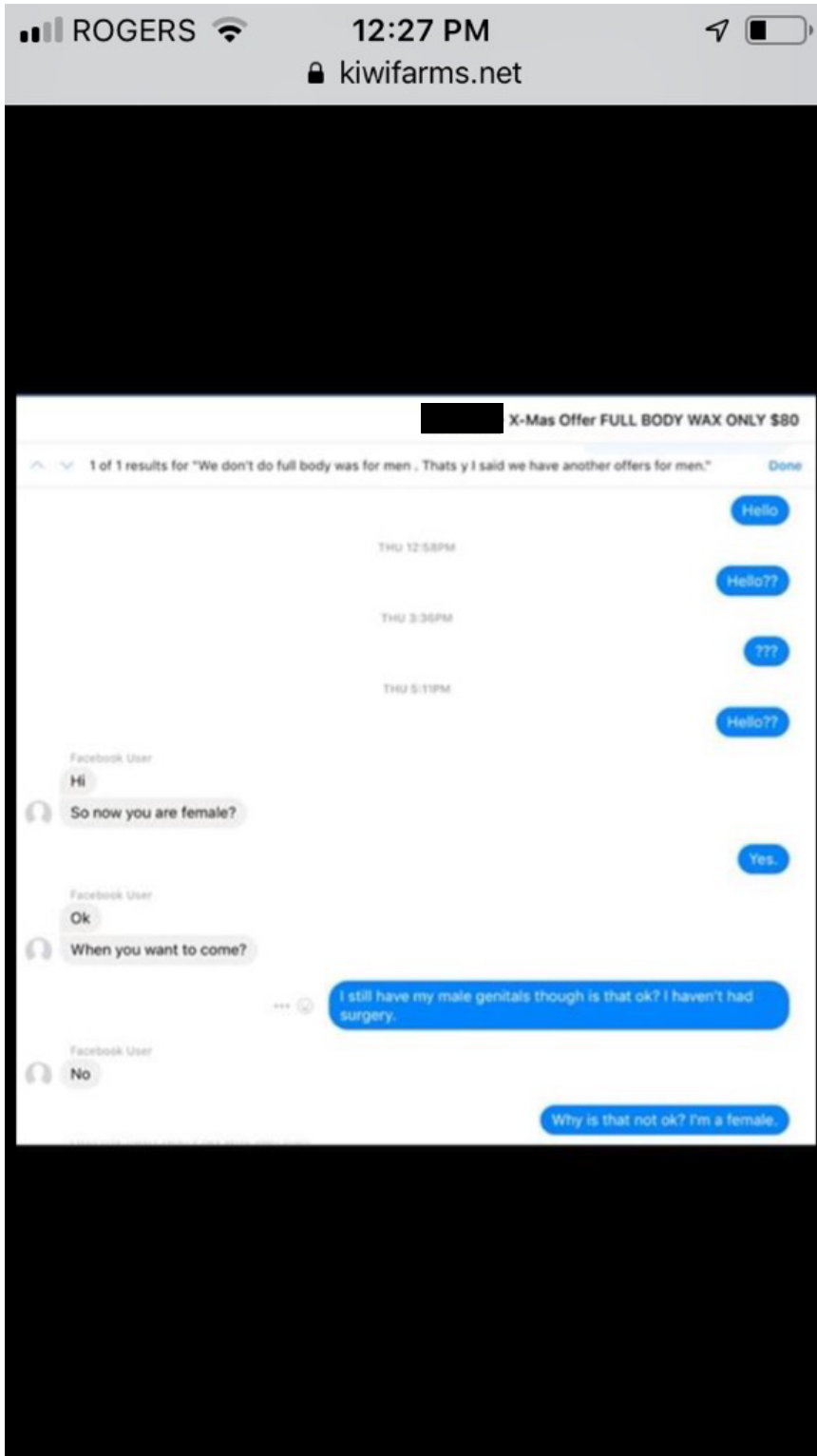
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For some trans women who are attracted to women and identify themselves as lesbians, the word TERF has become synonymous with “lesbians.” In a *Buzzfeed* article titled, “[Can Lesbian Identity Survive The Gender Revolution?](#)” Shannon Keating argues that lesbians who exclude transwomen are TERFS:

“TERFs refuse to see trans women as women at all, think including trans women in women’s spaces is akin to rape culture, and [advocate](#) for separating lesbians from the G, B, and T’s.”

On June 25th, Mya Byrne, a musician, writer, and trans activist, tweeted a selfie (since deleted) from San Francisco Pride, wearing a faux blood-stained T-shirt that read, “I PUNCH TERFS.” Because Byrne was wearing the shirt to Pride (i.e. an event that would presumably include more lesbians than straight women), the message could easily be read as a threat against lesbians who disagreed with the notion that penises can be female.

