Federal Court		Cour fédérale

Date: 20100520

Docket: T-516-09

Citation: 2010 FC 555

Ottawa, Ontario, May 20, 2010

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

CANADIAN HUMAN RIGHTS COMMISSION

Applicant

and

JIM PANKIW, KEITH DREAVER, NORMA FAIRBAIRN, SUSAN GINGELL, PAMELA IRVINE, JOHN MELENCHUK, RICHARD ROSS, AILSA WATKINSON, HARLAN WEIDENHAMMER and CARMAN WILLETT

Respondents

and

SPEAKER OF THE HOUSE OF COMMONS

Intervener

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This case is about printed brochures called householders that Members of Parliament typically send to households within their constituency. Householders enable Members of Parliament

to maintain their visibility in their constituencies by reporting on the Member's parliamentary activities and thoughts on issues. The resources for producing householders are provided by the House of Commons. Each Member of Parliament is entitled to send out four householders per year.

[2] This is an application for judicial review in respect of a decision by the Canadian Human Rights Tribunal (the tribunal) dated March 6, 2009, dismissing the complaints filed against the respondent, former MP Jim Pankiw. The complainants alleged that the respondent's householders contained discriminatory views about First Nations people contrary to sections 5, 12 and 14 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the Act).

[3] The Canadian Human Rights Commission (the Commission or the applicant) now submits that the tribunal erred in finding that the sending of householders by a Member of Parliament did not constitute a "service customarily available to the public" as per section 5 of the Act.

[4] The applicant requests the tribunal decision be quashed and remanded to the same or a differently constituted tribunal for a determination consistent with the reasons of this Court.

Background Facts to the Tribunal's Decision

[5] During 2002 and 2003, Jim Pankiw, then an independent Member of Parliament for the federal riding of Saskatoon-Humbolt, sent householders to his constituents which gave rise to the complaints that the content was discriminatory. Some constituents were deeply offended by these

messages from their MP. Nine members of this group, including several individuals of First Nations' ancestry, sought recourse under the Act. On various dates in 2003, they filed complaints with the Commission alleging that the householders expressed discriminatory views about First Nations people.

Relevant Legislation

[6] Race is a prohibited ground of discrimination under section 3 of the Act. Pursuant to section 5, the Act provides redress for those who experience adverse treatment or harassment in the provision of services, based on the fact that they are of Aboriginal descent (among other grounds). Section 5 states:

5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public	5. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour le fournisseur de biens, de services, d'installations ou de moyens d'hébergement destinés au public :
(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or	a) d'en priver un individu;
(b) to differentiate adversely in relation to any individual,	b) de le défavoriser à l'occasion de leur fourniture.
on a prohibited ground of discrimination.	

[7] The Act also sanctions the publication of notices that express discrimination or incite others to discriminate, in regard to Aboriginal people. Section 12 provides:

12. It is a discriminatory practice to publish or display before the public or to cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation that	12. Constitue un acte discriminatoire le fait de publier ou d'exposer en public, ou de faire publier ou exposer en public des affiches, des écriteaux, des insignes, des emblèmes, des symboles ou autres représentations qui, selon le cas :
(a) expresses or implies discrimination or an intention to discriminate, or	a) expriment ou suggèrent des actes discriminatoires au sens des articles 5 à 11 ou de l'article 14 ou des intentions de commettre de tels actes;
(b) incites or is calculated to incite others to discriminate	b) en encouragent ou visent à en encourager l'accomplissement.
if the discrimination expressed or implied, intended to be expressed or implied or incited or calculated to be incited would otherwise, if engaged in, be a discriminatory practice described in any of sections 5 to 11 or in section 14.	

[8] Section 14 of the Act clarifies when harassment constitutes a discriminatory practice:

14.(1) It is a discriminatory practice,	14.(1) Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait de harceler un individu :
(a) in the provision of goods,	a) lors de la fourniture de biens,

services, facilities or accommodation customarily available to the general public,	de services, d'installations ou de moyens d'hébergement destinés au public;
(b) in the provision of commercial premises or residential accommodation, or	b) lors de la fourniture de locaux commerciaux ou de logements;
(c) in matters related to employment, to harass an individual on a prohibited ground of discrimination.	c) en matière d'emploi.

