File No. 33676

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM A JUDGMENT OF THE COURT OF APPEAL FOR SASKATCHEWAN)

B E T W E E N:

THE SASKATCHEWAN HUMAN RIGHTS COMMISSION

Appellant

-and-

WILLIAM WHATCOTT

Respondent

-and-

ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF SASKATCHEWAN, ATTORNEY GENERAL OF ALBERTA, AFRICAN CANADIAN LEGAL CLINIC, ALBERTA HUMAN RIGHTS COMMISSION, ASSEMBLY OF FIRST NATIONS, FEDERATION OF SASKATCHEWAN INDIAN NATIONS AND MÉTIS NATION-SASKATCHEWAN, CANADIAN BAR ASSOCIATION, CANADIAN CIVIL LIBERTIES ASSOCIATION, CANADIAN CONSTITUTION FOUNDATION, CANADIAN HUMAN RIGHTS COMMISSION, CANADIAN JEWISH CONGRESS, CANADIAN JOURNALISTS FOR FREE EXPRESSION, CATHOLIC CIVIL RIGHTS LEAGUE AND FAITH AND FREEDOM ALLIANCE, CHRISTIAN LEGAL FELLOWSHIP, EGALE CANADA INC., EVANGELICAL FELLOWSHIP OF CANADA, LEAGUE FOR HUMAN RIGHTS OF B'NAI BRITH CANADA, NORTHWEST TERRITORIES HUMAN RIGHTS COMMISSION AND YUKON HUMAN RIGHTS COMMISSION, ONTARIO HUMAN RIGHTS COMMISSION, UNITARIAN CONGREGATION OF SASKATOON AND CANADIAN UNITARIAN COUNCIL, UNITED CHURCH OF CANADA, WOMEN'S LEGAL EDUCTION AND ACTION FUND

Interveners

MEMORANDUM OF ARGUMENT OF THE INTERVENER, CANADIAN CIVIL LIBERTIES ASSOCIATION

PART I - OVERVIEW

1. The Canadian Civil Liberties Association ("CCLA") intervenes in this appeal to argue that s. 14(1)(b) of *The Saskatchewan Human Rights Code*[1] is unconstitutional. Over twenty years ago, by the narrowest of margins, this Court upheld a similar but

[1] *The Saskatchewan Human Rights Code*, S.S. 1979, c.S-24.1 ["*Code*"]

narrower "hate speech" provision in *Canada (Human Rights Commission) v. Taylor*.[2] Since *Taylor*, experience with such provisions in human rights codes has shown that the majority's assumptions in that case have not generally been borne out. Rather, this experience has demonstrated that human rights tribunals face extreme difficulty in characterizing contentious expression and determining whether that expression meets the threshold articulated by this Court in *Taylor*.

2. The CCLA has intervened in many cases where complainants have engaged the use of human rights codes to limit and/or restrict expression that they find offensive. These include *Lund v. Boissoin and The Concerned Christian Coalition Inc.*[3] in Alberta, *Owens v. Saskatchewan (Human Rights Commission)*[4] in Saskatchewan, and *Elmasry et al. v. Rogers Publishing Limited et al.*[5] in British Columbia. The CCLA has also been granted intervenor status in the pending case of *Warman v. Lemire*,[6] which concerns the amended version of the federal provision that was at issue in *Taylor*. Like the case at bar, these cases illustrate the inherent difficulty in drawing a coherent line between polemical statements of opinion, and hate speech.

3. While the CCLA advocates for a robust protection for freedom of expression, the CCLA strongly disagrees with the content of Whatcott's expression. Indeed, the CCLA has long supported the rights of members of the LGBT communities to be free from discrimination. The CCLA has also vigorously defended the freedom of expression of members of the LGBT communities in circumstances where their expression has been challenged as being outside of the mainstream.[7] While this appeal may be characterized by some as a conflict between equality rights and freedom of expression,

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[2] *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892 ["*Taylor*"]

[3] 2009 ABQB 592 ["*Boissoin*"].This case examined the extent to which Alberta human rights law can limit a homophobic letter to the editor.

[4] 2006 SKCA 41 (CanLII) ["*Owens*"]. This case examines the extent to which s.14(1)(b) of the *Code* can limit an anti-homosexual advertisement.

