Court of Queen's Bench of Alberta

Citation: Boissoin v. Lund, 2009 ABQB 592

Date:
Docket: 0801 07613
Registry: Calgary

IN THE MATTER OF THE *ALBERTA HUMAN RIGHTS, CITIZENSHIP AND MULTICULTURALISM ACT*, R.S.A. 2000, c.H-14

AND IN THE MATTER OF A DECISION OF A PANEL OF THE ALBERTA HUMAN RIGHTS AND CITIZENSHIP COMMISSION IN REGARDS TO COMPLAINT NO. S.2002/08-0137

Between:

Stephen Boissoin and the Concerned Christian Coalition Inc.

Appellants

- and -

Darren Lund

Respondent

- and -

The Attorney General of Alberta, Canadian Civil Liberties Association and Canadian Constitution Foundation

Interveners

Reasons for Judgment
of the
Honourable Mr. Justice E.C. Wilson

Introduction

[1] This is a judicial review of a decision of an Alberta Human Rights Panel [the Panel] which found that the Appellant and The Concerned Christian Coalition Inc., an organization related to the Appellant had, in a letter to the editor of a newspaper published June 17, 2002, expressed comments likely to expose homosexuals to hatred and/or contempt due to their sexual orientation.

[2] The comments were found by the Panel to have violated s. 3(1)(b) of the *Alberta Human Rights, Citizenship and Multiculturalism Act* [the *Act*] which, in its pertinent terms, reads as follows:

> "No person shall publish ... or cause to be published ... before the public any statement ... that ... is likely to expose a person or a class of persons to hatred or contempt because of the ... sexual orientation ... of that person or class of persons."[1]

[3] The Appellant advances a number of complaints which argue (i) that the legislation is *ultra vires;* (ii) that the legislation violates s. 2(a) & (b) of the *Charter of Rights* and cannot be saved by s. 1 of the *Charter*; (iii) that the letter's contents were not hateful or contemptuous of homosexuals and, in any event, were protected speech under the *Charter* and (iv) that the remedies imposed were unlawful or unconstitutional. The Appellant also submits that the process leading up to the Panel's decision was flawed and that the Panel was wrong to have found that the Concerned Christian Coalition Inc. had also violated the *Act*.

[4] I permitted the intervention of several parties. Additionally, the Attorney General of Alberta appeared due to the constitutional challenges raised by the Appellant. The Attorney General of Canada declined to intervene.

[5] The Intervener Canadian Constitution Federation supported the Appellant's claim that the impugned legislation was *ultra vires* the Province. The Intervener Canadian Civil Liberties Association supported the Appellant's claim that the impugned legislation violated s. 2(a) & (b) of the *Charter* and could not be saved by s. 1.

[6] Alberta's position was that the legislation was *intra vires* the Province and that, while the legislation did violate s. 2(b) of the Charter, it was saved by s. 1.

[7] The Respondent's initial position disagreed with all of the Appellant's claims. However, during argument, counsel conceded some legal deficiencies in the remedies granted by the Panel.

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[1]To be clear, "sexual orientation" was not language found in this legislation. It was, however, added to the list of prohibited grounds of discrimination as a result of the decision in *Vriend v. Alberta* [1998] 1 S.C.R. 493. (It has been subsequently legislated into place by Alberta in 2009).

[8] In the reasons that follow I conclude that the legislation is *intra vires* the Province and does not violate the *Charter*. I also find that the contents of the letter to the editor do not violate s. 3(1)(b) of the *Act*. I further conclude that the remedies imposed by the Panel were either unlawful or unconstitutional. Finally, I will provide my observations regarding various troubling aspects of the process leading to the decision of the Panel, including my finding that the Panel was wrong in holding that the Concerned Christian Coalition Inc., was properly before it; alternatively, wrong in holding that that organization had violated the *Act*.

The Appeal from the Panel's Decision

[9] The pertinent provisions of the *Act* are as follows:

> 37(1) A party to a proceeding before a human rights panel may appeal an order of the panel to the Court of Queen's Bench by originating notice filed with the clerk of the Court of the judicial district in which the proceedings was held.
>
> . . .
>
> (4) The Court may
>
> (a) confirm, reverse or vary the order of the human rights panel and make any order that the panel may make under section 32, or
>
> (b) remit the matter back to the panel with directions.

Remedies are detailed in s. 32 of the *Act*.

[10] The *Act* makes no reference as to the grounds upon which an appeal may be brought. However, it is clear that the nature of the appeal is what is described as a judicial review.

Standard of Review

[11] This issue has been decided in *Walsh v. Mobil Oil Canada*:[2]

> 55 In our view, in light of Albert's human rights legislation, the existing case law answers the question of standard of review, at least in a general sense. It indicates that human rights tribunals, such as the panel in this case, may be afforded some deference with respect to findings of fact and credibility, given their role in hearing *viva voce* evidence. However, reviewing courts will be unconstrained in their assessment of the evidence as it relates to the applicable law, particularly where an error is found in respect of the tribunal's articulation of the law.

