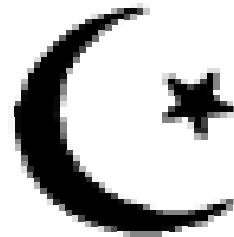
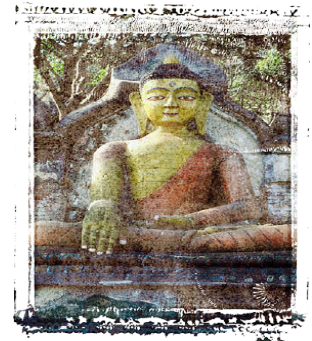


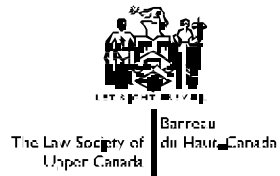


The Law Society of
Upper Canada | Barreau
du Haut-Canada

RESPECT FOR RELIGIOUS AND SPIRITUAL BELIEFS

A STATEMENT OF PRINCIPLES OF THE LAW SOCIETY OF UPPER CANADA





THE LAW SOCIETY OF UPPER CANADA

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March 10, 2005

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“What makes our communities work is our deep commitment to human rights and mutual respect. The Government is committed to these values [...] It will take measures to strengthen Canada’s ability to combat racism, hate speech and hate crimes, both here at home and around the world [...] What makes our communities vibrant and creative is the quality of their cultural life. The Government will foster cultural institutions and policies that aspire to excellence, reflect a diverse and multicultural society, respond to the new challenges of globalisation and the digital economy, and promote diversity of views and cultural expression at home and abroad.”

Excerpt from Speech from the Throne
to Open the First Session of the Thirty-Eighth Parliament of Canada
October 5, 2004

INTRODUCTION

1. In May 1997, the Law Society unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (the *Bicentennial Report*)¹ and recognized its commitment to the promotion of equality and diversity in the legal profession and its responsibility to regulate and provide services to an increasingly diverse legal profession² and population. Recommendation 1 of the *Bicentennial Report* provides “The Law Society should ensure that the policies it adopts actively promote the achievement of equality and diversity within the profession and do not have a discriminatory impact.” The Statement of Principles presented in this report promotes respect for religious diversity and condemns religiously motivated hatred and discrimination based on religion, in accordance with the Law Society’s commitment to promote equality and diversity, and more specifically recommendation 1 of the *Bicentennial Report*.
2. There is great diversity in the religious³ and spiritual beliefs and practices of people in Ontario and in Canada. This diversity, together with the values and spirituality that are shared in Ontario, in Canada and throughout the world,

¹ *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997).

² For information about the demographics of the legal profession, see Michael Ornstein, *The Changing Face of the Ontario Legal Profession, 1971-2001* (Toronto, October 2004).

³ In this report, the term “religious” belief includes “spiritual” belief. The terms “religion” and “creed” are used interchangeably.

should be celebrated. Instead, individuals and communities continue to be disrupted by religious hatred and discrimination.⁴

3. Hatred and discrimination on the basis of creed or religion are not acceptable. The Ontario *Human Rights Code*⁵, the *Canadian Human Rights Act*⁶, the *Canadian Charter of Rights and Freedoms*⁷ (the *Charter*), the *Criminal Code*⁸, as well as the Law Society of Upper Canada *Rules of Professional Conduct*⁹ contain provisions that recognize the value of religious or spiritual beliefs and/or prohibit discrimination and the wilful promotion of hatred on the basis of religion or creed.
4. The Law Society of Upper Canada recognizes the importance of promoting religious diversity and respect for religious beliefs. On April 22nd, 2004, Convocation passed a motion that the Law Society's Equity and Aboriginal Issues Committee and the Law Society's Government Relations Committee recommend to Convocation for Convocation's approval the role the Law Society should play and the positive steps it should take to discourage anti-Semitism and all forms of hatred or discrimination based on religion in our profession, our society and the world, and to promote religious respect in our profession, our society and the world.
5. In May 2004, a Working Group on Anti-Semitism and other Forms of Hatred and Discrimination Based on Religion (Working Group) was created with members of the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones, the Government Relations Committee and other interested benchers. Joanne St. Lewis is Chair of the Working Group. The members of the Working Group are: Andrea Alexander, Gary Gottlieb, Thomas Heintzman and Mark Sandler.

⁴ See *infra* paragraph 22 for a review of serious religiously motivated hate incidents that were reported in Ontario in 2004.

⁵ Ontario *Human Rights Code*, R.S.O. 1990, c. H. 19.

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

⁷ *Canadian Charter of Rights and freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.

⁸ *Criminal Code*, R.S.C. 1985, c. C-46.

⁹ *Rules of Professional Conduct* (Toronto: Law Society of Upper Canada, November 1, 2000).

