COMBATTING HATE ON THE INTERNET:
Current Canadian Efforts and the Recommendations of Non-Governmental
Organizations to Improve upon Them

WORKING DOCUMENT

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INTRODUCTION:

In March 2005, the Canadian government launched *A Canada for All – Canada's Action Plan Against Racism.* The Action Plan describes a concerted and coordinated effort by federal departments and agencies to combat racism and strengthen the Canadian model of shared citizenship. One of the stated objectives of the *Action Plan* is to explore what role the Department of Justice Canada may have in working with non-governmental organizations to combat the communication of hate propaganda through the Internet. This paper is written with the intention of assisting in the policy development on this complex topic. As such, it is a working document intended to be used to support future discussions regarding the implementation of the *Action Plan.*

The objective of this report is to identify and understand the work done by various Canadian organizations, primarily non-governmental organizations ("NGOs"), to identify and combat hate crimes on the Internet. Information was collected from interviews with key personnel at the NGOs and prominent individuals with expertise in online hate (listed in Appendix A). Additionally, public documents provided by these and other anti-racism-oriented organizations were reviewed. Each organization was provided with the opportunity to express their views on what role the Department of Justice may have in combatting the problem, including whether a national tip line would be beneficial.

The dissemination of hate propaganda and hate speech on the Internet is generally viewed by those interviewed as a growing problem, mainly due to the network's ease of use and its pervasiveness. The communications applications enabled by the Internet are ideal recruitment tools, because they offer a low cost and low effort means of reaching a large audience, and because people drawn to hate propaganda can access it without personal risk. Precise numbers of hate-oriented websites, chat rooms, blogs and online fora are hard to determine.[1] However, the proliferation of online locations that are hate-oriented undeniably points to the Internet as the means of choice for hate mongers of all stripes, especially given the attractiveness of Internet-based applications to youth.

The Internet has become a prominent means to access information and services by the general public. Accidental exposure to hate sites and other fora for hate speech has consequently also become a major concern, again especially for youth. At the same time, precisely because of the Internet's general utility for information dissemination, websites and other online fora are also well suited to anti-hate education and reporting mechanisms for online hate.

The report is organized into three major sections: 1) Background on government and law enforcement efforts to combat online hate in Canada; 2) Efforts by NGOs to combat

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[1] For a description of each of these online fora, see the definitions available through Wikipedia: A website is a collection of webpages accessed through a domain name on the World Wide Web (http://en.wikipedia.org/wiki/Website); A chat room is a term used to describe several different types of synchronous or asynchronous online conferencing (http://en.wikipedia.org/wiki/Chatroom); a blog is a user-generated website where entries are made in journal style and displayed in a reverse chronological order (http://en.wikipedia.org/wiki/Blog). All documents retrieved on February 6, 2007.

online hate; and 3) Recommendations by NGOs and individuals with expertise in online hate.

The recommendations for improving Canada's ability to address online hate fall into the following categories:

- Establishing a national tip line for online hate;
- Court ordered take down or blocking of Internet materials;
- Voluntary take down of Canadian hosted websites;
- Voluntary blocking of foreign hosted websites;
- Improvements to the Canadian Human Rights Commission's Internet-based hate propaganda complaints process;
- Improvements for law enforcement; and
- Funding for community groups.

All participants in this study have agreed that combatting hate on the Internet requires a multi-front approach, including public education, counter speech (that is, anti-hate advocacy and education), specialized law enforcement units and training, and an accessible human rights complaints process. Most agree that the laws pertaining to hate crime in Canada are sound. The suggestions and recommendations made are more concerned with fine tuning, and of investment of more resources into enforcement, education and capacity building for anti-discrimination programs by community groups.

I. BACKGROUND: CANADA'S EFFORTS TO COMBAT HATE ON THE INTERNET

The primary legislative mechanisms for dealing with online hate build on the mechanisms for dealing with offline hate. The two primary legislative instruments are therefore sections 318 and 319 of the *Criminal Code of Canada* ("*Criminal Code*") and section 13 of the *Canadian Human Rights Act.* Section 36 of the *Telecommunications Act* is also relevant to the discussion of appropriate means to combatting hate on the Internet, since it deals with whether or not telecommunications carriers may interfere with the communications which travel across their services, and some Internet Service Providers (ISPs) who merely provide the technical means of communication are considered to be common carriers.

Each of these legislative provisions is discussed briefly below, followed by a summary of the reports that various departments and ministries within the Government of Canada have commissioned or otherwise requested on the topic to date.

A. *The Criminal Code Provisions*

The Uniform Crime Reporting Survey administered by the Canadian Centre for Justice Statistics (an arm of Statistics Canada) considers hate crime to be a criminal violation motivated by hate, based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor.[2] Hate crime is therefore a broad term that applies both to the specific *Criminal Code* offences related to hate propaganda and to any offence motivated by hatred. As for hate propaganda offences, the *Criminal Code* prohibits:

- Advocating or promoting genocide against an "identifiable group", that is, any section of the public distinguished by colour, race, religion, ethnic origin or sexual orientation(section 318);
- Inciting hatred against an "identifiable group" by communicating in a public place statements which are likely to lead to a breach of the peace (subsection 319(1)); and
- Communicating statements, other than in private conversation, to willfully promote hatred against an "identifiable group" (subsection 319(2)).

Neither section specifically addresses the Internet, though both have been interpreted to apply to Internet communications. No proceeding can be initiated under s. 318 or s. 319(2) without the consent of the Attorney General.[3]

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[2] Canadian Centre for Justice Statistics, "Hate Crime in Canada: An Overview of Issues and Data Sources" (2001), Catalogue no. 85-551-XIE; Warren Silver, Karen Mihorean and Andrea Taylor-Butts, Canadian Centre for Justice Statistics, "Hate Crime in Canada" (2004), Catalogue no. 85-002-XPE.

[3] The procedure for obtaining consent from the Attorney General varies by province. In British Columbia, for instance, consent is obtained by submitting written statements of witnesses or other evidence to an Administrative Crown Counsel for review, who will determine if the case should be sent on to the Assistant Deputy Attorney General, who is the delegate of the Attorney General. For a complete description of the

Specific Internet-oriented evidence seizure and investigation assisting provisions were implemented at section 320.1, by means of the *Anti-Terrorism Act, 2001.*[4] These provisions provide for the issuance of a court order to a service provider to remove material considered to be hate propaganda:

> **320.1** (1) If a judge is satisfied by information on oath that there are reasonable grounds for believing that there is material that is hate propaganda within the meaning of subsection 320(8) or data within the meaning of subsection 342.1(2) that makes hate propaganda available, that is stored on and made available to the public through a computer system within the meaning of subsection 342.1(2) that is within the jurisdiction of the court, the judge may order the custodian of the computer system to
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> (*a*) give an electronic copy of the material to the court;
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> (*b*) ensure that the material is no longer stored on and made available through the computer system; and
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> (*c*) provide the information necessary to identify and locate the person who posted the material.

Hate propaganda materials can be ordered removed via s. 320.1, regardless of whether the content provider is also prosecuted under ss. 318 or 319. In other words, s. 320.1 is a means of removing material that qualifies as hate propaganda, even where the intent to advocate genocide or willfully promote hatred cannot be proven.

The *Criminal Code* also has specific provisions that address crimes motivated by hate. Section 718.2(a)(i) provides that evidence that an offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor shall be considered as an aggravating factor in sentencing an offender.[5]

Another provision in the *Anti-Terrorism Act, 2001* added to the *Criminal Code* at s. 430(4.1) a specific crime of mischief in relation to a building that is primarily used for religious worship, including a church, mosque, synagogue or a cemetery, where the mischief is motivated by bias, prejudice, or hate based on religion, race, colour or national or ethnic origin.[6] Whether this provision could apply to virtual places of worship is open to interpretation – for instance, regarding the defacement of a religious website – although the wording of the offence appears to have only physical places in mind, so the application to virtual places is doubtful.

Sections 318, 319 and 430(4.1) are the only offences specifically consisting of hate. Evidence of hate is otherwise treated as an aggravating factor to other offences and is to

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procedure in British Columbia, see Hate/Bias Crime Policy Guide, British Columbia Ministry of the Attorney General (2000).

[4] *Criminal Code*, R.S.C, 1985, c. C-46, ss. 318, 319, and 320; *Anti-Terrorism Act*, S.C. 2001, c. 41, ss. 10, 88.

[5] *Criminal Code*, R.S.C, 1985, c. C-46, s. 718.2(a)(i).

[6] *Criminal Code*, R.S.C, 1985, c. C-46, s. 430(4.1).

be considered in the sentencing of an offender, as set out in section 718.2. Because of the freedom of expression issues at stake in hate speech, dealt with in regard to s. 319(2) (willful promotion of hatred) by the Supreme Court of Canada in *R. v. Keegstra*[7], each offence requires evidence establishing intent, with the exception of s. 319(1), where inciting hatred in a public place may be done recklessly, rather than intentionally. Consequently, the threshold for qualifying an action as a hate crime is not easily met, even where race appears to have been an issue, unless it can be proven that the accused intentionally acted out of hatred. Several defences are also available for some offences, including the defence of good faith expression of opinion on a religious subject or belief based on a religious text.

Policing Hate Crime on the Internet

Both because of the high threshold for qualifying as an intentional hate crime and the strong social and political impact of hate crimes experienced by victims and affected communities, many police forces have designated special hate crimes officers, or have set up hate crimes units to deal with hate crime in their jurisdictions. Regional cooperative efforts between police forces have also been established in order to share information and resources in dealing with hate crime.

Some of these units have dedicated resources to combat hate crime on the Internet. For instance, Ontario's Hate Crime/Extremism Investigative Team employs a full time civilian analyst who monitors websites and other information exchange sites. The primary focus of the team is to prevent hate crime and other extremist activity, rather than to solve these types of crimes after the fact. To this end, the primary purpose of this Internet monitoring is to provide information to the police officers in the group regarding events or issues which may lead to hate crime or terrorist activity. In other words, by monitoring extremist groups via the Internet, the team hopes to both know when hate or terrorist activity is being planned and to anticipate situations where hate crimes or terrorism may occur, so that police may intervene.[8]

The British Columbia Hate Crime Team ("BC Team") not only has designated officers, but also has a designated Crown counsel assigned to the BC Team. The BC Team as a whole is made up of representatives from the Ministry of the Attorney General and Minister Responsible for Multiculturalism, such as the Criminal Justice Branch, Settlement and Multiculturalism Branch, Ministry of Public Safety, Solicitor General (represented by the Police Services Branch), as well as the RCMP and municipal police forces.

The BC Team has strong community connections. These connections both derive from its partner in the Multiculturalism Branch of the provincial government and from the

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[7] *R. v. Keegstra* [1990] 3 S.C.R. 697.

[8] The Ontario Hate Crime/Extremism Investigative Team also conducts educational projects providing information regarding hate crime, one directed at law enforcement training and another which provides information for target community groups (i.e., new immigrant groups). A third educational project is planned to provide training for Crown prosecutors and judges.

mandate carried out by its full time officers during the first few years of its existence, which mainly involved community liaison and training of other law enforcement officers in how to deal with hate crime. Police officers assigned to the BC Team now also investigate and assist in investigations of hate crimes, including Internet-based hate, and the BC Team is regularly called upon to attend meetings in communities where a hate incident has occurred. The BC Team is widely considered to be experts in hate crime (especially in B.C., but also nationally and internationally), further contributing to the high esteem in which community groups, as well as other law enforcement units, hold the BC Team.

The BC Team is known throughout the province as a resource for law enforcement, offering both training in hate crime investigation and prosecution, offering assistance in investigations, or conducting investigations directly, and offering the services of the designated Crown Counsel. The designated Crown Counsel provides a package of case law for hate propaganda and hate motivated crimes, provides opinions on charge approval under ss. 318 or 319 (i.e., to determine whether there is a basis to carry on with the investigation), and often provides second opinions to other Crown counsel working on hate propaganda or hate motivated crimes.

The BC Team also runs a telephone hotline through which to report hate crime in the province, or to receive information or referrals. Due to the positive community connections and strong reputation as a unit with expertise and exceptional sensitivity to hate crimes issue, the hotline has successfully served as a place for hate crime victims otherwise leery of police to report incidents.

The appointment of specialists among both police and the Crown's office illustrates the more general sense nationwide that law enforcement regarding hate crime requires expertise, regarding both the law and the impact on communities.[9] All provinces also have Tech Crime Units, who are able to assist in Internet investigations as needed, further illustrating the need for specialists able to handle the technical features of Internet related crime.

B. The Canadian Human Rights Act

Pursuant to Section 13 of the *Canadian Human Rights Act* it is a discriminatory practice to communicate via telecommunications, or cause to be so communicated, material that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or persons are identifiable on the basis of a prohibited ground of discrimination.[10] The freedom of expression issues raised by the section were conclusively dealt with in *Canadian Human Rights Commission v. Taylor*[11] and the provision's application to the Internet was first established by the Canadian Human Rights Tribunal ("Tribunal") in

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[9] Not all hate crimes specialists work in a special hate crime team. Some are investigators in other units, such as Serious Crime.

[10] *Canadian Human Rights Act*, R.S.C. 1985, c. h-6, s. 13.

[11] *Canadian Human Rights Commission v. Taylor*, [1990] 3 S.C.R. 892.

Citron v. Zündel in 2002.[12]   Section 13(2) has since been added to clarify that s. 13(1) applies to communication via computer networks, codifying the finding of the Tribunal in *Zündel.* For breach of s. 13, the Tribunal can order cessation of the practice, and measures to prevent it from recurring; victim compensation (where the victim is specifically identified); and a penalty of up to $10,000.

After a complaint is filed with the Canadian Human Rights Commission (CHRC), efforts are first made to resolve the complaint through mediation or other appropriate alternative dispute resolution measures. If the matter is not resolved, an officer investigates the allegations in the complaint and prepares a report to the Commissioners, upon which the parties are permitted to comment. The complaint and report are then reviewed by the Members of the Commission, who decide whether to dismiss or refer the matter to the Tribunal for further inquiry.[13]

In the few years since *Zündel,* the CHRC has received 55 complaints under s. 13, at least 29 of which have been referred to the Tribunal.[14] So far, the Tribunal has issued ten decisions, determining in all cases that the respondents had contravened s. 13 of the *Canadian Human Rights Act* and ordering respondents to cease and desist from their activities.

