To begin to warm this chilly climate

Halifax *Chronicle Herald*, under the title "Bad times for free speech: But axing Section 13 of Rights Act would begin to warm up chilly climate," Wednesday 21 May 2008

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Canadians heard a long time ago, at least as long ago as 1990, that they are not free to speak their minds as they see fit. 1990 was the year the Supreme Court of Canada ruled constitutional Section 13 of the Canadian Human Rights Act.

Section 13 says that it is "a discriminatory practice" to communicate "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 the basis of a prohibited ground of discrimination."

It is under s. 13 that a complaint against *Maclean's* magazine has been filed with the Canadian Human Rights Commission. It's indirectly because of s. 13 that provincial and territorial human rights commissions see fit to consider complaints about what people have said or written or drawn—as in the current complaint against *The Chronicle-Herald* for publishing an editorial cartoon that offended some readers.

Now none of us wants that any group of people is vilified. We don't want our ears bruised by racist epithets and we don't want to witness displays of contempt. And yet one doesn't have to be a free speech absolutist to see what is wrong and dangerous with s. 13. It is addressed to any matter that "is likely to expose" a person to hatred. What you say need not actually expose anyone to hatred. It need not even be intended to expose anyone to hatred.

Now consider the phrase "hatred or contempt." These subjective attitudes shade imperceptibly into dislike or disapproval and finally into simply turning a cold shoulder. Who can tell whether what has been expressed is hate? The test here could very well be just that someone might feel they've heard hate.

Worst of all, under s. 13 what you say need have no discriminatory effect in order to be a discriminatory practice. No one need be harmed.

Since it is vague and not about harm, s. 13 could be used to charge with discrimination a person who, in discussing a serious matter in public, related an opinion, not his own, to which someone might conceivably take offence (though no one did), even though relating this opinion harmed no one. It would just depend on the attitudes and agenda of the human rights commissioners. And what if the opinion related happened to be true? That would be neither here nor there—after all, what matters is that someone could conceivably feel that she received a cold shoulder.

A person of sense in 1990 could easily have predicted that s. 13 would soon be used, as it has indeed come to be used, to bully people away from saying what sitting commissioners happen not to want to hear.

The Supreme Court had three people of sense on it in 1990. The Court upheld the constitutionality of s. 13 by a mere 4-3 majority.

The Justices who got their way discounted their colleague's fears. As long as authorities remember that hatred and contempt are extreme feelings, they said, and keep in mind that the purpose of the Act is to overcome discrimination, and not to censor speech, Canadians have no reason to fear that a chilly climate for opinion will descend on the country or that s. 13 will be used to control the expression of opinion and emotion. These Justices neglected the sage advice never to make a law that requires intelligence or good will on the part of those who administer it.

Happily, Keith Martin, the member of parliament for Esquimalt-Juan de Fuca, a riding on Vancouver Island, has introduced into the House of Commons a private member's motion, M-446, to delete s. 13 of the Canadian Human Rights Act. Unhappily, the matter of s. 13 hasn't yet become a political issue. Unless a political party takes it up, M-446 will languish, and unless Canadians make s. 13 a political issue, no party will take up M-446. We need to communicate to politicians our support for M-446.

Keep in mind that s. 13 is peripheral to the Human Rights Act. Removing s. 13 will in no way prevent federal or provincial human rights commissions from effectively addressing discrimination in jobs, housing, and the rest. Harmful hate propaganda will remain criminal, a matter for the police and the courts, as will public mischief (shouting "fire" in a crowded theatre), incitement to violence, and conspiracy to commit a crime. Civil courts will continue to provide remedies for libel. Nothing that matters would be lost to us should human rights commissions no longer be able to censor, suppress, or punish speech.

Let us thaw the chilly climate in which we presently live so that we may speak candidly with each other about whatever is important to us. Support publicly Dr Martin's motion so that our politicians will come to do so, too.

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