

**IN THE MATTER OF AN ARBITRATION PURSUANT TO THE PRIDE TORONTO  
DISPUTE RESOLUTION PROCESS (“PTDRP”);**

**AND IN THE MATTER OF A COMPLAINT BY THE LEAGUE FOR HUMAN RIGHTS  
OF B’NAI BRITH CANADA (“B’nai Brith”) (Complainant) v. QUEERS AGAINST  
ISRAELI APARTHEID (“QuAIA”) (Respondent);**

**AND IN THE MATTER OF A COMPLAINT BY LEON KUSHNER (Complainant) v.  
QuAIA (Respondent);**

**BEFORE A BOARD OF ARBITRATION COMPOSED OF ROBERT G. COATES  
(CHAIR), RAJA KHOURI, AND MAURICE A. GREEN**

Appearances:

Anita Bromberg National Director Legal Affairs for League for Human Rights B’nai Brith  
Canada

Leon Kushner for Himself

Charles Campbell counsel for QuAIA

Kevin Beaulieu Pride Toronto (Watching Brief)

Hearing held on Wednesday, June 27<sup>th</sup>, 2012, Toronto, Ontario, Canada.

**REASONS FOR DECISION**

On Friday June 29<sup>th</sup>, 2012, the Board of Arbitration issued the following order and  
finding so that the parties would have a “bottom line” decision prior to the Pride Toronto  
Parade taking place on Sunday July 1<sup>st</sup>, 2012:

“ON THE BASIS OF THE EVIDENCE and Submissions presented by the parties:

1. The Panel finds that the activities of QUAIA are not contrary to the core  
missions, or policies, of Pride Toronto.
2. The Panel concludes that the activities of QUAIA described in the request for  
dispute resolution at the hearing, are not likely to present images or messages that  
promote, condone or may condone violence, hatred, degradation or negative  
stereotypes of a person or group contrary to the City of Toronto’s Anti-Discrimination  
Policy.
3. Therefore, the complaint of B'nai Brith is dismissed.
4. Nothing in this decision should be taken by the parties as support or approval by  
the panel, of QUAIA activities or messaging.

Reasons for this decision will be issued at a later date.”

The following are the reasons of the Board of Arbitration.

### **PRELIMINARY MATTERS**

1. At the beginning of the hearing Mr. Leon Kushner advised the Board of Arbitration (“the Board”) that he wished to withdraw his complaint against QuAIA, as his real complaint was against the Executive members of Pride Toronto, or its directors. Mr. Kushner wished the Board to simply amend his complaint to permit such a result. It was explained to Mr. Kushner that the Board could not accede to his request as Pride Toronto, its directors, and its Executive, had not been served with a complaint, and thus had not received proper notice, and therefore, he could not proceed in this manner. After hearing submissions from Ms. Bromberg and Mr. Campbell, Mr. Kushner was permitted to withdraw his complaint “without prejudice” to his right to file another complaint against different parties, if he so wished.

2. Both B’nai Brith and QuAIA raised preliminary objections regarding the process by which the members of the Board were chosen by the Chair of the Dispute Resolution Process, as well as a claim of reasonable apprehension of bias against one of the members of the panel.

3. After reviewing the parties’ oral arguments, and QuAIA’s written submissions, on these points, the Board finds that the manner of establishing a board of arbitration, pursuant to the PTDRP, is purely an internal administrative process, and was not open to challenge before the Board. Further, a claim of “reasonable apprehension of bias” by QuAIA was raised as against the Chair of the Dispute Resolution Process, who is not a member of this Board. Thus, the Board dismissed that aspect of QuAIA’s allegation. Further, both B’nai Brith and QuAIA raised a claim of “reasonable apprehension of bias” against member Raja Khouri for statements he is alleged to have made, or written, concerning the phrase “Israel Apartheid”. No specific evidence was proffered by either B’nai Brith, or QuAIA, to support such claims. Thus, in face of there being no evidence filed to support such an allegation, the Board rejected the claims as raised by both parties, and Mr. Coates and Mr. Green saw no other reason for Mr. Khouri to recuse

himself. Mr. Campbell advised the Board that if no reasonable apprehension of bias was found he nevertheless was willing to proceed on the merits.

