

HUMAN RIGHTS LAW

Provincial and territorial human rights codes often contain provisions prohibiting the incitement of hate or group discrimination by way of public displays, broadcasts, or publications. There is, however, not one uniform approach across Canada to the inclusion of prohibitions on hate speech and hate propaganda in human rights laws nationally.¹

Each provincial and territorial legislature in Canada has passed human rights laws that prohibit discrimination based on certain prohibited grounds such as race, sex, age, religion, ability, gender identity and expression, ethnicity, creed, etc. in the context of employment, tenancy, memberships, and accessing public goods and services. In the federal context, the main human rights legislation is the *Canadian Human Rights Act*, which generally applies to the federal government departments and agencies, Crown corporations, and federally regulated businesses.

All human rights laws across Canada, except for that in the Yukon Territory, prohibit in some respect the public display, broadcast or publication of messages that announce an intention to discriminate or that incite others to discriminate, based on the identified prohibited grounds.² While these provisions do place limits on free speech, they have not been challenged, most likely because their original purpose was to guard against discriminatory actions

by businesses or landlords who would use signs to indicate that certain racial or ethnic groups would not be served.³

In addition, human rights legislation in Alberta, British Columbia, Saskatchewan, and the Northwest Territories each contain a prohibition against the promotion of hatred or contempt in some formulation – these typically falling under the same provisions which address discriminatory publications.⁴

Not all offensive publications will count as discriminatory under the applicable human rights codes. Publications will typically only be found to be discriminatory when they have a very harmful impact on the person or group affected, based on a specific protected ground in the legislation. This will need to be determined on a case by case basis in the relevant jurisdiction.

¹ Julian Walker, "Hate Speech and Freedom of Expression: Legal Boundaries in Canada" (29 June 2018) Library of Parliament, Legal and Social Affairs Division, Parliamentary Information and Research Service, Publication No 2018-25-E. See also Canadian Centre for Diversity and Inclusion, "Overview of Human Rights Codes by Province and Territory in Canada", (January 2018), online: <https://ccdi.ca/media/1414/20171102-publications-overview-of-hr-codes-by-province-final-en.pdf>.

² Walker, *supra* at p 8; See *Alberta Human Rights Act*, RSA 2000, c A-25.5 at s. 3; *British Columbia, Human Rights Code*, RSBC 1996, c 210 at s 7; *Canadian Human Rights Act*, RSC 1985, c H-6 at s 12; *Manitoba, The Human Rights Code*, CCSM c H175, at s 18; *Ontario, Human Rights Code*, RSO 1990, c H.19, at s 13; *Quebec, Charter of Human Rights and Freedoms*, CQLR c C-12, at s 11; *New Brunswick, Human Rights Act*, RSNB 2011, c 171, at s 7; *Nova Scotia, Human Rights Act*, RSNS 1989, c 214 at s 7; *Prince Edward Island, Human Rights Act*, RSPEI 1988, c H-12 at s 12; *Newfoundland and Labrador, Human Rights Act*, 2010, SNL 2010, c H-13.1, at s 19; *Northwest Territories, Human Rights Act*, SNWT 2002, c 18 at s 13; *Nunavut, Human Rights Act*, SNU 2003, c 12 at s 14; *The Saskatchewan Human Rights Code*, 2018, SS 2018, c S-24.2 at s 14.

³ Walker, *supra* at 8.

⁴ *Ibid*: See *Alberta Human Rights Act*, RSA 2000, c A-25.5 at s. 3; *British Columbia, Human Rights Code*, RSBC 1996, c 210 at s 7; *Northwest Territories, Human Rights Act*, SNWT 2002, c 18 at s 13; *The Saskatchewan Human Rights Code*, 2018, SS 2018, c S-24.2 at s 14.