[9] The complainants and the Commission argued that the householders were discriminatory violations of section 12. They also argued that the communication by means of the householders constitutes a service customarily available to the public within section 5 of the Act. Further, according to the complainants and the Commission, the householders denigrate First Nations people on the basis of their race and this constitutes adverse differentiation on the basis of a prohibited ground. Therefore, they argued that the respondent violated section 5 of the Act when he sent out the householders.

[10] The Commission has since abandoned its submissions under section 12. Thus, that aspect of the tribunal's decision is not before the Court for review.

The Tribunal's Decision

[11] The tribunal's decision, reported at *Dreaver v. Pankiw*, [2009] C.H.R.D. No. 8, first dealt with the question of whether creating and mailing householders amounts to a service within section 5 of the Act. The tribunal answered this question in the negative. The key question in determining whether actions by a public official constitute a service under subsection 5(b) of the Act is whether the activity provides a benefit or assistance to people. A related question is whether the characterization of the activity as a service is compatible with the essential nature of the activity (at paragraph 23). The tribunal reasoned that while some constituents may derive some benefit from householders, this is not their fundamental purpose. It is the sender of the document who is its prime beneficiary. Householders convey political messages and elicit feedback to enable the Member of Parliament to know he has support. They are not a service under section 5 (paragraphs 24 to 29).

[12] Even if householders could be considered a service under section 5 of the Act, the next step under the test set out in *Gould v. Yukon Order of Pioneers*, [1996] 1 S.C.R. 571, is to determine whether the service creates a public relationship between the service provider and the end user. The creation of the content of the householders did not result in such a relationship because the public was not provided with an opportunity to participate. The part of the process that most clearly gave rise to the respondent's relationship with the public was the distribution of the householder, but here there was no adverse differentiation in the distribution process (paragraphs 30 to 35).

[13] The tribunal then considered section 5 in the context of other provisions of the Act. Section 5 deals with discrimination in the provision of services while sections 12 and 13 deal with discrimination in the communication of messages. The tribunal would deal with section 12 separately and the complainants had already acknowledged that section 13 did not apply. Thus, section 5 should not be extended to include written communications such as the householders since to do so would be to extend the limitations Parliament placed on discriminatory communications (paragraphs 40 to 44).

[14] On the issue of section 12 of the Act, the tribunal found that section 12 did not encompass written statements like those at issue in the present case (paragraphs 45 to 54).

[15] Since the tribunal found that the householders did not constitute a service customarily available to the public under section 5, the tribunal dismissed the allegation that the respondent had engaged in a discriminatory act under section 14, without looking at the merits of the allegations (at paragraphs 55 and 56).

Issue

[16] The issue is as follows:

Was it unreasonable for the tribunal to determine that householders do not constitute a service customarily available to the public?

Applicant's Written Submissions

[17] The applicant submits that the appropriate standard of review is reasonableness since the tribunal has developed particular expertise in the application of the law in a specific statutory context and the tribunal was interpreting its own statute with which it has particular familiarity. However, the applicant submits that the Act, as human rights legislation, must be given a large and liberal interpretation consistent with its quasi-constitutional status. The tribunal erred in applying a narrow interpretation.

[18] The applicant submits that the tribunal made an error of fact when it determined that householders are partisan political messages. This finding was inconsistent with the way it described householders at the beginning of its reasons.

[19] The applicant submits that what constitutes a service is varied and is not limited to the traditional definition of the word. Services are not restricted to marketplace activities. Indeed, most activities undertaken by a public body for the public good should be presumed to be services. Not all actions accepted as services by courts and tribunals include something of benefit being held out as a service or offered to the public. Here, the tribunal narrowed the definition of services by adding an additional requirement that the sole beneficiary of the service be the client. This contradicts a recent decision of the Federal Court of Appeal. That the provider of the service also benefits does not exclude the action from being considered a service. A householder, a document prepared by a public official and paid for by public funds which informs constituents, is a service in the same way

that a weather bulletin is. The tribunal's finding that it was not was unreasonable and unsupported by the evidence. Even if householders are also meant to influence voters, it does not follow that its distribution is not a service.

