

# CALGARY SINCE 1883 HERALD

THURSDAY, DECEMBER 10, 2009

## Alberta is more free thanks to court ruling

by JOHN CARPAY

Last week's Alberta Court of Queen's Bench ruling in *Boissoin vs. Lund* freed one man from the government's censorship machine, and also diminished the machine's ability to censor citizens' opinions.

The Alberta government's censorship machine is paragraph 3(1)(b) of the Alberta Human Rights Act.

This law reduces our ability to speak frankly about issues of public concern if our opinion happens to touch on race, ancestry, colour, place of origin, gender, sexual orientation, religion, source of income, marital status, or family status. Anything that is "likely" to expose a person to "hatred or contempt" on the basis of one of these grounds can trigger a human rights complaint. Taxpayers fund the government's censorship machine, but those prosecuted by it must foot their own legal bills.

Under paragraph 3(1) (b), Rev. Stephen Boissoin was subjected to a "human rights" prosecution after writing a letter to the editor of the Red Deer

Advocate in 2002. His letter expressed opposition to presenting homosexuality in a positive light to schoolchildren.

Justice Earl Wilson reprinted the entire letter in his judgment, posted at [www.CanadianConstitutionFoundation.ca](http://www.CanadianConstitutionFoundation.ca).

University of Calgary professor Darren Lund complained to the human rights tribunal about the letter, triggering more than seven years of stress for Rev. Boissoin, not to mention huge legal costs, lost energy, and wasted time.

Justice Wilson set aside the Panel's Order which had required Rev. Boissoin to pay \$5,000 to Prof. Lund, to refrain from ever again making "disparaging remarks about gays," and to ask the Red Deer Advocate to publish an apology.

Paragraph 3(1)(b) reaches far beyond disagreements between gays and Christians.

Write a letter to the editor calling for more frequent driver's testing for seniors, and you may be charged with exposing people to hatred or contempt on the basis of age.

Express your opinion about integrating fundamentalist Muslims into Canadian society, or limiting immigration from certain countries, and your comments might be found "hateful" on the basis of religion or place of origin. Argue that single mothers should not receive welfare benefits if they live with a boyfriend or common-law spouse, and a contempt complaint could be filed against you in respect of source of income, marital status, or family status. Criticize current aboriginal policy and you might find yourself accused of contemptuous speech on the basis of race or ancestry.

Even if the complaint is ultimately dismissed, Albertans live under the threat of having to defend themselves against prosecutions that can be triggered by the likes of Prof. Lund.

Supporters of paragraph 3(1)(b) are correct when they point out that there should be some restrictions on speech. And Canada's Criminal Code does place restrictions on speech. It's illegal to advocate genocide, utter threats, wilfully promote hatred, and harass people through repeated unwelcome communications.

The Crown must prove its case beyond a reasonable doubt to convict a person of one of these offences.

The accused person has the right to a timely trial, and to have proper rules of evidence and procedure followed.

Not so with human rights proceedings, which can drag on for years, and which accept mere hearsay as reliable evidence.

For example, Justice Wilson took the Human Rights Panel to task for having ruled that Rev.

Boissoin's letter had contributed to an assault on a gay teenager.

There was no evidence before the panel that an assault took place.

Further, there was no evidence that the person committing the assault (if one even took place) was influenced by the letter to the editor.

This is but one example of numerous errors in the panel's procedures and reasoning, by which the panel makes itself look like a kangaroo court.

Unfortunately, Justice Wilson did not strike down section 3(1)(b) as an unconstitutional violation of free speech.

He did, however, limit the circumstances in which speech prosecutions are likely to succeed.

He ruled that only words that demonstrate a real intention to discriminate in the provision of housing, employment, services, etc., or words that incite others to discriminate in such areas, are outlawed.

This court ruling is a positive development toward restoring freedom of speech in Alberta, because it establishes that political commentary on public policy issues -- even when expressed in polemical or offensive terms -- ought not to be prosecuted.

Nevertheless, Premier Ed Stelmach should dismantle his government's censorship machine entirely.