SCHEDULE "B"





**Morgane Oger M.S.M.**

@MorganeOgerBC

Follow



Amy hamm incites hatred against trans women because of who we are. Maybe she didn't get the memo, so I'll say it more explicitly: She and [@FeministCurrent](#) enabled Yaniv, creating social cover by inciting repulsive hatred instead of researching the facts and reporting. [#DoYourJob](#)

**Amy Eileen Hamm** @preta\_6

Replying to @jonkay @MorganeOgerBC

Meh. This is Oger trying to save face after repeatedly defending JY's HRT claims against women (as recently as last week). And of course Oger has to take a swipe at MM and try to discredit @AliciaMHendley / imply there's no legit reason to become gender critical except bigotry.

10:23 AM - 20 Apr 2019 from [Vancouver, British Columbia](#)

8 Retweets 32 Likes



102

8

32

**SCHEDULE "C"**

**BECAUSE IF OUR PRESIDENT WON'T DO IT?**

**WHO WILL? (We Will!!!!)**

**WE WILL NOT ACCEPT HARASSMENT UNDER THE GUISE OF FREEDOM OF SPEECH.**

**WE WILL NOT ACCEPT AN ADMINISTRATION THAT SHOWS SO LITTLE REGARD FOR THE MENTAL HEALTH OF THEIR OWN STUDENTS AND STAFF.**

**AND WE WILL NOT ACCEPT ANY LIMITATION ON OUR ABILITY TO BLOCK THIS HATEFUL, DECEITFUL DISPLAY.**

**WE WILL NOT BE SHAMED. WE WILL NOT BE SILENCED. AND WE WILL NOT APOLOGIZE.**

**THANKS TO YOU - THIS WILL BE THE LARGEST PRIDE IN THE HISTORY OF THE UNIVERSITY OF ALBERTA.**

**WE WILL NOT LET HATE TRUMP LOVE. NOT TODAY. NOT EVER. NOT HERE.**

**WHOSE CAMPUS?**

**OUR CAMPUS!**

**WHOSE CAMPUS?**

**OUR CAMPUS!"**

Like · Comment · Share

 **Bria Said, Nayneet Khinda, Blue Knox and 472 others like this.**



## SCHEDULE “D”



Hilla Kerner from the Vancouver Rape Relief and Women's Shelter poses at the shelter on Friday, May 3, 2013.

THE CANADIAN PRESS/Eric Dregger

Morgane Oger, a transgender activist, applauded the city's decision, adding that it's the last B.C. women's shelter that she knows of that denies services to the trans community.

“Their policy is discriminatory based on gender identity, which is against the law,” she said.

“They are saying that transgender women are men and not women.”



SCHEDULE "E"

The image consists of three screenshots from social media. The left screenshot shows a woman at a Women's March event holding a sign that reads "TRANS WOMEN ARE MEN TRUTH IS NOT HATE". The middle screenshot is a Facebook post by Morgane Oger with 127 shares, containing text about gender identity and a request for information. The right screenshot is a Facebook post by Morgane Oger with 278 likes, containing text about hate speech and a question about the woman in the photo.

**Left Screenshot:** A woman wearing a pink hat and glasses is holding a sign that reads "TRANS WOMEN ARE MEN TRUTH IS NOT HATE".

**Middle Screenshot:** A Facebook post by Morgane Oger with 127 shares. The text reads: "Who is a woman in Canada and British Columbia is not based on their plumbing but on our gender identity. Women are women because we say we are. Attributes usually associated with women are protected for all women, whether they possess them or not, like plumbing or biological function. We have six months for somebody to file a complaint against this woman on the basis of her actions publishing advice to discriminate on the basis of gender identity. ...but to do this, who she is needs to be known. If somebody knows who she is please email me the information at morgane@morganeoger.ca".

**Right Screenshot:** A Facebook post by Morgane Oger with 278 likes. The text reads: "Apparently not everyone at the Vancouver Women's March was equally enlightened about why trans women are women... A concerned citizen passed this photo on to me. This is hate speech. Anyone know who this person is?". Below the text is a photo of the woman from the left screenshot.



## SCHEDULE "F"



**4thWaveNow** @4th\_WaveNow · 24 Jan 2018

Politician/trans activist intending to go ahead to "pursue this woman" in human rights court for carrying a sign that said "trans women are men" in a public demo. Could be a field day for Canadian press.

[@BarbaraRKay](#) [@jonkay](#) [@globeandmail](#) [@DrDebraSoh](#) [@jordanbpeterson](#)  
[@docamitay](#)



**Morgane Oger**

@MorganeOgerNDP

Follow

Replying to [@halfwayhouse77](#) [@jodyvance](#) [@Roundhouse983](#)

I make it clear I intend to pursue this woman in the human rights tribunal. Dialogue might change that and I welcome it if it happens before.

Outraged as this hate storm may be, it is based in the UK and USA where transgender rights are lacking, reinforcing my resolve.

