

HUMAN RIGHTS AND ISCRIMINATORY PUBLICATIONS

I N D E X

Resource materials emanating from the Human Rights Tribunal Hearing of May 1997 in the case of Canadian Jewish Congress vs. Doug Collins and the North Shore News Ltd. The index includes summaries of legal submissions, hallmark Canadian cases, selected articles, media documents and bibliographies.

**Michael Silber
2001**



**Canadian Jewish Congress, Pacific Region
Vancouver, B.C.**

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PREFACE

In 1997, at the British Columbia Human Rights Tribunal history was made. Never before in this province had a member of the media been forced to defend his published remarks in front of a human rights tribunal. The CJC case against Doug Collins and the North Shore Free Press was indeed a hallmark case.

At issue was whether a published Doug Collins article exposed an identifiable group (Jews) to contempt or hatred as stated in Section 7 (1) of the B. C. Human Rights Code. Gregory Walsh, head counsel for CJC, argued that the Doug Collins article in question, entitled "Hollywood Propaganda", did indeed expose people of Jewish extraction to hatred and contempt and that the Respondents (Doug Collins and The North Shore News) had wittingly infringed Section 7 (1) of the B. C. Human Rights Code. But Doug Collins' head counsel, along with interveners from the B. C. and Canadian Civil Liberties Association, argued for the constitutional invalidity of the aforementioned section of the B. C. Human Rights Code. In the end, the tribunal judge Iyer ruled to dismiss the case.

Though a setback for CJC and supporters of the legislation, this case in no way brought an end to this debate or future crusades against offenders of Section 7 (1) of the B. C. Human Rights Code. In fact, some two years later CJC would get the verdict it had initially pleaded for in its original case. This time the tribunal judge ruled in favor of the Complainant (Harry Abrams) in his case against Doug Collins and the North Shore Free Press.

CJC's accumulation of documents and materials in its case against Doug Collins and the North Shore Free Press provided the impetus for the publication of this index. Issues fundamental to Canadian society such as free speech, the defense of multicultural values and the censorship and regulation of "offensive" opinions came to the fore in this case. Although this particular case was primarily concerned with the constitutional validity and application of Section 7 (1) of the B. C. Human Rights Code, on a more general level it was a forum for debate on the core values of our Western democracy.

The wealth of information that has been accumulated by CJC during its case against Doug Collins can serve an extremely useful purpose if it is made available to the public so that further research on the issues addressed in this case can be undertaken. The research would aid considerably in the undertaking of future cases involving Section 7 (1) of the B. C. Human Rights Code or other similar legislative provisions.

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This index should serve as a guide to the debate. Accumulated reference materials from both sides of this debate are included. The index is user friendly and will be of use to both the layman and legal scholar. This index should not, however, be considered to be exhaustive as it is simply a collection of material gathered for one particular purpose.

Summaries of important submissions and hallmark Canadian cases are included in the index. As well, summaries of selected articles and media documents and bibliographies are provided.

The index will be of great use for those interested in the constitutionality of Section 7 (1) of the B. C. Human Rights Code, issues of free speech and censorship in North America, challenges to Canadian Charter of Rights and Freedoms and cases involving the Canadian Human Rights Code. Ultimately, the effectiveness and usefulness of this index will be measured by the research and learning that it fosters.

I. RECENT CANADIAN CASES INVOLVING FREE SPEECH AND CHALLENGES TO THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS (THE "CHARTER")

EACH CASE WILL BE SUMMARIZED USING THE FOLLOWING FORMAT:

- a) Complainant/Plaintiff position*
- b) Respondent/Defendant position*
- c) Ruling of the case*
- d) Reference to materials that deal with the case*

1. ABRAMS V. NORTH SHORE FREE PRESS LTD. AND DOUG COLLINS

a) Complainant's position

The Complainant (Harry Abrams) alleged that the Respondents (North Shore Free Press Ltd. and Doug Collins) published or caused to be published articles that discriminate against Jewish persons and are likely to expose those persons to hatred or contempt on the basis of their race, religion and ancestry, contrary to Section 2 of the B. C. Human Rights Act (now Section 7 of the B. C. Human Rights Code). In his complaint, Abrams refers directly to the following articles published by Doug Collins: North Shore News articles of January 12, 1994, March 9, 1994 and June 26, 1994; and Daily Victorian articles of March 16, 1994 and March 30, 1994.

b) Respondents' position

Respondents contended that Section 2 of the B. C. Human Rights Act violates Section 2 of the Charter.

c) Ruling of the case

The presiding tribunal judge decided that there was sufficient evidence to rule in favor of the Complainant. Doug Collins was ordered to cease writing for the North Shore News and the North Shore News was issued a fine.

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d) Reference materials that deal with the case

For a detailed examination of the decision of the case see the B. C. Human Rights Tribunal Web Page at www.bchrt.gov.bc.ca. Click on 1999 Decisions. For a list of the particulars of the allegations, see B. C. Council of Human Rights Complaint Information, case numbers 940763, 94188 and 941890, dated 94/01/12 to 94/06/26; this is also available at the CJC office in Binder 1.

