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Chair

Mr. Dave MacKenzie

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● (1105)

[*English*]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): I call the meeting to order, this being meeting 31 of the Standing Committee on Justice and Human Rights.

Pursuant to the order of reference of Wednesday, February 15, 2012, we are dealing with Bill C-304, an act to amend the Canadian Human Rights Act on protecting freedom. This morning we have the sponsor of the bill, Mr. Storseth, the MP for Westlock—St. Paul.

If you have an opening address, please give it to us. You have up to ten minutes. I'll let you know when you reach nine minutes, and we'll cut you off at ten.

Mr. Brian Storseth (Westlock—St. Paul, CPC): Thank you very much, Mr. Chair. I'll endeavour to do my best not to be cut off.

Mr. Chair, to begin, I would like to thank you and the committee for the opportunity to discuss my private member's bill, Bill C-304, An Act to amend the Canadian Human Rights Act (protecting freedom).

This is an issue that has been near and dear to my heart for a number of years. I am thankful to have received support from a large number of my colleagues, numerous media outlets, and most importantly, Canadians, on this important and often overlooked issue.

Bill C-304 will help protect and enhance our most fundamental freedom, freedom of expression. Without freedom of expression, one must ask oneself what value freedom of religion or freedom of assembly holds. Freedom of expression is truly the bedrock upon which all other freedoms are built, and section 13 of the Canadian Human Rights Act directly erodes this fundamental freedom.

Section 13 of the Canadian Human Rights Act has been a contentious topic for a number of years. It has been widely acknowledged that it impedes upon paragraph 2(b) of the Charter of Rights and Freedoms, which states that every individual has the fundamental “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication”.

This conflict between section 13 of the Canadian Human Rights Act and paragraph 2(b) of the charter was reaffirmed in 2008 by Professor Richard Moon, who was hand-picked by the Canadian Human Rights Commission to review the act. He stated on page 31 of his report that “the principal recommendation of this report is that section 13 be repealed so that the censorship of Internet hate speech is dealt with exclusively by the criminal law”. It was reaffirmed once again in 2009 by the Canadian Human Rights Tribunal itself, which found section 13 to be unconstitutional.

Over the past few months I have had many opportunities to attend a number of conferences and annual general meetings to discuss with Canadians across our country my private member's bill and the implications of repealing section 13. Most people are astounded when they hear that our fundamental freedoms can be overruled by a quasi-judicial body that feels that something you said was likely to have exposed another individual or group to hatred or contempt. Canadians find it difficult to believe that such a loosely written and vague law has the power to undermine the fundamental rights Canada so proudly bases its democracy upon and which men and women have given their lives defending.

While section 13 of the Canadian Human Rights Act may have been implemented with well-meaning intentions in an effort to combat discrimination and hate speech, its implications reach much further. It is this zone of ambiguity we should all be concerned about.

Section 13 states:

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

I'd like to emphasize, Mr. Chair, “any matter that is likely to expose a person or persons to hatred”.

Subsection (2) goes on to extend this law to matters that are communicated by means of a computer or the Internet.

What this really means is that the Canadian Human Rights Commission and the Canadian Human Rights Tribunal only have to feel that you were likely to have offended someone. This is not a narrowly defined legal definition, which would be far more appropriate.

Under section 13 of the Canadian Human Rights Act, truth is not a defence. Intent is not a defence. You no longer have the right to due process, the right to a speedy trial, or the right to an attorney. It is alarming that, until recently, the Human Rights Tribunal had a 100% conviction rate, with 90% of defendants failing to obtain legal advice, because they simply could not afford it. At the same time, the legal costs of the plaintiffs are fully covered.

These are not the characteristics of an open and democratic society that promotes equality and fairness. These provisions are provided to any other individual in any other court in Canada under the Criminal Code. This is a clear depiction of censorship overstepping its bounds through an overzealous bureaucracy.

This is one of the reasons I have introduced Bill C-304, protecting freedom. It is an effort to reconstruct freedom of expression as a cornerstone of our great country. To achieve this, complaints must be directed to a fair, open, and transparent judicial system, not a broken system that prides itself on operating behind closed doors.

By repealing section 13 of the Canadian Human Rights Act, Canadians will be given back the right to be offended and individuals will have recourse to hate speech through the Criminal Code of Canada. The continued use of the Criminal Code to address hate messaging will ensure that all individuals are protected from threatening discriminatory acts, while preserving the fundamental right to freedom of expression in our country. It gives back the right to a fair, open, and transparent trial. It gives back the right to face your accuser. It gives back the right to allowable defences, such as truth or intent. It even gives back the right to recover costs should the claim be dismissed.

The Criminal Code has been tried and tested. It is ingrained with a system of checks and balances, a system in which society has entrusted its fundamental freedoms and has seen fit to enforce the rule of law in our country.

The solution here is not to take a band-aid approach and address the superficial inadequacies of section 13. The fundamental deficiencies and broken structure will still be there. These issues cannot simply be fixed through amendments, as section 13 would still be imposed under the discretion of a quasi-judicial system, and the fundamental principles that guide the implementation of section 13 would continue to create a two-tiered system of hate speech, which I find simply not appropriate.

I believe the solution is to use the laws we already have and to provide authorities with the tools and support necessary. This step will ensure the successful transition in which true democracy and freedom of speech can thrive so that society can continue to grow and adapt peacefully.

It is through freedom of speech and expression that we change governments—or not, in the case of Alberta last night—not through riots and revolts. It is how we test societal norms and successfully develop. It is through freedom of expression that we have shaped and will continue to shape our great nation.

I would like to challenge this committee to look beyond the intent of section 13 of the Canadian Human Rights Act and truly examine its structure and implications, and consider what we, as a free and democratic society, are willing to give up.

Thank you for your time, and I look forward to your comments and questions. God bless.

● (1110)

The Chair: Thank you, Mr. Storseth. That was only six minutes, so thank you for your time.

I'd like to welcome two new members to our committee, Mr. Scott and Mr. Sandhu. We have a couple of other people filling in, but some change in the structure is good, I guess.

The NDP will go first. Mr. Scott.

Mr. Craig Scott (Toronto—Danforth, NDP): Thank you so much, Mr. Storseth. I've also read your speech in the House; it's very informative.

I'm wondering if I could start with one general question, and then a couple of specific questions on section 54 of the Human Rights Act.

First, do you support or do you believe in non-criminal libel and defamation law as a valid part of our legal system, keeping in mind that it protects a dignitary interest in reputation? If so, if you do support it, why exactly is section 13 any different? Because we're also dealing with the limitation on freedom of expression to protect a dignitary interest. What's so different? Freedom of expression is being limited in the case of libel and defamation law, and it would also be here. What's different, in your mind?

Mr. Brian Storseth: Thank you very much for the question, Mr. Scott, and welcome to the committee.

I believe that section 13, as I said, directly infringes and erodes significantly on freedom of expression in our country. I believe not only that the implementation of section 13 has been flawed, but also there's the overarching approach to limiting our freedom of expression, as section 13 does.

Really the argument isn't whether or not section 13 infringes upon paragraph 2(b) of the charter. The opposition discussion has primarily been based around burden of proof and the aspect of to what extent it should be limited. But the fact remains—and I haven't seen it contested through any of the debate in the House or over the last several years—that section 13 provides a significant infringement upon the freedom of expression in our country. I believe these matters are serious matters and should be dealt with under the Criminal Code of Canada.

Mr. Craig Scott: Thank you very much. I'll leave that just for the moment.

I understand section 54 would also be repealed in your proposed legislation, and section 54 includes the remedial sections. On the Lemire decision in 2009 that you referenced from the Canadian Human Rights Tribunal, I may have misread, but it seems as if it focuses on the fact of a penalty being among the possible remedies as being the problem, not so much section 13 itself. Am I correct in that reading? If so, would you be open to an amendment to the act whereby the penalty provision gets removed, but not the actual section 13?

● (1115)

Mr. Brian Storseth: First, I would like to thank the opposition for considering amendments. I believe that means you're generally relooking at the issue of my legislation, and I hope you're looking to find ways in which we can continue to cooperate together and work toward passing this legislation as quickly as possible and in as uncontentious a manner as possible. I see this not as an issue of left wing or right wing; I see this as an issue of importance to Canadians across the country, on both sides of the political spectrum.

I was heartened by the fact that an opposition member did vote for this legislation on second reading, and I'm hoping that moving forward we'll be able to sit down collaboratively and find a way forward, so we can have more support.

As I mentioned at the beginning of my speech in the House, I am open to certain amendments, as long as they are provided in the spirit of the legislation, which is the repealing of these sections. I do try to stay away from specific cases when we're talking about my bill on protecting freedom. But you are correct in what you refer to, the fact that the Canadian Human Rights Tribunal itself did rule, I believe in at least one instance, that section 13 is unconstitutional, which is also in line with the commission's own Professor Richard Moon, who put out a report that stated on page 31 that the primary recommendation is that section 13 should be repealed and these types of offences should be investigated under the Criminal Code of Canada.

The Chair: Thank you. We've used up the time.

Mr. Goguen.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you, Mr. Chair.

We were talking about the Lemire case. Mr. Scott referred to it. In that case the Human Rights Commission itself ruled that section 13 was unconstitutional.

I know you've had a fair amount of support throughout the country with regard to the striking of section 13. Could you comment on what groups have supported you?

Mr. Brian Storseth: Thank you very much, Mr. Goguen.

