Law and Business Review of the Americas

Volume 10 | Number 4 | Article 7

2004

The Expansion of Canadian Hate Speech Legislation

Sarah Stark

Recommended Citation

Sarah Stark, *The Expansion of Canadian Hate Speech Legislation*, 10 LAW & BUS. REV. AM. 807 (2004)
https://scholar.smu.edu/lbra/vol10/iss4/7

This Comment and Case Note is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Law and Business Review of the Americas by an authorized administrator of SMU Scholar. For more information, please visit http://digitalrepository.smu.edu.

THE EXPANSION OF CANADIAN HATE SPEECH LEGISLATION

*Sarah Stark**

I. INTRODUCTION

THE competing rights expressed in sections 1 and 2 of Canada's Charter of Rights and Freedoms (Charter) form the foundation of an unfolding civil liberties battle. Section 2(b) of the Charter provides qualified protection for "freedom of conscience and religion; freedom of thought, belief, opinion and expression."[1] Section 1 of the Charter, however, subjects these rights "to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."[2] It is this qualifying clause that is forcing Canadian courts to incrementally refine how section 1 of the Charter may limit individuals' section 2 rights.

A recent addition to Canada's Federal Criminal Code section 318(4) (section 318(4) or Legislation),[3] adding sexual orientation to the list of classes protected against hate speech, will provide Canadian courts with an opportunity to revisit the extent of section 1's limiting power. Hate crime laws protect specified groups of individuals who are deemed to need increased governmental protection from speech motivated by hatred.[4] Because of the Legislation, statements that are disapproving of homosexual behavior are classified as hate speech and are subject to criminal prosecution. Canadians who oppose homosexuality on religious grounds and non-religious citizens who fear that the Legislation is overly broad have expressed concerns that the law will infringe on their constitutionally protected freedoms of religion and expression.[5]

---

* Sarah Stark is a 2005 J.D. Candidate at the Dedman School of Law, Southern Methodist University. Prior to attending law school, the author obtained a B.A. in history from the University of Dallas. Following graduation, she will be clerking for United States District Judge for the Western District of Louisiana, Judge Dee Drell.

1. CAN. CONST. (Constitution Act, 1982) pt. I (Canadian Charter of Rights & Freedoms), § 2(a), (b).
2. *Id.* § 1.
3. *Offenses Against the Person and Reputation Hate Propaganda*, R.S.C. ch. C-46, § 318(4) (2004) (Can.).
4. Attis v. New Brunswick Dist. No. 15 Bd. of Educ., [1996] 1 S.C.R. 825, 868 (quoting R. v. Big M Drug Mart, [1985] 1 S.C.R. 295, 336).
5. Vic Toews, *Address to the Canadian Parliament* (June 6, 2003), *available at* http://www.victoews.com/speech1.asp?ID=97.

II. CANADIAN CIVIL RIGHTS JURISPRUDENCE

According to the Canadian Supreme Court, Charter section 2(b)'s purpose "is to permit free expression to promote truth, political or social participation, and self-fulfillment." Its purpose is to protect the minority's rights to express their views, even when unpopular.[6] Minority speech, although perhaps unpopular, is protected because someone will always object to another's statements.[7] All expression intending to convey meaning is theoretically safeguarded under section 2(b),[8] and only violent actions are completely excluded from the Charter's protection.[9] Further, the free expression guarantee protects both the meaning attempted to be conveyed and the meaning as perceived by the receiving party.[10]

The freedoms protected in Charter section 2(b) are essential to Canadian democracy.[11] Because the enumerated freedoms are fundamental to protect and further democracy, the Charter's authors afforded them greater protection than other enumerated rights. For example, the provision proclaiming the right to be free from unreasonable searches[12] provides a further qualifying provision allowing that right to be limited. No such statement is included in Charter section 2(b).

