Hello Committee on Antisemitism,

I wish to add to my below submission that this has been made as part of the Alliance Against Campus Antisemitism in Canada for which Mr. Mark Sandler has been co-ordinating.

Thanks very much and I hope the Committee finds these and other submissions of particular relevance and significance.

Yours truly,

David H. Davis* BA, LLB, GPLLM
Immigration Lawyer | DAVIS IMMIGRATION LAW OFFICE

CBA National Immigration Section – member of organizing committee for the 2024 Montreal Conference – May 9-11th, 2024
Westin Hotel

t: 204-956-2336 ext. 201
m: 204-294-9616
f: 204-975-1655
w: daviddavislaw.com
e: david@daviddavislaw.com
a: Suite 201 – 233 Portage Avenue, Winnipeg, Manitoba CANADA R3B 2A7

TOP CHOICE IMMIGRATION LAW FIRM WINNER – 2020, 2021, 2022 & 2023

Licensed Recruiter in Western Canada:
Manitoba License No. 604-0812-1006

*Services provided by D.H. Davis Law Corporation

Let's connect

Recommendation: The Standing Committee on Justice and Human Rights should recommend that the Online Harms Bill be amended:

1) The Canadian Human Rights Commission and Tribunal should have the power to award costs. Where the Commission has assumed conduct of a case on the side of the complainant but then loses at the Tribunal level, the Tribunal should have the power to award costs not just against the complainant but also against the Commission.

In addressing antisemitism, it is impossible to ignore hate speech generally. The internet is filled with antisemitic incitement to hatred which spurs, feeds and justifies the demonstrations and encampments at universities and colleges.

While the Online Harms Bill now before Parliament addresses the issue of hate speech, that should not mean that the issue of online hate speech is beyond the scope of the present study. Consideration needs to be given both to preventing hate speech and respecting freedom of expression.

The addition to the Canadian Human Rights Act of a power in the Tribunal to award costs for an abuse of process, in the Online Harms Bill, is welcome. However, that addition does not completely address the concern about unfounded complaints.

One element of justice is equality of arms. Where human rights commissions interpose between the complainant and the target, complaints are cost free. However, the target may be put to great expense of exoneration. The principle of equality of arms is not respected. The awarding of costs against the losing side serves to prevent litigation from being undertaken lightly. When a party knows that the financial loss from an unsuccessful case is substantial, the party will think twice before commencing or defending the proceedings.

2) No proceeding at the Canadian Human Rights Commission or Tribunal should be instituted without the consent of the Chief Commissioner.

The screening and conduct functions of commissions need to be decoupled. Commissions should be screening complaints in every case. They should as well be able to have the power to take ownership of a case, its investigation and pursuit, in selected cases as they see fit.

In a civil proceeding, proof on a balance of probabilities, rather than the criminal standard of proof beyond a reasonable doubt, is sufficient. The higher standard in criminal proceedings serves as its own brake on frivolous proceedings. A consent requirement for civil proceedings is necessary, at least in practice if not in law, to compensate for the lower standard of proof.

3) The Online Harms Bill should require complainants to elect a forum.

It is possible to pursue essentially the same complaint in several Canadian jurisdictions simultaneously. Each forum addresses the complaint as a matter of substance, without regard to the fact that the same complaint has been filed elsewhere.

The Bill leaves to the Commission the discretion to determine whether the duplication in proceedings ought not continue. The prohibition is not absolute but should be.

4) The Canadian Human Rights Commission needs a power to remove parties.

The current legislation gives the Chair of a tribunal power to add parties, but not the power to remove parties. Where the subject matter of the complaint is meritorious but has been made against the wrong complainant, the complaint goes to its conclusion against the wrong

complainant. The Canadian Human Rights Commission and Tribunal need the power to remove parties as well as to add them.

5) The Canadian Human Rights Act should prevent the pursuit of anonymous complaints.

It is basic to respect for human rights that a person should not be asked to answer anonymous accusations. Then Canadian Privacy Commissioner John Grace in his testimony before the Standing Committee on Public Accounts, on December 12, 1989, stated that one of the rights conferred by the Privacy Act:

> '. . .is to know what accusations against us are recorded in government files and who has made them. Whether such accusations are true and well intentioned, as some may be, or false and malicious, as other may be, it is fundamental to our notion of justice that accusations not be secret nor accusers faceless.'

6) The Canadian Human Rights Act should set out a general principle of disclosure.

The Biil provisions sets out a power of disclosure subject to exceptions, but not a duty of disclosure. There should be rather a duty of disclosure, with the exceptions. Other than situations where there is a real and substantial risk that any individual whose identity was learned will be subjected to threats, intimidation or discrimination, disclosure should be required.

.....