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Sask code helps limit free speech

by JOHN CARPAY

When it comes to protecting freedom of expression, not all Canadian human rights laws are created equal. With the federal government having repealed Section 13 from the *Canadian Human Rights Act*, the *Saskatchewan Human Rights Code* remains one of only three provincial human rights statutes in Canada that undercuts free expression.

Democracy does not work when citizens lack the freedom to debate ideas and policies. Free expression serves not only the cause of expression itself, but also the causes of those advocate change in our wider social, political, and economic environment. And the right to free expression means nothing – absolutely nothing – if it applies only to speech that most people want to hear. Often the very point of free expression is to make us feel uncomfortable.

By making “discriminatory” publications illegal, human rights laws in Saskatchewan, B.C. and Alberta subvert free public discourse about issues like immigration, criminal justice, sexual morality, foreign policy, polygamy, social assistance, and aboriginal policy. These issues often require making references to ethnicity, religion, sexual orientation, and gender. Because these are prohibited grounds of discrimination under the *Code*, one can break the law simply by publically espousing an opinion on school curriculum, eligibility for social assistance, foreign policy in the Middle East, or trade with China. The potential violations are limitless.

Indeed, this is already happening. In Saskatchewan, William Whatcott was ordered to pay \$17,500 to four

complainants whose feelings were “hurt” by flyers he distributed. (This case was argued before the Supreme Court of Canada; decision forthcoming). In B.C., proceedings were brought against *Maclean's* magazine (for publishing excerpts from Mark Steyn's book *America Alone*) and comedian Guy Earle (for responding to hecklers during his stand-up comedy routine). In Alberta, public discourse has resulted in proceedings being taken against Stephen Boissoin (for a letter to the editor regarding the school curriculum), Catholic Bishop Fred Henry (for stating his Church's teaching on marriage) and Ezra Levant (for publishing the “Danish cartoons” of Mohammed in a magazine). These individuals, among others, have been forced to spend thousands (or tens of thousands) of dollars to defend against human rights complaints that were filed purely in respect of the honest expression of their opinion.

Not only are people subject to prosecution for stating their *honest* opinion. They are also subject to prosecution for stating what is *objectively true*. Truth, like “fair comment”, is an absolute defence to a lawsuit for defamation. The checks and balances inherent in the common law provide fairness between plaintiffs and defendants, but are excluded from human rights legislation.

Advocating genocide and counselling a criminal offence are already prohibited by the *Criminal Code*. Causing actual *harm* is answerable under the laws of defamation and negligence. To prosecute for “insults”

or “hurt feelings”, however, casts a chill on every citizen's freedom to express opinions on issue important to them.

Some argue that restricting freedom of expression is a necessary price to pay for ending discrimination. But eleven Canadian jurisdictions prove this is not so. The federal government, all provinces east of Saskatchewan, as well as the three territories, show us that it is not necessary to undermine the citizen's free speech rights in order to legislate against discrimination in employment, housing, and services. For example, Nunavut, Ontario and Manitoba indicate that discriminatory signs, notices and publications are prohibited *only in relation to employment, housing, facilities, goods, services, contracts and other areas where the legislation seeks to address actual discrimination*. This means that it's illegal for an employer or landlord to run an ad saying “women need not apply,” but there are no restrictions on the contents of a controversial letter-to-the-editor or an unpopular pamphlet.

Nothing stops Saskatchewan from joining the ranks of Canadian jurisdictions which respect freedom of expression. A Petition for Free Expression in Canada has been set up at www.jccf.ca urging the governments of B.C., Alberta and Saskatchewan to amend their human rights legislation to restore free expression.

Calgary lawyer John Carpay is President of the Justice Centre for Constitutional Freedoms (www.jccf.ca).