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Lemire's Right to Free Speech Vs. Ours

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The question of Section 13 of Canada's Human Rights Act (CHRA) dealing with hate speech has come to a head over the case of Marc Lemire, who was the last president of the neo-Nazi white supremacist group, Heritage Front, and is now a webmaster of a controversial site created in the name of free speech. Lemire is currently challenging the constitutionality of Section 13 after he was vindicated on an earlier Section 13 complaint regarding his website. Undoubtedly, Lemire wants to free cyberspace from restrictions posed by Section 13 to allow him to post freely any and all information.

Clearly there are problems with the operation of Section 13 that deals with intolerable expressions and protects against specific forms of hate speech. In its own words, Section 13 empowers the Canadian Human Rights Commission "[to deal with complaints regarding the communication of hate](#) messages by telephone or on the Internet."

13. (1) Section 13 of CHRA states, "It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that person or those persons are identifiable on the basis of a prohibited ground of discrimination."

Interpretation

(2) "For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not

apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking".

Glaring problems arose over Section 13 in the high profile case of Ezra Levant vs. Alberta's Human Rights Commission. Levant was dragged in by the Commission after Calgary Imam Syed Soharwardy launched a complaint against him for publishing the Danish newspaper cartoons of the Muslim prophet Mohammed. Incidentally, the same Soharwardy [compared Canada to Nazi Germany in December over the banning of face veils](#) at citizenship ceremonies. As hurtful as the unrepentant Soharwardy's comment was to the Jewish community, my organization (FSWC) did not refer the matter to the Canadian Human Rights Commission.

Levant [recently wrote](#), "The Alberta government, using its provincial version of Section 13, prosecuted me for 900 days, with no fewer than 15 government bureaucrats and lawyers. It spent \$500,000 prosecuting me, before dropping the case -- and leaving me with my \$100,000 legal bill.

And herein lays one of the most tragic fallacies of the human rights tribunals: Anyone can launch a complaint without incurring personal cost. On the other hand, defendants must always pay their legal bills-- win or lose. This structure presents opportunity for abusive plaintiffs to "punish" defendants at will or even to "disrupt" a person or an organization.

An episode at *Maclean's* magazine illustrates the problem of Section 13-related abuse: "Following a 2006 cover story by columnist Mark Steyn titled 'Why the future belongs to Islam,' we were visited by a group of law students from the Canadian Islamic Congress. We were given the option of handing over editorial control of our pages for a rebuttal to Steyn's piece or face a series of human rights complaints. As the first option was anathema to our obligations to our readers, [the students launched their complaints.](#)" In the end, the complaint was dismissed by the British Columbia Human Rights Tribunal.

Friends of Simon Wiesenthal Center (FSWC) and other organizations, including B'nai Brith Canada, hold "Interested Party Status" in the case; it is our position that Section 13 is constitutional. From FSWC's perspective, jihadi recruitment and white supremacist hate sites have proliferated over the internet in recent years to incite young people to hate and intolerance or, even worse -- to violence. In theory, that proliferation can be curtailed with tools like Section 13. In fact, we have been able to pull down hate sites in Canada by merely raising the matter with ISP providers and referring them to Section 13 as needed. Thus, it has been useful as a guide post.

A recent example concerns a website called "Filthy Jewish Terrorists" launched by expelled York University student [Salmon Hossain, in which he called for the genocide of the Jewish people](#) and attacks on Canadian and American soldiers. Although he has fled to South Asia, Hossain has been criminally charged with wilfully promoting hatred and would certainly, under Section 13, be barred from operating such a website in Canada.

However, concern over the misuse of human rights commissions has apparently motivated the Canadian government to reconsider Section 13. In fact, a Private Members Bill (C-304) introduced by MP Brian Storseth was read for the second time in parliament on November 22nd. [The Bill](#) asks parliament "to amend the Canadian Human Rights Act by deleting sections 13 and 54 to ensure there is no infringement on freedom of expression. . . "

The Canadian government has extricated itself from the Lemire case, an indication of its rethinking of Section 13. Indeed, Minister of Justice Rob Nicholson has stated "[our government believes Section 13 is not an appropriate or effective means of combating hate propaganda.](#)"

The government's view appears to be consistent with University of Windsor law professor Richard Moon, who reviewed Section 13 on behalf of the CHRC and in 2008 recommended it be repealed so that online hate speech is purely a criminal matter. In response, CHRC's Chief Commissioner Jennifer Lynch said the Moon report is "one step in a comprehensive review...we can envision [Section 13 being retained with some amendments.](#)"

MP Irwin Cotler, the former Minister of Justice and internationally recognized human rights lawyer and advocate, believes the act should be revised rather than deleted--or should, at the very least, await the Supreme Court decision (and I would add the outcome of the Lemire case). Some of [Cotler's recommendations](#) for revision include requiring the consent of the Attorney General of Canada for launching a prosecution; a statutory definition of hate; allowing commissions to award costs and the removal of anonymous submissions. There is also a large consensus for an increase in standard of proof based on objectivity and evidence (as in the court system) as opposed to convictions to the satisfaction of interest groups.

Nearly every western nation has statutory laws in place against hate speech. For example, in 1981 and 1995 Belgium passed its Anti-Racism Law and its Holocaust Denial Law respectfully. Brazil cracked down on several hate-related websites in 2006 as part of its 1988 Constitution which bans race-related hate speech. Similarly, France prohibits public and private communication which is defamatory or incites discrimination, hatred, or violence. Germany's Section 130 makes it a crime to publicly incite hatred against parts of the population or violate their human dignity. Having learned from mainly European history and ongoing social friction, Western nations take their hate laws quite seriously.

In the end, the debate over Section 13 is healthy and evolving. The law must strike a balance between preventing the abuse of the Internet and protecting individual rights to privacy and free speech. In as much we all believe in absolute freedom, our freedom is in reality protected by laws and social safeguards that help shield us against harm from each other and from civil disobedience. Without guiding posts or red lines that protect us against hateful behaviour, inequity would result leading to a loss of freedom and tolerance for all.