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May 3, 2019

Dear Ms. Craig,

Thank you for your email dated April 30, 2019 and the opportunity to provide comments on your Draft Report, attached, which contains your interim findings on the Complaint in which I have been named related to a post I authored and published on my Facebook page dated March 21, 2019 (the “Post”).

I do wish to provide the following comments on what I believe are factual errors in the Draft Report, including errors in the interpretations you place on the Post.

Before doing so, however, I feel it is important to clarify what I believe is in fact the law related to these issues, which may differ in some respects from your own analysis. I do so primarily because your Draft Report appears to attribute legal positions to me based on a misreading of my Response to the Complaint dated March 29, 2019. These are positions I do not in fact hold.

My reference to free expression under s. 2(b) of the *Charter* in my Response was not meant to suggest that the Code does not apply to my Post, as you appear to believe. Rather, I believe that both the Code and the *Charter* apply. I understand our Supreme Court has repeatedly held that s. 2(b) protects all expressive activity; that it provides especially strong protection for political speech on matters of public interest; and that it especially protects the expression of opinions on such matters. My position is that my Post meets all these criteria, and should therefore attract the highest *Charter* protection. As such it should not easily be found to violate the Code. I believe the analysis in your Draft Report does not reflect either the current law, or my position, as set out above.

Pages 10-13 of your Draft Report consider various social media posting guidelines at length. No complaint about my Post has been laid under any such guidelines. Nor does my Post violate any of these guidelines, and I do not read your Draft Report as suggesting that it does. Again, the reference in my Response to the Complaint to the post being on my “personal” Facebook page, although accurate, was not meant to suggest that the Code therefore does not apply. I accept that it does. Whether or not that page is “linked” on the City’s website is, I believe, immaterial.

At page 14 of the Draft Report, you suggest that “qualified privilege” does not apply to social media posts. Since you have properly determined to not address the allegation of defamation in the Complaint, I am not sure this is relevant. However, if it is relevant, I believe again your analysis is not correct as a matter of law. As you note elsewhere, reciprocity of “interest”, short

of a “duty or obligation” can also be the basis of a qualified privilege. In the first instance, a Facebook page is only a publication to those who have chosen to be “friends” with the owner of the page, but I believe even if it were available more generally a qualified privilege could apply. The “occasion” for my Post, as your Draft Report recognizes, was the occurrence of recent tragic events in New Zealand, on which a large number of Canadians from all social and political groups felt compelled to comment. I believe your final report should, if it refers to qualified privilege at all, at least acknowledge that an expression of opinion on such an occasion, by an elected politician, to his Facebook friends and followers, or even to the community at large, can at least arguably be expression that is protected by a qualified privilege.

Finally, I believe the law is clear that the interpretation to be given to words of the Post must depend on what an ordinary, reasonable reader, with no special knowledge or axe to grind, would understand. The words actually used in the Post must be the primary basis of its meaning. The Post was written, and would have been read, in the heat of an online debate that occurred that very day. It should be interpreted in that light. I believe when that analysis is properly applied, the Post cannot be interpreted the way the Complainant does. Reasonable readers would recognize that it is an expression of my personal opinions on a matter of public importance, and that it does not in fact convey the very extreme meanings that the Complainant and your Draft Report suggest.

With that, I would ask you to consider the following errors, which I will take in the order they arise from the Post.

The post does not allege that these MPs were themselves people who used “white supremacy rhetoric for political gain”

The Post states, before any mention of the Complainant:

“I’m not surprised because there are people in positions of power that are using racist and white supremacist rhetoric for political gain across the world and right here in Canada. We have to make the connection between this rhetoric and the violence that is perpetrated against Muslims and other vulnerable communities here in Canada and abroad.”

A reader at this point could not, and would not, understand that the Complainant is one of the people in positions of power referred to. The statement is a general statement, and a true statement, commenting on the causes of the tragic events reported in New Zealand. The paragraph goes on to express my own, firmly held opinion that “we have to make the connection” between this kind of rhetoric, wherever it occurs in the world, and violence we see. Many people, including our Prime Minister, have expressed the same opinion, and many more agree with it. However, it is not an opinion that in any way reflects on the Complainant. Indeed, the Post does not state that the Complainant used any rhetoric at all. The critique with respect to the Complainant is that he did not speak out, not that he spoke inappropriately.

The example of Andrew Scheer is not an “example” of “using white supremacist rhetoric”.