[20] With regard to the requirement that a service must be customarily available to the public, the applicant submits that the tribunal's finding that the householders do not create a public relationship between the provider and the user merely because the public does not participate in their content is unreasonable. There is no requirement for a service to have public participation; virtually all actions by a public body will meet the test for being customarily available to the public. In addition, even though the tribunal found that there was no discrimination in the provision of the householders under section 5, the tribunal erred by not carrying on to determine whether there was harassment in the provision of the householders under section 14.

[21] Finally, the applicant submits that the tribunal erred when it flatly determined that section 5 of the Act excludes all written communications. Many examples of services accepted by courts, such as a weather bulletin put out by Environment Canada, are clearly written.

Written Submissions of the Respondent and Intervener

[22] The respondent, Jim Pankiw and the intervener agree that the standard of review should be reasonableness. While human rights legislation is to be given a large and liberal interpretation, this

does not permit a departure from the rules of statutory interpretation to extend to the application of the Act beyond what the language of the statute will bear.

[23] The respondent and intervener submit that the tribunal's decision that householders are not a service within section 5 of the Act was consistent with the law and the evidence presented to the tribunal and falls within the range of possible acceptable outcomes. There is nothing to suggest that the decision was not intelligible.

[24] The first task before the tribunal was to determine the nature and purpose of householders, a question of fact to be accorded the highest degree of deference. The tribunal found that householders are communications characterized as informative and political. This was a reasonable finding. Besides this communication, there was no other activity, program or benefit that would suggest that some service was being provided. The tribunal then considered, after extensive review of the case law, that a service requires some benefit or assistance to be bestowed on the recipient, and thus, that a mere communication could not constitute a service. The tribunal also analyzed the appropriate interpretation of the term services in its context, appearing in conjunction with goods and accommodation in section 5 and considered the overall scheme of the Act. Deference requires the Court to avoid consideration of whether other possible interpretations might have been available or even preferable, but rather to determine whether the tribunal's ultimate decision was unreasonable.

[25] The respondent and intervener submit that even if the term service could be extended beyond the broadest limits the words can bear, constitutional considerations would constrain and delimit the bounds of reasonableness in the circumstances of political communications like householders. The interpretation advocated for by the Commission would extend the meaning of services to include communications and therefore allow the examination of the content of communications between Members of Parliament and their constituents. This would be a *prima facie* infringement of section 2 of the *Charter*. Since there are no limits or tests established by section 5 of the Act, such an infringement could not be saved by section 1. It would also infringe the right of constituents to make a fully informed decision when voting, violating section 3 of the *Charter* and would limit political discourse and infringe the underlying constitutional principle of democracy. Freedom of expression can only be limited by human rights acts' provisions that include clear language. Section 13 of the Act limits certain types of mere communications but has unique features that insure minimum impairment of the freedom of expression.

Analysis and Decision

Standard of Review

[26] The jurisprudence is settled. When reviewing the Canadian Human Rights Tribunal's interpretation of a provision of its enabling statute, the Act, the standard of review is reasonableness (see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, [2008] S.C.J. No. 9 (QL) at paragraph 54, *Vilven v. Air Canada*, 2009 FC 367, [2009] F.C.J. No. 475 (QL) at paragraphs 61 to

74, *Canadian Federal Pilots Assn. v. Canada (Attorney General)*, 2009 FCA 223, [2009] F.C.J. No. 822 (QL) at paragraph 50. The tribunal is specifically empowered to determine questions of law (see the Act at subsection 50(2)).

[27] **Issue**

Was it unreasonable for the tribunal to determine that householders do not constitute a service customarily available to the public?

The reasonableness standard was articulated by the Supreme Court of Canada recently in *Dunsmuir* above, and again in *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] S.C.J. No. 12 (QL). Accordingly, courts reviewing tribunal decisions under the reasonableness standard are to show deference. Deference requires respect for the decision making process with regard to both facts and law. In analyzing the written reasons of a tribunal, the court is to look only for justification, transparency and intelligibility and to look at whether the outcome falls within the range of possible acceptable outcomes (see *Dunsmuir* at paragraph 47 and *Khosa* at paragraphs 25 and 59).