The CHRC has also been holding meetings with stakeholders on how to better address the problem of hate on the Internet, and held a conference on the topic in December of 2005.[15]

C. The Telecommunications Act

The final legislative provision relevant to combatting hate on the Internet in Canada is section 36 of the *Telecommunications Act,* which provides that

> Except where the Commission approves otherwise, a Canadian carrier shall not control the content or influence the meaning or purpose of telecommunications carried by it for the public.[16]

Since the *Telecommunications Act* only applies to telecommunications carriers (that is, the five or six large Canadian telecommunications and cable companies who provide the means of telecommunication), the provision should not be interpreted to apply to resellers of Internet services (that is, the over 400 smaller Canadian ISPs, many, but not all of

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[12] *Citron v. Zundel*, [2002] CHRD No. 1 (C.H.R.T.).

[13] The CHRC website sets out a more detailed description of what happens to s. 13 complaints once they are filed, in addition to providing information about filing complaints. Retrieved February 6, 2007 from http://www.chrc-ccdp.ca/discrimination/watch_on_hate-en.asp.

[14] Mary Gusella, opening address, Hate on the Internet Conference, December 15-16, 2005, Ottawa, published in *Canadian Issues/Thèmes Canadiens* (Spring 2006): 4-7, as updated by Harvey Goldberg of the CHRC in an interview on January 11, 2007. As of January 11, 2007, six further cases were under investigation, leaving 13 cases closed for various reasons.

[15] Selected papers from the conference are published in *Canadian Issues/Thèmes Canadiens* (Spring 2006).

[16] *Telecommunications Act*, 1993, c.38, s. 36.

whom are members of the Canadian Association of Internet Providers (CAIP)). Nonetheless, the section is significant in that it has been interpreted by the large ISPs who are carriers to be a bar to their voluntary blocking or otherwise interfering with content not hosted on their facilities, unless explicitly approved by the Canadian Radio-television and Telecommunications Commission (CRTC) or compelled by court order.

To date, the CRTC has not issued a ruling under s. 36. In August, 2006, Richard Warman, a frequent complainant under s. 13 of the *Canadian Human Rights Act*, made an application to the CRTC requesting interim CRTC approval under s. 36 to allow Canadian carriers to block two United States-based hate websites which had published Mr. Warman's name and address and issued threats in retaliation for his anti-racist activities. The CRTC declined to issue a ruling, stating that submissions of the carriers should be heard on this issue before the CRTC would exercise its powers (the extent of which remains unexplored).[17]   The CRTC's response is not surprising, given the CRTC's decision to remain neutral with regard to Internet content in its 1999 Public Notice regarding New Media.[18]

The extent to which s. 36 is available as a means for ISPs to assure their compliance with the *Telecommunications Act* when choosing to block a particular hate site remains unclear.   The CRTC maintains that public consultations would be required to determine whether s. 36 would be available for this purpose.

D. Previous Reports on Internet Hate Commissioned by the Canadian Government

Industry Canada and the Department of Canadian Heritage first commissioned a report on combatting hate on the Internet in 1998, which examined policy approaches in other jurisdictions across the globe.[19]

In February 2001, the Minister of Industry and Minister of Justice launched the Canadian Strategy to Promote Safe, Wise and Responsible Internet Use, which included the document entitled, "Illegal and Offensive Content on the Internet: The Canadian Strategy to Promote Safe, Wise and Responsible Internet Use" ("Strategy").[20]   The Strategy featured five strategic priorities: 1) to educate users; 2) to promote effective self-regulation of the Internet industry; 3) to strengthen law enforcement in cyberspace; 4) to implement hotlines and complaint reporting mechanisms; and 5) to foster consultation between public and private sectors and their counterparts in other countries. The Strategy addresses online hate as well as other forms of illegal and offensive content, although the primary concern appears to be with child exploitation materials.

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[17] CRTC Letter dated August 24, 2006 regarding file #8622-P49-200610510.

[18] Broadcasting Public Notice CRTC 1999-84; Telecom Public Notice CRTC 99-14. Retrieved February 2, 2007 from http://www.crtc.gc.ca/archive/ENG/Notices/1999/PB99-84.HTM.

[19] Heather De Santis, "Combatting Hate on the Internet: An International Comparative Review of Policy Approaches" (1998). Retrieved January 27, 2007 from http://www.arts.uwaterloo.ca/ccm/ccrn/documents/colloq98_desantis.pdf.

[20] Government of Canada, "Illegal and Offensive Content on the Internet: The Canadian Strategy to Promote Safe, Wise and Responsible Internet Use" (2001). Retrieved January 27, 2007 from http://strategis.ic.gc.ca/epic/internet/incybp-cybpa.nsf/en/h_wa00059e.html.

The Canadian Secretariat to the United Nations World Conference Against Racism, overseen by Canadian Heritage (Multiculturalism), also formed several advisory committees in preparation for the World Conference in August/September, 2001, including a civil society advisory committee on hate and new media. This committee, consisting of Alan Dutton (chair), Karen Mock, and Eliane Ellbogen, produced a report with recommendations geared toward Canadian compliance with United Nations anti-racism conventions entitled "Combatting Hate on the Internet".[21]

It should be noted that reports on online hate, Canada's efforts to combat it, and recommendations for improving the Canadian approach have also been produced by NGOs and international organizations since the 1990s.[22]

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[21] Hate and New Media Working Group, "Combatting Hate on the Internet", January 31, 2001. Retrieved February 12, 2007 from http://www.pch.gc.ca/progs/multi/wcar/advisory/hate-on-net_e.cfm.

[22] See for instance, Yaman Akdeniz, "Stocktaking on efforts to combat racism on the Internet" (2006), background paper prepared for the United Nations High Commission on Human Rights, retrieved on March 5, 2007 from http://www.ohchr.org/english/issues/racism/groups/docs/e_cn4_2006_wg21_bp1.doc; Karen Mock, "Hate on the Internet" in Steven Hicks, Edward F. Halpin and Eric Hoskins, eds. *Human Rights and the Internet* (Macmillan Press Ltd., 2000): 141-152; Karen Mock, "Countering Anti-Semitism and Hate in Canada Today: Legal/Legislative Remedies and Current Realities" in *Anti-Semitism Worldwide 1998/9* (Stephen Roth Institute for the Study of Contemporary Anti-Semitism and Racism, Tel Aviv University); Bernie Farber, "From Marches to Modems: A Report on Organized Hate in Metro Toronto" (1997). Retrieved on January 30, 2007 from http://www.cjc.ca/docs/RD/98_Marches%20to%20Modems.doc.

II. EFFORTS BY CANADIAN NON-GOVERNMENTAL ORGANIZATIONS TO COMBAT ONLINE HATE

A few Canadian non-governmental organizations have been very active in combatting hate on the Internet. This section of the report begins by setting out the major areas of NGO activity in combatting online hate, namely: 1) Reporting services for online hate; 2) Monitoring of online hate; 3) Education and advocacy regarding online hate; and 4) Direct involvement in section 13 complaints to the Canadian Human Rights Commission.

Many anti-racist and anti-discrimination organizations have not specifically focused on Internet based hate; this is, however, mainly due to limitations on resources rather than a lack of interest or concern. This section therefore proceeds to set out the comments of anti-racist groups who have anti-hate crime initiatives but who have not concentrated on Internet hate, in order to provide a larger context for the recommendations which follow in the next section.

The section concludes with a summary of three areas of concern for NGOs working on anti-hate activities: threats posed to groups who become active in this area; relations with police and government; and finally, the difficulty some groups voice in fitting their concerns under the existing legal definition or threshold for intentional hate crimes.

1.   NGOs Actively Combatting Online Hate

a. *Reporting services for online hate*

Many community groups have some sort of mechanism for reporting hate crime, though they generally do not specifically promote the service in relation to hate on the Internet. The most comprehensive reporting service including a service specifically dedicated to online hate is run by B'nai Brith Canada's League for Human Rights (B'nai Brith). Canadian Jewish Congress (CJC), Friends of the Simon Wiesenthal Center, and Canadian Anti-racism Education and Research Society (CAERS) have also collected reports from the public about Internet hate through website, telephone, email or other reporting mechanisms.[23]

B'nai Brith has been actively engaged in the issues surrounding hate on the Internet since the 1990s, and has held three conferences on the topic, in 1997, 1999 and most recently in September, 2006. Following the most recent conference, B'nai Brith launched a website at www.hateontheinternet.com that includes an online reporting mechanism specifically

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[23] The CJC posted a "How to Report Hate on the Internet" fact sheet with a link to an email address where online hate can be reported in March, 2006, but it is not prominent on the group's website, Retrieved on January 30, 2007 from http://www.cjc.ca/template.php?action=ioi&item=96.   The Simon Wiesenthal Center (SWC) has a dedicated email address for reporting hate and/or terror sites at digitalhate@wiesenthal.net. Some of the websites included in their yearly report *Digital Terrorism and Hate,* are brought to SWC's attention through this email address. CAERS had a general hate crime reporting mechanism on its site recomnetwork.org through which it occasionally received reports on Internet hate, but this site has been temporarily taken down as the result of a complaint filed with the Canadian Human Rights Commission.

for online hate, a password protected forum to discuss combatting online hate, and various resources (including materials from the 2006 conference).

B'nai Brith has had an anti-hate hotline for some time which is the source of data for its annual audit of anti-Semitic incidents. The hotline is available via both the telephone and an online form, and is primarily dedicated to reporting offline anti-Semitic hate. The hotline has received reports of Internet hate as well, and has included these incidents in the annual audit where appropriate.

The main purpose of the hotline is to help victims. As a result, whether a report is referred to the police or the provincial or federal Human Rights Commissions is up to the complainant, as is whether the report remains anonymous. Anonymous reports made via the online reporting form are not included in the annual audit, however, since only reports which can be followed up are included in the report.[24] The reports received are kept under lock and key and no individual report is ever released, even to the police, without the victim's consent.

B'nai Brith maintains that an audit of online hate should remain part of a larger audit of hate incidents more generally, in order to provide the context for online hate. B'nai Brith considers the statistics produced for the audit to be a gross underestimate of actual hate incidents, and considers online hate to be even more underreported than other forms of hate crime, especially among young people (fearing repercussions from peers, parents) and older people (feeling they did something wrong with the technology to arrive at such sites).

B'nai Brith is well known for its anti-hate activities, including online hate. It receives reports from many other groups who are victims of hate, besides its primary constituency in the Jewish community, especially from members of groups that do not have community organizations which run their own anti-hate crime hotline. B'nai Brith has also been told by some people reporting online hate that they have been turned away by Cybertip.ca, the national hotline for reporting online child exploitation ("Cybertip")[25], and that Cybertip refers people trying to file reports regarding online hate to B'nai Brith. B'nai Brith is also recognized by other community organizations as a leader in the provision of information about anti-hate hotlines generally, and so B'nai Brith has advised other groups and shared its experience with setting up and running a hotline with, for example, Hindu, South Asian, and gay/lesbian/bisexual/transgender (GLBT) groups. However, at least one group, the Canadian Arab Federation, doubted that its community would ever use the B'nai Brith hotline due to Arab/Israeli political tensions.

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[24] The 2005 audit can be found online at http://www.bnaibrith.ca/audit2005Analysis.html#s21.

[25] Cybertip.ca is the national tip line for reporting online sexual exploitation of children. It is a centralized web portal for receiving and addressing reports from the public regarding child pornography, luring, child sex tourism, and children who are exploited through prostitution. Cybertip.ca also provides the public with information, referrals and other resources to help Canadians keep their children safe while on the Internet. Cybertip is located at www.cybertip.ca.

B'nai Brith uses the legal definition of hate crime and hate speech to apply to both online and offline incidents.[26] B'nai Brith has legal counsel that evaluates complaints/incident reports, and so is confident that it adheres to established Canadian legal definitions. The profile of online hate reports received by B'nai Brith bears the following characteristics: 1) complaints are split fairly evenly between websites and unsolicited bulk email (spam); 2) purveyors of online hate continue to be dominated by the far right, but B'nai Brith also has received complaints about academics (regarding Holocaust denial), about young people using hate against each other, and the independent online media; 3) much of the online hate reported is "multi-bias", promoting hatred against a variety of groups; and 4) reports are also coming in regarding specifically anti-Semitic materials, coming from extremists of various kinds (right, left and religious).

B'nai Brith measures its success both on a micro and macro level. On the micro level, success could mean a person finding the hotline and getting victim support services such as counseling or referral, or reaching a person in an under-serviced group (i.e., a young person) or area (i.e., from a rural community). On a macro level, success is measured by praise and recognition from individuals, other community groups both within and outside the Jewish community and from government, distributing copies of the annual audit (especially to people who can influence policy), building partnerships with other groups or government, and educating people. Of course, all of these measures of success are in the service of the ultimate macro level success, which would be to eliminate or at least reduce racism, which B'nai Brith acknowledges is hard to measure.

b. Monitoring of online hate

A number of organizations and individuals monitor the Internet for online hate to varying degrees, including the Simon Wiesenthal Centre, The Nizkor Project, Centre for Research-Action on Race Relations, Canadian Anti-racism Education and Research Society, as well as some of the specialized police hate crime units.

1. Simon Wiesenthal Centre for Holocaust Studies (SWC)

The primary community organization engaged in monitoring online hate is the SWC, of which the Friends of the Simon Wiesenthal Center is the Canadian branch ("Friends"). SWC has offices in a number of cities in North America, South America, Europe and the Middle East, many of which have professional staff monitoring the Internet for a broad variety of hate and terrorist materials in a multitude of languages, on websites, chat

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[26] "Hatred" was defined by the Supreme Court of Canada in *Keegstra* with regard to s. 319(2) as the "most severe and deeply felt form of opprobrium" directed at an identifiable group. The case law under the *Criminal Code* s. 318 and 319 further refines the Canadian legal definition of hate, particularly with regard to evidence of intent. In some provinces, such as British Columbia, charge approval for hate-based offences will only be granted where there is a substantial likelihood of conviction, and if so then further that the proposed charge is in the public interest. While the specific test for charge approval varies between provinces, the careful consideration of whether the laying of these charges is in the public interest is generally at the core of the tests. The reasoning here is that it would not be in the public interest to bring forward uncertain or incomplete cases which will likely result in an acquittal, since that result may be seen as exonerating or justifying the views of the accused.

rooms and blogs (including engaging in undercover work to gain access to these online groups). Friends has such a staff person in its Toronto office. As previously discussed, SWC does accept reports of online hate from individuals, but prefers to rely on its professional monitors, since many of the reports received from individuals do not meet the legal threshold of hate or extremism.[27]

For the past 11 years, SWC has compiled the sites identified by the staff into a unified database (SWC identified 6,000 websites containing hate and extremist content in 2005 alone). A committee comprised of SWC representatives from the various offices selects a sample of these sites (100 to 150) every year and compiles them onto a CD-ROM which is then distributed to police, politicians and educators, and will be made available to the public upon request. The entire database can be made available to researchers. SWC does not restrict access to the CD-ROM, as it operates under the philosophy that the public should know what is going on among hate-mongers and extremists in order to be able to do something about them.