6. The Working Group decided that the Law Society should develop programs and initiatives to discourage anti-Semitism and all forms of hatred or discrimination based on religion, and to promote religious respect. Some of the initiatives proposed include creating a statement of principles; developing education and outreach programs; sponsoring and attending community events; recognizing lawyers who demonstrate a commitment to the issues; and publishing information on a regular basis about the importance of promoting religious and spiritual respect and discouraging hatred and discrimination based on religion.
7. As part of the strategy to promote religious respect and discourage all forms of hatred and discrimination based on religion, the Working Group developed a *Statement of Principles* for the legal profession, included as Part VI of this report. The adoption of the *Statement of Principles* is well within the mandate of the Law Society “to govern the legal profession in the public interest by [...] upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law”. A *Statement of Principles* for the legal profession that promotes respect for religious belief and condemns hatred or discrimination based on religion not only advances the cause of justice and the rule of law, but also serves to educate the legal profession in the public interest.
8. The Working Group also decided that a cross-section of the profession should be interviewed about the relationship between their faith/spiritual belief(s) and practices, the rule of law and legal practice. The exercise revealed the commonality in the values and respect for human dignity of each religion. The information gathered through these interviews will be included in a separate report entitled *Dialogue with Lawyers: Religious and Spiritual Beliefs and the Practice of Law*. The following individuals were interviewed: Kiran Kaur Bhinder (Sikh), Judith Holzman (Jewish), Douglas Elliott (Christian), Vinay Jain (Jain), John Borrows (Aboriginal), Amina Sherazee (Muslim), Anita Balakrishna (Hindu) and Eric Nguyen (Buddhist).

9. This report is divided as follows:
- I- THE MEANING OF “RELIGION” AND “CREED”
 - II- ONTARIO AND CANADA’S PROFILE
 - III- RELIGIOUSLY-MOTIVATED DISCRIMINATION AND HATE CRIME IN ONTARIO AND CANADA
 - IV- LEGAL DEVELOPMENTS IN ONTARIO AND CANADA
 - V- THE INTERNATIONAL POSITION
 - VI- STATEMENT OF PRINCIPLES

I – THE MEANING OF “RELIGION” AND “CREED”

10. The term “creed” has often been used in Canadian legislation and case law interchangeably with “religion”. While the Ontario *Human Rights Code* promotes equal treatment with respect to employment and the provision of services without discrimination because of creed¹⁰, the *Charter*¹¹ and the *Canadian Human Rights Act*¹² promote equality without discrimination because of religion.
11. The Ontario Human Rights Commission and the Tribunal have interpreted creed broadly to include religion. Creed means a professed system and confession of faith, including both beliefs and observances or worship. A belief in a God or gods, or a single Supreme Being or deity is not a requisite. The existence of religious beliefs and practices are both necessary and sufficient to the meaning of creed, if the beliefs and practices are sincerely held and/or observed.
12. Although religion is not defined in the Ontario *Human Rights Code*, the *Canadian Human Rights Act* or the *Charter*, the Supreme Court of Canada considered the definition of the term “religion” and religious practices in *Syndicat Northcrest v. Amselem*¹³. The appellants, all Orthodox Jews, set up

¹⁰ *Supra* note 5.

¹¹ *Supra* note 7, section 15.

¹² *Supra* note 6.

¹³ *Syndicat Northcrest v. Anselem*, [2004] S.C.J. No. 46 at para. 39 (QL).

"succahs" on their balconies for the purposes of fulfilling the biblically mandated obligation of dwelling in such small enclosed temporary huts during the annual nine-day Jewish religious festival of Succot. The respondent, the syndicate of co-ownership Syndicat Northcrest, requested their removal, claiming the succahs were in violation of the by-laws as stated in the declaration of co-ownership, which prohibited decorations, alterations and constructions on the balconies. The respondent proposed to allow the appellants to set up a communal succah in the gardens. The appellants expressed their dissatisfaction with the proposed accommodation, explaining that a communal succah would not only cause extreme hardship with their religious observance, but would also be contrary to their personal religious beliefs, which, they claimed, called for the setting up of their own succahs on their own balconies. The respondent filed an application for a permanent injunction prohibiting the appellants from setting up succahs and, if necessary, permitting their demolition.

13. The Supreme Court of Canada defines religion and discusses the breadth of freedom of religion as follows:

[Religion means] [f]reely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith [...]

Freedom of religion consists of the freedom to undertake practices and harbour beliefs, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials. But, at the same time, this freedom encompasses objective as well as personal notions of religious belief, "obligation", precept, "commandment", custom or ritual. Consequently, both obligatory as well as voluntary expressions of faith should be protected under the Quebec (and the Canadian) *Charter*. It is the religious or spiritual essence of an action, not any mandatory or perceived-as-mandatory nature of its observance that attracts protection.¹⁴

¹⁴ *Ibid* at paras. 46-47.

II – ONTARIO AND CANADA’S PROFILE

14. Canada is committed to human rights, mutual respect and the promotion of diversity and multiculturalism, including diversity of religious and spiritual beliefs. Responses to the 2001 Canadian Census indicate that more than twenty four million people in Canada, or eighty three percent of Canadians, identify as being of a religious or spiritual faith. In Ontario, nine and a half million people, or eighty four percent, identify as being of a religious or spiritual faith. The Census identifies nine majority faiths in Canada and in Ontario: Catholic, Protestant, Christian Orthodox, Christian not included elsewhere, Muslim, Jewish, Buddhist, Hindu and Sikh. In addition, approximately 65,000 people in Canada, and 19,000 people in Ontario, indicated their religion as being other than those already listed.

