Cour d'appel fédérale | Federal Court of Appeal

Date: 20140131

Docket: A-456-12

Citation: 2014 FCA 18

CORAM: **EVANS J.A.**
GAUTHIER J.A.
STRATAS J.A.

BETWEEN:

MARC LEMIRE

Appellant

and

CANADIAN HUMAN RIGHTS COMMISSION
RICHARD WARMAN, THE ATTORNEY GENERAL OF CANADA

Respondents

and

AFRICAN CANADIAN LEGAL CLINIC

Intervener

Heard at Toronto, Ontario, on November 14, 2014.

Judgment delivered at Toronto, Ontario on January 31, 2014.

REASONS FOR JUDGMENT BY: EVANS J.A.

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REASONS FOR JUDGMENT

EVANS J.A.

[1] This is an appeal by Marc Lemire from a decision of the Federal Court, which is reported as *Canada (Human Rights Commission) v. Warman,* 2012 FC 1162. In that decision, Justice Mosley (Judge) granted an application for judicial review by the Canadian Human Rights Commission

(Commission) to set aside a decision of the Canadian Human Rights Tribunal (Tribunal). The Tribunal's decision is reported as *Warman v. Lemire*, 2009 CHRT 26.

[2] The proceedings arise from complaints filed with the Commission by Richard Warman in November 2003. He alleged that Mr Lemire had committed a discriminatory practice in breach of section 13 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (CHRA) by the communication of hate messages through the Internet. After investigating Mr Warman's complaints, the Commission referred them to the Tribunal for adjudication.

[3] The Tribunal upheld the complaint about one of the messages and found that Mr Lemire had communicated it contrary to section 13, but declined to grant a remedy. It held that, when combined with the penalty provisions of the CHRA (paragraph 54(1)(*c*) and subsection 54(1.1)), section 13 breached section 2(*b*) of the *Canadian Charter of Rights and Freedoms* (Charter) and could not be justified under section 1 as a reasonable limit on the right of free expression. The Commission made an application for judicial review to the Federal Court to set aside the Tribunal's decision.

[4] The Judge agreed with the Tribunal that the penalty provisions of the CHRA were not saved by section 1 as a minimal impairment of section 2(*b*) rights, and granted a declaration pursuant to subsection 52(1) of the Charter that paragraph 54(1)(*c*) and subsection 54(1.1) were of no force or effect. However, he allowed the application for judicial review on the ground that the offending provisions could be severed from the CHRA so as to preserve the validity of section 13. The Judge rejected Mr Lemire's other constitutional objections to section 13.

[5] After the Judge had rendered his decision, the Supreme Court of Canada upheld the constitutionality of paragraph 14(1)(*b*) of *The Saskatchewan Human Rights Code*, S.S. 1979, c. S-241 (*Code*), which is analogous to section 13 of the CHRA: *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, [2013] 1 S.C.R. 467 (*Whatcott*). With only minor modification, the Court adopted the analysis in *Canada (Human Rights Commission) v. Taylor,* [1990] 3 S.C.R. 892 (*Taylor*), where it had upheld section 13 of the CHRA as then drafted under section 1 of the Charter, on the ground that it was a minimal impairment of section 2(*b*) rights.

[6] As Mr Lemire acknowledges, *Whatcott* has resolved some of the constitutional objections to section 13 that he raised in the Federal Court. However, the following three issues remain:

> (1) Is the manner in which the Commission administers section 13 relevant in a section 1 analysis for determining whether the section is a reasonable limit on section 2(*b*) of the Charter?
>
> (2) Does section 1 of the Charter save section 13 in so far as it applies to the communication of a hate message through the Internet?
>
> (3) Are the penalty provisions (paragraph 54(1)(*c*) and subsection 54(1.1)) constitutional? If not, can they be severed so as to render section 13 a reasonable limit on section 2(*b*)?

[7] In her memorandum of fact and law, counsel for Mr Lemire also argued that section 13 is invalid because Internet and other communications through computers can include private communications. She submitted that, unlike *Taylor*, *Whatcott* held (at para. 83) that a statutory prohibition of private communications by human rights legislation could not be justified under section 1.

[8] In my view, it would be inappropriate for the Court to entertain this issue in the present appeal. There is no supporting factual record before us because the issue was not raised before the Tribunal. Nor does it arise on the facts of this case.

[9] Although not relevant to the disposition of this appeal, it should be noted that a recent amendment to the CHRA repeals section 13: *An Act to Amend the Canadian Human Rights Act (protecting freedom),* S.C. 2013, c. 37, section 2. The Act received royal assent on June 26, 2013 and comes into effect one year from that date: *ibid*. section 6.

[10] The Commission is the principal respondent to the appeal. In addition, three interveners were given leave to make submissions to the Court. Two of them, the Canadian Civil Liberties Association (CCLA) and the Canadian Association for Free Expression argued that the Judge erred in upholding the validity of section 13. The third, the African Canadian Legal Clinic (ACLC), argued that the Judge erred in finding the penalty provisions of the CHRA (paragraph 54(1)(*c*) and subsection 54(1.1)) to be invalid, an issue on which the Commission took no position in the appeal.

Tribunal's Decision

[11] The Tribunal started its hearing on Mr Warman's complaints in January 2007 and ended two years later. The Tribunal dismissed all his complaints, except that in respect of an article entitled "AIDS Secrets: What the Government and the Media Don't Want You to Know" ("AIDS Secrets"). This article appeared in a "Controversial Columnists" section of a website, Freedomsite.org (Freedomsite), to which members of the public had access through the Internet.

[12] Mr Lemire owned Freedomsite and administered it from Canada. This degree of control, the Tribunal held, was sufficient to make him responsible for posting the "Controversial Columnists" material on the website. The Tribunal concluded that "AIDS Secrets" was likely to expose homosexuals and Blacks to hatred and contempt, and that Mr Lemire had repeatedly communicated it in breach of the prohibition in section 13.

[13] Turning to the constitutional objections to section 13, the Tribunal held that the application of section 13 to the Internet, which had been added "for greater certainty" by the *Anti-Terrorism Act*, S.C. 2001, c. 41, section 88, was a reasonable limit on section 2(*b*) rights because it had a rational connection with the legislative objective of preventing discrimination.

