

April 2022

British Columbia Teachers Federation Submissions Respecting British Columbia's Human Rights Commissioner's Inquiry into Hate in the Pandemic

A. Introduction

1. For the purposes of this inquiry, the Commissioner has defined "hate incidents" to consist of actions and speech rooted in prejudice aimed at a person or groups because of a characteristic entitled to protection and which are intended to – or do - result in dehumanization, humiliation, degradation or victimization of the targeted individual or group.
2. Hate incidents and hate speech have always been present in Canadian society. With the advent of the internet, email and, more recently, social media, hate is more easily proliferated and circulated than ever before – including within schools and educational settings. The internet and social media not only provide a breadth of opportunity to propagate hate not previously seen, these forums also provide a unique opportunity for individuals and organizations to propagate hate and hate speech anonymously.
3. The COVID-19 pandemic has drawn particular attention to the online proliferation of hate and misinformation leading to extremist views. While new and creative tools may be needed to help address the unique ability of emerging and shifting technology to facilitate the spread of hateful expression, many of the basic tools required to combat hate incidents remain the same and are simply in need of enforcement.
4. The BCTF makes these written submissions to address how British Columbia can eliminate or prevent hate incidents during these times of crisis and beyond through the use of human rights law and education.

5. The BCTF's primary submissions are twofold. First, the BCTF submits that education can play a critical role in reducing the proliferation of hate when administrators, teachers and students are provided with education, training and tools to counter beliefs and attitudes which might otherwise lead to the proliferation of hate and to address incidents when they arise. Second, the BCTF submits that strong anti-discrimination and hate speech laws play a crucial role in holding individuals accountable for acts and expressions of hate and addressing the well recognized harm to society caused when hate and premises of inferiority are permitted to flourish.

B. BCTF

6. The BCTF is a trade union and the certified bargaining agent for over 46,000 teachers and associated professionals employed by public school boards across British Columbia. The BCTF's membership represents a broad cross section of British Columbia's diverse population.
7. Within the trade union movement, the BCTF is a social justice union that advocates for social change and universal access to educational opportunities. It has extensive experience advocating for the rights of equity seeking groups in classrooms and society at large - including by addressing racism, sexism, ablism, transphobia and homophobia through litigation, law reform, teacher training and curriculum development. Among other things, the BCTF's goals, as outlined in its Member's Guide, are:
 - a. To create public awareness of problems in society that hinder student growth and development and stimulate the search for solutions;
 - b. To strive to eliminate from the school system discrimination on the basis of sex, race, religion, age, handicaps, economic status, marital status, sexual orientation, gender identity, number of dependents, or pregnancy; and

- c. To promote a working and learning environment in the public schools of British Columbia that is free from violence.
8. In furtherance of these goals, the BCTF has a long history of engaging in equality and human rights litigation aimed at eliminating discrimination and hate directed at individuals and groups because of protected characteristics or grounds. Among other things, the BCTF represented one of its members, James Chamberlain, in challenging a decision of the Surrey School Board to ban the use of children’s books depicting same-sex parents and families in primary school classrooms, which challenge led to the Supreme Court of Canada overturning the School Board’s decision (*Chamberlain v. Board of School Trustees of School District No. 36*, 2002 SCC 86). The BCTF has also offered its expertise and perspective to the courts as intervenor in foundational equality rights cases like *Moore v. British Columbia*, 2012 SCC 61, *Reference re: Section 293 of the Criminal Code of Canada* (2011 BCSC 1588), and *Kempling v. British Columbia College of Teachers* (2005 BCCA 327).
9. Most notably for the purposes of this inquiry, the BCTF intervened before the British Columbia Human Rights Tribunal in *Oger v. Whatcott* (No. 7), 2019 BCHRT 58 (“*Oger*”), a case involving the interpretation of s. 7 of the *Human Rights Code*, R.S.B.C. 1996 c. 210 (the “*Code*”) brought by a transgender woman who was the subject of hateful flyers while running for public office. The BCTF is also presently engaged in litigating a human rights complaint brought on behalf of members of the Chilliwack Teachers’ Association against Chilliwack School Board Trustee Barry Neufeld, alleging that certain published expressions by Trustee Neufeld constitute discrimination regarding employment for members of the CTA and violate s. 7 of the *Code* (prohibiting discriminatory publications, including hate speech).
10. The BCTF’s submissions in response to the present Inquiry are also informed by its extensive work developing educational curricula, resources and policies aimed at improving inclusion and safety for marginalized student populations and developing, delivering and advocating for teacher training to combat racism, sexism, ablism,

homophobia, transphobia and other forms of discrimination and hate within the teaching profession, the BCTF and the school system more generally.

