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There's no Monopoly on Truth

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Should a man be forced to pay \$17,500 to four individuals who felt offended by the flyers he distributed?

The Saskatchewan Court of Appeal will answer this question when it considers the appeal of William Whatcott this September.

In 2001 and 2002, Mr. Whatcott peacefully distributed flyers in Regina and Saskatoon. His flyers expressed opposition to teaching children in public schools about homosexuality, and also expressed, in polemical language, his religious objections to homosexual behaviour and the gay lifestyle. Some of the flyers were photocopies of a page from the gay magazine *Perceptions*, which included a personal classified ad stating "searching for boys/men for penpals, friendship, exchanging video, pics & Your age, look & nationality is not so relevant." On the photocopied page, Mr. Whatcott wrote: "Saskatchewan's largest gay magazine allows ads for men seeking boys!"

In response to complaints from four individuals whose feelings were hurt by the flyers, Mr. Whatcott was prosecuted under Saskatchewan's human rights law, ordered to pay \$17,500 to the complainants and ordered to refrain from distributing the same or similar flyers.

Like the human rights complaints against Maclean's magazine for having published excerpts from Mark Steyn's book *America Alone*, this case pits Canadians' historic right to freedom of expression against human rights legislation that attempts to prevent hurt feelings.

The Canadian tradition of tolerance for polemical speech, even if considered hateful or extreme in its context, predates the Charter. In 1951 the Supreme Court of Canada acquitted a Jehovah's Witness of seditious libel for distributing a

pamphlet entitled *Quebec's Burning Hate for God and Christ and Freedom Is the Shame of All Canada*, which contained extremely offensive statements about Quebec society, the clergy and the courts. Even if some listeners perceive it as hateful, polemical speech plays a crucial role in public debate.

In *R. vs. Zundel* and other cases, the Supreme Court of Canada has made it very clear that the purpose of freedom of expression is to protect minority beliefs that the majority regard as wrong or false or offensive, and to prevent the majority's perception of "truth" or "public interest" from smothering the minority's perception. In *Edmonton Journal vs. Alberta*, the Supreme Court of Canada declared that "it is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression. Indeed a democracy cannot exist without that freedom to express new ideas and to put forward opinions." The concept of free and uninhibited speech permeates all truly democratic societies and institutions." In *Reference re Secession of Quebec*, the Supreme Court declared that nobody has a monopoly on truth, and that our democracy is predicated on faith in the marketplace of ideas: The best solutions to public problems will rise to the top.

In addition to freedom of expression, the Whatcott appeal also concerns freedom of religion, which the Supreme Court has defined as "the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination."

Religious teachings against adultery,

fornication, common-law relationships and homosexual behaviour run afoul of human rights codes because some listeners can easily perceive the teachings as "discriminatory" or "hateful" on the basis of marital status, family status and sexual orientation. The Whatcott appeal highlights the direct conflict between religious freedom and restrictions on "discriminatory" speech in human rights legislation.

When a man is ordered to pay \$17,500 to people offended by flyers that he peacefully distributed, it sends a chilling message to all citizens: "Be very, very careful about what you say, and when in doubt, remain silent. Avoid the risk of a human rights prosecution that publicly brands you as 'hateful' or 'bigoted,' and avoid the risk of paying a hefty fine, and incurring massive legal bills." This chilling effect on citizens freely expressing themselves undermines the quest for truth, the marketplace of ideas and democracy itself.

Canadian courts will continue to be asked to balance the constitutional rights of religious freedom and freedom of expression with a new legislative "right" to be free from hurt feelings. This conflict will end only when politicians, courts and the Canadian public recognize that a right to offend through free speech cannot be reconciled with a right to be "free from" offence caused by another citizen's peaceful expression.