[28] As a preliminary matter, there is no basis to interfere with the tribunal's finding of fact that householders are communications characterized as informative and political. Courts are to afford administrative fact finding a high degree of deference. It was entirely open to the tribunal to make this initial finding.

[29] The prime issue in this case is the interpretation of certain provisions within the Act. After a significant analysis of the case law on services and analyzing the role of section 5 within the scheme of the Act, the tribunal determined that services within the context of section 5 of the Act are limited to activities, the essential nature of which is to provide a benefit or assistance to people. The tribunal provided the following synthesis of its interpretation:

> 23 What emerges from this analysis of the law is that to determine whether actions by a public official constitute a "service" under s. 5(b) of the *CHRA*, one must ask whether the activity provides a benefit or assistance to people. A related question is whether the characterization of the activity as a service is compatible with the essential nature of the activity.

[30] The tribunal determined that services are not limited to marketplace activities and include some actions by government or public officials in the performance of their functions.

[31] The applicant has provided a well reasoned argument that services within the context of section 5 of the Act should include a broader range of government actions and argues that most actions undertaken by public servants should at the very least be presumed to be services. The applicant also argues that the tribunal, by putting emphasis on the essential nature of the activity, fashioned for itself a new requirement, which would further restrict what could be classified as a service.

[32] I am prepared to accept that the tribunal took an approach which attempted to clarify and better define what is meant by the term services and that their analysis resulted in an incremental narrowing of that definition. Given the unclear state of the case law on this point, clarification was

needed. Endeavouring to do so was therefore intelligible and justified. There is no allegation or indication that the tribunal set about its task with the intention of producing a narrow interpretation. All materials and jurisprudence cited and used were known to the parties before the tribunal and were fully argued. The decision making process appears to have been quite transparent.

[33] The applicant disputes the substantive result of the tribunal's interpretation and offers a preferable, or as the applicant sees it, the correct interpretation. In my view, this is not enough. Deference requires the Court to avoid consideration of whether other possible interpretations may have been available, or even preferable. As noted by Mr. Justice Binnie in *Khosa* above, at paragraph 59:

> …Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (Dunsmuir, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.

[34] The task before the applicant is to establish that the tribunal's interpretation was unreasonable in the sense that it lacked justification, transparency or intelligibility, or to establish that the tribunal's ultimate conclusion was unreasonable in the sense that it fell outside the range of reasonable possible outcomes. The applicant has not provided a basis for establishing either.

[35] In any event, I am satisfied that the tribunal was not unreasonable in its interpretation of the law or in its conclusion.

[36] Of primary assistance to the tribunal was the decision in *Canada (Attorney General) v. Watkin*, 2008 FCA 170, 378 N.R. 268, where the Federal Court of Appeal had recently addressed the precise issue of what constitutes a service within section 5 of the Act. The *Watkin* Court analyzed the issue thoroughly against the standard of correctness because it had come to the Court as a jurisdictional matter and had not been addressed by the tribunal (at paragraph 23).

[37] The *Watkin* Court expressly rejected the idea that all government actions come within section 5 (at paragraph 26). With reference to *Gould v. Yukon Order of Pioneers*, [1996] 1 S.C.R. 571, [1996] S.C.J. No. 29, the *Watkin* Court stated:

> …the first step to be performed in applying section 5 is to determine whether the actions complained of are "services" (see *Gould*, *supra*, per La Forest J., para. 60). In this respect, "services" within the meaning of section 5 contemplate something of benefit being "held out" as services and "offered" to the public (*Gould*, *supra*, per La Forest J., para. 55).

[38] At paragraph 28, the Court offered some examples of government actions that would constitute a service.

> Public authorities can and do engage in the provision of services in fulfilling their statutory functions. For example, the Canada Revenue Agency provides a service when it issues advance income tax rulings; Environment Canada provides a service when it publicizes weather and road conditions; Health Canada provides a service when it encourages Canadians to take an active role in their health by increasing their level of physical activity and eating well;

> Immigration Canada provides a service when it advises immigrants about how to become a Canadian resident. That said, not all government actions are services.

[39] It would appear from the agreed statement of facts that a Member of Parliament may send out up to four householders per year. This seems to me to say that it is up to the Member to decide how many, if any, householders the Member will send out to his or her constituents.