C. Submissions

1. Responding to hate: Robust anti-discrimination and hate speech laws and policies

The importance of human rights legislation

11. Strong anti-discrimination and hate speech laws play a crucial role in holding individuals accountable for acts and expressions of hate and addressing the well-recognized harm to society caused when premises of inferiority are permitted to lead to desensitization, discrimination and hate.

12. Both the *Criminal Code*, R.S.C. 1985 c. C-46 (the “*Criminal Code*”) and human rights legislation include provisions expressly prohibiting hate speech. The *Criminal Code*, for example, prohibits the incitement of hatred against identifiable groups, the promotion of genocide, and the distribution of hate propaganda. However, not all hate speech will meet the high threshold of criminal conduct. Further, the *Criminal Code* has very specific and, in the BCTF’s respectful submission, limited aims and possibilities for reparation. In the criminal context an individual or group who is the target of hate speech is not empowered to choose whether charges will be laid or pursued against perpetrators, leaving many victims of hate incidents powerless to address such insidious conduct in a manner that is meaningful to them. The *Criminal Code* is further focused on the offender and state, rather than on the victim and the impact of the speech in question. In the BCTF’s respectful submission, these limitations, among others, make the *Criminal Code* an inadequate tool on its own to address the recognized harms of hate speech and underscores the critical importance of human rights legislation in combatting hate and hate speech.

13. The *Human Rights Code*, unlike the *Criminal Code*, is aimed at preventing discrimination and eliminating inequality by, among other things, prohibiting discrimination in certain areas of life – including by prohibiting discriminatory publications and publications which are likely to expose individuals or groups to hatred on the basis of one or more protected characteristics. Protected characteristics presently include Indigeneity, race, ancestry, place of origin, religion, marital status, family status, sex, sexual orientation, gender identity or expression, disability and/or age.
14. The differing aims of criminal and human rights legislation have been the subject of much discussion by the Supreme Court of Canada which has led to a strong body of jurisprudence affirming the important role that human rights legislation plays in reducing the proliferation of hate. Notably many of the Supreme Court’s decisions in this area have arisen from fact patterns touching upon the education sector or the role that education might play, either in the dissemination of hate or in its elimination.
15. The first of these cases was *Taylor v. Canada (Human Rights Commission)*, [1990] 3 S.C.R. 892 (“*Taylor*”) which involved a human rights complaint filed against Mr. John Ross Taylor and the Western Guard Party for recording and disseminating telephone messages denigrating members of the Jewish faith. Themes conveyed through the messages included that books, schools and media were controlled by Jewish conspirators who encouraged perversion, laziness, drug use, communism, theft and race mixing. The question before the Supreme Court of Canada in *Taylor* was whether s. 13 of the *Canadian Human Rights Act*, which prohibited telephonic communications likely to expose a person or group of persons to hatred or contempt by virtue of a prohibited ground, unjustifiably violated Mr. Taylor’s right to freedom of expression as guaranteed by s. 2(b) of the *Canadian Charter of Rights and Freedoms* Part 1 of the *Constitution Act*, 1982 being Schedule B to the *Canada Act* 1982 (UK), 1982, c. 11 (the “*Charter*”).

16. *Taylor* provided the Supreme Court Canada with its first opportunity to consider the importance of the objectives and purposes of hate speech provisions contained in human rights legislation. While the Court found that s. 13 of the *Canadian Human Rights Act* violated Mr. Taylor's s. 2(b) *Charter* rights, the Court affirmed that the restriction imposed constituted a reasonable limit in a free and democratic society. In reaching this conclusion on the justification of the infringement, the Court noted the importance of the statutory objective of s. 13:

The serious harm caused by messages of hatred was identified by the Special Committee on Hate Propaganda in Canada, commonly known as the Cohen Committee, in 1966. The Cohen Committee noted that individuals subjected to racial or religious hatred may suffer substantial psychological distress, the damaging consequences including a loss of self-esteem, feelings of anger and outrage and strong pressure to renounce cultural differences that mark them as distinct. This intensely painful reaction undoubtedly detracts from an individual's ability to, in the words of s. 2 of the Act, "make for himself or herself the life that he or she is able and wishes to have". As well, the Committee observed that hate propaganda can operate to convince listeners, even if subtly, that members of certain racial or religious groups are inferior. The result may be an increase in acts of discrimination, including the denial of equal opportunity in the provision of goods, services and facilities, and even incidents of violence.¹

17. The Court ultimately concluded that neither s. 13(1) of the *Canadian Human Rights Act*, nor the Tribunal's cease and desist order directed at Mr. Taylor, unjustifiably infringed his constitutionally protected right to freedom of expression. *Taylor* affirmed that the purpose of hate speech provisions in the *Canadian Human Rights Act* was to "protect the equality and dignity of all individuals by reducing the incidence of harm-causing expression."²
18. *Taylor* was decided by the Supreme Court of Canada alongside *R. v. Keegstra*, [1990] 3 S.C.R. 697 ("*Keegstra*"), a criminal case involving the willful promotion of hatred contrary to s. 319(2) of the *Criminal Code*. Mr. Keegstra asserted, like Mr. Taylor, that the legislative provision at issue – here the *Criminal Code* – violated his

¹ *Taylor v. Canada (Human Rights Commission)*, [1990] 3 S.C.R. 892 ("*Taylor*") at p. 918.