I'll go over a little bit of the chronology of how my private member's bill has unfolded. This bill, I have to admit, started right here in the justice committee in 2007, when the member for St. Catharines actually put forward a study of the effects of repealing section 13. That study unfortunately never came to fruition because of the nature of minority Parliaments.

In 2008, when I had the opportunity to sit on this justice committee—and I can say the talent has only increased since I have been here—I also put forward a motion to study it. The committee, even in a minority circumstance, admitted that there were significant problems with section 13. Once again, in a minority context, it never really went any further than that.

It would be overwhelming to talk about all of the groups that have endorsed this type of legislation since pre-2008 when I first put it forward in this committee, but I am heartened to tell you that Bill C-304, since I have put it forward on the order paper, did receive the support of the Canadian Jewish Congress and the Muslim Canadian Congress. I also received the support of PEN Canada and the editorial support of the *National Post* and even the *Toronto Star*.

The point is that there has been wide-ranging support. It hasn't been from the left or the right of the political spectrum. It hasn't been about blue or orange. It has really been about doing away with a piece of legislation that Canadians.... Education on what this legislation actually does and how it has been implemented for 40-plus years I feel has really appalled Canadians.

Most importantly, I would say that the most important support I have received has been from Canadians across this country. I have been from coast to coast to coast in discussing section 13 and what problems I feel there are with it. When you address it with Canadians and sit down and actually tell them what's happening, they're absolutely appalled. It really doesn't matter whether you're in a forum that's predominantly one political party or another; the sentiment I have received has been the same.

In my own riding I did a poll on this. Interestingly enough, repealing section 13 was the only issue more popular in my riding than the repeal of the long-gun registry. I think that's quite interesting, and goes to show.... There was 87% support. I don't get 87% of the vote in my riding—almost, but not quite. That goes to show me that this legislation I believe transcends political boundaries. As such, I'm hoping that the next time this comes forward we can work cooperatively and get more support from the opposition on this as well.

● (1120)

The Chair: You have one minute.

Mr. Robert Goguen: So you appear to have had quite an open discussion with a number of Canadians, and it would appear that the average Canadian is in your court. I wonder if you could highlight the reasons why you think they've bought into your idea on this.

Mr. Brian Storseth: That's an excellent question. I thank you for that.

First of all, I would suggest that the idea of freedom of expression is one that all Canadians hold very dear. It is something that is tremendously important to us as a society. It gives us the ability to continue to grow and push societal norms so that we can continue to grow as a country through a peaceful democratic process. I believe that's the cornerstone of our country.

Another aspect is the practical problems with the implementation of section 13 over a number of years and also the fact that it does eliminate some of the natural rights that Canadians hold near and dear. One of the interesting parts of this is that when you talk to an individual and you tell them that the right to an attorney can be taken away from you, they actually don't believe it. You actually have to point out specific examples, because these are natural rights that Canadians feel are theirs, and no court and no government should be able to take them away.

I think those are some of the reasons why this has been such a popular piece of legislation. Now I'm just trying to manoeuvre it through Parliament, which sometimes unfortunately can be skewed in partisan politics. But on a private member's bill, I really do believe that we should be able to, in this place, have fruitful discussion and unwhipped votes on private members' legislation, because I think that is what Canadians sent us here to do.

The Chair: Thank you, Mr. Goguen.

Madame St-Denis.

[*Translation*]

Ms. Lise St-Denis (Saint-Maurice—Champlain, Lib.): I am not going to ask a lot of questions. I am replacing Mr. Cotler at the last minute and I won't be able to ask very specific questions.

Mr. Storseth, you said that you have consulted all Canadians. Did you get opinions from all the provinces in Canada?

[*English*]

Mr. Brian Storseth: Thank you very much for your question, Ms. St-Denis.

As you have stated, you haven't had the opportunity to review this legislation in depth. I hope you will do that before the next vote, simply because I believe that this is an issue—and Mr. Simms from the Liberal Party saw it as well—not of the left wing or the right wing. It's not a partisan issue. It's actually an issue I think all parties should be on board with. I think when you sit down, look at the actual facts, and at how this is played out, and really, when you look at the infringement of freedom of speech in our country that this has imposed, I believe that—hopefully—you'll give it a second look.

As for whether I've consulted Canadians throughout every province in our country, I personally haven't been to every single province and territory in our country to discuss this legislation, but I have received correspondence. With the amazing mass communication and today's technology, I have had dialogue from Canadians in I believe pretty much every province in the country.

There are some mixed opinions on it, but as you discuss it more and bring more education to light, Canadians in general, I have found, from each corner of our great country, feel that freedom of speech and expression in our country is one of the fundamental principles we have. It's one of our core building blocks of our democracy.

● (1125)

[*Translation*]

Ms. Lise St-Denis: Thank you. I am going to leave it at that.

[*English*]

The Chair: Thank you.

Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Merci.

Thank you very much, Mr. Storseth. I appreciate you bringing us forward. When I practised law in Alberta this was quite shocking for me as well. A quasi-judicial body that would make decisions that would impact people basically with what are criminal-type charges and convictions, and with the ability to then put a punishment on them, is in my mind beyond what would be adequate for a quasi-judicial body.

I'm wondering if you have any specific knowledge of the training and expertise of these individuals. I know that it is very difficult for a member of the bar to become a judge. First they must do seven years of university, including three or four years of law school, practise for a minimum of 10 years—and usually more like 20 to 25 years—as an advocate, as a barrister or solicitor, in one of the courts in Canada, and then to go through judicial training school, and of course are bound by precedents of hundreds of years.

What kind of training would this particular body have compared to a judge of, for instance, the Court of Queen's Bench in Alberta?

Mr. Brian Storseth: Thank you very much, Mr. Jean, for your question.

I'd also like to thank you for your help with my private member's bill. You've been a strong advocate for freedom of expression in our country. It is appreciated by our ridings.

Mr. Jean and I are in neighbouring ridings, so people in northern Alberta get Brian and Brian, whether they like it or not.

At the end of the day, you raise an excellent point. There are actually a couple of points in there. It's not only about the extensive amount of judicial training you must have to become a judge in our country, the extensive amount of training to work within the Criminal Code and the criminal justice system in Canada, and how it's obviously not as extensive for this quasi-judicial body. I think the most pertinent point you raise is the fact that this is a quasi-judicial body.

This is not a body that is open and transparent. This is not a body that follows the rules of evidence we have and that exist in the court system in Canada. It is very closed. I've pointed out that intent is not an allowable defence. Truth—even if what you're saying is actually true—is not an allowable defence.

Also, you do not have the right to an attorney. That's something I've always really taken umbrage at in the legislation. It's like putting an amateur hockey player who plays backyard hockey up against a team of professional hockey players every day and then being surprised that the professionals win every game. It simply is not fair. That's not how our court system, as you rightfully pointed out, operates in our great country.

I agree with you in principle on both of those points. It looks like you want to ask me another question, so I'll cut it short.

Mr. Brian Jean: I do.

I appreciate that, and thank you for pointing out that the Brians rule northern Alberta as far as the Conservative Party of Canada goes. I will say that I do appreciate all the letters you send into my riding, because it helps me with my election as well. That is a joke, for all those people who didn't get that.

Now, some people have said that the victims of hate crimes should not need the authorization of the Minister of Justice to go after perpetrators of hate crimes. That sounds to me like an American system, because of course in Canada you can't bring charges privately without the permission of the crown. In fact, no charges—just about—are laid against any individual in Canada without.... I would say that 99.99% of all charges are laid by the crown in right of Canada. So we don't have private prosecutions. Although they are available, very few are pursued.

So how would you respond to needing the authorization of the Minister of Justice, for instance, which is necessary today under the Criminal Code, if you want to proceed with a private prosecution?

● (1130)

Mr. Brian Storseth: You raise some very valid points when it comes to that. I can't disagree with your preamble at all. I would perhaps add only that hate crime is a serious offence—

Mr. Brian Jean: Very.

Mr. Brian Storseth: —and it's a serious offence that should be investigated by police officers and ruled on by judges with adequate training, as you have said. Also, it should be put forward in an open and transparent system, which is our Criminal Code of Canada. To do otherwise I think would diminish how serious an offence this truly is.

Mr. Brian Jean: Thank you.

Is that all my time?

The Chair: That's all the time, sir.

Mr. Jacob.

[*Translation*]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): Good morning, Mr. Storseth.

Section 13 of the Canadian Human Rights Act ensures that Canada meets its international treaty obligations and its commitments under the International Covenant on Civil and Political Rights, as well as other international and regional commitments. If section 13 makes it possible to meet those obligations, could you tell me why you think repealing it is a good idea?

Right now, section 13 does a good job of guaranteeing that Canada complies with the objectives of the international community in terms of human rights protection, ensuring, among other things, legal protection against hate speech and incitement to hate and the ensuing violence.

[*English*]

Mr. Brian Storseth: Thank you very much for your question.

On the first part of your question—why repeal it—I believe, as I've stated, that the core principle of this bill is to repeal it because it does infringe on our Charter of Rights and Freedoms. Paragraph 2(b) of the Charter of Rights and Freedoms states that "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication", is enshrined in our charter.

The debate really isn't about whether or not it impedes our own charter. The debate that has been put forward by the NDP opposition is to try to justify why that happens. I think we need to repeal this because not only has it not worked practically in the implementation—I don't believe that it has adequately protected against hate speech in our country—but I believe it infringes significantly on freedom of speech and expression, which is a cornerstone of our society.

One of the issues—and it's what I have heard in debate in the House and once again here today through your questions—is this reinforcement of two-tiered hate speech law in our country, one tier being what is currently in place under section 13 of the Canadian Human Rights Act, and the second being the Criminal Code. But I actually take umbrage at that because, as Mr. Jean has just stated so well, these are serious cases, and there shouldn't be different levels of hate speech in our country.

