

## The threat of censorship in Nova Scotia

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In its recent report to Parliament, the Canadian Human Rights Commission defended censorship as a means to deal with hate on the internet. Its central argument is that extreme and ardent expressions of hate cause harm to members of groups the CHRC is mandated to protect.

The CHRC neglected, though, to provide evidence that extreme and ardent hate expressed in the relative obscurity of blogs and niche websites puts Canadians at risk of harm. And it's certainly hard to see how such expressions could put Canadians at greater risk of harm than do, say, talk-radio comments about immigrants ruining the country or *Maclean's* articles contending that Muslims are set to win a demographic war. These latter—true or false, well-intended or obnoxious—do not express hate and, thereby, fall beyond the purview of the CHRC and the Canadian Human Rights Tribunal, as the CHRC itself is at pains to insist.

The CHRC failed also to explain how the tribunal manages to prevent or mitigate harm when the extreme words it has ordered removed from one site get reproduced by journalists or bloggers on another. (A good sampling of the sort of thing the CHRC would like removed from the web can be found in its report, on its website.)

The point is that far from being a noble and effective weapon in the fight for equality and social justice—a weapon that, regrettably, occasionally inflicts minor collateral damage—censorship is both ignoble and ineffective. It violates freedom of expression and chills candour and openness, and it doesn't help anyone with anything.

What about the Nova Scotia Human Rights Commission, then? Does it also pose a threat to candour, openness, and the peaceful expression of opinion and emotion?

Yes, it does, and that's surprising, because really the NSHRC has no statutory mandate to meddle in free expression. Nothing in Nova Scotia's current Human Rights Act, which came into force in 1989, gives our commission or its associated tribunal any power over what we can express publicly in our province.

It is true that Section 7 (1) of the provincial act forbids us from publishing, displaying, or broadcasting anything "indicating discrimination or an intention to discriminate against" people belonging to one of the groups named in the act. And so our restaurants may not post signs saying "Homosexuals not served" and our factories may not advertise "Coloureds need not apply." Given the clear meanings of the words, though, that's all Section 7 forbids. There's nothing in it forbidding our expressing our ugly opinions or our vile emotions.

Nonetheless, the NSHRC, in both word and deed, has asserted powers of censorship. The NSHRC has at least twice investigated matters of expression. One case, in the 1990s, ended with an order against a grotesque image on a shirt. A second case ended not long ago with a complaint against a cartoon in the *Herald* dismissed. Now one has to admit that, as far as deed goes, the NSHRC is much better behaved than some other provincial and territorial commissions. In Alberta, remember, a man's letter to the editor resulted in fines and a gag order.

Better behaved, though, does not mean well behaved—and, anyway, there's the matter of word. Both Krista Daley, the current director of the NSHRC, and Michael Noonan, a former (acting) director, have said the NSHRC is authorized under Section 7 to investigate complaints of hate speech. Ms Daley explained at King's College last November that while Section 7 preserves a quaint idiom from the early days of human rights legislation, contemporary commissioners and, more importantly, judges understand that the section prohibits hate speech and, thereby, that it gives the provincial tribunal the power to suppress expression it deems hateful.

Ms Daley might be right that judges would agree with her. That's what makes it important that our new provincial government examine Section 7 with an eye to deleting it. Our government should, at least, affirm publicly that the section says nothing in addition to what it says. Legislators would do well to delete the section now, before precedent and the courts firmly impose on it an interpretation according to which we say what we want only at the pleasure of the NSHRC.