² *Taylor*, supra p. 927 as cited in *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11 ("*Whatcott*") at para. 47

s. 2(b) freedom of expression rights under the *Charter* and could not be justified under s. 1. The Court's reasons in *Keegstra* speak to the types of harms occasioned by hate speech. Among other things, the Court noted the effects of hate propaganda as follows:

The derision, hostility and abuse encouraged by hate propaganda therefore have a severely negative impact on the individual's sense of self-worth and acceptance. This impact may cause target group members to take drastic measures in reaction, perhaps avoiding activities which bring them into contact with non-group members or adopting attitudes and postures directed towards blending in with the majority. Such consequences bear heavily in a nation that prides itself on tolerance and the fostering of human dignity through, among other things, respect for the many racial, religious and cultural groups in our society.³

19. The Court also noted the significant harms to society at large caused by hate speech or hate propaganda, including that "its premise of racial or religious inferiority may persist in a recipient's mind as an idea that holds some truth, an incipient effect not to be entirely discounted".
20. In *Ross v. School District No. 15*, [1996] 1 SCR 85, the Supreme Court of Canada again had occasion to consider the application of human rights legislation to discriminatory expressions – this time expressions made by a teacher outside of the educational setting. The teacher in question publicly made anti-Semitic, racist and discriminatory comments (including through the publication of books, pamphlets and letters to a local paper) during his off-duty time. While the School District initially continued his employment following a human rights complaint brought by the parent of a Jewish student, Mr. Ross was eventually fired by the School District at the direction of the Human Rights Board of Inquiry. Mr. Ross asserted that the Board of Inquiry's direction violated his *Charter* protected right to freedom of expression.
21. The Supreme Court of Canada found that the School District discriminated with respect to educational services available to the public in continuing to employ Mr.

³ *R. v. Keegstra*, [1990] 3 S.C.R. 697 ("*Keegstra*") at p. 746-747.

Ross, noting that his continued employment contributed to an “invidiously discriminatory” or “poisoned” educational environment. Any violation of Mr. Ross’s right to freedom of expression or religion was found to be justifiable in light of the ameliorative purposes of human rights legislation.

22. In *Saskatchewan v. Whatcott*, [2013] 1 SCR 467 (“*Whatcott*”), the Supreme Court of Canada reviewed and affirmed many of the principles developed in *Taylor*, *Ross* and *Keegstra* about the multiple and significant harms of hate speech and the justifiability of limiting the right to freedom of expression in furtherance of the purposes and aims of human rights legislation.
23. *Whatcott*, like *Taylor*, involved a challenge to the section of the *Saskatchewan Human Rights Code* which expressly prohibited the publication or display of any representation “that exposes or tends to expose to hatred, ridicules, belittles or otherwise affronts the dignity of any person or class of persons on the basis of a prohibited ground.” Rothstein J., writing for the Court in *Whatcott*, noted the role that hate speech plays in laying the groundwork for further and broader acts of hate:

Hate speech, therefore, rises beyond causing emotional distress to individual group members. It can have a societal impact. If a group of people are considered inferior, subhuman, or lawless, it is easier to justify denying the group and its members equal rights or status. As observed by this Court in *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 S.C.R. 100, at para. 147, the findings in *Keegstra* suggest “that hate speech always denies fundamental rights”. As the majority becomes desensitized by the effects of hate speech, the concern is that some members of society will demonstrate their rejection of the vulnerable group through conduct. Hate speech lays the groundwork for later, broad attacks on vulnerable groups. These attacks can range from discrimination, to ostracism, segregation, deportation, violence and, in the most extreme cases, to genocide: see *Taylor* and *Keegstra* [emphasis added].⁴

24. In the BCTF’s respectful submission, as the above-referenced brief jurisprudential history makes clear, there can be no doubt that the *Code* and its prohibition on

⁴ *Whatcott*, *supra* at para. 74.

publications which are likely to incite hatred is a critical tool in the fight against hate and one which fills an important gap left by the criminal law.

