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Chair

Mr. Scott Reid

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● (1235)

[*Translation*]

The Chair (Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC)): I call the meeting to order.

This is the 26th meeting of the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development.

[*English*]

Today we are starting a study of human rights commissions. We have two sets of witnesses before us today. First, we have David Langtry, deputy chief commissioner of the Canadian Human Rights Commission. He is accompanied by Sébastien Sigouin, who is director of the policy and international relations division, and Monette Maillet, who is director and senior counsel of the legal advisory services at the Human Rights Commission. They will be followed by Alan Borovoy, from the Canadian Civil Liberties Association.

I just want to alert members from all parties to the obvious time constraints it puts on us within a window of one and a half hours. I'm going to have to be pretty ruthless in keeping our questions and responses short in order to allow both sets of witnesses to be heard from fully. What I propose is that we have a single round of questions, rather than the normal two rounds after each set of witnesses. Even so, it's going to be tight, and I ask for everybody's cooperation.

That being said, I welcome our witnesses.

I would ask, Mr. Langtry, that you please feel free to start. Thank you.

Mr. David Langtry (Deputy Chief Commissioner, Canadian Human Rights Commission): Thank you, Mr. Chairman.

Good afternoon. I thank the subcommittee for inviting the Canadian Human Rights Commission to participate in your discussion of policies and practices of human rights commissions internationally and in Canada.

[*Translation*]

I am David Langtry and I am Deputy Chief Commissioner of the Canadian Human Rights Commission, or CHRC. With me today are Monette Maillet, Senior Counsel and Director of Legal Advisory Services, and Sébastien Sigouin, Director of Policy and International Relations.

We welcome this opportunity to provide you with an overview of the role and mandate of the commission and to describe our practices and work both domestically and internationally.

[*English*]

Perhaps the best way for me to explain the role and mandate of the commission is to read an excerpt from section 2 of the Canadian Human Rights Act: “The purpose of this Act is to extend the laws in Canada to give effect...to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have”—without discrimination. This sets out the mandate our commission pursues in all our work in helping to create a Canada with dignity, respect, and equality for all.

The commission itself consists of two full-time members, me and Chief Commissioner Jennifer Lynch, and four part-time members, together with 190 staff. An important aspect of our work is dealing with complaints of discrimination. Most complaints are in the employment context, and about one-third are about discrimination based on disability.

Experience has shown that often the best way to resolve human rights disputes, most of which occur at the local level, on the shop floor or in an office, is to bring the parties together to work out their differences. That is why the CHRC provides a robust system of alternative dispute resolution. ADR is offered at every stage of the process, and it is often successful.

Of course, not all complaints can be resolved in this way. The remaining cases go through the statutory process of investigation and a decision by the commission. About 86% of the time complaints are resolved or closed at the commission. The balance of complaints are referred to the Canadian Human Rights Tribunal, which is a completely independent hearing body, apart from us.

While perhaps best known as a complaints-screening body, the commission fulfills another extremely important function—that is, serving as a catalyst for advances in human rights. We perform an education and outreach function. We work with employers to help them integrate human rights into daily practice and prevent discrimination before it happens. We develop research, policies, and tools, and give advice to Parliament.

In the 30-plus years since its creation, the commission has contributed to making positive changes in Canadian society. Many of you will know of some of the precedent-setting cases that have made a huge difference for communities seeking equality: VIA Rail, which provided accessibility for persons with disabilities who travel on trains; Sangha, which confirmed that discrimination on the basis of over-qualification can be discrimination on the basis of race; Vaid, which confirmed that human rights law applies to the House of Commons; and Multani, which clarified the interplay between human rights and security.

As society and the law evolve, new human rights issues constantly arise and the CHRC contributes to resolving them.

● (1240)

[*Translation*]

Our act has been amended on several occasions to meet the changing needs of society, such as including sexual orientation as a ground of discrimination, and establishing the responsibility of employers to accommodate, to the point of undue hardship, the special needs of employees resulting from, for example, their religious requirements or disability.

[*English*]

A highlight of 2008 was the repeal of section 67 of the act, the section that excluded matters falling under the Indian Act. The passage of Bill C-21 was a milestone in the development of human rights law in Canada, and the commission applauds the cooperation shown by parliamentarians in working to reach a consensus on the legislation, which finally gives first nations peoples access to the same level of fundamental human rights protection that most Canadians take for granted.

Repeal of this section was just a first step. The commission is now working in close collaboration with first nations organizations to build a human rights system that reflects and respects aboriginal peoples' cultures and traditional laws.

An issue of particular and recent controversy regards section 13 of the act, which deals with hate messages. In response to concerns about section 13, the commission undertook a comprehensive policy review. The results of the review are detailed in the special report to Parliament that was tabled in both Houses last Thursday. As you know, your colleagues on the Standing Committee on Justice and Human Rights have agreed to conduct a study on section 13. We welcome and look forward to having that informed debate.

I would now like to tell you about the international aspect of our work and some recent developments on that front.

In the early 1990s the CHRC chaired an international initiative that led to the adoption in 1993 by the United Nations General Assembly of a set of standards for national human rights institutions. These standards came to be known as the Paris Principles. The Paris Principles serve as the internationally recognized benchmarks to assess the composition, mandate, and performance of a national human rights institution. Since their adoption, the Paris Principles have provided guidance to governments from around the world in establishing national human rights institutions that are independent and pluralistic.

An independent, rigorous, and transparent accreditation process gives substance and credibility to human rights institutions. There are 88 national human rights institutions worldwide that are now accredited in accordance with the Paris Principles, and 65 of these have the highest status, A status, including the Canadian Human Rights Commission. All of these institutions are members of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, or the ICC.

In 2007 the CHRC was elected as chair of the ICC for a three-year term. Under our leadership, the ICC has matured significantly as an organization. The ICC is working to provide a role for national institutions in corporate responsibility and has been very effective in promoting the role of national human rights institutions at the United Nations.

At the regional level, the CHRC has played a leading role in the development of the Network of National Human Rights Institutions of the Americas. This network has provided its members with a wide range of capacity-building and information-sharing services, ranging from the role of NHRIs in promoting and protecting the rights of indigenous peoples or the rights of persons with disabilities to human rights and security measures through to education and to prevention of torture. More recently the CHRC has effectively promoted a role for NHRIs at the Organization of American States that is similar to the one they have at the UN.

A reflection of the commission's international work at home has been its participation in the universal periodic review of Canada. It made a submission to the United Nations Human Rights Council to contribute to the first part of the review, which took place in February 2009, and intervened before the council at the conclusion of the review in June.