15. Selected Religions, Ontario and Canada (2001 Census)¹⁵

	Canada	Ontario
Total population	29,639,035	11,285,550
Catholic	12,936,905	3,911,760
Protestant	8,654,850	3,935,745
Christian Orthodox	479,620	264,055
Christian not included elsewhere	780,450	301,935
Muslim	579,640	352,530
Jewish	329,995	190,795
Buddhist	300,345	128,320
Hindu	297,200	217,555
Sikh	278,410	104,785
Eastern religions	37,550	17,780
Other religions	63,975	18,985
No religious affiliation	4,900,090	1,841,290

¹⁵ Statistics Canada, “Selected religions, provinces and territories (2001 Census)”, online: <http://www.statcan.ca/english/Pgdb/demo30b.htm>.

III – RELIGIOUSLY-MOTIVATED DISCRIMINATION AND HATE CRIME IN ONTARIO AND CANADA

16. Notwithstanding the diversity of religious beliefs in our country, there has been a disturbing rise in religiously motivated discrimination and hate crime over the last several years in Ontario and Canada. A 2001-2002 survey of twelve of the major police forces in Canada identified 928 hate crimes committed in those jurisdictions during the period.¹⁶ The results showed that 43% of the hate crimes were motivated by religion. The survey confirmed that there was a spike in the number of hate crimes committed in the months immediately following the September 11, 2001, terrorist attacks in the United States. There were approximately three times as many hate crimes recorded in Canada during the two months immediately after September 11, 2001 as there were during the same two-month period the year before.¹⁷ Although the level of hate crime decreased again after its peak in the latter months of 2001, hate crimes motivated by religion continued to be committed over the duration of the survey period. Two trends identified by the survey were that Jews or their institutions were targeted in 25% of hate crimes, more often than any other group targeted in any type of hate crime. Jews were also the most frequent targets of hate crimes motivated by religion, followed by Muslims.
17. The League for Human Rights of B'nai Brith Canada recently released its 2004 *Audit of Anti-Semitic Incidents*, which indicates that anti-Semitic incidents in Canada has risen by 46.7% from the previous year.¹⁸ In total, 857 incidents were

¹⁶ The Canadian Centre for Justice Statistics, *Pilot Survey of Hate Crime* (Results released June 1, 2004); summary available online: <http://www.statcan.ca/Daily/English/040601/d040601a.htm>. The Police Forces surveyed were Calgary, Edmonton, Halton Regional, Montreal, Ottawa, Royal Canadian Mounted Police (excluding detachments from British Columbia), Regina, Sudbury, Toronto, Waterloo, Windsor, and Winnipeg. These services represent about 43% of the national volume of crimes measured by the Uniform Crime Reporting Survey.

¹⁷ *Ibid.*

¹⁸ League for Human Rights of B'nai Brith Canada, *Audit of Antisemitic Incidents, 2004* (published in March 2005). Available online: <http://www.bnaibrith.ca/pdf/audit2004.pdf>. The 2002 *Audit* indicates that 459 anti-Semitic incidents were reported to B'nai Brith Canada's League of Human Rights that year, an increase of 60.48% from the 286 incidents reported in 2001. The 2003 *Audit* revealed that 584 anti-Semitic incidents were reported, representing an additional 27.2% increase over 2002. This was the highest number of incidents in the 20-year history of the *Audit*. The types of incidents reported each year ranged from harassment to vandalism to severe violence.

reported, the highest number in the twenty-two year history of the Audit. Since 2000, the total number of incidents has increased more than three-fold. Harold Davis, National President of B'nai Brith Canada stated in a press release "The threshold for what constitutes anti-Semitic activity continues its downward cycle, with open expressions of anti-Semitism being increasingly tolerated. A climate is being created where acts of anti-Semitism have simply become so commonplace, that the perpetrators of these crimes are often showed lenience, with their acts brushed aside or labelled as mere 'pranks'." Frank Dimant, Executive Vice-President of B'nai Brith Canada, also states: "A disturbing trend has been detected whereby incidents of anti-Semitism are becoming increasingly violent. Individuals are acting out their prejudices in less restrained fashion. Every concerted effort must be made to thwart this dangerous pattern, so that these expressions of hatred do not escalate. We've already seen the bombing of a Jewish elementary school. Surely, this should be enough to sound the alarm."¹⁹

18. Since September 2001, The Council on American-Islamic Relations Canada (CAIR-CAN) has documented hate activity against 19 Islamic institutions and mosques, including attempted arson, destruction and defacement of mosque property, and graffiti. Six of those incidents have occurred in the last 12 months.²⁰
19. In addition to hate incidents, religious communities face a lack of acceptance of their religious practices. Those incidents occur at school or work. Where freedom of religion is litigated²¹, the students and families at the centre of these controversies have faced anger and hostility from others.

B'nai Brith Canada, *2002 Audit of Anti-Semitic Incidents*, online:

<http://jewishcanada.ca/publications/audit2002/audit2002-00.html>. B'nai Brith Canada, *2003 Audit of Anti-Semitic Incidents*, online: www.bnaibrith.ca/publications/audit2003/audit2003-02.html.

¹⁹ B'nai Brith press release posted March 15, 2005, available online at:

<http://www.bnaibrith.ca/prdisplay.php?id=886>.

²⁰ On line information from www.caircan.ca

²¹ Examples of case law on point: *Peel Board of Education v. Ontario Human Rights Commission* (1991), 3 O.R. (3d) 531 (Ont. Ct. Gen. Div. (Div. Ct.)); *Multani(tuteur de) c. Commission scolaire Marguerite-Bourgeois*, [2004] J.Q. no. 1904 [*Multani*], leave to appeal to S.C.C. requested.