I don't believe that you can be prosecuted for a hate speech and only get, say, a $5,000 fine and that's adequate. If it's hate speech, it should go under the Criminal Code of Canada and it should be prosecuted to the fullest extent of the law. I believe that a two-tiered system actually takes away from that and minimizes it.

I believe these are serious offences that need to be investigated by a police officer. They need to be looked at in an open and transparent system that has all the checks and balances that we Canadians expect, and not by some quasi-judicial body where, at the end of the day, you don't even see the light of day of it, and by a quasi-judicial body that in some cases has rules of evidence that ebb and flow depending on who is presiding over the case. I don't think that is the right way to go. I believe we need an open and transparent system. I believe this should be looked at under the Criminal Code of Canada.

● (1135)

[*Translation*]

Mr. Pierre Jacob: Thank you. I have another question for you.

In the Taylor case, the Supreme Court of Canada stressed the importance of freedom of expression, but it didn't limit its analysis to messages that are likely to be hateful. It rather tried to stress the importance of looking at a message in its overall context. This is what it said:

> This analysis requires an approach sensitive to the context of a given case, it being necessary to explore the nature and scope of constitutionally entrenched human rights in light of the facts at hand.

In your opinion, what role do elements such as the context in which a statement was made and the intent of the person making the statement play in cases dealing with hate messages?

[*English*]

Mr. Brian Storseth: Thank you very much for your question.

As I've stated both with the government side and the opposition side, I think it's important when communicating the principles of this legislation that you don't delve into specific cases—or at least I try not to.

I do note, however, that the Supreme Court of Canada has also emphasized that section 13 does not target expression that some may find merely offensive, but rather that it should target only the most extreme forms of expression of hatred and contempt. I find that difficult to do with a law that everybody agrees is vague and very loosely worded. It's very difficult to adhere to those principles and standards when you're looking at a law that simply says somebody may feel as if they were offended. I think that's one of the fundamental flaws in this. That's where I would be at with that.

The Chair: Thank you.

Mr. Seeback.

Mr. Kyle Seeback (Brampton West, CPC): Thank you, Mr. Chair.

Thank you, Mr. Storseth. It's good to see you here today.

I'm going to ask you to comment. Have you seen the submissions on this from the Canadian Bar Association? I'm not sure if you have. If you have not, I'm going to read you a passage.

The Canadian Bar Association made a submission with what I think is fairly inflammatory rhetoric on this issue. What they say is that if section 13 is repealed, "Canadians can expect to be subjected to a plethora of hateful messages and communications, and a corresponding loss of civility, tolerance and respect in Canadian society".

There's no factual basis behind that. I find that to be a rather shocking statement.

You have extensively studied this. I wonder if you could comment on that and on whether you agree or disagree with that submission.

Mr. Brian Storseth: Well, first of all, I'm disappointed that the Canadian Bar Association would put forward something with so little actual fact or proof behind it. The fact of the matter is that it kind of sounds to me like they don't really have trust in Canadians, which I don't think is the fundamental principle that our government —I mean government as a whole—is based on.

I absolutely disagree with that, because what this does, what this legislation repealing section 13 does.... It's a question I get around town halls all over our country: what happens next? That's basically what they're asking: what happens after section 13 gets repealed? Well, at the end of the day, when you're repealing a piece of legislation like this the consequences will be that hate speech is actually going to be taken more seriously, I believe, because it will be investigated under the Criminal Code of Canada. It will be investigated by police officers. There will not be a branch of the bureaucracy looking over what is and what isn't free speech in our country.

I believe it's going to be a more accountable system. I believe it's going to be more open to Canadians. A system that is more open and transparent to Canadians can only be a good thing.

As for whether or not the Canadian Bar Association likes that openness and transparency, I can't control that, but I believe this is going to be a real plus, not only for free speech for our country but for the process and for respecting our natural rights as Canadians.

Mr. Kyle Seeback: So I take it that what you're saying—and I know you've talked about it somewhat today—is that you think hate propaganda should be dealt with exclusively under criminal law, as recommended by the 2008 Moon report.

Mr. Brian Storseth: Yes. Professor Moon actually said it quite well on page 31 of his recommendations. He addresses the fact that he believes that this should be moved from section 13, which is vague, loosely worded, and difficult to enforce in our country, to the Criminal Code, which isn't vague and which gives you all your natural rights as a Canadian, including the right to an attorney and so forth. It really balances out the system so that Canadians can have openness and transparency when dealing with hate speech. That's where this should be at.

It really is telling when the Canadian Human Rights Commission hand-picked Dr. Moon to look at this and Dr. Moon's own report says that section 13 should be repealed, as well as the penalty clauses, and that this should be moved into the Criminal Code of Canada. Obviously the minister has also commented in the House of Commons that he believes this is the right path, and the government is going to look at strengthening any amendments to the Criminal Code that need to be strengthened to ensure that a crime as serious as hate speech is taken in that light.

● (1140)

Mr. Kyle Seeback: Great.

Some suggest that we could just rewrite section 13 and therefore make it a little clearer, or try to clean up some of the vagaries. Do you think that's a way that we should perhaps go down or look at?

Mr. Brian Storseth: No, I don't believe a few simple amendments will change the fundamentally flawed nature of section 13 itself.

The other aspect is that section 13 actually provides a two-tiered system of looking at hate speech in our country. As I said, I would hate to be the person who tries to decide, "Okay, this is definitely hate speech, but it's not that bad, so we'll only give a $5,000 fine. This other one is definitely hate speech and it's more egregious, so...."

You know, if you're targeting an identifiable group with hate speech, you should be prosecuted for it. It should be taken seriously. There should be one code for it, not these different principles. If it's just a difference of opinion, if that's what it is, then that's what it should be left at as well.

The Chair: Thank you, Mr. Seeback.

Mr. Sandhu.

Mr. Jasbir Sandhu (Surrey North, NDP): Thank you, Chair.

You talked about the fact that if we take this section out of the act, somehow the police will take hate crimes more seriously. Are you implying that we or the police don't take it seriously right now?

Mr. Brian Storseth: What I'm implying—or I'm not implying it, I'm saying it—is that right now, under section 13, that's not investigated by the police. That's investigated by the commission itself, so through the commission and then through a tribunal.

At the end of the day, what I'm saying is that these offences are of a serious nature and should be investigated by the police. If you have a case of hate crime, it's serious, and it should be investigated by the police. It should be looked at in an open and transparent system with checks and balances such as we have in our Canadian judicial system under the Criminal Code of Canada. That's where it should be dealt with, not under a quasi-judicial body that often nobody hears or sees, where the rules of evidence ebb and flow on a daily basis, depending on who's presiding over the case. This is not, I believe, where these types of offences should be looked at.

Mr. Jasbir Sandhu: You described the Canadian Human Rights Tribunal in a very different way. You talked about it as being closed, as secretive. Do you think we have any sort of use for the Canadian Human Rights Tribunal?

Mr. Brian Storseth: Well, what I'm discussing here is the way in which section 13 has been practically dealt with by the Canadian Human Rights Commission itself. It's not just my comments or my words for it, as has been stated by Mr. Seeback. Dr. Moon, who was appointed by the commission itself to study section 13 and study all these aspects we've been talking about, came back and actually recommended that section 13 should be repealed and that the Criminal Code of Canada should be beefed up so that this can be dealt with under the Criminal Code.

I think it's important to note that in my legislation I've taken into account the fact that.... You know, I'm not saying that I have a prescriptive "this is the only way forward to do it". I've said that I'm open to some technical amendments the government is looking at should they fall within the spirit of the legislation. I put a one-year implementation period into this bill because I realize it's not my job as a private member to make the adjustments to the Criminal Code. That's the job of the Government of Canada and the Minister of Justice. So I put a one-year implementation period in there, through consultation with people in the field, to give us the ability and the time to make sure that the Criminal Code is exactly where we need it to be so that we can look after these cases in the serious manner in which they deserve to be looked at.

● (1145)

Mr. Jasbir Sandhu: You talked about section 2 of the charter with regard to freedom of expression, freedom of the press. I just want to quote from the section before that—that you could have "reasonable limits" on freedom of speech.

I'm not a lawyer, but in a criminal case the burden of proof is much higher than it is at a tribunal. Speaking as a minority, as a minority member, I think sometimes you need to look at a burden of proof that could be a little less than a criminal proof but still be hateful. I think this is another channel for us to pursue or to take a look at hateful acts or expressions by people.

How would you respond to that?

Mr. Brian Storseth: First of all, in the beginning you talked about section 1 of the charter, which in the end states, "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". I believe that's what you were referring to, correct?

The important part there is where it says "demonstrably justified in a free and democratic society". We've already established the fact, and there's been no refutation, that this is a loosely worded, vague law that has been abused over the 40-plus years it's been in play. I don't know how that would fit the restriction that section 1 actually puts on it, saying that it has to be demonstrably justified.

To your burden-of-proof argument, which is an argument the official opposition made in the House of Commons during debate, I believe what you're pushing for is a two-tiered system of hate speech in our country. I believe—and I do understand we're at a difference of opinion with this—that this actually demeans how serious in nature hate speech is.

If somebody is practising hate speech to the extreme extent of which the Supreme Court of Canada talked about section 13 needing to look at, then that needs to be dealt with in a serious manner. It needs to be investigated, as I think you would agree, by the police. It needs to be presided over by a judge in an open and transparent system, which in our democracy has been the Criminal Code of Canada for the entire length of time we've been a country. I think that's the mechanism in which we should be looking at this.