With this I conclude my remarks. We welcome the opportunity to answer your questions.

● (1245)

The Chair: Thank you very much.

We'll start with questions from the Liberal Party.

I believe Mr. Silva will go first.

Mr. Mario Silva (Davenport, Lib.): Thank you.

We were just trying to figure out who the chair was, because Jennifer Lynch couldn't make it today to the meeting, which is unfortunate. First of all, congratulations on your chairmanship. I think that's great. It's good for Canada as well.

I want to ask two questions in relation to the international scene. One is that we've just had the universal periodic review for Canada. I wanted to know whether you can comment on that and on whether there's a role as well for the commission to play in some of the possible implementation of the periodic review recommendations that came forward.

Number two is the fact that you also mentioned the Organization of American States. Now, the Inter-American Commission on Human Rights is very well known, and very prominent individuals have raised some serious issues of human rights. They also did a credible amount of good work on reports. I think of the report on forced disappearances, for example. I'm wondering whether the commission as well does work similar to that of the Organization of American States and the human rights reports that they do, and whether that is distributed. Their reports are very well distributed, and it's very well respected internationally.

Can you comment on those two issues, please?

Mr. David Langtry: Yes. Thank you.

I'll deal first with the UPR, and then I would ask to Mr. Sigouin to answer in terms of the Organization of American States, since he is the one who has been doing most of the work with the OAS.

Regarding the UPR process, indeed the Canadian Human Rights Commission welcomed that process, and as chairs of the ICC, we did conduct regional workshops internationally to assist national human rights institutions to participate in that process.

We welcome the opportunity and the fact that all member states would be under the review. As you know, Canada certainly had supported that process. We did provide a submission in February, as I had mentioned the five-page submission. This was not solely by the Canadian Human Rights Commission, but we consulted as well with all of the provinces through the Canadian Association of Statutory Human Rights Agencies. So we engaged with all ten provinces and three territories, as well as with 60 NGOs, in developing our submission. We did that through Rights and Democracy. So we made the submission. As I mentioned, of course, we attended and intervened last week.

We think it is a good process, and certainly I believe our experience is that it opened the door to greater dialogue and engagement with civil society and the government as far as our role in terms of any follow-up work. Yes, we certainly have offered to be part and parcel should we be given the mandate by Parliament to do any kind of follow-up or reporting work that may be in terms of any of Canada's obligations and response to recommendations.

On the OAS, I'll ask Sébastien to respond.

Mr. Sébastien Sigouin (Director, Policy and International Relations Division, Canadian Human Rights Commission): Thank you very much, Mr. Silva, for your question.

With regard to the Inter-American Commission, you are correct that it's an institution with lots of credibility. In fact, we are hosting next week a delegation of two senior officials from the Inter-American Commission, who are coming to the Canadian commission for three days to learn of our own experience and complaints process learned from our expertise. This is part of a project funded by CIDA.

As you know, the strengthening of the inter-American human rights system is a priority for the Government of Canada. As part of that process, it was felt that the Canadian commission could contribute to this process to the inter-American system by sharing its expertise with the Inter-American Commission.

We are, of course, a different kind of entity from the Inter-American Commission, but we do provide reports on the human rights situation in Canada. Mr. Langtry mentioned the UPR, the universal periodic review. We also provide independent reports through what is called at the UN the treaty reporting process, which is that Canada, as a member of this or that human rights treaty, has to provide periodic reports. As part of that process, we also provide reports to the UN on the specific issue, whether it's discrimination against women or any racial discrimination or any other human rights issue that Canada has adhered to through a treaty.

● (1250)

Mr. Mario Silva: Thank you.

Do I have any more time?

The Chair: You have one minute and 45 seconds.

I should have mentioned that everybody has seven minutes, but that's with the answers.

Mr. Mario Silva: Just on the mechanics of the operations between the commission and the tribunal, is it the tribunal that handles most of the difficult cases and the commission less? If you make a petition, do you have to make it first to the commission, and then go to the tribunal? You can't make it directly to the tribunal, I believe.

Mr. David Langtry: That's correct. The tribunal hears any cases that are referred to it by the Canadian Human Rights Commission. We do not make a decision on the merits of the case. We are a screening body. So when we receive complaints, we consider them, and we may decide that we will not deal with the case because it may be beyond our jurisdiction, it may be out of time, or there may be alternate proceedings that are available. If we decide to deal with it, then we make a decision to either dismiss it or to refer it to the tribunal for a hearing.

We do not make a finding that discrimination occurred. That is done in the open hearing at the Canadian Human Rights Tribunal, which is separate and apart from us.

Mr. Mario Silva: Thank you.

The Chair: Thank you.

Monsieur Dorion.

[*Translation*]

Mr. Jean Dorion (Longueuil—Pierre-Boucher, BQ): Mr. Langtry, congratulations on your presentation. It is interesting. You mentioned that the commission has A status accreditation under the Paris Principles.

Are there B status accreditations? Actually, specifically, what are the criteria used to judge the work, the performance, the composition and so on of the various commissions?

[*English*]

Mr. David Langtry: Yes, thank you for that question.

The A status is, as I mentioned, the highest status. There are 88 of those. We also have B status at the ICC, which are near to being Paris Principles-compliant but don't fully meet each of the requirements in the Paris Principles. They're accorded a B status, which means that they do not have standing at the Human Rights Council. All A-status national human rights institutions have full status to appear and speak to every agenda item at the Human Rights Council. We also have some with C status, and they're basically not Paris Principles-compliant at all.

So an application for accreditation is made by a national institution and it is then referred to the subcommittee on accreditation, which is a subcommittee of the ICC. It considers the application, it is reviewed by the national institutions unit of the Office of the High Commissioner for Human Rights in Geneva, and an analysis is done. Each applicant has to provide material to substantiate its annual reports, its budget, a description of its activities. Field officers of the UN will also provide information and input. The subcommittee on accreditation meets twice a year to consider the applications and reach a decision, a recommendation that is given to the ICC to either accept or reject the recommendations.

The subcommittee consists of one representative of each of the four regions that ICC is broken down into—the Americas, Asia-Pacific, Africa, and Europe. Canada is one of the four members of the subcommittee on accreditation.

● (1255)

[*Translation*]

Mr. Jean Dorion: Can you give specific examples of the kinds of criteria used to judge commissions?

[*English*]

Mr. David Langtry: Basically, the Paris Principles—which we can certainly provide to you—are a set of standards to make sure that a commission is, for example, independent of government, so it's not an arm of government and it can act independently. It has to be national in scope; so the provincial and territorial commissions would not be eligible for accreditation, only the Canadian, as a national organization, would. It must have a broad mandate, rather than a narrow, specific interest. It must be autonomous in terms of its budget and have adequate funding in order to resource it. The appointment process is to be pluralistic, open, transparent, and without undue interference. There are a number of rules like that to ensure that they have a broad enough mandate.