As written, with section 1 acting as a limitation on section 2, the Charter forces the courts to weigh the interests of respective parties before determining whether an imposition on civil rights is permissible.[13] Canadian courts have adopted a two-step analysis to ascertain whether a governmental action demonstrates sufficient need to override a citizen's enumerated civil rights.[14] Courts must first determine whether the individual's activity is constitutionally protected.[15] If it is protected, the activity may be limited only by a restriction that is reasonable under Charter section 1. Because a reasonableness standard is generally subjective, Canadian courts have adopted a three-part proportionality analysis to determine when an imposition on rights is reasonable.[16] To prevail, the government must show "that the measure adopted is rationally connected to the objective . . . ; that the measure impair as little as possible the right or freedom in question . . . ; and that there [is] proportionality

6. R. v. Zundel, [1992] 2 S.C.R. 731, 732.
7. Saskatchewan (Human Rights Comm'n) v. Bell, [1994] 21 C.R.R. (2d) 92, 26 (Sask. App. Ct.).
8. CAN. CONST. (Constitution Act, 1982) pt. I (Canadian Charter of Rights & Freedoms), § 2(b).
9. *Zundel*, 2 S.C.R. at 732; *see also Attis*, 1 S.C.R. at 864.
10. *Zundel*, 2 S.C.R. at 733.
11. *Id.* at 751.
12. CAN. CONST. (Constitution Act, 1982) pt. I (Canadian Charter of Rights & Freedoms), § 8 provides, "Everyone has the right to be secure against unreasonable search or seizure."
13. *Id.* §§ 1-2.
14. R. v. Keegstra, [1990] 3 S.C.R. 697, 735 (citing R. v. Oakes, [1986] 1 S.C.R. 30).
15. *Id.*
16. *Id.*

between the effects of the measure and the objective."[17]

When examining limitations on constitutional rights, the courts presume that legislation may violate one or more constitutional provisions[18] because courts fear that a restriction on constitutional rights could result in a slippery slope that results in a permissive attitude toward section 2(b) violations.[19] The government bears a heavy burden in showing that any limitation is reasonable under Charter section 1. Where an express right is limited, the government must demonstrate "that the restriction is 'demonstrably justified' in a 'free and democratic society'—that is, a society based on the recognition of fundamental rights, including tolerance of expression which does not conform to the views of the majority."[20]

In the criminal realm, the government's burden is perhaps lighter because the proposed purpose of all criminal legislation is the protection of public security and the preservation of society.[21] This objective may dwarf any civil rights asserted by individuals. When assessing the legislative purpose, courts must look not to the potential consequences of the legislated act, but rather to the facial purpose behind the legislation by which Parliament aims to achieve its ends.[22] In *R. v. Keegstra*, which addressed hate crime legislation in a racial context, the Supreme Court required that the government show that the legislation focused on an identified, pressing social problem.[23] "In the absence of an objective of sufficient importance to justify overriding the right of free expression, the state's interest in suppressing expression which may potentially affect a public interest cannot outweigh the individual's constitutional right of freedom of expression."[24]

The freedoms of religion and expression receive qualified protection in Charter section 2(b). Religious freedoms encompass "the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination."[25] Both freedoms may be limited "to protect public safety, order, health or morals and the fundamental rights and freedoms of others."[26] In determining whether a governmental action is a reasonable limitation on a freedom, the court balances the state's true justification for infringement against the nature of the infringed-upon right.[27]

17. Attis v. New Brunswick Dist. No. 15 Bd. of Educ., [1996] 1 S.C.R. 825, 880.
18. R. v. Zundel, [1992] 2 S.C.R. 731, 732.
19. *Keegstra*, 3 S.C.R. at 765-66.
20. *Zundel*, 2 S.C.R. at 760.
21. *Id.* at 762.
22. *Id.* at 760.
23. 3 S.C.R. at 725.
24. *Zundel*, 2 S.C.R. at 767.
25. Attis v. New Brunswick Dist. No. 15 Bd. of Educ., [1996] 1 S.C.R. 825, 868 (quoting R. v. Big M Drug Mart, [1985] 1 S.C.R. 295, 336).
26. *Id.*
27. *Id.*