25. However, s. 7(1)(b) is not the only section of the *Code* capable of addressing hate speech and hate incidents. Hate incidents, including hate speech, may also arise in the context of: publications indicating an intention to discriminate (s. 7(1)(a))⁵, employment (s. 13)⁶, and services customarily available to the public (s. 8)⁷.
26. The purposes and aims of human rights legislation simply cannot be achieved if hateful expression is permitted to persist – wherever that might be. For this reason, hate speech provisions in the *Code* – and the application of other sections of the *Code* to discriminatory expression – must be zealously protected by British Columbia’s Human Rights Commissioner.

Ensuring the Code evolves to suppress hate

27. In the BCTF’s submission, it is imperative, not only that hate speech provisions in human rights legislation be vigorously defended and applied, it is also critical that the *Code* be regularly revisited and revised to ensure that it recognize the diverse forms that hate may take and the importance of providing express recognition and protection to vulnerable groups.
28. Until 2016, for example, the *Code* did not offer express protection from discrimination on the basis of gender identity and gender expression. Although the BC Human Rights Tribunal’s jurisprudence effectively ensured that transgender individuals could avail themselves of protection under the prohibited ground of sex, unsurprisingly, this protection was not evident to many transgender individuals (to say nothing of employers or service providers). Moreover, it was unclear whether

⁵ *Oger v. Whatcott (No. 7)*, 2019 BCHRT 58 (“*Oger*”).

⁶ *Chilliwack Teachers’ Association v. Neufeld*, 2021 BCHRT 6

⁷ *Ismail v. British Columbia (Human Rights Tribunal)*, 2013 BCSC 1079

the protection offered by the ground of sex in the *Code* could extend to prohibit discrimination (or hate speech) aimed at gender identity or expression going beyond transgenderism. Given the extreme vulnerability of trans and gender nonconforming individuals and their need for protection, the *Code* was amended in 2016 to expressly add gender identity and gender expression as protected grounds.

29. More recently, BC added Indigenous identity as a protected ground under the *Code* in 2021. Although Indigenous people could previously utilize the protected grounds of race and ancestry to engage the *Code*'s protections, their inclusion and protection was not apparent to many. Adding Indigenous identity to the protected grounds in the *Code* was a significant step in signaling to Indigenous people that the *Code* is aimed at protecting and affirming their right to be free from discrimination in the areas to which the *Code* applies.
30. Presently, many individuals and groups are advocating for the addition of social condition as a protected ground under the *Code*. In the BCTF's respectful submission, such revisiting and updating of protected grounds is a crucial part of ensuring that the *Code* can be responsive to emerging forms and types of hate.
31. In the BCTF's submission, however, periodic review and revision of the *Code* should not be limited solely to the addition of new protected grounds. Rather, it should also consider whether procedural or other reforms are needed to address hate when it arises.
32. In *Oger v. Whatcott*, for example, the Tribunal found itself without the full compliment of procedural tools necessary to prevent the weaponization of hate inside the Tribunal's halls and hearing rooms. In *Oger*, the Tribunal considered a complaint brought by Ms. Oger, a trans woman, against Bill Whatcott under section 7 of the *Code* which prohibits discriminatory publications (including publications which indicate an intention to discriminate and publications or publications which are likely to expose individuals or groups to hatred on the basis of a protected ground). Throughout the course of the hearing, Mr. Whatcott wore a T-shirt the effect of

which, the Tribunal found, was to deny Ms. Oger's gender identity and "to publicly humiliate her once more." Mr. Whatcott further referred to Ms. Oger as a man throughout the proceedings, despite the Tribunal's orders directing him to refer to her as either the Complainant or by using female pronouns. Outside of the Tribunal's hearing room, but during the processing of Ms. Oger's complaint, Mr. Whatcott also "used every public forum at his disposal to talk about the complaint and repeat his hateful rhetoric about Ms. Oger" including by referring to her as, among other things, a "transvestite with tyrannical tendencies" who was in need of psychiatric help. He also cast his net broadly, at times, asserting, without foundation that human rights for transpeople have led to "physical and sexual assaults in Canadian women's shelters and correctional centres."

33. The *Oger* example of hateful expression occurring within the hearing room itself begs the question of whether or not procedural reforms or amendments to the Tribunal's power to control its own process would assist the Tribunal in hearing cases involving hate without providing new opportunities for expansion of the harm associated with hate speech for those with fortitude enough to file a complaint in an effort to enforce their rights.

Strong human rights jurisprudence

34. In addition to robust human rights legislation, the BCTF submits that it is imperative that parties and intervenors are prepared to advance cases and evidence suited to ensure that human rights jurisprudence continues to develop in a manner which recognizes: a) the social context within which specific hate speech must be understood; b) the new and unique ways that hate may manifest itself – particularly in relation to different grounds of discrimination; and c) Canada's international law obligations.
35. On the first and second points above, *Oger*, again, provides an excellent case in point.