2. ZUNDEL V. THE QUEEN

a) Crown's position

The Crown charged Ernst Zundel with violating Section 181 of the Criminal Code of Canada as a result of publishing a pamphlet entitled "Did Six Million Really Die?" which denied the fact that the Holocaust during WWII occurred. Section 181 states that "everyone who willfully publishes a statement, tale or news that he knows is false and that causes or is likely to cause injury or mischief to a public interest is guilty of an indictable offense and liable to imprisonment for a term not exceeding two years."

b) Mr. Zundel's position

Mr. Zundel argued that Section 181 of the Criminal Code violated Sections 2 (b) and 7 of the Charter.

c) Ruling of the case

The Supreme Court of Canada held that the appeal should be allowed and an acquittal entered.

d) Reference materials that deal with the case

For all the particulars of the arguments of the case and the decision, see *Zundel v. the Queen*, (1992) 95 Dominion Law Reports (4th) Supreme Court of Canada, starts on page 202.

3. KEEGSTRA V. THE QUEEN

a) Crown's position

The Crown charged John Keegstra with violating Section 319 (2) of the Criminal Code of Canada, the willful promotion of hatred against an identifiable group by communicating antisemitic statements to his students.

b) Mr. Keegstra's position

Mr. Keegstra argued that Section 2 (b) of the Charter guaranteed him the right to make such statements.

c) Ruling of the Case

Mr. Keegstra was convicted at trial but the Alberta Court of Appeal subsequently ruled that Sections 319 (2) and 319 (3) infringed Sections 2 (b) and 11 (d) of the Charter respectively and that the infringements were not justifiable under Section 1 of the Charter. Mr. Keegstra was accused and found guilty at his second trial but the Alberta Court of Appeal subsequently reversed the ruling.

The Supreme Court of Canada later reversed the Court of Appeal's decision and declared that Section 319 (2) of the Criminal Code, though it infringed Section 2 (b) of the Charter, was a reasonable limit which was demonstrably justified in a free and democratic society.

d) Reference materials that deal with the case

For a detailed explanation of the arguments of the first case, see *R. v. Keegstra* S.C.R. (1990), pages 697-869. For a breakdown of the second trial and the Alberta Court of Appeal's decision in reversing the ruling, see *R. v. Keegstra* Dominion Law Reports 124 (1995), starts on page 289. For an explanation of the Supreme Court of Canada's subsequent decision to reverse the Alberta Court of Appeal's ruling, see Martine Valois, "Hate Propaganda, Section 2 (b) of the Charter: A Canadian Constitutional Dilemma," pages 386-396.

4. CANADIAN HUMAN RIGHTS COMMISSION V. TAYLOR

a) Complainant's position

The Canadian Human Rights Commission charged Mr. Taylor and the Western Guard Party of violating Section 13 (1) of the Canadian Human Rights Act which

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stipulates that it is a "discriminatory practice to communicate by telephone or by means of a telecommunication facility...any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that the person or those persons are identifiable on the basis of a prohibited ground for discrimination."

b) Respondent's position

Mr. Taylor claimed that Section 13 (1) of the Canadian Human Rights Act violated Section 2 (b) of the Charter and is therefore invalid.

c) Ruling of the Case

The Supreme Court of Canada issued a cease and desist order against Mr. Taylor and the Western Guard Party on the grounds that although the expressed activities covered in Section 13 (1) of the Canadian Human Rights Act are protected by Section 2 (b) of the Charter, the Canadian Human Rights Act's objective of promoting equal opportunities for all Canadians by eradicating discriminatory practices is of sufficient importance to override the constitutionally protected freedom under the Charter.

d) Reference materials that deal with the case

For a detailed look at the arguments of the case and the decision of the Supreme Court of Canada, see *Canadian Human Rights Commission v. Taylor S.C.R.* (1990), pages 892-977. Also see Valois, page 401, which deals with the constitutional issues of the case.

5. DAGENAIS V. CANADIAN BROADCASTING CORPORATION

a) Complainant's position

Mr. Dagenais argued that the ban granted by a the Ontario Court of Appeal to prevent the broadcast of a fictional program on child sexual and physical abuse must remain until the completion of four criminal trials, one of them in which the Complainant is accused of sexual abuse.

b) Respondent's position

The Canadian Broadcasting Corporation argued that the ban of its television show violated Section 2 of the Charter.

c) Ruling of the Case

The Supreme Court of Canada ruled that the ban be lifted.

d) Reference materials that deal with the case

For a detailed look at the arguments of the case and the Supreme Court of Canada's decision, see *Dagenais v. Canadian Broadcasting Corporation* Dominion Law Reports 120 (1995), (4th), starts on page 12.

6. NEALY V. JOHNSTON

a) Complainant's position

Referring to Section 13 (1) of the Canadian Human Rights Act, the Complainants alleged that Randy Johnston, Terry Long and the Church of Jesus Christ Christian-Aryan Nations acted in concert to communicate telephonically or caused to be so communicated, recorded telephone messages that were likely to expose persons to hatred or contempt by reason that those persons are identifiable on the basis of race, color, religion or national origin.

b) Respondents' position

The Respondents argued that their right to voice such telephonic messages is protected under Section 1 of the Charter.

c) Ruling of the Case

The Canadian Human Rights Tribunal ruled that the Respondents were in breach of Section 13 (1) of the Canadian Human Rights Act and that this case allowed for a justifiable limitation on freedom of expression under Section 1 of the Charter. The Tribunal ordered the Respondents to cease communicating telephonically messages that are likely to expose persons to hatred or contempt on the basis of race, color, religion, or national origin.

d) Reference materials that deal with the case

For a detailed look at the arguments of the case and the Tribunal's decision, see *Nealy v. Johnston* (1989) 10 Canadian Human Rights Reporter, pages D/6450-D/6487.