[5] 2008 BCHRT 378 (CanLII) ["*Elmasry*"]. This case concerns a complaint that an article written by columnist Mark Steyn in *Macleans Magazine* amounts to "hate speech" against Muslims.

[6] Federal Court of Canada, File No. T-1640-09) (Hearing scheduled for December 13, 2011); *Warman v. Lemire*, 2009 CHRT 26

[7] *Little Sisters Book Shop and Art Emporium v. Canada (Attorney General)*, [2000] 2 S.C.R. 1120; *R. v. Glad Day Bookshop Inc.*, [2004] O.J. No. 1766 (Ont. Sup. Ct. Jus.)

the CCLA notes that the right to express oneself on controversial issues, even in polemical terms, is often an important tool in the arsenal of equality-seeking groups.

4. Put simply, provisions such as s.14(1)(b) do not work. They are overbroad in their application, lack objective standards, and encourage litigation over matters that are better left to the marketplace of ideas. In a robust democracy, polemical expression such as Whatcott's flyers may be denounced and countered, but should not be banned.

PART II – CCLA'S POSITION ON POINTS IN ISSUE

5. The CCLA takes the following position on the points raised by the Appellant:

a) Section 14(1)(b) infringes s.2(b) of the *Charter*;

b) The infringement of s.2(b) is not saved by s.1;

c) Section 14(1)(b) infringes s.2(a) of the *Charter*;

d) The infringement of s.2(a) is not saved by s.1; and

e) In the alternative, s.14(1)(b) was not contravened.

PART III - ARGUMENT

A. Section 14(1)(b) Infringes Freedom of Expression

6. The Appellant has conceded that s.14(1)(b) infringes s.2(b) of the *Charter*.

B. The Infringement of s.2(b) is Not Saved by Section One

7. The CCLA agrees that the objectives of s.14(1)(b) – to promote social harmony and individual dignity – are matters of pressing and substantial concern.[8] However, the CCLA submits that the means chosen to achieve these objectives do not meet the proportionality test set out in *Oakes*.

8. The impugned provision is not closely tailored to its objectives. The terms "hatred", "ridicule", "belittle" and "dignity" in s.14(1)(b) are inherently subjective, and their meanings capable of different interpretations depending on the subjective experience of both the author and recipient of expression. As such, they do not exhibit "care of design

[8] *Taylor*, *supra* at page 958 *per* McLachlin J. (as she then was)(dissenting); page 918 *per* Dickson C.J.C.

and lack of arbitrariness",[9] and lack a rational connection to the objectives sought to be promoted. This subjectivity is demonstrated by the experience under s.14(1)(b) and its counterparts in other jurisdictions. Despite this Court's attempt in *Taylor* to confine the concept of promoting "hatred" to "unusually strong and deep-felt emotions of detestation, calumny and vilification", tribunals and courts have varied widely in their application of these terms. "Strong and deep-felt emotions" are by their very nature subjective.

9. Section 14(1)(b) and its counterparts have been applied to reach deeply into matters of morality, politics, history, and current affairs, in a manner which courts and tribunals have found notoriously difficult to balance against freedom of expression.[10] Even where expression is ultimately found not to constitute "hate speech", extensive litigation is sometimes required before a complaint is dismissed.[11] In such cases, the process by which the complaint is investigated, and subsequently litigated, can have a profound chilling effect on freedom of expression. In a review of the regulation of hate speech under the *Canadian Human Rights Act*, Professor Richard Moon noted that investigation processes can be unavoidably time-consuming and compromise a respondent's freedom of expression.[12]

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[9] *Taylor*, *supra* at pages 925-926, *per* Dickson C.J.C.; cf McLachlin J. (dissenting) at pages 961-965. While the majority found this requirement to be satisfied by the provision at issue in *Taylor*, s.14(1)(b) is worded more broadly and vaguely. In *Saskatchewan (Human Rights Commission) v. Bell* (1994), 114 D.L.R. (4th) 370 (Sask.C.A.), the Court sought to cure this defect by "reading down" the language of s.14(1)(b) to incorporate the *Taylor* standard, but this is arguably inconsistent with the words of the provision. In any event, to the extent that it may be necessary, the CCLA submits that this Court should re-examine this and other conclusions reached by the majority in *Taylor*.

