

Victories for free speech

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Editor



Canada's successful effort to repeal laws that curtail freedom of speech demonstrates that restoring free speech is possible, but far from guaranteed. It's taken their Conservative government six years to take action on an unpopular law which clearly limits free expression.

Section 13 of the Canadian *Human Rights Act* was introduced in 1977. It prohibited acts which are 'likely to expose a person or persons to hatred or contempt' on the basis of their race or religion. The law was later amended to specifically include material published on the internet. It is replicated across Canada at the provincial level. And it is enforced by Canada's extensive network of human rights commissions.

In 2008 these laws were most famously used against columnist Mark Steyn. Steyn's column for *Macleans*' magazine had raised the ire of the Canadian Islamic Congress, who argued it was offensive to Muslims. Steyn's article was in fact an excerpt from his best-selling book, *America Alone*, and concerned the global ambitions of radical Islamists. Complaints were made to the Canadian, Ontario and British Columbia human rights commissions. The complaints were not taken up by the Ontario or Canadian commissions, but the commission in British Columbia thought the column was worthy of investigation. And so, over five days in June 2008, Mark Steyn was hauled before human rights bureaucrats and

questioned about his journalism.

Ultimately, and luckily for Steyn, the tribunal decided he was in the clear, although not without several parting shots at his article. Another journalist, magazine publisher and TV-host Ezra Levant, was subject to similar investigation which also ended without official censure. Both cases attracted considerable media attention and debate, and contributed to the collapse of public support for the law. Conservative organisations and some media outlets have campaigned against the law. Also unhelpful to supporters of section 13 was the revelation that a former employee of the Canadian Human Rights Commission was himself responsible for a considerable portion of the complaints under the law.

But despite the election of the Conservative government of Stephen Harper in 2006, it was not until 2012 that a bill to fix the law was introduced. Even then, it was not part of the government's official legislative agenda, but rather the pet-project of a Conservative backbencher. Eventually, with the support of the government, the repeal of section 13 passed Canada's House of Commons in June 2012.

While this is a significant victory for free speech, there are three important caveats. Firstly, even though the Conservative party has a majority in the Senate, it has not yet found the votes to pass the repeal through the upper chamber. Secondly, despite supporting this effort, Harper's government has simultaneously expanded the budget of its human rights commission—the very agency responsible for enforcing these anti-free speech laws. And thirdly, the web of complementary laws at the state level look set to

remain in place.

Even as we celebrate the defeat of Nicola Roxon's anti-discrimination laws, which would have gone much further than Canada's legislation, there remain important lessons for Australia from Canada's experience.

Section 18c, the law used against Andrew Bolt, was an amendment to the *Racial Discrimination Act* moved by the Keating government in 1995. At the time it was opposed by the Liberal and National parties. Yet upon their election to government in 1996 they did nothing to rectify the law. The 2011 case against Bolt has served as a catalyst for public concern in much the same way the cases against Steyn and Levant did in Canada. Encouragingly, opposition leader Tony Abbott has promised that if elected, his government will repeal section 18c to ensure that no one is hauled before the courts again for simply expressing an opinion.

It remains to be seen, however, how much of a priority this will be for an incoming Abbott government, or what it will do if the repeal is blocked by the Senate. It's also not yet clear what the new government will do with Australia's Human Rights Commission, which aggressively lobbied in favour of Roxon's anti-free speech bill, and routinely fails to defend the human right of freedom of speech. And like Canada's provinces, all Australian states have passed similar laws which threaten free speech, and no state government has demonstrated any willingness to address this.

Supporters of free speech must remain vigilant if we are to capitalise on recent victories. The rollback of laws which restrict our freedoms is far from assured.

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