[14] However, the Tribunal found that section 13 no longer constituted a minimal impairment of section 2(*b*) rights because of the addition of the penalty provisions by S.C. 1998, c. 9, sections 27-8, and the Commission's non-conciliatory approach to complaints of breaches of section 13. As a result, section 13 had become less preventive and more punitive, and had thus lost the conciliatory character on which the Supreme Court of Canada had based its conclusion in *Taylor* that section 13 as then drafted constituted a minimal impairment of section 2(*b*) rights.

[15] In particular, the Tribunal noted, unlike complaints of other kinds of discriminatory practices, the Commission had rarely attempted to mediate section 13 complaints. Instead, it referred the vast majority of them to the Tribunal for adjudication, and regularly sought compensatory awards and penalties. Moreover, the Commission often continued to process complaints after impugned material had been removed from the website on which it was posted.

Indeed, in the present case, Mr Lemire had removed most of the material before he was notified of Mr Warman's complaints, and promptly removed "AIDS Secrets" from Freedomsite after learning that it was the subject of a complaint to the Commission. Further, the Tribunal found, the Commission had not attempted to resolve the complaint by conciliation.

[16] Citing *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board),* [1991] 2 S.C.R. 5 and *Nova Scotia (Workers' Compensation Board) v. Martin*, 2003 SCC 54, [2003] 2 S.C.R. 504 (*Martin*), the Tribunal recognized that it had no jurisdiction under subsection 24(1) of the Charter to grant a formal declaration that section 13, in conjunction with paragraph 54(1)(*c*) and subsection (1.1), was invalid. Nonetheless, because it had concluded that these provisions were unconstitutional, the Tribunal declined to issue any order to remedy the breach of section 13.

Federal Court's Decision

[17] The Judge agreed with the Tribunal that Mr Lemire had communicated "AIDS Secrets" through the Internet in breach of section 13, and that the section infringed the right to freedom of expression guaranteed by section 2(*b*). He also agreed that the penalty provisions of paragraph 54(1)(*c*) and subsection 54(1.1) were invalid because they could not be justified under section 1 as reasonable limits on section 2(*b*) rights.

[18] However, the Judge disagreed with the Tribunal on two issues. First, he held that the Tribunal had no jurisdiction to scrutinise the Commission's conduct in administering section 13 as part of its section 1 analysis: allegations of improper conduct by the Commission could only be considered by the Federal Court on an application for judicial review. Second, the Judge found that,

while the post-*Taylor* penalty provisions added an impermissible, punitive aspect to section 13, they could be severed and the validity of section 13 preserved.

[19] Accordingly, the Judge granted the Commission's application for judicial review. He remitted the matter to the Tribunal to issue a declaration that "AIDS Secrets" constituted hate speech and that Mr Lemire had communicated it in breach of section 13. He also directed the Tribunal to determine whether to award a remedy under paragraphs 54(1)(*a*) (cease and desist order) and (*b*) (compensation). Finally, he declared that paragraph 54(1)(*c*) and subsection 54(1.1) (penalty) were of no force or effect pursuant to subsection 52(1) of the Charter but could be severed from the CHRA so as to preserve the validity of section 13.

Statutory and constitutional framework

[20] Subsection 13(1) of the CHRA provides that it is a discriminatory practice to communicate hate messages telephonically. Subsection 13(2) was added to the CHRA in 2001 to make it clear that subsection (1) applies to hate messages communicated through the use of computers, including the Internet.

13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, 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	13. (1) Constitue un acte discriminatoire le fait, pour une personne ou un groupe de personnes agissant d'un commun accord, d'utiliser ou de faire utiliser un téléphone de façon répétée en recourant ou en faisant recourir aux services d'une entreprise de télécommunication relevant de la compétence du Parlement pour aborder ou faire aborder des questions susceptibles d'exposer à la haine ou au mépris des personnes

persons are identifiable on the basis of a prohibited ground of discrimination.	appartenant à un groupe identifiable sur la base des critères énoncés à l'article 3.
(2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.	(2) Il demeure entendu que le paragraphe (1) s'applique à l'utilisation d'un ordinateur, d'un ensemble d'ordinateurs connectés ou reliés les uns aux autres, notamment d'Internet, ou de tout autre moyen de communication semblable mais qu'il ne s'applique pas dans les cas où les services d'une entreprise de radiodiffusion sont utilisés.

[21] The Tribunal's powers to remedy a breach of section 13 are found in subsections 54(1) and (1.1).

54. (1) If a member or panel finds that a complaint related to a discriminatory practice described in section 13 is substantiated, the member or panel may make only one or more of the following orders:	54. (1) Le membre instructeur qui juge fondée une plainte tombant sous le coup de l'article 13 peut rendre :
(*a*) an order containing terms referred to in paragraph 53(2)(a);	*a*) l'ordonnance prévue à l'alinéa 53(2)a);
(*b*) an order under subsection 53(3) to compensate a victim specifically identified in the communication that constituted the discriminatory practice; and	*b*) l'ordonnance prévue au paragraphe 53(3) — avec ou sans intérêts — pour indemniser la victime identifiée dans la communication constituant l'acte discriminatoire;
(*c*) an order to pay a penalty of not more than ten thousand dollars.	*c*) une ordonnance imposant une sanction pécuniaire d'au plus 10 000 $.
(1.1) In deciding whether to order the person to pay the penalty, the member	(1.1) Il tient compte, avant d'imposer la sanction pécuniaire visée à l'alinéa

or panel shall take into account the following factors:	(1)*c*) :
(*a*) the nature, circumstances, extent and gravity of the discriminatory practice; and	*a*) de la nature et de la gravité de l'acte discriminatoire ainsi que des circonstances l'entourant;
(*b*) the wilfulness or intent of the person who engaged in the discriminatory practice, any prior discriminatory practices that the person has engaged in and the person's ability to pay the penalty.	*b*) de la nature délibérée de l'acte, des antécédents discriminatoires de son auteur et de sa capacité de payer.

[22] Paragraph 53(2)(*a*) and subsection 53(3), referred to in paragraphs 54(1)(*a*) and (*b*), further define the Tribunal's powers under subsection 54(1).