III. HATE CRIME AND CRIMINAL LAW GENERALLY

The purpose of hate crime legislation is to ensure an end to discrimination so that all citizens may enjoy equal participation in society.[28] According to one court,

Discrimination . . . may be taken to mean any distinction, exclusion, restriction or preference which is founded on any aspect of the person mentioned [in the hate crime legislation]. . . and which in purpose or effect impairs the enjoyment of persons of their rights, secured by these sections [of the hate crime legislation], to equal opportunities.[29]

While a discriminatory act alone is not subject to criminal penalties, discrimination motivated by hate will face criminal prosecution.[30] Canadian courts have defined hate as "extreme ill-will and an emotion which allows for no redeeming qualities in the persons to whom it is directed; and unusually strong and deep-felt emotions of detestation, calumny and vilification."[31] Sections 318 and 319 of the Canadian Criminal Code address Offenses Against the Person and Reputation Hate Propaganda, designed to protect minority groups who suffer societal repercussions when fellow citizens are permitted to express ideas perceived as distasteful by members of these groups.[32] People are protected based on their color, race, religion, ethnic origins,[33] and since 2004, sexual orientation.[34] Although hate speech legislation restricts a speaker's constitutional freedom of expression, Canadian courts consider the criminalization of such speech a reasonable limitation of section 2(b) rights because hate speech has been determined to undermine the democratic process and deny respect to individuals simply because they possess a certain characteristic.[35] For an act to qualify as criminal under section 319(2), the government must show that the restriction on free speech is reasonable under Charter section 1.[36] If the language facing prohibition undermines democratic values by "denying respect and dignity to certain members of society,"[37] a limitation on free expression is constitutionally permissible.[38]

28. *Id.* (citing *Keegstra*, 3 S.C.R. at 765).
29. Saskatchewan (Human Rights Comm'n) v. Bell, [1994] 21 C.R.R. (2d) 92, 17 (Sask. App. Ct.).
30. Hellquist v. Owens, [2002] 228 SASK. R. 148, 21 (Sask. Q.B.).
31. *Bell*, 21 C.R.R. (2d) at 21 (quoting Canada v. Taylor, [1990] 3 S.C.R. 892, 928).
32. *See Offenses Against the Person and Reputation Hate Propaganda*, R.S.C. ch. C-46, §§ 318, 319 (1985) (Can.).
33. *Id.*
34. Frank Stirk, *Proposed Law Threatens Bible: A Bill Before Parliament Could Target Certain Scripture Passages as "Hate Propaganda,"* CHRISTIAN WK., Aug. 20, 2002, *available at* www.chriatianweek.org/stories/vol16/no11/story1.html.
35. Attis v. New Brunswick Dist. No. 15 Bd. of Educ., [1996] 1 S.C.R. 825, 877.
36. R. v. Zundel, [1992] 2 S.C.R. 731, 733.
37. *Id.*
38. *Id.*

IV. CONCERNS ARISING FROM SECTION 318(4)

Hate speech issues ordinarily involve only the freedom of expression provision of Charter section 2(b). The Legislation, however, impacts both freedom of expression and freedom of religion.[39] Section 318(4) raises three primary concerns. First, some Christian groups fear that the additional language infringes upon the freedom to express their religious beliefs.[40] In particular, Christian groups are concerned that the Bible, which they assert clearly stands against homosexual conduct, could be considered hate speech and subsequently banned or censored.[41] Secondly, adding sexual orientation to the list of protected classes may effectively "clos[e] down. . . full debate on the homosexual issue."[42] Finally, opponents consider the Legislation loosely drafted; by failing to define sexual orientation,[43] it fails to identify who the Legislation is designed to protect.[44]