[10] See e.g. *Warman v. Lemire*, 2009 CHRT 26 (Judicial Review currently pending before the Federal Court); *Owens, supra*; *Boissoin, supra;* and *Elmasry, supra*.

[11] In *Boissoin* and *Owens* (as well as the instant case), the Tribunals initially upheld the complaint before being overturned in the Courts. An appeal to the Alberta Court of Appeal is still pending in *Boissoin*.

[12] The *Canadian Human Rights Act*, requires the Commission to investigate every complaint that is not frivolous, vexatious, or made in bad faith. Under section 27.1(2) of the *Code*, a complaint can be dismissed where it is without merit, or raises no significant issue of discrimination. However, this threshold process can still be time-consuming. For example in this case, complaints were initially filed between September 9, 2001 and April 8, 2002. A Tribunal was appointed on October 2, 2002 and a decision was not released until May 2, 2005. The Court of Appeal released its decision overturning the Tribunal on February 25, 2010.
Report to the Canadian Human Rights Commission Concerning Section 13 of the Canadian Human Rights Act and the Regulation of Hate Speech on the Internet, Professor Richard Moon, October 2008 [the "Moon Report"], at p. 37-39

10. Nor does s.14(1)(b) minimally impair freedom of expression. This provision is broader on its terms than the hate speech provision of the *Criminal Code*. Moreover, the human rights code provisions are complaint-based. When *Maclean's Magazine* ran an article by Mark Steyn that was thought by some readers to promote hatred against Muslims, complaints were brought on behalf of the Canadian Islamic Congress in three different jurisdictions. Ultimately all three were dismissed, for different reasons, but not before the publisher was required to engage in costly litigation.[13]

11. By contrast, s.319(2) of the *Criminal Code*, upheld in *R. v. Keegstra*,[14] requires the consent of the Attorney General to prosecute, which provides some limit on the use of the provision. In *Taylor*, the majority asserted that "[t]he chill placed upon open expression in [the context of a human rights code] will ordinarily be less severe than that occasioned where criminal legislation is involved".[15] Experience since *Taylor*, however, has shown that human rights code provisions have been used far more frequently, with arguably greater chilling effect.

12. In any event, s.14(1)(b) of the *Code* is distinguishable from the statutory provision at issue in *Taylor*, in that it is framed far more broadly both in terms of the scope of the speech, and the means of communication it captures.

13. The statutory provision at issue in *Taylor* prohibited only material conveyed repeatedly through telephonic communications. Section 14(1)(b) prohibits *any* expressive activity (including newspaper, broadcasting, and other printed material) which exposes an individual to "hatred, ridicules, belittles or otherwise affronts the

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[13] The Canadian Human Rights Commission determined that the views expressed by Mr. Steyn did not meet the threshold articulated in *Taylor*, and dismissed the complaint without appointing a Tribunal: see *Canadian Islamic Congress v. Rogers Media Inc*., Decision of the Commission (20071008). The Ontario Human Rights Commission determined that the complaint was outside its jurisdiction and dismissed the complaint: see reasons of the Commission in File No. LHOR-72KLKN. The British Columbia Human Rights Tribunal dismissed the complaint after a hearing on the basis that the complainants did not establish that Mr. Steyn's article was likely to expose them to hatred: see *Elmasry, supra*.

[14] *R v. Keegstra*, [1990] 3 S.C.R. 697

[15] *Taylor*, *supra* at page 932.

dignity of any person or class of persons on the basis of a prohibited ground." Further, communication must be "conveyed repeatedly" to engage s. 13 of the *CHRA*, a point relied upon by the majority in *Taylor*.[16] Section 14(1)(b) of the *Code* contains no such requirement and potentially captures one single expression of the nature broadly described above. The CCLA submits that this is not minimally impairing and therefore not a reasonable limit on freedom of expression.

