



**Lessons from the SCC in Whatcott:  
Hate Speech or Not?**

Perhaps York community members have at times wondered about how an institution of higher learning such as York can balance the right of freedom of expression (which includes political views and academic freedom) and the right to equality and the right to be free from discrimination and harassment. We may have considered questions such as these: What is the difference between hate speech and offensive speech? Where do we draw the line between the expression of political opinions or religious belief and hateful expression that targets vulnerable groups of people?

Canada's highest court, the Supreme Court of Canada (SCC) has provided some clarity in answering some of these questions in the recent decision *Saskatchewan (Human Rights Commission) v. William Whatcott*. The facts of this case are as follows. In 2001 and 2002 Whatcott, a self-identified born-again Christian, distributed anti-gay flyers in Regina and Saskatoon. The flyers were certainly offensive, but some of them also crossed the line over into hateful speech according to Saskatchewan's human rights code. For example, two of Whatcott's flyers stated that "Saskatchewan's largest gay magazine allows ads for men seeking boys!; If you cause one of these little ones to stumble it would be better that a millstone was tied around your neck and you were cast out into the sea". When individuals came forward to complain to Saskatchewan's Human Rights Commission about Whatcott's flyers, the complaints went forward to a human rights tribunal which found that he had breached the province's human rights code. Whatcott appealed that decision to a lower court which agreed with the tribunal. Whatcott then appealed again to the Saskatchewan Court of Appeal, which found that freedom of expression must be given a broad interpretation, and that Saskatchewan's human rights code should not stand because it violates the Canadian Charter of Rights and Freedoms (the Charter) which protects freedom of expression and freedom of religion.

Then, the case went up to the SCC, which held that most of section 14 of Saskatchewan's human rights code should stand to prevent discrimination by prohibiting certain forms of public expression. Section 14 in Saskatchewan's code bans public expression that exposes people to "hatred" on the basis of sexual orientation or other similar protected grounds. The SCC said, yes, this type of legislation does breach the Charter protections for freedom of expression and religion, but it is justified under section 1 of the Charter to protect minorities and vulnerable groups, and to prevent the stifling of dialogue and discourse.

The SCC states in the decision that hate speech is different from other forms of expression in that it is specifically used and intended to "delegitimize" its target in the eyes of the majority

and to reduce their acceptance within society, and that it can have a societal impact. In addition, the SCC says hate speech lays the groundwork for later, broad attacks on vulnerable groups that can range from discrimination, to ostracism, segregation, deportation, violence and in the most extreme cases, genocide.

The high court also spoke about political expression and how that fits into all of this, stating that political expression is crucial in that it contributes to our democracy by encouraging the exchange of opposing views, but that hate speech is the opposite because it shuts down dialogue by making it difficult or impossible for members of a vulnerable group to respond, thereby stifling discourse. However, the SCC reiterates that it is important to remember that offensive speech DOES NOT equal hate speech. The test is whether a reasonable person, aware of the context and circumstances, would interpret the expression as likely to expose an individual/group to detestation and vilification on the basis of a prohibited ground of discrimination. Also, the SCC emphasized that it is the public sphere in which this type of prohibition applies, and not in private conversations.



So, what does a decision such as this mean for us as York community members? Well, it confirms that there is certainly a line between freedom of expression and hateful speech, and that protecting vulnerable groups from hate speech is an important part of upholding human rights. Unlike Saskatchewan, in Ontario, hate speech is only covered under the criminal law and not under our Human Rights Code. However, York University has a policy, Hate Propaganda Guidelines, which sets out definitions of hate according to the relevant legislation as well as consequences for those who violate the policy. The policy defines hate propaganda as the public promotion or incitement of hatred against an identifiable group. Hate propaganda targets persons and/or property based on such factors as colour, race, religion, ethnic origin, sex, sexual orientation and gender identification.

*(continued...)*



*(Hate Speech /continued...)*

York encourages a culture and community where dialogue and the exchange of diverse and often opposing views is welcomed and valued. However, any expression, whether verbal or otherwise, must not be hateful; hateful expression not only results in discriminatory and even violent behavior against vulnerable groups, but also shuts down dialogue.

What are some ways for us to create a more respectful campus where freedom of expression is valued, but does not turn into hateful expression?

- Express your opinions/beliefs openly and honestly on campus, but recognize that we are all members of a diverse campus with multiple opinions, and we will not always agree with one another.
- Educate yourself about others' opinions and beliefs. It is easier to understand where others are coming from when you take the time to learn more about their perspectives.
- If you are unsure about whether the expression you want to engage in, or whether expression you observe on campus, is a violation of York's policies or the Ontario Human Rights Code, contact the Centre for Human Rights. Our case advisors provide information and advice to assist any York community member concerned about human rights, discrimination, or harassment, and the advice is completely confidential.
- Recognize that if the expression you want to engage in causes harm to individuals and to society as a whole, harms individuals by diminishing them in their dignity and self-worth, and/or encourages hostility, discrimination and violence, it may be hate propaganda, which is contrary to York University policies and potentially the Criminal Code.

**For more information:**

The SCC Decision: <http://bit.ly/Wsx1AV>

Hate Propaganda Guidelines: <http://bit.ly/XVpP3G>

## WORKSHOPS

Mar. 13, 2013

**Positive Space**  
(9:30 am to 12:30 pm)

Light refreshments provided.  
To register visit:

[www.yorku.ca/rights/workshops/index.html](http://www.yorku.ca/rights/workshops/index.html)

We welcome all York students, staff and faculty to attend our workshops.

## Upcoming Events:

**Women and the Law,**

**Wednesday March 6**

**1:30-2:30pm 1014 Osgoode Hall, ADR Room)**

Featuring **Chantelle Bowers, Executive Director and General Counsel, Judicial and Registry Services**, Federal Court of Appeal and the Court of Marital Appeal Court of Canada. The presentation will focus on the importance of the Immigration and Refugee Board's Chairperson Gender Guidelines ("women Refugee Claimants Fearing Gender-related persecution"), as truly a path breaking and among the first in the world to consider gender-related persecution as a form of persecution that can be assessed by the Refugee Division panel hearing the claim.

**International Women's Week at YorkU**

**March 4-8, 2013**

CHR is collaborating with the Gender Based Violence Prevention Committee on a series of events to celebrate International Women's Day. **Details:** [www.facebook.com/events/1925549694250935/](http://www.facebook.com/events/1925549694250935/)

**Sexual Assault/ Violence**

**Workshop**

**Tuesday March 12**

**12-1:30pm**

**McLaughlin Senior Common Room, (McLaughlin 140)**

**Thursday March 21**

**12:30-2pm Bethune College Room 203**



The time is now! Join the movement to eradicate sexual assault and sexual violence! All gender groups are encouraged to attend.

## Connect with the CHR!

Visit our Website to get more information about our services, events, workshops, and human rights resources <http://www.yorku.ca/rights/>



Like us on Facebook!  
York University Centre for Human Rights



Follow us on Twitter!  
<http://twitter.com/#!/YorkURights>

Find us on York's YU Connect Website  
<http://yuconnect.yorku.ca/>