A. Freedom of Religion Concerns

Christians, the most vocal opponents of the legislation, seek to protect Biblical passages that condemn homosexual practices.[45] Christians are concerned that any vocalized religious opposition to homosexual behavior will be considered hate speech subject to criminal prosecution.[46] Religious groups believe that the law may allow censorship of Biblical passages that condemn homosexual behaviors and that those quoting such passages could be prosecuted.[47]

To illustrate their concerns, opponents reference two instances in which hate speech protection for sexual orientation has or might have led to prosecution. First, in 1997, Sylvia MacEachern, editor of the *Roman Catholic Journal*, was subjected to a hate crime investigation following an interview on an Ottawa radio station, during which MacEachern affirmed the Catholic Church's position that homosexual acts are contrary to nature and depraved.[48] Following the interview, the hate crimes unit of the

39. There are also a number of issues involving freedom of the press and media, particularly arising out of the Hugh Owens case. These, however, are not addressed in this paper.
40. Toews, *supra* note 5; *see also* Graham A.D. Scott, *Homosexuality: Why Bill C-415 (Now Bill C-250) is Ill-Advised*, CHURCH ALIVE CANADA, Nov. 4, 2002, *available at* www.churchalivecanada.org/theology/homosexuality_scott.html.
41. Stirk, *supra* note 34.
42. *Id.*
43. Canada Bill C-250, *An Act to Amend the Criminal Code* (hate propaganda), 2nd Sess., 37th Parl., 2002 (first reading).
44. Scott, *supra* note 40.
45. Toews, *supra* note 5.
46. *Id.*
47. *See* Scott, *supra* note 40; *see also* Stirk, *supra* note 34; *Pending Law Source of Concern*, GUELPH MERCURY, Dec. 6, 2002, at A5, *available at* 2002 WL 103208708.
48. Rory Leishman, *Bill C-250 Poses Threat to Conscientious Christians*, LONDON FREE PRESS, June 1, 2003, *available at* http://www.familyaction.org/Articles/issues/bill-C415/leishman-june1.htm.

Ottawa-Carleton Police investigated MacEachern and her statements.[49] Because sexual orientation was not a protected classification under the hate speech laws, prosecution was not possible.[50] Section 318(4) now allows the government to prosecute a similar case and citizens like MacEachern could face criminal prosecution for confirming their faith's doctrinal beliefs.[51]

In a more recent case, Hugh Owens placed an anti-homosexual advertisement in a secular newspaper.[52] Incorporating quotations from the Biblical books Leviticus, Romans, and I Corinthians, Owens's advertisement also included an encircled picture of two males holding hands with a red line through the circle.[53] The advertisement offered bumper stickers with the same image for sale.[54] Three homosexual men filed a complaint against Owens pursuant to the Saskatchewan criminal provision against hate speech, Human Rights Code S-24.1, section 14,[55] not pursuant to Canada's Federal Criminal Code.[56] The Saskatchewan provision, however, uses language similar to Section 318(4).[57] The complaint claimed that the red circle with a slash was intended to make homosexual people feel inferior.[58] After the Board of Inquiry determined that the "advertisement exposed gay persons to hatred and ridicule, and affronted [the] dignity of gay persons,"[59] the Board found that banning the advertisement was a "reasonable restriction on [Owens'] freedom of speech."[60] The Saskatchewan Human Rights Commission subsequently convicted Owens for discrimination against homosexuals and ordered him, as well as the newspaper that published the advertisement, to pay $1,500 to three

49. *Id.*
50. *Id.*
51. Stirk, *supra* note 34.
52. Hellquist v. Owens, [2002] 228 SASK. R. 148, 2 (Sask. Q.B.).
53. *Id.*
54. *Id.*
55. Prohibitions Against Publications, S.S. ch. S-24.1, § 14 (1979) (Can.), states:

> (1) No person shall publish or display, or cause or permit to be published or displayed, on any lands or premises or in a newspaper, though a television or radio broadcasting station or any other broadcasting device, or in any printed matter or publication or by means of any other medium that the person owns, controls, distributes or sells, any representation, including any notice, sign, symbol, emblem, article, statement or other representation:
>
> (a) tending or likely to tend to deprive, abridge or otherwise restrict the enjoyment by any person or class of persons, on the basis of a prohibited ground, of any right to which that person or class of persons is entitled under law; or
>
> (b) that exposes or tends to expose to hatred, ridicules, belittles or otherwise affronts the dignity of any person or class of persons [or a group of persons; because of his or their race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, age, nationality, ancestry, place of origin or receipt or public assistance].
>
> (2) Nothing in subsection (1) restricts the right to freedom of speech under the law upon any subject.

56. *Owens*, 228 Sask. R. at 2.
57. *Id.*
58. *See, e.g., id.* at 4.
59. *Id.* at 1.
60. *Id.*

homosexual activists.[61] On appeal, the Saskatchewan Court of Queen's Bench affirmed the Board's decision that Owens' right to freedom of speech was not unreasonably violated.[62]

In the *Owens* case, the Canadian Supreme Court did not discuss the constitutionality of Saskatchewan Human Rights Code section 14. In a previous case addressing an offense similar to Owens's, the Court determined that while section 14 clearly contravenes Charter section 2(b), such a violation is reasonable under Charter section 1.[63] In its analysis, the Canadian Supreme Court found that the objective of the Saskatchewan Human Rights Code is to insure equality for all human dignity so that every person is treated equally so as to eliminate discrimination.[64] Section 14(1) "is quite clearly directed at discouraging, if not eliminating, activity which reinforces prejudice and in turn fosters discrimination."[65] Because section 14's constitutionality was previously established, the only determination in Owens's case focused on whether he violated section 14. Owens's advertisement violated section 14's objective because the advertisement purposefully caused one group to feel inferior; they were "likely to cause others to engage in one or more of the discriminatory practices"[66] prohibited by the Code; and they would likely "expos[e] homosexuals to hatred or ridicule."[67] Owens and MacEarchern's cases illustrate why Christians fear potential legal problems that may arise from quoting and expressing religious sources.

B. Termination of Public Debate About Homosexuality

Because the Legislation makes sexual orientation a protected class, some groups, including Christians and others, predict that such protection may effectively terminate all open debate about homosexuality or its place in society.[68] Any opinion not supportive of alternative sexual orientations could be viewed as critical, and thus, as an expression of hatred. Gwen Landolt, national vice-president of REAL Women,[69] says that the Legislation could impact the entire public because it prohibits anyone from speaking hatefully about an identifiable group.[70] Therefore, anyone speaking out against homosexuality may face criminal charges.[71] Within the past year, Canadians have engaged in extensive discussions relating to sexual orientation in the context of legalization of marriages between

61. *Id.*
62. *Id.*
63. Saskatchewan (Human Rights Comm'n) v. Bell, [1994] 21 C.R.R. (2d) 92, 30 (Sask. App. Ct.).
64. *Owens*, 228 Sask. R. at 12-14.
65. *Id.*
66. *Id.*
67. *Id.* at 14.
68. Mercury, *supra* note 47, at A5.
69. REAL Women is a pro-life, pro-family, Canadian advocacy group, *available at* http://www.realwomenca.com.
70. Mercury, *supra* note 47, at A5.
71. *Id.*

same sex couples. Some citizens worry that debates over issues such as homosexual marriages may now be classified as criminal offenses by those who do not support the practice.[72] Political discussions about sexual orientation and the associated homosexual rights might cease due to fears of criminal prosecution.[73]