A fundamental requirement is that the commission has to be founded in legislation or in the constitution. There has to be a sound legal framework. So it's not a committee that's simply established by motion; it has to have a legislative base.

[*Translation*]

The Chair: You still have three minutes.

Mr. Jean Dorion: I will be brief, then, given that there is not a lot of time left.

Among people interested in human rights, there is a whole debate that has economic and social rights on one side and rights of other kinds, such as personal freedom, on the other side.

Can you tell us a little about your own view of things? Can you summarize your thinking on the matter for us?

[*English*]

Mr. David Langtry: Yes. Interestingly, as you may be aware, all provinces and territories have some degree of social condition, either expressly stated, or an aspect of social condition. The Canadian Human Rights Act does not have a social condition provision in it. In our annual report in 2003, we urged and recommended that social condition be added to our mandate. Of course, the mandate decision is that of Parliament.

Just recently, last year, we conducted a fairly extensive study on social condition. Professor Wayne MacKay was engaged to conduct the research. His recommendation, with a lengthy and well-reasoned report comparing various jurisdictions in Canada, does recommend that the mandate of the commission be expanded to include social condition.

That research is presently being considered by us. We have posted the research on our Internet and we've certainly invited submissions from the public on that. We'll then be making a determination in terms of what, if any, recommendations we might be making to Parliament.

[*Translation*]

Mr. Jean Dorion: Thank you very much.

The Chair: Thank you, Mr. Dorion.

[*English*]

Mr. Marston, please.

Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP): Well, as is usual, by the time the first sets of questions are being asked, I have about nine more that are blossoming.

First of all, I want to say congratulations on the work you do. It's important work.

On the UPR front, and when you read the UPR of Canada, a number of countries expressed concern for our reluctance to adopt OPCAT. I wouldn't mind your comments on that. I also would love to have a copy of your presentation on the UPR. I think it's very important.

My first question is, on the UPR evaluation of Canada's human rights record, what were the most significant issues, in your opinion?

Mr. David Langtry: That's an interesting question. I would have to say that certainly in our submission on the UPR we had highlighted aspects of social equality and social condition, but we had also particularly focused, if I might say, on aboriginal issues. We made specific reference.

By the way, we will be more than pleased to provide you with a copy of our submission.

We noted with regret that Canada had not concurred with or signed onto the United Nations Declaration on the Rights of Indigenous Peoples. As well, we had noted our work in terms of the United Nations Convention on the Rights of Persons With Disabilities.

The aboriginal one is a particular issue for us. I can say that from the Canadian Human Rights Commission the number one priority stated within our commission is our work on the implementation of the repeal of section 67. We've established a national aboriginal office in Winnipeg that is specifically geared towards the implementation of the repeal of section 67.

As you may of course be aware, the transition period for the full implementation of Bill C-21, the act to repeal section 67, is a three-year period. It was June of last year when it passed. There are two more years before it has full application to aboriginal authorities, but it does have immediate effect as against the Government of Canada, so we are receiving complaints, and obviously there may be a significant volume of cases coming in the next two years. That is why it has really been a focus of our activity.

● (1300)

Mr. Wayne Marston: I will just go a bit further on that point. None of us can avoid seeing in the media over the last few days stories of Manitoba and the aboriginal communities being hit hard by swine flu. I suspect that as they dig through the causes for that, the overcrowding and some of the issues raised in the UPR will surface.

I'm pleased to hear Mr. McKay's consideration of the fact that the commission should be looking at the social conditions. Our belief, of course, is that part of a human right is not to live in poverty, and there's almost a predetermination of the poverty levels in Canada by the way our system functions. That's going to take a much deeper look, but I have what is a potentially loaded question.

I talked to one of my staff today. He's an American by birth. He came to Canada, which shows an improvement in his judgment. We talked about the absolute freedom of speech in the U.S., and of course in Canada the commission and the tribunal have had the issue of the *Maclean's* situation and other such things. I'd like your comments on that balance that you try to strike between people's rights in regard to what they perceive as hate literature or hate media and the absolute right of freedom of speech.

Mr. David Langtry: Thank you. Certainly it has been the position of the commission.

As you know, we did table a special report to Parliament last Thursday, which we're pleased to provide to you as well. It really talked about the balancing, in saying that in virtually all jurisdictions there is a balance. While there is the fundamental right of freedom of expression, that does not trump other fundamental rights. In other words, they are all put on an equal footing. The courts, in interpreting that, have often talked about the need to balance, and when there are competing rights, to ensure that this is there.

As you may be aware, we had engaged Professor Moon to do a study on section 13 as well. Certainly in our special report to Parliament we have recommended that Professor Moon's report as well be given full consideration. On balance, after consideration of Professor Moon's recommendation and our broad consultations with those who wanted to make submissions and our own consideration of it, and having regard for the Supreme Court of Canada's decision in Taylor and Keegstra, as an example in 1990, as well as Parliament's amendment of our act in 2001 as part of the Anti-terrorism Act to specifically include hate on the Internet as being part of our mandate, our report for consideration by Parliament recommends that both regimes be maintained, with some modifications, to clarify the definition of "hate". It has always been our commission's view that it is only in the extreme cases that the matter should proceed further, and hence a decision in the *Maclean's* case. As you know, our commission dismissed that complaint, did not send it to tribunal. In fact, there have only been in our existence 17 cases that have been heard by the Canadian Human Rights Tribunal, out of any of those that came before us.

So what we're saying is that we have been adopting the Taylor test in our analysis at the commission level and only sending on those more extreme cases. We have also recommended, to clear any uncertainty, that Parliament amend our act to make it very clear that it's only those very narrow and most extreme cases that should be within our jurisdiction. Therefore, we would also be able to more clearly dismiss those cases that come before us that don't meet that threshold under section 41 of our act, which allows us to fairly quickly make a decision that it's beyond the jurisdiction of the commission, rather than having to go through a full investigation.

● (1305)

The Chair: Thank you very much, Mr. Marston.

We are turning now to Mr. Hiebert.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Thank you, Mr. Chair.

Mr. Langtry, I appreciate your being here to give us your insights into the strengths and weaknesses of our Canadian Human Rights Commission system. Given the shortness of today's witness time, I would ask that you be willing to provide answers in writing to questions that we submit to you after this proceeding. Would you be okay with that?

Mr. David Langtry: Yes.

