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Thursday, June 18, 2009

Chair

Mr. Scott Reid

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● (1210)

[*Translation*]

The Chair (Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC)): Order.

[*English*]

We are the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development. Today is Thursday, August...whoops; you know where my mind is. It's June 18, and this is meeting 27.

Today we are continuing our study of the human rights commissions. Our witness today is Professor Martin from the University of Western Ontario.

Professor, we have an hour for you. Then we'll have to move to some in camera proceedings on the topic of human rights in Iran. We will have time for a complete go-round for questions. If they're brief, we might be able to arrange to have a second round of briefer questions.

Whatever happens with the questions, we certainly look forward to your comments, and I invite you to start them now.

Professor Robert Martin (Professor, University of Western Ontario, As an Individual): Thank you very much.

Insofar as time is concerned, my son just gave me an ultimatum that I must be standing on Wellington Street at 1:15 waiting for him.

The Chair: We'll make sure we do that.

Mr. Robert Martin: Since I wish to talk about freedom of expression, let me begin by stressing that freedom of expression is a human right. If you're familiar with the Universal Declaration of Human Rights, article 19 guarantees freedom of expression. It is generally forgotten in this country that freedom of expression is a human right, which seems bizarre in a country in which the very notion of human rights seems to be utterly elastic and limitless. In Canada, individual whims often become characterized as human rights.

I would like to say something about what I regard as the horrifying record of human rights commissions in this country. These things should not be called human rights commissions, since they regularly and systematically violate just about every human right anyone might care to think of.

Let me say a little about their historical development. The first example of such legislation was enacted in Ontario. In 1944, Ontario enacted a statute called the Racial Discrimination Act, which was designed to prohibit public expressions of intention to discriminate. It was designed to prohibit signs, which in 1944 were unfortunately common at some of the better resorts in Ontario, like Muskoka. They would prominently display signs saying “No Jews Allowed”. The point of the Racial Discrimination Act of 1944 was to bring this practice to an end, a highly desirable and laudable intention.

From that auspicious beginning, human rights commissions have shifted over to become thought police. Ontario enacted the first systematic set of human rights laws, based to a large extent on laws that had earlier been enacted in the State of New York. Ontario largely copied a New York statute called the Fair Employment Practices Act, which prohibited discrimination in employment. Similarly, Ontario copied another New York act called the Fair Accommodation Practices Act, which prohibited discrimination in accommodation. The human rights commissions, following the lead of Ontario, began their lives as anti-discrimination organizations. Persons who had suffered as a result of direct and overt acts of discrimination, in the pursuit of jobs or housing, had a forum to which they could complain and seek redress. Ontario pioneered these practices.

By 1960 there was a vast range of Ontario legislation, all of which was consolidated and brought together in a general statute called the Ontario Human Rights Code. The general purpose of the Human Rights Code was to make discrimination in employment and accommodation impossible. Over the years the ambit of this legislation has extended limitlessly, so that it now goes far beyond employment and accommodation. Parliament enacted the Canadian Human Rights Act, which sought to do the same things that the Ontario Human Rights Code did in Ontario for areas within federal jurisdiction.

Human rights commissions first got into the thought police business in the late 1970s. It's necessary to advert here to a particularly odious man named John Ross Taylor. He is best described as the grand old man of Canadian Nazism. During the Second World War he was interned pursuant to the War Measures Act for continuing his pro-Nazi activities even though Canada was at war with Nazi Germany. After being released from internment, he continued his Nazi political activities, particularly with a group based in Toronto called the Western Guard Party. In 1977 the Western Guard Party inaugurated what Mr. Taylor and his followers regarded as a significant step forward in human progress, which was a dial-a-hate-message service.

The Western Guard Party posted leaflets and handed out flyers that contained the invitation "If you want to hear a hate message, dial this number". Persons who dialed the number could listen to a recorded hate message, which, given Taylor's background, was pretty traditional stuff. It was fairly standard, traditional anti-Semitism.

This dial-a-hate-message service got the governments of Canada and Ontario very exercised. There ensued a flurry of correspondence between Toronto and Ottawa, with many politicians and officials trying to outdo each other in their determination to do something about the dial-a-hate-message service.

Let me express what I view as a general principle of public policy-making. The semi-hysterical need to reflexively do something is a disastrous source of public policy. It was decided to do something about John Ross Taylor and his recorded hate messages. The Canadian Human Rights Act would be amended by the addition of section 13. Section 13 prohibited public communications that were likely to expose anyone to hatred or contempt on the basis of certain prohibited grounds.

Despite the enactment of section 13 of the Canadian Human Rights Act, John Ross Taylor and his cronies continued the dial-a-hate-message service. Taylor was summoned to appear before the Canadian Human Rights Commission, and the commission ruled that the dial-a-hate-message service was a discriminatory practice, contrary to the act, and ordered Taylor to cease immediately. Taylor continued the practice.

The way the Canadian Human Rights Act gets its teeth is through a provision in the statute that says that decisions of the Canadian Human Rights Tribunal, which is the decision-making body under the Canadian Human Rights Act, may be entered in the judgment book of the Federal Court of Canada. So through a bit of legislative legerdemain, they are given the status of judicial decisions. What is the point of that? The point is very serious. Once entered in the judgment book of the Federal Court of Canada, a decision of the Canadian Human Rights Tribunal acquires the status of a decision of a superior court, with the result that failure to abide by the terms of such a decision amounts to the crime of contempt of court.