20. In September 2003, at the invitation of the Canadian government, the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance visited Canada, and reported on his findings. In his report, the Special Rapporteur made note of the increase in anti-Semitic activity in Canada in recent years, as well as the discrimination and hate directed at Muslims in the wake of September 11, 2001. The Special Rapporteur made particular reference to the unique challenges faced by Muslim women, including discrimination related to wearing the hijab. Among the conclusions and recommendations of the Special Rapporteur was the recognition that the “resurgence of anti-Semitism and Islamophobia requires not only vigilant attention and repression but also measures to promote dialogue between the communities concerned”.²²
21. In 2004, numerous religiously motivated hate incidents continue to be reported in Canada. Included in these incidents were the firebombing of the United Talmud Torah School library in Montreal in April, the upsetting of 24 headstones in a Jewish Cemetery in Quebec City in June, and suspected arson related to a fire in a Sikh parochial school in Vancouver in July.
22. The following are examples of some of the incidents that have taken place in 2004, in Ontario:
 - a. March 15, 2004 – Thirteen houses and vehicles were defaced with swastikas and anti-Semitic graffiti in Vaughan;
 - b. March 21, 2004 – In a string of incidents in Toronto, windows were broken and swastikas painted on the wall at the Pride of Israel Synagogue, swastikas were marked on street signs, homes and cars, a Jewish school was damaged, and 27 headstones toppled at Bathurst Lawn Memorial Park Cemetery;

²² Mr. Doudou Diene, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Racism, Racial Discrimination, Xenophobia and all Forms of Discrimination, Mission to Canada*, UN Doc. E/CN.4/2004/18/Add.2 (1 March 2004).

- c. March 25, 2004 – A fire was set at the Al-Mahdi Islamic Centre, a mosque in Pickering, and a Muslim business establishment was vandalized;
- d. March 26, 2004 – Four gravestones were toppled in the Beth David Cemetery in Brantford;
- e. March 28, 2004 – Fire fighters responding to a fire at a business in Vaughan discovered swastikas painted on the front entrance;
- f. April 10, 2004 – A dozen headstones were toppled at the Beth Jacob Cemetery in Kitchener;
- g. June 12 & 13, 2004 – A Conservative Jewish candidate had 9 of his election signs painted with swastikas in the Windsor West riding;
- h. June 20, 2004 – Anti-Semitic graffiti was discovered on an Ottawa synagogue;
- i. June 23, 2004 – In Toronto, Ryerson University’s multi-faith prayer room was defaced with anti-Muslim graffiti;
- j. June 27, 2004 – Anti-Semitic messages were painted on Unionville streets;
- k. August 2004 – Death threats were made against Muslim students in flyers and letters received by Ryerson University in Toronto;
- l. September 4, 2004 – A mosque in St. Catharines suffered damage to its exterior wall when a car parked against the wall was set on fire and ignited cardboard was stuffed into exterior vents of the building;
- m. October 14, 2004 – Death threats were received by the Arab Student Association office and the Muslim Student Associations at Ryerson University in Toronto; and

- n. October 18, 2004 – A 21 year old man was arrested as he was posting hate literature outside the Arab Student Association office at Ryerson University in Toronto.
23. One of the most serious manifestations of anti-Semitism is Holocaust denial. Those who promote Holocaust denial assert that the Jewish Holocaust did not happen. Although not all make the same claims, they promote the position, based upon distorted, misleading or false information, that there was no systematic attempt by Nazi Germany to exterminate European Jews. That manifestation of anti-Semitic hatred has attracted a tremendous amount of media attention and is widely spread through the Internet. The cases of *R. v. Keegstra*²³ and *R. v. Zundel*²⁴ both dealt with hatred manifested by Holocaust denial.

IV- LEGAL DEVELOPMENTS IN ONTARIO AND CANADA

Legislation Prohibiting Hatred and Discrimination

24. When addressing incidents of religiously motivated incidents, federal and provincial legislation prohibit either hatred or discrimination on the grounds of religion or creed. Provisions to this effect can be found in the *Charter*²⁵, federal and provincial human rights legislation²⁶, the Law Society of Upper Canada *Rules of Professional Conduct*²⁷, as well as the *Criminal Code*²⁸.
25. Section 2(a) of the *Charter*²⁹ guarantees freedom of conscience and religion. Section 15 further guarantees “every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without

²³ [1990] 3 S.C.R. 697 [*Keegstra*].

²⁴ [1992] 2 S.C.R. 731 [*Zundel*].

²⁵ *Supra*, note 7.

²⁶ Such as the Ontario *Human Rights Code*, *supra* note 5 and the *Canadian Human Rights Act*, *supra* note 6.

²⁷ *Supra* note 9.

²⁸ *Supra* note 8.