I hope when we talk about the different groups that are endorsing my legislation.... I do bring up the Muslim Canadian Congress, the Canadian Jewish Congress, PEN Canada, the *Toronto Star*. This is a diverse group of people with different backgrounds and different ways of looking at the issue. Seeing the support that I've had from these groups and continue to have from Canadians as a whole, I'm hoping we'll be able to sit down, Mr. Sandhu, and find a way in which we can get some opposition support on this. I believe issues like this are too important not to be looked at in a non-partisan light so that we can cooperatively look at this legislation.

The Chair: Thank you.

Mr. Goguen.

Mr. Robert Goguen: Thank you, Mr. Chair.

Mr. Storseth, it's clear in my mind that you believe the proper forum for hate propaganda is the Criminal Code. You've commented on transparency, and of course the superior training of the judges who sit there.

Certainly you're not a proponent, I guess, of hate speech, but of course the criminal system has certain restraints, one of them being prosecutorial discretion and the second one being the burden of proof, which Mr. Sandhu has alluded to.

Is it your feeling that perhaps the exercise of discretion, with of course the burden of "beyond all doubt" in criminal prosecution, is a further safeguard of the right to liberty of expression? It is a fundamental right, is it not?

What are your thoughts on that?

Mr. Brian Storseth: This is the system our judicial system survives under. This is one of the checks and balances we have.

When the opposition talks about the burden of proof, I'm not heartened by the fact that they believe it's okay.... I don't want to put words in their mouth, but they seem to believe it's okay, for certain instances, to not really be able to prove it, but as long as you feel like you may have been offended, there should be a punishment.

I don't believe that's what Canadians feel. It's not so much about how I feel about it. I'm speaking on behalf of the literally thousands and thousands of Canadians who have contacted me in my office on this legislation.

As I said when going through the chronology, this isn't something I just picked up last week and decided to put forward in a private member's bill. The fact of the matter is that I worked on this with Mr. Dykstra when he proposed it in 2007. I proposed it again in 2008. I note that this committee, in the minority context in which the government was outvoted, still found, through their study in 2008—Mr. Rathgeber was here, so he might be able to comment on it—that there were severe flaws with section 13, even in a minority context.

So when you go through the chronology of this and how extensive and how long a process this has been, I think we've done our due diligence. I think we've consulted with Canadians. I think we've consulted with the bureaucracy on it. I believe it's time we repealed section 13 of the Canadian Human Rights Act.

I actually believe Canadians as a whole are onside with this, no matter what aspect of the political spectrum you come from.

● (1150)

Mr. Robert Goguen: I'm going to share my time with Mr. Jean.

The Chair: Mr. Jean.

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

Mr. Storseth, you mentioned some individuals, one being the *Toronto Star*, who seem to be in favour of your position on this particular bill. Actually, it made me give second consideration to your movement when I saw that they were in favour of it.

Some other associations have also come out in favour of this: PEN Canada, the Canadian Association of Journalists, the Canadian Civil Liberties Association, the Muslim Canadian Congress—I was surprised—Ezra Levant, Mark Steyn, and Maclean's Magazine.

I want to point out one particular group, a gay rights lobby group called Egale Canada, which you mentioned. They came out in favour of your position. It wasn't that long ago that if you said something pro-homosexual you would actually be censored, so they felt that your position on this—and eliminating section 13—was the best position.

Are there any other groups that I've missed mentioning? These are groups that represent a distinctively different part of Canada from those that usually come out and support positions of this government and, in particular, of a Conservative from Alberta.

Mr. Brian Storseth: That's an excellent point, Mr. Jean, and you're absolutely right.

The groups you listed are not traditionally in the voter block that I would rely on to get re-elected in northern rural Alberta, but that goes to show how this legislation really is the norm now. When it was first brought up, this was a contentious piece of legislation, and I would submit to you that it's really not that contentious a piece of legislation now. When the groups you mentioned, such as PEN Canada and some of these others, can agree with the Catholic Civil Rights League, the *National Post* editorial board, the *Toronto Star*, and the B.C. and Yukon Catholic Women's League on a private member's piece of legislation, there is broad consensus for this across our country. And dozens of others have endorsed this legislation.

As I've said to you, and I think you've seen in your riding and across our country, Canadians accept this as a piece of legislation that needs to move forward. I'm hoping that not only will we be able to get the support of the colleagues that I had in the last vote, but that through further discussion and consultation with my colleagues in the opposition we'll get more opposition votes on this legislation. This isn't something that should be used as a partisan wedge. It's not something their base doesn't agree with as well.

The Chair: Thank you.

Madame Boivin, welcome back to the committee, now as the critic for the official opposition.

[*Translation*]

Ms. Françoise Boivin (Gatineau, NDP): Thank you, Mr. Chair. I apologize for being late, but my colleague and I participated in the debate on Bill C-26 and we have been running around.

Mr. Storseth, thank you for being here to talk about your bill. It has caught my attention for some time now. Ever since we started talking about it, we have realized that it is not so simple. We keep going back and forth between various protections that we want to provide. I am an advocate for freedom of expression. It is very important to me. I have spent my life on the radio and on TV, so for me, freedom of expression is a fundamental concept protected under the Charter and I am well aware of that. But, at the same time, I have always known that it is our responsibility to understand that each right can have limits that we set as a society. So it is always a question of finding the right balance.

I don’t think anyone around this table is in favour of hate speech, whatever the extent may be, and I don’t believe that such is the intent of your bill. As I said, once again, it is a matter of finding the right balance.

Mr. Sandhu raised a point that interests me and that would be worth exploring a bit further. I have been a lawyer my whole life and I am going to explain how I see the issues related to the Charter and to human rights under the Canadian Human Rights Act and under current provincial charters, such as the Quebec Charter of Human Rights and Freedoms. As a lawyer, when people came to my office, we could sometimes end up with circumstances that might have led to various types of legal situations. That could entail criminal offences, civil remedies, and so on.

My concern with your bill is that we are taking away an existing remedy. I also met with various interest groups on the issue and some of them felt a certain degree of defeatism. We all pretty much share the same point of view on the issue. Cases before the Canadian Human Rights Tribunal—and in Quebec—sometimes take so long that it is discouraging. But a case that takes a long time does not mean that it is a bad case. Some people have opportunities and they sometimes take advantage of the system. Some people file all sorts of complaints for a yes or no. It has often been the case with section 13. Wouldn't we be throwing the baby out with the bathwater if we passed your bill? Shouldn't we work more on improving things and perhaps adding some powers? I think Mr. Moon referred to this bill and said that we should perhaps find a way to allow the Canadian Human Rights Commission to have a specialized tribunal that deals with abuses of the system and with those who sue for whatever reasons in order to protect the right to freedom of expression. At the same time, we have to keep a recourse that is completely different from that of the Criminal Code and that does not minimize the serious nature of the complaint. I don't agree with your argument that, if it is at the criminal level, it is more serious. Some people don't go to criminal court and they file civil suits because it is about the burden of proof.

I said a lot of things, but I wanted to share all this with you.

● (1155)

[*English*]

Mr. Brian Storseth: Thank you very much, Madame Boivin.

Ms. Françoise Boivin: Just say yes.

Voices: Oh, oh!

Mr. Brian Storseth: First of all, I would like to congratulate you on your appointment.

Ms. Françoise Boivin: Thank you.

Mr. Brian Storseth: I thank you for the work you've been doing on this.

You talked about meeting with different lobbyist groups and the sense of defeatism. I would be more than happy to sit down with you and any groups that would like to talk about my legislation. As I have said here already today, I am open to some technical amendments or amendments that will stick within the spirit of the legislation I have put forward.

I would just address, in my short time, one point that you made on how long it takes for the Canadian Human Rights Tribunal to go through this. I think that's part of the problem, or one part of the problem with this. I think we agree on this, that it takes far too long and there is no guarantee of a speedy trial or even necessarily an attempt at a speedy trial or investigation. It is something that really runs in contradiction to what we would do under the Criminal Code of Canada and what we would do under other investigations.

The last point I'd like to make is that these are tremendously serious offences, and I feel they need to be dealt with as such. I'm of the belief that the Criminal Code of Canada is the proper place for that to happen.

With that, I would just like to thank you for your intervention. I look forward to working with you on this.

The Chair: Thank you, Mr. Storseth. You've obviously been ably helped by your assistant here, who has been able to provide you with the information as required.

We need to elect a new vice-chair.

● (1200)

[*Translation*]

Mr. Robert Goguen: I would like to nominate Ms. Boivin. She already had a promotion, let's give her another one.

Ms. Françoise Boivin: You are too kind.

[*English*]

Mr. Robert Goguen: I'd like to nominate Madame Boivin as the vice-chair of the committee.

Some hon. members: Agreed.

The Chair: Congratulations.

Ms. Françoise Boivin: Merci.

Can we have five minutes now for a coffee break?

The Chair: Okay, five minutes.

● (1200)

(Pause)

● (1205)

The Chair: I call the meeting back to order.

We have four witnesses appearing today, three in person and one by video conference. I'd like to welcome Ms. Hunter, Mr. Toews, and Mr. Freiman, who are here in the room, and by video conference Ms. Mahoney.

We can see very clearly. I hope you can hear us fine, Ms. Mahoney.

Professor Kathleen Mahoney (Fellow of the Royal Society of Canada, Barrister and Solicitor, Professor, Faculty of Law, University of Calgary, As an Individual): Yes, I can.