Taylor, to no one's surprise, persisted, and he was cited for contempt and brought before the Federal Court of Canada on a contempt citation. He had clearly violated the terms of the order prohibiting further hate messages. The Federal Court of Canada found that Taylor was in contempt and ordered him to cease forthwith. To avoid letting the whole thing get completely out of hand, the Federal Court took a very sensible decision. It gave Taylor, God knows why, a second chance. The Federal Court said to Taylor, "We sentence you to a year's imprisonment for contempt, and we will suspend the sentence if you cease the dial-a-hate-message service". Taylor was nothing if not stubborn, and he left the Federal Court and went right back to the dial-a-hate-message service. So the suspended sentence was put into operation, and Taylor was imprisoned.

● (1215)

Taylor served nine months in prison. He was the first person in Canada to be imprisoned for expressing an opinion since the 1930s.

Between the time of his initial appearance before the Canadian Human Rights Commission and his contempt hearing before the Federal Court of Canada, the Canadian Charter of Rights and Freedoms became part of the Constitution, including, of course, section 2(b), which guarantees freedom of expression.

Taylor immediately thought to himself, "Well, isn't this fortunate. I have a basis for further legal action." Taylor went back to the court, arguing that section 13 of the Canadian Human Rights Act was an infringement of his freedom of expression as guaranteed under the charter. This matter eventually ended up before the Supreme Court of Canada in a proceeding called Canadian Human Rights Commission v. Taylor.

It was resolved by the Supreme Court in 1990. The main judgment was delivered by Chief Justice Brian Dickson. As you are aware, no guarantees in the charter are absolute. According to the words of section 1 of the charter, the rights set out in the charter are guaranteed "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".

The state is thereby authorized to limit charter guarantees, presuming that the state is able to go before a court and justify the limitation. The Supreme Court of Canada in the Taylor case held that section 13 of the Canadian Human Rights Act was a justifiable limit on freedom of expression.

I have profound respect and admiration for Chief Justice Brian Dickson, but I would have to say of his judgment that he tied himself in semantic and logical knots in bending over backwards to justify section 13.

A two-stage analysis is required to justify a limit on a charter right. The state must argue first in favour of the objective it is seeking and second in favour of the means it has chosen for achieving that objective. The courts have said that in order to pass muster, the state's objective must be "pressing and substantial". It must be of sufficient importance to justify overriding a Constitutional right.

What was the state's objective in enacting section 13 of the Canadian Human Rights Act? As I read the judgment, Chief Justice Dickson said that the state's objective was to ensure that people do not get their feelings hurt. With the most profound respect to Brian Dickson, I cannot accept that preventing hurt feelings is "pressing and substantial" in a free and democratic society.

The means chosen to achieve that objective were also upheld, with Dickson characterizing those means as essentially conciliatory.

Taylor's argument was "How can you uphold the means chosen when I did not have a fair trial before a proper court and did not have the regular criminal defences available to me?" Chief Justice Dickson said, "That's all right; this was not a criminal trial, but a conciliation proceeding before the Human Rights Commission", which seemed to miss the fundamental point that Taylor was sent to jail. It appears that when we're trying to uphold the right not to have one's feelings hurt, who cares about procedural due process?

Chief Justice Dickson's decision upholding the constitutionality of section 13 is cited over and over again by those who support the thought police role of human rights commissions. I would dare to observe that those who oppose freedom of expression in this country treat Chief Justice Dickson's decision in the Taylor case as if it were divine revelation.

● (1220)

It must be noted that this decision emanated from a real live human being. It did not descend from heaven, engraved on tablets of stone, as some might imagine that it did. So both the Canadian Human Rights Commission and the provincial commissions have been actively involved over the last few years in a national campaign against free expression.

It does appear that at the hands of human rights commissions the right not to be offended and not to have one's feelings hurt has been erected into vast human rights. Let me give you a few examples of some of the more outrageous aspects of this. I'll deal with the ones that are laughable first, and then come to the horrifying ones.

In 2008 a man whose name escapes me and which is not directly relevant was doing a stand-up comedy act in a bar in Vancouver. Two patrons of the bar, both female and very drunk, did not find his work amusing and they began heckling and taunting him in a very aggressive fashion, even going to the point of throwing drinks at him. He was not amused by their interventions and he tried to shut them up, as any stand-up comedian would do.

Our friend the stand-up comedian surmised immediately that the two female patrons in the bar were lesbians and he made some unfriendly remarks about their sexual orientation and their behaviour in an attempt to shut them up. They complained about his remarks to the B.C. Human Rights Commission, which actually heard the matter. So human rights commissions now exhort themselves to control the content of what stand-up comedians say to try to shut hecklers up.

Another one that's worth looking at happened in Ontario in 2005. There's a man named Ted Kindos, who ran an establishment in Burlington, Ontario, called Gator Ted's Bar & Grill. In May 2005 he discovered standing in the entrance to his establishment a man who had received medical authorization to smoke cannabis for medical purposes, doing precisely that at the front door to his bar and restaurant. Some of the patrons already inside the bar complained to Mr. Kindos, who went to the man standing at the doorway and asked him to stop. This man was not amused and complained to the Ontario Human Rights Commission that he was discriminated against on the grounds of disability.

The Ontario Human Rights Commission dealt with this matter and eventually prepared a draft settlement under which Mr. Kindos would have been obliged to allow this individual, and others similarly situated, to do their smoking of cannabis for medical purposes inside his establishment.