²⁹ *Supra* note 7.

discrimination and, in particular, without discrimination based on [...] religion [...]"³⁰

26. Other sections of the *Charter* also recognize the value of religious or spiritual faiths. For example, sections 25 and 35 guarantee Aboriginal rights and freedoms and section 27 recognizes that the *Charter* shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians. Section 28 of the *Charter* guarantees *Charter* rights equally to men and women. Therefore, the *Charter* recognizes that religious rights and practices are guaranteed equally to men and women.
27. Provincial human rights codes and the *Canadian Human Rights Act* also promote the right to equality based on creed or religious beliefs. The Ontario *Human Rights Code* provides that every person has the right to equal treatment with respect to services, goods, facilities, accommodation (housing), employment, the right to enter into contracts, and membership in vocational associations without discrimination because of creed.³¹
28. The *Canadian Human Rights Act* prohibits discrimination on the ground of religion in relation to goods, services, facilities, accommodations, employment and employee organizations in a manner similar to the Ontario *Human Rights Code*.³² The *Canadian Human Rights Act* also contains anti-hate provisions. Under the *Act*, it is discriminatory to publish or display any notice, sign, symbol, emblem or other representation that expresses or implies discrimination or an intention to discriminate, or incites or is calculated to incite others to discriminate, if the discriminatory practice expressed or implied, if engaged in, would be discriminatory practice under other provisions of the *Act*.³³ It is discriminatory as well to communicate via telecommunication facilities any matter that is likely to expose a person or persons to hatred or contempt by

³⁰ *Ibid.*

³¹ *Supra* note 5, ss. 1-3, 5, 6.

³² *Supra* note 6, ss. 3(2), 5, 7, 9.

³³ *Ibid.*, s. 12.

reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

29. The *Criminal Code* deals specifically with hate crimes and hate-motivated crimes in sections 318 to 320, 430(4.1) and 718.2(a)(i).³⁴ Sections 318 and 319 prohibit advocating genocide and public incitement of hatred or wilful promotion of hatred against any group distinguished by colour, race, religion, ethnic origin or sexual orientation. Chief Justice Dickson, in *Keegstra*, discusses the values promoted by the legislation:

In my opinion, it would be impossible to deny that Parliament's objective in enacting s. 319(2) is of the utmost importance. Parliament has recognized the substantial harm that can flow from hate propaganda, and in trying to prevent the pain suffered by target group members and to reduce racial, ethnic and religious tension in Canada has decided to suppress the wilful promotion of hatred against identifiable groups. At the core of freedom of expression lies the need to ensure that truth and the common good are attained, whether in scientific and artistic endeavours or in the process of determining the best course to take in our political affairs. [...] The message put forth by individuals who fall within the ambit of s. 319(2) represents a most extreme opposition to the idea that members of identifiable groups should enjoy this aspect of the s. 2(b) benefit. The extent to which the unhindered promotion of this message furthers free expression values must therefore be tempered insofar as it advocates with inordinate vitriol an intolerance and prejudice which view as execrable the process of individual self-development and human flourishing among all members of society.³⁵

30. Sections 320 and 320.1 allow judges to authorize seizure of hate propaganda in hard copy or electronic form. Section 430(4.1) was added to the *Criminal Code* in 2001 creating the offence of mischief against places of religious worship or religious property “motivated by bias, prejudice or hate based on religion, race, colour, or national or ethnic origin”. Finally, a court is directed by section 718.2(a)(i) of the *Criminal Code* to treat, as an aggravating feature on sentencing, evidence that any offence was motivated, inter alia, by bias, prejudice or hate based on religion as well as other enumerated grounds.

³⁴ *Supra* note 23.

³⁵ *Supra* note 23 at 762.

31. The Law Society has also adopted rules of professional conduct and model policies that promote the respect for religious and spiritual beliefs. Rule 5.04 of the *Rules of Professional Conduct*³⁶ specifies that a lawyer has a special responsibility “to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of [...] creed [...] with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other members of the profession or any other person.” Rule 5.04 encompasses the duty to accommodate religious or spiritual faiths and practices. Model policies that prohibit harassment and discrimination on the ground of creed are also available for the legal profession. Such model policies and guidelines include the *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements*³⁷, the *Guide to Developing a Policy Regarding Flexible Work Arrangements*³⁸ and *Preventing and Responding to Workplace Harassment and Discrimination: A Guide to Developing a Policy for Law Firms*³⁹. The Law Society also published an information document entitled *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities: Legal Developments and Best Practices*⁴⁰, which outlines best-practices and legal developments in the area of accommodation and includes information about accommodations of creed and religious beliefs and practices.

Case Law Development

32. Tribunals, including the Supreme Court of Canada, have interpreted the terms hate and discrimination. In *Keegstra*, the accused, an Alberta high school teacher

³⁶ *Supra* note 9.

³⁷ *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements* (Toronto: Law Society of Upper Canada, March 2001).

³⁸ *Guide to Developing a Policy Regarding Workplace Equity in Law Firms* (Toronto: Law Society of Upper Canada, updated March 2003).

³⁹ *Preventing and Responding to Workplace Harassment and Discrimination: A Guide to Developing a Policy for Law Firms* (Toronto: Law Society of Upper Canada, March 2002).