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[2][2008] A.J. No. 830 (C.A.).

[12] On questions of law, the appropriate standard of review is correctness.[3] It should be noted that the claim that the legislation violates the *Charter of Rights* was raised for the first time before me. This is because Alberta legislation forbids a panel from making such a determination.[4]

Evidence

A. The Letter

[13] The Appellant admittedly wrote the letter to the editor of the Red Deer Advocate which is the largest daily newspaper in central Alberta. The newspaper published the letter on June 17, 2002. As it is the focus of this matter I set it out in full:

> The following is not intended for those who are suffering for an unwanted sexual identity crisis. For you, I have understanding, care, compassion and tolerance. I sympathize with you and offer you my love and fellowship.
>
> I prayerfully beseech you to seek help, and I assure you that your present enslavement to homosexuality can be remedied. Many outspoken, former homosexuals are free today.
>
> Instead, this is aimed precisely at every individual that in any way supports the homosexual machine that has been mercilessly gaining ground in our society since the 1960's. I cannot pity you any longer and remain inactive. You have caused far too much damage.
>
> My banner has now been raised and war has been declared so as to defend the precious sanctity of our innocent children and youth , that you so eagerly toil, day and night, to consume. With me stand the greatest weapons that you have encountered to date - God and the "Moral Majority." Know this, we will defeat you, then heal the damage you have caused.
>
> Modern society has become dispassionate to the cause of righteousness. Many people are so apathetic and desensitized today that they cannot even accurately define the term "morality."
>
> The masses have dug in and continue to excuse their failure to stand against horrendous atrocities such as the aggressive propagation of homo- and

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[3] *Elgie v. Alberta (Workers' Compensation, Appeals Commission)*, 2009 ABCA 277, para's 32, 34.

[4] *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c.A-3; *Designation of Constitutional Decision Makers Regulation*, Alta. Reg. 69/2006.

bisexuality. Inexcusable justifications such as "I'm just not sure where the truth lies" or "If they don't affect me then I don't care what they do," abound from the lips of the quantifiable majority.

Face the facts, it is affecting you. Like it or not, every professing heterosexual is having their future aggressively chopped at the roots.

Edmund Burke's observation that, "All that is required for the triumph of evil is that good men do nothing," has been confirmed time and time again. From kindergarten class on, our children, your grandchildren are being strategically targeted, psychologically abused and brainwashed by homosexual and pro-homosexual educators.

Our children are being victimized by repugnant and premeditated strategies, aimed at desensitizing and eventually recruiting our young into their camps. Think about it, children as young as five and six years of age are being subjected to psychologically and physiologically damaging pro-homosexual literature and guidance in the public school system; all under the fraudulent guise of equal rights.

Your children are being warped into believing that same-sex families are acceptable; that men kissing men is appropriate.

Your teenagers are being instructed on how to perform so-called safe same gender oral and anal sex and at the same time being told that it is normal, natural and even productive. Will your child be the next victim that tests homosexuality positive?

Come on people, wake up! It's time to stand together and take whatever steps are necessary to reverse the wickedness that our lethargy has authorized to spawn. Where homosexuality flourishes, all manner of wickedness abounds.

Regardless of what you hear, the militant homosexual agenda isn't rooted in protecting homosexuals from "gay bashing" The agenda is clearly about homosexual activists that include, teachers, politicians, lawyers, Supreme Court judges, and God forbid, even so-called ministers, who are all determined to gain complete equality in our nation and even worse, our world.

Don't allow yourself to be deceived any longer. These activists are not morally upright citizens, concerned about the best interests of our society. They are perverse, self-centred and morally deprived individuals who are spreading their psychological disease into every area of our lives. Homosexual rights activists and those that defend them, are just as immoral as the pedophiles, drug dealers and pimps that plague our communities.

> The homosexual agenda is not gaining ground because it is morally backed. It is gaining ground simply because you, Mr. and Mrs. Heterosexual, do nothing to stop it. It is only a matter of time before some of these same morally bankrupt individuals such as those involved with NAMBLA, the North American Man/Boy Lovers Association, will achieve their goal to have sexual relations with children and assert that it is a matter of free choice and claim that we are intolerant bigots not to accept it.
>
> If you are reading this and think that this is alarmist, then I simply ask you this: how bad do things have to become before you will get involved? It's time to start taking back what the enemy has taken from you. The safety and future of our children is at stake.
>
> (signed) Rev. Stephen Boissoin, Central Alberta Chairman, Concerned Christian Coalition, Red Deer.

B. The July 4, 2002 Newspaper Story

[14] While the letter of the Appellant prompted numerous responsive letters to that editor over the following days and weeks, including at least one rejoinder from the Appellant, a news item published in the July 4, 2002 edition of the Red Deer Advocate became almost as important to the complaint and the Panel's decision as the impugned letter.

