

The purpose of laws against the expression of hate

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One effect of our laws and policies against hate speech has been to chill and deform public discussion of controversial or sensitive matters.

That wasn't the intention behind these laws and policies, at least not among those who first drafted them. Members of the Cohen Committee, way back in 1966, were seriously concerned that their recommendation to make unlawful the wilful promotion of hatred against identifiable groups would catch only the haters and leave the rest of us alone. Some members of the committee were prepared to abandon recommending any law, even at the cost of letting neo-Nazis speak freely, if they thought a law would put non-hateful speech at risk.

But times have changed, and with them have changed intentions and purposes. Nowadays it looks as though the main purpose of laws and policies in Canada against hate speech is precisely to make people think twice before offering their opinions or expressing their emotions.

What people say can harm people. It can harm them by lowering their self esteem, for instance, or by causing them to internalize negative self images, or by bringing others to think of them through negative stereotypes. But when speech harms people in these ways or others, it harms them because what it says seems plausible, ordinary, reasonable. If people in our communities are being kept down by other people's mistaken opinions or baseless feelings, it's because those opinions and feelings are widespread and common, and come from people who bear no ill will toward anyone.

And so, if people need to be protected against the effects of speech, it's against the effects of lots of bits of everyday speech. The hateful opinions and proposals pose no real problem, for they find no audience, while in a society marked by inequalities along lines of race, ethnicity, sex, and sexual preference, ordinary opinions might well pose major problems for the dispossessed and the people on the margins. An expert who floats the hypothesis that girls by nature can't do higher math will do more damage to members of a vulnerable class than will the loner whose website proclaims all women are trash.

If the intention of those who administer laws against the promotion of hate is actually as much to police everyday expression and discussion as to silence the occasional neo-Nazi, then the investigations by human rights agencies of *Macleans*'s magazine, *The Western Standard*, *Catholic Insight*, and the like are not the simple

mistakes we might have thought they were. They would, in fact, be efforts to move the borders of what's acceptable speech closer to what people ordinarily say, as well as to send signals not to cross the new lines.

Of course, it is possible that our various human rights agencies are not actually consciously using sticks to influence the content of everyday public discourse. Perhaps today's chilly climate is entirely an unintended and regretted by-product of an honest attempt to silence only the haters.

There are reasons for doubt, though. One is that Richard Moon, the law professor chosen by the Canadian Human Rights Commission to review its practices of suppressing and punishing expression, is not at all opposed to officials using sticks to quiet the ordinary racism, sexism, and homophobia he finds in day to day discussion. (Take a look at his book.)

More significant is the recent finding in Alberta that Stephen Boissin, in speaking against what he calls the homosexual agenda, did expose people to hatred and contempt. Boissin clearly hates homosexuality, but there's no evidence he hates any homosexuals—unless one declares that this is a distinction without a difference, and that's to move a line.

As well, in her statement regarding *Maclean's* magazine, Barbara Hall, the Chief Commissioner of the Ontario Human Rights Commission, asserted that negative stereotypes of a disadvantaged group all by themselves expose people to hatred and, for that reason, fall within her commission's realm of concern.

Let us hear what Professor Moon says in his review of the CHRC. And let us hear what the parliamentary committee on the CHRC, headed by MP Rick Dykstra, finds. If these two reviews do not conclude that the CHRC should be stripped of all power to suppress and punish expression, we can be pretty certain that human rights agencies across the country will claim, as needed for their proper functioning, the power to regulate through prosecution and threat of prosecution the well-meaning expression by Canadians of their everyday opinions and emotions.