The Chair: Okay, thank you.

I think all of you have been advised that you have a five- to seven-minute opening address.

Ms. Hunter, would you like to start?

Ms. Judy Hunter (Staff Lawyer, Legislation and Law Reform, Canadian Bar Association): Good afternoon. Thank you for the invitation to the Canadian Bar Association to present its views to the committee today on Bill C-304.

The CBA is a national association of over 37,000 lawyers, law students, notaries, and academics. An important aspect of CBA's mandate is to uphold the rule of law and seek improvements in the law and in the administration of justice. It is this optic that informs our comments to you today. The CBA's national constitutional and human rights law section and equality committee are the authors of the submission you have before you and are composed of lawyers with specialized knowledge in human rights.

Mr. Toews is a member of the constitutional and human rights law section. He practises human rights law in Winnipeg.

● (1210)

Mr. Mark Toews (Member, Canadian Bar Association): Thank you.

You've received our submission. This morning I'd like to provide a synopsis of CBA's concerns with Bill C-304 and reiterate our recommendations.

The CBA has a keen interest in and supports the work and operation of not only the Canadian Human Rights Commission and the tribunal but also human rights commissions and tribunals at the provincial and territorial level.

The CBA supports the inclusion of and retention of section 13 of the Canadian Human Rights Act. We support the values embodied in the Canadian Charter of Rights and Freedoms and in human rights legislation. While we support the right to freedom of expression, it is important to note that no freedom is absolute. All rights and freedoms are subject to limitation by countervailing rights.

The right to be free from discrimination based on race, religion, or other characteristics, and to be treated with dignity, is a countervailing right that can be a reasonable limit to the right to freedom of expression. It is a fundamental value in our society, arguably as fundamental as the value of free expression. It is also a value that is consistent with the spirit of the charter as expressed in section 15, the equality rights provisions, and section 27, dealing with Canadian multiculturalism.

Now is not the time to repeal section 13. The number of hate messages and communications has not diminished over the years. The advent of the Internet, including e-mail, and social media such as Facebook and Twitter have made it possible to spread hate messages instantly and to a worldwide audience.

Recently the Honourable Justice Rosalie Abella of the Supreme Court of Canada publicly lamented that we haven't learned the most important lesson, which is to try to prevent the abuses from happening in the first place.

It is submitted that atrocities have occurred where a culture of prejudice and discrimination was permitted to grow—for example, the Tutsis in Rwanda, the Falun Gong in China. Such a culture is created where the dissemination of hateful and intolerant views is allowed unchecked.

In our submission we have provided an example of the type of anti-Semitic hate messages that are spread today via the Internet but that were successfully dealt with by the tribunal. By voting to remove section 13 from the act, parliamentarians are in effect voting to allow the proliferation of this type of egregious speech in Canada and beyond via the Internet.

This seems rather ironic, given that at the same time the government is establishing an office of religious freedom designed to promote and protect religious freedom and minorities abroad, to oppose intolerance, and to promote Canadian values of pluralism and tolerance. These are the same values that section 13 is designed to protect. We believe the protection of religious freedom and minorities begins here at home.

Section 13 applies to conduct that falls short of criminal behaviour but that nevertheless poses harm to vulnerable target groups. Without section 13, the only tool the state will have to deal with this type of discrimination is the Criminal Code.

In order to successfully prosecute an individual under subsection 319(1) of the Criminal Code, the crown must prove, on the more onerous criminal evidentiary standard of “beyond a reasonable doubt”, that the accused publicly communicated statements and intended to incite hatred against an identifiable group to such a degree that they're likely to lead to a breach of the peace.

For example, in the Ahenakew case, despite making comments about the Jews, including that they were a disease, he was ultimately acquitted, since the elements of the offence could not be proven at the criminal standard. If only the Criminal Code tool remains, it is foreseeable that hate messages such as the examples in our submission will proliferate and spread unchecked in Canada and beyond its borders.

It's interesting to note that the United Nations Human Rights Committee has upheld section 13 against allegations that it violated freedom of expression guaranteed by article 19 of the International Covenant on Civil and Political Rights. In fact, article 20 of the international covenant prohibits any advocacy of religious or racial hatred that would incite discrimination. This suggests that retaining section 13 is necessary if Canada is to meet its obligations under the covenant.

While the CBA recommends the retention of section 13 in the act, it agrees with the repeal of the penalty provision in paragraph 54(1)(c) and its related provision in subsection 54(1.1), while retaining the provisions in paragraphs 54(1)(a) and (b). Penalty provisions are not consistent with the core remedial functions of human rights legislation, and are contrary to the underlying philosophy of such legislation, which is the eradication of discrimination, the encouragement of equality, and fostering tolerance.

● (1215)

By repealing these two provisions, Parliament will respond to the need to protect the right to freedom of expression and will underscore that remedies for violations of section 13 are purely civil. The repeal of paragraph 54(1)(c) and subsection 54(1.1) would remove any basis for concerns about the constitutionality of section 13.

Those are my brief comments. Thank you.

The Chair: Thank you.

Mr. Freiman.

Mr. Mark Freiman (Past President, Canadian Jewish Congress, President, Canadian Peres Center for Peace Foundation, As an Individual): Thank you, Mr. Chairman.

Thank you, members of the committee, for affording me this opportunity.

Let me start out by specifying that I appear today as an individual, but I hope as an individual with some relevant background experience. I am the immediate past president of the Canadian Jewish Congress, which during my tenure was recognized as the leading voice for the Jewish community. I am currently the president of the Canadian Peres Center for Peace, and I've had the privilege—in my view it is a great privilege—of acting on behalf of the Canadian Human Rights Commission in the matter of the Internet hate site that was maintained by Ernst Zundel. That was the first successful proceeding brought under subsection 13(1). I've also had opportunities to appear at all levels of court up to and including the Supreme Court of Canada to defend the constitutionality of subsection 13(1) and its analogues.

This morning, however, I do not come clothed in any other authority, and I hope simply to raise a few points with you for your consideration. Let me give you the overall perspective.

It is my view that subsection 13(1) of the Canadian Human Rights Act is an important resource in protecting vulnerable communities from the harm caused by hate propaganda. It is constitutionally appropriate in a free and democratic society because it deals only with dangerous and harmful speech and is not concerned simply with offensive speech. It deals with dangerous and harmful speech in a way that minimally impairs the ability of Canadians to debate freely important social and political issues, including the ability to take strong and controversial positions.

The Criminal Code, on the other hand, especially section 319, which criminalizes some aspects of incitement speech, is not an adequate substitute for subsection 13(1) of the Canadian Human Rights Act. It also follows that it's not advisable to restrict the definition of hate to advocating violence, which, as Mr. Toews has ably demonstrated, is really what underpins the Criminal Code.

That's not to say that subsection 13(1) is without issues or problems. There are many ways in which the way subsection 13(1) is currently administered could be significantly improved so as to, among other things, weed out frivolous complaints at an early stage, to accelerate the pace of the hearings, to better protect the legitimate rights of respondents by levelling the playing field, and crucially, as Mr. Toews said, to repeal the penalty provisions that are attached to the current provision. Let me simply specify a couple of points.

First, it's important to note that subsection 13(1) does not deal with speech in the abstract. It does not deal with all written, let alone all oral, communications. It deals with a single medium of communication, namely the Canadian telecommunication system and notably the Internet and computer-generated telephone messages, what we today call robocalls.

It is important to remember that the regulation of telecommunications for content is not unfamiliar. On the broadcasting side, the CRTC on a daily basis engages in regulation on the basis of content. The regulation of speech outside of the broadcasting context is also not as unfamiliar as some would portray it as being. In fact the regulation of speech in our society is not confined to prohibiting someone from yelling “Fire!” in a crowded theatre. Let me just remind the committee of some examples.

We have a law of defamation, which regulates the content of speech and attaches penalties to speech. We have the principle of contempt of court, which regulates speech dealing with the justice system. We have regulation of advertisements addressed to children. We have regulation of advertisements of dangerous products, like tobacco and alcohol. We have regulation of the strictest sort dealing with pornography and, most importantly, child pornography, including merely cartoon or even verbal representations.

● (1220)

The key in every case is that this regulation is geared to preventing harm and to saving society from danger.

Is hate speech dangerous? To ask the question is to answer it. History provides the clearest examples of the mortal dangers—that is, dangerous to life—that hate speech can carry. Study Nazi propaganda in the thirties. Study Cambodian propaganda in the seventies. Study anti-Tutsi propaganda in Rwanda in the nineties. Study racist propaganda in the former Yugoslavia of the nineties. You will get your answer.

Does subsection 13(1) target only dangerous speech, or is it aimed at politically incorrect speech? Because of the definition given by Chief Justice Dickson in the Taylor case in the Supreme Court of Canada, the regulation is strictly confined to the most extreme kinds of speech. I won't go into the legal definitions here, but they are extremely rigorous. Even Professor Moon, in his remarks, has acknowledged that subsection 13(1) has only been used, up to now, on speech that is at the far end of hate propaganda.

The Criminal Code, in my submission, is not an adequate substitute or an adequate basis on which to protect society from these sorts of dangers. Mr. Toews has given fine examples of it. Let me simply add that the target of prosecution is the wrongdoer, and, appropriately, we set high standards to protect against wrongful convictions.

The focus of the Human Rights Act is the message itself, not the wrongdoer. Its purpose is to protect society from the baleful consequences of those most dangerous messages.

The Chair: Thank you, Mr. Freiman.

Now, by video conference, we have Ms. Mahoney, all the way from Calgary.