[15] That news item reported that a gay teenager had been seriously assaulted in downtown Red Deer solely because he was gay. In the course of detailing a number of comments attributed to the victim, the following was reported:

> "He also doesn't feel safe reading the anti-gay statements like the ones in the Red Deer Advocate's June 17 letter to the editor from Stephen Boissoin of the Concerned Christian Coalition.
>
> "I feel the letter was just encouragement for people to go out and stop the gay rights movement."

[16] This reported assault with an alleged connection to the impugned letter became quite significant.

[17] The Respondent, Dr. Lund, testified that the reported assault and the specific reference by the victim to the appellant's letter triggered his complaint to the Human Rights and Citizenship Commission (Transcript p. 6/ 5-16). Dr. Lund maintained that the Appellant's letter exposed people to hatred and contempt and that it fostered an atmosphere of violence, citing the reported assault and the quotation of the victim as support for his claim (13/12-14/10). In his final argument to the Panel the Respondent listed 5 "facts of the case" that had been established. Numbers 4 and 5 of those "proven facts" were the assault and the newspaper quotation from the victim.(250/26-251/5).

[18] The sole expert witness called by the Appellant provided a report which took into account the reported assault and the quotation from the victim. The witness was cross-examined on these two points by counsel on behalf of the Attorney General of Alberta (232/25-234/27). In final argument Crown counsel relied upon the assault and the quotation from the victim as providing linkage for his argument that the impugned letter could prompt persons to engage in prohibited, discriminatory practices (327/23 - 329/2).

[19] During final argument the Panel agreed with counsel for the Appellant that "no one gave evidence that in fact this individual was attacked because of their sexual orientation" (239/5-8).

[20] Unfortunately no one seemed to appreciate that there was no evidence of an assault at all, nor any evidence as to the accuracy of the news report of the alleged assault nor of the quotation attributed to the alleged victim. No evidence was provided of the details of the reporter's interview, what questions were asked, nor how the subject of the Appellant's letter to the editor arose during the interview. The reporter never testified nor did the alleged victim testify.

[21] No one seemed to appreciate that there was, perhaps, an even more significant problem in the evidence. Assuming there was an assault, there was no evidence to support the inference, let alone conclusion that the assaulter had previously read the letter to the editor or had been influenced by it to commit his crime.

[22] The significance of all these oversights cannot be overstated. For example, some counsel relied upon this hearsay as proven fact to support their arguments.

[23] Unfortunately, in arriving at her decision, the Panel also mistakenly presumed that the newspaper report provided evidence of an assault and/or that the letter served as some sort of trigger for that assault. The Panel then utilized those erroneous presumptions to help draw conclusions of great legal significance in the case - that the letter violated s. 3(1)(b) of the *Act* and that the Panel had jurisdiction to adjudicate upon the complaint. These fundamental deficiencies will be discussed in greater detail later in these reasons.

Analysis

A. The Vires of the Legislation

[24] For ease of reference, the pertinent portions of s. 3(1)(b) of the *Act* are set out:

> "No person shall publish ... or cause to be published ... before the public any statement ... that ... is likely to expose a person or a class of persons to hatred or contempt because of the ... sexual orientation ... of that person or class of persons."

[25] I will turn first to a consideration of the Province's jurisdiction to enact this legislation.

[26] A convenient start point is the majority decision of Estey, J. in *Scowby v. Saskatchewan (Board of Inquiry)*:[5]

> "[O]ne does not approach a provincial human rights code on the basis that it is constitutionally presumptively suspect. The great bulk of the protections granted by such codes would appear to be beyond challenge as being legislation in relation to property and civil rights, or to matters of merely local or private nature. They deal, for example, with questions of discrimination in housing and employment, and equal access to goods and services. These legislative protections are valid not because they affirm interests such as liberty, or human dignity, but because the activities legislated, that is, for example, housing, employment, and education, are themselves legitimate areas of provincial concern under ss. 92 and 93."[6]

[27] In his text *Discrimination and the Law,*[7] Justice Tarnopolsky writes:

> "Therefore, human rights legislation in Canada, which prohibits discrimination with respect to employment, residential and commercial accommodation, goods, services, facilities, and public accommodation, and publication or broadcasting with respect thereto, is essentially within the legislative jurisdiction of the provinces."[8]

[28] But, as was submitted by the Appellant and the intervener Canadian Civil Liberties Association (hereafter the C.C.L.A.), a literal reading of s. 3(1)(b) of the *Act* finds a "stand-alone prohibition on hateful or contemptuous expression in any public forum, however remote that may be from the listed fields in the *Act*".[9] Such an interpretation creates a risk of the legislation being improperly applied to all expressions including those having no real link to subject matters which fall within provincial jurisdiction. The intervener Canadian Constitution Foundation, [hereafter the C.C.F.] observed that on a literal interpretation one could violate s. 3(1)(b) without any injured party suffering a loss in the areas of service, housing or employment.[10] Thus, the appellant and others argue that, the legislation is *ultra vires* the Province.

