

Features

LETTERS TO THE EDITOR

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Justified limits on speech

LIKE most modern democracies Australian states have laws that prohibit racial vilification. Emerging from the Nazi Holocaust the international community agreed to outlaw racial hatred. Australia also agreed to enact such laws with an eye to protecting those such as Aboriginal Australians from racial hatred. In NSW we have had specific laws for almost 20 years.

James Allan (Canada's deadly tongue trap, 6/6) rails at Canadian judges for not using the Canadian Charter of Human Rights to overturn what he loosely calls "hate speech laws". Allan says that the Canadian laws make it an offence for any person to publish any statement "likely to expose a person or group or class of persons to hatred or contempt". But he omits critical words. Those words qualify the limitation on free speech.

They include the words "because of their race". Those words appear, for example, in the British Columbia Human Rights Code, which outlaws publication of statements likely to expose a group of persons to hatred because of their race.

When the Canadian Supreme Court looked at whether a similar law in the criminal code was a reasonable restriction on free speech it held that it was. Professor Allan says the Canadian Supreme Court is doing a "truly awful job". If that case is any indication, I don't agree.

A human rights charter that protects freedom of expression must be balanced. Our laws against defamation, pornography and racial vilification are all examples of freedom of speech being legitimately limited. What I said in this paper on March 14 was that governments should have to clearly justify making laws that place limitations on human rights. A human rights charter can only work if it allows for limits to be made on free speech with justification. Outlawing incitement to racial hatred is justified. Victoria's Charter of Rights and Responsibilities Act recognises this.

Reasonable limits on human rights are a feature of modern legislation in this area and go hand in hand with statutory protection of rights.

Anna Katzmann SC,

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