Perhaps you would like to give us an opening address. Thank you very much.

Prof. Kathleen Mahoney: Thank you very much. I'm very honoured to have been asked to participate in your deliberations.

I am also appearing as an individual, but I do have some background in this area. I have provided you with a very detailed paper that I have written on this topic, and I hope you will have a chance to read it.

In terms of my personal involvement in the past, I was representing the Women's Legal Education and Action Fund twenty years ago in both the Taylor case and the Keegstra case emanating out of Alberta, which are the leading cases today in both the criminal law and the Canadian Human Rights Act's section 13. From that perspective, I'm very familiar with the legal background, as well as the factual background, of both of those cases.

Today I'd like to address basically three points. A number of the points that I could address have been addressed by the Canadian Bar Association and the Canadian Jewish Congress, so what I'm going to talk about first of all, essentially, is that hate expression is more than expression. Hate expression is a practice of discrimination that actually causes harm to vulnerable groups and to society. Those harms include both physical and psychological harms.

Hate speech perpetuates stereotypes and creates barriers to the social, economic, and political participation of the groups that it targets. It silences people, so it affects freedom of expression of others. It is proliferating and increasingly accessible on the Internet, which has already been mentioned, and it comes before you as an issue as hate speech is increasingly proliferating at an alarming rate. For example, 15 or so years ago, there was one hate site on the Internet. Today there are over 5,000 such sites. That's my first point.

The second point I wish to address is that hate speech targets women. Sometimes this group is not recognized as being targets of hate propaganda. It's important because women are not protected otherwise than in human rights legislation. I'm thinking particularly about lesbians. I'm thinking about black women and how they've been portrayed in hate speech. I'm thinking about aboriginal women and how they've been degraded in various forms of hate speech. I'm thinking about people with disabilities and how hate speech has promoted eugenics and euthanasia for this group of people. So I want to focus some of your attention, please, on women as a group.

Thirdly, I want to talk about the fact that the courts have recognized that this type of expression is more than expression. It amounts to the types of harms that we're used to recognizing in other forms and under a different kind of language.

Those are the three points I want to talk about.

First of all, over many years, Parliament—including yourselves—has identified equality as one of the most important underlying values and principles of a free and democratic society. In fact, the courts have said that equality is the genesis of the rights and freedoms guaranteed by the charter. I think what they meant by that was that the rights and freedoms in the charter are not very meaningful if all Canadians cannot experience them, and that includes freedom to speak, freedom of speech.

The court has further told us that the charter itself must not be used as an instrument of better-situated individuals to roll back legislation that has as its object the improvement of the condition of less-advantaged individuals. I would suggest to you—and the highest courts in the land have agreed with me—that the government protection of equality and expressive rights in section 13 addresses this very point.

● (1225)

In other words, government has acted against discrimination and for equality by creating section 13 of the Canadian Human Rights Act. In that sense, it's quasi-constitutional legislation, because it's equality-seeking, and in that sense it's of profound importance to Canada's fundamental basic values.

Now, the point on harm is one that I want to stress. Hate speech causes harm to society, it causes harm to the groups that it targets, and it also causes harm to individuals. Its reach has increasingly been expanded through the Internet, which section 13 expressly addresses.

With respect to women, when women are targeted, hate expression degrades and depicts them in ways that are specifically gendered. The harmful effects....

Sorry?

The Chair: You have one more minute for your opening address.

Prof. Kathleen Mahoney: All right.

I'll skip to what I think is the most important part of this debate, which is often misunderstood, and that is that hate speech is a practice of discrimination. It's more than just speech. This is where the argument lies in the popular media, in *Maclean's* magazine, etc. They treat hate speech as just a form of expression. It's not.

The Supreme Court of Canada has held that hate speech is more than that. They've recognized it in, for example, sexual harassment. People can sexually harass, be punished for it, and have their so-called speech limited if they have poisoned the work environment. They can do that by posting pornography, for example. It could be argued that posting pornography is freedom of speech, but when it affects a person's ability to work, it's more than that.

Hate speech operates in the same way. Hate speech hurts people. Hate speech interferes with employment. Hate speech interferes with people's freedom of speech. So in that sense we have to, in my humble submission, see hate speech for exactly what it is. It is more than expression. It is a form of discrimination.

I'd be happy to expand upon that in the question period.

Thank you very much for your attention.

● (1230)

The Chair: Thank you.

You mentioned your submission to the committee. It has not been distributed. The committee members do not have it. It was received yesterday by the clerk. It's only in English and it has to be translated before it can be distributed. So it has not been distributed and the members don't have it.

Prof. Kathleen Mahoney: Yes, I understand that.

The Chair: Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

Ms. Mahoney, I hope to be able to read your submission. Will it be translated? It is true that it is 60 pages, but still. As a francophone, I insist on bilingualism, so I will refrain from making any comments.

Having said that, Ms. Mahoney, I think that your remarks were very clear. I am happy you pointed out that hate speech is not freedom of expression, but a form of discrimination described in the Canadian Bill of Rights. Actually, the Canadian Bill of Rights prohibits it. When we read section 13, we often forget that it refers to section 3. Section 3 is clear. It tells us what the prohibited grounds of discrimination are. Thank you for pointing that out.

And I would also like to thank the other witnesses for joining us today.

[*English*]

Mr. Freiman, I would like you to maybe answer what the presenter of that bill was saying a bit earlier. He kind of stated the fact that it's a serious offence, heinous speech, so it should be dealt with by the Criminal Code. I know you addressed it, but there are still a lot of people who think that if we think it's serious, then the Criminal Code is it. But there could be two different types of legalities around it.

Mr. Mark Freiman: That's really what I was trying to get at in some of my comments.

It's probably useful to think again about the distinction as to what is intended to be accomplished. In a criminal offence, we intend to punish the offender. In remedial legislation, such as human rights codes and human rights acts, we intend to improve the conditions of society and to protect individuals.

The kinds of requirements that are to be found in the Criminal Code are extremely important. They are central to our charter in their protection of people accused of crimes. But if the purpose is to protect society from a dangerous mode of conduct, in this case speech, then the Criminal Code is an awkward vehicle to accomplish that.

That in fact is why I agree wholeheartedly with Mr. Toews's submission on behalf of the Canadian Bar Association that penalty provisions that currently exist in the Canadian Human Rights Act are anomalous, incongruous, and probably should not be found there.

[*Translation*]

Ms. Françoise Boivin: Thank you.

I was actually just getting to that. I wanted to talk about the recommendations of the Canadian Bar Association. You didn't really have time to elaborate, but the CBA's section and committee recommend that section 13 be kept, but that we repeal paragraphs 54 (1)(c) and 54(1.1).

Would you like to further expand on your approach to the issue?

[*English*]

Mr. Mark Toews: Sure. I'd be happy to.

As I articulated in my submission, the whole purpose behind the Human Rights Act , as Mr. Freiman has indicated, is to help improve societies and to help change the behaviour. It's also to correct the harm that has been done. Also, it provides the ability to order to cease and desist from what has been going on—the hateful messages that have been communicated—and if necessary to provide certain compensation for the victim. That is to meet the objectives to help encourage equality, foster tolerance, and to try to get rid of discrimination and prejudice.

The penalty takes it outside of those particular objectives. It is not necessary. It is not consistent with the philosophy and underlying values. Therefore, it is no longer consistent with the objectives of the Human Rights Act. It's questionable whether the Human Rights Act should be doing it constitutionally in the first place for a matter such as this.

● (1235)

The Chair: Thank you.

Mr. Jean.

Mr. Brian Jean: Thank you, Mr. Chair. I would like to give my time to Mr. Rathgeber, since he hasn't had an opportunity.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Jean, Mr. Chairman.

Thank you to all the analysts for your appearance here today.

I must say I am concerned, and perhaps disturbed, by each of your testimonies. I believe that any sense of government-regulated free speech is antithetical in a true, free, and democratic society. I think either you believe in free speech within reasonable limits, or you don't.

I'm going to start first with Mr. Toews, from the Canadian Bar Association. You outlined that one of the premises of your group is to uphold the rule of law. I couldn't agree more. I subscribe entirely to that subscription.

My question then is how you can defend a law that states it's an offence when somebody says something or communicates something that is, and I quote, “likely to expose a person or persons to hatred or contempt”.

You don't need actual victims. In somebody's mind it has to likely be contemptuous or hateful. Truthfulness, as noted, is not a defence to the person who is caught in the crossfire of the bureaucrats who are determining what is hateful and what is contemptuous. There are no actual victims and truth is no defence. We can get into the procedure of the human rights commissions, which allow hearsay evidence and no right to cross-examine, but we'll leave that aside.

How is it defensible that something can be hateful without actual victims?

Mr. Mark Toews: The major concern is that this kind of a speech can incite to hate.

It has to be looked at objectively: it will reasonably incite people to hate or to show contempt for the specified group. That is the concern. There doesn't have to be a victim yet. The whole purpose of these provisions is to prevent the abuses from happening, preventing there being victims in the first place.

Mr. Brent Rathgeber: So you support punishing pre-crimes?

Mr. Mark Toews: This is not a pre-crime. This isn't a crime. This is a provision in the Human Rights Act to try to correct discriminatory behaviour that undermines the dignity and respect for every individual and undermines equality in our society.

Mr. Brent Rathgeber: You just said because it's likely to lead to further damage down the road, so you are advocating punishing something now to prevent something actionable and more harmful down the road.

Mr. Mark Toews: I'm not suggesting any punishing, and that is entirely consistent with—

Mr. Brent Rathgeber: Sorry, sanctioning.