The Post does not accuse Andrew Scheer of “using white supremacist rhetoric”. Rather, I believe my Post would be understood as pointing to this as an example of people in power failing “to make the connection” between such rhetoric on the part of Faith Goldy and resulting violence. Again, many people, including our Prime Minister, reacted to Mr. Scheer’s conduct the same way. What I call “unacceptable” and “dangerous” is failing to make this connection. Again, this is clearly my opinion, and many would agree. It is not a statement about the Complainant, or a statement of fact that is false or misleading under the Code.

Andrew Scheer sharing a “stage” with Faith Goldy is a fair and accurate characterization

On pages 14 and 15 of the Draft Report, you conclude that, as the basis for my comments, I used a “factually incorrect example”. The Post states:

“We have two Conservative MPs in Barrie that have been silent on their leader’s appearance on the same stage as a neo-Nazi sympathizer, Faith Goldy, at United We Roll rally. This is unacceptable and it is dangerous. They are playing footsies with white supremacists who have inspired violence through Yellow Vest Canada social media channels and elsewhere”.

There is nothing factually incorrect about this statement. In fact, major media outlets at the time of my Post and subsequently – including national media present, and the Prime Minister’s Office itself - reported the occurrence of the same events in the same or similar terms:

- CBC News:¹ “But Scheer ought to have made a distinction between his support for Canadian oil workers, and support for the racism and violence that has been associated with United We Roll. Conservative Senator David Tkachuk even told the crowd to "roll over" Liberals across the country, and he has since refused to apologize. [...]

The rally has also been associated with Yellow Vests Canada, a group whose Facebook page is rife with racist and xenophobic views, particularly towards Muslims and immigrants. In fact, the United We Roll convoy was originally named the Yellow Vest Convoy, but was changed due to the obviously problematic association. [...]

One of the speakers at the rally was Faith Goldy, who was fired from Rebel Media after appearing on a neo-Nazi podcast, and who regularly bemoans the erosion of "white identity." *Scheer spoke on the same platform that she did*, ignoring what should be a toxic association.”

- CBC News:² “Scheer has come under fire for speaking at the recent United We Roll rally on Parliament Hill, which had picked up participants who were making racist and

¹ CBC News, “United We Roll wasn't just about oil and gas. Scheer knew that and worked the crowd anyway” <https://www.cbc.ca/news/opinion/united-we-roll-1.5030419>

² CBC News, “‘The criticisms are completely baseless,’ Scheer says of claims he's too soft on hate groups” <https://www.cbc.ca/news/politics/scheer-pizzagate-united-we-roll-new-zealand-extremism-1.5069197>

anti-immigrant comments. *The Prime Minister's Office also condemned Scheer for "sharing a stage" with Faith Goldy*, a commentator who was let go from her job at Rebel Media after appearing on a podcast affiliated with the neo-Nazi website the Daily Stormer.”

- The Star:³ “Note that in February Tory Leader Andrew *Scheer spoke at the same event as Faith Goldy* — an Internet personality with white nationalist affiliations who once lent her voice to a Neo-Nazi podcast.”
- The Globe and Mail:⁴ “Mr. Yussuf also *condemned Mr. Scheer for sharing a stage with “racists and bigots”* at a protest led by a convoy of pro-pipeline, anti-carbon-tax demonstrators in February. Former Rebel Media personality Faith Goldy also attended the rally on Parliament Hill, where she told Indigenous counter protesters to leave Canada if they didn’t like it.”
- National Observer:⁵ “Federal Conservative leader Andrew Scheer welcomed a small convoy to Parliament Hill and white nationalist Faith Goldy told Indigenous rights defenders to go back where they came from as the United We Roll protest descended on Ottawa on Tuesday and Wednesday.”

As you note, in order to violate the Code, statements of fact must be “known to be false” or the speaker must have “intent to mislead”. This is not proven or provable. Indeed, if as you suggest the standard is that I “reasonably ought to have checked” the statements to ensure veracity, as stated on page 1 of the Draft Report, then that standard was surely met in light of the national media coverage and the fact checking that went along with it.

I believe that the Complainant’s position, which you appear to be accepting, is a technicality. The “stage” described in the Post is and would be understood to be the rally, not the physical podia from which they spoke. The expression “sharing a stage” is very commonly used in this way, and I believe a reasonable reader of the Post would have understood my Post that way.