Mr. Russ Hiebert: Great. I also have more questions than I have time for, so I really urge you to keep your answers as brief as possible. Thank you.

I note that in recent years the commission and the tribunal have conducted secret hearings to withhold evidence from defendants, to conceal the names of accusers, and to even exclude a defendant from portions of his own hearing, among other things.

I am a lawyer, and as I'm sure you would probably know, such practices do not occur in regular courts. If they did, they would bring the administration of justice into disrepute. So my first question is this. Who approves these kinds of legal tactics? Secondly, does either the commission or the tribunal have any sort of a manual of legal procedure that must be used during these hearings, or do they actually just make it up as they go along?

Mr. David Langtry: Thank you for the question. I appreciate the opportunity, albeit briefly, to describe our processes.

As you well know, of course, we are an administrative tribunal, and as such are subject to the rules of procedural fairness. All of our decisions are subject to review on judicial review.

Mr. Russ Hiebert: Do you have a written document of legal procedure?

Mr. David Langtry: We have operating procedures that we follow, certainly, which are more in terms of the time periods within which complaints and responses must be filed and so on.

Mr. Russ Hiebert: Anything like that would be appreciated.

Who approves the legal tactics that you use?

Mr. David Langtry: The legal tactics, if you will, are conducted in the same way before the tribunal in virtually every case. When we would make any kind of special request, we have to establish that before the tribunal. As you know, there are no hearings at the commission.

Mr. Russ Hiebert: So a lawyer at the tribunal will make a decision as to whether to have a so-called secret hearing on some of these issues. It's not directed by yourself or anybody in authority.

Mr. David Langtry: On one occasion when an application was made before the Canadian Human Rights Tribunal to permit one of the witnesses to give evidence, our lawyer had to state the case as to why a great exception would be made to the usual. The foundation of that was based on concerns of potential security or safety. But it's up to the tribunal then whether or not to accede to a request. That was made in one instance, and I'm only aware of one instance.

Mr. Russ Hiebert: Moving on, it has not escaped the notice of parliamentarians that some commission investigators have broken the law. I'm referring here to the posting of large amounts of hate speech material on the Internet by your investigators, and the theft of Internet service during a recent investigation. I also note that the commission has hired some questionable people. One was a former police officer who was kicked off the force because of corruption.

An internal governance audit in 2003 gave the CHRC a failing grade for ethics. It was found not to have had an ethics code or manual in 2003. Since that time, has the CHRC adopted an ethics code? If so, would it apply to the screening of potential hirees? Would it have prevented the hiring of a corrupt individual?

● (1310)

Mr. David Langtry: Perhaps I might be permitted to respond to the preamble before the question.

The fact of the matter is that some of the information that has been in the media and some of the descriptions of what we have done we feel are untrue. As part of our special report, we have detailed what our process is. For example, the allegation of the theft of the Internet service was untrue. The RCMP investigation and the Privacy Commissioner investigation both came to the determination that there was either no evidence or insufficient evidence to proceed further.

In terms of our code of conduct and ethics and the like, we are subject to, of course, all the Government of Canada codes of ethics, codes of conduct, all of the legislation pertaining to all of our employees.

We do not post hate messages. I can tell you that the commission would not condone any of our employees doing so.

Mr. Russ Hiebert: Thank you.

Your website tells us that 2% of complaints each year are section 13 hate speech complaints. This indicates that so-called hate speech complaints are a relatively minor portion of what the commission does. What's even more interesting is that it's the same individual responsible for virtually every section 13 complaint that has been sent forward to the tribunal in the last eight years. I'm sure you know Richard Warman. Since 2001 there have been 14 complaints that resulted in a decision from the tribunal. Of those 14 complaints, 12 have been brought by Richard Warman. Essentially, without Mr. Warman it would appear that the law would not really be used that much at all.

Is it true that Richard Warman has received over $50,000 in awards through the tribunal process over the years? Is it also true that the commission has given him thousands of dollars more in expenses, as a so-called witness to his own complaints?

Mr. David Langtry: I can honestly say I'm not aware of what awards Richard Warman has received. As you know, we're not the tribunal. I do not know. I do not have a number. We can certainly look into that.

I certainly have no knowledge of any amounts the commission has paid to Richard Warman. I'm not aware of that. I can certainly seek that information and provide it to you.

Mr. Russ Hiebert: I'd appreciate that. Thank you very much.

It certainly would be suspicious to have an individual who was a former employee being paid to be a witness at his own complaints, and then receiving such awards.

In your recent memo to Parliament last week, you claimed—as you did earlier today—that there is no hierarchy of rights, only a matrix of rights in which all rights are equally important. But our Charter of Rights and our Bill of Rights both list freedom of expression as a fundamental right, one that takes precedence over other values in society. Why does the CHRC not believe that freedom of expression is a fundamental right?

As a follow-up question, in the report you also indicate that freedom from hate is a priority that's given equality with freedom of speech. This concept of freedom from hate is in the title of the document. Could you tell me where in the charter or where in legal context in Canadian law this freedom from hate exists, or where it was first described or invented?

Those are my two questions.

Mr. David Langtry: I can't give you the origin of its existence, but certainly obviously from our perspective it came from Parliament in terms of our mandate to deal with hate on the Internet. Section 13 is a creature of statute, as you know, and it came from the mandate of Parliament.

In terms of the balancing and the limit, that was, as you know as well, considered head-on in light of the charter by the Supreme Court of Canada in the Taylor case in 1990. The decision of the Supreme Court at that time—they released both the Taylor and the Keegstra decisions on the same day—upheld the constitutionality of both section 13 of the Canadian Human Rights Act and sections 318 and 319 of the Criminal Code of Canada. So it is based on that.

And then again, as I had referenced, the 2001 amendment to our act, again by Parliament, as part of the Anti-terrorism Act expressly states that it does cover hate on the Internet, which the tribunal had already determined was the case.

So we take the mandate from Parliament, and we take the balancing, if you will, and the restriction on freedom of expression from the court cases. These are not decisions that are taken by the commission. We are subject to Parliament and the mandate that you, as parliamentarians, give to us or take away.

● (1315)

The Chair: That completes the questions that members can ask.

I don't normally do this, but I am just going to ask one question very briefly.

Mr. Sweet.

Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC): I just want to say that this is a very important issue, and one we've had very spirited debate about. I am very glad that Mr. Langtry already responded to my colleague Mr. Hiebert and said that he would submit written answers to questions. But we gavelled in the meeting late, so we've had 39 minutes in this meeting. The parliamentary tradition is that everybody gets an opportunity to question. I'm not certain if Mr. Rae feels this way, but I know that was the case when we met as chairs of all the committees earlier this year, and I would hope that in future when we schedule, we schedule enough time, particularly when it's an important issue like this, so that everybody gets an opportunity to raise their concerns with the witnesses.