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[5][1986] 2 S.C.R. 226.

[6]*Ibid*, para. 4.

[7]1st ed. revised (Toronto: Thomson Carswell, 2006)

[8]*Ibid.*, Vol. 1, p. 3 - 56.3

[9]From C.C.L.A. Brief of Argument, paragraph 8. The listed fields in the *Act* relate to discrimination involving the supply of goods, services, accommodations, facilities, tenancies, and certain matters involving employment. See para. 31, *infra.*

[10]From C.C.F.'s Brief, paragraph 12.

[29] Taking a cue from the *Scowby* decision, I'm not satisfied that the presumption of legislative validity is overcome. With respect, the ultra vires argument only arises due to mistaken reliance upon a narrow, literal interpretation of the section.

[30] Section 11 of the *Alberta Interpretation Act*[11] directs that :

> "An enactment shall be construed as remedial, and shall be given the fair, large and liberal construction and interpretation, that best ensures the attainment of its objects".

When determining the intention of the legislature, and with due regard to the preamble of the *Act*, "we are to have particular regard ... to the overall purpose and special nature of human rights legislation; and we are to strive to fulfill that purpose".[12]

[31] In my opinion the broad intent of the *Act* is to achieve equality for all through the prohibition of specific discriminatory practices or activities in the provision of goods, services, accommodations and facilities (s.4); tenancies (s.5); and, employment practices (s.s. 6, 7, 8, & 9). While the *Act* seeks to achieve its intent in various ways, the aim of section 3(1) is to discourage, if not eliminate activity which reenforces prejudice which, in turn, fosters discrimination and discriminatory practices against persons or classes of persons.

[32] Using the issue in this case as an example, section 3(1)(a), prohibits *inter alia*, the publishing of any statement "that indicates discrimination or an intention to discriminate" against a person or class of persons because of their sexual orientation. To be clear, the inferential discriminatory effects are those listed in section 4 to 9 of the *Act*.

[33] Similarly, s. 3(1)(b) is aimed at prohibiting public statements which are likely to expose a person or class of persons to hatred or contempt because of their sexual orientation. But, to be clear, the purpose of the section cannot be to simply restrain hateful or contemptuous speech *per se*. Such legislation would be *ultra vires* the province. As was said in the context of examining similar legislation in Saskatchewan:

> "... having regard especially for the division of powers between the federal and provincial governments, the section requires that the affront be productive of a specific discriminatory effect or effects. An adverse general effect upon the class will not be sufficient to engage the provision."[13]

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[11]RSA 2000, Chapter I-8.

[12]*Saskatchewan (Human Rights Commission) v. Engineering Students' Society* (1989) CarswellSask 627 (C.A.) page 17.

[13]*Engineering Students Society, supra*, page 4.

The failure to prohibit such hateful or contemptuous statements can result in other persons - readers or listeners - engaging in prohibited discriminatory practices or activities against a person or class of persons because of their sexual orientation. Simply put (in the fact context of this case) s. 3(1)(b) is directed at eliminating statements which are hateful or contemptuous of a person or class of persons due to their sexual orientation, and which are also likely to cause others to engage in any of the discriminatory practices listed in the *Act*.[14]

[34] I agree with a portion of the C.C.L.A. written submission that a contextual and purposive interpretation of s. 3(1)(b) must be employed

> "... that sees the provision in its context as aiming to reinforce and promote the goals of the *Act*, by preventing specific acts of discrimination in the fields of activity listed in the statute. These fields of activity include accommodation, property, tenancy and employment. Section 3 is therefore read as an independent prohibition against publishing or displaying materials that would ... lead to specific acts of discrimination in these fields."

[35] To similar effect was the Attorney General's written submission:

> "As discussed by Dickson C.J. for the majority in *Taylor*, the connection between hate propaganda and acts of discrimination is the basis upon which the province may limit such expression:
>
> [H]ate propaganda can operate to convince listeners, even if subtly, that members of certain racial or religious groups are inferior. "The result may be an increase in acts of discrimination, including the denial of equal opportunity in the provision of goods, services, facilities, and even incidents of violence." [emphasis added].[15]

[36] However, I disagree with any implication that the Province has jurisdiction to regulate hateful expressions that may lead to violence. That is a matter governed by the criminal law power reserved solely to Parliament. But I also wish to make it clear that I reject the submission of the appellant and others that the Province's proscription of "hate speech" automatically transgresses upon the Federal criminal law power. In *R. v. Keegstra*, the Supreme Court clearly indicated that provincial human rights legislation may quite properly coexist with the criminal law sanction.[16] I also reject the submission that if the *Act* did provide for penalties for violations of s. 3(1)(b), that would automatically translate the legislation into an unconstitutional incursion upon the criminal law power. As was pithily observed by Estey, J. in the *Scowby* decision:

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[14] *Ibid.*, at pp 30-31.