SWC praises Canadian anti-hate law, both the *Criminal Code* provisions regarding hate propaganda and the *Canadian Human Rights Act's* s. 13, as model laws addressing the problem of hate speech. Indeed the legal definition of hate in Canada is the worldwide standard used by SWC to determine whether material qualifies as hate: in other words, if the material would count as hate in Canada, it can go into the database. SWC has a high level of both legal and technical expertise, and so is able to determine where websites and chats are hosted, and includes this information on the CD-ROM. SWC monitors a broad swath of extremist and hate sites, containing all forms of racism, as well as anti-gay, anti-immigrant, anti-abortion, animal rights, environmentalist and other extremist sites. Leo Adler of Friends is of the opinion that the audience for these materials is not changing so much as the scale (i.e., that much more material is available online now than ever before) due to the ease of use of the Internet, and so these sites are being used as a recruitment tool to garner new converts -- or warriors -- for these causes.

2. The Nizkor Project

A second significant community based effort that monitors online hate is the Nizkor Project. The Nizkor Project is an online database featuring historical materials about the Holocaust. The aim of the project is "To monitor the falsehoods, half-truths, and misinformation distributed via the Internet and other media by individuals and organizations that are fascist (including Nazi or neo-Nazi), racist, anti-Semitic, and/or that dishonestly and/or flagrantly reject established historical fact about the Nazi Holocaust" and to refute or otherwise reply to that misinformation so as to insure that the racist arguments are discredited.[28] Ken McVay, Director of the project, fundamentally believes that the best response to such material is to ensure that it is marginalized and that the larger public is equipped with solid factual anti-racist information. He believes that racist materials need to remain available rather than be driven further underground, in order to be able to debunk racist claims and make them unacceptable to the mainstream.

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[27] See note 26 above.

[28] Nizkor Project, "Objectives", retrieved January 30, 2007 from http://www.nizkor.org/objectives.html.

3. Centre for Research-Action on Race Relations (CRARR)

CRARR is a Montreal-based community group engaged in a variety of anti-racist projects, including providing legal representation to individuals involved in proceedings before various tribunals, regulatory bodies, human rights commissions, and courts. CRARR also has volunteers that occasionally monitor hate chats from time to time, in particular to be aware of any discussion of CRARR itself. However, most of CRARR's anti-hate work is complaint-based, as will be discussed further below, so the group does not pro-actively pursue hate mongers, with the possible exception of some French language racist web sites in Quebec, pursuit of which CRARR has made a priority in the coming year.

4. Canadian Anti-Racism Education and Research Society (CAERS)

CAERS is a British Columbia-based research and education centre that actively monitors hate group activity in Canada, including hate group activity on the Internet. CAERS is the Canadian representative of the International Network Against Cyberhate.[29] CAERS is especially concerned with hate group recruitment strategies, especially the recruitment of youth. According to Alan Dutton, Executive Director of CAERS, hate group activity on the public parts of the Internet (i.e., websites) has declined, so that hate group recruitment is now taking place more often offline (in malls, on streets) or through less obvious and less public areas of the Internet (i.e., social networking sites, even job application sites, where youth may list interest in white power bands, for instance, as a way to find one another). CAERS collects this information primarily to inform the public about youth recruitment, and provides services to youth involved in hate groups and their families to help them get out of these groups. CAERS also provides some training to law enforcement and prison officials on these issues. CAERS will forward information gleaned from its monitoring activities to law enforcement if appropriate, and has lobbied Internet Service Providers to take down hate materials in the past, as will be elaborated below.

5. Police Services

The Ontario Hate Crime/Extremism Investigation Team has a civilian staff person who monitors the Internet, in order to provide information to the police officers in the group regarding events or issues which may lead to hate crime or terrorist activity.

There is consensus among those who actively monitor the Internet for hate that it is an effective means of gathering information about what hate groups are doing, and what the dangers to potential victims are. Even groups who do not monitor for online hate consider active monitoring to be a good means of building an audit: Anita Bromberg and Ruth Klein of B'nai Brith, for instance, acknowledged that professional monitoring would be a better way to assure greater accuracy for an audit of online hate than B'nai Brith's current method of compiling their annual audit only from reports received through the B'nai Brith hotline.

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[29] The INACH website, last visited on August 10, 2007, is found at http://www.inach.net/.

c. *Education and advocacy regarding online hate*

Virtually all of the above mentioned groups engage in public education or professional development training for police, educators and/or the public regarding online hate. As already noted, the B'nai Brith's League for Human Rights has held three conferences on online hate, for a broad audience of professionals, including police, lawyers, politicians, community activists and educators. B'nai Brith believes that educators have a particularly significant role to play in bringing anti-hate messages to young people, and believes that the issue of the use of technology to perpetrate hate should be part of an anti-bullying campaign in schools.

The Canadian Jewish Congress (CJC) is primarily an advocacy organization, educating the public by issuing press releases, writing columns for newspapers, and issuing reports, some of them on the issue of hate on the Internet.[30] As noted above, the CJC also does have a means of reporting online hate, but the advocacy and educational projects are the major focus of the organization.

The Simon Wiesenthal Center (SWC) has a program, entitled "Tools for Tolerance," which features educational sessions for police, security services, and teachers, and which has a component on online hate. The program is currently offered in Los Angeles and New York, but will shortly be available in Toronto. Members of Canadian law enforcement have been offered the opportunity to apply for funding to attend the Tools for Tolerance courses in Los Angeles through the Friends of the Simon Wiesenthal Center.[31] Friends currently runs a professional development workshop for law enforcement officers, entitled "Investigating Online Extremism", which has been included in the requalification training programs of the Toronto Police, among others.

The 519 Community Centre, a Toronto-based organization dedicated to providing services for lesbians, gay men, bisexuals and transgendered people, provides a set of Internet Safety Tips to its community. These Safety Tips deal with how to be safe when you choose to have a face to face meeting with a person you have met online. The Safety Tips also suggest contacting the ISP if you encounter hateful and homophobic comments online. The organization otherwise does not focus on online hate.

As mentioned above, the Canadian Anti-Racism Education and Research Society (CAERS) provides education to the public, law enforcement and prison officials regarding especially youth recruitment into hate groups and more generally racist activity including by online means. CAERS currently runs an education and advocacy website at stopracism.ca, and has had two other websites in the past, antiracist.com and recomnetwork.org which contained discussion features, as well as an archive of reports

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[30] See for instance Bernie Farber, "From Marches to Modems: A Report on Organized Hate in Metro Toronto" (1997). Retrieved on January 30, 2007 from http://www.cjc.ca/docs/RD/98_Marches%20to%20Modems.doc.

[31] See for instance the Law Enforcement Aboriginal and Diversity Network Newsletter, Issue No. 5 (September 2006). Retrieved on January 30, 2007 from http://www.lead-alda.ca/index.php?page=resources.

and articles about racism and hate crime, including Canadian Human Rights Commission complaints and Tribunal decisions. Antiracist.com was discontinued when public funding ran out, and recomnetwork.org was taken offline pending the resolution of the s. 13 counter-complaint against the site, discussed in further detail below.

A very sophisticated set of resources for parents, educators, children and young people has been produced by the Media Awareness Network (MNet), specifically dealing with online hate.[32]   The goal of these materials is to encourage critical thinking and address all issues that relate to hate mongering and hate ideology generally, rather than focusing on hate leveled at any particular group. The materials provide information about what the legal definition of online hate is and how to handle it, but also aims more broadly at the "culture of hate" fostered by the online environment, where young people engage in hurtful comments, racist jokes, and generally display a lack of empathy for their peers.

MNet has conducted a major study on how youth behave online (in two phases, one completed in 2001 and the second in 2005), entitled, "Young Canadians in a Wired World".[33] Through this and similar research, MNet tries to stay apprised of the types of materials that youth encounter online, though not to the extent of monitoring hate groups. Insights gained from the surveys of the online behaviours of youth singled out by Catherine Peirce, Project Director at MNet, include that many young people encounter hate unwillingly (often via email), but that a small but significant percentage of older children (over the age of 10) actively seek out hate materials online.

MNet also has specific materials for parents ("Be Web Aware", launched in 2004)[34], as well as lesson plans and other professional development materials for teachers ("Deconstructing Online Hate", launched in 2005).[35] MNet has well established expertise in providing educational materials regarding online hate, as it has included a section on online hate in its Internet safety workshops since MNet began working on Internet safety in 1996.

d. ***Direct involvement in section 13 complaints to the Canadian Human Rights Commission***

A number of community groups have been involved in one way or another in filing complaints under s. 13 of the *Canadian Human Rights Act* to the CHRC. That said, the complaints process is mostly designed to deal with complainant individuals, as the rest of the *Act* deals with particular offline discriminatory incidents. This practice is frequently criticized by the parties who have been involved in this process, as will be set out below in the recommendations. Nonetheless, due to the need for the involvement of an

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[32] Media Awareness Network, "Online Hate: An Introduction". Retrieved January 30, 2007 from http://www.media-awareness.ca/english/issues/online_hate/index.cfm.

[33] Media Awareness Network, "Young Canadian in a Wired World". Retrieved January 30, 2007 from http://www.media-awareness.ca/english/research/YCWW/index.cfm.

[34] Be Web Aware is located at http://www.bewebaware.ca/english/default.aspx. Accessed January 30, 2007.

[35] Media Awareness Network, "Deconstructing Online Hate". Retrieved January 30, 2007 from http://www.media-awareness.ca/english/catalogue/products/descriptions/online_hate.cfm.

individual (or a representative of a community organization), those few individuals who have filed s. 13 complaints and have gone through the process can be considered activists in the area of online hate, since a high degree of personal commitment is required to see a complaint through to its conclusion.

Richard Warman is an Ottawa-based lawyer who is undoubtedly the single most prolific filer of s. 13 complaints against individuals and groups using the Internet to perpetrate hate. He has filed over a dozen complaints in the four years since the decision resulting from the complaint filed by Sabine Citron against Canada's most notorious holocaust denier Ernst Zündel, which established that s. 13 applied to hate propaganda disseminated through the Internet. Warman chooses respondents by monitoring the Internet for the most egregious hate mongers, including engaging in undercover work in chat rooms.[36] Warman files complaints against the most heinous purveyors of hate he finds, namely people who advocate genocide, and mainly chooses respondents who are leaders in the hate movements (neo-Nazi, white supremacists) or who are vocal individual hate mongers with their own websites.

Other individuals have filed a single complaint or have focused on a single respondent, including Sabine Citron's complaints against Ernst Zündel, and Mark Schnell's complaints against hateful homophobic content distributed by Machiavelli Associates Emprize Inc. and the people responsible for its website. A significant development in the area of complaints filed by individuals is that at least one individual has been able to file a complaint under his screen name (i.e., anonymously) and so to be shielded from the usual barrage of threats and efforts to intimidate which commonly accompanies filing a s. 13 complaint. The complaint was filed against a number of individuals who posted hateful homophobic content on an AOL, Inc. ("AOL") chat forum dedicated to the same sex marriage issue, and is currently headed for the Tribunal.[37] This complainant received some assistance in filing the complaint from the Canadian Internet Policy and Public Interest Clinic (CIPPIC). CIPPIC does not generally seek out s.13 complainants and does not intend to do so in the future.

The Centre for Research-Action on Race Relations (CRARR) has been engaged in anti-racist research and advocacy for over 20 years and has assisted numerous individuals in filing human rights complaints. CRARR filed its first s. 13 complaint against a white supremacist website three years ago and is now in the midst of Tribunal hearings regarding that site. As noted above, CRARR is primarily complaint driven and this s. 13 filing arose out of a complaint raised by one of CRARR's volunteers who encountered the site. CRARR does not intend to proactively engage in s. 13 filings the way that Warman does. Rather, Fo Niemi, Executive Director of CRARR, states that CRARR has made it a priority to go after French language hate sites with Quebec content, as this as an

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[36] Most community groups do not encourage this type of work by individuals, since it presents a significant risk to the individual if he or she is found out, and Warman has indeed been subject to death threats as a result of his activism.

[37] AOL, Inc. was formerly America Online. The complainant also named AOL as a respondent, citing the service providers delays in removing the offending messages, but the CHRC did not recommend that this part of the complaint go forward.

area where CRARR is best positioned to make a difference, being based in Montreal. Based on its current experiences before the Tribunal, CRARR wants to organize a national forum of people with s. 13 experience regarding strategies to counteract the obstructionist tactics of respondents that currently plague Tribunal hearings. This event is at the idea stage at the moment.

Community groups have also appeared as intervenors before the Human Rights Tribunal in s. 13 complaints, including B'nai Brith's League for Human Rights, the CJC and the Simon Wiesenthal Centre. Some community groups and/or members of these groups have appeared as expert witnesses before the Tribunal, Bernie Farber (Chief Executive Officer of the CJC), and Karen Mock (formerly with the Canadian Race Relations Foundation). Other groups, such as Canadian Anti-racism Education and Research Society (CAERS), have been consulted by complainants in s. 13 complaints, but have not appeared before the Tribunal.[38]

2.   *NGOs Engaged Only in Offline Anti-hate Activities*

Many community groups work to counter hate crime and/or racism more generally, but have not addressed hate on the Internet specifically. Some of these groups do however have limited experience dealing with online hate and their experiences are recounted below, as they are able to articulate some gaps in existing work.

Canadian Council on American-Islamic Relations (CAIR-CAN) includes information about reporting anti-Muslim hate crime on its website.[39] CAIR-CAN reports that it has received reports of hate on the Internet against Muslims, but generally just stores and files the information since the organization does not have the resources to spend a lot of effort pursuing Internet-based complaints. Most of the reports they receive pertain to offline hate, and most are received via the telephone, though some are received via email or fax. CAIR-CAN monitors how its own group is being talked about on the Internet, but does not monitor for anti-Muslim hate more generally.