Mr. Mark Toews: It's not even sanctioning. This is about correcting an ill that is going on. This is about remedying a problem that could proliferate, that is being spread in society and could incite hatred and contempt.

Mr. Brent Rathgeber: The fact that there are no actual victims doesn't concern you.

Mr. Mark Toews: That is not critical to this particular piece, no.

Mr. Brent Rathgeber: Mr. Freiman, you and I have had this conversation before. I'm afraid you are not going to be able to convince me; I know I'm not going to be able to convince you.

I want to draw on your theatre analogy. I will agree that all free speech is subject to limits, and I support the laws against liable and slander. I also support the hate provision speeches in section 319 and 320 of the Criminal Code. I further agree with you that it ought to be actionable if someone yells “Fire!” in a crowded theatre. You and I agree on that. Would you agree with me that if the theatre is empty—I'm the only person in the theatre—I should be allowed to yell “Fire!” as loud as I like?

Mr. Mark Freiman: If we're going to confine it to that question, I think yes.

Mr. Brent Rathgeber: So you see that there have to be victims for there to be a state-sanctionable compromise on my free speech?

Mr. Mark Freiman: No, because I'm not persuaded that your assumptions are correct. I'm not persuaded that we are dealing here with punishment and I'm not persuaded that this regulatory provision in this legislation is aimed at redressing harm already done to victims.

To me, the better analogy is the analogy to prohibiting advertisements aimed at children or prohibiting advertisements of dangerous products.

● (1240)

Mr. Brent Rathgeber: You all remember the great liberal philosopher John Locke, who said that my freedom to swing my fist ends where your nose begins. I think we all agree that if I'm alone on an island or in a theatre by myself, I should have the complete liberty to do what I want. We all agree with that.

Mr. Mark Freiman: Yes.

Mr. Brent Rathgeber: But you agree that since I'm close enough to Mr. Jean, and his nose is in my arm's length, that compromises my liberty. You'll agree with that?

Mr. Mark Freiman: That's correct.

Mr. Brent Rathgeber: Okay. So do you see the need for actual victims? Sadly, Mr. Toews does not.

Mr. Mark Freiman: I believe that the perspective is the protection of society and the protection of the targets of the speech. So there are victims, certainly, if a specific group is singled out, is dehumanized, and is portrayed as having no redeeming virtues. This is, by the way, the definition that Mr. Justice Dickson articulated in the Supreme Court of Canada. In those circumstances we don't need to quibble about the concept of victim and define it. Yes, there is a target, and yes, you do need a target. Simply saying something in the abstract, without specifying that it is a given group that is being targeted—

Mr. Brent Rathgeber: What about—

The Chair: Thank you, Mr. Rathgeber; your time is up.

Mr. Cotler.

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

Let me make full disclosure at the outset. I also appeared before the Supreme Court in the trilogy of cases that was referenced earlier by Kathleen Mahoney.

I think it's important that we appreciate the basic principles and propositions that were set forth and that can frame our understanding here. The court said, number one, that hate speech constitutes an assault on the very values that underlie free speech to begin with; number two, that hate speech should be seen as not just a speech issue, but an equality rights issue, as a discriminatory practice; number three, that it was a minority rights issue, the right of minorities to protect against group-vilifying speech; number four, that it was a harms-based issue, and they referred to the harms-based rationale; finally, number five, that it was an implementation of our international law undertakings in that regard.

So I think we need to frame it in terms of these basic principles and propositions, and I'd like to give Ms. Mahoney an opportunity to expand upon that, which she was about to begin, and that was why hate speech is a discriminatory practice and an equality rights issue.

Prof. Kathleen Mahoney: Thank you very much, Mr. Cotler.

I was thinking as I was listening that perhaps it would be important to give a couple of examples of how this works, as opposed to discussing it in the abstract. Chief Justice Dickson remarked when he was deciding these two leading cases way back twenty years ago—and I think the rationale is as important or more important today—that the Holocaust did not start in the ovens of Auschwitz, it started with words. The court was acknowledging that words that are hate words are much more than expression. Similarly, right today, if we want to use an up-to-date example, in Uganda, the parliament of Uganda, as of February, has reintroduced a bill to require capital punishment for homosexuals. They also want to criminalize anyone who knows of homosexuals who does not disclose who they are. And thirdly, they want to criminalize anybody who rents accommodation to homosexuals.

What led to this rather extraordinary legislation, which has been addressed by everybody from President Obama and Hillary Clinton to human rights organizations all over the world? In addition to Uganda, there are 37 other countries in Africa that are moving in the same direction. What has led to this?

What has led to this has been a concerted campaign in fact led by North American evangelical homophobic preachers who have gone to Africa and have stirred up through their words and through their preaching such virulent hatred of homosexuals that it has now led to legislation requiring capital punishment for anyone caught in a homosexual act more than twice.

I think these are two very good examples of how hate speech operates. It's not just a heated conversation about different opinions. It's targeting a group, it's saying they're less than human. It's saying that their living, their actual act of living, is no longer tolerable to people who don't live in the same way, and therefore drastic measures must be taken against them.

This is what our court has identified as extreme speech. This is what the Canadian Human Rights Act is addressing in section 13. This is what the courts have said upholds that legislation constitutionally.

There are hallmarks of hatred that the Supreme Court of Canada has accepted that make this section of the Canadian Human Rights Act very narrowly applicable to speech. It doesn't apply across the board. It's not offensive speech. It's not a speech that embarrasses or makes people uncomfortable. It's speech that harms people and puts them in danger, puts them at risk of further harm from people acting on that speech to hit people, to deny them employment, to actually murder them.

We've seen that. We've seen suicides as a result of hate speech of kids in school. We've seen murders of people in the U.S. like Matthew Shepard, for example, who was targeted because he was gay and was taken out and murdered. Those are the effects. And Justice Sinclair in Manitoba, in the Manitoba justice inquiry of the death of Helen Betty Osborne, an aboriginal girl who was murdered by three white boys and was targeted because she was an aboriginal so-called “squaw”, stereotyped as worthless.... These boys set out to find an Indian squaw to murder. That murder, Justice Sinclair found, was fed by hateful stereotypes of aboriginal women.

Members of the committee, it's my most respectful submission that you must very carefully contemplate these things. This isn't just speech. There are victims, there are many victims who are targeted by hate speech. Just because it's not a fist in the face doesn't mean they aren't harmed.

● (1245)

The Chair: Thank you.

Prof. Kathleen Mahoney: It doesn't require physical harm.

Thank you.

The Chair: Thank you.

Mr. Seeback.

Mr. Kyle Seeback: Thank you, Mr. Chair.

Mr. Toews, I read the submission of the Canadian Bar Association, and I find the statement that you wrote and you repeated to the committee today to be quite shocking. I'm going to read that statement.

What you're saying in effect is that if section 13 is removed, Canadians can expect to be subjected to a plethora of hateful messages and communications, and a corresponding loss of civility, tolerance, and respect in Canadian society. What you seem to be saying is that Canada is populated by a whole bunch of hateful people, and the only thing that is stopping them from unleashing this avalanche of hate is section 13 of the Canadian Human Rights Act. I find that, quite frankly, to be a shocking statement.

I'd like you to tell me what empirical data you have for making that statement. What surveys have you conducted? What research have you done? Or is this just something you decided to throw into the submissions today?

Mr. Mark Toews: I think history is our best teacher to be able to answer that particular question. When hate messages are allowed to proliferate unchecked and without any accountability whatsoever, we see the effects—

Mr. Kyle Seeback: This is not unchecked. We have the Criminal Code.

Mr. Mark Toews: Well, the Criminal Code, that's a whole other discussion. I have a question whether the Criminal Code can adequately keep in check a lot of the matters we're dealing with. Much of the speech is allowed unchecked, we would respectfully submit, without section 13.

Mr. Kyle Seeback: What's the empirical data?

Mr. Mark Toews: The empirical data is shown throughout history.

Mr. Kyle Seeback: So there's no current empirical data that you have that you're going to present to this committee to show that if section 13 is gone, that's going to unleash a horde of hateful speech and messaging. That's basically what you're saying today.

Mr. Mark Toews: We've already seen a significant increase, and we've already heard that from other submissions, with the incredible increase of what is proliferated on websites and so forth. We can only expect that it will increase if continued to be left completely unchecked.

Mr. Kyle Seeback: It's your expectation or opinion. It's not based on any kind of data that we have. I just want to make that clear. I mean, that's fine. I just want to understand that.

● (1250)

Mr. Mark Toews: We look at historical data and we do not ignore it. We do not allow history to repeat itself—

Mr. Kyle Seeback: Then I find your argument today very incongruous. You're saying what we need to do is stop the hateful speech by having a cease and desist; that's what's going to do it. It would seem to me that if we have this growing and expanding problem, then in fact what you would be suggesting is we need to have stronger penalties to stop it. If you're just going to say there's going to be a cease and desist and no actual penalty, how's that going to stop people? Your argument is illogical. You're saying there's a huge problem but we should water down the provisions. I don't understand that.

Mr. Mark Toews: Well, I will simply respond to that in this way. The purpose of this act is to help prevent the discriminations, to help encourage equality and to foster tolerance. There is an educative element to the Human Rights Commission, to the Human Rights Tribunal, to help change these kinds of behaviours. The cease-and-desist order and to correct the problems is within the mandate of the Human Rights Act, and that is what needs to be encouraged and supported.

Mr. Kyle Seeback: If I have any time left, if Mr. Rathgeber would like it, he seemed to be going down a great path....