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7. AZIZ KHAKI, MICHAEL ELTERMAN AND CHARAN GILL V. CANADIAN LIBERTY NET

a) Complainants' position

The Complainants alleged that Derek J. Peterson and the Canadian Liberty Net discriminated against Jewish and non-white persons on the grounds of national or ethnic origin, race, color and religion, by causing to be communicated telephone messages which exposed these groups to hatred and contempt, in violation of Section 13 (1) of the Canadian Human Rights Act.

b) Respondents' position

The Respondents argued that their right to convey such messages is protected under Section 1 of the Charter.

c) Ruling of the case

The Canadian Human Rights Commission found that the Respondents violated Section 13 (1) of the Canadian Human Rights Act. The Commission further ordered that the Respondents cease communicating telephonically messages which are likely to expose persons to contempt or hatred on the basis of race, color, national origin and religion.

d) Reference materials that deal with the case

For a look at the decision of the Tribunal, see Binder 12, Tab 12 at the CJC Office. The particulars of the allegation are found on pages 1-2.

8. MALCOLM ROSS V. NEW BRUNSWICK SCHOOL DISTRICT

a) Complainant's position

Mr. Ross alleged that the New Brunswick School Board had wrongfully dismissed him from his position as a teacher for discriminatory remarks made in and outside his classroom. Mr. Ross argued that the School Board's decision violated his freedom of expression and religion and as protected under Section 1 and 2 of the Charter.

b) Respondent's position

The New Brunswick School District No. 15 found that Mr. Ross' views were extreme and that Jewish students experienced a "poisoned educational environment" because of their religion and ancestry and that Mr. Ross had violated Section 2 and 13 (1) of the Canadian Human Rights Act.

c) Ruling of the Case

Though the Supreme Court of Canada found that Mr. Ross' freedom of expression and religion as stipulated under Sections 1 and 2 of the Charter were breached by the School Board's decision, the Court ruled that the School Board's breach of Sections 1 and 2 of the Charter was justifiable.

d) Reference materials that deal with the case

For a look at the arguments of the case and the decision of the Supreme Court of Canada, see *Ross v. New Brunswick School District No. 15, Judicial Review, Charter and Human Rights Litigation*, Vol. II, No. 3, 1996, pages 173-4.

9. CANADIAN JEWISH CONGRESS V. NORTH SHORE FREE PRESS LTD.
AND DOUG COLLINS

a) Complainant's position

The CJC alleged that the Respondents published or caused to be published an article (entitled "Hollywood Propaganda") that discriminated against Jewish persons and was likely to expose those persons to hatred or contempt on the basis of their race, religion and ancestry, contrary to Section 2 of the B. C. Human Rights Act (now Section 7 of the B. C. Human Rights Code).

b) Respondents' position

The Respondents argued that Section 2 of the B. C. Human Rights Act (now Section 7 of the B. C. Human Rights Code) infringed on Section 2 (b) of the Charter and that the Charter protected the right to express the opinions contained in the relevant article.

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c) Ruling of the case

The Tribunal ruled that Section 7 (1) of the British Columbia Human Rights Code was constitutional but that the "content and tone of the column [did] not fall within the scope of prohibition in Section 7 (1)."

d) Reference materials that deal with the case

For a list of the particulars of the allegation against North Shore Free Press Ltd. and Doug Collins, see B. C. Council of Human Rights Complaint Information, case numbers 940767 and 940768, dated 94/03/09. For a detailed examination of the B. C. Human Rights Tribunal's decision, visit its web site at www.bchrt.gov.bc.ca and click on Decisions and go to 1997 Decisions.

II. BALANCING THE CHARTER WITH THE B. C. HUMAN RIGHTS CODE: MATERIALS PERTAINING TO THE CONSTITUTIONALITY OF SECTION 7 OF THE B. C. HUMAN RIGHTS CODE

(1) SUMMARIES OF RESPONSES SUBMITTED IN THE CJC V. NORTH SHORE FREE PRESS LTD/ DOUG COLLINS CASE TO SUPPORT THE ARGUMENTS RAISED FOR AND AGAINST THE CONSTITUTIONALITY OF SECTION 7 OF THE B. C. HUMAN RIGHTS CODE.

(1.1) *Doug Collins' counsel David Sutherland's response to Ms. Mrozinski of the Office of the B. C. Attorney General regarding the constitutionality of Section 2 of the B. C. Human Rights Code, dated October 28, 1996.*

Counsel for Mr. Collins responded to Ms. Mrozinski's statement that "the [Member Designate's] views on the constitutionality of the legislation could not be the subject of an appeal in the absence of a finding that the publications at issue actually violate the B. C. Human Rights Code," by stating that the Charter is intended to protect Canadians "from certain unjustifiable intrusions by legislature or Human Rights tribunals" (page 3). The submission underscores the Respondents' position in both the CJC and Abrams case (referred to above) that Section 7 of the B. C. Human Rights Code is unconstitutional. The submission is available at the CJC Office, Binder 1, Tab 37.

(1.2) *Mr. Tom Patch (Member Designate B. C. Human Rights Tribunal) submission, "Does the Tribunal have the Jurisdiction to consider the Charter?," dated February 5, 1997.*

In response to the Respondents' position that a tribunal has no jurisdiction to consider the constitutionality of Sections of the Charter, Mr. Patch stated that the B. C. Human Rights Tribunal does indeed have the jurisdiction to consider the validity of protecting Charter rights that violate section(s) of the B. C. Human Rights Code (page 2). This submission is available at the CJC Office, Binder 1, Tab 54.