The Council of Agencies Serving South Asians (CASSA) provides information about how to report a hate crime on its website, and had a hotline to report hate crime, but has since virtually discontinued it due to lack of resources (although the reporting form is still available on the website).[40] CASSA received assistance in setting up the hotline from B'nai Brith, which shared some of its resources, including intake forms.[41] CASSA formed a partnership with the South Asian Legal Clinic of Ontario (SALCO) to deal with complaints coming in through the hotline, but SALCO's mandate is to provide direct poverty law-related services to its clients, and so has limited resources to deal with hate

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[38] Alan Dutton of CAERS has appeared as an expert witness on the impact of hate, including hate on the Internet, before the Labour Relations Board of Ontario and the Supreme Court of British Columbia.

[39] Canadian Council on American-Islamic Relations, "Reacting to Anti-Muslim Hate Crimes". Retrieved January 30, 2007 from http://www.caircan.ca/rpt_hatact.php.

[40] CASSA, "Hate Crime Form". Retrieved January 30, 2007 from http://www.cassa.on.ca/.

[41] CASSA reports that it tried to request that a U.S. Internet service provider take down an anti-immigrant website listing a Toronto contact address hosted on the U.S. service several years ago, but was unsuccessful.

crime generally, much less online hate.[42] SALCO will handle complaints regarding hate crime, but can only refer clients to a roster of lawyers willing to do pro-bono work.

CASSA also has a sophisticated anti-hate site specifically aimed at educating South Asian youth, entitled "It's About Time".[43] This project was carried out with the participation of youth though CASSA's "Say No to Hate" project, and was funded by the Government of Canada though the National Crime Prevention Strategy. However, CASSA notes that the site has not been kept up to date, again due to lack of resources.

The Canadian Arab Federation (CAF) makes a reporting service available to the Arab community, mainly providing information to people regarding where to report a hate crime and maintaining a list of lawyers to whom to refer callers. CAF keeps track of these reports, but has not compiled them into an audit. CAF has received complaints about online anti-Arab or anti-Muslim materials, but acknowledges that the group does not have the training or the technology to deal with online hate. This is again due to lack of resources, though Sara Amesh, Project Director at the CAF, considers online anti-Arab hate to be a growing concern within CAF's constituent community.

CAF is active in educating the Arab community about hate crime and anti-Arab racism, and in educating law enforcement and security services about anti-Arab and anti-Muslim sentiment. Amesh and CAF Executive Director Mohamed Boujenane consider hate crime to be grossly underreported in the Arab and Muslim communities, and consider this underreporting to be a result of the community members' general distrust of police. According to Amesh, distrust of police is in part a result of policing practices in countries from which Arab immigrants arrive, and in part a result of community members' belief that police in Canada engage in unjustified racial profiling of Arabs and Muslims. Underreporting is also due, she said, to a lack of knowledge about Canadian laws in the Arab and Muslim communities.

The Canadian Islamic Congress has put together a flyer through its "Better Safe than Sorry" project for parents, administrators of mosques and other Islamic institutions, and Muslims generally. This flyer addresses both sides of the hate crime problem: 1) staying safe and avoiding becoming a victim of hate crime, and 2) preventing young people from getting involved in extremist groups.[44] These materials, however, are not specifically Internet oriented.

The Hindu Conference of Canada (HCC) has engaged primarily in educational projects regarding anti-Hindu hate. These projects include a presentation on media bias against Hindus at the Hindu Youth Conference in Toronto in August, 2006, and organizing an event entitled "Combatting Stereotypes in Education: Hindu Parent-Child Initiative" held in North York on August 26, 2006, dealing with how anti-Hindu literature has made its way into the school curriculum (funding for the latter event was provided by the Toronto

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[42] SALCO is a project of Legal Aid Ontario (LAO), rather than a permanent clinic.

[43] Available via a link on the CASSA website. Retrieved February 22, 2007 from http://www.cassa.on.ca/.

[44] Canadian Islamic Congress, "Better Safe Than Sorry". Retrieved January 30, 2007 from http://www.canadianislamiccongress.com/ar/safe.php.

District School Board).[45] HCC also does presentations at Hindu temples regarding anti-Hindu sentiment, based on information gathered from complaints received from the community. HCC has not focused on online hate, and has mainly focused on non-legal remedies for dealing with anti-Hindu statements in mainstream contexts, recommending that its community members write to school authorities or to the newspapers, for instance. Ron Banerjee, Executive Director of the HCC, believes that the Hindu community has a low level of awareness of legal remedies for hate materials, and is interested in setting up a hotline for anti-Hindu hate, but lacks resources.

Other groups with specific constituencies similarly provide information regarding how to report hate crime or have engaged in advocacy to further the interests of their constituencies by either suggesting changes to hate crime legislation or the handling of hate crime by law enforcement. However, these groups, which include the Canadian Muslim Civil Liberties Association, the Indigenous Bar Association, Equality for Gays and Lesbians Everywhere (EGALE), and the African Canadian Legal Clinic, do not specifically address Internet hate.

Some umbrella organizations have been established to bring a broad array of community groups together to address common issues regarding racial or other discrimination. The National Secretariat Against Hate and Racism Canada, for instance, convened a symposium in October of 2005 focused on hate crime, the *Criminal Code* and the *Charter of Rights and Freedoms,* although this event did not specifically address Internet hate.

The National Anti-Racism Council of Canada (NARCC) is an umbrella organization with 125 member organizations, and is strongly committed to being representative of all communities within Canada: its board of directors, for instance, is designed to feature broad representation from Central, East, West, and North regions, francophone and Aboriginal groups, and groups of various size and focus (national, regional and local). NARCC is consequently sensitive to regional differences regarding the degree of outspokenness of groups, their leadership, their populations, and what forms of activism are considered acceptable.

Estella Muyinda, Executive Director of NARCC, states that because of its broad membership, NARCC is beginning to receive reports of hate crime, including online hate, from individuals who do not have a more obvious place to go to report (including from mixed-race people, or from in one case a Chinese-Muslim person), as well as from local groups who do not know how to proceed (such as a Northern Aboriginal group concerned about an anti-Native website). NARCC has begun to keep a record of these types of calls and would be interested in having a hotline, both for reporting hate crime and for audit purposes, but does not currently have the resources to do so. NARCC currently mainly co-ordinates resources shared between members and both writes its own reports and posts member groups' reports and resources on its website.

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[45] See http://www.hccanada.com/accomplishments.html. Retrieved February 22, 2007.

3. *Consequences for Community Groups doing Anti-Hate work*

Groups doing anti-hate crime work are frequently subject to threats from racists, regardless of whether the work they do is focused on the offline or online context. Some of these threats are experienced via the Internet - including threatening emails or postings, denial of service attacks[46], overwhelming quantities of spam, or personal threats to prominent figures in the organization.

It is noteworthy, too, that all complainants who have filed complaints under s. 13 of the *Canadian Human Rights Act* report having received threats or having been subject to attempts at intimidation, especially via the Internet itself.

4. *NGO Relations with Government and Police*

Groups working specifically in the area of online hate report having a good relationship with the Canadian Human Rights Commission, and see themselves as working in partnership with them. Most of the community groups not working specifically on issues related to the Internet do not have much of a relationship with the CHRC, though they report relationships with provincial human rights commissions.

Community groups are also more likely to have a relationship with the provincial Attorney Generals' offices, rather than the Department of Justice, except the larger, more policy oriented groups such as B'nai Brith, CJC and Friends. The latter groups are involved in consulting and working groups with various government departments, and/or have been asked to make submissions regarding hate- or terrorism-related legislation, and consider themselves to have good relations with the federal government. One group, CRARR, suggested that the Justice Minister should intervene in CHRC cases involving prominent hate mongers, especially where persistent delay tactics are being employed or where the same unconvincing expert witnesses are trotted out in case after case to testify on the respondents' behalf. This suggestion reflects the opinion of CRARR that there should be a closer relationship between the CHRC and Justice Canada (or the newly created Public Prosecution Service of Canada).

Relations with police services vary from group to group, with most offering some recommendations for improvement. Those police services having designated hate crimes units are universally praised as better able to handle hate crimes than those that do not. Many groups have participated in police committees designed to address racism and hate.

5. *Definition of Hate*

The NGOs that currently work actively on online hate all have legal counsel and adhere to the current legal definition of hate, as covered by either the *Criminal Code* or the *Canada Human Rights Act,* as appropriate. This approach is concerned primarily with

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[46] A denial of service attack (DoS) is an attempt to make an online service unavailable to its intended users. For a fuller definition, see the entry on DoS attacks in Wikipedia, retrieved on March 5, 2007 from http://en.wikipedia.org/wiki/DDoS#Distributed_attack.

the motivation for hate speech (i.e., to willfully promote hatred against an identifiable group), rather than examining contextual factors which would allow the law to apply differently to people from different backgrounds.

Many of the groups who do not currently work on the issue of online hate or who have less sophisticated reporting services (if any) state that the current focus on the motivation for hate is too narrow to cover most of their communities' concerns, which is offered as part of the explanation for why their constituents underreport hate crime or do not use existing services.[47]

Muslim, Arab and South Asian groups in particular complained that the current legal definition is too narrow to meaningfully address their community's concerns.   The concerns broadly fall into the following categories: 1) too high a bar on what counts as anti-Muslim hate; 2) pervasive anti-Muslim and anti-Arab sentiment in the mainstream culture; and 3) lack of a positive relationship with police. These groups considered any initiative dealing with online hate directed at Muslims to be hampered by these concerns as much as they hamper efforts to combat anti-Muslim hate in the offline context.

Uzma Shakir of the South Asian Legal Clinic of Ontario (SALCO) noted that while Jewish groups have a good understanding of what qualifies as a hate crime, other groups (in which she included African Canadian and Aboriginal persons) generally do not, since incidents that they experience as racially charged rarely meet the legal definition (namely qualifying as *clearly* motivated by hate against an identifiable group). Shakir considers this feeling that the requirement of clear intent overlooks more culturally pervasive (and hence "acceptable") forms of racism to explain why many ethnic groups are more actively focused on negative stereotypes in the mainstream media, in school curriculum, or the public statements of politicians, and in problems they perceive with racial profiling by police or intelligence services than they are on hate crime.

CAF and CAIR-CAN also cited a large gap between what Arab and Muslim community members think should be hate crime and what meets the legal definition, citing examples where the community considers the fact of a recognizably Muslim target to be evidence enough that the attack was motivated by anti-Muslim sentiment, such as vandalism of a Muslim religious school or an assault on a person wearing a turban. When such incidents fail to qualify as hate crimes, the community feels discriminated against by the legal system.

Underreporting in Muslim, African Canadian and Aboriginal communities is also frequently tied by community groups to the lack of a positive, trusting relationship with police or other government institutions.   Police are described as often sharing in the bias directed against the group, and as unresponsive even when reports are filed.

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[47] The complaints of many ethnic groups that the legal definition of hate crime is too narrow is discussed extensively in"Addressing Hate Crime in Ontario", the Final Report of the Hate Crimes Community Working Group to the Attorney General and Minister of Community Safety and Correctional Services for Ontario, at pages 21-22, 28-29, and 34-37.   Retrieved March 5, 2007 from http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/hatecrimes/.

The interviews also revealed controversy over whether the treatment of inter- and intra-minority group racism should be treated the same way that dominant to minority group racism is treated, with some considering the current definition of hate to be too blind to contextual power relationships. A similar divide over the issue of context and power characterizes the controversy over intra-group hate, such as the Muslim Canadian Congress' efforts to have accusations of blasphemy and apostasy considered as hate speech, since these accusations expose moderate or progressive Muslims to possible violence from extremist Muslims.[48] Farzana Hassan, President of the Muslim Canadian Congress, reports that the group has received threats, including by e-mail, against the group and its leaders. She states that accusations of blasphemy and apostasy by the group's political opponents within the Muslim community are essentially a license to kill for Islamist vigilantes.

The Hindu Conference of Canada (HCC) voiced a related concern regarding the inability of untrained eyes to recognize anti-Hindu hate, since anti-Hindu hate is often tied to Indian politics and society. According to Banerjee, Executive Director of the HCC, anti-Hindu campaigns are sometimes dressed up as historical accounts, or commentary about current events in India, but the aim of these forms of propaganda is to suppress Hinduism and to win converts for fundamentalist forms of competing religions. Following terrorist attacks in India this past summer, the Indian government blocked a series of websites which were thought to be linked to anti-Hindu terrorism.[49] The HCC noted that such sites would not easily be recognized as hateful in Canada, without a specialized understanding of Hindu issues.[50]

These concerns reflect a pervasive sense among the NGOs interviewed that current anti-hate laws and practices are only really suited to dealing with the most black and white cases of hate propaganda, most commonly of the Neo-Nazi or white supremacist variety. This common conviction that only a narrow band of material meets the legal definition of hate affects the recommendations which follow, as noted.

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[48] Farzana Hassan, Muslim Canadian Congress, Letter to Attorney General of Ontario dated October 11, 2006. Retrieved on January 31, 2007 from http://www.muslimcanadiancongress.org/20061011.pdf.

[49] Paranjoy Guha Thakurta, "Bloggers blocked after Indian blasts", Asia Times, July 21, 2006. Retrieved January 31, 2007 from http://www.atimes.com/atimes/South_Asia/HG21Df02.html.

[50] In particular, Banerjee states that, for example, to untrained eyes calls for the establishment of "Khalistan" in the state of Punjab in India seem like a merely political opinion, but he stresses that such calls to establish a Sikh state are often tied to advocacy for the ethnic cleansing of Hindus from the region.

III. RECOMMENDATIONS BY CANADIAN NGOS AND INDIVIDUALS WITH EXPERTISE IN ONLINE HATE

The recommendations for improving Canada's ability to address online hate fall into the following categories:
- Establishing a national tip line for online hate;
- Court ordered take down or blocking of Internet materials[51];
- Voluntary take down of Canadian hosted websites;
- Voluntary blocking of foreign hosted websites;
- Improvements to the CHRC s. 13 complaints process;
- Improvements for law enforcement; and
- Funding for community groups.

1) Establishing a national tip line for online hate

There is broad, if sometimes qualified support for a national tip line to receive reports from the public regarding online hate, modeled after the currently operative model used by Cybertip.ca ("Cybertip") to receive reports regarding online child exploitation. Comments regarding the establishment of a national tip line concern: a) the purpose of the tip line; b) the character of the tip line; c) special concerns related to hate speech; d) the relationship of such a tip line to Cybertip. However, some people interviewed expressed reservations about the utility of a national tip line for online hate, mainly expressing the view that such resources would be better spent combating offline hate.

a) Purpose of the tip line

Identifying the purpose of a national online hate tip line is a prerequisite to dealing with many of the cautions that were voiced by both NGOs and the expert individuals consulted. Three possible purposes were identified: i) to create an audit of online hate; ii) to determine which websites or other material is illegal and refer reports to law enforcement or the CHRC, as appropriate; and iii) to involve the public, especially in a way that provides a low impact alternative to reporting online hate propaganda to police directly or filing a s. 13 complaint under the *Canadian Human Rights Act* to the CHRC.

i. Audit:

There is broad support for using a national online hate tip line as a resource for compiling a comprehensive audit of online hate. There is general agreement that a more comprehensive grasp of the types and extent of hate material available online would then enable analysis which would lead to more informed and targeted policy for addressing online hate.