[15] *Canada v. Taylor* [1990] 3 S.C.R. 892 at para 40.

[16] [1990] 3 S.C.R. 697 at para's. 341-345.

> "The province may, under s. 92(15), create an offence to enforce or support a constitutionally valid provincial law or program".[17]

[37] Accordingly, I agree with the Attorney General that Alberta has the lawful authority to regulate discriminatory expression when such expression has effects falling within subject matters over which the province has legislative jurisdiction granted by s. 92 & s. 93 of the *Constitution Act,* 1867.[18]

B. Interpreting the Legislation

[38] As has been explained s. 3(1)(b) requires some causal link between publication of the message and the infringement of rights contained in the *Act*. The next issue is to examine the nature of that connection or linkage between the publishing of the hateful message and the specific prohibited acts of discrimination listed in the *Act*.

[39] The language of the section utilizes the phrase "likely to expose". The Panel referred to the decision in *Re: Kane,*[19] where Rooke, J. (as he then was) said of the precursor legislation:

> "... the phrase "likely to expose" is a balance of probabilities test. In other words what s. 2(1)(b) seeks to prevent is representations which are more likely than not to expose a person or class of persons to hatred or contempt on the basis of the prohibited grounds".[20]

[40] The Panel adopted a test proposed by Rooke, J:

> Does the communication itself express hatred or contempt of a person or group on a basis of one or more of the listed grounds? Would a reasonable person, informed about the context, understand the message as expressing hatred or contempt?
>
> Assessed in its context, is the likely effect of the communication to make it more acceptable to others to manifest hatred or contempt against the person or group

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[17]Supra, para. 3.

[18]Subject, obviously, to *Charter* considerations.

[19]2001 CarswellAlta 1066 (Q.B.).

[20]*Ibid*, para. 122.

concerned? Would a reasonable person consider it more likely than not to expose members of the target group to hatred and contempt?[21]

[41] By way of background, it should be noted that Rooke J's decision in *Re: Kane* was in response to a panel's request for his opinion upon 5 questions of law arising in a particular proceeding before that panel.[22] What seems not to be appreciated is that *Re: Kane* did not purport to assess in detail every element of a s. 3(1)(b) complaint which must be considered by a panel.

[42] However, in the case before me the Panel appears to have thought otherwise. Thus the Panel only purported to apply Rooke J's test in order to reach its decision and failed to go further and assess the likelihood that the letter's contents would make it more acceptable for others to manifest hatred or contempt toward homosexuals by engaging in discriminatory activity prohibited by the *Act*.

[43] While *Re Kane* decision said very little about the nature of the required connection or linkage beyond the reference to "others" manifesting hatred or contempt, the C.C.L.A. argued before the Panel and before this Court that the allegedly hateful or contemptuous speech must be directly linked to areas of prohibited discriminatory practices and that s. 3(1)(b) applies only to hateful expression that itself signals an intention to engage in discriminatory behaviour, or seeks to persuade another person to do so.[23] I agree. As a result, and in order to give proper effect to s.3(1)(b), both the message and this intended effect must be considered. But, secondly, there must be some likelihood that the message might bring about a prohibited discriminatory practice in order to engage s. 3(1)(b).

[44] I recognize that a consideration of a writer's motivation or intent may initially appear misplaced since s.3(1)(b) is silent about these matters. That may be contrasted to s.(3)(1)(a) where they are explicitly mentioned. Yet every message has some purpose or intent behind its thoughtful creation and planned dissemination to others. Further, I also note the reference in s.3(2) of the *Act* to the "free expression of opinion"[24] (which may, in turn, prompt consideration of Charter values). I conclude that a writer's motivation or intent must therefore be implicated in s.3(1)(b).

[45] Thus a panel's examination of a complaint must include some consideration or assessment of a writer's intent. Reasonable inferences in that regard may also be drawn notwithstanding a respondent's claim of no discriminatory intent.

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[21] *Ibid* para. 125.

[22] Seek s. 31 of the *Act*.

[23] C.C.L.A. Brief of argument, paragraph 34.

[24] Section 3(2) reads "Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject."

[46] Properly drawing the link or connection between the discriminatory message and an intended discriminatory practice is crucial.

[47] Consider, for example, the case of a vendor who was selling stickers which depicted caricatures of persons of Oriental, Black or East Indian origin over which was superimposed a red circle with a slash running through it - which is a universal symbol for "forbidden" or "not allowed" or "not wanted". The court's interpretation of the message conveyed by the stickers was as follows:

> "This use of the symbol, is insidious. Although the symbol, as used, is ambiguous, it is, nevertheless, a very powerful one: it may be interpreted as advocating anything from mere disapproval of the presence of those depicted to genocide of them. Often this symbol is a direction not to enter or a prohibition against doing some act with attendant consequences including, from time to time, harm to the one who enters or does the act. The effect of the stickers on any individual viewer must necessarily be in part subjective. But even if there are some viewers who would not see the stickers as actually exposing to hatred, they certainly tend to do so."[25]

[48] What then of the intended effect in having this racist message offered for public sale? What of the required linkage between the message and potential discriminatory practice?

