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Politicians, not courts, at fault for assault on free speech

by JOHN CARPAY

Should Bill Whatcott be required to pay \$17,500 to four individuals who were offended by the flyers he distributed? In 2001 and 2002, Whatcott distributed flyers articulating his opposition to teaching homosexuality in Saskatoon's public schools. In making his case that this would harm children, he said "Sodomites" were trying to spread their "filth" and "perversion." The Saskatchewan Court of Appeal must rule on whether the contents of Whatcott's flyers are "extreme" enough to justify this \$17,500 human rights tribunal ruling. The court's job is not easy because extremism, like beauty, is in the eye of the beholder and the meaning of "extremism" changes with time. Forty years ago, sodomy was a Criminal Code offence and same-sex marriage would have been an "extreme" proposal. Today, same-sex marriage is legal and it would be considered "extreme" to re-criminalize sodomy. What qualifies as "extreme" depends entirely on the subjective perception of the viewer or listener.

In a Regina courtroom last Friday, the lawyer for the Saskatchewan Human Rights Commission repeatedly asserted that the content of the flyers was "extreme" and "hateful." She also admitted citizens opposed to teaching school children about homosexuality do have the right to speak out and can even use "strong" language to do so, but not "extreme" or "hateful" language. She spoke as though the difference between "strong" and "extreme" is obvious; as though Canadians are unanimous in where they draw the line. But as this court case and others demonstrate, Canadians draw the line in many different places. Which begs the question: why should the government take sides in public policy debates by prosecuting those who advocate politically incorrect views? As long as the expression is peaceful, why not let

Canadians listen to all views (even "extreme" ones) and make up their own minds on matters of politics, religion and morality? Canada's human rights laws continue to put courts in the difficult position of having to decide if expression is sufficiently "extreme" or "hateful" to justify the government's prosecution of Canadians who express politically incorrect views. In similar fashion, Canadians are put in the impossible position of having to predict with accuracy whether their social, political, moral or religious commentary will be considered "extreme" or "hateful" by human rights bureaucrats. Since most Canadians can't afford to spend tens of thousands of dollars defending themselves against human rights prosecutions, and since most citizens are not capable of handling the stress of a prosecution that can drag on for years, and since most people would be horrified to see themselves publicly branded as "bigoted" or "hateful" by the process, people do what appears wise under the circumstances: they censor their own speech. Any subject that might involve race, gender, sexual orientation, age, or religion (eg. immigration, same-sex marriage, Islamist terrorism) is now clouded by the spirit of fear because saying something "discriminatory" may well land you in hot water with human rights commissions.

This problem is not unique to Saskatchewan. In Alberta, Ed Stelmach's government refuses to alter the human rights legislation that saw Roman Catholic Bishop Fred Henry prosecuted for articulating his church's opposition to same-sex marriage. The same legislation has enabled the prosecution of Rev. Stephen Boissoin for writing a letter to the editor of the Red Deer Advocate criticizing the political agenda of gay rights activists.

Boissoin has been ordered by the Alberta Human Rights Commission to pay \$5,000 to a man whose feelings were hurt by the letter, to write a letter of apology and to forever refrain from saying anything "disparaging" about homosexuals. The commission's order is unclear as to whether Boissoin can still participate in public policy debates about issues like same-sex marriage, or preach his religion's teachings on sexuality.

Our civilization's tradition of freedom of speech dates back centuries and has facilitated artistic, literary, religious, philosophical and political achievements. But human rights legislation has a chilling effect on free speech and this chilling effect undermines the very foundations of democracy, which depends on open discussion, vigorous debate and the marketplace of ideas. The chilling effect also undermines the quest for truth, which requires that every notion and idea be open to challenge.

In *Taylor v. Canadian Human Rights Tribunal*, the Supreme Court of Canada ruled these restrictions on freedom of expression do not violate the Charter. And like the lawyer for the Saskatchewan Human Rights Commission in court last Friday, the Supreme Court in *Taylor* also stressed the importance of robust, vigorous, uninhibited free speech. But this position contradicts itself. When citizens can be prosecuted for speech human rights bureaucrats deem "extreme," it effectively puts an end to vigorous and robust debate.

However, the courts are not at fault here. Premier Stelmach can change Alberta's human rights legislation and restore freedom of speech to this province. The winner of this federal election can do the same for Canada.