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## HUMAN RIGHTS COMMISSIONS

### Albertans can now speak a little freer than before



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Residents of Alberta can now speak almost as freely about controversial issues as residents of Eastern Canada, thanks to a ruling handed down by the Alberta Court of Queen's Bench on Dec. 3.

The decision involved Stephen Boissoin, an Alberta pastor who in 2002 wrote a letter to his local newspaper, the Red Deer Advocate, expressing his fierce opposition to what he called the "wicked homosexual agenda" for Alberta's schools.

He was charged under Alberta law with having published a statement that was "likely to expose a person or a class of persons to hatred or contempt" because of sexual orientation. After a hearing before the Alberta Human Rights Commission, he was ordered in 2008 to pay damages of \$5,000. He was also saddled with a lifetime ban on publishing "disparaging remarks about gays and homosexuals."

On the appeal, Mr. Justice E. C. Wilson of the Alberta court gave the rights panel a well-deserved spanking, holding that Mr. Boissoin's remarks had not violated the law, and that the remedies imposed by the panel were "either unlawful or unconstitutional."

But the appeal involved more than the question of Mr. Boissoin's guilt. Also at stake was the constitutionality of the law under which he was charged. A key point stressed by Judge Wilson was that in order to be constitutionally

valid, paragraph 3(1)(b) of the Alberta Human Rights, Citizenship and Multiculturalism Act had to be connected with a constitutionally legitimate purpose. Provincial legislatures have the power to outlaw discrimination in the provision of goods, services, accommodations, employment, etc. Accordingly, statements linked with a discriminatory practice – for instance, the infamous signs of the 1940s: "No Jews, blacks or dogs allowed" – can legitimately be outlawed by provincial legislation.

But statements lacking any link to a discriminatory practice, even if hateful or contemptuous, are outside the scope of what Canada's Constitution permits provincial legislatures to deal with, the court held: "... the purpose of the section cannot be to simply restrain hateful or contemptuous speech per se. Such legislation would be *ultra vires* the province."

There is a little-known dividing line separating Canada's three westernmost provinces from the rest. The legislatures of British Columbia, Alberta and Saskatchewan have all gone politically correct, larding their so-called human rights laws with apparent standalone interdictions of offensive speech.

Saskatchewan's Human Rights Code is the worst example, prohibiting any statement that "ridicules, belittles or otherwise affronts the dignity of any person" on a prohibited ground. This broad abrogation of free speech rights is sandwiched absurdly between two other sections of the code guaranteeing freedom of expression. What were Saskatchewan legislators thinking when they passed this self-contradictory law?

In Eastern Canada, provincial legislatures appear to have better appreciated the consti-

tutional limitations on their powers. Ontario's Human Rights Code, for instance, prohibits signs or notices announcing an intention to discriminate, or inciting others to discriminate, in employment, housing, services, etc. However, it does not contain a free-standing prohibition on expression for mere hateful, contemptuous or belittling words.

Judge Wilson's ruling therefore brings Alberta's law into line with that of Eastern Canada – assuming that the personnel at Alberta's Human Rights Commission will be conscientious about applying it. Unfortunately, the judge neither struck down the offending paragraph nor required the Alberta Legislature to amend it formally. Instead, it was left sitting on the books, a siren call for the easily offended who don't read legal precedents to submit groundless complaints to the commission. The commission, in turn – if its other members are as ignorant of the law as the panelist who decided the Boissoin case – might simply choose to prosecute and let the appeal courts decide whether they have been overzealous.

The ruling also brings Alberta's law back within the constitutional boundaries it occupied prior to the 1996 enactment of paragraph 3(1)(b). In vigorous debates this past summer over Bill 44 (Alberta's new Human Rights Act), many Albertans had advocated repealing the offending paragraph. The government declined such suggestions, re-enacting it without any significant changes. Now the court has virtually repealed it for them after all. Isn't it time the Alberta Legislature cleaned up its Act?

» The Canadian Constitution Foundation intervened in the court case in favour of freedom of expression.



**Stephen Boissoin**

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