4. Additionally, QuAIA raised a preliminary complaint alleging that it did not have sufficient knowledge of the case it had to meet, and that it was unfair to force it to proceed on Wednesday June 27<sup>th</sup>, 2012. The Board considers that QuAIA was, and is, well aware of the fundamental reasons raised by B'nai Brith concerning its objection to QuAIA participating in the Pride Parade. The question of whether QuAIA should be permitted to march has, for some time, been the subject of much public discussion, debate, and controversy. QuAIA has been part of that public discussion. The Request for Dispute Resolution form filed by B'nai Brith (no:4 Agreed upon Record) very clearly sets out the grounds for objection raised by B'nai Brith, and thus, the Board finds that QuAIA is fully aware of the fundamental case it has to meet. Further, the reality is that the Pride Parade is set for Sunday, July 1<sup>st</sup>, 2012, and a decision must be rendered before that date in order for the parties to be able to govern themselves, as well as Pride Toronto. To use a time honoured legal phrase, "time is of the essence". Thus, QuAIA's preliminary objection is dismissed.

## 5. **OVERVIEW**

The core of B'nai Brith's objection to QuAIA taking part in Pride Toronto's march is that QuAIA's very name, and messaging, breaches Pride Toronto's policies, including its anti-discrimination policy, and the City of Toronto's Anti-Discrimination Policy, as well as the Ontario Human Rights Code. Further, B'nai Brith claims that QuAIA by its very name, and messaging, is "far from inclusive and violates the required undertaking to respect all members of the communities participating in Pride Week events".

6. QuAIA adopts the position that its name, or messaging, does not constitute an expression of hatred, or anti-Semitism, against Israel, or the Canadian Jewish community, but rather is a statement of opposition to the policies of the Government of Israel towards the Palestinians, both those holding Israeli citizenship and living in Israel,

and those living in the West Bank and Gaza. QuAIA considers that it is engaged in expressing its views and opinions as part of a broad public political debate regarding the on-going Middle East conflict.

7. The Board of Arbitration draws its mandate from, and is governed by, the 2012 Pride Parade Terms and Conditions, the relevant ones being referred to in paragraph 9, below. In brief, the central issue can be summarized as to whether B'nai Brith has proven by its evidence that QuAIA acts in a discriminatory manner by its very existence and messaging, or whether QuAIA is properly characterized as an organization of individuals who have come together for a common political purpose which they wish to pursue by taking part in Pride Toronto's Parade, and thus, should be protected by the *Canadian Charter of Rights and Freedoms* [Section 2(b) – Freedom of Opinion and Expression].

## 8. GENERAL FACTS

At the commencement of the hearing on the merits the Board marked the following documents upon agreement of the parties:

- i) A blank 2012 Toronto Pride Parade Application Form.
- ii) QuAIA's application form.
- iii) The request for dispute resolution filed by Leon Kushner.
- iv) The request for dispute resolution filed by B'nai Brith.
- v) The 2012 Pride Parade Terms and Conditions.
- vi) Pride Toronto's 2012 Anti-Discrimination Agreement.
- vii) Pride Toronto's Dispute Resolution Process.
- viii) Pride Toronto's Parade 2012 List.
- ix) City of Toronto's Declaration of Non-Discrimination.

9. The following are the terms and conditions required by Pride Toronto of those organizations who wish to participate in the Parade, and which are directly relevant to the complaint:

i) “3. The Applicant hereby declares that policies upholding equal opportunity and non-discrimination have been adopted, by which discrimination on the grounds of Race, Colour, Creed, National Origin, Religious or Political affiliation, Sex, Age, Personal or Family Relationships, Disabilities, HIV/AIDS, Income Restriction, Union Affiliation, Sexual Orientation and Gender Orientation is prohibited by the organization/business or individual”.

ii) “6 a) The Applicant will not present any messages – verbal, written, in imagery or otherwise – that promotes or condones violence or the incitement of hatred as defined in the Criminal Code of Canada”.

iii) “6 c) The Applicant agrees that all messages delivered during the participation in the Parade and March will remain non-violent and in accordance with the guidelines above, the City of Toronto’s Anti-Discrimination Policy and Pride Toronto’s Freedom of Expression policy”.

iv) “6 d) The Applicant will tailor its messaging to be in accordance with:

i) the theme of the 2012 festival; or

ii) Pride’s Global Human Rights for Queers (international human rights) program, or

iii) messages in solidarity with the LGBTTIQQ2SA communities”.