The Ontario liquor licensing authorities got wind of this whole matter and wrote Mr. Kindos a letter saying that if he agreed to this settlement and allowed persons to smoke cannabis for medical reasons inside his establishment, he would lose his liquor licence. So if he doesn't allow the smoking of cannabis, he is sanctioned by the human rights commission. If he does allow it, he loses his licence, and therefore his business.

The thought that occurred to me on reading that matter is that this must have been based on a Monty Python sketch, but that actually happened in Canada, in Ontario, recently.

● (1225)

Let me turn to what is perhaps the most horrifying.

The Chair: Professor, it's now 12:30, and we're a bit worried about having enough time to get to our single round of questions and get you back on the street in time to be picked up by your son at 1:15.

Prof. Robert Martin: I'll quickly go through the most horrifying.

It involves a man named Stephen Boissoin, who lived in Red Deer, Alberta. Mr. Boissoin was not impressed with some of the political activities of homosexuals. He took out an ad in the local paper, the *Red Deer Advocate*, to express his views. The ad showed a cartoon of two stick men holding hands, and over top of this was imposed a not-permitted sign, a circle with a diagonal through the circle. In addition to that graphic, he expressed his opinions about certain aspects of homosexual activist politics in Alberta and Canada.

Interestingly enough, a teacher named Darren Lund, who according to his own testimony was not homosexual, complained to the Alberta Human Rights Commission. By the time the complaint was resolved, Mr. Lund had ceased to be a school teacher and had became a professor at the University of Calgary. Even though Mr. Lund did not belong to the group to whom the alleged discriminatory statements were said to have been directed, the complaint was upheld. Mr. Boissoin was ordered to pay compensation to Mr. Lund and to all his witnesses and to apologize publicly to Mr. Lund. He was ordered by the commission never again, throughout his entire life, to make critical or derogatory remarks about homosexuals or homosexual politics. The question that arose in my mind as I read that decision was why did the Human Rights Commission of Alberta stop short of ordering that Mr. Boissoin be burned at the stake?

It increasingly seems to me that the best way to understand this country is as a theocracy. Canada is a country utterly in the grip of a secular state religion of equality. As befits the theocracy, we have our very own holy inquisition. Since this is a federal theocracy, the holy inquisition is divided into sub-units. Each of these sub-units of the Canadian holy inquisition is called a human rights commission. These sub-units of the holy inquisition have a mandate to identify and extirpate heresy and blasphemy—a mandate that they pursue with great energy.

Let me say a little bit about the Canadian Human Rights Commission, which is actually nearby. The Canadian Human Rights Commission has been involved in recent years with an utterly odious human being called Richard Warman. It seems that one of Mr. Warman's main forms of recreation is to prowl the Internet looking for what he regards as questionable websites. When he finds a questionable website, using a pseudonym, he will log onto the website and then post hateful commentary on the website. After he has done that, he has a habit of complaining to the Canadian Human Rights Commission about his own posts. Most of his complaints have been upheld, and he has received vast sums of money in compensation for complaining about his odious remarks, many of which are despicable.

Let me give a particular example that is uniquely odious, even for Mr. Warman. Someone in this city who is a dear friend, and for whom I have profound respect, is Senator Anne Cools. After I leave here to meet my son on Wellington Street, he will drive me to the Centre Block, where I'm going to meet with Anne Cools.

● (1230)

Senator Cools is very agitated because of a recent posting that Mr. Warman made on a website called Free Dominion. If you know Anne Cools, you may know that she was born in Barbados, in the Caribbean, came to this country, and has a distinguished record of service to her adopted land. In his post on Free Dominion, Mr. Warman described Senator Cools using the N-word. As if that weren't enough, he added to it what is, in my view, the most despicable and loathsome word that one can use to describe a woman, and he used these two words to describe Senator Cools. And she is exceedingly upset about this.

I was talking to her on the phone yesterday and with great agitation she said, “Do you know what he called me?” I'm not going to repeat what he called her, but it is revolting.

Mr. Warman continues to make complaints before the Canadian Human Rights Tribunal. To its credit, in a decision it reached earlier this year, a case called, oddly enough, Richard Warman v. Northern Alliance and Jason Ouwendyk, the Canadian Human Rights Tribunal acknowledged Mr. Warman's vile activities and cautioned him to desist, which, to the best of my knowledge, he has not done.

I may have gone too far in my remarks, but let me note that Mr. Warman has not hesitated to sue people for defamation when people have publicly criticized him.

● (1235)

The Chair: I'm going to interrupt you again, Professor. You really do have to wrap these up in order to give people time to ask questions.

Prof. Robert Martin: Go ahead, please.

The Chair: Okay.

As a final note I'll mention one more thing. You're in a parliamentary committee, so you're not subject to any lawsuits for anything you're saying here.

Mr. Sweet, briefly, please.

Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC): I simply wanted to make sure that you assured the witness of that.

The Chair: All right.

That being said, we'll turn now to Mr. Silva.

I want to remind folks that we really are tight for time, so I'm going to keep these to six minutes and I'm going to be pretty tough about that.

Please go ahead, Mr. Silva.

Mr. Mario Silva (Davenport, Lib.): Mr. Chair, I don't really have any questions, just a very brief statement.