53.(2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:	53(2) À l'issue de l'instruction, le membre instructeur qui juge la plainte fondée, peut, sous réserve de l'article 54, ordonner, selon les circonstances, à la personne trouvée coupable d'un acte discriminatoire :
(*a*) that the person cease the discriminatory practice and take measures, in consultation with the Commission on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in future, including	*a*) de mettre fin à l'acte et de prendre, en consultation avec la Commission relativement à leurs objectifs généraux, des mesures de redressement ou des mesures destinées à prévenir des actes semblables, notamment :
(i) the adoption of a special program, plan or arrangement referred to in subsection 16(1), or	(i) d'adopter un programme, un plan ou un arrangement visés au paragraphe 16(1),
(ii) making an application for approval and implementing a plan under section 17;	(ii) de présenter une demande d'approbation et de mettre en oeuvre un programme prévus à l'article 17;

(*b*) that the person make available to the victim of the discriminatory practice, on the first reasonable occasion, the rights, opportunities or privileges that are being or were denied the victim as a result of the practice;	*b*) d'accorder à la victime, dès que les circonstances le permettent, les droits, chances ou avantages dont l'acte l'a privée;
(*c*) that the person compensate the victim for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice;	*c*) d'indemniser la victime de la totalité, ou de la fraction des pertes de salaire et des dépenses entraînées par l'acte;
(*d*) that the person compensate the victim for any or all additional costs of obtaining alternative goods, services, facilities or accommodation and for any expenses incurred by the victim as a result of the discriminatory practice; and	*d*) d'indemniser la victime de la totalité, ou de la fraction des frais supplémentaires occasionnés par le recours à d'autres biens, services, installations ou moyens d'hébergement, et des dépenses entraînées par l'acte;
(*e*) that the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any pain and suffering that the victim experienced as a result of the discriminatory practice.	*e*) d'indemniser jusqu'à concurrence de 20 000 $ la victime qui a souffert un préjudice moral.
(3) In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member or panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.	(3) Outre les pouvoirs que lui confère le paragraphe (2), le membre instructeur peut ordonner à l'auteur d'un acte discriminatoire de payer à la victime une indemnité maximale de 20 000 $, s'il en vient à la conclusion que l'acte a été délibéré ou inconsidéré.

[23] Sections 1 and 2(*b*) are the provisions of the Charter relevant to this appeal.

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to	1. *La Charte canadienne des droits et libertés* garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être

such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.	restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.
2. Everyone has the following fundamental freedoms:	2. Chacun a les libertés fondamentales suivantes :
…	[…]
(*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;	*b*) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;
…	[…]

Issues and analysis

[24] Since the only issues in dispute in the Federal Court concerned the constitutionality of section 13, it is common ground that the Judge appropriately selected the correctness standard to review the Tribunal's decision. This Court must decide if the Judge applied that standard correctly: *Agraira v. Canada (Public Safety and Emergency Preparedness),* 2013 SCC 36 at paras. 45-47.

[25] As indicated earlier in these reasons, the Supreme Court of Canada's decision in *Whatcott* has substantially narrowed the scope of the issues raised by this appeal, and frames much of the analysis of those that remain.

[26] Writing for the Court in *Whatcott*, Justice Rothstein summarized (at para. 59) the principal elements of hate speech provisions in human rights legislation that provide the degree of objectivity required by the Charter.

> … [W]here the term "hatred" is used in the context of a prohibition of expression in human rights legislation, it should be applied objectively to determine whether a

> reasonable person, aware of the context and circumstances, would view the expression as likely to expose a person or group to detestation and vilification on the basis of a prohibited ground of discrimination.

[27] In other words, "[t]ribunals must focus on the likely effects of impugned expression in order to achieve the preventive goals of anti-discrimination statutes" (at para. 54). The Court held that the prohibition by paragraph 14(1)(*b*) of the Saskatchewan *Code* of speech that "belittles, ridicules … or otherwise affronts the dignity" of members of a vulnerable group was not rationally related to the legislative objective of preventing discrimination, and was not a justifiable limit on freedom of speech under section 1. Such speech does not necessarily expose to hatred those at whom it is aimed. However, the Court also held that these words could be severed. See paras. 89-95.

[28] Addressing the objectives of hate speech provisions in human rights legislation, Justice Rothstein said (at para. 71):

> When people are vilified as blameworthy or undeserving, it is easier to justify discriminatory treatment. The objective of … [hate speech provisions] may be understood as reducing the harmful effects and social costs of discrimination by tackling certain causes of discriminatory activity.

[29] Justice Rothstein noted (at para. 75) that a "particularly insidious aspect of hate speech" is that it effectively blocks the target group from responding.

> It does this not only by attempting to marginalize the group so that their reply will be ignored: it also forces the group to argue for their basic humanity or social standing, as a precondition to participating in the deliberative aspects of democracy.

[30] Finally, Justice Rothstein observed (at para. 120) that because of its narrow definition, hate speech constitutes “an extreme and marginal type of expression”. It “contributes little to the values underlying freedom of expression and … its restriction is therefore easier to justify” under section 1.

[31] Against the background of these observations, I turn to the issues raised in the present appeal.

ISSUE 1: Is the conduct of the Commission in administering section 13 relevant to determining if it is a reasonable limit on section 2(*b*) rights and thus saved by section 1?

[32] Mr Lemire was supported on this issue by the CCLA. They conceded that the Judge was correct to hold that an application for judicial review would be the proper recourse for challenging the legality of the Commission’s conduct in investigating and processing complaints of breaches of section 13.

[33] However, they say that it was appropriate for the Tribunal to have regard to the manner in which the Commission enforced section 13 as a contextual factor in determining whether the section as administered is a minimal impairment of section 2(*b*) rights. In particular, they adopt the Tribunal’s findings concerning the Commission’s refusal to mediate or otherwise take a conciliatory approach to section 13 complaints, and the manner in which the Commission had processed Mr Warman’s complaints against Mr Lemire. The Commission’s conduct, they argue, displaced the conciliatory and remedial objectives of the CHRA and gave it a distinctly punitive character.

[34] The Judge divided the issue into two discrete parts. First, did the Tribunal have the authority to take the Commission's enforcement of section 13 into account in assessing whether it was a reasonable limit on freedom of expression? If not, was the Commission's conduct relevant to the Court's analysis of whether section 13 could be justified under section 1?