C. Failure to Adequately Define Sexual Orientation

The Legislation, judicial decisions, and other case law fail to define the term sexual orientation.[74] Concerns have arisen over the fact that no one knows which groups and practices the Legislation protects from hate speech. *Church Alive Canada*, a theological publication produced by the United Church of Canada, reports "that an Ontario Member of Parliament has stated that sexual orientation includes all forms of sexual behavior: sodomy, bestiality, pedophilia, homosexuality, bi-sexuality, trans-sexuality, polygamy and even sado-masochism."[75] Questions then arise as to whether such a broad, inclusive definition could lead to the legalization of pedophilia or bestiality. That definition could also end public opposition to these and similar practices. When a term such as sexual orientation remains undefined, citizens who vocally and publicly oppose polygamy or pedophilia do so without knowing whether they will be prosecuted for their statements. Similarly, citizens who engage in such sexual practices do not know whether the government will protect their sexual practices from negative statements.

Some members of the judiciary have expressed concern when a criminal provision includes undefined terms. The justice writing for the majority of the Canadian Supreme Court in *R. v. Zundel*, a 1992 case addressing whether laws against spreading false information violated freedom of expression, wrote, "I do not assert that Parliament cannot criminalize . . . hate propaganda. I do assert, however, that such provisions must be drafted with sufficient particularity to offer assurance that they cannot be abused so as to stifle a broad range of legitimate and valuable speech."[76] Some members of the judiciary remain unconcerned that criminal provisions may include undefined terms.[77] In a case considering whether an author violated a statute against spreading false news that was intended to protect the public, a concurring justice wrote that the failure to define the term public interest did not cause the legislation to be unduly vague.[78] Instead, he emphasized that numerous terms in the criminal code, such as obscene, indecent, immoral, and scurrilous remain

72. *Id.*
73. *Id.*
74. Stirk, *supra* note 34.
75. Scott, *supra* note 40.
76. [1992] 2 S.C.R. 731, 743.
77. *Id.* at 805.
78. *Id.*

undefined[79] and that several others lack sufficient definitions.[80] Failure to adequately define terms, he argued, is an insufficient reason for a court to find a criminal provision unduly broad, and thus, unconstitutional.[81]

D. The Legislation's Safeguards

Although some Christians oppose section 318(4) because it could result in a limitation of free expression and religion, the supporters of the Legislation maintain that religious speech will remain protected and that the Bible will not be censored.[82] The Legislation's supporters rely on Criminal Code section 319(3), which states that "[n]o person shall be convicted of an offence . . . if, in good faith, he expressed or attempted to establish by argument opinion upon a religious subject."[83] The *MacEachern* and *Owens* cases indicate otherwise. Both MacEachern and Owens stated their concerns about homosexuality stemming from their Christian foundations. While neither faced legal challenges arising strictly from quoting Biblical passages, both made religious objections and faced penalties as a result.

A second asserted safeguard is that strict procedural devices will limit hate crime prosecutions.[84] Before commencing a hate crime action, an Attorney General (AG) must grant permission to prosecute the proposed defendant.[85] The AG's permission, however, must be given only if the prosecution occurs under section 318, the genocide provision, or section 319(2), prosecution for wilful promotion of hatred.[86] The exclusion of Criminal Code section 319(1), which provides for prosecution for public incitement of hatred, leaves a gap in the Legislation.[87]

Assuming that requiring the AG's permission to prosecute provides sufficient protection for most hate speech cases, this safeguard is undercut in the context of section 318(4) by claims that many AGs support homosexual activists and are likely to give permission to prosecute freely.[88] As evidence of such support, critics point to events in Ontario and Alberta. In Ontario, the Attorney General supported a definition of marriage that encompassed same-sex couples over the common law definition that included only heterosexuals.[89] The same AG permitted his department to drop pending nudity charges against a Gay Pride parade's participants because they were wearing shoes.[90] Similarly, the Alberta

79. *Id.*
80. *Id.*
81. *Id.*
82. Leishman, *supra* note 48.
83. *Offenses Against the Person and Reputation Hate Propaganda*, R.S.C. ch. C-46, § 319(3) (1985) (Can.).
84. Leishman, *supra* note 48.
85. *Id.*
86. *See Offenses Against the Person and Reputation Hate Propaganda*, §§ 318, 319.
87. Toews, *supra* note 5.
88. Scott, *supra* note 40.
89. *Id.*
90. *Id.*