[49] The Court had no difficulty in quickly concluding that both the purpose and effect of displaying the stickers would cause or tended to cause others to engage in discriminatory practices.[26] By displaying and selling the stickers Bell provided to persons who might be inclined to contravene the *Act*, the means to do so.

> "For example, a businessman at his place of business, or a provider of public accommodation at the premises that he had to let, by posting the sticker or stickers at the entrance would make it clear that any goods, services or amenities provided would not be made available to the groups depicted, or at least their trade was not wanted."[27]

[50] The Court admitted that there was no evidence of discriminatory practices actually occuring, but the Saskatchewan legislation "required only that the display would tend to foster

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[25] *Saskatchewan (Human Rights Commission) v. Bell* (1994) CarswellSask 196 (C.A.), 27.

[26] *Ibid.*, paragraph 29.

[27] *Ibid.*

discrimination, not that that was its actual effect."[28] This may be another way of saying that the display sought to persuade others to practice prohibited discrimination.

[51] But seeking to persuade others to practice discrimination is not the same as there being a likelihood that prohibited discriminatory practices might, in fact, ensue. Simply fostering discriminatory beliefs in another does not automatically make it likely that the individual might then act out those beliefs through prohibited discriminatory activity.[29]

[52] The *Bell* decision never really grappled with this issue. But, to be fair, Mr. Bell's appeal against the ordered injunction was only on constitutional grounds. Thus the Court's conclusions regarding the potentially discriminatory effects of the racist stickers appears not to have been much of an issue in that appeal.

[53] The Court admitted there was no evidence led concerning discriminatory practices of landlords or shopkeepers in the community or the province notwithstanding Mr. Bell had sold a number of the stickers. Surely, if it existed, then some such evidence would have been led. Indeed, how strange that the Court concerned itself with the mythical store owner who might purchase and display the stickers for a discriminatory purpose when the Court had a real store owner before it in Mr. Bell and yet never suggested he had attempted or even considered implementing a discriminatory activity. It should also be noted that notwithstanding a number of stickers had been sold, there was no evidence led that even one sticker had been posted by a landlord or shopkeeper - or anyone else for that matter.

[54] Interestingly, the Court made no reference to the countervailing consideration that landlords or shopkeepers are presumed to know that the law prohibits discrimination vis-a-vis potential tenants or customers on racial grounds. Thus in finding Mr. Bell at fault, the court had to presume that there was the likelihood that some landlord or shopkeeper, somewhere in Saskatchewan, might be persuaded to knowingly violate the law. In the absence of judicial notice of notorious facts or of facts that are capable of immediate and irrefutable proof, I respectfully suggest that one should hesitate to come to such conclusions without some evidence.

[55] If the *Act* purported to simply restrain hate speech notwithstanding that no likelihood of discriminatory activity could be demonstrated then the legislation would be ultra vires. Hateful or contemptuous speech that may prompt or even add to existing prejudice against a class of persons is not prohibited *per se* by the *Act*. As earlier discussed, more is required.[30]

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[28] *Ibid.*

[29] See *Engineering Students, supra.*

[30] This point may be overlooked by some litigants. In *Owens* v. *Saskatchewan* (Human Rights Commission) 2006 CarswellSask 217 (C.A.) the court specifically noted that the connection to a potential prohibited discriminatory activity was not an issue before it - see paragraph 24.

[56] Absent some "concrete evidence"[31] linking the message to discriminatory practices, only reasonable and appropriate inferences as to discriminatory effects may be drawn and relied upon when considering the "likely to expose" requirement. This caution was recently reexpressed by the Supreme Court:

> "In *Trinity Western University v. British Columbia College of Teachers* [citations omitted] a risk was held to be overly speculative because there was insufficient evidence that potentially discriminatory beliefs were actually resulting in discriminatory conduct."[32]

Speculation in the guise of reasonable inferences and overly enthusiastic interpretations or extrapolations of "cause and effect" must be avoided. Care must be taken not to simply move from a finding that the message is hateful or contemptuous to then presume that discriminatory practices are likely to ensue. It is worth underscoring that most board decisions cited during this appeal applied the Supreme Court's decision in *Taylor* (where the definition of "hate" and "contempt" were set and the insidious effect of resultant prejudice was discussed), with no apparent appreciation that the Federal provision being examined requires no connection to prohibited discriminatory activity. That is far different from the provincial legislation governing this case.