The Chair: That's a good point. I was about to propose a question of my own. Perhaps we can invite the witnesses back at a later date, if they're willing to come back, to ask further questions.

I did have one follow-up that I just wanted very briefly to put in here on my own. This is to Mr. Langtry.

Did I understand from your last comment that essentially you look at only the precedents that come from the courts, as opposed to looking at the previous decisions of the tribunal? Do you distinguish that way?

Mr. David Langtry: Oh, certainly. We're bound by the decisions of the tribunal, absolutely. The courts obviously inform us greatly, but the tribunal decisions are the ones we follow when we refer a case on. It might be on an issue of duty to accommodate, for example. The tribunal will make a decision, and then those decisions of the tribunal and the superior courts—the Federal Court and the Supreme Court of Canada—are what we follow in our investigations and our consideration of the case. Provincial court decisions are not as binding on us.

The Chair: Right. Thank you very much.

We have to suspend momentarily while we bring in our next witness. We do appreciate your coming here. Thank you.

Mr. David Langtry: Thanks for the opportunity.

● _____ (Pause) _____ ●

● (1320)

The Chair: We're back in session.

Our next witness is Alan Borovoy, general counsel for the Canadian Civil Liberties Association.

Mr. Borovoy, we are very glad indeed to have you here as a witness. We apologize for the fact that we won't give people as much time to ask questions as you and they deserve. At any rate, the floor is yours.

Mr. A. Borovoy (General Counsel, Canadian Civil Liberties Association): Thank you very much, Mr. Chairman. The problem is exacerbated in my case because I tend to speak slowly.

I think that in view of the polemics that have preceded these hearings, it would be appropriate for me to begin by indicating areas of agreement that my organization has with the defenders of section 13 of the Canadian Human Rights Act. I can state these agreements in three points.

First, we agree that freedom of speech is not and cannot be absolute. Second, as far as a hierarchy of freedoms is concerned, there is no necessary priority that one freedom has over another in the abstract. The priorities are intelligently worked out in concrete situations, not as a matter of abstract principle. Third, we agree that the bulk of our human rights legislation ought to remain and that the agencies created to enforce it should be encouraged to continue doing so, because most of it is very helpful and very important.

Those are the areas of agreement. I turn now to the areas of disagreement.

While freedom of speech may not be absolute, it is nevertheless the lifeblood of the democratic system. It's the vehicle that enables any of us to mobilize, or attempt to mobilize, public support for the redress of our various grievances. My favourite philosopher once described it as a strategic freedom, a freedom on which other freedoms depend.

There are basically two problems with the anti-hate provisions of the human rights legislation. The first is that it's too vague, and the second is that it's too wide.

When it talks about exposing people to hatred or contempt, I submit that with all the definitions in the world, the problem is that it still remains vague. We know that freedom of speech is often most important when it expresses strong disagreement, but where does strong disagreement leave off and hatred begin? If, as Professor Moon recommended, they had talked about using violence as the focus, there probably wouldn't be the difficulty that there is, but hatred is a necessarily vague term.

Then, of course, we have the breadth, the width. It targets statements “likely to expose” people on various grounds, various consituencies, to hatred or contempt. It says “likely to expose”. There's no requirement that there be an intent to foment hatred, and there's no defence for truth or reasonable belief in the truth.

I want to refer to a recent controversy, because I think there has been a certain amount of facile discussion about it. I'm talking about the complaint that had been filed against *Maclean's* magazine over the article written by Mark Steyn. It has been said that, “Oh, well, that didn't rise or sink to the level of hatred”, as though it was perfectly obvious that it didn't. I submit that it's anything but obvious that Mr. Steyn's article did not rise or sink to the level of hatred.

● (1325)

I'm going to take one sentence from his piece. He said: "Of course not all Muslims are terrorists—though enough are hot for jihad to provide an impressive support network...". What does that statement effectively say? That a significant number of Muslims "support"—support what: terrorism, including the kidnapping, torture, and beheading of innocent people? What worse can you say about people these days than that they support activity like that? I think it's anything but clear that a subsequent panel from the Human Rights Commission, or indeed the tribunal if they ever get to deal with it, is going to reach the same conclusion as the last one did.

We did a little research in our office about recent controversial issues, and I just want to read you a couple of extracts; they're quite short. An article written in *The New Republic* magazine, a respectable American publication, on the conflict in Kosovo said:

> The conventional thinking...is that we have no quarrel with the Serbian people. It's their leader, Slobodan Milosevic, and his henchmen who manipulated them into waging so many brutal wars. ... But what if it isn't true? What if the Serbs... actually support ethnic cleansing...? In that case, we do have a quarrel with the Serbian people. ...
>
> I myself used to believe that ordinary Serbs have been deceived and bullied into accepting atrocities done in their name. But now, after five years...trying in vain to elicit expressions of remorse from the hundreds of Serbs I have met, I am convinced that the latter assessment is the accurate one. Whatever else we do in Kosovo, we must face the fact that, for all intents and purposes, many ordinary Serbs are—to paraphrase Daniel Jonah Goldhagen—Milosevic's willing executioners.

Is that not likely to expose all kinds of Serbian people to hatred or contempt?

We have Daniel Goldhagen's book, and here's what he says about the state of mind of the German people at the time of the Holocaust:

> ...the perpetrators, "ordinary Germans", were animated by antisemitism, by a particular *type* of antisemitism that led them to conclude that the Jews *ought to die*. ... Simply put, the perpetrators, having consulted their own convictions...and having judged the mass annihilation of Jews to be right, did not *want* to say "no".

Is that not likely to expose a whole generation of Germans to hatred or contempt?

I know that Daniel Goldhagen is a controversial historian, but no one questions his historical credentials. There has been literature that has attempted to document the collaboration, the cooperation the Nazis received from the indigenous populations in some of the countries they occupied. This leads to a very interesting question: To what extent could section 13 make it an offence to tell the truth about the Holocaust? This is a problem we see with this legislation.

● (1330)

As a result, the Canadian Civil Liberties Association has taken the position that Richard Moon was very much on the right track when he suggested the focus should not be on expressions of hatred, but on the prevention of violence. We may have some quarrels with some of the details, but the direction of the Moon report, in our view, is the correct one.

All of which, Mr. Chair, is, as always, respectfully submitted.

The Chair: Thank you very much, Mr. Borovoy.