36. Aided by submissions made by intervenors, including the BCTF and West Coast LEAF, the Tribunal rendered a decision on the merits of Ms. Oger's complaint that was firmly grounded in the social context for trans and gender diverse people:

Unlike other groups protected by the *Code*, transgender people often find their very existence the subject of public debate and condemnation. What flows from this existential denial is, naturally, a view that trans people are less worthy of dignity, respect, and rights. In the hearing room for this complaint, we were witness to repeated, deliberate, and flagrant attacks on Ms. Oger based on nothing more than a belief that her very existence is an affront.

And so, despite some gains, transgender people remain among the most marginalized in our society. Their lives are marked by "disadvantage, prejudice, stereotyping, and vulnerability": *F. (C.) v. Alberta (Vital Statistics)*, 2014 ABQB 237 at para. 58; see also *Rainbow Committee of Terrace v. Terrace (City)*, 2002 BCHRT 26 [43 C.H.R.R. D/413] at paras. 47–51. They are stereotyped as "diseased, confused, monsters and freaks": *Nixon v. Vancouver Rape Relief Society (No. 2)*, 2002 BCHRT 1 [42 C.H.R.R. D/20] at paras. 136–37, overturned 2005 BCCA 601 [55 C.H.R.R. D/67] (not on this point). Transpeople face barriers to employment and housing, inequitable access to health care and other vital public services, and heightened risks of targeted harassment and violence. The results include social isolation, as well as higher rates of substance use, poor mental health, suicide, and poverty: *XY v. Ontario (Government and Consumer Services) (No. 4)*, 2012 HRTO 726 [74 C.H.R.R. D/331] at paras. 164–66. For transgender children, anti-trans bullying leads to higher rates of absenteeism and poorer educational outcomes, which then has ripple effects for their health and future prospects: Christophe Cornu, "Preventing and addressing homophobic and transphobic bullying in education; A human-rights based approach using the United Nations Convention on the Rights of the Child" (2016) *Journal of LGBT Youth* 13:1-2, 6-17 at pp. 7–8.⁸

37. Intervenors played a significant role in providing the Tribunal with much of this social context.
38. The Tribunal's decision in *Oger*, finding that Mr. Whatcott's flyers violated sections 7(1)(a) and (b) of the *Code*, also embraced a trans-specific (i.e. grounds-specific) understanding of hate – noting that questioning the existence of trans people is "at the root of the prejudice and stereotypes that continue to oppress them" (*Oger* at

⁸ *Oger, supra* at paras. 61-62.

para 120) and that denying the reality of transgender people is a rhetorical technique used to expose or tending to expose them to hatred or contempt (see, for example, *Oger* at paras 152-157).

39. Beyond social context, however, there is practical context that must be reflected in the jurisprudence. While the exclusive Federal jurisdiction to regulate telecommunications (now interpreted to include regulation of the internet) must be respected, the proper interpretation of this jurisdiction, in the BCTF's respectful submission, is one which appreciates the meaning of "regulation" and therefore the true scope of the Federal jurisdiction. Just as the exclusive Federal jurisdiction over Indians and Lands reserved for Indians does not mean that provincial legislation can never apply to an Indigenous person, exclusive Federal jurisdiction over regulation of internet service providers does not extend to so far as to make the *Code* inapplicable to any communication simply by virtue of the fact that it has been transmitted by way of email or the internet.
40. To interpret exclusive Federal jurisdiction in this fashion would be to render the *Code* impotent with respect to any matter – be it in employment, services, membership in a union or discriminatory publications – where communications have been transmitted – or business has been conducted - electronically. Parties and intervenors must ensure that the Tribunal's jurisprudence appreciates both the correct approach to division of powers and the practical implications of the modern world (and of contemporary communication).
41. Finally, the BCTF submits that parties and intervenors, including the Commissioner, must make every effort to ensure that human rights jurisprudence develops in a manner that recognizes and gives voice to Canada's international law obligations. As noted by the Supreme Court of Canada in *Keegstra*, and more recently affirmed in *Divito v. Canada*, 2013 SCC 47 at paras 22-23 "Generally speaking, the international human rights obligations taken on by Canada reflect the values and

principles of a free and democratic society, and those values and principles that underlie the *Charter* itself.”⁹