Professor, I understand some of the concerns that you raised about the Human Rights Commission, but, as a gay man, I must say one thing. I'm not very fond of the good old days before the commission existed when it was okay to spit on gays, where it was okay to discriminate against them, where it was okay to beat them up, and in fact no police would investigate. I'm not going to go back to those old days.

Thank you very much for your comments about it.

Prof. Robert Martin: May I be permitted to say...?

The Chair: It's six minutes for questions and answers, so yes, you may.

Prof. Robert Martin: That is the classic example of the kind of argumentative technique used by people who support the thought police who say that if I argue in favour of free expression, I'm in favour of the persecution of Asians, Africans, and homosexuals.

I make a principled argument, sir, in favour of freedom of expression. I do not add any baggage to that argument. If you wish to read that into my argument you are free to do so, but it wasn't there.

The Chair: Mr. Silva, do you have anything further?

Mr. Mario Silva: No.

The Chair: This is the Liberal round of questions.

Mr. Cotler, do you have anything?

Hon. Irwin Cotler (Mount Royal, Lib.): No.

The Chair: All right.

[*Translation*]

Mr. Dorion, do you want to say anything?

Mr. Jean Dorion (Longueuil—Pierre-Boucher, BQ): I am not trying to deny that there can be violations in terms of the charter. But your way of seeing things seems a bit extreme. You seem to have something against people who initiate legal proceedings based on their right not to have their feelings hurt. It seems very reasonable to me that people would initiate legal proceedings in those cases. Take, for example, the statements made by Holocaust deniers, those who say the Holocaust never happened.

I think that Holocaust survivors and their children find it very hurtful to hear someone denying a historical fact that has been proven. Surely, it must cause them a great deal of pain. In addition, it is very important not to create an official version of the historical truth. And it is normal for those hurt by a false statement to initiate legal proceedings and to seek justice. Do you not think so?

● (1240)

[*English*]

Prof. Robert Martin: Well, I would not wish to resurrect the whole wretched business of Mr. Zundel. The whole Zundel affair was a very sorry and embarrassing business.

You point out in your remarks that the risk of this sort of approach is that we establish an official version of history and punish anyone who might deviate from the official version.

[*Translation*]

Mr. Jean Dorion: Is that a question for me?

Mr. Robert Martin: No, just my answer.

The Chair: Mr. Dorion, you still have four minutes.

Mr. Jean Dorion: Yes, certain things have been shown to be accurate and true. We can support different points of view, but when the purpose of that view is to promote hatred of a particular group or to make accusations against them, that is not acceptable, especially when it involves people who have been victimized and who are still alive.

Perhaps in a hundred years, we can be more lenient. But for now, it is not acceptable to hurt people to that extent. That is my opinion. What do you think?

[*English*]

Prof. Robert Martin: Might I reply that there is a vast difference between promoting hatred against people and offending or hurting the feelings of people?

[*Translation*]

Mr. Jean Dorion: Can you elaborate?

[*English*]

Prof. Robert Martin: The Criminal Code of Canada, in section 319, creates the offence of wilfully promoting hatred. And the courts, in hearing prosecutions under this section, have demanded a very high standard of proof from the crown. The crown is obliged to lead evidence that demonstrates that the accused actually intended and did attempt to promote hatred, which the courts have defined as abhorrence and detestation against an identifiable group of people. There is a vast gap between that and offending someone or hurting someone's feelings.

[*Translation*]

Mr. Jean Dorion: Say, for instance, I had been beaten, raped and tortured by people. Say I took them to court and they were found guilty. If afterwards, those same individuals or their friends spread the idea that I made the whole thing up, that it never happened, I would feel like the victim of a huge injustice.

I think it is normal for Holocaust victims to react that way. Do you not agree?

[*English*]

Prof. Robert Martin: I understand the direction of your sentiments, but life in a democracy requires robust citizens.

[*Translation*]

Mr. Jean Dorion: Thank you, Mr. Chair.

[*English*]

The Chair: That uses up the time that's available.

Mr. Marston, please.

Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP): Well, sir, I approach witnesses very respectfully in this place, but I must say I profoundly disagree with your opinions.

What separates Anne Cools and the attack on her from the attack on the homosexuals with those stick cartoons? Maybe it's in the degree of how it was implemented....

If you stop and look at the feelings, as you describe them, of Jewish people who stood before those signs that said to them that they weren't welcome because they were lesser than the rest of humanity—because that's what those signs were intended to do—and you talk about people's feelings getting hurt, I have Jewish friends who were not of the Holocaust generation, yet they suffer every day as a result of the hate from that time.

How can you can sit and call a group of people “thought police” when they are doing one of the most difficult jobs that we have in our country in trying to sort out the difference between what are serious incidents and what are not serious. And at times, as with any group of human beings, I'm sure they're going to go to the fallacy side of it.

I'll sit here today and defend your right to hold your opinions and certainly your right to express them, and express them publicly, but to the point where that begins to humiliate or shame other people.... I'm not suggesting, sir, that you've done so today. I don't mean it in that context. But when you're looking at people like Anne Cools who are attacked, that has to be stopped.

I really don't have a question for you, sir, other than to say that I profoundly disagree with your view.

● (1245)

Prof. Robert Martin: Well, I'm glad that you do.

Let me repeat the point I made in replying to the first questioner. We are in a very dangerous situation where anyone in this country today who argues in favour of free expression is thereby tarred as a racist, anti-Semite, homophobe, etc. Surely in this confine we should be able to understand arguments of principle. Free expression is a profound principle. It is the basis for our democracy. It is a very dangerous practice to tar persons who argue in favour of free expression with these sorts of labels.