#### 10. **B’nai Brith’s Evidence**

B’nai Brith submitted a copy of a page from QuAIA’s web site (Exhibit 2), being a photo of a QuAIA banner hung from the roof of Wellesley Station (at the Yonge Street intersection) which calls for gays to boycott Israeli tourism, and which was hung during the 2011 Parade when QuAIA did not take part in the Parade. Although, the banner is unreadable in the photo Mr.Campbell, on behalf of his client, conceded the wording. The exhibit was tendered, according to B’nai Brith, to show that one could not trust QuAIA, as although not marching in 2011, they still attempted to expose their message, and could not be trusted if permitted to participate in this year’s Parade.

11. B’nai Brith also filed its “2011 Audit of Anti-Semitic Incidents: National Executive Summary” (Exhibit 3). The purpose of such information was to provide a basis for the claim that anti-Semitic activity follows on, or flows from, anti-Israel activity.

12. B'nai Brith also wished to file in evidence a video made by a Mr. Gladstone, which showed QuAIA activity with voice over commentary by Mr. Gladstone. Mr. Campbell, on behalf of QuAIA objected to the admission of such evidence unless Mr. Gladstone was going to be called as a witness by B'nai Brith. The Complainant wished to file the video for the truth of its content, including the voice over comments by Mr. Gladstone. Given the questions which QuAIA's counsel wished to ask Mr. Gladstone, both about the manner in which the video had been compiled, and the voice over comments by Mr. Gladstone, the Board ruled that it would not permit the admission of the video unless Mr. Gladstone was called as a witness, as it otherwise constituted hearsay evidence.

**13. B'nai Brith's Submissions**

Although not a complete recitation of all her submissions, in essence Ms. Bromberg submitted that Pride Toronto should celebrate Gay Culture and should not, as she described it, "be a route for anti-Israel propaganda". She objected to the use of the Toronto Pride Parade as a means to promote "ludicrous slander", and its alleged consequences. She submitted that QuAIA's participation is contrary to Toronto Pride's principles of fostering and developing communities. She characterized the words "Israel Apartheid" as "slander and misinformation". She advised that she visited QuAIA's web site and made a number of claims about its content. However, B'nai Brith provided no evidence of the actual content of QuAIA's website, and no attempt was made to file extracts. Thus, we can make no findings in that regard.

14. Ms. Bromberg, understandably, conceded that QuAIA's name and its messaging did not meet the standard required to be considered "hate speech", or "incitement to hatred, or to violence", pursuant to the Criminal Code of Canada. That being the case, section 6a) of Pride's Terms and Conditions for participants, cited above, has clearly not been breached by QuAIA, and that ground of objection need no longer be analyzed.

15. In response to a question from the Board, Ms. Bromberg suggested that no organization should be permitted to participate in the Pride Parade if it is espousing a

political message arguably unconnected with LGBT issues, even if pro-Israel. Thus, B'nai Brith's objection was focused on the alleged harm, and adverse impact, of the use of the word "Apartheid" as applied to Israel. Due to that alleged adverse impact Ms. Bromberg submits that QuAIA's messaging is simply not consistent with the general vision of Pride Toronto for 2012, being to "Celebrate and Demonstrate". Ms. Bromberg also submitted that that the Board should be guided by the votes of Toronto City Council, and the Ontario Legislature, which effectively decided that QuAIA's name, and messaging, was offensive.

#### **16. QuAIA's Evidence**

QuAIA submitted a brief of supporting documents upon which it wished to rely. Ms. Bromberg, on behalf of the Complainant, objected to some of the documents proffered. Section 1, of QuAIA's brief, contained the "Findings" of the "South African Session of the Russell Tribunal on Palestine", (2011) in which Israel did not participate, and the "Executive Summary" of a study by the South African "Human Sciences Research Council" on the Human Rights situation in the West Bank and Gaza, in which Israel also did not participate.