C. Applying the Legislation to the Facts

[57] Here is how the Attorney General expressed the linkage in this case during submissions before the Panel (and essentially repeated before me):

> On a plain reading, the letter is asking the reader to do whatever they can within their own sphere of influence to stop the homosexual machine. Now, clearly readers of that letter will be from every social strata and they will be involved in every sphere of activity that is covered by the *Human Rights Act*. So Mr. Boissoin's letter on plain reading exhorts people to discriminate in employment, discriminate in tenancy, discriminate in goods and services. That is the letter itself. (327/23 - 328/5).

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[31] *Trinity Western University v. College of Teachers* (British Columbia) [2001] 1 S.C.R. 772 at paras. 36 & 38.

[32] *Alberta v. Hutterian Brethren of Wilson Colony* 2009 SCC 37, paragraph 82.

[58] This submission would appear to be a practical example of what Rooke, J. meant when he discussed "making it more acceptable to others to manifest hatred."[33] Thus the "others" he mentions would be the landlord, the employer, etc. who would likely manifest the hatred or contempt through discriminatory activities within their "sphere of activity".

D. Analysis

(i) Absence of Required Linkage to Discriminatory Activity

[59] With great respect, my plain reading of the letter does not lead me to the inference pleaded by the Crown. The appellant's testimony refutes any suggestion that this was his intent. The letter's target audience are people that the appellant believes are apathetic to the inroads made by the "homosexual machine" which is detrimental to his view of what a fit and proper heterosexual society should look like. But inferring some sort of call for discriminatory practices prohibited by provincial law is an unreasonable interpretation of the letter's message.

[60] Again, and it bears repeating, absent some sort of connection or linkage between the impugned message and discriminatory practices the *Act* has no authority to restrain the message.

[61] In this case there was no identification of individuals or groups who might potentially undertake prohibited discriminatory activity. Nor was there evidence that discriminatory practices forbidden by the *Act* were likely to occur.

[62] The evidence regarding potential effects provided a variety of concerns, none of which fell within the statute's reach.

[63] Mr. Doug Jones, retired hate/bias coordinator with the Calgary Police Service offered this opinion about the letter:

> "It's certainly my opinion that when people who haven't had an opportunity to learn more about sexuality, who are young, impressionable, perhaps sitting on the fence and not sure what direction or what's okay or what isn't, when they read something like this, it can definitely push them over the edge and in a direction that could cause them to act out.
>
> Young people are very easily impressioned by something like this. And showing it to their friends or getting a group of friends together, it's easy for something to then occur as a result. And that's my concern. (98/22 - 99/7)

[64] With respect, this opinion was of no relevance to the Panel. A fear of young people "acting out" in response to the letter isn't activity governed by the *Act*. Additionally, it is curious that the witness seemed to be of the view that young and impressionable youths who are at risk

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[33]See para. 40 of these reasons, *supra*.

of acting out, are readers of newspapers and, in particular, of letters to the editor of newspapers. The source of this view was not explained and thus its reliability cannot be ascertained. In the result, even had the opinion been relevant I would give little, if any, weight to it.

[65] Dr. Kevin Alderson, psychologist, author and university professor, who unabashedly described himself thusly: "I am considered the expert in Calgary in terms of gay and lesbian psychology"[34] bluntly described the reasonable reader's probable reaction to the letter as "what a bunch of crap".[35] He expressed a concern however with what might be the reaction of the unreasonable person,[36] the irrational unhealthy people.[37]In that regard he spoke of the hate crimes perpetrated by James Keegstra and the crimes occuring in the schools in Taber, Alberta, Littleton, Colorado and at the Ecole Polytechnique in Montreal. But after putting references to criminal activity aside, Dr. Alderson only spoke of a concern with the cumulative factor - that is, that this letter would be added to the already accumulated pile of similar messages further exacerbating intolerance and homophobia.

[66] While one may not take issue with his opinions, they are not strictly relevant to the discriminatory activities that the *Act* is concerned with and, accordingly, do not really assist in the analysis required by s. 3(1)(b) of the *Act*.

[67] As was earlier explained, s. 3(1)(b) of the *Act*, in order to be *intra vires,* requires that the message of alleged hate or contempt be connected to the likely perpetration of acts of discrimination listed in the *Act* eg denial of equal opportunity in the provision of goods, services, accommodations, employment, etc. Only then would a panel have jurisdiction to find a violation of s. 3(1)(b).

(ii) **Mistaken Basis For Finding Jurisdiction**

[68] No where in her decision does the Panel address the required linkage to discriminatory activity.

[69] Instead, the Panel mistakenly found its jurisdiction to deal with the complaint by relying upon two erroneous conclusions. The first error was "the circumstantial connection" between the Appellant's letter and the assault on the gay teenager in Red Deer.[38] The Panel ruled:

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[34]103/22-23.

[35]118/12.

[36]118/13-15.

[37]122/7-9.

[38]Para. 350(b).