Mr. Wayne Marston: Certainly, in the case of my remarks just now, there was no labelling done, sir.

Number one, when you found a society, when you found a country and a constitution—as we saw in Canada with the evolution of our Charter of Rights and Freedoms—and other living documents, you do in fact move from the point of time when you found your country to the point of time when, through the evolutionary process of the government and of the courts and of commissions, you enhance the values of what you've put into those documents.

Over a period of time, part of what you describe as the thought police was put into our system to rein in hate. There is a line someplace—I don't proclaim myself as the person who's going to decide where that line is—where the freedom of expression ends. You have to have someone there to at least cause the discussion of where that line should be.

Thank you, Mr. Chair.

The Chair: Professor Martin, do you have a response?

Prof. Robert Martin: That comment brings us to what I think is, with all respect, sir, the most dangerous and insidious issue in this area: people constantly talking of balance. That balance is usually tipped very much in favour of the thought police.

The chair of the Canadian Human Rights Commission, Jennifer Lynch, last Friday published an article in *The Globe and Mail*. In it she argued the glories of the Canadian Human Rights Commission and the need for balancing free expression. At the end of the article, she suggested that, really, Canadians cannot be trusted to exercise free expression, because if they did, if we let Canadians have free expression, then, God knows, lots of people might get their feelings hurt; so we can't allow free expression.

At the same time that this statement was made, the CRTC, the Canadian Radio-television and Telecommunications Commission, released a discussion paper about the Internet. One of the members of the commission argued eloquently and very forcefully that the state should not regulate the Internet because of the great risk of imposing orthodoxy.

Let me suggest an aphorism. Now, I must confess that I'm not a great fan of Pierre Trudeau, but we all know his most famous aphorism, that the state has no business in the bedrooms of the nation. My aphorism is that the state has no business in the computers of the nation.

The Chair: We are out of time on that round of questions.

It's now the turn of a Conservative member. Mr. Hiebert.

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

Mr. Martin, you've made, I think it's fair to say, some fairly strong statements today that have obviously caused some uncomfortableness among some of the members, I sense. It's in relation to these comments that I think the questions relating to freedom of expression are what we're trying to struggle with.

I note that you gave some examples that would be, I think everybody would agree, quite offensive. In the example of Senator Cools, I have to ask: Do you believe she should have access to some form of legislation or prosecutorial avenue to prevent people like Mr. Warman from making the comments he did about her on the Internet? Should there be freedom of expression to that degree, even if it tremendously offends members of our committee—or even Senator Cools?

● (1250)

Prof. Robert Martin: I know Senator Cools well and respect her profoundly. One of the reasons I admire Senator Cools so much is that she is a remarkably tough human being. I'm sure her response to this whole matter would be that she would regard it as a serious compromise to descend to the level of Richard Warman. I don't wish to speak for her, but I have no doubt that she does not want to soil herself by getting into a tussle with a vermin like this.

Mr. Russ Hiebert: You're basically stating that even where tremendously offensive remarks are made, like the ones that have been made about Senator Cools, it's your belief that human rights commissions should not be used to force individuals who make such comments to retract or pay compensation or face the consequences. Is it simply the price we pay in a democracy for freedom of expression?

Prof. Robert Martin: I don't wish to sound flippant, but we must pay a certain price for being grown-ups. To use the unpleasant, popular phrase, grown-ups don't spend 24 hours whining and complaining and moaning and being victims. Grown-ups in a democracy, in my view, should be tough and robust.

I do have a tendency to speak my mind firmly and directly, which I think, out of respect for the Parliament of Canada, it is my obligation to do.

Mr. Russ Hiebert: What would you do to improve the current system?

Prof. Robert Martin: I would have a public hanging of Richard Warman.

While I think there's a lot to be said for abolishing human rights commissions or taking away their thought police role, there is a legitimate place for the anti-discrimination functions that date back to the Ontario Human Rights Code of 1960. The thought police role is an unnecessary adjunct.

The Criminal Code does contain an offense of wilfully promoting hatred. Let me note, for the benefit of my friend down at the end of this table, that in 2002 the Criminal Code was amended by changing section 318, so that the wilfully promoting hatred offence has been broadened. It originally applied to promoting hatred on the basis of race, religion, or national origin. The section now refers to promoting hatred on the basis of race, religion, national origin, or sexual orientation

The Criminal Code contains a prohibition against promoting hatred, which is certainly not a form of speech that deserves any protection in a democracy. The Criminal Code can do the job. It doesn't need the assistance of human rights commissions.

● (1255)

Mr. Russ Hiebert: As an aside, I noticed in your biography it states that you were a candidate for the federal New Democratic Party in 1979 and 1980. Is that correct?

Prof. Robert Martin: That's correct.

Mr. Russ Hiebert: What are the recommendations that have been made by the commissioner herself? Is that cost allowed to be awarded where there is abuse? I'm wondering if you have any thoughts on whether court costs should be awarded to the successful defendant, the person who's succeeded in protecting their reputation, but at tremendous cost, usually as a result of hiring lawyers to defend them?

Do you think the allowance of awarding costs to the persons who have successfully defended themselves should extend beyond simply cases of abuse and perhaps to other cases where it was not necessarily frivolous, but it would provide a deterrent from those people who might bring frivolous cases?