42. Acknowledgement that limits on freedom of expression will sometimes be necessary in a free and democratic society are reflected in a number of international instruments, including the *Universal Declaration of Human Rights* (“UDHR”), the *International Covenant on Civil and Political Rights* (“ICCPR”), and the *International Convention of the Elimination of All forms of Racial Discrimination* (“CERD”).
43. Article 20 of the *ICCPR*, for example (which Canada has ratified), requires state parties to prohibit certain types of discriminatory expression, including “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”¹⁰ *CERD* also specifically requires state parties to declare it an offense to disseminate “ideas based on racial superiority or hatred” or to incite racial discrimination.
44. Prohibiting hate-promoting expression is therefore not only compatible with international law obligations, it is required of state signatories, including Canada. Indeed, among the recommendations made by the United Nations to member states on the subject of countering COVID-19 related hate, is ensuring that allegations of hate speech that may constitute incitement to discrimination, hostility or violence are independently investigated and the perpetrators are held accountable in accordance with international human rights law obligations. Canada’s international human rights obligations seek to balance the right to freedom of opinion and expression with the need to limit expression because individuals and groups targeted by hate speech are made more vulnerable to violence, political and social exclusion and isolation and stigmatization, among other things.¹¹

⁹ *Keegstra, supra* p. 750.

¹⁰ ICCPR, Article 20(2)

¹¹ United Nations Guidance Note on Addressing and Countering COVID-19 related Hate Speech, May 11, 2020, online: <https://www.un.org/en/genocideprevention/documents/Guidance%20on%20COVID-19%20related%20Hate%20Speech.pdf>(et “Guidance Note”) _at pp 2 and 5.

Resourcing the enforcement of rights

45. It goes without saying that rights embodied in human rights legislation are without meaning or effect if administrative tribunals and courts tasked with enforcing them are inadequately resourced to deal with complaints in a timely or effective manner. In the BCTF's respectful submission, there can be no question that the BC Human Rights Tribunal is presently in precisely such a position. Given the quasi-constitutional nature of human rights and the critical role that the *Code* and human rights jurisprudence play in addressing the proliferation of hate speech, the BCTF submits that the Commissioner must advocate for a fundamental change to the Tribunal's budget and resourcing.
46. Both the previous and the current Chair of the BC Human Rights Tribunal have made multiple presentations to the bar – the later having even written to the public - on the Tribunal's significant resource challenges over the past number of years. Both have consulted with the bar and considered and implemented procedural reforms of varying levels of complexity in an effort to alleviate some of the Tribunal's extraordinary backlog.
47. As of March 2021, it was taking the Tribunal:
 - a. an average of 9 months to accept a complaint for filing and service on the relevant respondent;
 - b. an average of 2.5 years from filing to issue a decision on an application to dismiss; and
 - c. an average of 4.5 years after filing to issue a final decision on the merits of a complaint.
48. As of November 2021, the Tribunal was in possession of:
 - a. 1970 complaints awaiting screening on intake to determine if they would be accepted for filing and served;
 - b. 170 complaints awaiting service;

- c. 435 complaints awaiting mediation;
 - d. 274 applications to dismiss not yet assigned to a Tribunal Member for determination;
 - e. 97 complaints waiting to be scheduled for hearing.
49. The figures and timelines above, which the Tribunal made public during a Continuing Legal Education Conference in November of 2021, are staggering. Indeed, the Tribunal's inadequate resourcing and extraordinary backlog of cases led it to take the drastic measure of imposing a moratorium on filing preliminary applications to dismiss complaints in November of 2021 until further notice. Arguably, these are applications that respondents have a statutory right to make.
50. Despite having sounded the alarm about its inability to deal with complaints in a timely manner, no meaningful increase to the Tribunal's funding appears to have been forthcoming. As such, the status quo is almost certain to remain (or worsen) until a significant increase in funding is provided.
51. In the BCTF's respectful submission, however, such processing times and delays – which are having a significant negative impact on both complainants and respondents – are no surprise when considered alongside the Tribunal's historical budget and case load data.
52. The present direct access Tribunal model was created in 2002 following the Campbell government's elimination of BC's previous human rights commission and council. In 2005-2006 - the first budget year for which Tribunal operating costs are readily available - the Tribunal's annual operating costs were \$3,062,790. The number of complaints filed with the Tribunal during that same period of time was 1,145. At that time, the Tribunal employed 8.5 Members, one Chair and one Registrar, along with 7 case managers, 2 information officers, 1 receptionist and 1 other employee to process and address complaints filed.