[35] The Judge started his analysis of the first of these questions by noting (at para. 52) that the Tribunal had the implied power to determine Mr Lemire's motion challenging the constitutionality of section 13. For this purpose, the Tribunal

> … has the authority to receive systemic evidence as to how s. 13 is administered and the effect of the legislation but it has no jurisdiction to review the actions of the Commission.

[36] The Judge inferred this latter restriction from the Tribunal's jurisdiction to decide only those constitutional issues properly before it. He held that the propriety of the Commission's conduct fell outside the Tribunal's mandate to inquire into a complaint of a breach of the CHRA (section 50). Since Parliament had entrusted the administration of the CHRA to the Commission, it was not open to the Tribunal to find section 13 inoperative on the basis of the manner in which the Commission administered it: paras. 54-55.

[37] Accordingly, the Tribunal overstepped its legal authority to inquire into Mr Warman's complaint when it commented in its section 1 analysis on the Commission's decision to refer this or other section 13 cases for adjudication, the low rate of settlements, and the Commission's refusal to offer mediation or to attempt a conciliation. Allegations of improper conduct by the Commission,

the Judge held, can only be made through an application for judicial review to the Federal Court: paras. 56-62.

[38] In any event, he concluded (at paras. 63-65), the Tribunal's criticisms of the Commission's handling of section 13 complaints, including those made by Mr Warman against Mr Lemire, were not warranted on the basis of the record before him.

[39] After finding that the Tribunal had no authority to examine the conduct of the Commission for the purpose of determining Mr Lemire's constitutional challenge to section 13, the Judge considered whether the Court could examine the manner in which the Commission administered section 13 when determining whether it is a reasonable limit on section 2(*b*) rights and thus saved by section 1. He held that the way in which Commission exercised its statutory administrative powers was not relevant to the validity of section 13.

[40] The Judge stated that legislation is invalid only if it infringes the Charter by virtue of either its terms or its necessary effects: the administration of a statute cannot otherwise invalidate it. An application for judicial review would be the appropriate means of challenging conduct by the Commission on the ground that it was inconsistent with Charter values or unlawful for some other reason. If such an application were successful, the Court could fashion an appropriate remedy without invalidating the statute: paras. 69-70.

[41] The Judge acknowledged that Charter challenges should not be determined in a factual vacuum and that the effects of legislation could attain such importance as to become its dominant

feature and displace its original purpose. In the present case, however, he saw no indication of such effects.

[42] I agree with the Judge's conclusion that the manner in which the Commission enforced section 13 is not relevant to a determination of the section's constitutional validity. The effects of legislation may invalidate it if they flow necessarily from its terms. Infringements of Charter rights that result from administrative action that was neither statutorily mandated nor authorized do not render legislation invalid: see, for example, *Eldridge v. British Columbia (Attorney General),* [1997] 3 S.C.R. 624 at para. 20; *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69, [2000] 2 S.C.R. 1120 at para. 125 (*Little Sisters*); *Thomson v. Alberta (Transportation and Safety Board)*, 2003 ABCA 256, [2004] 4 W.W.R. 535 at para. 48 (*Thomson*).

[43] In the present case, the broad administrative powers conferred by the CHRA do not expressly or impliedly authorize the Commission to infringe Charter-protected rights. Accordingly, since it is clear from *Taylor* that section 13 can be administered with a minimal impairment of section 2(*b*) rights, the manner in which it is enforced cannot render it unconstitutional.

[44] True, there is judicial authority for the proposition that the practical effects of legislation may be relevant to determining its constitutional validity. For example, in *R. v. Morgantaler*, [1993] 3 S.C.R. 463 at 514, it was noted that the restrictions in the *Criminal Code*, R.S.C. 1985, c. C-46 on access to abortions that had been struck down in *R. v. Morgentaler*, [1988] 1 S.C.R. 30 (*Morgentaler I*) because the provisions themselves had the effect of imposing unacceptable delays, and subjecting women seeking abortion services to undue stress and trauma.

[45] Chief Justice Dickson held in his concurring judgment in *Morgentaler I* (at 75-76) that the procedural requirement imposed by the impugned provisions of the *Criminal Code* before a woman could obtain an abortion – the approval of a therapeutic abortion committee – could not be justified under section 1 because the evidence indicated that these committees often operated in an unfair and arbitrary manner. In other words, because the *Criminal Code* made committee approval a defence, it was necessary to examine the way in which the committees actually worked. See also *Canadian Egg Marketing Agency v. Richardson*, [1998] 3 S.C.R. 157 at para. 98.

[46] Counsel could cite no authority for the proposition that the potentially invalidating practical effects of legislation can include unauthorized administrative action by the body charged with enforcing it. Indeed, *Little Sisters* and *Thomson* are to the contrary. This is no doubt because unauthorized infringements of Charter rights by those administering a statutory scheme are regarded as more appropriately dealt with by the grant of a remedy under subsection 24(1) (such as a stay of administrative proceedings) that does not invalidate the legislation itself: see *Schachter v. Canada*, [1992] 2 S.C.R. 679 at 719-20.

[47] Nor do I accept that the effects of the Commission's conduct have displaced the valid objectives of section 13, namely the prevention of discrimination against vulnerable groups on prohibited grounds. Conciliation is not the only constitutionally permissible manner in which the Commission may approach the enforcement of the CHRA in general and of section 13 in particular.

[48] Because of the nature and relatively small number of section 13 complaints, as well as the extreme kinds of speech proscribed, I agree with the Judge (at paras. 63-64) that the Commission

cannot reasonably be criticized for being reluctant, in this and other section 13 complaints, to devote scarce resources to mediation and conciliation, or to accept offers to take down offending material voluntarily.

[49] On the other hand, I agree with the CCLA's submission that the Judge erred in holding that the Tribunal's jurisdiction is narrower than the Court's in deciding Mr Lemire's constitutional challenge to the validity of section 13. In particular, the Judge inferred (at para. 55) from the CHRA's creation of two separate administrative bodies, and the restriction of the Tribunal's authority to "inquire into the complaint", that Parliament did not authorize the Tribunal to render the CHRA inoperative on the basis of the Commission's conduct.