Prof. Robert Martin: If we're going to maintain these things, it would be highly desirable to make them, as far as possible, follow the procedures of courts to guarantee, to the extent that it can be achieved, the procedural rights of all parties who appear before them.

Mr. Russ Hiebert: What kind of a job do you think they're currently doing in terms of following procedural rights?

Prof. Robert Martin: I've often seen the phrase "kangaroo courts" used, and that's not a bad characterization.

The Chair: We unfortunately are out of time for this set of questions.

We do have a moment before we reach our 1 p.m. deadline. I have to be pretty firm on that, but because of the unusual nature of the commentary, I'm just going to ask two questions myself.

First of all, I'm assuming that the reference to hanging Richard Warman was meant as a metaphorical statement, as opposed to an actual advocacy.

Prof. Robert Martin: Had it been anything more, it would have been a crime. It was metaphorical.

The Chair: Secondly, with regard to Senator Cools, we've all been dancing around what was actually said on the Free Dominion website. I am assuming that the moderators or administrators of Free Dominion have removed the comments, which means they aren't available for us to inspect.

Prof. Robert Martin: They were removed.

The Chair: I'll just ask this. I'm assuming this was not a matter of personal libel against the personal character of Senator Cools, but rather was a derogatory reference to her race that Mr. Warman posted on the website.

Prof. Robert Martin: To her race and her sex.

The Chair: I just wanted to confirm that, so we would all be clear on those things.

That completes the time we have.

Prof. Robert Martin: I would prefer not to, but if you wish, I will repeat the phrase.

The Chair: No, I think we can all guess. I assume it's a reference to her race that begins with the letter "n."

Prof. Robert Martin: Yes.

The Chair: We were all guessing at that, but I wanted to be clear.

I think we've dealt with this matter, so I'll just suspend for a moment while we move on to the matters regarding Iran.

Thanks very much, everybody.

● _____ (Pause) _____

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● (1300)

The Chair: We're back in session. We are still public.

We will go in camera for consideration of the draft report, but first Professor Cotler has a statement that was raised with us earlier.

Professor, I'll turn the floor over to you.

Hon. Irwin Cotler (Mount Royal, Lib.): Thank you, Mr. Chairman.

These hearings have taken place at an important moment of remembrance and reminder historically. In other words, we've been meeting in the aftermath of the 60th anniversary of the genocide convention, sometimes spoken of as the "never again convention", and on the 60th anniversary of the Universal Declaration of Human Rights, sometimes spoken of as the Magna Carta of human rights, and it would be appropriate to ask ourselves at the conclusion of these hearings regarding Iran, in this historical perspective, what have we learned and what must we do?

I want to suggest to you that there are three major lessons of the last 60 years that find expression in Ahmadinejad's Iran. And I use the term "Ahmadinejad's Iran" because I want to distinguish that from the people and public of Iran, who are otherwise the objects and targets of massive domestic repression, as we have been witnessing yet again these last few days.

What we are seeing in Ahmadinejad's Iran of relevance to our hearing has been the emergence of it as the epicentre of the toxic convergence of the advocacy of the most horrific of crimes, namely genocide. This is a crime whose name we should even shudder to mention, embedded in the most virulent of hatreds, namely anti-Semitism, and underpinned by the illegal pursuit of atomic weapons in defiance of UN Security Council resolutions—again, we've heard witnesses' testimony on that—dramatized by the parading in the streets of Tehran and festooned on billboards and the like of a Shahab-3 missile draped in the emblem, "wipe Israel off the map", which we have certainly read about, but not always the other four words, as the Imam says, namely, that this is a religiously sanctioned incitement to genocide that denies the Holocaust while it incites to a new one, warning Muslims that if they recognize Israel, they will burn in the *umma* of Islam. It engages in a systematic repression of domestic rights, of which the Bahá'í religious minority, and the testimony attending it in these hearings, has been a case study.

But while we have been focusing on the nuclear in the international community, there is a danger of ignoring and sanitizing the genocidal context in which the nuclear takes place and makes the nuclear so threatening. In other words, Mr. Chairman, if we're to focus only on the nuclear, we might as well focus on Pakistan, which already has nuclear weapons. The reason we focus as well on Iran is because of what I would call the convergence of the three: namely, the nuclear, genocidal, and rights-violating Iran. That is the context that makes the nuclear as threatening as it is.

Now, it was this understanding of these three major lessons of history with which I began, and it is the corresponding convergence of these three major dynamics of the nuclear, the genocidal, and the rights-violating dimensions that resulted in some 50 leading international law scholars, genocide experts, and victims of genocide initiating and endorsing a petition that is titled "The Danger of a Genocidal, Rights-Violating and Nuclear Iran: The Responsibility to Prevent Petition", which I'm pleased to table here today.

[*Translation*]

In addition, I introduced a bill with respect to combatting incitement to genocide, domestic repression and nuclear armament.

[*English*]

What the petition demonstrates—and I should mention in terms of some of the signatories that it includes some distinguished signatories, such as Madam Justice Louise Arbour, the former United Nations High Commissioner for Human Rights, Salih Mahmoud Osman, a survivor of the killing field in Darfur and a member of Parliament there, Nobel Peace laureate Elie Wiesel, and the like, and as I say, leading international law scholars—and what the Iran Accountability Act has been organized around is a particular finding of fact and conclusion of law that should underpin our hearings and indeed our own appreciation of one salient factual legal matter, and that is that Iran has already committed the crime of incitement to genocide in violation of the genocide convention's prohibition.