The Post calls on Mr. Brassard to denounce white supremacists

In no way does the Post invite “outrage and anger” at the Complainant about the New Zealand attacks, as stated at page 15 of the Draft Report. The Post does call on the Complainant, in his role as the elected MP for Barrie-Innisfil, to denounce Faith Goldy, anti-immigrant groups and

³ The Star, “Andrew Scheer can’t be tough on crime if he is soft on hate”

<https://www.thestar.com/opinion/star-columnists/2019/03/25/andrew-scheer-cant-be-tough-on-crime-if-he-is-soft-on-hate.html>

⁴ The Globe and Mail, “Canadian Labour Congress and Muslim group accuse Scheer of emboldening far-right actors”

<https://www.theglobeandmail.com/politics/article-canadian-labour-congress-and-muslim-group-accuse-scheer-of-emboldening/>

⁵ The National Observer, “Convoy mixes with white nationalists and delivers toxic message to Ottawa”

<https://www.nationalobserver.com/2019/02/21/analysis/convoy-mixes-white-nationalists-and-delivers-toxic-message-ottawa>

all white supremacist and hateful rhetoric. My criticism was and is that he has failed to do this to date.

At page 16 of the Draft Report, you state that the MP “had immediately denounced hatred and racism following the horrific events in New Zealand.” I do not dispute this. However, my criticism in the Post was that he has failed to specifically denounce Faith Goldy, anti-immigrant groups (such as United We Roll), and all white supremacist and hateful rhetoric. He had not done this at the time of the Post. In fact, on February 19, 2019, the MP responded to a Tweet from @forde_chris1 that criticized the United We Roll convoy for the racism and xenophobia present in the movement by deflecting instead of acknowledging and condemning what has been widely reported.⁶

At page 15 of the Draft Report, you state that I have provided no “facts to support the statement that the MP has caused harm by not denouncing his list of subjects”. This statement is clearly an expression of opinion, with which many have agreed. Notably, the Chair of the Canadian Anti-Hate Network, Bernie M. Farber, has drawn similar, if not more direct conclusions in an opinion piece published on February 27, 2019:

- The Star:⁷ “Groups like YVC and their supporters within the UWR convoy only give strength to those like the Bissonnettes and Bowers of this world. Worse yet, political leaders who ignore such hatred are not just willfully ignorant but clearly stand with the victimizers against the victims.”

I also draw your attention once again to the articles listed above, published by various national media outlets. The harm to which I refer is set out earlier in the Post. It is the creation of a political climate in which acts of hate and violence are encouraged and on the rise. This again is my opinion: staying silent in the face of white supremacy and hate is dangerous and harmful.

“Playing footsies” is a fair and accurate characterization

The Draft Report goes on to suggest that I made a statement known to be false by saying that Mr. Brassard was “playing footsies with white supremacists”. The expression “playing footsies” is again not a statement of fact, but rather a commonly used characterization of conduct. In my Post, it was and would be understood to be another way to characterizing the Complainant’s silence, and lack of action. Indeed, by including the next paragraph beginning “Even worse”, the post is expressly identifying that the allegation made against both MPs (being silent) is different, and less bad, from actually having a direct connection to white supremacists, eg. by being their Facebook-friend. Given that context, I do not believe any ordinary reader would interpret “playing footsie” to be the same as being an active “supporter”, as your Draft Report suggests.

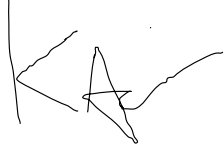
⁶ @JohnBrassardCPC, <https://twitter.com/JohnBrassardCPC/status/1097827955978502144>

⁷ The Star, “Scheer and Bernier should denounce extremists in Ottawa convoy”
<https://www.thestar.com/opinion/contributors/2019/02/27/scheer-and-bernier-should-denounce-extremists-in-ottawa-convoy.html>

In closing, the Post simply asked that the two MPs, and Mr. Scheer, “clearly denounce” Faith Goldy’s neo-Nazi rhetoric. It asked, and my Response to the Complaint again asked, that the two MPs engage in a dialogue about these topics. Instead of doing so, they have elected a legal dialogue through the office of the Integrity Commissioner and their lawyer. Given their choice, it is important to me that the law and the facts be accurately stated.

I trust these comments are helpful to your final report. If you require anything further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'Keenan Aylwin', with a stylized, cursive-like script.

Keenan Aylwin