[50] Courts readily regard administrative tribunals' authority to decide questions of law as including constitutional challenges to the validity of their enabling legislation: for a synopsis of the relevant law, see *Martin* at para. 48. This enables a tribunal to create a factual record, avoids the bifurcation of administrative proceedings, and otherwise facilitates access to justice: see, for example, *Martin* at paras. 29-30; *R. v. Conway*, 2009 SCC 22, [2010] 1 S.C.R. 765 at para. 79.

[51] In my respectful view, the Judge's narrow construction of the Tribunal's jurisdiction to "inquire into the complaint" would undermine the reasons for conferring legal authority on it to decide the constitutional validity of its enabling legislation. The Tribunal would have had jurisdiction to consider the propriety of the conduct of the Commission, if it had been relevant to determining the constitutional issue in this case, because the validity of section 13 was integral to Mr Lemire's response to Mr Warman's complaint.

[52] Thus, I agree with the Judge that the Tribunal should not have taken the conduct of the Commission into account in the section 1 analysis, but not because its jurisdiction to determine Mr Lemire's constitutional challenge to section 13 was narrower than that of the Court.

ISSUE 2: Does the application of section 13 of the CHRA to the communication of hate messages through the Internet constitute a minimal impairment of the right to freedom of expression guaranteed by section 2(*b*) of the Charter?

[53] Mr Lemire argues that *Taylor* is not determinative of the validity of section 13's prohibition of hate messages communicated through the Internet. When *Taylor* was decided, he says, section 13 applied only to messages communicated by telephone. However, in 2001 the CHRA was amended by the addition of subsection 13(2), which provides that subsection 13(1) applies to material communicated by means of computers, including the Internet. This, he says, has vastly increased the scope of section 13 since *Taylor* was decided, and has thus expanded the statutory restrictions on freedom of expression. The argument has six aspects.

[54] First, the Court in *Taylor* emphasized that the communication of a taped message by telephone was particularly likely to have an impact on the recipient because of the impression it creates of a direct and personal contact by the speaker. In contrast, Mr Lemire argued, a message that appears on a computer screen, or is heard through a computer, is a less effective communication because it lacks the personal quality of a message communicated by telephone.

[55] Second, the range of material available through the Internet greatly exceeds that available by telephone: it includes both video and audio content, political speeches, newspapers, journals, and

material posted on message or discussion boards. These additional infringements on freedom of speech have a chilling effect on speech of a political nature and are not justifiable under section 1, particularly in the absence of a defence of truth or fair comment.

[56] Third, the Internet provides ample opportunity for members of the public to respond to material that they regard as hateful by posting material on their own websites. In addition, blogs and message boards often allow visitors to respond immediately to material posted there. These features of Internet communication advance the educative effects of free debate. In contrast, as the Court noted in *Taylor* (at 937-938), a taped message communicated by telephone does not enable the recipient to reply directly.

[57] Fourth, unlike telephone companies, Internet Service Providers (ISPs) that provide access to the Internet may not be common carriers and have no statutory protection from liability for the content of communications. Hence, they are susceptible to pressure to remove material from websites that are perceived by the Commission or others to constitute hate speech, without any adjudication of whether it contravenes section 13. A failure by an ISP to respond to a complaint by quickly removing the offending material from its server, or inserting keyword “filters” to block certain words from being posted, may attract adverse publicity for the ISP as a result of either a complaint under section 13 or the activities of interest groups.

[58] Fifth, the Commission has no jurisdiction over material posted on servers located and managed outside Canada that can be accessed by computers anywhere in the world. Since it is difficult to prevent Canadians from reading hate messages posted and stored on servers outside

Canada, section 13 is ineffective in achieving its objective of prohibiting the communication of hate messages.

[59] Sixth, the communication of material on a website to an individual who accesses it through the Internet is by nature private because it requires a person to locate and click onto a website in order to read the impugned material. It is thus communicated solely to that person and not to the world at large. For this reason, Mr Lemire submits, section 13 constitutes a limit on freedom of expression that cannot be justified under section 1.

[60] Whether Mr Lemire's arguments are considered individually or collectively, the application of section 13 to the Internet has not, in my opinion, changed the minimal impairment analysis under section 1. The medium may be different but the essential message of *Taylor* and *Whatcott* remains the same. Hate speech constitutes an extreme form of expression of limited scope that fosters a climate in which unlawful discrimination may be regarded as acceptable and flourish. It does this by demeaning, vilifying, and marginalizing groups of individuals who share characteristics that constitute a prohibited ground of discrimination under the CHRA. Since hate speech contributes little to the values underlying free speech, its proscription is fairly easily justifiable under section 1.

[61] The taped telephone message may be an effective medium of communication, but the pervasiveness of the Internet in contemporary daily life, as well as its global reach, makes it a more effective medium than the telephone. Communications through the Internet take a variety of highly effective forms, including material that incorporates text, graphics, and video. Indeed, a statutory prohibition of the communication of hate speech without including such a widely used and powerful

means of communication as the Internet would be an exercise bordering on futility. To conclude that the application of section 13 to Internet communications is not a minimal impairment of section 2(*b*) rights would seriously jeopardize Parliament's ability to pursue the legitimate objective of curbing hate speech in order to prevent discrimination against members of targeted groups.

[62] Justice Rothstein recognized the power of this relatively new form of communication in *Whatcott* when he said (at para. 72):

> In terms of the effects of disseminating hateful messages, there is today the added impact of the Internet.

It is true that the hate messages in *Whatcott* were disseminated by "low tech" means: the distribution of flyers and the insertion of personal advertisements in newspapers. However, the section of the Saskatchewan *Code* impugned in *Whatcott* defines very broadly the prohibited means of communicating hate messages, and may well include Internet or other computer mediated communications. Nothing in the Court's reasons suggests that this feature of the section threatened its constitutional validity.

[63] Nor is it a fatal flaw that section 13 cannot prevent the communication to Canadians of hate messages that are stored on servers outside Canada, and posted on websites owned and managed from abroad. Justice Rothstein convincingly dealt with the ineffectiveness argument in *Whatcott* (at para. 98) as follows:

> As to effectiveness, Dickson C.J. indicated at pp. 923-924 of *Taylor,* that one should not be quick to assume that prohibitions against hate speech are ineffectual. In his view, the process of hearing a complaint and, if necessary, of issuing a cease and desist order, "reminds Canadians of our fundamental commitment to equality of opportunity" and the eradication of intolerance. The failure of the prohibition to render hate speech extinct or stop hate crimes is not fatal.

