# Supreme Court Upholds Ban on Hate Speech

Protecting people from discrimination on the basis of their sexual preference, race, religion, gender, age, etc. is a value that most Canadians embrace. And so is free speech.  Most of the time, these values are perfectly compatible. But when anti-discrimination laws ban hate speech, they come into conflict. A new case from the Canadian Supreme Court sheds light on how far the government can go in banning hate speech without treading on the right of free speech.

**THE CASE**

**What Happened:** The case comes from Saskatchewan where it's illegal to publish materials that expose individuals or groups to hatred on the basis of their race, religion, etc. (*Sask. Human Rights Code,* Sec. 14(1)(b)). It started when Mr. W, a member of an organization called the Christian Truth Activists, published and distributed four anti-gay flyers bearing titles such as "Sodomites in our Public Schools" and "Keep Homosexuality Out of Saskatoon Public Schools." The Sask. Human Rights Commission found Mr. W. guilty of violating the hate speech law and ordered him to pay $17,500 in damages to four of the individuals offended by the flyers. After nearly 10 years of litigation, the case reached the Supreme Court of Canada.

**What the Court Decided:** The Court ruled that two of the pamphlets violated the law and two of them didn't.

**How the Court Justified Its Decision:** The Court made three key points:

The Hate Speech Law Was Constitutional: The Court acknowledged that the Sask. law interfered with Mr. W's right to free speech. But free speech isn't an absolute right and must be balanced against other interests. Protecting people from hate speech on the basis of their sexual preference, race, etc. is the kind of compelling interest that might justify some infringement on liberty.

But even a compelling interest isn't enough. To justify limiting a right like free speech, the law must be drafted narrowly and go no farther than necessary to serve the interest. The Sask. hate rule passed that test, the Court reasoned. The speech it banned wasn't simple criticism but speech that subjects a group to hatred, contempt and ridicule because of their protected characteristics.

Two Pamphlets Crossed the Line: The next question was whether Mr. W's pamphlets constituted hate speech banned by the law. The Court criticized the Sask. Commission for considering all of the pamphlets collectively rather than individually. So the Court went through the pamphlets one by one.

The first two pamphlets didn't simply ridicule homosexuality but *toleration of* homosexuality as a mortal sin abominated by the Bible, the Court. Such words of threat and contempt were designed to induce the reader to hate gay people and constituted just the kind of hate speech the law banned.

Two Pamphlets Didn't Cross the Line: By contrast, the latter two pamphlets which discussed how gay men prey on little boys, although negative and highly offensive, were *not* meant to incite hatred like the first two. So the Commission was wrong to find them in violation of the hate speech law.

*Sask. (Human Rights Comm.) v. Whatcott,* 2013 SCC 11 (CanLII), Feb. 27, 2013

**ANALYSIS**

Although it's not an employment case, the principles discussed in *Whatcott* are highly relevant to the workplace. The most obvious significance of the ruling is that the right to free speech doesn't extend to hate speech banned by discrimination laws. To the extent your employees engage in such speech at work or through use of their work email or computers, they're committing a discrimination offence that not only reflects badly upon but can result in liability to your organization.

But you should also note that while all provinces, territories, and the federal jurisdiction have human rights codes, they don't all ban hate speech. Of course, banning such speech in your workplace might be in your interest even if the law doesn't specifically require it.