(1.3) *Submission from Chris Finding (Industrial Relations Officer) to the B. C. Council of Human Rights, dated August 16, 1995.*

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Mr. Finding's submission contains background information on the CJC v. NSN/Collins case and outlines the positions in detail of both the Complainants and Respondents. Pages 4-9 of the document consider the constitutional aspect of the case. Mr. Finding raises a number of important questions and discusses them within the context of the case:

- a) Is the content of the articles in question likely to expose Jewish persons to hatred or contempt based on their race, religion, and ancestry?*
- b) Are the provisions of Section 2 (1) of the British Columbia Human Rights Act consistent with Section 2 (b) of the Charter?*
- c) Are the provisions of Section 2 (1) of the British Columbia Human Rights Act saved by Section 1 of the Charter?*
- d) Is the structure of the Human Rights Commission inherently biased?*
- e) Does the Complainant have status to bring the complaint under Section 11 (2) of the B. C. Human Rights Act?*

(2) SUMMARIES OF ARTICLES AND BOOKS THAT DEAL WITH THE CANADIAN CONSTITUTIONAL DILEMMA OF FREE SPEECH

- (2.1) *Martine Valois, "Hate Propaganda: A Canadian Constitutional Dilemma," in the Revue Juridique Themis, V. 26 (1992), starts at page 373.*

In this article, the author argues that the current Canadian state of law regarding hate literature shows that the Canadian legal protection of freedom of speech indicates not an absolute right, but rather..."when the state wants to restrict freedom of speech, it must advance stronger justifications than when it purports to restrict other individual conduct" (page 404). In other words, the author's position is that free speech, in order to exist, must be protected from restriction by more stringent requirements than restrictions on other forms of conduct.

Valois then discusses the constitutional aspects of cases involving infringements on freedom of speech (e.g., Keegstra and Taylor). She concludes by pointing out that, for all the emphasis the courts have claimed to place on freedom of expression, they have never failed to curtail it where more "important rights" are

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concerned and that the principle of freedom of expression must rank fairly low in the hierarchy of Canadian rights and freedoms.

- (2.2) *Lorraine Eisenstadt Weinrib, "Hate Promotion in a Free and Democratic Society: R. v. Keegstra," in McGill Law Journal, V. 36, 1991, starts at page 1416.*

Ms. Weinrib's article is a case commentary on *R. v. Keegstra*. The conclusion of the commentary states that the approach to Section 2 (b) of the Charter taken by the Supreme Court of Canada was one which took into account the intentions of the drafters of the Charter to promote a society in which all members are free to participate free from "negative parochial identification" and states further that "it is permissible for the state to attach its highest form of disapprobation to willful promotion of hatred in the knowledge that there is ample national and international recognition that this kind of communicative activity is inimical to the stability in multicultural statehood of the post-war period." She concludes by stating that the legacy of *Keegstra* is not that freedom of expression rights are weak, but rather that restrictions on promoting hatred against identifiable groups demonstrate "a commitment to vibrant democracy" (page 1149).

- (2.3) *Philip L. Bryden, Associate Dean, Faculty of Law, University of British Columbia, Judicial Review (1995), Chapter 4, "Judicial Review and the Charter".*

This chapter examines the approaches to issues of applicability involving the Charter, the institutional role of courts and tribunals and the substantive issues concerning limitations of Charter rights when protecting "societal interests." Of particular interest is sub-section III (The Jurisdiction of Administrative Tribunals to entertain Charter Arguments) in which Mr. Bryden states that "courts are more likely than not to take the view that adjudicative tribunals possess the jurisdiction to entertain constitutional challenges to their enabling legislation."

- (2.4) *G. L. Gall, "Multiculturalism and the Fundamental Freedoms: Section 27 and Section 2," pages 29-58 in Multiculturalism and the Charter: A Legal Perspective, (1987).*

This chapter looks at the relationship between Section 2 and 27 of the Charter.

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- (2.5) *Richard Moon, "Drawing Lines in a Culture of Prejudice: R. v. Keegstra and the Restriction of Hate Propaganda," in U.B.C. Law Review, V. 26, (1992), starts at page 99.*

This article looks at the R. v. Keegstra decision and the issue of restricting speech in Canada.

- (2.6) *Margot Priest, "Charter Procedure in Administrative Cases: The Tribunal's Perspective" (1994), Canadian Journal of Administrative Law & Practice (1993-1994), pages 151-169.*

Among other things, this article examines the issue of whether a Tribunal has jurisdiction to consider constitutional matters and when it should defer such questions to other courts.

(3) FURTHER READINGS THAT EXAMINE THE CANADIAN CONSTITUTIONAL DILEMMA OF FREE SPEECH: A SHORT BIBLIOGRAPHY

- (3.1) *Elman and Nelson, "Distinguishing Keegstra and Zundel," (1993, 4:3 Constitutional Forum 71 at 77) .*
- (3.2) *Kathleen E. Mahoney and Sheila L. Martin, "Broadcasting and the Canadian Charter of Rights and Freedoms, Justifications for Limiting Freedom of Expression," for the Task Force on Broadcasting Policy in Canada (1985), Supply and Services Canada (233 pages).*
- (3.3) *Mahoney, "Religious Broadcasting and the Charter of Rights and Freedoms," (1986), for the Task Force on Broadcasting Policy in Canada, Supply and Services Canada.*
- (3.4) *Mahoney, "Making Equality Happen-The Canadian Constitutional Approach," "Chartering Human Rights, Canada-Israel Law Conference," The Hebrew University of Jerusalem, Dec. 1992.*
- (3.5) *Mahoney, "Section - Where is the Balance of Rights Between Free Expression and other Rights?" Queen's University, Faculty of Law, Kingston Ontario, (April, 1993).*

III. EXAMPLES OF "INCENDIARY SPEECH"

(1) EXCERPTS FROM THREE ARTICLES INVOLVED IN RECENT CANADIAN CASES INVOLVING FREE SPEECH AND CHALLENGES TO CHARTER RIGHTS UNDER SECTION 2. THESE EXCERPTS GIVE THE READER AN IDEA OF WHAT KIND OF SPEECH IS INVOLVED IN CHALLENGES TO CHARTER RIGHTS.