[64] *Whatcott* also undermines the argument that section 13 is not a minimal impairment of freedom of expression because the Internet provides ample opportunities for members of vulnerable and targeted groups to respond to hate speech and to engage in an educative exchange of views on controversial topics that are of public interest. A common characteristic of hate speech, Justice Rothstein held, is that far from encouraging the exchange of ideas, it tends to stifle members of the vulnerable group from entering into an educative discussion of its subject matter: paras. 75-76, 104, and 116-117.

[65] In my opinion, these observations are as true of hate messages communicated by the Internet as by any other means. Moreover, because of the extreme nature of prohibited hate speech it strikes me as fanciful to imagine that those who engage in it are likely to be open to an educative exchange of ideas.

[66] Although the expression of political views is at the core of the protection provided by section 2(*b*), hate speech does not get a pass simply because its subject matter could be regarded as political or of public interest. As Justice Rothstein stated in *Whatcott* (at para. 117):

> Political expression contributes to our democracy by encouraging the exchange of opposing views. Hate speech is antithetical to this objective in that it shuts down dialogue by making it difficult or impossible for members of the vulnerable group to respond, thereby stifling discourse. Speech that has the effect of shutting down public debate cannot dodge prohibition on the basis that it promotes debate.

[67] Similarly, the absence of a defence of truth is not required for the validity of statutory prohibitions of hate speech. As Justice Rothstein put it (at para. 141):

> To the extent that truthful statements are used in a manner or context that exposes a vulnerable group to hatred, their use risks the same potential harmful effects on the vulnerable groups that false statements can provoke. The vulnerable group is no less

> worthy of protection because the publisher has succeeded in turning true statements into a hateful message. In not providing for a defence of truth, the legislature has said that even truthful statements may be expressed in language or context that exposes a vulnerable group to hatred.

[68] It may be true that ISPs are more susceptible than telephone companies to pressure to close down a website or block the posting of material that is or may become the subject of a complaint under section 13. Nonetheless, in view of the power of the Internet as a medium of communication, and my rejection of the other arguments advanced by Mr Lemire in this context, I do not regard the ability and potential willingness of ISPs to block or remove communications as in themselves sufficient to render section 13 more than a minimal impairment of section 2(*b*) rights.

[69] Nor do I agree with the argument that when a person accesses material on a website that is available to anyone with a computer the communication of the material to that individual is private. In my view, having posted "AIDS Secrets" on Freedomsite, Mr Lemire caused it to be communicated to the public whenever any member of the public visited the website and read the article.

[70] In any event, the entire basis of Mr Lemire's argument, namely that subsection 13(1) did not apply to the Internet when *Taylor* was decided, may be unfounded. Since subsection 13(2) states that it was enacted to provide "greater certainty" that subsection 13(1) applies to material communicated though the Internet, it may not have changed the existing law.

ISSUE 3: Did the Tribunal err in invalidating the penalty provisions contained in paragraph 54(1)(*c*) and subsection 54(1.1) on the ground that they are punitive in nature ?

(i) *Federal Court decision*

[71] The Judge prefaced his discussion of this issue by noting (at para. 108) that the discussion of the validity of the penalty provisions was "somewhat artificial" because the Commission was no longer asking for the imposition of a penalty on Mr Lemire. Nonetheless, he went on to determine their constitutionality. It is appropriate in this appeal to consider the Judge's conclusion that the penalty provisions are invalid because they are not a minimal impairment of section 2(*b*) rights: the issue was argued on the appeal to this Court, and the Judge's ruling may have an impact on any subsequent section 13 proceedings.

[72] The Judge rejected the argument of the Attorney General that because the penalty provisions form part of a statutory regulatory scheme they should be regarded as designed to induce compliance with the CHRA, rather than to express society's condemnation of hate speech. The Judge characterized (at para. 112) the Tribunal's power under paragraph 54(1)(*c*) to impose a penalty for breach of section 13 as "inherently punitive".

[73] Like a fine in criminal proceedings, the Judge reasoned, a penalty imposed under paragraph 54(1)(*c*) is paid into the general revenue fund. Unlike, for example, a liability to contribute to a fund for anti-discrimination education or for victims of hate speech, a penalty does not have a compensatory purpose. Rather, it was intended to express society's opprobrium of the conduct. He regarded the factors in subsection 54(1.1) that the Tribunal must take into account in imposing a

penalty and fixing its amount as supporting this view because of their resemblance to the sentencing principles applied in criminal proceedings.

[74] Having found that the penalty provisions brought section 13 "uncomfortably close to the state's ultimate control measure, criminal sanctions" (at para. 107), the Judge agreed with the Tribunal that the section could no longer be considered to be "exclusively remedial" and thus not justifiable under section 1.

[75] For the reasons that follow, I respectfully disagree with the Judge on this issue.

(ii) *Jurisprudence*

(a) penal provisions

[76] I agree with the Judge that it is not constitutionally permissible for human rights legislation to include a sanction designed to impose a punishment that expresses society's moral opprobrium of the conduct of the wilful communicator of hate speech.

[77] Neither *Taylor* nor *Whatcott* expressly states that a penal sanction for a breach of a prohibition of hate speech in human rights legislation constitutes more than a minimal impairment of section 2(*b*) rights. Nonetheless, their emphasis on the civil nature of human rights statutes indicates that the Court would not have upheld the hate speech provisions before them if they had found that they were penal in nature. The penalty provisions were added to the CHRA after *Taylor* was decided, and a violation of the Saskatchewan *Code* had ceased to be an offence before *Whatcott* was decided.