⁴⁰ *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities: Legal Developments and Best Practices* (Toronto: Law Society of Upper Canada, March 2001).

whose teaching licence was revoked for communicating anti-Semitic statements to his students, was charged under the *Criminal Code* with unlawfully promoting hatred against an identifiable group. Mr. Keegstra was convicted by a jury and sentenced to a \$5,000.00 fine. The Alberta Court of Appeal overturned his conviction on constitutional grounds, but the Supreme Court of Canada reversed that decision.⁴¹ The Supreme Court held that the *Criminal Code* provisions that prohibit the dissemination of hate violated the guarantee of freedom of expression, but were saved under section 1 of the Charter. The case was remitted back to the Court of Appeal for decision on other issues, where a new trial was ordered. Mr. Keegstra was again found guilty and sentenced to a \$3,000.00 fine. The Court of Appeal quashed his conviction on separate constitutional grounds, but the Supreme Court of Canada overturned that decision.⁴²

33. Former Chief Justice Dickson held that hatred must be defined contextually. He stated:

Hatred is predicated on destruction, and hatred against identifiable groups therefore thrives on insensitivity, bigotry and destruction of both the target group and of the values of our society. Hatred in this sense is a most extreme emotion that belies reason; an emotion that, if exercised against members of an identifiable group, implies that those individuals are to be despised, scorned, denied respect and made subject to ill-treatment on the basis of group affiliation.⁴³

34. Other examples of incidents involving hatred include the case of *Zundel* in which the accused was charged with spreading false news after publishing a pamphlet that, *inter alia*, challenged the existence of the Holocaust.⁴⁴ Although Mr. Zundel was found guilty and sentenced to nine months imprisonment, the Supreme Court allowed the appeal and entered an acquittal after the majority held that the relevant *Criminal Code* provision was not justifiable under section 1 of the *Charter*.

⁴¹ *Keegstra*, *supra* note 23.

⁴² *R. v. Keegstra*, [1996] 1 S.C.R. 458, rev'g (1994), 157 A.R. 1 (C.A.).

⁴³ *Supra* note 23.

⁴⁴ *Supra* note 24.

35. Although Mr. Zundel's conviction was overturned by the Supreme Court of Canada, in 1996, complaints were filed with the Canadian Human Rights Commission alleging that Mr. Zundel was placing materials on the internet that were likely to expose people to hatred contrary to section 13 of the *Canadian Human Rights Act*. Mr. Zundel posted a homepage on the Internet that questioned the existence of the Holocaust. In 2002, the Canadian Human Rights Tribunal found that Mr. Zundel had engaged in discriminatory practice and ordered that he cease communicating messages that are likely to expose a person or group to hatred.⁴⁵
36. In May 2003, Mr. Zundel was detained for being a threat to national security. The Federal Court ruled that his status within the white supremacist movement, his contacts and publications make him a danger to the security of Canada.⁴⁶ Mr. Zundel's deportation order to Germany was carried out in March 2005.⁴⁷
37. Racist or anti-Semitic hatred is often not confined to one single identifiable group. The case of *Andrews and Smith v. The Queen*⁴⁸, dealt with the prosecution of two members of the Nationalist Party of Canada, a white supremacist political organization, for the wilful promotion of hatred directed against Black people, Jews, Pakistanis etc.
38. Case law has also dealt with discrimination based on religion or creed. Discrimination is defined as follows:

A distinction, whether intentional or not, but based on a protected ground, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.⁴⁹

⁴⁵ *Citron v. Zundel*, [2002] C.H.R.D. No. 1 (QL).

⁴⁶ *Re Zundel*, [2004] F.C.J. No. 60 (QL). In February 2005, the Federal Court determined that there were reasonable grounds to believe Mr. Zundel was inadmissible to Canada for being a security threat: *Re Zundel*, [2005] F.C.J. No. 314 (QL).

⁴⁷ Kirk Makin "Zundel won't fight deportation order" *The Globe and Mail* (26 February, 2005) A7.

⁴⁸ [1990] 3 S.C.R. 870.

⁴⁹ *Law Society of British Columbia v. Andrews*, [1989] 1 S.C.R. 143 at 174-175 [*Andrews*]. Discrimination includes "direct discrimination" (where a practice or rule is adopted which on its face discriminates on a protected ground); "adverse effect discrimination" (where a practice or rule is adopted which is on its face

39. Some examples of incidents that involve discrimination and have been dealt with by tribunals relate to the observance of religious practices at work or at school. For example, in the employment context, the Human Rights Board of Inquiry in *Shapiro v. Peel (Regional Municipality)*⁵⁰ ruled that an employee, who was an observant member of the Jewish faith and had to use vacation time, lieu time or unpaid leave to celebrate Jewish holy days, was discriminated against. The Board also held that Ms. Shapiro's proposal that she work overtime to make up for the time she lost from work to celebrate Rosh Hashana was a reasonable one. An employer who requires a Jewish employee to use vacation or lieu time or unpaid leave in order to celebrate Jewish holy days discriminates under the *Code*.⁵¹
40. Case law has also addressed this issue in the context of education. Quebec courts remain divided regarding the right of students to accommodations based on religious practices. In December 2001, a student was sent home from school because he wore a kirpan, a small ceremonial dagger worn by Sikhs. Although the Québec Superior Court declared null and void the School Board's ruling that Gurbaj Singh was not allowed to wear the kirpan, the Québec Court of Appeal reversed the decision in March 2004. It held that the School Board's decision infringed Mr. Singh's full exercise of freedom of religion under the *Charter*, it was properly restricted under s. 1 as the enjoyment of the freedom constituted a threat to the security of others. In April 2004, an application for leave to appeal to the Supreme Court of Canada was filed.⁵²
41. In 1994, a student was expelled from a public school in Québec for wearing the hijab, the Islamic headscarf. Later that same year another student was told that she would have to stop wearing the hijab or find a new school; she found a new

neutral, and which will apply equally to everyone, but which has a discriminatory effect upon a prohibited ground on one person or group in that it imposes, because of some special characteristic of the person or group, obligations, penalties or restrictive conditions not imposed on other members); and "systemic discrimination" (practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics): See *Andrews; Ontario Human Rights Commission and O'Malley v. Simpson-Sears Ltd.*, [1985] 2 S.C.R. 536; *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114.