9:06 AM - 24 Jan 2018



## SCHEDULE "G"

ROGERS 12:23 AM mobile.twitter.com



Morgane Oger M.S.M. Retweeted



**Penny Daflos** @PennyDaflos · 5h

MORE: "I thought we wouldn't have to worry about transphobia anymore," says @MorganeOgerBC. She blames @VPL and @CityofVancouver for allowing the discussion she compares to "a holocaust denial party." #vanpoli @CTVancouver



4 6 16

3

24

46



## SCHEDULE "H"

The image displays two screenshots from a mobile device. The left screenshot shows a news article on the website [ctvnews.ca](http://ctvnews.ca). The article is titled "Anti-discrimination organization wants to map offenders with hate atlas" and is attributed to "The Canadian Press", published on Friday, March 22, 2019 at 4:26 AM EDT. The article includes a photograph of hands typing on a computer keyboard. Below the photo, a caption reads: "A woman uses her computer keyboard to type while surfing the internet in North Vancouver, B.C., on Wednesday, December, 19, 2012. (THE CANADIAN PRESS/Jonathan Hayward)". The right screenshot shows a tweet from user @aniobrien, dated March 26. The tweet text reads: "First Morgane Oger campaigned to get a women's rape shelter defunded & now they are are trying to create a geographic list of 'hate crimes' by which they mean a list of people deemed to be 'anti-trans'. I wonder if they'll have to wear badges? Maybe a star?". The tweet includes a link to the news article and shows engagement metrics: 30 replies, 101 retweets, and 2 likes. Below the tweet, another user, Mr. TamC, is partially visible with a tweet dated March 24.

SCHEDULE "P"



**Elizabeth Warren** 

@ewarren

Follow



Fox News is a hate-for-profit racket that gives a megaphone to racists and conspiracists—it's designed to turn us against each other, risking life and death consequences, to provide cover for the corruption that's rotting our government and hollowing out our middle class.

8:03 AM - 14 May 2019

< **Top** Latest People Phot >

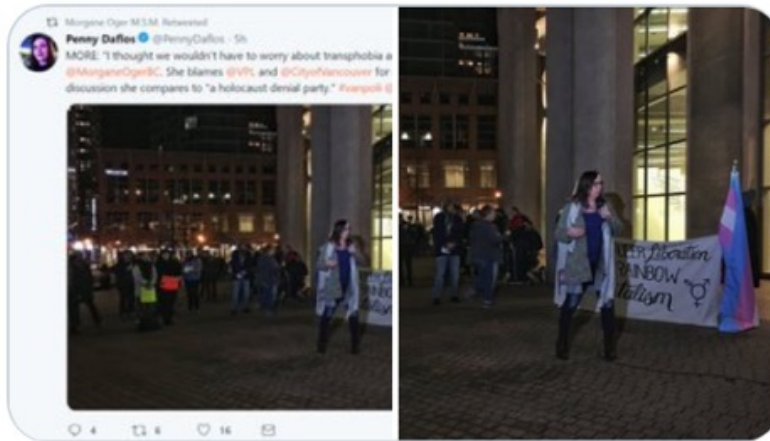


**Ystriya #MeghanMurphy** · Jan 11

Trans activist **Morgane Oger** protests outside the Vancouver Public Library where Meghan Murphy is speaking, and compares a feminist talk to a holocaust denial party.

That's how much they **hate** that women have rights.

[#GIDVPL](#)



3 24 46

Show this thread



**Jules** @jpaulson... · May 25, 2018

## SCHEDULE “J”



**Ray Blanchard** @BlanchardPhD · May 11

My beliefs include the following 6 elements: (1) Transsexualism and milder forms of gender dysphoria are types of mental disorder, which may leave the individual with average or even above-average functioning in unrelated areas of life.

21 285 915



**Ray Blanchard** @BlanchardPhD · May 11

(2) Sex change surgery is still the best treatment for carefully screened, adult patients, whose gender dysphoria has proven resistant to other forms of treatment.

22 171 835



**Ray Blanchard** @BlanchardPhD · May 11

(3) Sex change surgery should not be considered for any patient until that patient has reached the age of 21 years and has lived for at least two years in the desired gender role.

12 242 1.2K



**Ray Blanchard** @BlanchardPhD · May 11

(4) Gender dysphoria is not a sexual orientation, but it is virtually always preceded or accompanied by an atypical sexual orientation – in males, either homosexuality (sexual arousal by members of one’s own biological sex) . . .

5 170 806



**Ray Blanchard** @BlanchardPhD · May 11

or autogynephilia (sexual arousal at the thought or image of oneself as a female).

7 153 752



**Ray Blanchard** @BlanchardPhD · May 11

(5) There are two main types of gender dysphoria in males, one associated with homosexuality and one associated with autogynephilia. Traditionally, the great bulk of female-to-male transsexuals has been homosexual in erotic object choice.

15 205 844



**Ray Blanchard**

@BlanchardPhD

Follow

(6) The sex of a postoperative transsexual should be analogous to a legal fiction. This legal fiction would apply to some things (e.g., sex designation on a driver’s license) but not to others (entering a sports competition as one’s adopted sex).

11:59 AM - 11 May 2019

333 Retweets 1,617 Likes