[78] Financial penalties imposed for non-compliance with a statutory scheme and payable into the general revenue fund have been found not to be penal in nature for the purpose of determining if the procedural protections of section 11 of the Charter apply: see, for example, *United States Steel Corporation v. Canada (Attorney General)*, 2011 FCA 176 (*U.S. Steel*); *Canada v. Guindon*, 2013 FCA 153 at paras. 46-47. Penalties for non-compliance imposed by regulatory legislation for the protection of the public in accordance with the objectives of the statute are not necessarily penal in nature for the purpose of section 11: *R. v. Wigglesworth*, [1987] 2 S.C.R. 541 at 560; *Martineau v. M.N.R.*, 2004 SCC 81, [2004] 3 S.C.R. 737 at para. 22; *U.S. Steel* at paras. 47-49.

(b) non-penal financial sanctions

[79] The Supreme Court recognized for the first time in *Whatcott* that the imposition of a financial sanction was a constitutionally permissible remedy for breach of a hate speech provision in human rights legislation. Thus, Justice Rothstein said (at para. 149):

> As in tort law, an award of damages made pursuant to the *Code* is characterized as compensatory, not punitive, and is directed at compensating the victim. However, the circumstances in which a compensation award will be merited should be rare and will often involve repeat litigants who refuse to participate in a conciliatory approach.

[80] A communicator of hate speech was liable under paragraph 31.4(*b*) of the Saskatchewan *Code* to compensate a person injured by the contravention of the *Code* who had suffered with respect to "feeling, dignity or self-respect". The Supreme Court in *Whatcott* (at para. 204) upheld the compensatory awards made by the Tribunal under paragraph 31.4(*b*) in favour of two complainants on the basis of the harm caused to them when they received flyers containing the hate messages.

[81] In order to apply this jurisprudence to the present case I shall first examine the terms of the penalty provisions in the CHRA and the wider remedial context of which they are an integral part.

(iii) *Remedial scheme of the CHRA*

[82] Paragraph 54(1)(*c*) provides that the Tribunal may order a person who has breached section 13 to pay a penalty of not more than $10,000. Subsection 54(1.1) prescribes the factors that the Tribunal must take into account when deciding whether to impose a penalty for a breach of section 13. Those listed in paragraph 54(1.1)(*a*) focus on the discriminatory practice: its nature, extent, and seriousness, and the circumstances surrounding it. In contrast, the factors in paragraph (*b*) are directed at the person who engaged in the discriminatory practice: whether he or she acted wilfully or recklessly and had a record of prior discriminatory practices, and his or her ability to pay.

[83] A breach of section 13 is the only discriminatory practice in the CHRA that can be remedied by the imposition of a penalty. However, those who have engaged in discriminatory practices other than hate speech are liable under subsection 53(2) to compensate victims who have been injured in specified ways, including a liability under paragraph 53(2)(*e*) to pay a sum of up to $20,000 for pain and suffering. None of these apply to a breach of section 13.

[84] Paragraph 54(1)(*b*) provides that a compensatory order may be made under subsection 53(3) against a person who has contravened section 13 if the claimant was specifically identified in the hate speech. Subsection 53(3) empowers the Tribunal to award up to $20,000 to the victim of a discriminatory practice if the person who engaged in that conduct acted wilfully or recklessly.

[85] Since subsection 53(3) does not in terms require proof of loss by the victim, it is not compensatory in precisely the same way as paragraph 31.4(*b*) of the Saskatchewan *Code* which applies when the hate speech caused the injured person to suffer with respect to feeling, dignity or self-respect. Nonetheless, when applied to breaches of section 13, subsection 53(3) can be regarded as compensating victims specifically identified in hate speech for the damage presumptively caused to their "sense of human dignity and belonging to the community at large" which *Whatcott* recognized (at para. 81) that hate speech causes.

[86] Although Mr Lemire requested a declaration that subsection 54(1) was invalid, counsel did not make submissions specifically directed to the validity of paragraph 54(1)(*b*). Since the Judge's Order included a direction that the Tribunal consider granting a remedy under paragraph 54(1)(*b*), he must have considered it to be valid. I agree with this conclusion.

[87] Unlike the Saskatchewan *Code,* the CHRA does not make a person found in breach of section 13 liable to compensate members of a targeted group by hate speech unless it specifically identifies them. In these circumstances, a penalty is the only means provided by the CHRA for imposing a financial sanction for non-compliance with section 13.

[88] I consider now whether the penalty provisions in paragraph 54(1)(*c*) and subsection 54(1.1) are a minimal impairment of section 2(*b*) rights and thus justifiable under section 1.

(iv) ***Are the penalty provisions a minimal impairment of section 2(b) right?***

[89] The starting point for an analysis of the validity of a remedial provision is that Parliament is entitled to considerable deference in any determination of the proportionality of a measure that it has selected to tackle a complex social problem: *Canada (Attorney General) v. JTI-Macdonald Corp*., 2007 SCC 30, [2007] 2 S.C.R. 610 at para. 43 (*JTI-Macdonald)*. Fashioning remedies in these circumstances calls for the weighing and balancing of competing considerations on the bases of expertise, knowledge, and perspectives beyond those of the courts. Accordingly, the minimal impairment requirement is satisfied if Parliament "has chosen one of several reasonable alternatives": *JTI-Macdonald, ibid*.; *Whatcott* at para. 78. Perfection is not required.

[90] In my view, when the penalty provisions are considered in the context of the objectives of the CHRA and its remedial scheme, they are not properly characterized as penal in nature. They are no more intended to express society's moral opprobrium of the conduct in question than the award of compensation under subsection 53(3) for wilfully or recklessly breaching section 13.

[91] Like the financial penalties often contained in other regulatory legislation, paragraph 54(1)(*c*) is designed to induce compliance with the statutory scheme in order to impose a measure of financial accountability on those in breach of section 13 and to deter future breaches. The penalty provisions thus advance the statutory objective set out in section 2, namely, to give effect to the principle that individuals should have an opportunity equal to that of others to lead the lives that they are able and wish to have without being hindered by discriminatory practices based on a prohibited ground. On the preventive purpose of paragraph 54(1)(*c*), see *House of Commons Debates*, No. 057 (February 11, 1998) at 3744 (Hon. Anne McLellan).

[92] Justice Rothstein stated in *Whatcott* (at paras. 79-82) that statutory prohibitions of hate speech are not primarily aimed at protecting individuals from a loss of a sense of human dignity, but at protecting the societal standing of vulnerable groups and preventing discrimination against them. On the social harm caused by hate messages, see also *Taylor* at 919. The imposition of a liability to pay an amount to the general revenue fund in the circumstances set out in paragraph 54(1)(*c*) is thus consistent with the objectives of the CHRA in general and of section 13 in particular.