⁵⁰ [1997] O.H.R.B.I.D. No. 15 (QL).

⁵¹ *Ibid.*

⁵² *Multani, supra* note 21.

school.⁵³ Following these incidents, the Québec Commission des droits de la personne et des droits de la jeunesse produced a discussion paper in 1995 called *Religious Pluralism in Québec: a Social and Ethical Challenge*. In the paper, the Commission regards the ban on the Islamic veil in public schools as discrimination based on religion and states that where the school's rules interfere with the right to equality, the school has an obligation to accommodate and adapt the rules to eliminate any discriminatory consequences.⁵⁴ Despite the Commission's report, in 2003 another student was barred from a school in Québec for wearing the hijab. The family of the girl filed a human rights complaint against the school, but later decided not to proceed with the complaint.⁵⁵

42. The CRTC has recently been faced with investigating incidents of religiously motivated hatred. During coverage of Palestinian leader Yasser Arafat's funeral on November 12, 2004, three people on the *Imus in the Morning* radio show, simulcast on the all-news MSNBC, advocated dropping a bomb on Palestinians to "kill 'em all."⁵⁶ The Canadian Radio-television and Telecommunications Commission (CRTC) is currently investigating over 20 complaints about the show.⁵⁷

V – THE INTERNATIONAL POSITION

43. The harm of religious discrimination and the need to promote religious rights and freedoms has been recognized internationally. This position was formally stated

⁵³ Kinda Jayoush "Students Strive to Wear Traditional Symbols in Class Decision Draws Wide Criticism: Muslim Council Ponders Legal Action" *Montreal Gazette* (24 September, 2003) A2.

⁵⁴ Commission des droits de la personne et des droits de la jeunesse by Pierre Bosset *et al.* (Québec: Commission des droits de la personne et des droits de la jeunesse, 1995) at 23, online: <http://www.cdpdj.qc.ca/fr/publications/docs/hidjab.pdf>.

⁵⁵ "Human rights complaint in hijab case dropped" *CBC News* (17 November, 2004), online: <http://www.cbc.ca/story/canada/national/2004/11/16/hijab041116.html>.

⁵⁶ Antoniz Zerbisias "Probe Here over Aired Arab Slurs: Arafat Mourners Derided on MSNBC" *The Toronto Star* (30 November, 2004), online: <http://www.thestar.com>; "Imus in the Morning" *MSNBC* (12 November, 2004), online: Media Matters for America, <http://www.mediamatters.org/items/200411190009>. MSNBC later apologized to "anyone who was offended by these remarks."

⁵⁷ Zerbisias, *ibid.*

in the *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (the “*Declaration*”) in 1981.⁵⁸

44. Article 1 of the *Declaration* guarantees the right to thought, conscience and religion, including the right to choose one’s religion and freedom and to manifest one’s religion in private or in public, individually or in community with others. Articles 2 & 3 of the declaration guarantee the right to be free from discrimination on the grounds of religion or belief, and condemn discrimination on these grounds as a violation of human rights and freedoms.
45. Pursuant to the *Declaration*, the United Nations Commission on Human Rights decided, in Resolution 1986/20, to appoint a Special Rapporteur on Freedom of Religion or Belief. The Special Rapporteur’s mandate is to examine incidents and governmental actions, which are inconsistent with the provisions of the *Declaration*, and to recommend remedial measures, taking into account a gender perspective and the experience of various states.
46. The Special Rapporteur’s report of January 15, 2003, documents violations of the principles of non-discrimination and respect perpetrated against people of various faiths in countries around the world.⁵⁹ The Special Rapporteur discussed the acts of hatred and discrimination, including verbal and physical assaults, committed against Muslims in the wake of September 11, 2001. Attacks on Jews and vandalism of synagogues were also noted. The Special Rapporteur’s analysis showed an overall rise in hatred and discrimination against religious minorities and women and an increase in religious extremism affecting all religions.
47. The Special Rapporteur noted that, in 2002, religious minorities faced threats to their existence due to harassment (Christians in Myanmar), deportation (Adventists and Protestants in Azerbaijan), campaigns of repression (against Falun Gong members), arrests (Protestants and Adventists in Turkmenistan),

⁵⁸ *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, GA Res. 36/55, UN GAOR, 36th Sess., (1981).