14. While some of the statements contained in the impugned flyers amount to statements of purported fact, the *Code* does not permit Mr. Whatcott to raise truth, or the sincerity or reasonableness of his belief, as a defence.[17] The CCLA submits that the exclusion of these defences from s.14(1)(b) further increases the degree of infringement of freedom of expression.[18]

15. The chilling effect of s.14(1)(b) is exacerbated by the remedial provisions of the *Code* which permit the Tribunal to make an order that the respondent pay compensation, up to $10,000, where they have either willfully or recklessly contravened the *Code*, or where the person injured by the contravention has suffered with respect to feeling, dignity, or self-respect as a result of the contravention.[19] Therefore, the *Code* permits an order of compensation solely on the basis of the subjective effect of the expressive activity, without regard to the intention of the author, or their sincere belief in the content of the expression.

16. The CCLA recognizes that polemical expression on the morality of sexual practices may be deeply offensive to gays and lesbians. The CCLA rejects the Respondent's argument that there is a clear distinction between expression which criticizes the sexual practices of gays and lesbians, and expression which criticizes the LGBT community or individuals. The CCLA accepts that individual sexual practices are

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[16] *Taylor*, *supra* at page 938.
[17] The CCLA does not suggest that there is any basis for believing that these statements of purported fact are either true or reasonable. Rather, the issue is that the provision does not permit such defences to be raised.
[18] See dissent of McLachlin J. in *Taylor, supra*, at pages 966-968.
[19] *Code, supra*, at s. 31.4

frequently an integral component of one's identity. Nevertheless, the CCLA notes that matters of sexuality have long been a subject of debate and opinion. Not just religious texts, but also countless works of literature, historical documents, court decisions, and the like would reflect formerly prevalent views that such sexual practices are "sinful", often in confronting terms. Likewise, cohabitation between unmarried heterosexuals ("living in sin") has in past attracted strong moral disapprobation. If Whatcott's flyers are hate speech, what becomes of these forms of expression?

17. Finally, the CCLA rejects the Appellant's contention that a less exacting s.1 standard is appropriate in the circumstances of this case on the basis that the expression at issue is said to lie far from the core values that freedom of expression is designed to protect. In light of the subjectivity inherent in the process of characterizing some expression as "hateful", expression may be caught which goes to the very core of s.2(b). Voicing an opinion on a question of morality and/or public policy, even in terms considered polemical or offensive, is crucial in a democratic society. The CCLA submits that the intrusion into freedom of expression outweighs any benefits that may be claimed for s.14(1)(b). This provision is not a reasonable limit that is demonstrably justified in a free and democratic society.

C. Section 14(1)(b) Infringes Freedom of Religion

18. The sincerity of Mr. Whatcott's belief in the content of his expression appears to be largely grounded in his personal religious beliefs and convictions. In that respect, Mr. Whatcott's expressive activity also engages his freedom of religion as guaranteed by s. 2(a) of the *Charter*. The inability to raise sincere religious beliefs and convictions in response to a complaint under s.14(1)(b) of the *Code* infringes freedom of religion.

19. Contrary to the Appellant's position, the right to express and disseminate religious beliefs is a fundamental aspect of freedom of religion, which received legal recognition long before the *Charter*.[20] The Appellant argues that s.2(a) does not extend

[20] See e.g. *Boucher v. The King*, [1951] S.C.R. 265, at page 288; and *Saumur v. City of Québec*, [1952] 2 S.C.R. 420 at page 342, and generally the reasons of Justices Rand, Kellock, Estey, Locke, and Kerwin.

to “publication of hateful religious beliefs”. However, some might argue that certain statements of moral disapprobation in the Bible and other religious texts are “hateful”, as discussed in *Owens v. Saskatchewan*.[21] The CCLA submits that this Court should avoid evaluating religious beliefs to attempt to separate them into “hateful” and “non-hateful” categories, for the purposes of determining whether they are protected under s.2(a). Limiting the right to express beliefs should be justified, if at all, under s.1.

D. The Infringement is Not Justified Under s.1

20. For the reasons given above under freedom of expression, the infringement of freedom of religion is also not demonstrably justified in a free and democratic society under s.1 in this context. Contrary to the Appellant’s position, the CCLA would distinguish between *acting* on religious beliefs so as to harm or infringe the rights of others, and *expressing* a religious belief. Limiting the expression of beliefs should require a more stringent justification.