[93] An important function of the penalty provisions is to plug the gap left in the remedial scheme for a breach of section 13 when Parliament limited compensation awards under paragraph 54(1)(*b*) to hate speech that specifically identified individuals. Without paragraph 54(1)(*c*) most violators of section 13 would be exonerated from financial liability – a valuable tool for enhancing compliance with the law – because hate speech typically targets vulnerable groups as a whole, rather than individuals within the group.

[94] Parliament could have chosen different means of imposing financial accountability on those who have communicated hate speech that does not specifically identify individuals. Like paragraph 31.4(*a*) of the Saskatchewan *Code*, the CHRA could have imposed liability to compensate individual members of a targeted group, even when the hate speech was directed at the group and not at identified individuals.

[95] However, a complaint of a breach of section 13 may be made by a person who is not a member of the group targeted by hate speech: see CHRA, subsection 40(1) and paragraph 40(5)(*b*). If those entitled to compensation under such a provision were not parties to the proceeding, it is

difficult to see how a compensation order could be made. It would make little sense to impose liability to make a payment to a complainant who was not a member of the group. In any event, to gear financial accountability to the compensation of individuals misses the principal harm of hate speech at which statutory prohibitions of it are aimed: see paragraph 92 above.

[96] The CHRA could, as the Judge suggested (at para. 112), have empowered the Tribunal to require a person in breach of section 13 to make a payment in support of an organization or activity beneficial to the group targeted by the hate speech. However, identifying appropriate recipients might well present serious practical problems for the Tribunal.

[97] There is no basis in the record for asserting that the potential imposition of liability to make a payment to the general revenue fund of up to $10,000 has a more chilling effect on freedom of expression than the liability to pay up to $20,000 under section 54(1)(*b*) to individuals specifically identified in a hate message. Indeed, by limiting the amount payable to a single penalty of no more than $10,000 paragraph 54(1)(*c*) imposes a lower limit on potential liability than would a provision to compensate multiple individual victims of hate speech, even if they were not specifically identified.

[98] When viewed in the context of the CHRA's remedial scheme, the imposition of a penalty under paragraph 54(1)(*c*) and subsection 54(1.1) carries no more of a moral stigma than a finding that an individual has wilfully or recklessly engaged in the communication of hate speech, and by virtue of paragraph 54(1)(*b*) is required to compensate specifically identified individuals.

[99] On the comparatively rare occasions when hate speech specifically identifies individuals within the targeted group, the Tribunal may both award compensation to the victims under paragraph 54(1)(*b*) and impose a penalty under paragraph 54(1)(*c*). This additional sanction may be particularly appropriate to deter those who have repeatedly engaged in discriminatory practices.

[100] I do not, with respect, agree with the Judge's view that the factors in subsection 54(1.1) that the Tribunal must consider when deciding whether to impose a penalty under paragraph 54(1)(*c*) necessarily give the provisions a punitive character. In my opinion, they are consistent with the objectives of general deterrence (paragraph 54(1.1)(*a*)) and specific deterrence (paragraph 54(1.1)(*b*)), and thus of enhancing compliance with section 13.

[101] For example, the requirement that a penalty may only be imposed in respect of wilful or reckless conduct is also found in subsection 53(3), which directs payment to the victim. The discriminator's state of mind is relevant to whether the imposition of financial liability is appropriate to ensure compliance and to deter.

[102] The requirement that the Tribunal must consider the individual's ability to pay can also be regarded as linked to deterrence: a person of limited means may be deterred from future breaches by a smaller penalty than a wealthier person. Similarly, it may take a larger penalty to deter a person who has been a repeat offender. In truth, the considerations relevant to sentencing may overlap with those governing the imposition of an administrative penalty since both are designed to prevent statutorily prohibited conduct.

[103] That Parliament chose the word “penalty” to describe the financial liability that may be imposed in respect of wilful hate speech that does not specifically identify individuals cannot justify characterizing the impugned provisions as punitive.

[104] In short, even though the financial liability imposed under paragraph 54(1)(*c*) and subsection 54(1.1) may not be based on a loss to individual victims, they are not penal in nature. Rather, they represent a reasonable means of imposing financial accountability for the damage caused by the vilification of targeted groups and of deterring the communication of hate speech in order to decrease discrimination against them.

[105] Section 1 does not entitle or require courts to search out an optimal remedy for a complex social problem – a task for which they are not equipped. This is a matter for the legislature. The role of the courts is to ensure that the statutory remedy selected is within the range of what is reasonable. In my opinion, when considered in context paragraph 54(1)(*c*) and subsection 54(1.1) meet this standard

[106] In view of this conclusion, it is not necessary to decide if, as the Judge held (at paras. 130-137), the penalty provisions may be severed from the body of the CHRA so as to preserve the validity of section 13. That said, I would have reached the same conclusion as the Judge, and for substantially the reasons that he gave.

Conclusion

[107] For these reasons, I would dismiss the appeal, but would vary the Order of the Federal Court by setting aside the declaration pursuant to subsection 52(1) of the Charter that paragraph 54(1)(*c*) and subsection 54(1.1) are of no force and effect. Because the Commission does not seek the imposition of a penalty in this case, it is not necessary to require the Tribunal to determine whether to make an award against Mr Lemire under subsections 54(1)(*c*) and 54(1.1) to remedy his breach of section 13.

"John M. Evans"

J.A.

"I agree,
Johanne Gauthier J.A."

"I agree,
David Stratas J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-456-12
(APPEAL FROM A DECISION OF THE HONOURABLE MR. JUSTICE MOSLEY OF THE FEDERAL COURT, DATED OCTOBER 2, 2012, DOCKET NO. T-1640-09)	
STYLE OF CAUSE:	MARC LEMIRE v. CANADIAN HUMAN RIGHTS COMMISSION THE ATTORNEY GENERAL OF CANADA RICHARD WARMAN
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 14, 2013
REASONS FOR JUDGMENT BY:	EVANS J.A.
CONCURRED IN BY:	GAUTHIER J.A. STRATAS J.A.
DATED:	JANUARY 31, 2014

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