Iran has already gone down the road to genocide. One of our witnesses, Professor Gregory Stanton, the president of the International Association of Genocide Scholars and the architect of the "Eight Stages of Genocide", which has emerged as a template for inquiry into this issue, testified before this committee that Iran has already passed through the first six stages of genocide. There is, therefore, a corresponding responsibility to prevent, which is characterized in the petition by the international legal scholars as a *jus cogens* obligation, an international legal obligation of the highest order of overriding legal imperatives. As it is put, and I don't like to use the Latin, but that is how it has become framed in international law, *erga omnes*, against all, it involves obligations incumbent on all parties in the international community to prevent and protect.

I might add that this responsibility to prevent is not only to be found in the genocide convention. It's also in the statutes for the establishment of international tribunals in the former Yugoslavia and Rwanda. And the prohibition on incitement to genocide is also part of the International Criminal Court, and that's why one speaks of it in such a *jus cogens* character.

What I'd like to do, and with this I will summarize the rest of my presentation, is first outline an outline: the eight precursors to genocide in Ahmadinejad's Iran, which are set forth more fully in the petition; the critical mass of dynamics that are constitutive of the crime of incitement; and why Professor Stanton argued that Iran has passed through the first six stages of genocide. Secondly, I'll outline the remedies to combat it.

Let me begin first with the precursors, and I'm going to go through them in very short order.

The first is what has been referred to by genocide scholars as the delegitimization, denial, and exclusion of the alien other. As Dr. Professor Stanton put it, what genocidaires do is classify the alien other, the targeted state and people, as illegitimate and unworthy of the universe of obligation. As Helen Fein says, you try to put the targeted group or state outside the boundaries of human obligation. You single them out for enmity and opprobrium. This is what has happened in Ahmadinejad's Iran, which characterizes the Jewish people and the State of Israel as a forged nation, as a fabricated people, and as an illegal state warranting their demise. All the evil people of the world, all the evil Jews, have been gathered there. That's precursor number one, which is set forth more fully in the petition.

I might add, with regard to each of these precursors, that there is comprehensive and authoritative and documented evidence in the petition that underpins each of the precursors.

Second, from singling out, from delegitimization and denial, one moves to dehumanization of Israel and the Jews and to the use of epidemiological metaphors reminiscent of Nazi-like dehumanization of the Jews. Mr. Chairman, I never make an analogy with the Holocaust. I'm making the analogy only with respect to the language of incitement.

● (1305)

Just as the Nazis referred to the Jews as vermin, and the Hutus referred to the Tutsis as cockroaches, so you can find—and maybe I'll just read this into the record, in French—that Israel and the Jews are referred to

[*Translation*]

like a disgraceful stain on the clothing of the Islamic world, a cancerous tumour, a repulsive germ, a decaying body, a cancerous bacteria.

● (1310)

[*English*]

I can go on, but I think the point is made here with respect to this second precursor, that of dehumanization, characterizing the targeted state and people as being less than human, if not subhuman.

The third is the demonization, and in this case the demonization of Israel and the Jew as a dangerous, diabolical, devil-like, satanic figure. In a word, it is dehumanization coupled with demonization, subhuman coupled with the threatening diabolical, which acts, again, as part of the precursors to genocide.

The fourth is Holocaust denial. It's known before this committee. I need not say anything other than to say that not only is it an assault on justice and memory and truth, but in fact the Jews are accused of fabricating this "hoax" of Holocaust denial, thereby adding to the dehumanization and demonization to which I formerly referred.

The fifth is what genocide experts refer to as a false accusation in the mirror. This is where the *génocidaires* invoked this strategy to convince their own people, in this instance Iranian Muslims, that if the diabolical and murderous other is not attacked, then in this instance Islam and Iran will fall victim to this diabolical evil, thereby framing its own aggression as self-defence. It's a leitmotif that's been used the Nazis, it was used by the *génocidaires* in the Balkans, Rwanda, and Darfur. It provides psychological justification for genocide. In other words, not only is this alien other fabricated, illegitimate, inhuman, and demonic, but it is also threatening and therefore it has to be attacked.

The sixth is a notion of satanic Jews as the enemies of humanity, not just the enemies of Islam but the enemies of humanity, the poisoners of the international wells. The struggle against this demonic enemy must continue; it is religiously sanctioned until this demonic enemy is vanquished.

Seventh is the financing and support and arming of two terrorist groups, Hamas and Hezbollah, which, yes, are listed as terrorist entities in Canadian law, but what perhaps is not always appreciated is they are not only terrorist groups. They have an objective, which is genocidal, by their own acknowledgment. They have an ideology, which is anti-Semitic, a terrorism, which is instrumentalist, and a global reach, which speaks in terms of a global Islamic caliphate.

Finally, there are the inciting tropes of classical anti-Semitism that are set forth in the petition where the Jews are spoken of as the killers of children, as I say, the poisoners of the international wells, anti-Semitic trope.

So the question becomes, and with this I close: what do we do? The enduring lesson has been, throughout the last 60 years, that the Holocaust, and the genocides in Srebrenica, Rwanda, Darfur, occurred not only because of the machinery of death, but because of the state-sanctioned incitement to genocide. Now, tragically, we cannot do anything about those other genocides; they have already occurred. There is only one place in the world today, which has already committed the crime of incitement to genocide, that falls within this historical frame of reference, but where we have an opportunity and indeed an obligation to do something about it.