Mr. Brent Rathgeber: Thank you. Sure.

Ms. Mahoney, you indicated in your opening comments that there were 5,000 hate speech sites. Is that in Canada, or is that worldwide?

Prof. Kathleen Mahoney: Well, it doesn't matter where the sites are. They can be anywhere. When the sites were counted a few years ago, that was the number that came up. My guess would be that they were originating in Canada as well as elsewhere.

Mr. Brent Rathgeber: Since you're such a strong advocate of it, why has section 13 been so ineffective in dealing with this plethora of hate speech sites on the Internet? Or is it perhaps because the powers that be don't think those sites are actually hateful but merely offensive or politically incorrect, which is quite different from hateful?

Prof. Kathleen Mahoney: I disagree.

First of all, to these last two questioners, I think it's important to understand the purpose of law, which is a bigger question. Laws dictate to the country as well as the rest of the world what any particular country's values are. Oftentimes the law doesn't obliterate the crime.

For example, we have a crime against murder. There are murders committed in Canada every day, but it's very important to have our values stated within the Criminal Code that murder is a bad thing and we don't want it. So the hate speech provisions also speak to that.

What I would also add is if you're looking for data, section 13 has been used quite significantly since 9/11, since the amendments were made to include the notion that the Internet can be used to spread hatred. There was dual purpose there. It wasn't just to prevent the promotion of hatred against identifiable groups. It was also for national security reasons. A significant number of cases have been brought before the courts—some successful, some not—since that time, since those amendments. So I think it's wrong—

Mr. Brent Rathgeber: You're really not addressing my question, but thank you.

The Chair: Thank you. We're over time.

Go ahead, Mr. Scott.

Mr. Craig Scott: Thank you, Mr. Chair.

I'd like to start by focusing on potential tweaks to the legislation. We do have a “baby being thrown out with the bathwater” approach by the mover of this bill. I want to at least remain open-minded about what could be done to improve it. We already have a submission from the CBA that refers to section 54.1 and the penalty provision as being something that probably should go. That has a history, with others making that same recommendation. Let's leave that on the table for the moment.

I'd like to ask Mr. Freiman, in particular, a question. Mr. Freiman, you mentioned that effectively—and I'm not sure whether the point was that in practice this is the way it's gone or whether this has been read in jurisprudentially—the Dickson language in the Taylor decision about extreme hate has tended to be, or has been, where this provision has been focused. I'm wondering if that is an accepted jurisprudential reading into section 13. If it is or isn't, do you think it's worth considering adding the word “extreme” in front of “hatred” or “contempt”, or would that be a problem?

Mr. Mark Freiman: I don't think it would be a problem to add the words. It would not be a problem to be even more specific and explicit.

Chief Justice Dickson interpreted what the words mean and what they can be used to mean in order to sustain the constitutionality of the provision. He set a very high standard. Every time this legislation has come before a court for judicial review of a given decision, it has been that standard that has been invoked.

As I said, Professor Moon, who has his own views on these matters, has conceded that in practice, the cases brought by the Canadian Human Rights Commission before the Canadian Human Rights Tribunal have all been focused on this sort of extreme speech. It still is very helpful to make it explicit so that somebody reading the act will know how it's going to be interpreted as well.

● (1255)

Mr. Craig Scott: Thank you.

If I could, I'll quickly follow up with Ms. Mahoney. If you've heard what Mr. Freiman has said, would you concur, or would you have any cautions against adding that word “extreme” to the legislation?

Prof. Kathleen Mahoney: I'm not so sure that adding the word "extreme" would be particularly useful. What I think would be a better suggestion, frankly, is to look at how the courts have defined that and include those hallmarks of hatred in the legislation. They attempt to further clarify what hatred is. They are very clear. They're set out in the Lemire case and I think they're very helpful. What they do, in point form—they make five points—is present the characteristics of hate speech. I think those would be of much more useful guidance to tribunals and to courts looking at challenges to the legislation to put against the facts of the speech itself.

If I might add one other point on the notion that a penalty chills speech, I'm not exactly in favour of removing the penalty. I would draw your attention to the case of Hill and the Church of Scientology, which was a defamation case. The Supreme Court of Canada upheld a damage award of $800,000, notwithstanding the fact that the argument was made that this would chill speech. If you compare that penalty to the rather small penalties in the Canadian Human Rights Act that are designed to compensate the victim and to address the seriousness of the effects of hate speech, I don't think they're out of line.

Mr. Craig Scott: I get that point. It is the case, for example, in defamation law that punitive damages are available, as they are in the rest of tort law. So that is something we're going to have to look at.

Back to Mr. Freiman, I have a quick question on "likely to expose." I'm getting the sense that my colleagues are not necessarily understanding the human rights framework of the Human Rights Act. I wonder if there's anything you wanted to add on that language and why it shouldn't be viewed as being as problematic as it's being viewed.

Mr. Mark Freiman: "Likely to expose" is a way of defining what's being looked at. You have to characterize the speech. What is its tendency? What is its probable effect? We can't know the effect until after it's occurred. That's what's meant by "likely to expose".

Given the speech, given an analysis of its nature, what are the probable consequences that speech will have? That's all the provision is referring to.

The Chair: Thank you.

Go ahead, Mr. Jean.

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

I appreciate the opportunity to have another line of questioning with these witnesses. In particular, I'm interested to know whether or not Mr. Toews petitioned the members of the Canadian Bar Association to see what their position was on this particular section and legislation.

Mr. Mark Toews: In fairness, perhaps Ms. Hunter can assist me with this.

Mr. Brian Jean: I only have a few minutes.

Mr. Mark Toews: I appreciate that.

Mr. Brian Jean: Yes or no is fine.

Mr. Mark Toews: It's not really a yes or no question.

Mr. Brian Jean: It's a yes or no question.

Mr. Mark Toews: No, it's not a yes or no question. There are certain sections that are involved with this, but perhaps Ms. Hunter can expand on that.

Mr. Brian Jean: As I said, did you survey your members to find out what their position was on this?

Ms. Judy Hunter: Can I answer that, please? I'm a staff lawyer with the Canadian Bar Association.

Mr. Brian Jean: Absolutely.

Ms. Judy Hunter: It goes to those sections that are composed of volunteer lawyers from across the country who belong to those sections that would be of interest in this particular matter.

● (1300)

Mr. Brian Jean: How many would that be?

Ms. Judy Hunter: It has gone to the media, communications, and entertainment section; the equality section; the criminal law section; and of course the constitution and human rights law section. Not only that, it goes to the elected officials in the CBA—the president and all of the executive officers.

Mr. Brian Jean: What goes to them?

Ms. Judy Hunter: The submission is approved by a wide variety of members from across the country.

Mr. Brian Jean: How many people are there?

Ms. Judy Hunter: I can't give you a number, but all of them.

Mr. Brian Jean: It doesn't go to the membership at large, though.

Ms. Judy Hunter: No, but it goes to—

Mr. Brian Jean: That was my question. That's the question to which you could have answered no.

Ms. Judy Hunter: It wouldn't be of interest to the pension and benefits group, for example.

Mr. Brian Jean: It would sure be interesting to me as a CBA member.

Ms. Judy Hunter: I don't think it would be if you were there purely because you were interested in practising pensions.

Mr. Brian Jean: I think you're wrong. As a past CBA member I was interested in this when the CBA came forward, made submissions to Parliament, and didn't ask our opinions on them. I stopped being a CBA member because you did not ask my opinion on your submissions and I didn't agree with a lot of them.

I apologize for sounding this way, but if you're going to come forward and say you represent CBA members, maybe you should survey the group at large, not just people who are particularly interested in section 13.

My next question is in relation to the Criminal Code. You mentioned that it wasn't adequate. I practised criminal law for a number of years, and I'm wondering if the only argument you rely upon is to suggest that the burden of proof is too high.

Mr. Mark Toews: There are a number of reasons why it's so inadequate, and I've touched on a number of them. The burden of proof is very high. It only deals with specific circumstances. You also have to prove intent. As I recall, in the Ahenakew case that was exactly where there was a significant problem.

Mr. Brian Jean: I thought you said it was an evidentiary burden.

Mr. Mark Toews: It was the evidentiary burden beyond a reasonable doubt that he intended to incite hate.

There are other problems. In subsection 13(1) it has to undermine public peace, so to speak. There are problems in subsection 13(2), where you have to get the Attorney General's consent. As Ms. Mahoney has already pointed out, it's not as comprehensive as what you find under the Human Rights Act. It deals significantly with racial issues and religion, but it doesn't deal with other aspects of discrimination the way the Human Rights Act does. So there are a number of areas where it falls short.

Mr. Brian Jean: Do you know how, in 1977, this section 13 originally came in—what the purpose of it was?

Mr. Mark Toews: I'm not familiar with the history back in 1977.

Mr. Brian Jean: In 1977 apparently it came in as a result of mass telephone communications being sent out in recorded hate messages to people in Toronto. Apparently they felt there was nothing to deal with continual communications of recorded telephone messages. It has been expanded since then.

My argument, based upon my history as a criminal lawyer, is if you think that the Criminal Code is not adequate and the burden is not adequate—I would argue with you on that, because I think the burden is necessary to protect those people who are innocent—we should look at it, and the CBA should come forward and ask that we amend the Criminal Code.

That's my time, Mr. Toews. The nice thing about lawyers is we can have lots of arguments, but thank you very much for coming forward.

The Chair: Thank you, Mr. Jean. The time is up.

I'd like to thank the witnesses for appearing today.

Our meeting is adjourned.

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