17. Section 2, of the brief of documents, contained a series of articles, or comments, by such prominent Israelis as Ehud Barak, Shulamit Aloni (former Education Minister of Israel), Daniel Blatman (Holocaust Researcher and Head of the Institute for Contemporary Jewery, at Hebrew University, Jerusalem), and other prominent international personalities such as Bishop Desmond Tutu, and Canadian MP Irwin Cotler, all touching on the question of whether it is permissible to raise the allegation that the policies of successive Israeli governments has been to create a situation of apartheid, or a situation akin to apartheid, vis-à-vis the Palestinians in the West Bank and Gaza.

18. Section 3, of the brief of documents, contained the Staff Report prepared for the Executive Committee of the City of Toronto, dated April 2, 2011, concerning whether Pride Toronto was in compliance with the City's Anti-Discrimination Policy by permitting

QuAIA to participate in the Pride Parade 2011. B'nai Brith had no objection to the inclusion of this report, with an update being added.

19 Section 4, of the brief of documents, contained a series of articles, or letters, supporting QuAIA's attempt to participate in the Parade.

20. Mr. Campbell argued that he was not filing the documents for the truth, or correctness, of the views set out, but only for the purpose of establishing that the question of whether Israel's government is treating the Palestinian communities in the West Bank and Gaza in a manner which could justifiably be labeled as "apartheid", or akin to "apartheid", has been, and continues to be, debated openly in the media and elsewhere. Further, that there are many Israelis themselves who raise the question, and are highly concerned about that label being correct. Thus, the Respondent adopts the position that there is nothing legally improper in QuAIA using the term "apartheid" in either its name, or it's messaging. According to QuAIA it is mirroring a term widely used in the general public debate concerning the Israeli - Palestinian conflict.

21. The Board considered the arguments of counsel, and found that it would permit the admission of those documents contained in Sections 1, and 2, solely for the purpose of establishing factually that the term "apartheid" has been used, and continues to be used, in the general public discourse in Israel and elsewhere, by those prominent, and not so prominent. The Board does not make, and need not make, any findings as to the correctness of the political views expressed one way, or another, in those documents. Section 3 was admitted with updated material being filed on consent as Exhibit 5. As regards Section 4 the Board did not permit such "personal views and opinions" to be admitted. In general, they are simply letters of support, and put bluntly, our task is not to decide the issues through a popularity contest. Such views would be of little, if no weight, in the Board's deliberations.

22. The Board also would not permit an article by Jonathan Kay, from the National Post, to be admitted, as it was simply an attack upon B'nai Brith by Mr. Kay, and of no relevance to the issues before this Board.

23. The Respondent called viva voce evidence from Mr. Tim McCaskell, and Professor Sara Schulman. Mr. McCaskell testified that Gay Pride grew out of a 1974 Gay Freedom Day, and accompanying political movement. Mr. McCaskell joined the Body Politic, being a member of its board for twelve (12) years. He has also been active on the Right to Privacy Committee, the Simon Nkoli Anti-Apartheid Committee (Mr. Nkoli having been imprisoned by the white South African government), and Aids Action Now. Mr. McCaskell, who is currently a member of QuAIA, rejected the notion that QuAIA is "too political" for Pride Toronto. He believes that Pride Toronto presents a "broad tent" capable of including much diverse opinions, including religious groups, and political parties, having their own representation.

24. Mr. McCaskell stated that QuAIA does not espouse discrimination, or hatred, of Jews. He advised that there are many Jewish members of QuAIA, and that the organization does not permit anti-Semitism or Islamaphobia at any of its meetings, or activities. In fact, he testified that it is made clear at the beginning of any QuAIA meeting that expressions of racism or intolerance are not permitted. He stated that the group supports queers in Palestine, and makes public what he characterized as the "conditions of apartheid" of the Palestinian people. He was not challenged on this evidence upon cross-examination by Ms. Bromberg.

25. When asked by a Board member as to why the respondent uses the word "apartheid", Mr. McCaskell stated that it draws a parallel to South Africa, and the campaign of "boycott, divestment and sanctions" waged against it, and develops solidarity amongst the members more easily.

26. Professor Sara Shulman also provided viva voce evidence. She is the Distinguished Professor of Humanities at the City University of New York. She is a

Fulbright Scholar in Judaic Studies. She is a Fellow at the New York Institute for Humanities at New York University. She is on the Advisory Council of the Centre for Human Rights at the Harvard Kennedy School. She is also the author of seventeen (17) books. She advised that she is Jewish, and not a member of QuAIA.