(1.1) *Doug Collins article "Hollywood Propaganda" dated March 9, 1994, appearing in North Shore News*

This article labels films on the Holocaust as "Hollywood propaganda." Collins states that the reason so many films on the Holocaust are being made is "because the Jewish influence is the most powerful in Hollywood." Collins re-names Schindler's List as "Swindler's List" and states that Steven Spielberg and other filmmakers have "cashed in" with the wave of holocaust films and that "hardly a day goes by but that press, radio and television don't mention something about the six million."

(1.2) *Doug Collins article "Some value freedom of the press, some don't," dated June 26, 1994, appearing in the North Shore News*

(1.3) *Excerpts from Factum of the Appellant, Canadian Jewish Congress, re: Ross case; available at CJC, Binder 23, Tab 1, page 2: Here is an excerpt from an article which appeared in the Miramichi Leader, in which Malcolm Ross summarized his views.*

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IV. EXPERT OPINIONS ON THE NATURE AND REPERCUSSIONS OF "INCENDIARY SPEECH"

- (1.1) *"Opinion on and Analysis of 'Hollywood Propaganda,' a Column by Doug Collins Published in North Shore News," March 9, 1994, prepared by Bart Testa, Senior Tutor, Program in Semiotics and Communications, Victoria College, University of Toronto; 24 pages (available at CJC Binder 5, Tab 1).*

According to Mr. Testa, "Hollywood Propaganda is a text devised to deliver, and deliver with forceful clarity...the message that the Holocaust itself is an exercise in propaganda"(page 1). The author proceeds to list and explain a number of other messages conveyed by the article. Mr. Testa, applying his expertise on semiotics, analyzes "Hollywood Propaganda" and reaches the conclusion that the aforementioned article contains antisemitic language and would therefore expose Jewish people to hatred or contempt.

- (1.2) *Submission prepared by Leonidas E. Hill, Ph.D., Professor Emeritus of History, University of British Columbia, concerning the article by Doug Collins "Hollywood Propaganda;" 7 pages (available at CJC Binder 5, Tab 2).*

The first few pages of this submission provide a brief description of the origins of antisemitism. Subsequent pages describe antisemitism in Nazi Germany and then in the post war period. Section V of the submission looks at the Collins article and Section VI explains how "Hollywood Propaganda" contributed to hatred of Jews.

- (1.3) *Submission prepared by Robert S. Anderson, Professor of Communication at Simon Fraser University; 6 pages (available at CJC, Binder 5, Tab 3).*

The first two pages of Professor Anderson's submission look at the historical treatment of minorities by the media. The next three pages discuss the role of community newspapers such as the North Shore News.

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(1.4) *Expert Opinion of Morton Weinfeld, Chair in Canadian Ethnic Studies
McGill University; 5 pages (available at CJC Binder 11, Tab 6).*

Mr. Weinfeld submits that 'Hollywood Propaganda' "reinforces several well known and well documented antisemitic stereotypes, which are rooted not only in the European experience, outlined in Mein Kampf itself, but also in more recent expressions of antisemitism established by research in the United States and in the Holocaust denial movement" (page 4).

V. ISSUES OF FREE SPEECH AND CENSORSHIP IN NORTH AMERICA

(1) SUMMARIES OF ARTICLES, CHAPTERS IN BOOKS AND MEDIA TRANSCRIPTS THAT DEAL WITH ISSUES OF FREE SPEECH AND CENSORSHIP.

(1.1) *CBC Prime Time Magazine Transcript for February 7, 1995 "Cyberhate;" 12 pages (also available at CJC Binder 4, Tab 9).*

This program looked at web hate and discussed with people if and how to go about regulating this type of speech. The program showed how people are able to reach a far greater audience with the Internet than with pamphlets. A number of guests made suggestions as to how to regulate the Internet and some called for legislative measures. But others argued that the Internet is not the jurisdiction of any one nation and that laws curtailing free speech cannot be applied to the Internet like they can in a given nation.

(1.2) *Jonathan Rauch, "In Defense of Prejudice: Why Incendiary Speech Must be Protected," in Harper's Magazine (May 1995), pages 37-46.*

In this article, the author argues that in order to preserve intellectual freedom and the progress of knowledge, incendiary speech must be protected.

(1.3) *Frank Miele, "Giving the Devil His Due: Holocaust Revisionism as a Test Case For Free Speech and the Skeptical Ethic," in Skeptic (a publication of the Skeptics Society), Vol. 2, No. 4, 1994, pages 58-70.*

The author examines a number of "Holocaust revisionists" and discusses issues of academic freedom and responsibility.

(1.4) *David McGowan and Ragesh K. Tangri, "A Libertarian Critique of University Restrictions of Offensive Speech," in California Law Review, Vol. 79: 825, pages 825-918 (also available at CJC Binder 39, Tab 11).*

This article examines the constitutionality and desirability of university restrictions of offensive speech. It first looks at the turmoil that has prompted campuses to seek ways to maintain a level of civility which will protect students from offense. The paper then analyzes current theories of protecting speech.