This time around I'm assuming we'll begin with Mr. Rae. Please go ahead.

Hon. Bob Rae (Toronto Centre, Lib.): Thank you, Mr. Borovoy. It's nice to see you again, if I may say so. Our association goes back many years, and I'm very delighted to be with you in the room again.

If I could just ask you a question, you stated at the beginning the three principles. You said freedom of speech can't be an absolute. Could you tell us what you think the limits on freedom of speech are? And what are the instruments of public policy that should be used to enforce those limits?

Mr. A. Borovoy: I'm not able to tell you in the abstract because that engages my second principle. In the abstract I can't tell you what the limits of free speech are. I could give you a few examples of limits on free speech.

You are aware, of course, of Oliver Wendell Holmes' famous injunction that there's no freedom to falsely shout "fire" in a crowded theatre. That's an example. There are numbers of others.

Hon. Bob Rae: Correct me if I'm wrong, but I believe you didn't answer the second half of my question. Is that to say you advocate, as I take it, that section 13 should simply be removed from the Human Rights Act?

Mr. A. Borovoy: I think the best way is to remove it and leave the Human Rights Commission in the position of dealing with traditional issues of discrimination, for which it was originally created.

Hon. Bob Rae: How about the Criminal Code?

Mr. A. Borovoy: On the Criminal Code, as far as we're concerned, if the key section were narrowed to deal with the prevention of violence, particularly in situations of imminent peril, it would be much closer to the position that we would advocate.

Hon. Bob Rae: So the so-called Cohen report of 1970, with which you're very familiar because the debates in Parliament around that time were also very much informed by your views and by the debate that ensued at that point.... So you would remove section 18, which would prohibit the advocacy or the promotion of genocide?

Mr. A. Borovoy: No. Our concern would be section 319, dealing with hatred. That's the key problem.

Hon. Bob Rae: With respect to the incitement of hatred and the wilful promotion of hatred, you would do what? You would take away that section? You would change that section?

Mr. A. Borovoy: I would replace it or amend it with something that was focused on the incitement of violence in situations of imminent peril.

Hon. Bob Rae: So you would say that it would only be anybody who is communicating statements in a public place who incited hatred against an identifiable group, as it says here, "where such incitement is likely to lead to a breach of the peace". That's the current provision.

Mr. A. Borovoy: No. The difficulty with that is that is so wide it could include situations where the person is provoking an attack upon himself. You could have a situation that we generally refer to as the "heckler's veto". You don't want to penalize the speaker because of the violence of his audience. You may penalize a speaker if the speaker is urging the violence by his supporters against others, but not if what he says is so unpopular that he's attracting the violence to himself.

● (1335)

Hon. Bob Rae: What about the argument, Mr. Borovoy, that would say that if you simply leave it to the Criminal Code, which you'll have to admit is a remedy that's been used very infrequently, you are in effect saying that the less drastic powers of the Human Rights Tribunal, which doesn't have powers to imprison people or take away their freedom of movement by incarcerating them, but simply has the ability to fine people, and obviously we hope will discourage conduct, but it's never been challenged on the grounds that it's criminal-type legislation.... What about the argument that in fact what you're doing thereby is perhaps forcing the authorities to use the Criminal Code more frequently than they otherwise would, instead of using an administrative tribunal, which you'd use less frequently?

I can't claim to be as articulate as you, Alan, but help me out here. You know what I'm trying to say: that you're going to end up using more drastic punishment, rather than less drastic punishment, by virtue of—

Mr. A. Borovoy: In addition to everything else, you're attributing clairvoyance to me.

Some hon. members: Oh, oh!

Hon. Bob Rae: Are you a ventriloquist?

Mr. A. Borovoy: I appreciate where you're going with this. I would suggest to you that it may be overly influenced by a key fallacy, and that is that we either use legal sanctions or we do nothing when there are hate pronouncements. I happen to be of the view that there are many things that citizens can do in a democracy to curtail, reduce the influence of, or reduce the number of occurrences of hate speech that don't necessarily require legal sanction.

Hon. Bob Rae: But you would agree with me that from the point of view of taking means and ways—and certainly there are lots, and you and I and others have participated in several—in which we attempt to denounce and demonstrate and pronounce against and show our rejection of any expression of hatred in a number of circumstances that have neither invoked the actions of the Human Rights Tribunal nor invoked the responses of the Criminal Code.... So you're obviously right in that regard. But it seems to me that the risk we end up running, in what you're doing by advocating simply eliminating section 13 rather than revising and amending it, which is the alternative path that's been set out, I think, by a number of people —including an alternative presented by Professor Moon in a very even-handed way, as he looks at presenting his options—is that we lose the benefit of having, as we all agree, a more tightly focused section 13, but one that nevertheless still gives certain powers to the Human Rights Tribunal to do its job. That's where I think the difference of opinion will be on the committee and where I think it will be in Parliament.

If we lose that, we end up with an open field, effectively, and the Criminal Code in place, and the Criminal Code is a very tough route to follow in these circumstances. I think the history of the trials and the cases with regard to the Criminal Code will show that I'm right in that regard.

Mr. A. Borovoy: In that regard, while there have been numbers of situations that may not have led to prosecutions, or that didn't lead to convictions but did lead to some pretty unpleasant harassment of legitimate speech as a result of the anti-hate section of the Criminal Code as well, there are other provisions even there that are less drastic than the normal prosecutorial instrument is. Richard Moon himself recommended that there can be certain action taken against certain websites that may have material on them that runs afoul of the law. Prosecution wouldn't be a necessary remedy there, but it would be helpful in removing some of the material from the marketplace, assuming that the material contravenes what I say ought to be the barrier.

● (1340)

The Chair: Thank you.

That ends that round of questions.

[*Translation*]

The floor is yours, Mr. Dorion.

Mr. Jean Dorion: I am going to ask a question on a matter that is really quite close to the one you are talking about. I am talking about negationism. People who, for example...

An hon. member:*Editor's note: Inaudible.*

Mr. Jean Dorion: Is the translation working?

[*English*]

Mr. A. Borovoy: I couldn't quite hear. You referred to the issue of something, and I couldn't hear what.

[*Translation*]

Mr. Jean Dorion: I am talking about negationism. Is that okay?

Basically, there are two opposing theories in this kind of debate. There are those who defend freedom of expression, those who say that you cannot impose an official historical truth. Then, there are those who take the side of the victim.

For example, suppose I am attacked, beaten or raped by thugs. I go to court and have them convicted. Then, the thugs or their friends start saying that I made it all up, that what happened to me never happened. When they do that, they increase my pain and suffering a lot. The first thing that someone who has suffered so much pain or such a great injustice needs, after all, is the recognition that he has been wronged.