27. Professor Shulman testified that she has studied the question of Palestine and Israel extensively, and stated that the dialogue surrounding the words “Israeli Apartheid” is part of a “Global Movement” which is currently taking place. In fact, the week prior to this hearing, a group named QuAIA marched in the New York City Pride Parade, without any issues being raised by anyone. From her perspective, QuAIA has relationships with Palestinian queer groups – in the West Bank, Gaza, and Israel. QuAIA is a global phenomenon – not one merely occurring in Toronto. Accordingly, QuAIA’s stance accords with Pride Toronto’s messaging for 2012, which includes Global Human Rights for Queers, and is in solidarity with LGBTTIQQ2SA communities in other parts of the world.

28. Ms. Schulman testified that she has personally marched in gay pride parades with groups representing causes with which she profoundly disagrees. Nonetheless, she supported their right to march. Additionally, she has experience with the issue of what she termed “Pink Washing” – a phenomenon where she stated the Israeli government attempts to use its “good” treatment of gays and lesbians as a method of “Pink Washing” its treatment of Palestinians. The level of gay rights in a society tends to symbolize modernity. In her view, QuAIA is sending the message that “we (gays and lesbians) are everywhere”. Upon cross-examination by Ms. Bromberg, Ms. Schulman stated that “any scholar of Jewish history knows that there has always been a diversity of opinion with respect to nationalism”. In her opinion, there is no such thing as a single Jewish perspective. She stated that she believed B’nai Brith was taking a similar position on this issue as members of the Likkud party.

29. At the same time, Professor Schulman understood why people would/could feel offended by the “apartheid” claim. She offered that it was very difficult for many in the

Jewish community to hear such claims. When asked if there were not a better way of getting its message across, Professor Schulman responded that there never has been uniformity of opinion surrounding these issues.

30. **QuAIA's Submissions**

The core arguments on behalf of the respondent are that, 1) The concession by the Complainant that the use of the word “apartheid” in QuAIA’s name, or messaging, does not meet the definition of hate, or hate speech, or incitement to violence, pursuant to the Criminal Code of Canada supports a dismissal; 2) That the question of whether Israel’s government can be accused of creating a situation of apartheid, or something akin to apartheid, is the subject of ongoing open debate throughout the world, and the exhibits of QuAIA, the evidence of Professor Schulman and Mr. Tim McCaskell, support that proposition; 3) That the use of the word “apartheid” either in QuAIA’s name, or messaging does, not constitute “discrimination” as used in Pride Toronto’s policies, nor those of the City of Toronto; and 4) That the Board should apply *Charter* values to the manner in which we interpret Pride Toronto’s policies so as to give weight to Section 2(b) – Freedom of Expression and Opinion.

31. **Reasons**

As has been stated in paragraph 14 herein, the Complainant conceded that QuAIA’s name and messaging does not breach the Criminal Code of Canada, and thus there is no breach by QuAIA of Pride’s Section ii) 6 a) of Pride’s terms and conditions of participation.

32. As regards the claim that QuAIA is guilty of “discrimination”, as used in Pride’s policies and the City of Toronto’s Anti-Discrimination Policy, the first observation is that the City’s own Staff Report (found at Exhibit 4, Section 3) stated that it was Staff’s conclusion that QuAIA does not violate the City’s Policy, and set out their detailed reasons, which need not be repeated. It is true, that such a report is not binding upon us, but it does place in context the debate which took place before Toronto Council, and which culminated in a different result from its own staff’s subsequent opinion. Suffice to

say, that there are many reasons why politicians may have engaged in the debate about QuAIA in the first place, and many reasons why they voted as they did, all likely unrelated to the strict legalities of the situation. Thus, Ms. Bromberg's submission that we should be swayed by the vote of Toronto Council is not persuasive. If the Complainant truly believed that QuAIA has been engaging in "discriminatory practices" one could wonder why it, apparently, has never filed a complaint with the Ontario Human Rights Tribunal during the past years. Although not conclusive, such lack of action certainly leaves a doubt as to whether B'nai Brith truly believes it stands on solid legal ground.