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(2) A BIBLIOGRAPHY ON FREE SPEECH AND CENSORSHIP IN NORTH AMERICA

- (2.1) *Bottos, D., "Keegstra and Andrews: A Commentary on Hate Propaganda and the Freedom of Expression," in the Alberta Law Review, (1989) 27, starts on page 461.*
- (2.2) *Adler, A., "What's Left? Hate Speech, Pornography, and the Problem for Artistic Expression," (1996) 84 in California Law Review, pages 1491-1577.*
- (2.3) *Dixon, John, "The Keegstra Case: Freedom of Speech and the Prosecution of Hateful Ideas," (John Russel, Ed.), Vancouver: New Star Books, 1989, pages 36-45.*
- (2.4) *Dixon, "Freedom of Expression as a Fundamental Right" (September 1990) 24, pages 1-27.*
- (2.5) *Dyzenhaus, D., "Regulating Free Speech," in the Ottawa Law Review, (1991) 23, starts on page 289.*
- (2.6) *Ellis, Deborah, "Hate speech is still protected speech," in the New Jersey Law Journal, December 3, 1991.*
- (2.7) *Feder, Barnaby J., "Toward defining free speech in the computer age," in the New York Times, dated November 3, 1991.*
- (2.8) *Fish, A. "Hate Promotion and Freedom of Expression: Truth and Consequences," in the Canadian Journal of Law and Jurisprudence, (1989) 2, starts on page 111.*
- (2.9) *Gellman, Susan, "Hate Speech and a New View of the First Amendment" (1995), 24 Capital University Law Review, pages 309-316.*
- (2.10) *Green, Jonathon, The Encyclopedia of Censorship, (New York, 1990).*
- (2.11) *Hentoff, Nat, Free Speech for Me But Not For Thee: How the American Left and Right Relentlessly Censor Each Other, (New York: Harper Perennial, 1992).*

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- (2.12) *Hohenberg, John, Free Press/Free People: The Best Cause, (New York: Columbia University Press, 1971).*
- (2.13) *Lassen, Kenneth, "Racial Defamation as Free Speech: Abusing the First Right Amendments.*
- (2.14) *Lepofsky, David M., "The Role of the 'Press' and Freedom of the Press," Cambridge Lectures, 1991, 83.*
- (2.15) *MacKay, A. Wayne., "Freedom of Expression: Is it All Just Talk?" (1989), 68 Canadian Bar Review. 713.*
- (2.16) *Rosenberg, E. D., "Hate Crimes, Hate Speech and Free Speech: Florida's Bias-Intended Hate Crime Statute," in the Nova Law Review, (1990) 17, starts on page 597.*

(3) SUMMARIES OF PAMPHLETS AND PAPERS FROM INTERNATIONAL ORGANIZATIONS AND CONFERENCES THAT DEAL WITH ISSUES OF FREE SPEECH AND CENSORSHIP.

- (3.1) *Sandra Coliver (Ed.), Striking a Balance: Hate Speech, Freedom of Expression and Non-Discrimination. Article 19, International Centre Against Censorship, Human Rights Centre, University of Essex, 413 pages.*

This study looks at issues of free speech, censorship, racism and legislative measures on how to curtail offensive speech. It examines these issues within different national contexts, looking at examples from Great Britain, Europe, the United States, Australia and Canada. (Parts of this study, including Chapter 12 are available at CJC, Binder 18, Tab 27.)

- (3.2) *Report of Special Rapporteur to U.N. Commission on Human Rights: Promotion and Protection of the Right to Freedom of Opinion and Expression, dated December 14, 1994 (also available at CJC Binder 18, Tab 70).*

The report defines freedom of expression and opinion and examines the state of free speech and opinion in various Second and Third World Countries. The study

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is primarily concerned with political expression and the repercussions of such speech in autocratic, semi-democratic and democratic countries.

(3.3) *Report of Special Rapporteur to U.N. Commission on Human Rights: Promotion and Protection of the Right to Freedom of Opinion and Expression, dated February 4, 1997 (also available at CJC Binder 18, Tab 71).*

Same format as the previous document in (3.2). Examines the state of free speech in countries not covered in (3.2) document: Albania, Brazil, Cuba, Indonesia, Myanmar, and Sri Lanka.

VI. OPPONENTS OF SECTION 7 OF THE B. C. HUMAN RIGHTS CODE

(1) SUMMARIES OF SUBMISSIONS AND PUBLICATIONS OF THE B. C. PRESS COUNCIL, B. C. CIVIL LIBERTIES ASSOCIATION AND THE CANADIAN CIVIL LIBERTIES ASSOCIATION ON DEFENDING FREE SPEECH. THE ABOVE MENTIONED ORGANIZATIONS HAD INTERVENER STATUS IN BOTH THE CJC V. NORTH SHORE FREE PRESS LTD. AND THE ATTIS V. NEW BRUNSWICK SCHOOL DISTRICT NO. 15 CASES.

(1.1) *B. C. Press Council Submission in the CJC v. Collins/NSN case entitled In Defense of a Free Press in British Columbia: Why the B. C. Press Council is Fighting the New B. C. Human Rights Code; 153 pages (also available at CJC Binder 48).*

This submission provides an overview of the B. C. Press Council's argument in the CJC v. Doug Collins/North Shore News case.