⁵⁹ Mr. Abdelfattah Amor, Special Rapporteur on freedom of religion or belief, *Civil and Political Rights, Including Religious Intolerance*, UN ESC, 59th Sess., UN Doc. E/CN.4/2003/66 (15 January 2003), online: www.unhcr.ch/html/menu2/7/b/religion/documents.htm.

imprisonment and expulsion (Tibetan monks and nuns), and death sentences (Christians in China and members of the Ismaili community in Saudi Arabia). The Special Rapporteur described cases of religious hatred and discrimination by non-state entities including violent attacks by Orthodox extremists on Jehovah's Witnesses, Pentecostals and Catholics in Georgia; attacks on Muslims by Hindu extremists in India; attacks by Muslim extremists on religious minorities in Bangladesh, Indonesia and Pakistan; violence against Coptic Christians in Egypt; and attacks on Catholic, Adventist, Methodist and Nazarene churches in Yugoslavia. The Special Rapporteur also highlighted the discrimination that had occurred when religious minorities were subject to limitations on the manifestation of their religious identity or belief.

48. As a result of recent incidents such as those recorded by the Special Rapporteur, the international community has come together at conferences on anti-Semitism organized by the Organization for Security and Co-operation in Europe (OSCE) to promote religious respect and non-discrimination. The first conference took place in 2003 in Vienna⁶⁰ and was followed by a second conference in Berlin in 2004⁶¹. Over four hundred participants from governments, international organizations, and non-government organizations attended each conference, including delegations from Canada, the United States and a number of European countries. Expert speakers presented information and participants discussed strategies for eliminating anti-Semitism. A number of recommendations came out of the conferences including recommendations that States:
- a. Acknowledge that anti-Semitism is a human rights violation and condemn all manifestations of anti-Semitism;
 - b. Compile data and statistics relating to anti-Semitic incidents;
 - c. Train law enforcement officers about hate crime;

⁶⁰ OSCE, *Consolidated Summary of the OSCE Conference on Anti-Semitism, Vienna, 19 and 20 June 2003*, PC.DEL/883/03 (18 July 2003).

⁶¹ OSCE, *Consolidated Summary of the OSCE Conference on Anti-Semitism, Berlin, 28 and 29 April 2004*, PC.DEL/696/04/Rev.1 (27 July 2004). Online: http://www.osce.org/documents/cio/2004/07/3349_en.pdf.

- d. Ensure that legal systems foster a safe environment, free from anti-Semitism and discrimination;
- e. Implement hate crime legislation;
- f. Encourage information exchanges on best practices and experiences in law enforcement and education;
- g. Encourage political and civic leaders to speak out clearly and frequently against discrimination;
- h. Encourage NGO efforts in the area of anti-discrimination;
- i. Implement anti-bias education in schools and elsewhere;
- j. Promote accurate remembrance and, as appropriate, education about the Holocaust;
- k. Promote inter-religious dialogue (possibly facilitated by a Code of Conduct);
- l. Avoid elevating certain religions over others; and
- m. Ensure that anti-Semitic materials are not disseminated in the media in print, electronic, or any other form, while ensuring that faith-based communities are allowed equal access to media and are represented fairly in the media.

VI – RESPECT FOR RELIGIOUS AND SPIRITUAL BELIEFS – STATEMENT OF PRINCIPLES

49. The incidents of religiously motivated discrimination and hatred outlined in this report and the Canadian and international condemnation of discrimination and hatred based on religion reinforce the importance for the Law Society to adopt a *Statement of Principles* that recognizes religious diversity. Therefore, the Law Society adopts the following *Statement of Principles*.

50. **The Law Society of Upper Canada, recognizing that:**
- a. **Respect for religious diversity advances the cause of justice;**
 - b. **The rule of law is enhanced when religiously motivated discrimination or hatred is not tolerated;**
 - c. **There continues to be a disturbing number of incidents of religious discrimination and religiously motivated hate crimes in Ontario and in Canada, as well as in the world;**
 - d. **The laws of Ontario and Canada guarantee freedom of conscience and religion, and prohibit discrimination and the wilful promotion of hatred on the basis of religion or creed;**
 - e. **The international community has condemned religious discrimination as harmful and unacceptable, and has recommended that measures be undertaken to combat religious hatred and discrimination; and**
 - f. **Although particular groups may be frequent targets of religious discrimination, religious hatred and discrimination is a problem of Canadian society as a whole;**
51. **The Law Society of Upper Canada condemns in the strongest terms all manifestations and forms of hatred and discrimination based upon religious and spiritual beliefs. Although current circumstances centre predominantly on issues of anti-Semitism and Islamophobia, the Law Society condemns all forms of religious intolerance directed at any group or community.**
52. **The Law Society of Upper Canada undertakes to promote and support religious understanding and respect both inside and outside the legal profession.**

CONCLUSION

53. In accordance with our mandate and the *Bicentennial Report*⁶², the Law Society of Upper Canada has undertaken a strategy to discourage all forms of hatred and discrimination based on religion and to promote religious respect in our profession, society and the world.
54. This report demonstrates that there are many religious practices in Ontario and Canada. Yet despite the existence of religious diversity in our country, there exist many incidents of religiously motivated hate crimes and discrimination. The legislation and jurisprudence clearly indicate that religious disrespect is not acceptable. The Law Society has been proactive in creating this *Statement of Principles* to encourage religious respect in the legal profession.
55. The separate report entitled *Dialogue with Lawyers: Religious and Spiritual Beliefs and the Practice of Law* will present a dialogue with various members of the profession. This is another aspect of the Law Society's strategy aimed at discouraging religious hatred and discrimination. The Law Society anticipates doing other projects for this strategy, such as developing continuing legal education programs, public education programs and outreach programs with organizations that promote religious respect.

⁶² *Supra* note 1.