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[51] "Take down" is the term used to refer to the removal of materials by the hosting service provider, while "blocking" refers to the implementation of a technology by a service provider which prevents subscribers from accessing materials hosted elsewhere.

Jane Bailey, Professor of Law at the University of Ottawa, considers a national tip line to be useful for gathering information that would determine how best to deal with the problem of online hate: whether this means bolstering law enforcement efforts, investing in more targeted anti-racist education, or providing a clearer picture for policy makers of where these materials are coming from and to whom they are directed. She thought the purpose of the tip line could evolve as the picture of online hate in Canada becomes clearer, but that its initial function should be to create a comprehensive audit. Catherine Peirce of The Media Awareness Network similarly felt that such a database would allow for targeted funding for anti-hate educational programs, as well as providing a better understanding of the various hate movements.

As B'nai Brith 's League for Human Rights currently uses its hotline to provide the data for its annual audit of anti-Semitic incidents (both on and offline), the comments of B'nai Brith 's Klein and Bromberg are particularly useful. They are of the opinion that while it would be useful to have a national hotline, that community groups would have to continue to be involved in gathering information and receiving reports, which they could then forward to the government body compiling the audit. Otherwise the audit that resulted would likely be incomplete, since not all groups will use a national tip line, but may use tip lines run by trusted community groups. This sentiment was echoed by a significant number of community groups who felt that they did not currently have the resources to run their own tip lines, but felt there was the need for a tip line, run by a representative community group, for each individual community.

ii. Determining what is Illegal:

A second purpose which a national tip line may serve is to have experts on staff who can sift through reports and determine which materials are contrary to the *Criminal Code* or the *Canadian Human Rights Act*, and which are hosted in or otherwise tied to Canada. These materials could then either be forwarded to the appropriate law enforcement service or the CHRC, or Canadian ISPs could be notified. These options elicited far more caution than the audit function above, from a variety of stakeholders.

The Canadian Jewish Congress (CJC) supported the use of the tip line to determine whether action needs to be taken against a particular site or posting, much like the model that Cybertip currently operates. However, Don McKinnon of the Ontario Hate Crimes/Extremism Investigation Team voiced the concern that police services may not have the resources to actually act upon referrals of illegal content, given their limited capacity to handle such complaints. Similarly, the CHRC is not currently set up to handle reports without a complainant filing a report, and runs its own telephone line to assist individuals in determining whether they want to file a complaint. Consequently, Harvey Goldberg of the CHRC, though open to discussion about the utility of a tip line for other purposes, did not feel that referral of tips collected by the tip line to the CHRC would accomplish more than the CHRC's own phone line. He felt that referrals to the CHRC from a tip line may well accomplish less, since direct discussion of the potential complaint with the reporting individual would likely be reduced or eliminated. In any

case, the public should not be led to believe that all reports will be acted upon by the government entity to which it is referred, even if deemed to be contrary to law.

Tom Copeland of the Canadian Association of Internet Providers (CAIP) supported the use of a national tip line to determine what is illegal, even if the reports cannot be acted on by police or the CHRC. A determination of legality would assist ISPs in making decisions regarding voluntary take down or blocking of illegal materials, which is usually the fastest method of getting the most egregious and clear cut hate materials off the Internet. ISPs are not in a position to judge what is or is not illegal, and are committed to only taking down or blocking materials that are illegal in Canada. Copeland felt that an authoritative determination of what content is illegal would be helpful.

However, if the decision of whether materials are illegal is made without the authority of government, the process becomes more objectionable to groups concerned with civil liberties on the Internet. Professor Bailey thought that if the tip line were able to result in blocking of foreign sites or take-down of domestic sites then there would have to be a heightened accountability mechanism, including an easy and transparent process to appeal such decisions. Nart Villeneuve of the Citizen Lab at the University of Toronto similarly felt that there would need to be open and transparent standards by which the material was being judged, and a continuing review process regarding the effect of the tip line's authority to judge content online.

Voluntary take-down and voluntary blocking by ISPs (as opposed to court ordered or other government authority ordered take-down or blocking) is controversial. The below discussion of the issue is relevant to the question of whether the tip line should be used to make determinations of legality, and whether ISPs should be allowed or encouraged to rely on these determinations when they make decisions regarding voluntary removal of access to online content.

Harvey Goldberg of the CHRC noted that one of the difficulties with Internet-based complaints is the determination of a Canadian connection, in order to establish Canadian jurisdiction over the hate materials. He suggested that a useful function of a tip line might be to provide the technical expertise to determine the location of websites or other online communications for potential complainants. This would relieve the CHRC of this step in the investigation, and shorten the existing process of reaching a determination of whether the content is contrary to Canadian human rights law.

iii. Involvement of the public:

One of the positive features of tip lines is that they allow the public to be involved in the control of illegal online content in a far less taxing fashion than either filing a complaint with the police or with the CHRC. Groups who receive complaints about Internet content that are not equipped to handle the complaints themselves stated that they would appreciate knowing where to send people who encounter online hate. These groups felt it would be especially useful to have a service to which to refer people who want to feel like they have done something about online hate, but who may not want to go through the

process and incur the personal risk of filing a formal complaint.   Even groups that run their own hotline said they saw a benefit to the public of a central location that people know is available to report online hate.

b) Character of the tip line:

The concept of a private/public partnership much like the structure of Cybertip is generally supported by community groups, with the CHRC, police services and community groups commonly identified as valuable partners.[52]

Harvey Goldberg states that the CHRC has an open mind about the establishment of a tip line for hate, but has yet to be convinced that the Cybertip model would work for hate. The identified purpose of the tip line would influence the CHRC's position: in particular whether the hate tip line would just compile an audit and promote public awareness education, versus whether the tip line is to refer complaints to the appropriate police agency or the CHRC. If the latter were the function of the tip line, Goldberg is more skeptical about the utility of such a tip line, given that the CHRC already operates a toll free number to receive inquiries about how to file a complaint and whether filing a complaint is appropriate.   However, the CHRC's toll free number does not accept complaints per se, nor does it compile an audit of complaints.

Community respondents generally agreed that there should be a way of making anonymous reports, and to make a report without having to be identified as a complainant or victim.   A person cannot currently initiate a complaint with the CHRC without becoming a complainant.

Community respondents stressed that the tip line would have to be user-friendly and accessible, and so it would be preferable for the tip line to be able to address the needs of commonly targeted communities in their own languages. The tip line would have to be widely promoted, both through mainstream media and via community groups, so there would have to be buy-in from community stake holders. Achieving community support involves being clear about the purpose of the tip line and establishing realistic expectations of what happens to reports once they are submitted.

Differences of opinion were raised as to whether the tip line should be devoted exclusively to online hate, or whether it would be able to receive reports of hate crime more generally, and so to serve as a clearinghouse for all hate related reports. Estella Muyinda of the National Anti-Racism Council of Canada (NARCC), with its broad overview of the national scene, felt there is a need for such a central location to report hate crime of all sorts, and felt that an umbrella organization like NARCC could operate such a service, if given the resources.

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[52] For background on the establishment and governance of Cybertip, including the public/private partnerships, see Cybertip, "Best Practices".   Retrieved January 31, 2007 from http://www.cybertip.ca/en/cybertip/background/.

There are some differences of opinion about whether a community group can spearhead a national tip line for hate, the way the Canadian Centre for Child Protection does for cybertip.ca. Alan Dutton of CAERS, for instance, expressed the view that a government entity such as the CHRC would be better suited for such a role, given the diverse views held by community groups on the topic of hate generally.

c) **Special concerns related to hate speech;**

Community involvement is a much larger and more complicated issue for hate crime than for child exploitation. Many community groups felt that a national tip line could not succeed in either garnering support and use from their communities, or in properly identifying hate materials aimed at their communities, without involvement of community groups and/or staff trained in the issues facing these communities. Even with such efforts to be inclusive, many groups felt that a national tip line should co-exist with tip lines run by community groups specifically for their communities, and that funding should be provided to community groups to operate such tip lines. The reports received from community tip lines could be forwarded to the national tip line, with the consent of the reporting party or under condition of anonymity. Finally, if a community group is chosen to run the tip line, inter-group tensions will have to be addressed, especially between the Muslim and Jewish communities.

Due in part to the differences of opinion regarding what should qualify as hate (in other words, whether the bar to qualify as hate propaganda is too high), Leo Adler, Director of National Affairs for the Friends of the Simon Wiesenthal Center, was ambivalent about the utility of an online hate tip line. He feared that it would just become a place where people lodged complaints about objectionable materials of all sorts, rather than materials which legally qualify as hate. Consequently, he preferred the model of professional monitoring of hate groups to the use of a tip line, as a means of collecting accurate information about online hate and extremism, focusing on materials which truly run awry of the *Criminal Code* and the *Canadian Human Rights Act*.

Security will also be a much bigger issue for a hate tip line than for Cybertip, both in terms of physical facilities and technical facilities. If an NGO runs the hate tip line it will, like all other anti-racist activists, likely become the target of threats from extremist groups or fall victim to violent or destructive acts. Fo Niemi of CRARR reported that CRARR received bomb and arson threats, for instance, when the organization represented the victim of a hate crime in a criminal proceeding. Reports of attempts to disrupt web based services run by anti-racist groups also indicate that an online hate tip line will likely be under attack through technical means as well.

Finally, the issue of hate materials hosted in the United States, where much of the material is considered protected speech under the First Amendment of the *Constitution of the United States*, creates special challenges for an online hate tip line. Whether the tip line will be able to distinguish materials that violate U.S. law (and which should consequently be forwarded to U.S. law enforcement – especially if they address Canadian targets) is another layer of analysis which may affect the utility of the tip line.

d) Relationship of a hate tip line to Cybertip

A variety of options for combining or sharing resources between Cybertip and an online hate tip line came up in the interviews. Professor Bailey and the Canadian Jewish Congress (CJC) support the expansion of Cybertip's mandate to include online hate, noting that some hotlines in other jurisdictions, such as the UK, Germany, Austria and France, handle both forms of illegal content.

Lianna McDonald, Executive Director of Child Find Manitoba, which operates Cybertip.ca, stated that Cybertip is open to a partnership with a hate tip line where resources regarding management of the site and technical expertise could be shared. For instance, Cybertip has invested a tremendous amount of time and resources into establishing the technology and the expertise to manage its data and to find locations of sites. These resources could be shared while maintaining a separate entity affiliated with the hate reporting service.

Michael Geist, Professor of Law at the University of Ottawa, is of the opinion that Cybertip's involvement with the blocking of foreign child pornography websites through Project Cleanfeed Canada ("Cleanfeed") makes Cybertip a less desirable partner for an online hate hotline.[53] Professor Geist cites the high degree of mistrust that online civil liberties advocates have regarding Cleanfeed. In particular, advocates fear that it marks the beginning of far more expansive censorship of online materials, and that the expansion of Cybertip to hate would only "fan the fear" that Cleanfeed will be expanded to other types of content. Professor Geist feels this association would cause tremendous controversy for the hate tip line, even if Cybertip were to make clear that the hate speech side of its service is unconnected to Cleanfeed.

Nonetheless, the position of the Association of Internet Hotline Providers (INHOPE) is that a single national hotline is preferable to multiple hotlines. Having a single hotline makes it easier to compile comprehensive statistics, and promotion to the public of a central hotline is less confusing than multiple specialized hotlines. The Association notes, however, that in those countries where the national hotline has a broader mandate, the hate speech reporting feature is usually not as strongly promoted and does not get as many reports as child protection issues do. Cormac Callanan, CEO of INHOPE, attributed this disparity to the fact that the hotline providers generally feel that hate is enormously complex, since unlike child exploitation it is more contextual and there is no easy objective way of judging whether hate content is illegal. However, Callanan stated that there is a more clear-cut portion of hate on the Internet that is easy to classify, and that can usually be dealt with in a more straightforward way.

2) Court ordered take down or blocking of Internet materials:

All stakeholders interviewed for this report had no problem with the taking down (i.e., removal) of Canadian hosted material pursuant to a court order, upon the determination

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[53] See page 34 below for a description of Project Cleanfeed.

that the materials are contrary to Canadian anti-hate laws. The position of many online civil liberties-oriented groups, such as Citizen Lab[54], is that a government determination that material is illegal is the preferable means of dealing with online hate, rather than ISPs voluntarily taking material down in response to pressure by community groups. The fear voiced by Nart Villeneuve of Citizen Lab is that consumers and community groups can pressure ISPs to take down more than what fits the legal definition of hate. Some community groups prefer to go directly to ISPs, however, since this method (when successful) is significantly faster and less costly than getting a court or the Tribunal to make a determination.

The Canadian Association of Internet Providers (CAIP) Code of Conduct for its members states that a member ISP will take appropriate action if illegal content is hosted on its services:

- CAIP members will not knowingly host illegal content. CAIP members will share information about illegal content for this purpose; and
- Although Internet providers are unable to monitor all content, CAIP members will make a reasonable effort to investigate legitimate complaints about alleged illegal content or network abuse, and will take appropriate action.[55]

CAIP members may vary as to what they deem to be "appropriate action", but issuance of a court order to a subscriber to cease publication of content is universally deemed sufficient to service providers to take down the materials, as is of course an order directed to the custodian of a computer system under s. 320.1 of the *Criminal Code,* ordering the custodian to cease making materials determined by the court to be hate propaganda available through the computer system.

The National Anti-Racism Council of Canada (NARCC) takes the position that the taking down of Canadian hosted materials should not be left to the voluntary actions of ISPs alone. NARCC believes that there should be a mechanism for getting an expedited ruling on the legality of materials which ISPs can rely on that would be faster and less costly than getting a court order under section 320.1 of the *Criminal Code* or via an injunction sought by the CHRC. Estella Muyinda of NARCC also thought that ISPs should face consequences for not complying with this expedited ruling, though other organizations, like the CJC, seemed content with the ISPs continuing to voluntarily respond but with additional guidance from an expedited ruling mechanism.