(1.2) *B. C. Civil Liberties Association Submission in the CJC v. Collins/NSN case, dated June 19, 1997; 50 pages (available at CJC Binder 48).*

Section I (A) of the submission entitled "The Justification for Freedom of Expression" underlines the fundamental points of the B. C. Civil Liberties Association's position on freedom of speech and censorship. In Section II (A), which relates directly to the main issues argued in the CJC v. Collins/NSN case, the B. C. Civil Liberties Association examines whether the Section 7 (1) of the B. C. Human Rights Code violation of the Charter can be saved by Section 1 of the Charter. Sub-section C (iii) of Section II looks at extremist expression and harm and the salutary and deleterious effects of Section 7 (1) of the B. C. Human Rights Code.

(1.3) *Canadian Civil Liberties Association in the CJC v. Collins/NSN case entitled Factum of the Intervener "David Attis v. The New Brunswick School Board of Trustees No. 15; 12 pages (available at CJC Binder 23, Tab 3).*

This submission looks at issues such as the Oakes Test, Freedom of Expression and Charter rights and the Canadian Human Rights Code within the context of the aforementioned case.

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(2) EXCERPTS AND SUMMARIES FROM SELECTED CANADIAN ARTICLES VOICING OPPOSITION TO SECTION 7 OF THE B. C. HUMAN RIGHTS CODE AND THE GENERAL CLAMP DOWN ON FREE SPEECH.

- (2.1) *Kim Bolan, "Distortion means not having to say writer is sorry, press council says," in the Weekend Sun, dated October 21, 1995.*
- (2.2) *Victoria Wong, "Collins complaint crushed by press council," in the Vancouver Sun, dated December 7, 1984.*
- 2.3) *"Complaint Dismissed: Press Council backs News and Collins," in The North Shore News, dated December 7, 1984.*
- (2.4) *Les Leyne, "Hate writing clampdown goes too far, says Wilson," in the Victoria Times Colonist, dated June 8, 1993; all articles listed in this subsection are available at CJC Binder 47, Tab 1.*
- (2.5) *R. J. McKellar (opinion) "Anti-hate law echoes of 1984" in Letters, Vancouver Sun, dated June 17, 1993.*
- (2.6) *Les Leyne, "Civil liberty group Opposition critics label hate law gag," in Victoria Times Colonist, dated June 9, 1993.*
- (2.7) *Keith Baldrey, "Anti-hate law could hit free speech, opposition says," in Vancouver Sun, dated June 8, 1993.*
- (2.8) *Shane McClure, "Clowns to the left, jokers to the right," in the Province, dated June 9, 1993.*
- (2.9) *Crawford Kilian, "Anti-bigotry bill harnesses free speech," in Vancouver Sun, dated June 11, 1993.*
- (2.10) *Kenneth Whyte, "Stifling free speech under the virtuous banner of human rights," in the Globe and Mail, dated June 26, 1993.*
- (2.11) *Brian Kieran, "Bill 33: New promises, old stunts," in the Province, dated June 22, 1993.*
- (2.12) *Editorial "A misguided act against hatred," in the Vancouver Sun, dated June 15, 1993.*

VII. PROPONENTS OF SECTION 7 OF THE B. C. HUMAN RIGHTS CODE

(1) SUMMARIES OF SUBMISSIONS AND PUBLICATIONS SUPPORTING THIS SECTION OF THE B. C. HUMAN RIGHTS CODE.

- (1.1) *Submission from the CJC v. Collins/NSN case entitled "Closing Submissions of the Crown on the Constitutionality of S. 7 (1) (b) of the Human Rights Code of British Columbia;" 41 pages (available at CJC Binder 48).*
- (1.2) *Ritu Mahil and Dean David Cohen, Faculty of Law, University of Victoria, "Balancing Freedom of Expression with the Right to be Free from Discrimination and Hate Speech," published by the Affiliation of Multicultural Societies and Service Agencies of B.C.; 49 pages (available at CJC Binder 48).*

(2) EXCERPTS FROM SELECTED ARTICLES DEFENDING SECTION 7 (1) OF THE B. C. HUMAN RIGHTS CODE.

- (2.1) *David D. Schreck, MLA, North Vancouver Lonsdale, "Bill 33 not written with anyone in mind," in Victoria Times Colonist, dated July 13, 1993.*
- (2.2) *"New Law hailed as aid in war on hate literature," in Victoria Times Colonist, dated August 20, 1993.*
- (2.3) *Anita Hagen, Minister of Education, "Bill wards off hate mongers, upholds free speech," in Victoria Times Colonist, dated July 7, 1993.*

(3) EXCERPTS FROM SELECTED MEDIA DOCUMENTS RELATING TO THE RISE OF RACISM, ANTI-SEMITISM AND HATE CRIME ACTIVITY IN CANADA.

- (3.1) *Harold Munro, "Racist wooing students: Leader holds up Hitler as a model," in the Vancouver Sun, dated Nov. 2, 1992.*
- (3.2) *"Swastika, satanic symbols mar Winnipeg synagogue," in the Vancouver Sun, dated Nov. 2, 1992.*

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- (3.3) *"Racist Front looks for members," in the Province, dated November 6, 1992.*
- (3.4) *Corry Anderson, "Neo-Nazism on rise in Delta, says newsletter's publisher," in the Surrey/North Delta Now, dated December 9, 1992.*
- (3.5) *William Boei, "Hate on the rise," in the Weekend Sun, June 5, 1993.*
- (3.6) *Doug Ward, "Hate-message line back in operation in Surrey," in the Vancouver Sun, dated December 19, 1992.*
- (3.7) *Jack Kapica, "All minorities targets of racial violence, experts say," the Globe and Mail, dated January 4, 1991.*

(4) FURTHER LIST OF MEDIA DOCUMENTS THAT DEAL WITH THE RISE OF RACISM, ANTISEMITISM AND HATE-ACTIVITY IN CANADA.