[40] The tribunal also grappled with a line of cases indicating that mayoral proclamations constitute a service customarily available to the public (for example see *Okanagan Rainbow Coalition v. Kelowna (City),* 2000 BCHRT 21). The tribunal noted that in those cases, the proclamation had been specifically sought by an individual or group from the community (decision at paragraph 20).

[41] The tribunal also dealt with cases where the grant of citizenship (clearly a benefit to the recipient) had been held not to be a service (see *Forward v. Canada (Citizenship and Immigration),* 2008 CHRT 5). The tribunal reasoned that this was arguably correct because characterizing it as a mere service would be to ignore the fundamental role of citizenship in defining the relationship between individuals and the state (decision at paragraph 22).

[42] In my view, this process was the very exercise one would expect the tribunal to go through when attempting to reconcile inconsistent case law. It was an intelligible fine tuning exercise. The analysis led the tribunal to determine that not only must a service require something of benefit or

assistance being held out, but one may also inquire whether that benefit or assistance was the essential nature of the activity.

[43] I do see this as adding to or clarifying the law as it stood post-*Watkin*. In my view, it is not inconsistent with *Watkin* above. On the contrary, it is entirely consistent. Each of the four examples of government services in *Watkin* above, can be said to provide, as their essential nature, a benefit or assistance.

[44] Next, the tribunal intelligibly applied this question to the householders which were the subject of the decision and considered the benefits that recipients may derive from receiving such publications (at paragraphs 29 and 30). The tribunal, however, determined that the primary nature of householders was not to benefit the constituents, but to convey the Member of Parliament's political views and to receive feedback. To this extent, it was the sender of the householder who was the primary beneficiary and thus, householders were not a service.

[45] While it may have been open to the tribunal to come to different factual or legal conclusions, I see no basis upon which to intervene in its determination.

[46] The tribunal also looked to the scheme of the Act for a further intelligible justification for why the content of householders would not fall within the ambit of section 5 of the Act. Even if a communication could be considered a service, section 5 was only meant to apply to the provision of the service, not its content. This was a logical conclusion.

[47] Section 5 applies to the provision of a service. Yet the complainants at the tribunal and the applicant here wish to attack the content of the householders, not the provision of the householders. Parliament specifically drafted sections 12 and 13 of the Act to apply to communications. Section 12 expressly applies to the publishing or displaying of any "notice, sign, symbol, emblem or other representation" but does not apply to the content of written material such as newspaper articles (see *Re Warren and Chapman*, (1984), 11 D.L.R. (4th) 474 (Man. Q.B.), *Saskatchewan (Human Rights Commission) v. Engineering Students' Society* (1989), 56 D.L.R. (4th) 604 (Sask. C.A.)). Section 13 of the Act is the only section which expressly applies to the content of communications, but was carefully limited by Parliament to communications that are transmitted telephonically via the internet and was further limited to such communications "likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination". The applicant concedes that neither section 12 nor section 13 would apply to the content of householders. It is logical to conclude, as the tribunal did, that if Parliament intended the Act to apply to the content of written communications, such as householders, it would have done so expressly. Stretching the definition of services in the context of section 5 to encompass the content of written communications would be to rewrite the Act.

[48] The applicant finally argues that the tribunal should have gone on to consider whether the householders violated section 14 of the Act. In my view, that was not necessary and the tribunal was justified in giving short shrift to the section 14 analysis. While section 14 differs from section 5 in its application, its construction is similar, in that services has the same meaning in both sections; a point conceded by the Commission before the tribunal,

> The Tribunal has concluded that the Householders do not constitute "services customarily available to the general public". In closing argument, the Commission conceded that if the Householders were found not to constitute "services" then s. 14 would not apply. The Tribunal agrees. Since the Householders were not services, there can be no harassment in the provision of services on the basis of a prohibited ground. Section 14 does not apply in the present case.

[49] The respondent and intervener provide further justification for the tribunal's interpretation by asserting that the broader interpretation proffered by the applicant would conflict with the right to freedom of expression contained in section 2 of the *Charter*. On this basis, the respondent and intervener assert that the alternative interpretation suggested by the applicant would have been an unreasonable one.