AG declined to challenge a lesbian couple seeking to adopt a baby.[91] However, the critics' most compelling argument that prosecutorial discretion is an insufficient safeguard is the fact that multiple AGs supported the movement to make sexual orientation a protected class, which appears to indicate a predisposition to prosecute those suspected of speaking out against homosexuality.[92]

V. CONCLUSION: THE JUDICIARY's RESPONSE TO SECTION 318(4)

Pursuant to the Court's analysis of Charter section 2, a restriction on what citizens may express about homosexuality is clearly a restriction on their freedom of expression. The application of section 318(4) will dictate whether it unconstitutionally limits Canadian citizens' freedom of expression and religion rights under Charter section 2. If challenged, a court would be forced to determine whether such an infringement is reasonable in light of governmental interests.

Even though the Canadian Supreme Court recognizes its infringement on constitutional freedoms, the Court has allowed, fairly leniently, the expansion of hate speech legislation. The Court appears to support the government's goal of protecting societal minorities from negative ideas. It seems improbable then that the Court would find the inclusion of sexual orientation as an identifiable group to be an unreasonable extension of existing hate speech legislation. If the government's purpose in adopting the Legislation is to increase homosexuals' acceptance in Canadian society, outlawing anti-homosexual comments is rationally related to that goal. The sexual orientation addition, however, could struggle to overcome the second component of the rationality test. A strong argument can be made, particularly by religious groups, that the Legislation infringes on their freedoms more than is necessary in order to accomplish its purpose. If adding sexual orientation limits the use of Biblical passages and political debate, perhaps Parliament may have adopted overly invasive measures to accomplish its goal. Finally, the proportionality test between the government's objective and the measure's effects on civil freedoms may not be in the proper balance if, again, the Legislation limits religious rights and shuts down political debate on an issue of central importance to the nation. The last two aspects of the reasonableness test are not necessarily roadblocks that would cause the Court to find section 318(4) unconstitutional. If the governmental interests were extremely strong and Parliament closely tailored its means, the term identifiable group could be constitutionally expanded.

Some members of Canada's Supreme Court have indicated, however, that they may not support additions to hate speech legislation.[93] In *R. v. Zundel*, the majority wrote:

91. *Id.*
92. *Id.*
93. R. v. Zundel, [1992] 2 S.C.R. 731, 743.

> To permit imprisonment of people, or even the threat of imprisonment, on the ground that they have made a statement which 12 of their co-citizens deem to be false and mischievous to some undefined public interest, is to stifle a whole range of speech, some of which has long been regarded as legitimate and even beneficial to our society. I do not assert that Parliament cannot criminalize the dissemination of racial slurs and hate propaganda. I do assert, however, that such provisions must be drafted with sufficient particularity to offer assurance that they cannot be abused so as to stifle a broad range of legitimate and valuable speech.[94]

As the Canadian Parliament only recently adopted the Legislation, uncertainty remains regarding its enforcement. If Biblical quotations and other religious language are limited because they are deemed criminal in nature, a constitutional challenge is to be expected. The challenge could be premised on an unconstitutional limitation of freedom of expression, religion, or media rights to an extent beyond what is reasonable under Charter section 1. Thus far, it appears that the Canadian Supreme Court is unlikely to find the Legislation, as written, unconstitutional. Still, the majority's opinion in *R. v. Zundel* indicates that the Court may be inclined to change the identifiable groups protected under national hate speech legislation. The Court appears concerned that citizens could be imprisoned for making statements that are illegal under a broad, vague law that acts to limit constitutional rights. The Court's interest in protecting all constitutional rights provides religious groups with hope that they will be permitted to speak out against a practice that they vehemently oppose.

94. *Id.*