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Taking the free-speech campaign to the legislatures

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In the case of *Whatcott vs. Saskatchewan Human Rights Commission*, the Supreme Court of Canada has justified the exercise of censorship by human-rights tribunals. Canadians in Alberta, B.C. and Saskatchewan therefore will need to focus their efforts on legislatures, not the courts, if they want to restore freedom of expression in their provinces.

The case arose more than a decade ago. The Saskatchewan Human Rights Tribunal ordered William Whatcott to pay \$17,500 to four individuals who were offended by flyers he distributed peacefully in Regina and Saskatoon. The flyers use vitriolic language to oppose teaching children in public schools about homosexuality, and used polemical language to denounce homosexual behaviour.

The Saskatchewan law used against Mr. Whatcott is similar to B.C.'s law, which was famously applied to prosecute *Maclean's* magazine for publishing segments of Mark Steyn's book *America Alone*, and comedian Guy Earle for confronting lesbian hecklers at a nightclub. Alberta's law was used to prosecute Bishop Fred Henry (for proclaiming the Catholic definition of marriage), and Ezra Levant for publishing the "Danish cartoons" of the prophet Muhammad.

In a free society, citizens make up their own minds about what is true or false, right or wrong, loving or hateful. Free citizens don't let politicians, bureaucrats and judges make these decisions on their behalf. Those who are happy with Wednesday's court decision will gleefully pull quotes from Mr. Whatcott's flyers and cheer the

court's denunciation of his opinions. But they won't explain why they, as citizens of a free nation, want to give up the power to make up their own minds about other people's opinions, or why they want to transfer this power to government.

The right to free expression means 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. And the issues that matter most to us as citizens are often those that produce the most heated exchanges.

Democracy depends on open discussion, vigorous debate, and the marketplace of ideas. By creating a legal right to be free from hurt feelings, human rights laws subvert free public discourse not only about matters of sexual morality, but debate about issues such as immigration, criminal justice, foreign policy, polygamy, social assistance and aboriginal policy. The potential violations are limitless.

The court believes that Mr. Whatcott is fully entitled to express his opinion that homosexual behaviour is sinful and unhealthy, but he must deliver this message in a way that does not come across as "hateful" to any of his listeners. Can anyone articulate a clear and principled distinction between hate and strong dislike?

Some argue that restricting freedom of expression is a necessary price to pay for ending discrimination. But 11 Canadian jurisdictions prove this is not so. The federal government, all provinces east of Saskatchewan, as well as the three territories, have anti-

discrimination laws that do not undermine free expression.

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.

The Supreme Court's decision does nothing to stop Saskatchewan, B.C. and Alberta from joining the ranks of the 11 jurisdictions where speech is not censored in the name of human rights. I invite all those who share my view to join me in petitioning these three provinces to change their laws.

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*Calgary lawyer John Carpay is president of the Justice Centre for Constitutional Freedoms. He was involved with the Whatcott case before the Saskatchewan Court of Appeal and the Supreme Court of Canada. He invites interested readers to read and sign his *Petition for Free Expression in Canada*, which can be found at jccf.ca.*