[50] The applicant simply responds by stating that human rights legislation by its very nature contemplates some encroachment of the freedoms listed under section 2 of the *Charter* and that to prohibit any encroachment would render the legislation ineffective (see *Hudler v. London (City)*, [1997] O.H.R.B.I.D. No. 23 at paragraph 70).

[51] The tribunal, in the present case, did not feel that it was necessary to tackle this *Charter* argument and nor do I. I do accept that the avoidance of a conflict with the *Charter* may further justify the tribunal's ultimate conclusion. It is trite law that where there are two possible interpretations of a statute, an interpretation which does not infringe the Constitution is to be preferred over one that does (see *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241, [1996] S.C.J. No. 98 (QL) at paragraph 3), *Slaight Communications Inc. v. Davidson*, [1989] 1

S.C.R. 1038, [1989] S.C.J. No. 45 (QL), *Owens v. Saskatchewan (Human Rights Commission)*, 2006 SKCA 41, 267 D.L.R. (4th) 733). However, I cannot speculate as to what role such a constitutional consideration may have played in the tribunal's decision making process, which is the primary focus of a judicial review application. In any event, since I have already determined that the tribunal's decision making process and ultimate decision were reasonable, it is unnecessary to delve into an analysis whether an alternative interpretation may or may not have resulted in a *Charter* violation.

[52] For the reasons above, I would dismiss the application for judicial review.

[53] In a section 5 analysis, after an action by any public body has been determined to be a service, it is not always necessary to then require that the service create a public relationship between the service provider and the end user. While this may have been the approach taken by the Supreme Court in *Gould* above at paragraph 69, such an approach is to be limited to the nature of the facts in that case. A service by any public body will generally meet the test of being customarily available to the public.

[54] Since householders were not a service, it was unnecessary for the tribunal to determine whether householders were customarily available to the public. Therefore, this error is immaterial to the disposition of this judicial review.

[55] Because of the nature of this application and because it is about an issue of public interest, there shall be no order as to costs.

JUDGMENT

[56] **IT IS ORDERED that** the application for judicial review is dismissed and there shall be no order as to costs.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

Canadian Human Rights Act, R.S.C. 1985, c. H-6

5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public	5. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour le fournisseur de biens, de services, d'installations ou de moyens d'hébergement destinés au public :
(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or	a) d'en priver un individu;
(b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.	b) de le défavoriser à l'occasion de leur fourniture.
12. It is a discriminatory practice to publish or display before the public or to cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation that	12. Constitue un acte discriminatoire le fait de publier ou d'exposer en public, ou de faire publier ou exposer en public des affiches, des écriteaux, des insignes, des emblèmes, des symboles ou autres représentations qui, selon le cas :
(a) expresses or implies discrimination or an intention to discriminate, or	a) expriment ou suggèrent des actes discriminatoires au sens des articles 5 à 11 ou de l'article 14 ou des intentions de commettre de tels actes;
(b) incites or is calculated to incite others to discriminate	b) en encouragent ou visent à en encourager l'accomplissement.

if the discrimination expressed or implied, intended to be expressed or implied or incited or calculated to be incited would otherwise, if engaged in, be a discriminatory practice described in any of sections 5 to 11 or in section 14.

13.(1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

13.(1) Constitue un acte discriminatoire le fait, pour une personne ou un groupe de personnes agissant d'un commun accord, d'utiliser ou de faire utiliser un téléphone de façon répétée en recourant ou en faisant recourir aux services d'une entreprise de télécommunication relevant de la compétence du Parlement pour aborder ou faire aborder des questions susceptibles d'exposer à la haine ou au mépris des personnes appartenant à un groupe identifiable sur la base des critères énoncés à l'article 3.

14.(1) It is a discriminatory practice,

14.(1) Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait de harceler un individu :

(a) in the provision of goods, services, facilities or accommodation customarily available to the general public,

a) lors de la fourniture de biens, de services, d'installations ou de moyens d'hébergement destinés au public;

(b) in the provision of commercial premises or residential accommodation, or

b) lors de la fourniture de locaux commerciaux ou de logements;

(c) in matters related to employment,	c) en matière d’emploi.
to harass an individual on a prohibited ground of discrimination.	

FEDERAL COURT
SOLICITORS OF RECORD

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