53. Over the following decade, the number of complaints filed annually with the Tribunal remained relatively stable – as did the Tribunal’s budget.
54. In 2015/2016, the number of cases filed with the Tribunal began creeping upward, breaking the 1,200 mark for the first time. In 2016/2017 - the fiscal year in which gender expression and identity were added to the *Code* - the number of complaints filed with the Tribunal climbed to 1273.
55. In 2017-2018, cases filed totaled 1443. The Tribunal’s budget, however, remained unchanged at \$3,004,000. Although generally unchanged from 2005/2006 levels, there can be no doubt that the Tribunal’s budget of approximately \$3,000,000 in 2017-2018 represented, in practical terms, a reduction from its similar budget 10 years earlier after accounting for the basic rate of inflation.
56. In late 2018, the *Code* was amended to extend the limitation period for filing a human rights complaint from 6 months to 1 year. During the first full fiscal year following this amendment (2018-2019) the number of cases filed with the Tribunal increased to 1736. Still, the Tribunal’s budget remained largely unchanged.¹²
57. In 2019-2020, the Tribunal was resourced with a budget of \$3,148,000 to address 1,614 complaints received.
58. With the onset of Covid-19, the Tribunal received 2,656 complaints in 2020-2021. Its budget for that fiscal year was just \$3,148,000.
59. Notably, in 2021, the Province also added Indigenous identity as a protected ground under the *Code* and the Tribunal took steps to implement significant measures to make the Tribunal, and its processes, more accessible and culturally welcoming to Indigenous parties. Such measures are long overdue and require additional funding.
60. Constrained by a budget that has remained largely unchanged in over 15 years, and with a case load (excluding backlog) more than double that envisioned at the time

¹² 2018-2019 Budget per the Tribunals Annual Report: \$3,112,000

its budget level was initially set, the Tribunal is simply without the resources necessary to fulfil the role it should in adjudicating complaints and interpreting quasi-constitutional rights under the *Code*, including complaints involving hate speech. While the associated extraordinary delays should be of concern irrespective of the type of complaint, here the BCTF notes the particularly significant impact that such delays will have on cases involving hate speech distributed by digital and electronic means. Social media and other means of electronic distribution are only likely to fan the flames of hate speech, extending its reach exponentially while complaints inch their way through the Tribunal's processes.

61. The BCTF submits that it is incumbent on the Commissioner, as part of any recommendation(s) she might make respecting the enforcement of rights under the *Code* to address hate speech, to advocate strenuously for adequate resourcing of the BC Human Rights Tribunal.

2. Prevention of hate: Transformative education

Role of Education

62. There can be no doubt about the role that education has to play in combatting misinformation and ignorance that can lead to hate speech and in providing a safe and inclusive learning environment in which all members of the school community can be free from hate and violence. Among other things, the United Nations' Guidance Note on Addressing and Countering COVID-19 related Hate Speech recommends that member states ensure "that education and training, especially at schools, including via online platforms, addresses COVID-19 related hate speech, disinformation and misinformation by encouraging critical thinking, social and emotional skills and responsible engagement, through global citizenship education and human rights education."¹³

¹³ Guidance Note, *supra* at p. 5. See also: United Nations Strategy and Plan of Action on Hate Speech, May 2019, online:

63. The importance of education and training in combatting hate was further echoed in the recommendations and themes identified by Ontario's Hate Crimes Community Working Group in its Final Report entitled "Addressing Hate Crimes in Ontario". In its executive summary, the Working Group identifies 8 themes requiring attention and recommendations including:

4. Education and Training. No long-term hate-crime reduction strategy can succeed without a substantial educational component. All service providers (police officers, Crown prosecutors, front-line victim services workers, correctional officers and supervisors) must be trained to appreciate the special impact of hate incidents on victims and their communities, and to understand the specific services and supports each victimized community requires. The public education system must dissolve systemic barriers that condone discrimination; students must come to understand, recognize and reject all manifestations of hate and learn how to prevent and respond to hate incidents in schools. The Working Group's strategy addresses each of these imperatives. The role of the education system – elementary, secondary and post-secondary – is essential, as is the effective education and training of all professionals involved in investigating and prosecuting hate crimes and/or providing victim services.¹⁴

64. Before making 13 recommendations respecting education and training to address or prevent hate and hate crime victimization, the Working Group observed the following:

The Working Group believes that our schools, colleges and universities must be encouraged and supported to continuously build and maintain strong, sustainable partnerships among themselves and with the Ontario Government in the overall strategy to address hate crimes and hate incidents. The Working Group understands that hate is not intrinsic to human beings; it is a learned behaviour which can be unlearned. Educational institutions play key roles in shaping the ideas and attitudes of our children and youth who come from such

<https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>, p.4.

¹⁴ Addressing Hate Crimes in Ontario – Final Report of the Hate Crimes Community Working Group, Final Report of the Hate Crimes Community Working Group to the Attorney General and the Minister of Community Safety and Correctional Services, Strategy, recommendations, priorities for action, 2006, online:

http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/hatecrimes/HCCWG_full.pdf (the "Final Report"), p. 3.

a huge diversity of ethno-racial, socio-economic and geographically differentiated communities. They are central to the development of Ontario's moral climate.

The Working Group concluded that educational institutions are not immune from intolerance and violence. Across the province, children and youth are significantly implicated in hate incidents and hate crimes as both victims and perpetrators. Teachers, administrators and support personnel also convey and are the targets of hate. Hate activity, whether it takes the form of slurs, graffiti, intimidation, bullying, harassment or assault, is continuously evident in classrooms and on school grounds. As well, hate groups work within school environments to recruit young people to their ranks.