Blocking access to foreign websites deemed illegal under Canadian law is somewhat more controversial. Citizen Lab's Nart Villeneuve, for instance, considers any blocking

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[54] Citizen Lab monitors online censorship worldwide as part of the Open Net Initiative, which investigates and challenges surveillance and filtering of Internet content by governments. The OpenNet Initiative is a partnership between the Citizen Lab at the Munk Centre for International Studies, University of Toronto, the Berkman Center for Internet & Society at Harvard Law School, the Advanced Network Research Group at the Cambridge Security Programme at Cambridge University, and the Oxford Internet Institute at the University of Oxford. See http://www.opennetinitiative.org for complete details.

[55] Canadian Association of Internet Providers, "Code of Conduct". Retrieved February 2, 2007 from http://www.cata.ca/caip/codeofconduct/CodeConduct.html.

by Canadian ISPs to lend some legitimacy to the politically repressive blocking done by other governments elsewhere in the world. Advocates of online civil liberties generally distrust the accuracy of blocking technologies, and fear that these technologies continue to be prone to problems of over blocking.

Nonetheless, most participants in this report were not troubled by the prospect of court ordered blocking of specific foreign websites, again upon the official and specific determination that the blocked content is illegal in Canada.

3) Voluntary take down of Canadian hosted websites by ISPs:

The extent and frequency with which Canadian ISPs currently voluntarily take-down hate materials hosted on their servers is not easily determinable. As noted above, CAIP's Code of Conduct states that members will not knowingly host illegal content, and CAIP's Tom Copeland reiterates that member ISPs are under no obligation to take down materials unless there is a specific determination of illegality. However, at least some Canadian ISPs have reportedly taken down hate materials without a determination by a court or the Tribunal, based on complaints lodged directly with the ISP by community groups or concerned consumers.

Some groups, such as the Friends of the Simon Wiesenthal Center, report a high degree of success in getting Canadian ISPs to voluntarily take down Canadian hosted hate material, and therefore do not see the need for an expedited notice and take down regime compelled by government authority. Alan Dutton of Canadian Anti-racism Education and Research Society (CAERS) reports mixed success with convincing Canadian ISPs to take down Canadian hosted hate sites. Others, like the Canadian Jewish Congress (CJC), report that while they are often successful at getting U.S. ISPs to take down hate materials, Canadian ISPs tend to prefer that there be an official determination of legality before agreeing to take materials down. The CJC's CEO Bernie Farber attributes this difference between U.S. and Canadian ISPs to the lack of an avenue by which to compel take down of hate materials in the U.S., making the decision to take such material off of a company's facilities always a company's own decision. Still others report that ISPs were uncooperative in addressing complaints about online hate when it is not of the neo-Nazi variety: anti-gay materials, for instance, or anti-immigrant materials. Some groups also express frustration with the incapacity to do anything about chat rooms or other online fora, where abusive materials appear to be part of the norm. The variety of experiences with dealing with ISPs accounts for differences in the degree of faith a group is willing to put into voluntary take down as a solution to online hate, since some groups have a better success rate at getting materials voluntarily removed than others.

Professor Bailey does not like the voluntary, complaint driven approach precisely because of the unevenness of its success: it is by nature market driven, and so whether or not a complaint results in material being taken down depends on whether the affected "market" is large or powerful enough to be worth the risk of angering other consumers by taking the material down. Professor Bailey prefers some law enforcement mechanism or use of CHRC expertise to be included in the process of determining that content is illegal.

This may not require a complete court proceeding (i.e., an order issued under s. 320.1 of the *Criminal Code*) or a CHRC Tribunal proceeding, but may involve the issuing of CHRC guidelines for ISPs about what crosses the line. The CJC's Farber put forward a proposal at the Canadian Telecom Summit in June of 2006 along these lines regarding how to come up with such guidelines in relation to blocking of content, as discussed below on page 33.[56]

The Canadian Civil Liberties Association (CCLA) does not take a position in respect of private parties refusing to carry certain messages (i.e., in the offline context, the CCLA does not take the position that bookstores should be forced to carry books their proprietors do not want to). Instead, the CCLA has stated that the principle of civil liberties must protect the idiosyncratic choices of both consumers and sellers, unless the sellers become an effective monopoly on access to materials, in which case freedom of expression issues again come to the fore. As noted above, groups like the Open Net Initiative, Citizen Lab, and the Canadian Internet Policy and Public Interest Clinic (CIPPIC) take issue with voluntary take down, due to worries about abuse of voluntary take down. These groups prefer that ISPs only take materials down upon an order from an appropriate authority. These groups may be satisfied by an order issued through an expedited process overseen by the CHRC, though the specifics of such a procedure would have to be worked out before they would offer definitive support or rejection.

4) *Voluntary blocking of foreign hosted websites by Canadian ISPs:*

Blocking in general is controversial as evidenced by the wide range of opinions. Voluntary blocking of foreign hosted hate materials by Canadian ISPs is also controversial. In addition to the general objections to blocking noted above, discussion of voluntary blocking by Canadian ISPs concerns the following topics: a) the role of the Canadian Radio-television and Telecommunications Commission (CRTC); b) establishment of a mechanism or organization for providing guidelines for ISPs to judge whether material should be blocked; and c) whether Project Cleanfeed Canada ("Cleanfeed") should be extended to hate propaganda.

a) **Role of the Canadian Radio-television and Telecommunications Commission (CRTC):**

Richard Warman filed an application with the CRTC in August of 2006, as noted above, attempting to cause the CRTC to exercise its powers under s. 36 of the *Telecommunications Act* to permit ISPs to interfere with (or control, in the words of the section) communications carried over their services, namely blocking two hate websites hosted in the United States. This application is novel, and has opened discussion about the proper role of the CRTC in regulating content on the Internet, something which it

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[56] Farber's proposal is not currently publicly available in written form. For a description providing the key points of the proposal, see Michelle McQuigge, "Plan wants ISPs to monitor offensive websites", June 13 2006, Canadian Press, retrieved February 22, 2007 from http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20060613/isp_monitoring_060613?s_name=&no_ads=.

explicitly declined to do with the issuance of the New Media public notices in 1999.[57] Warman and those that support this strategy hoped that the CRTC could make a determination as to whether these two sites qualified as illegal hate content, which would then give the ISPs the comfort they prefer when choosing to block only content that has been determined to be illegal. Some, such as Professor Geist, have suggested that the CRTC should call upon the expertise of the CHRC in making determinations under s. 36, and that the current practice of staying out of Internet content regulation entirely needs to be revisited.

Tom Copeland of CAIP stated that ISPs are less concerned about running awry of the *Telecommunications Act* than they once were, given that ISPs regularly interfere with content (i.e., spam, viruses, child pornography) and the CRTC has given no indication that it will enforce s. 36 against telecommunications carrier ISPs who block such content.

These two different aspects of the s. 36 issue highlight the underlying purpose of the Warman application: namely, that since s. 36 has so far not been used to police ISPs who control illegal content, the application seeks to determine whether s. 36 could instead serve as the expedited avenue for a determination of the legality of hate content that many of those interviewed hope for. The idea is that if a determination of illegality (or likely illegality) is made, ISPs will then be more easily persuaded to voluntarily block these sites.

b) Establishment of a mechanism or organization for providing guidelines for ISPs to judge whether material should be blocked:

The CRTC route, with CHRC involvement, is but one route for providing an expedited means of determining whether hate material is illegal and should be blocked or taken down.

Sgt. Don McKinnon of the Ontario Hate Crimes/Extremism Investigation Team and the CJC's Bernie Farber also put forward a proposal at the Canadian Telecom Summit aimed at enhancing the ability of ISPs to voluntarily block sites. The proposal included the establishment of a committee composed of police, community groups and ISP industry representatives to either determine whether specific hate sites qualify as illegal content, or to merely establish guidelines for what would qualify as illegal hate. ISPs could then determine whether to block a particular site about which a complaint has been received. ISPs would also be able to go to the committee to confer with experts about whether particular material qualifies as hate, so that they can feel confident about a decision to block a particular site.

This plan is appealing to McKinnon because it puts emphasis on taking the material off the Internet rather than on prosecution, for which there are limited resources. The plan is appealing to Farber, because it would be significantly faster than the CHRC or criminal prosecution routes.

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[57] Broadcasting Public Notice CRTC 1999-84; Telecom Public Notice CRTC 99-14. Retrieved February 2, 2007 from http://www.crtc.gc.ca/archive/ENG/Notices/1999/PB99-84.HTM.

In both cases, the need for a right of appeal is part of the idea, shifting the burden of proving that a site should not qualify as hate onto the content provider, rather than the current situation which puts the burden on the complainant.

c) Whether Project Cleanfeed Canada should be extended to hate propaganda:

Project Cleanfeed Canada was announced in November, 2006.[58] It is an initiative of Canada's largest ISPs to voluntarily block a list of foreign hosted websites containing images of the sexual abuse of children. The list itself is compiled by a committee of experts associated with Cybertip, namely the content analysts with Special Constable status who review the reports of child exploitation content received by Cybertip. Cybertip states that the list will only contain the most clear-cut forms of child pornography, featuring the sexual abuse of prepubescent children, and will only feature foreign sites so as not to interfere with Canadian investigations. The list itself is not public, as this would amount to providing a directory of the most heinous forms of child pornography. The ISPs do not have a hand in compiling the list, and merely implement the blocking of those addresses provided by the experts.

Some organizations and individuals, including Professor Bailey, have suggested that Cleanfeed could be extended to foreign hosted sites dedicated to similarly clear-cut hate and/or terrorism. Professor Bailey's support depends, however, on the committee of experts being a public agency (like the CHRC), rather than a private agency (or the ISPs themselves). The process should be open and transparent, and the list should be public. By staying away from the gray area closer to the line where illegal hate ends and materials protected by freedom of expression begin, that is, only listing clearly illegal content, Professor Bailey feels that a Cleanfeed approach would not expand the Supreme Court's established limits to freedom of expression, and so should not be objectionable to advocates for the protection of freedom of expression online.

Opposition to extending Cleanfeed to hate sites is strong, however. Proponents of the project in its current form, including Cybertip, CAIP and Professor Geist, all assert that child pornography is a special case, distinct from hate speech. The argument against extending Cleanfeed stresses that it is illegal to view or access child pornography, whereas it is not illegal to view or access hate materials, only to disseminate them (Professor Bailey does not see this as a crucial difference). By preventing access to child pornography, ISPs feel that they are within their comfort zone of only preventing illegal acts from taking place. Since it is not illegal to access hate material hosted on foreign websites within Canada, ISPs are less comfortable with blocking these sites.

Professor Geist argues that ISPs do not necessarily need CRTC approval via s. 36 of the *Telecommunications Act* to block child pornography precisely because it is illegal to

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[58] A series of Frequently Asked Questions (FAQs) regarding the administration of Project Cleanfeed Canada is posted on the Cybertip website. Retrieved February 2, 2007 from http://www.cybertip.ca/en/cybertip/cf_faq.

access (although he notes that the question of the need for CRTC approval to block even child pornography is still an open question). He further believes that ISPs would need CRTC approval (pursuant to s. 36) in order to block hate sites. The legal analysis of what is hate speech is much more complex, he argues, and so the potential blocking of legal speech is a larger issue than with child pornography, and so the risk of over-inclusion is greater with hate speech. While the rationale not to release a list of blocked child pornography sites to the public makes sense to Professor Geist, he does not believe the same can be said for hate sites in that there is some value that remains in challenging hate mongers directly. Any list of blocked hate sites should therefore be public, which further reduces the utility of blocking them. Finally, Professor Geist is concerned about the appeals process which is currently only loosely articulated regarding Cleanfeed. Since he feels the risk of overblocking is greater with hate speech, the public needs to have a lot of confidence in the appeals process, whether through the courts or an ombudsperson, for such a project to have legitimacy.

Opponents to Cleanfeed also oppose the extension of the project to hate speech, since it feeds into the slippery slope argument often asserted by these opponents (i.e. that once you block one type of speech you open the door to blocking more types of speech, persistently reducing freedom of expression on the Internet). Nart Villeneuve of Citizen Lab is troubled by the lack of transparency of Cleanfeed's undisclosed list of blocked addresses, because it makes it impossible to test the blocking method for accuracy. Villeneuve also argues that such an approach does nothing to address the other applications where illegal content is exchanged, such as peer-to-peer networks, VoIP, and instant messaging.[59]

The CHRC is open to the idea of the CHRC being the body that determines whether a website is contrary to s. 13, that is, serving the role that Cybertip plays in Cleanfeed. However, Harvey Goldberg of the CHRC points out that there are several issues that would need to be resolved before the CHRC would be in a position to assume such a role, namely: 1) whether such a role fits within the CHRC's current mandate; 2) allocation of further resources to the CHRC for this purpose; 3) determination of whether playing such a role would be contrary to the CHRC's statutory function under s. 13 of the *Canadian Human Rights Act*; and 4) working out the difference between child pornography and hate propaganda which makes the latter more difficult to pursue on the Internet, in particular hate propaganda's general legality in the United States, as opposed to child pornography which is by and large illegal in the countries where the material originates as well as where it is received.

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[59] For a description of each of these online fora, see the definitions available through Wikipedia: peer-to-peer (or P2P) is a term used to describe a computer network which relies primarily on the computing power and bandwidth of the participants in the network rather than concentrating it in a relatively low number of servers (retrieved on February 6, 2007 from http://en.wikipedia.org/wiki/P2p); VoIP stands for Voice over IP, and refers to services which carry voice signals over the IP network (i.e., the Internet) (retrieved on February 6, 2007 from http://en.wikipedia.org/wiki/VOIP); instant messaging (or IM) is a form of real-time communication between two or more people based on typed text (retrieved on February 6, 2007 from http://en.wikipedia.org/wiki/Instant_messaging).

As for mandate, there is an argument, acknowledged by Goldberg, that the CHRC's general mandate to combat discrimination in all its forms could include such a role.[60] However, the question of whether the CHRC has the authority to take on an adjudicating role still needs to be determined, since s. 13 complaints are referred to the Tribunal for final determination, rather than the CHRC itself making a final determination. The CHRC certainly has the expertise to determine the merits of a complaint, although Goldberg stresses that the CHRC currently does not have the resources to perform the suggested function of reviewing foreign websites for compliance with the *Canadian Human Rights Act*.

In any case, blocking is a solution that is mainly geared to prevent or at least significantly reduce inadvertent or casual access of prohibited sites, but cannot deter the truly hardcore viewer of prohibited material. This purpose would need to be kept in mind should hate sites be included in the Cleanfeed project.