- (4.1) *Peritz, I., "Vandals deface seven synagogues with swastikas, anti-Semitic slogan," in the Montreal Gazette, dated January 5, 1993.*
- (4.2) *Semenack, S., "Gay Bashing: Montreal gays say it's getting worse as gangs cruise streets for trouble," in the Montreal Gazette, dated March 27, 1989.*
- (4.3) *Swanison, G., "Hate crimes on rise, police say," in the Toronto Star, dated June 16, 1993.*
- (4.4) *Farnsworth, Clyde H., "Head of Detroit white supremacists faces trial in Canada," in the New York Times, dated March 24, 1995.*
- (4.5) *Lewis, Peter H., "Jewish rights group urges ban on all hate messages on Internet," in the New York Times, dated January 10, 1996.*
- (4.6) *McClintock, M., "Gays seek hate crime law," in the Ottawa Sun, dated May 16, 1993, page 10.*
- (4.7) *Roberts, J. V., "Hate Motivated Crimes Deserve Harsher Penalties," in the Ottawa Citizen, dated November 24, 1994.*

CHAPTER SEVEN

(5) REFERENCE WORKS DEALING WITH ANTISEMITISM, RACISM, HATE-MOTIVATED CRIMES AND RIGHT-WING EXTREMISM IN CANADA.

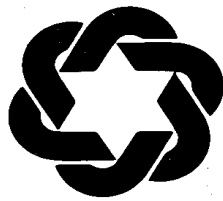
- (5.1) *Barrett, Stanley, Is God a Racist; The Right Wing in Canada, Toronto: University of Toronto Press, 1987.*
- (5.2) *Chesnoff, Richard Z., "Hatemongering on the data highway," in U. S. News & World Report, dated August 8, 1994, starts on page 52.*
- (5.3) *Davies, Alan, "An Historical Perspective on the Malcolm Ross Affair, (1992), 41 in University of New Brunswick Law Journal, pages 302-310.*
- (5.4) *Davies, Alan (Ed.), Anti-Semitism in Canada: History and Interpretation, Waterloo: Wilfred Laurier University Press, 1992.*
- (5.5) *Delisle, E., The Traitor and the Jew: Anti-Semitism and Extreme Right Wing Nationalism in Quebec, Montreal, 1993.*
- (5.6) *Driedger, Leo, Multi-Ethnic Canada: Identities And Inequalities, Don Mills: Oxford University Press, 1996.*
- (5.7) *Gilmour, G., Hate Motivated Violence, (Working Document WD 1994-6e), Ottawa: Department of Justice Canada, 1994.*
- (5.8) *Herek, G. M. and K. T. Berrill, "Documenting the victimization of lesbians and gay men: Methodological issues," in G.M. Herek and K.T. Berrill (Eds.), Hate Crimes: Confronting Violence against Lesbians and Gay Men, Newbury Park: Sage Publications, 1992.*
- (5.9) *League for Human Rights of B'nai Brith Canada, Victim Impact of Racially Motivated Crime, Downsview, Ontario: League for Human Rights of B'nai Brith Canada, 1993.*
- (5.10) *League for Human Rights of B'nai Brith Canada. 1994 Audit of Anti-Semitic incidents, Downsview, Ontario: League for Human Rights of B'nai Brith Canada, 1994.*

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- (5.11) *Li, Peter, Ethnic Inequality in a Class Society, Toronto: Wall and Thompson, 1988.*
- (5.12) *Li (Ed.), Race and Ethnic Relations in Canada, Toronto: Oxford University Press, 1991.*
- (5.13) *Lipstadt, Deborah, Denying the Holocaust, New York: The Free Press, 1993.*
- (5.14) *Matas, D., "The Charter and Racism," in the Constitutional Forum, (1990) 2, starts on page 82.*
- (5.15) *McKague, Ormond (Ed.), Racism in Canada, Saskatoon: Fifth House Publishers.*
- (5.16) *Nelson, J. and Kiefl, G., Survey of Hate Motivated Activity, (Technical Report TR 1995-4e), Ottawa: Department of Justice Canada, 1995.*
- (5.17) *Quinley, H and C Y Glock, Anti-Semitism in America, New York: The Free Press, 1979.*
- (5.18) *Roberts, J. V., "Statistics on Race and Crime: Towards a Canadian Solution," in Canadian Journal of Criminology, (1994) 36, pages 175-186.*
- (5.19) *Roberts, J. V., Disproportionate Harm: Hate Crime in Canada: An Analysis of Recent Statistics, Department of Criminology, University of Ottawa, 1995.*
- (5.20) *Sigal, John and Morton Weinfeld, Trauma and Rebirth: Intergenerational Effects of the Holocaust, New York: Praeger, 1989.*
- (5.21) *Rosenthal, P., "The Criminality of Racial Harassment," in the Canadian Human Rights Yearbook, (1989-1990), 6, starts on page 113.*
- (5.22) *Ross, J. I., "Research Note: Contemporary Radical Right-Wing Violence in Canada: A Quantitative Analysis," in Terrorism and Political Violence, (Autumn, 1992) 4, No.3, starts on page 72.*

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(5.23) *Ward, W. Peter, White Canada Forever, Montreal: McGill Queens Press, 1978.*



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