...

The Working Group believes that Ontario's schools, colleges and universities must be actively engaged in preventing and reducing hate crimes and hate incidents. The Ministry of Education has a responsibility to provide guidance to school boards in curricula directions and instructional practice to ensure that Ontario's students are instilled with an appreciation and respect for each other's differences. The Ministry must also ensure that the norms and values of Ontario's educational system focus on empathy, critical thinking, and conflict resolution skills. As well, anti-racism and antihate policies and practices must be rigorously enforced through monitoring, and requiring strict adherence to, codes of conduct for administrators, teachers, students and parents. In sum, the Ministry, in partnership with school boards and schools, must ensure the creation of an organizational culture and climate where prejudice and hate-motivated behaviour are not tolerated.

In the Working Group's view, it is important that the Ministry's commitment to equitable, supportive and safe environments for all students and staff include a determination to eradicate hate crimes and hate incidents of every kind.¹⁵ [emphasis added]

65. The BCTF wholeheartedly agrees that any long-term hate-crime reduction strategy must have a substantial educational component if it is to succeed. For this reason, the BCTF has advocated tirelessly for, and contributed to, the creation and implementation of the SOGI 123 resources in BC. SOGI 123 is aimed at providing educators in BC with grade appropriate sexual orientation and gender identity inclusive lesson plans, policies and resources. The goal of SOGI inclusive education

¹⁵ Final Report, *supra* at pp. 41-42.

is to ensure that everyone understands the diverse society that we live in and to ensure that all feel safe, valued and respected in schools and society at large.

66. The BCTF has also developed a variety of workshops for teachers to assist in creating inclusive schools, including, workshops on anti-racism strategies, truth and reconciliation, residential schools, addressing ablism and mental health, ending child poverty in BC classrooms, preventing gender-based violence, and creating a gender inclusive school culture.
67. In the BCTF's respectful submission, it is imperative that curricula and resources be developed in partnership with targeted groups and that any curriculum also be supported by adequate in-service training for teachers on the relevant social context and history of belief systems which allow hate to proliferate.
68. The BCTF emphasizes the importance of teacher in-service training and toolkits, both to promote inclusion and to assist in early intervention to address hateful views. The BCTF recommends that the Commissioner support the development of toolkits, like that being developed by University of Winnipeg Adjunct Professor Kawser Ahmed to assist high school teachers in identifying and addressing early extremism before thoughts can turn into violent actions.¹⁶ Where words, thoughts or actions have already been unleashed in the form of hate, Toronto Metropolitan University has also developed a toolkit aimed at assisting members of its University community to combat anti-Asian hate.¹⁷
69. As noted by the Hate Crimes Community Working Group, all administrators, teachers and staff working in educational settings must be trained and competent in identifying and addressing hate incidents (p. 43). Whether aimed at preventing hate from forming or addressing hate incidents when they do occur, tool kits and teacher

¹⁶ <https://www.cbc.ca/news/canada/manitoba/winnipeg-extremism-teachers-students-1.6276936>

¹⁷ <https://www.ryerson.ca/responding-to-hate/>

training are, in the BCTF's respectful submission, a critical aspect of addressing hate speech and hate incidents outside of formal justice systems.


70. Finally, the BCTF supports the mindful collection of disaggregated data about the proliferation of hate within educational settings (and society at large) to assist in: a) identifying and supporting targeted groups; b) supporting litigation directed at systemic change (necessitating an accurate appreciation of social context); and c) identifying areas for curriculum development and teacher training.
71. While the collection of disaggregated data can leave marginalized communities especially concerned about the use to which such data may be put, the need for data and reporting on this subject demands that data collectors build trust with affected communities so that meaningful data can be gathered.
72. Disaggregated data – mindfully collected – can shed light, for example, on the prevalence of hate speech and hate incidents in the educational setting, whether various preventative or remedial measures are having the intended effect, and on who is most affected by hate speech and hate incidents. Advocacy is rarely effective in a factual vacuum. For this reason, disaggregated data collection must be part of any concerted effort to address hate and hate speech head on.

D. Conclusion


73. In the BCTF's respectful submission, ensuring that perpetrators are held accountable is best achieved through robust human rights legislation prohibiting hate speech, through periodic review and updating of the *Code*, and through the ongoing development of jurisprudence which fulfills Canada's international human rights obligations, appreciates the different and changing context(s) in which hate speech arises and recognizes the unique forms that hate speech may take in relation to specific protected groups.

74. Finally, any comprehensive strategy aimed at the prevention of hate speech and hate incidents, must include extensive training, education and data collection.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



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