5) Improvements to the CHRC s. 13 complaints process:

All of the organizations and individuals with experience making complaints under s. 13 of the *Canadian Human Rights Act*, and many other organizations that have not pursued such complaints for lack of resources, have recommendations for how to improve the process. These recommendations fall under the following categories:

- accessibility of process and burden on individual complainants;
- time it takes for a complaint to be resolved;
- delay tactics of respondents and the issue of costs;
- concern that the penalties issued to unsuccessful respondents are too low;
- investigative difficulties; and
- ISP liability.

a) Accessibility of the s. 13 process and the burden on individual complainants:

Many organizations considered the CHRC process to be inaccessible to most individuals; since most people would require assistance to file a complaint and not all groups have access to someone who can assist with complaint filings. The most common issue raised by nearly all groups and individuals, however, is the burden the s. 13 complaints process places on the individual complainant, in terms of both time and resources. As well, complainants are subjected to significant threats and intimidation tactics from the hate groups against whom they are complaining.

The CHRC has the power to initiate complaints, pursuant to s. 40(3) of the *Canadian Human Rights Act*, which states that

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[60] Section 27(1)(h) of the *Canadian Human Rights Act* for instance, states that the Commission "shall, so far as is practical and consistent with the application of Part III, try by persuasion, publicity or any other means that it considers appropriate to discourage and reduce discriminatory practices referred to in sections 5 to 14.1."

> Where the Commission has reasonable grounds for believing that a person is engaging or
> has engaged in a discriminatory practice, the Commission may initiate a complaint.

A frequent suggestion consequently involved the recommendation that the CHRC file its own complaints under s. 13, which is deemed by many to be more appropriate than an individual filing an Internet-based complaint. The general feeling is that individual complainants make sense for other forms of discrimination which are personal in nature, but does not make sense in relation to hate propaganda in which individuals are not specifically targeted. The CHRC acknowledges that it may be appropriate in certain cases for the CHRC to bring its own complaints to the Tribunal under s. 13, but has so far not done so. Alternatively, Goldberg of the CHRC suggests that another body might be created to act as a complainant in Internet-based complaints, leaving the CHRC to perform its current procedural function of vetting complaints and referring them to the Tribunal.

Both individual and organizational complainants report being subjected to significant threats either directly from respondents or from other members of the hate movements. Some organizations and individuals suggested that the vulnerability of complainants to threats (or worse) would be diminished if complainants were permitted to file complaints anonymously or pseudonymously on a regular basis. The pseudonymous complainant regarding postings on an AOL forum considered this to be a strong protection which bolstered his ability to carry on with the complaint, given the personal attacks which were part of the anti-gay language about which he was complaining.

Professor Geist also stressed the need to improve the CHRC complaint filing system, so as to remove the disincentives to individuals and groups filing complaints. He noted that this is one advantage of the tip line proposition, since there are low barriers to reporting hate sites to a tip line, whereas there are significant barriers to filing a CHRC complaint.

b) Time it takes for a complaint to reach the Canadian Human Rights Tribunal:

The CHRC claims that it is now able to deal with Internet based s. 13 complaints more efficiently than it has in the past. In general, there is an average 9 month time lapse from filing a complaint to reference to the Tribunal for all complaints, with the Internet-based complaint referral periods being somewhat shorter. Because the process of assessing complaints, sending them to the Tribunal and Tribunal hearings themselves are quasi-judicial processes, there are a set series of procedural steps required, and each of these take time. Therefore, the CHRC feels that the length of time a complaint takes to be resolved is not easily shortened further without altering the procedural steps, or creating a separate expedited procedure for certain types of complaints, either of which would require a legislative change. The CHRC is not currently proposing any amendments to the *Canadian Human Rights Act* regarding these issues.

Nonetheless, the length of time it takes to pursue a s. 13 complaint through to final resolution is one of the barriers to accessibility of the process, and is a common source of criticism from the organizations and individuals interviewed for this report. Warman

stated that while there have been some improvements, it still takes the CHRC too long to complete their investigation and make a referral to the Tribunal, and noted that even his well organized and complete complaints take months to get through the investigation stage. He suggested that an expedited route should be available where the identity of the respondent is not seriously at issue and the complaint demonstrates a clearly well-founded case. Warman and Leo Adler of Friends suggest a goal of six months for the CHRC to refer s. 13 cases to the Tribunal.

A common source of delay is the length of time it takes to get the identities of the respondents who are responsible for the impugned content. Both CRARR and the pseudonymous complainant in the AOL case advocate for a faster mechanism than a court order for the CHRC to obtain the identities of parties responsible for websites or other online postings from ISPs. This suggestion is countered by the position of the ISPs (through CAIP) that ISPs must protect the privacy of their customers unless required by law to disclose customer information. Goldberg of the CHRC reports that the CHRC has sought the cooperation of ISPs on several occasions and has found that in general ISPs try to help to the extent they are able. He suggests that there is room for more discussions regarding ISP cooperation with CHRC investigations.

Complainants also bemoan the fact that the hate material often remains accessible for the duration of the proceedings. The CHRC has obtained an interlocutory injunction in one case, and is not averse to using that procedure again where warranted.[61] However, the complainants interviewed suggested that there should be some more expedited mechanism for the CHRC to issue an interim cease and desist order against the respondent or his/her service provider, without having to go through the courts. Granting the CHRC this power may require a legislative amendment to the *Canadian Human Rights Act.*

c) Delay tactics of respondents at Tribunal and the issue of costs:

Complainants with Tribunal experience noted that respondents in s. 13 cases create excessive delays through use of vexatious procedural tactics in order to drive up the already sizeable burdens to complainants and further reducing the accessibility of the process to the ordinary person. They suggest that the Tribunal should be authorized to award costs against respondents who engage in these tactics, which would involve amending s. 54 of the *Canadian Human Rights Act* to allow the Tribunal to award costs.

A related issue raised by the Canadian Anti-racism Education and Research Society (CAERS) is the launching of s. 13 complaints by respondents against anti-racist organizations who report on the activities of racists on their websites. CAERS became the subject of two such "counter-complaints" a number of Warman's s. 13 complaints, containing excerpts from the respondent's website, were posted on CAERS' recomnetwork.org website, arguing that in doing so CAERS republished the purportedly

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[61] *Canadian Human Rights Commission v. Winnicki* 2005 FC 1493.

offending material.[62]   CAERS sees this as an abuse of the s. 13 process, and suggests there should be an expedited means of dismissing such vexatious counter-claims.

d) Penalties are too low:

Tribunal hearings are costly, especially when they are dragged out by wily respondents. CRARR and Warman both point out that the fines awarded are exceedingly low compared to the costs to complainants and the public purse. They would like to see higher penalties levied against respondents in order to truly serve as a deterrent. They argue that the maximum penalties as permitted in the Act should be levied more often, and further that the Act should be amended to increase the maximum penalty that the Tribunal can award. CRARR also suggested that alternative penalties should also be imposed, for instance mandating anti-hate training for unsuccessful respondents (similar to the anti-racism diversion program offered for hate crimes offenders through B'nai Brith).

Warman also stressed the need for a more expedient mechanism for enforcing damages awards. At present, even when the Tribunal does award damages, a complainant must pursue a recalcitrant respondent via a court action to collect a civil debt, again adding a significant burden on complainants and making the likelihood of collecting damages from respondents low.

e) Investigative difficulties:

As mentioned above, one of the steps that extends the length of time it take for the CHRC to refer a complaint to the Tribunal is establishing respondents' identities. CRARR suggests that the procedure for identifying the name of the person behind a website needs to be clarified, and that complainants should be permitted to file complaints against a web address alone.

The CJC and Friends of the Simon Wiesenthal Centre both suggested that the domain name registration system be revised to require a verified identity, since they deemed the current system to make it possible for website operators to falsify or otherwise hide their true identities, thereby complicating the investigation process. Both CJC and Friends acknowledge that international agreement would be required outside of the ".ca" domain.

CRARR also suggested that where there is a parallel criminal investigation going on, that law enforcement should share information about the parties responsible for a website with the CHRC.

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[62] The counter-complaints were filed by Andrew Guille and Alexan Kulbashian.

f) ISP liability:

Subsection 13 (3) of the *Canadian Human Rights Act* sets out an exemption for telecommunications service providers (including ISPs) who merely serve as carriers of subscribers' hate propaganda messages:

> For the purposes of this section, no owner or operator of a telecommunication undertaking communicates or causes to be communicated any matter described in subsection (1) by reason only that the facilities of a telecommunication undertaking owned or operated by that person are used by other persons for the transmission of that matter.

The restriction of this exemption to ISPs who *only* provide facilities was clarified by the Tribunal in *Warman v. Kulbashian et al.* as follows

> Furthermore, I do not believe that Affordable Space.com operated a communication undertaking that could benefit from the exception of s. 13(3). Considering Mr. Kulbashian's major role in Affordable Space.com's operations, and how he actively involved himself in and encouraged the communication of the Hate Messages over its server, Affordable Space.com cannot claim that the messages were communicated "by reason only" that its facilities were used by others. The complaint against Affordable Space.com has been substantiated.[63]

How much more involved an ISP has to be to incur liability is still an open question. Different parties are interpreting the *Kulbashian* decision differently. For example, some see it saying that ISPs will be liable where they have knowledge, and others (namely CAIP) see liability only to accrue where the ISP engages in deliberate dissemination of hate messages. This question should be clarified, since B'nai Brith reports that the *Kulbashian* case has made ISPs more cautious about talking about online hate, for fear of incurring liability.

The pseudonymous complainant in the complaint against respondents posting anti-gay hate messages on an AOL message board initially filed a complaint against AOL itself, based on his repeated efforts to have AOL remove the messages from the board and their slowness in doing so. AOL was considered exempt from liability by the CHRC, but the complainant still contends that ISPs who know about hate messages and do not take action should be subject to sanction.

6) Improvements for law enforcement:

Most of the complaints and recommendations pertaining to law enforcement relate to a need to apply ss. 318 and 319 more consistently, which is often tied to the need for more training for law enforcement in the area of hate propaganda. The recommendations fall in the following interrelated categories: a) consistency of application of the relevant

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[63] *Warman v. Kulbashian, Richardson, Tri-City Skins.com, Canadian Ethnic Cleansing Team, Affordable Space.com*, File No. T869/11903, paragraph 119.

provisions of the *Criminal Code*; b) need for more overall training for all police officers regarding hate crime; c) need for more specialized units; and d) legislative reforms.

a) Consistency of application of the laws:

The Canadian Centre for Justice Statistics (CCJS) has attempted to ensure that a uniform definition of hate crime is in use across police units through its reports on hate crime in Canada. These reports compile the results of a pilot survey, which in turn draws from the General Social Survey (GSS) on Victimization, the Uniform Crime Reporting (UCR) Survey, as well as the Ethnic Diversity Survey.[64]

This data collection project funded through *Canada's Action Plan Against Racism* demonstrates the gaps in reporting and recording hate crime at the police level. In response, the CCJS has engaged in large scale consultations with community groups and the Canadian Association of Chiefs of Police to arrive at a common definition of hate crime:

> Hate crime is a criminal violation motivated by hate, based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor.
>
> - UCR 2.2 Definition

This definition includes the same factors as *Criminal Code* s.718.2 (a) (i) for sentencing purposes.

Nonetheless, a common complaint among community groups interviewed for this report continues to be that depending on where located, different law enforcement units handle hate crimes differently. Klein and Bromberg of B'nai Brith note that there still does not appear to be a high level of consistency in recognizing incidents as falling within the definition of hate crime, so that a swastika painted on a building counts as a hate crime for some units and not for others. Klein and Bromberg stress the need for not only a common definition but also more consistent application of what qualifies as a hate crime.

The problem with inconsistent application of the definition of hate crime, combined with the problem of dissatisfaction with the definition voiced by some community groups, makes for less public confidence in the utility of reporting s. 318 and s. 319 offences to police. Compounding the problem is the inconsistent application of these provisions even to hate mongers who do fall within a clear-cut definition of hate crime. Ken McVay of the Nizkor Project notes that some hate mongers are treated as "harmless kooks" and so are permitted to carry on spreading hate undisturbed by police. Additionally, the hate propaganda provisions are rarely applied to people who use chat rooms, Usenet or blogs to spread hate, as opposed to websites.

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[64] Canadian Centre for Justice Statistics, "Hate Crime in Canada: An Overview of Issues and Data Sources" (2001), Catalogue no. 85-551-XIE; Warren Silver, Karen Mihorean and Andrea Taylor-Butts, Canadian Centre for Justice Statistics, "Hate Crime in Canada" (2004), Catalogue no. 85-002-XPE.

The police services acknowledge that ss. 318 and 319 are rarely invoked in isolation from other concerns connecting the accused to other offences. This general tendency is echoed by the complaint by some Muslim groups that police do not react when anti-Muslim hate messages, such as a placard reading "Islam is the religion of Death", are carried openly in public places.

b) Overall training regarding hate crime:

Several groups have advocated for improvements in the training of police officers who will receive hate crimes reports, mainly to alleviate the problem of inconsistency between police units described above. Groups that report pervasive distrust of law enforcement also stress the need for improved police training in dealing with populations typically targeted by hate crime that distrust the police.

Klein and Bromberg of B'nai Brith note that the experience of reporting any hate crime is colored by the level of sophistication of the intake officer, which in turn determines whether the report makes it to the hate crimes unit or designated hate crime officer's desk, if there is one. As Alan Dutton of Canadian Anti-Racism Education and Research Society (CAERS) notes, when police do not respond the relationship between communities (and community organizations) and police deteriorates.

The general lack of knowledge about hate crimes includes ignorance about s. 318 and s. 319 offences. Most of the time, Klein and Bromberg assert, the police do nothing if a complaint about Internet hate is filed or say they can't do anything about it. Police do not generally appear to be aware that there is an avenue available to order the removal of an extremist site advocating violence (s. 320.1), for instance, so more specific training in this area is also warranted.

The data collection project run by the Canadian Centre for Justice Statistics (CCJS) described above starting on page 40 is attempting to address the inconsistency of application of the hate crime provisions, by training police to recognize and report hate crimes, thereby improving data collection in the long term. With approximately 522 police forces in Canada, the training goal is being approached through regional training sessions, training trainers, and training in the police colleges. CCJS is also working towards an electronic version of the training package so that police forces can provide on-going training to all their officers.

The training incorporates findings from the research on victim impact and community impact and uses video clips, photographs, and excerpts from newspaper articles to provide victims' perspectives. Trainers cover how to talk to victims, how to acknowledge their perception of a hate incident, and how to acknowledge the community impact. By training officers to recognize and record comprehensively all hate crimes, Statistics Canada is working towards more accurate statistics on the prevalence and characteristics of hate crimes in Canada.

