

Tuesday, September 3, 2013

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Attention: The Honourable Minister of Justice and Solicitor General of Alberta,
Mr. Jonathan Denis, QC

Subject: Freedom for all Albertans

Dear Minister Denis,

We, the undersigned, urge you to introduce legislation to amend the *Alberta Human Rights Act* in order to protect the fundamental freedoms of Albertans. Freedom of expression is one of the most valuable and important rights, one that is necessary for a free and democratic society to function and to exist. To delay improvements to the law is to delay justice and to impinge on democracy.

You are well aware of section 3 of the *Act* and its restriction on free expression. We are well aware of your personal views on the merits and failures of the section. The time for change is now. The issue is fresh in the minds of Albertans; indeed, Albertans are calling for change now. Individuals and organizations from across the political spectrum are making repeated calls for change.

With the recent passage of the federal Bill C-304, *An Act to Amend the Canadian Human Rights Act (Protecting Freedom)*, a freedom bill that originated in Alberta, the issue is fresh in the minds of the people. The positive reception to Bill C-304 across the country and especially in this province should be an encouragement to you and your government to press forward with reform.

What have the courts said about the issue? The Alberta Court of Appeal urged the Alberta government to review the hate speech provisions. In *Lund v. Boissoin*, 2012 ABCA 300 the Court concluded with an admonition to the government stating that “the citizens of this Province are entitled to certainty when it comes to exercise of their fundamental rights. It is ironic that the *O’Neill Report*, which inspired the 1996 amendments, recommended that ‘the *Act* be rewritten in plain language’. In my view, it would serve the interests of the citizens of this Province if the Legislature would direct its attention to this objective.” We agree with the Court of Appeal. In its current form, section 3 of the *Act* is confusing at best, contradictory at worst.

The Supreme Court of Canada has also recently ruled on the subject. In the *Saskatchewan (Human Rights Commission) v. Whatcott* 2013 SCC 11 ruling, the Court left the door wide open for provinces to eliminate hate speech restrictions altogether – there is no constitutional requirement for them. In fact, the Court states, “I do not say that the marketplace of ideas may not be a reasonable alternative, and where a legislature is so minded, it will not enact hate speech legislation.” (para. 104, see also para. 106). Aside from Alberta, B.C. and Saskatchewan, no other Canadian province restricts the free expression of ideas and opinions by way of human rights legislation.

The media, from both sides of the spectrum, have also called for amendments. From the *Toronto Star* on the left (“As the Star has long argued, this is legal overkill that chills free speech” editorial, 28 Feb. 2013) to the *National Post* on the right (the hate speech provision “is a particularly pernicious infringement on free speech” editorial, 28 Sept. 2011), and the *Globe and Mail* somewhere in the middle (“It’s time to reign in [the Alberta Commission] before further damage is done to Canadians’ right to free expression”, editorial 28 Feb. 2008) the mainstream national newspapers have all called for free expression. And here in Alberta, the *Calgary Herald*, the *Edmonton Journal*, and many more besides have argued in their pages against section 3.

Alberta’s own politicians and leaders have also called for change. The Honourable Premier Redford herself recognized the problem of censorship already in 2011, when she first ran for Premier. She promised at that time to restore free expression to Albertans by repealing Section 3. Likewise, the Official Opposition led by Ms. Smith has made it official party policy to repeal section 3 of the *Act*.

Mr. Denis, there is no good reason for continued delay. The Courts, the media, academics, institutions, Albertan citizens, politicians and we are calling for change. Please act now to defend the freedom of public discourse, the freedom of robust debate, and the freedom of published opinion for all Albertans. Give to Albertans the same freedom enjoyed by the majority of Canadians. We ask you to seriously consider tabling a bill this fall to amend the *Act* and to either remove section 3 in its entirety or, at the very least, to return it to its pre-1996 language.

If you wish to meet with us to discuss this letter and how to implement the changes recommended, we can make ourselves available to you. We look forward to your response.

Respectfully submitted and sincerely yours,



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Dr. Brian Rushfeldt, LL.D. (Hon)
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