Here I remind us of the two other lessons I began with, the danger of indifference and inaction in the face of this incitement, and the impunity that encourages it. I say that because, Mr. Chairman, as we meet, not one state party to the genocide convention—and regrettably I include our own country—has undertaken any of the mandated remedies in international law in general, and the genocide convention in particular, in order to undertake their responsibility to prevent.

Madam Justice Louise Arbour and others have said in the petition that this is not a policy option, it is an international legal obligation of the first order. So our response must be not only to heed the precursors to genocide set forth in the petition and summarized in my remarks today, but to invoke the panoply of legal remedies, the corpus of the legal obligation to prevent.

● (1315)

Very quickly, one-liners regarding some of them, they have been mentioned before in testimony, so I don't want to duplicate. But any state party to the genocide convention can and must refer the international criminality of Ahmadinejad's Iran to the UN Security Council for accountability and related sanctions.

I find it shocking, and indeed as anomalous as it is shocking, that we've referred the matter of Iran's illicit pursuit of enriched uranium on the road to becoming an atomic power. In respect to it, there is not yet conclusive evidence, though the evidence does strongly indicate that's what Iran seeks to do. But we have not referred the state sanction incitement at the genocide in respect to which there is comprehensive, authoritative evidence.

When and should the leaders of Iran or any other country say, “The evidence regarding the nuclear on which we focused is not conclusive”, we can say, interestingly enough, “Go to the evidence regarding the genocidal incitement, which is conclusive, and there you will find the convergence of the two, in the statement that with one bomb we can wipe Israel off the map”. That's where you get the convergence of the nuclear with the genocidal, which makes the nuclear so dangerous, but you have to go to the genocidal in order to see that. What we have been doing thus far, regrettably, is by ignoring the genocidal, we've been sanitizing it and even undercutting the case for the nuclear.

A second remedy could be done immediately. One doesn't even have to go to the UN Security Council. The argument would be made, “Well, the UN Security Council may not act for many reasons that we know”. Any state party can initiate an interstate complaint against Iran, which is also, we need to be reminded, a state party to the genocide convention and which also has these obligations to prevent it. But rather than prevent, it actually in fact engages systematically in the incitement to take an interstate complaint against Iran before the International Court of Justice.

Thirdly, we can certainly call upon the UN Security Council—just call upon them, I'm not saying they will do it—to refer the matter of this international criminality of Ahmadinejad's Iran to the International Criminal Court for prospective investigation and prosecution because it is also a violation of a similar prohibition, exactly the same prohibition, word for word, in the International Criminal Court, prohibiting direct and public incitement to genocide as it exists in the genocide convention. Any state party can declare Ahmadinejad and those associated with him inadmissible to Canada. It's one of those astonishing things that Maher Arar is still regrettably on a United States watch list, but Ahmadinejad is not.

We have, in fact, through a commission of inquiry in Canada found that Maher Arar is not only innocent but an innocent victim of the actions of three governments. I won't go into it. Subsequently, we made an apology at the parliamentary and governmental level. Yet Maher Arar is still on the U.S. watch list, and Ahmadinejad is not, an anomaly that I suggest needs to be corrected. Any state party can set up a monitoring mechanism to monitor incitement and to develop sanctions specifically targeted to the incidents of incitement in order to render that the genocide there is accountable, and the like. We have suggested this in the private member's bill, the Iran Accountability Act, including, as well, freezing the assets of those engaged in the incitement as well as those who contribute to the nuclear and military infrastructure of Iran.

We have been doing this to expose the critical mass of human rights violations. What has been happening of late, I think, needs to be factored into our report as well. When Canada, to its credit, co-sponsors annually, at the United Nations General Assembly, the resolution respecting human rights violations in Iran, the testimony before these hearings should also be included as the evidentiary basis for that resolution which we co-sponsor.

● (1320)

Finally, Mr. Chairman, this I take from my Iranian human rights colleagues and the likes, such as Roya Boroumond, who testified before this committee: These remedies are not only obligatory under international law, but they are important ends in themselves. If you speak to the Iranian human rights people in and outside of Iran, they will tell you that the very invocation of these legal remedies would embolden the progressive forces in Iran. They would be looked to as an act of solidarity with victims of the human rights violations and otherwise in Iran. It would further tend to isolate President Ahmadinejad. It would tend to help promote regime change.

This is not the objective of what I am recommending today. I'm saying in consequence of undertaking our international legal obligations and the responsibility to prevent, the fallout may well be to help promote regime change and act as a catalyst on the way for enhanced sanctions. So I say at this point, heeding the lessons of history, at times such as these, *qui s'excuse s'accuse*—whoever remains indifferent will indict himself or herself.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Cotler.

Mr. Dorion, please.

[*Translation*]

Mr. Jean Dorion: I do not have any questions for the witness. I would just like to know whether it is possible to see what the petition says. I would like to take a closer look at what the authors are asking for.

Hon. Irwin Cotler: It is in English only, because it is an international petition. But I could give you....

Mr. Jean Dorion: I have no problem reading English.

Hon. Irwin Cotler: I can give you a summary in French. We prepared a French summary, but the request itself was in English.

[*English*]

The Chair: Well, it's been tabled.

[*Translation*]

Therefore, a translation will follow.

A voice: Soon.

[*English*]

The Chair: It will take some time. It's 60 pages long.

I'm going to suggest right now that we suspend momentarily while we go in camera.

[*Proceedings continue in camera*]

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