33. As regards the use of the word "discrimination", the following quotes have been relied upon by both Courts and Human Rights Tribunals on a regular basis. Namely:

"In *Battlefords and District Co-operative Ltd. v. Gibbs*, [1996 CanLII 187 \(SCC\)](#), [1996] 3 S.C.R. 566 at para. 20, the Supreme Court of Canada addressed what it called "the appropriate definition of discrimination", and quoted with approval from pp. 173-75 of *Andrews v. Law Society of British Columbia*, [1989 CanLII 2 \(SCC\)](#), [1989] 1 S.C.R. 143:

What does discrimination mean? The question has arisen most commonly in a consideration of the Human Rights Acts and the general concept of discrimination under those enactments has been fairly well settled. There is little difficulty, drawing upon those cases in this Court, in isolating an acceptable definition.... I would say then that discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed on others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.

The Ontario Court of Appeal in *Ontario (Disability Support Program) v. Tranchemontagne*, [2010 ONCA 593 \(CanLII\)](#), 2010 ONCA 593 at para. 109 stated that:

"...the onus of prov[ing] discrimination on a balance of probabilities remains on the claimant throughout". It also stated, at para. 104:

However, in my opinion, the goal of protecting people from arbitrary or stereotypical treatment or treatment that creates disadvantage by perpetuating prejudice is actually incorporated into two stages of the *prima facie* case analysis: i) determining whether the treatment in issue truly creates a disadvantage; and ii) determining whether the protected ground or characteristic truly played a role in creating the disadvantage.

34. Has the Complainant met the onus, which it bears, of proving that QuAIA by its name, and messaging, is engaging in stereotypical treatment, or treatment that creates a disadvantage by perpetuating prejudice against either Israel, or those who are Jewish? Has QuAIA by its name and messaging created a distinction, whether intentional or not, but based on the personal characteristics of an individual or group which imposes burdens or disadvantages?

35. The first problem the Complainant faces is defining which “person or group” it is seeking to protect. Is it Israel - the country, or Israel’s government, or Jewish Israelis (as there are also Palestinian Israelis, as well as the Druze who are Israeli). The Complainant never really analyzed this aspect of the definition of discrimination for the Board. Rather, although everything QuAIA is engaged in relates to Israel, either as a country, or its government, B’nai Brith attempts to argue that such negative public discussion by QuAIA affects the Jewish community within Canada, and thus impliedly it should be seen as creating a disadvantage for the Canadian Jewish community, and thus discriminates against Canadian Jews in general. For the Complainant the “personal characteristic” of the group seems to be those who are Jewish, which clearly establishes a group identified by “creed”.

36. However, the problem with the Complainant’s theory is that we were not provided any credible evidence that could substantiate a clear causal connection between the political actions of QuAIA, and any acts of anti-Semitism which may have been committed against the Jewish community, whether it was vandalism to synagogues, or anti-Semitic comments by persons unconnected to QuAIA. For example, it may well be that there are occasions where some unknown member of the public acts out in a discriminatory manner against Jews, or the Jewish community, after watching a newscast showing QuAIA marching in a Gay Pride march. However, how is that provable without providing credible evidence to support such a nexus? Additionally, even if such evidence had been forthcoming is that something for which QuAIA should then bear responsibility? On these facts we think not.

37. If QuAIA's message could clearly be characterized as a "diatribe against Jews", such as one finds in the *Keegstra* case, then it is easily argued that they must have intended that the natural consequences of their "speech" would be to influence others, and incite them to acts of anti-Semitism, and maybe violence. However, simply by adopting a political view that a country, or its government, is engaging in policies which creates something akin to apartheid, or apartheid itself, affecting an identifiable group cannot possibly fall within the accepted definition of "discrimination". Having reached that conclusion, it is not necessary for us to complete the analysis of the other components of the definition of "discrimination". Thus, Section iii) 6 c) of Pride's terms and conditions have not been breached by the Respondent. It follows that neither can the Complainant establish a breach of Ontario's Human Rights Code, as the definition of "discrimination" bears no different a meaning under the Code.