The BC Hate Crime Team had its own part-time data analyst in the past, who was charged with collecting files from police services across the province and collating them for demographic information on the persons involved, incident types, and charges laid, in order to provide a yearly Status Report on hate crime handling in the province, though the BC Team is currently not funded for that staff position. A researcher is currently analyzing the data, however, for her own research purposes, and her data analysis will be made available to the BC Team.

The discrepancy between the perception of community groups and the work currently being done by CCJS through *Canada's Action Plan Against Racism* may involve training not only police but also educating victim service providers. It has been suggested that the above training modules may be adapted for victim services, thereby improving the capacity of victim services workers educating victims as to the uniform definition of hate crime. [65]

c) Need for more specialized units and a National Coordination Centre:

Community groups agree that hate crime involves a developed expertise, and so would like to see more specialized hate crimes units where none currently exist.

Canadian Anti-Racism Education and Research Society (CAERS) suggests that community relations between existing hate crimes units and various ethnic groups must also be a top priority, complaining that relations with the BC Hate Crimes Team have deteriorated in recent years due to funding cuts, staff turnover, and a lack of consistent direction from the provincial government.

Existing specialized units also need more financial support so as to incorporate more police services. Sgt. Mackinnon would like to see a national strategy to handle hate crimes and extremism, so as to be able to reach into rural areas as well as the more urban areas currently covered. Members of the BC Hate Crimes Team expressed support for the creation of a National Coordination Centre, much like the National Child Exploitation Coordination Centre (NCECC), to help coordinate investigations and information sharing between specialized provincial hate crimes units and the RCMP.

Myron Claridge of the BC Hate Crimes Team suggested that a good investment for the Department of Justice would be a pilot project to support and promote the use of s. 320.1 to take down hate propaganda on the Internet. To date, only one case has been successfully brought under that provision, in the province of Quebec. The pilot project would have to provide resources and support, likely to hate crimes teams, for police officers and prosecutors the reduce the burden of bringing 320.1 applications.

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[65] Andrea Hogue and Susan McDonald, "An Exploration of the Needs of Victims of Hate Crimes" (2006, Department of Justice Canada: Ottawa.), p. 32.

Along similar lines, the Canadian Association of Police Boards (CAPB) passed a resolution in 2006 to promote coordinated action on cyber crime.[66] Ian Wilms, President of the CAPB, has put together a proposal for a Centre for Excellence dedicated to all aspects of cyber crime, with the RCMP as the lead organization. "Cyberpol" as Wilms calls it (so as to be a sister organization to Interpol, with Canada taking leadership in this area), would have members from police forces (all levels), civilians trained in technical aspects, a training centre for prosecutors and judges, a policy centre to develop legislative responses, and would seek to develop international partnerships. A feasibility study is scheduled to commence in August 2007, with support from the Calgary Police, Province of Alberta, and the federal government.

d) Legislative reforms:

Only one complaint was frequently voiced regarding hate propaganda offences, and that was the need for the Attorney-General to consent to the laying of charges. Sgt. Mackinnon considered this requirement to be poorly conceived from a police perspective, since even a veteran officer in a hate crimes unit is not authorized to lay the charge on his own, while a recently graduated officer can lay a homicide charge on his or her first day on the job. He said the practice sends the message that police do not have the expertise to recognize hate propaganda crimes.

e) Other miscellaneous police oriented suggestions:

Given the common opinion that hate crimes require expertise, community groups generally support the appointment of special prosecutors, as is already the practice within the BC Hate Crimes Team.

B'nai Brith would also like to see more use of diversion options such as sensitivity training as part of sentencing for hate crime.

SALCO and CRARR both voiced the opinion that there should be more cooperation between the CHRC and the police. As noted above, CRARR thought the police should share information regarding the identity of people responsible for hate websites with CHRC where a parallel investigation is occurring. SALCO thought there should be a mechanism whereby when s. 318 or s. 319 complaints are filed with the police and the police do not lay charges, that the complaint would be automatically forwarded to the CHRC, so that CHRC can evaluate whether it meets the s. 13 threshold.

7) *Funding for community groups and Support for educational initiatives:*

Community groups generally stressed that community groups need to be stable and well-resourced for an anti-hate plan to really be effective, and that funding needs to be provided for anti-racism and anti-hate work by community groups. Community groups consistently stated that while project funding is important, funding for ongoing projects

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[66] Canadian Association of Police Boards, Resolution 06-8. Retrieved February 8, 2007 from http://www.capb.ca/services/conf_2006/index.html.

also needs to be provided, so that good work done to create educational materials or to develop programs continues and materials are kept up to date. Karen Mock has particularly strong views on this issue, saying that good materials are produced and then buried because the groups who produced them do not have the resources to keep them up to date. Funding to update materials would go farther than beginning afresh each time.[67] Klein and Bromberg reported that a lot of community groups are disappointed with *Canada's Action Plan Against Racism* because it does not appear to support existing initiatives that work and instead only supports start up funding for new initiatives.

The Canadian Council on American-Islamic Relations (CAIR-CAN) does policy work in addition to its anti-racist activities, and stressed the need for funding that is not vulnerable to cuts when a group is critical of government policies.

B'nai Brith noted that government agencies and police are often happy to make use of community group services and materials paid for by the group itself (such as B'nai Brith's annual audit and anti-racist diversion program), but that government funding should be provided to support these resources as they become part of the government's or police services' anti-racist strategy.

Several community groups expressed a desire to have an anti-hate crime hotline to assist members in their constituent communities, and cited the need for funding to do so. The Canadian Islamic Congress and the Canadian Arab Federation suggested that legal aid funds be provided to pay for an employee to run an anti-Muslim hate hotline, to monitor for anti-Muslim hate on the Internet, to compile an audit and provide education within the Muslim community about the legal remedies available to handle anti-Muslim hate. As mentioned above, NARCC suggested that an all encompassing hotline would be useful, and that as an umbrella organization NARCC could serve as a clearinghouse of anti-hate groups, able to direct people to community resources appropriate to them or to handle cases of people who would otherwise fall between the cracks or be underserved.

All community groups stressed the need for education, both within their communities and about their communities, to the general public and to law enforcement. Many groups were particularly interested in promoting anti-racist and anti-hate education for young people, for parents and for teachers, and thought that funding for specialized educational materials for use by and within ethnic communities would be ideal.

The Nizkor Project's Ken McVay stated that while he admired Warman's tenacity to go after the worst hate mongers on the Internet and is happy to see them taken to task in Tribunal hearings, he remains of the opinion that the public resources expended to run these hearings would be better spent on anti-racist and anti-bullying education in the schools. He considers Tribunal hearings to do little to change the minds of people already infected by hate or to take away the hate mongers' audience.

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[67] Examples of youth oriented projects which the community groups creating them stressed need funding to keep the materials up to date include CASSA's It's About Time portal (Retrieved February 8, 2007 from http://www.cassa.on.ca/) and B'nai Brith's "Is Your Child a Target?" flyer (Retrieved February 8, 2007 from http://www.bnaibrith.ca/publications/IsYourChildATarget-2006.html).

Alan Dutton of CAERS likewise expressed the view that resources to combat offline hate would be better spent than a focus on online hate, given his view that far more racist activity, organizing and recruitment occurs offline than online. He did however support government funding to create and maintain a variety of online resources for youth and their families, where youth can honestly discuss racism and/or their involvement with hate groups, and receive information and counseling.

IV. CONCLUSION: NEXT STEPS

The various recommendations above would clearly require the involvement of different government ministries and not all are within the purview of the Department of Justice.

To explore which options to pursue, the first step would be to strike a Task Force with all stakeholders to seriously examine the issue of new initiatives or reforms, or to in a more focused fashion examine the prospect of establishing a national tip line. The Task Force will need to identify gaps in education of the public, existing legislation, and resources and training for law enforcement in order to determine how best to proceed.

With regard to a tip line, Tom Copeland of CAIP has already stated to the CHRC that CAIP is happy to participate in such a Task Force, and reiterated this willingness in the course of the interview for this report. Lianna MacDonald of Cybertip stressed that this is a crucial step, in that it is essential to the success of the tip line to get buy-in from all the stakeholders who will be affected by or be essential to the tip line – in this case police, the CHRC, the ISP industry, the Media Awareness Network and community groups.

Achieving consensus on the purpose and goals of a hate hotline will be more difficult with hate than with child exploitation materials, and so a feasibility study should be done in conjunction with meeting all the stakeholders. A balance will have to be struck between the stakeholders so that all agree on what the goals and objectives of the tip line are, before beginning the next step of figuring out how to accomplish those goals and objectives. Some resistance can be anticipated from police, who have concerns about increased work load and funding issues, which may render them incapable of responding to an increase in reports. Some resistance can also be anticipated from the CHRC, where there is some entrenchment regarding their accomplishments in this area so far – i.e., some CHRC representatives have stated that people are already reporting adequately, but the community participants in this report universally said the CHRC process is not really accessible and contains serious disincentives to report online hate.

Community representation will be a large and difficult issue for any hate Task Force, including one for a tip line. The interviews for this report reveal significant gaps in the current ability of community groups to monitor, audit, or even register awareness of hate against their communities on the Internet, and so community group participation cannot be based on established expertise in online hate alone. Instead, some community groups will have to be chosen for their expertise in racism and hate against their own groups in the offline context. However, this will mean that the current narrow focus of what qualifies as hate will likely be challenged by Task Force participants, which may make it more difficult to reach consensus among stakeholders, as some groups will seek to classify materials closer to speech protected by freedom of expression guarantees as hate speech. This will be a challenge whether the purpose of the tip line is to only create an audit of online hate or if further action is to be taken.

Macdonald stressed that from her experience with Cybertip, all potential issues have to be worked through before launching a tip line: technical and security issues, audits, legal issues, procedural commitments (i.e., whether there will be 24 hour access, commitments regarding how quickly reports will be forwarded, and whether all tips will receive a reply), and training of people who will screen the tips coming in. The spokespeople for the tip line should be able to answer all possible questions, so as to ensure public confidence in the tip line. Macdonald stated that Cybertip is willing to share all of its experience and resources once the process of establishing a tip line gets going (including technical, administrative, and legal resources, training materials, and financial plans).

Steps for exploring the establishment of the tip line are clear due to the precedents set by Cybertip. But the other recommendations outlined above should also be given serious consideration, since the same stakeholders are involved in most of the recommendations, and so the same complaints are likely to be raised regardless. Consequently, any Task Force should be set up with a clear and limited mandate, in order to limit the scope of issues to be dealt with before getting down to the business of making concrete progress toward implementing a tip line or other initiative.

ACKNOWLEDGEMENTS

AUTHOR BIOGRAPHY

Andrea Slane is the Executive Director of the Centre for Innovation Law and Policy at the Faculty of Law, University of Toronto. Her research on hate propaganda and communications technologies is interdisciplinary, spanning back through her previous career as a film and literature professor, as reflected in her book *A Not So Foreign Affair: Fascism, Sexuality and the Cultural Rhetoric of American Democracy* (Duke University Press, 2001), through to her subsequent practice as a technology lawyer, as reflected in her article "Hate Speech, Public Communication and Emerging Communications Technologies" (*Canadian Issues/Thèmes Canadiens,* Spring 2006: 118-125).

APPENDIX A

Participating Organizations

The 519 Community Centre – Howard Shulman, *Anti-violence Program Co-ordinator*
B'nai Brith Canada – Ruth Klein, *National Director, League for Human Rights*; Anita
      Bromberg, *Counsel and Human Rights Coordinator, League for Human Rights*
British Columbia Hate Crime Team – Det/Cst. Kate Caprarie (Vancouver Police); Corp.
      Sean McGowan (RCMP); Myron Claridge, *Crown Counsel*
Canadian Anti-Racism Education and Research Society (CAERS) – Alan Dutton,
      Executive Director
Canadian Arab Federation – Mohamed Boujenane, *Executive Director*; Sara Amash,
      Project Manager
Canadian Association of Internet Providers (CAIP) – Tom Copeland, *Chair*
Canadian Association of Police Boards -- Ian Wilms, *President*
Canadian Civil Liberties Association – Alan Borovoy, *General Counsel*
Canadian Human Rights Commission – Harvey Goldberg, *Team Leader, Strategic
      Initiatives*
Canadian Internet Policy & Public Interest Clinic – Pippa Lawson, *Executive Director
      and General Counsel*
Canadian Islamic Congress -- Dr. Mohamed Elmasry, *Chair & National President*
Canadian Jewish Congress – Bernie Farber, *CEO*
Canadian Race Relations Foundation -- Dr. Ayman Al-Yassini, *Executive Director*
Canadian Radio-television and Telecommunications Commission – Will Amos, *Legal
      Counsel*
Center for Research-Action on Race Relations – Fo Niemi, *Executive Director*
Citizen Lab – Nart Villeneuve, *Director of Technical Research*
Council of Agencies Serving South Asians – Uzma Shakir (former *Executive Director*)
Council on American Islamic Relations Canada – Sameer Zuberi, *Comunications and
      Human Rights Coordinator*
Cybertip.ca/Child Find Manitoba – Lianna McDonald, *Executive Director*
Electronic Frontier Foundation – Ren Bucholz, *Policy Coordinator*
Friends of the Simon Wiesenthal Center – Leo Adler, *Director of National Affairs*
Hindu Conference of Canada - Ron Banerjee, *Executive Director*
Indigenous Bar Association – Jeffrey Hewitt, *President*
INHOPE (Association of Internet Hotline Providers) – Cormac Callanan, *CEO*
Media Awareness Network – Catherine Peirce, *Project Manager*
Muslim Canadian Congress – Farzana Hassan, *President*
National Anti-Racism Council of Canada -- Estella Muyinda, *Executive Director*
The Nizkor Project – Ken McVay, *Founder*
Ontario Hate Crime/Extremism Investigation Team – Det. Don McKinnon (London
      Police Service)

Participating Individuals

Jane Bailey – Law professor, University of Ottawa
Michael Geist – Law professor, University of Ottawa
DH – anonymous complainant under section 13.1 re anti-gay postings on AOL forum
Sgt. Robert Lajoie – RCMP, formerly with the National Child Exploitation Coordination
 Centre (NCECC)
Karen Mock – Ontario Hate Crimes Community Working Group, *Chair*
Richard Owens – Partner, Blake, Cassels & Graydon LLP
Richard Warman – frequent complainant under section 13.1 re racist and other
 discriminatory material on websites