E. In Context, s.14(1)(b) Was Not Contravened

21. In the alternative, the CCLA takes the position that a contextual consideration of the impugned expressive activity is a necessary component of a proper *Taylor* analysis. The CCLA submits that the Court of Appeal was correct in assessing the underlying context of Mr. Whatcott’s messages, and that it properly applied *Taylor* to find that the expression did not contravene s.14(1)(b).

22. A proper application of the *Taylor* analysis always requires consideration of the context of the expressive activity in order to balance the countervailing rights otherwise enunciated in both the *Charter* and the *Code*.

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[21] *Owens* considered a passage from Leviticus that was translated as follows: “If a man lies with a man as one lies with a woman, both of them have done what is detestable. They must be put to death; their blood will be on their own heads.”: para. 7.

23. The messages contained in Mr. Whatcott's flyers are confrontational and extreme, and indeed the CCLA repudiates the content of Mr. Whatcott's expression. However, debate concerning norms of behaviour, and comment on the morality of the behaviour of others, are fundamental to democracy. Polemical expression has a role to play in such debate.[22]

24. Similarly, debate concerning the manner in which children in the public school system are exposed to messages about sexual identity and sexuality is inherently controversial. Participation in debates on issues of public importance must generally be protected, and is fundamental to our notions of democracy.

25. Where the objective purpose of the expressive activity is participation in public debate concerning norms of behaviour, prevailing views of morality, and public education (ie. participation in the marketplace of ideas), prohibiting the communication strikes at the very heart of the core values protected by the *Charter* guarantee of freedom of expression. An objective examination of expression requires a consideration of the messages in context, including the context in which they are disseminated. This is distinct from consideration of the subjective intent of the author, and is required to engage in a proper balancing of the freedom of expression as against countervailing interests.[23]

26. The CCLA submits that the second component of the *Taylor* analysis is not a contextual assessment of whether the expression is likely to cause hate,[24] but whether limiting the expression is a justifiable limit (and therefore constitutional) in the specific factual context.

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[22] See e.g. *WIC Radio Ltd. v. Simpson*, [2008] 2 S.C.R. 420, at para. 49, confirming that the defence of fair comment in defamation law protects "obstinate, or foolish, or offensive statements of opinion, or inference, or judgment".
[23] *Taylor, supra*, at pages 921-922; see also *Owens, supra* at para. 63; *Elmasry, supra*, at paras. 83, 150
[24] cf. Factum of the Appellant, paragraph 54

27. The *Code*, and other human rights statutes, must be interpreted in a manner which is consistent with the *Charter*.[25] A contextual analysis, as engaged in by the Court of Appeal, is necessary in each case to ensure that the application of a particular restriction remains consistent with the demonstrably justified limit.

PART IV - COSTS

28. The CCLA does not to seek costs and asks that no costs be awarded against it.

PART V - ORDER SOUGHT

29. The CCLA respectfully submits that the appeal should be dismissed, on the grounds that s.14(1)(b) is unconstitutional, or alternatively on the grounds that the Court below properly applied *Taylor*. The CCLA requests that it be permitted to present oral argument in support of its submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Toronto , Ontario, this 5th day of August, 2011

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Canadian Civil Liberties Association

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[25] *R. v. Zundel (No. 2)*, [1992] 2 S.C.R. 731 at p. 771

PART VI - TABLE OF AUTHORITIES

PART VII- STATUTORY AUTHORITIES

Constitution Act, 1982, Schedule B	**Loi Constitutionelle de 1982, Annexe B**
1. Guarantee of Rights and Freedoms The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.	1. Garantie des droits at libertés La *Charte canadienne des droits et libertés* garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.
2. Fundamental Freedoms Everyone has the following fundamental freedoms: (*a*) freedom of conscience and religion; (*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (*c*) freedom of peaceful assembly; and (*d*) freedom of association.	2. Libertés fondamentales Chacun a les libertés fondamentales suivantes : *a*) liberté de conscience et de religion; *b*) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication; *c*) liberté de réunion pacifique; *d*) liberté d'association.
Canadian Human Rights Act, H-6 (as amended)	**Loi canadienne sur les droits de la personne, H-6**
Hate messages **13.** (1) 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	**Propaganda haineuse** **13.** (1) Constitue un acte discriminatoire le fait, pour une personne ou un groupe de personnes agissant d'un commun accord, d'utiliser ou de faire utiliser un téléphone de façon répétée en recourant ou en faisant recourir aux services d'une entreprise de télécommunication relevant de la compétence du Parlement pour aborder ou faire aborder des questions susceptibles d'exposer à la haine ou au mépris des personnes appartenant à un groupe identifiable

