

A small battle won for freedom of expression

The Cranky Professor

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Stephen Boissoin, a former pastor in Alberta, thinks that children “are being warped into believing that same-sex families are acceptable; that men kissing men is appropriate.” Mr Boissoin urges us to “take whatever steps are necessary to reverse the wickedness.... Where homosexuality flourishes, all manner of wickedness abounds.”

These sentences are from a letter Mr Boissoin sent to the Red Deer *Advocate*. The *Advocate* published that letter on 17 June 2002.

Another Albertan complained to the Alberta Human Rights Commission that Mr Boissoin's letter was likely to expose homosexuals to hatred or contempt and that Mr Boissoin had, thereby, violated Section 3(1)(b) of the Alberta Human Rights, Citizenship and Multiculturalism Act. On 30 November 2007, an Alberta Human Rights Panel found that Boissoin had indeed violated that section.

The Panel ordered Mr Boissoin to cease making “disparaging remarks” about homosexuals, to write an apology to the complainant, to ask the *Advocate* to publish that apology, to pay the complainant \$5,000, and to pay another party up to \$2,000. Mr Boissoin appealed the decision to the Alberta Court of Queen's Bench.

On 3 December 2009, Justice E.C. Wilson ruled in favour of the appeal. The Panel had no authority to order Mr Boissoin not to speak his mind and no authority to compel an apology. And, said Justice Wilson, the Panel erred in finding the letter to constitute hate speech. Whatever one might think of it, the letter was not an expression of hate or contempt.

Justice Wilson did not, however, rule against Section 3(1)(b). Yet he agreed with Mr Boissoin's lawyers that hate speech is a federal matter, not a provincial one.

Justice Wilson noted that since tenancy, goods and services, facilities, and employment are under provincial jurisdiction, they can properly be addressed in provincial human rights legislation. But, according to Justice Wilson, that implies that for speech to violate the province's act, it must indicate an intention to discriminate in the provision of one of the above.

Speech the provinces can regulate, then, is restricted to such things as ads for jobs or housing and signs in restaurant windows. If Justice Wilson's reasoning is sound, then our own commission, the Nova Scotia Human Rights Commission, oversteps its authority when it investigates hate speech complaints not directly related to discrimination in housing, employment, facilities, or services.

This win for freedom of expression follows a significant development last September, when Athanasios Hadjis, of the Canadian Human Rights Tribunal, expressed his opinion that the penalty provisions recently added to the Canadian Human Rights Act have rendered unconstitutional the censorship section of that Act. In light of his opinion, Judge Hadjis declined to uphold a complaint that Marc Lemire had spoken hatefully on his website, though the judge agreed that Mr Lemire had, indeed, spoken hatefully.

Those who support laws against the expression of hate worry that the effect of these rulings is to make it more and more difficult for commissions and tribunals to apply these laws. And, in truth, these rulings do make it hard to apply censorship laws. But that effect is to be welcomed, not feared. It is to be welcomed by all of us—not just by those of us who value freedom of expression for its own sake, but by anyone concerned to promote equality and fairness.

Hearing what Stephen Boissoin has to say about homosexuality and the homosexual agenda, even were it hateful, requires us to dispense with platitudes and to get down to the hard business of arguing for our position and explaining where the other side goes wrong. If Mr Boissoin is forbidden to speak his mind, we're deprived of a target to examine and critique. Even more, we are without opportunity to try to change the minds of those who agree with him.

The movement toward equality for homosexuals and acceptance of homosexuality constitutes one of the great stories of liberation of our time. We must remember that most of the success lesbians and gays have had came without help from hate speech legislation—and, indeed, depended on the frank discussion of the fears and distress of those opposed to equality and acceptance. Attitudes changed because of discussion.

Laws against the expression of hate are enemies of candidness and openness. Thus they are enemies of frank discussion. Frank discussion, though, is what we need if we're to move what Mr Boissoin calls the homosexual agenda forward. At least it is for those of us who hope soon to delight in a society in which men kiss men in public and no one minds.