



## **Know Your Rights Legal Protections against Hate Speech**

### **Foreword**

Millions of people around the world mark Pride every year. These joyful events are a way to honor and celebrate lesbian, gay, bisexual, transgender and queer (LGBTQ) visibility, acceptance and above all, community pride. This year, New York hosted nearly 5 million people from around the world to commemorate the 50<sup>th</sup> anniversary of the Stonewall Uprising, the events that helped foster the modern LGBTQ rights movement.

In August, Bermudians, residents, and thousands of visitors will join us to celebrate our first national Pride parade. This is a time to show the world our warmest welcome, our generous hospitality and our loving people. For LGBTQ people and our families, this will be an occasion to mark our victory for marriage equality and to demonstrate that we are a vibrant, loyal and integral part of Bermudian society.

Given the significance of this occasion, on behalf of OUTBermuda, we aspire to make this a beacon of hope to LGBTQ youth and others who feel they are alone. Our mission will continue to promote and support the wellbeing, health, dignity, security, and safety of the LGBTQ community, and our friends in family throughout Bermuda, for as long as we are needed.

Following the announcement of Bermuda's Pride celebration in August, however, there have been reports of hate speech based on people's sexual orientation, or their intention to attend the Pride event. As we appeal to each other's humanity, it is smart to understand that Bermuda law may serve to protect people who are victims of abuse or hateful threats, and that our police are empowered to assist with any investigation. In addition, if public law is inadequate, it is also possible to bring private prosecution in some instances.

Please understand that OUTBermuda is not qualified and does not provide legal advice. The information here is for your guidance, and as always, please consult your attorney or the appropriate law enforcement officials for advice with respect to any particular issue or problem. Our goal is to keep all of us safe, and to ensure everybody knows their rights.

### **Human Rights Act**

Under the Human Rights Act, it is an offence to:

- (i) publish or display writing, whether physically or via electronic media; or

(ii) say something in public,

with intention to promote ill will or hostility against people based on their sexual orientation or political opinion. For example, regardless of their sexual orientation, people whose political opinions lead them to support Pride events and gay rights gatherings are protected under the Human Rights Act.

If somebody has suffered personal damage, including injured feelings, as a result of another person promoting ill will or hostility, they may have a claim for damages to be investigated through the Human Rights Commission, or even in the Supreme Court.

### **Offensive Communications**

The Electronic Communications Act makes it an offence to send a message or post online that is grossly offensive or of an indecent, obscene or menacing character.

### **Freedom of Expression**

People also enjoy a right to freedom of expression, so any allegation of being “grossly offensive” or “promoting ill will or hostility” for the above offences must be viewed in the context of the statement being made.

Equivalent laws in the UK have been criticised for allowing heavy-handed interference with freedom of expression. For example, in 2016 a comedian was convicted for uploading a video to YouTube showing how he taught his dog to do a Nazi salute on command to annoy his girlfriend. The conviction led to protests, and was condemned by comedians and writers including Stephen Fry, Ricky Gervais and Shappi Khorsandi.

In 2018, a transgender activist applied the same laws to bring a private prosecution against black lesbian feminist activist, Linda Bellos OBE, for comments she had made about transgender activists. There also have been various UK reports describing preachers being arrested, detained and, in some cases, prosecuted for stating that homosexuality is sinful. The heavy-handed use of such laws can lead to impressions of censorship or possibly martyrdom, and enhance public support for those who are prosecuted under them.

### **Intimidation**

Section 322 of the Criminal Code makes it an offence to threaten somebody with intent to cause alarm, or to make the victim act or fail to act in a particular way. Threats may include physical injury, reputation damage or property damage. The threats might relate to the victim or to somebody connected to them such as a friend or family member.

It's worth noting that this offence also applies to threats made against a class of people. For example, if somebody was making threats against people generally who intended to attend a Pride event, which might include straight allies, to try and stop them from going, then it could be an offence of intimidation.

## **Stalking**

If somebody persists in abuse or harassment, this could be punished under the Stalking Act. This law makes it an offence to engage in persistent conduct such as following somebody, sending unwanted messages, interfering with property, loitering, or watching somebody with the intention to cause physical or mental harm or fear for safety. A victim can also apply for a protection order to place limits on the stalker.

## **Appeal to Our Better Angels**

Although we now live in an age where we can interact online with people from all over the world, it's not always easy to find common ground or to connect online on a human or personal basis with those whom we disagree. It is, however, very easy to be insulting or contemptuous online towards people with different views.

Laws exist to protect people against real threats of violence or abuse; however, the harder task is to find ways to connect with those we disagree in a spirit of love, understanding and compassion, and to be an example for those with whom we disagree to do the same. We might not be able to change each other's minds, but we can change how mindful we are when we speak to each other.

*Source: Peter Sanderson is the head of litigation at Benedek Lewin Limited. His practice covers civil litigation generally. He has advised on claims under the Human Rights Act and Bermuda Constitution, including the case of A&B v Director of Child & Family Services, enabling same-sex couples to adopt a child, and Bermuda Bred Company v Minister of Home Affairs, allowing permanent same-sex partners of Bermudians to live and work in Bermuda. He may be contacted at [psanderson@benedeklewin.com](mailto:psanderson@benedeklewin.com)*