This is the debate between those who say that you cannot impose an official historical truth—people have the right to believe the version of history that they want to believe—and those who take the side of the victims.

What is your position? How do you see that question yourself?

[*English*]

Mr. A. Borovoy: I am not one who thinks that a democratic society has any business determining what its citizens shall believe and thereby using legal sanctions to enforce it. Having said that, I'd be very much in favour of using numbers of other sanctions, if people make racially obscene remarks. As an example, when the material was revealed concerning Keegstra and what he had done in his class, he was removed from the class, he was ousted from the teaching profession, and the voters of the community of which he was mayor voted him out of office. I think that was entirely appropriate. Those were sanctions, but they weren't the legal sanctions. They weren't illegal, of course, but they weren't the sanctions of the law. They were the sanctions of public opinion, expressed in I think very constructive ways, and at that point I saw no point in prosecuting him. He should have been allowed to wallow in the obscurity he so richly deserved.

[*Translation*]

Mr. Jean Dorion: Thank you.

[*English*]

The Chair: Thank you.

Mr. Marston.

Mr. Wayne Marston: Thank you, Chair.

I certainly appreciate having this witness before us today.

I would suggest, sir, that when you referred to the Canadians who stand up to intolerance, or stand up to hatred, you could practically include everybody in this room in one fashion or another. I would suggest that for many of the folks who are elected here, part of the reason we wind up in this place is a result of our standing up for rights of people in one way or another over a period of time, which then gives you a little bit of name recognition.

In Hamilton we had an initiative on strengthening the Hamilton community, which dealt with the aftermath of a fire bombing of a Hindu samaj following 9/11, a very serious hate crime. The individual couldn't tell the difference between a samaj and a mosque. We had the Community Coalition Against Racism. There were times when one or the other of these organizations would raise uncomfortable issues, and to some extent you've done so yourself here today when you talked about the complicity of the peoples of Serbia and the peoples of Germany, and how far that should go.

One of the things that struck me that was a little concerning was when you made comment that perhaps the commission would be better off if it looked at imminent violence issues. To my mind, violence is usually something that happens in the heat of the moment, and there would be more responding on their part after the police had already investigated or whatever.

When it comes to the sending out of hate messages on the Internet or the media, or wherever it goes, I would suggest that this commission is well placed to deal with those areas where perhaps police forces aren't quite as sophisticated on the ground, because they haven't had the time working with it.

I'm drawn to this report—and I'm not so sure it has been made available to you—that the commission has made to Parliament. They did allude to some things in it today that are quite striking, like adding a statutory definition of hatred. That's one of the places where it's easy to misplace what is hatred and what is not, and it says "and contempt". The important thing for me is that it draws us back to the Supreme Court of Canada and its rulings as a foundation for taking these determinations as to how we are going to make applications of the legislated designation of what the commission is supposed to do.

It goes on talking about costs and things of that nature, but this report seems to be addressing in a way some of the concerns that have been out there in recent times. I think there's a real effort.

As you can see, I'm making more of a statement than I am asking a particular question. Feel free, sir, to respond in any fashion you feel like.

I'm frightened that a body that we have in place, the Human Rights Commission and the tribunals, which is tasked with one of the most difficult jobs in our country, because of one or two very serious issues, one or two judgments that were made, is being put at risk by people in this country who could minimize or contain their ability to do their job. So coming back to where we're at with all of this, it is to find a way that if they have strayed—and that's a large "if"—then judging by the opinions of the court and whatever legislation may well flow out of this determination as to how we address it, the important part is that we don't minimize their ability to perform a very serious and very important job.

If you look at what happened in Nazi Germany, and what happened with Kosovo and the other areas, if you'd had a Human Rights Commission in place in the years before, there's a chance that people like Hitler would not have sustained the power that they did in the manner they did over the years.

I think I've opened a door here that I'm sure you will have many a comment on.

● (1345)

Mr. A. Borovoy: Have you ever.

I'll just say one word about Germany. Pre-Hitler Germany had anti-hate legislation very similar to what we have in Canada now, and in the 15-year period before Hitler came to power, there were more than 200 prosecutions based on anti-Semitic speech. And in the opinion of the leading Jewish organization of the day, they thought the prosecutions were well handled some 90% of the time. So it didn't matter at the time it was most needed.

When you talk about what you do about the Human Rights Commission, and that what I'm advocating may disable it somehow, I would say *au contraire*. I began by making the point that I'm very much in favour of the rest of what human rights commissions do, and I think those programs should be strengthened.

I do not think the provision or the addition in the human rights legislation of definitions of hatred would help all that much. In fact, I was rather surprised that anyone would think it would make that much difference. Just to give you one example, the definition talks about "strong detestation". I ask a question: Is "strong detestation" any clearer than "hatred"? That is just the problem with these definitions. And it's not their fault. It's not the fault of the judges who wrote it. That's the problem when you make words like that the basis of an offence in law. There is inherent, inescapable vagueness.

Human rights commissions could still perform a valuable function where expressions of hatred are concerned. They have an educational mandate, and they could make increasingly imaginative use of that mandate to promote, to publish responses, and to undertake preventative programs. There are all kinds of things human rights commissions could do.

In all fairness, I'm not as *au courant* with what commissions are doing these days. I've been drifting into other fields. But at one time I worked rather closely with Dr. Daniel G. Hill, the first director of a human rights commission in Canada, the Ontario Human Rights Commission, and he had a lot of imaginative educational programs. I think there is a lot commissions could do about it.

That's why I say I want to get back to the response I gave to Mr. Rae earlier. It's not an either/or proposition. We don't have to use the legal stick or do nothing.

● (1350)

Mr. Wayne Marston: I would agree with you on addressing racism. A lot of the hate we hear of is blatant racism, and addressing racism by education is the only way to deal with it. My experience is that racism is a learned behaviour.

I'm very fortunate; I grew up in northern New Brunswick, and I was never exposed to people from any other race but our own. There was friction between English and French, but.... And when I came to Ontario, to Hamilton, and I saw exhibitions of hate, particularly in early seventies—

The Chair: We're just over our time here, Mr. Marston, so I hope you can come to your question.

Mr. Wayne Marston: I will come to it very succinctly.

Seeing open racism against Sikhs in Hamilton in the 1970s shocked me. I must say that is probably one of the reasons I value very dearly the work of the commissions—and as you say, you do as well.

I will end there to leave more time to the government.

The Chair: Thank you.

Mr. Sweet, I believe you are next.

Mr. David Sweet: Thank you, Mr. Chairman.