38. Finally, QuAIA argues that the Board should interpret Pride Toronto's policies in light of the *Charter*. As regards Section 2(b) one of the most persuasive pronouncements is that of Chief Justice McLachlin has stated in *Harper v Canada (A-G)* [2004] 1 S.C.R. 827:

"12. The right of the people to discuss and debate ideas forms the very foundation of democracy; see *Reference re Alberta Statutes*, [1938 CanLII 1 \(SCC\)](#), [1938] S.C.R. 100, at pp. 145-46. For this reason, the Supreme Court of Canada has assiduously protected the right of each citizen to participate in political debate. As Dickson C.J. stated in *R. v. Keegstra*, [1990 CanLII 24 \(SCC\)](#), [1990] 3 S.C.R. 697, at p. 764, "[t]he state therefore cannot act to hinder or condemn a political view without to some extent harming the openness of Canadian democracy and its associated tenet of equality for all.

**14. Permitting an effective voice for unpopular and minority views — views political parties may not embrace — is essential to deliberative democracy.** (bolding added). The goal should be to bring the views of all citizens into the political arena for consideration, be they accepted or rejected at the end of the day. **Free speech in the public square may not be curtailed merely because one might find the message unappetizing or the messenger distasteful** (bolding added) (*Figuroa, supra*, at para. 28):

Put simply, full political debate ensures that ours is an open society with the benefit of a broad range of ideas and opinions. . . . This, in turn, ensures not only that policy makers are aware of a broad range of options, but also that the determination of social policy is sensitive to the needs and interests of a broad range of citizens.

Participation in political debate "is . . . the primary means by which the average citizen participates in the open debate that animates the determination of social policy"; see *Figuroa*, at para. 29.

15. The right to participate in political discourse is a right to effective participation — for each citizen to play a “meaningful” role in the democratic process, to borrow again from the language of *Figueroa*. In *Committee for the Commonwealth*, *supra*, at p. 250, McLachlin J. stated that s. 2(b) aspires to protect “the interest of the individual in effectively communicating his or her message to members of the public” (emphasis added). In the same case, Lamer C.J. declared that “it must be understood that the individual has an interest in communicating his ideas in a place which, because of the presence of listeners, will favour the effective dissemination of what he has to say” (emphasis added); see *Committee for the Commonwealth*, at p. 154.

16. The ability to engage in effective speech in the public square means nothing if it does not include the ability to attempt to persuade one’s fellow citizens through debate and discussion. This is the kernel from which reasoned political discourse emerges. Freedom of expression must allow a citizen to give voice to her vision for her community and nation, to advocate change through the art of persuasion in the hope of improving her life and indeed the larger social, political and economic landscape; see *R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, [2002 SCC 8 \(CanLII\)](#), [2002] 1 S.C.R. 156, 2002 SCC 8, at para. 32; *U.F.C.W., Local 1518 v. KMart Canada Ltd.*, [1999 CanLII 650 \(SCC\)](#), [1999] 2 S.C.R. 1083, at para. 43.”

39. It is unnecessary for the Board to decide whether Toronto Pride is bound by the *Charter*. It is sufficient for us to interpret and apply Toronto Pride’s policies in a manner consistent with *Charter* values. It would be ironic in the extreme not to apply such principles of interpretation found in such a fundamental constitutional document, and which has provided the LGBTTIQQ2SA community with such enormous legal gains over the recent years.

40. Thus, although many may be offended by its name, and political message, it would be wrong for this Board to find that such activity, and exercise of freedom of expression and opinion, breaches Pride Toronto’s policies. In fact, the argument was made, and supported by the evidence, that such “messaging” is in keeping with Pride’s terms and conditions found at iv) 6 d) ii), set out in paragraph 9 above, and we so find.

41. Thus, we find that:

- i) The activities of QuAIA are not contrary to the core missions or policies of PrideToronto;
- ii) The activities of QuAIA described in the Complaint, and at the hearing, are not likely to present images or messages that promote, condone, or may

promote or condone violence, hatred, degradation, or negative stereotypes of a person or group, contrary to the City of Toronto's Anti-Discrimination Policy, or the Ontario Human Rights Code;

iii) Therefore, that the Complaint of B'nai Brith is dismissed.

DATED AT TORONTO this 9th day of July, 2012

***Robert G. Coates***

***Maurice A. Green***

***Raja Khouri***

Panel members