the basis of a prohibited ground of discrimination. Interpretation (2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking. Interpretation (3) For the purposes of this section, no owner or operator of a telecommunication undertaking communicates or causes to be communicated any matter described in subsection (1) by reason only that the facilities of a telecommunication undertaking owned or operated by that person are used by other persons for the transmission of that matter.	sur la base des critères énoncés à l'article 3. Interprétation (2) Il demeure entendu que le paragraphe (1) s'applique à l'utilisation d'un ordinateur, d'un ensemble d'ordinateurs connectés ou reliés les uns aux autres, notamment d'Internet, ou de tout autre moyen de communication semblable mais qu'il ne s'applique pas dans les cas où les services d'une entreprise de radiodiffusion sont utilisés. Interprétation (3) Pour l'application du présent article, le propriétaire ou exploitant d'une entreprise de télécommunication ne commet pas un acte discriminatoire du seul fait que des tiers ont utilisé ses installations pour aborder des questions visées au paragraphe (1).
***Saskatchewan Human Rights Code*, c. S-24.1**	
Right to freedom of conscience 4 Every person and every class of persons shall enjoy the right to freedom of conscience, opinion and belief and freedom of religious association, teaching, practice and worship.	
Right to free expression 5 Every person and every class of persons shall, under the law, enjoy the right to freedom of expression through all means of communication, including, without limiting the generality of the foregoing, the arts, speech, the press or radio, television or any other broadcasting device.	
Prohibitions against publications 14(1) No person shall publish or display, or cause or permit to be published or displayed, on any lands or premises or in a newspaper, through a television or radio broadcasting station or any other broadcasting device, or in any printed matter or publication or by means of any other medium that the person owns, controls, distributes or sells, any representation, including any notice, sign, symbol, emblem, article, statement or other representation: (a) tending or likely to tend to deprive, abridge or otherwise restrict the enjoyment by any person or class of persons, on the basis of a prohibited ground, of any right to which that person or class of persons is entitled under law; or	

(b) that exposes or tends to expose to hatred, ridicules, belittles or otherwise affronts the dignity of any person or class of persons on the basis of a prohibited ground.

(2) Nothing in subsection (1) restricts the right to freedom of expression under the law upon any subject.

Dismissal and deferral of complaint

27.1 (1) In this section, "proceeding" includes a proceeding authorized by another Act, a civil proceeding or a grievance under a collective agreement.

(2) At any time after a complaint is filed or initiated pursuant to section 27, the Chief Commissioner may dismiss the complaint where he or she is of the opinion that:

(a) the best interests of the person or class of persons on whose behalf the complaint was made will not be served by continuing with the complaint;
(b) the complaint is without merit;
(c) the complaint raises no significant issue of discrimination;
(d) the substance of the complaint has been appropriately dealt with pursuant to another Act or proceeding;
(e) the complaint is made in bad faith or for improper motives or is frivolous or vexatious;
(f) there is no reasonable likelihood that an investigation or further investigation will reveal evidence of a contravention of this Act; or
(g) having regard to all the circumstances of the complaint, a hearing of the complaint is not warranted.

(3) The Chief Commissioner may, at any time after a complaint is filed or initiated, defer further action if another proceeding, in the opinion of the Chief Commissioner, is more appropriate having regard to the nature of the allegations and the remedies available in the other proceeding.

Order respecting compensation

31.4 A human rights tribunal may, in addition to any other order it may make pursuant to section 31.3, order the person who has contravened or is contravening that provision to pay any compensation to the person injured by that contravention that the human rights tribunal may determine, to a maximum of $10,000, where the human rights tribunal finds that:

(a) a person has wilfully and recklessly contravened or is wilfully and recklessly contravening any provision of this Act or any other Act administered by the commission; or
(b) the person injured by a contravention of any provision of this Act or any other Act administered by the commission has suffered with respect to feeling, dignity or self-respect as a result of the contravention.