I'm going give the bulk of my time to my colleague, Mr. Hiebert, but I did want to say a couple of things.

First off, I agree with you, Mr. Borovoy, about the large portion of good work that the Canadian Human Rights Commission does. I think the commission is suffering from something that.... There's a phrase in U.S. jurisprudence: that the United States justice system doesn't only have to be just but has to appear just. I think there's an issue there of credibility now, publicly, that they're going to have to deal with. One witness mentioned the things in the media, and I understand that; we deal with the media all the time, trying to straighten out stories.

One of the things you mentioned about the breadth and scope of section 13 I think is eluding the commission as well. I say that in the sense that the Canadian Human Rights Act was not meant to be punitive but remedial in nature, because it would damage anybody's reputation beyond their capability to recover by simply going to a tribunal. Anyone who has a complaint lodged against him, which is easy to have happen because of the breadth of it, has to seek legal counsel, because they would be terrified of going before a tribunal that would be public and then they would be named as a person who would be, of course, guilty of hate speech.

That's one of the main concerns I have around the issue. You can comment on that, but I want to leave the questioning to my colleague, Mr. Hiebert.

Mr. A. Borovoy: Perhaps what I can do is work my response into my reply to Mr. Hiebert, in the interests of economy of time.

Mr. Russ Hiebert: Thank you very much, Mr. Borovoy, for that, and for agreeing to be here today.

The Canadian Human Rights Commission, in its special report to Parliament last week, suggested that there is a “right to freedom from hate”. In your opinion, is there a right to freedom from hate, or is it the case that freedom of expression in a society sometimes means that people will be offended?

● (1355)

Mr. A. Borovoy: Of course you can't have viable free speech unless people are likely to be offended. It simply doesn't otherwise exist. But as far as the more, if I may say, metaphysical question you're asking, is there a right to freedom from hatred, that really depends on one's ultimate philosophy, and I don't know how philosophical you want me to get.

As far as I'm concerned, the rights we have are creations of the law. Apart from that, I don't understand what we're talking about. So if you create a freedom from X, then you have that right. If you don't, you don't have that right. I don't see these things existing in a state of nature. So if the questions you're asking me are at that level, I beg off, because that's not my area.

Mr. Russ Hiebert: In brief, in Canadian law, is there a right to freedom from hate?

Mr. A. Borovoy: I'm sorry...?

Mr. Russ Hiebert: I said, in brief, in Canadian law, is there a right to freedom from hate?

Mr. A. Borovoy: Yes, of course. The anti-hate section of the Criminal Code has created that right to freedom from hate.

Mr. Russ Hiebert: And is it your belief that that right should exist in Canadian law?

Mr. A. Borovoy: No, for all of the reasons I gave earlier. No, because it's too vague and will lead to unwarranted restrictions on legitimate speech.

Mr. Russ Hiebert: Thank you.

In the same report from the commission, the chief commissioner herself recommended that there be an opportunity for court costs, legal costs, to be awarded to the defendant, to the person who's responding to the complaint, in cases where there is abuse. In my mind, it would seem that.... Well, in a real court of law, we know that court costs can be awarded not only for frivolous or vexatious lawsuits, but also in cases where a person was innocent and the judge felt it appropriate that the complainant bear the costs, whether or not it was abusive.

Would you agree that costs in these situations should be allowed to be awarded to those individuals who are in fact innocent, keeping in mind that complainants do not have the benefit of legal advice provided, as it is to the complainants themselves? The system is very skewed against the person who is trying to defend his reputation, and it would seem to me that having a regular process where a complainant has to keep in mind that he might have to pay the court costs of the person they're complaining against would be a good deterrent against frivolous or vexatious complaints.

Mr. A. Borovoy: It would probably also be a very effective deterrent against using the human rights legislation at all, and I think that is just the problem with it. To say that there might be some remedy for costs isn't to say that the costs ought to follow the event, as is so often the case in court, and doesn't say that the complainant should necessarily be the party who is bearing them. I think these cases are much more complex than that.

I don't know whether you intended this, Mr. Hiebert, and if you didn't, just stop me, but when you talked about a “real court”, I became a bit uneasy. That is because real justice is dispensed by many different tribunals in our society, and there's no magic in wearing the legal kimona or lack of it in wearing ordinary business clothes.

Mr. Russ Hiebert: The reference I was making was to the fact that in the regular judicial system, there are different rules for evidence. There are different rules for handling these kinds of complaints, which don't, to my knowledge, apply under the current human rights tribunal. That's the differentiation I'm trying to make.

Last of all, and I think this may be my last question, you gave an invitation to ask more about other legal sanctions.

● (1400)

Mr. A. Borovoy: It was “other sanctions”.

Mr. Russ Hiebert: Other sanctions, not legal sanctions.

There's the fallacy of legal sanctions versus nothing. You suggested that there are other sanctions that can take place. You gave us an example in Keegstra. Can you give us other examples that would inform our committee as to how these complaints could be dealt with without the law in place?

Mr. A. Borovoy: Of course in some respects this is already happening. There may be situations in which it ought to happen more, but very often when a person of some standing in the community makes a racist statement, all hell breaks loose. People begin denouncing them all over the place. I think that's a very healthy response and ought to be encouraged.

Human rights commissions at various times might even publish documents responding to some polemics in the community. That's also a good thing.

Then there's also the indirect stuff. When the legal sanctions against discrimination are vigorously and imaginatively used, it helps to create a climate favourable to human rights and inimical to hatred in the community. The more you see of that, the more helpful it is, and I would encourage that.

These are some of the ways we deal with these things. When those kids walked out of school in Keswick, when the youngster was being penalized and they just walked out, they were engaging in the kind of conduct that helps to shore up this feeling in society.

The Chair: Thank you very much, Mr. Borovoy.

I want to draw the attention of members of the subcommittee to an important scheduling matter. On Thursday we'll be meeting at 12 o'clock instead of in our usual 12:30 time slot. That's to permit us to have one hour to question Professor Martin, who will be our witness, followed by an hour in camera to begin giving drafting instructions to our analysts on our report on human rights in Iran. On the basis that there may not be enough time in that hour to give full instructions after all the hearings we've had, I've also convened a second meeting, which can be cancelled if we don't need it, that will take place at 3:30 on Thursday so that we can finish our drafting instructions. With any luck, we won't need it, but if we do need it, it's there. It's easier to cancel than it is to set up a room *de novo*.

On that basis, please clear your schedules. And please take advantage of the two days we have to organize yourselves to ask any questions you have for our analysts, so that we can come prepared for this.

Thank you very much, everybody.

We are adjourned.

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