> "Because it is hate speech, it becomes a local matter. Not taking jurisdiction would mean that inciting hatred would be acceptable up to the point that a crime occurs as a result of it. This cannot be the case, given the context of this being rural Alberta that is a matter of a local nature".[39]

[70] The second error the Panel relied upon to find its jurisdiction was the content of the Appellant's letter which related, at least indirectly, to the educational system in Alberta involving "a critique of the homosexual agenda which he alleged existed in the school system in Red Deer, Alberta"[40] including a complaint regarding school curriculum.[41] The Panel concluded that the educational system in Alberta is a matter of a local and private nature and then held that "In founding his letter on the basis of actions of the Government of Alberta, Mr. Boissoin accedes to the authority of the provincial jurisdiction.[42]

[71] With respect, the Panel got it somewhat backwards. The test for jurisdiction is not that the letter addressed issues of a "Local or Private Nature"[43] but whether the letter's content runs afoul of s. 3(1)(b) of the *Act*. This fundamental error is fatal to the Panel's decision. This mistake is in addition to the factual error concerning the "circumstantial connection" of the letter to an unproven assault. The significance of this error was previously discussed in these Reason and need not be repeated.

[72] In addition, the Panel mistakenly confined its attention to a concern with the vulnerability and endangerment of homosexuals as is demonstrated in a passage from the Panel's decision:

> "I also accept Dr. Alderson's evidence that Mr. Boission's letter was likely to expose gay persons to more hatred in the community and that the effects of hate literature is to increase the threat level the physical safety of gays".[44]

[73] The Panel's mistaken focus prompted her to incorrectly adopt a literal interpretation of s. 3(1)(b) of the *Act* which would prohibit all hateful and contemptuous expression in any public forum and heedless of the required connection or linkage to acts of discrimination listed in the *Act*. This error is fatal to the Panel's decision.

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[39]Para. 350(c).

[40]Paras. 350(a), 351.

[41]Para. 352.

[42]Para. 352.

[43]Section 92(16) of the Constitution Act, 1867.

[44]Para. 354.

(iii) Misinterpreting the "reasonable person's understanding" of the letter's contents

[74] In determining if a message was "likely to expose" people to hatred or contempt, Rooke J in Re: *Kane* had proposed a test,[45] which included these questions:

> "Does the communication itself express hatred or contempt of a person or group on a basis of one or more of the listed grounds? Would a reasonable person, informed about the context, understand the message as expressing hatred or contempt?

[75] The Panel's answer is found at paragraph 320:

> In response to the questions posed by Justice Rooke, in my view it is clear that the letter expressed hatred or contempt for a group of persons on the basis of their sexual preference. It is also my view that any person of reasonable intelligence informed about the context of this statement would understand the message is expressing hatred and/or contempt. This is obvious from the response to the message in other letters to the editor of the Red Deer Advocate that followed this publication and from the incidence [sic] at the hearing.

[76] With respect, there is no basis to settle the "reasonable person's understanding" of the letter's message simply upon reading subsequent letters to the editor. The Panel further erred in her inferential conclusion that these subsequent writers were persons of reasonable intelligence. They may very well have been but how the Panel came to her conclusion isn't explained nor, in any event, is it clear that these writers, were in fact, "informed about the context", which is a requirement of Rooke, J's. reasonable person test. But even if she was correct in her conclusion, the Panel said nothing about the contradictory letters to the editor which were supportive of the Appellant. Why were all of those writers ignored? The danger in even partially relying upon anything akin to a public referendum when applying principles of law is obvious.

[77] Secondly her reference to "the incidence [sic] heard at the hearing" can only be a reference to the newspaper report of the alleged assault and purported tie-in of that allegation to the impugned letter. I have previously explained the fallacy in presuming that these hearsay events are proven fact or that the letter triggered the commission of a crime. Accordingly I will not repeat myself.

[78] In the result, I find that the Panel failed to properly apply the test expressed by Rooke, J. in determining the "reasonable person's understanding" of the letter's message by taking irrelevant considerations into account. This error undermines the Panel's conclusion.

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[45] See paragraph 40 of these reasons.

(iv) Whether the letter expressed hatred or contempt for homosexuals

[79] In her decision, the Panel repeated the definitions of "hatred" and "contempt" established in *Taylor* where Dickson, C.J. adopted definitions provided in previous Human Rights Commission decisions:

Hatred	-active dislike, detestation, enmity, ill-will, malevolence -a set of emotions and feelings which involve extreme ill will towards another person or group of persons -to say that one "hates" another means in effect that one finds no redeeming qualities in the latter
Contempt	-the condition of being condemned or despised; dishonour or disgrace -a mental process of "looking down" upon or treating as inferior the object of one's feelings -to be viewed as similarly extreme as hate[46]

[80] Dickson, C.J. then added his own gloss to these two definitions to require "unusually strong and deep-felt emotions of detestation, calumny and vilification."[47]

[81] Thus the language under examination must reflect these extreme or unusually strong and deep-felt emotions. Nothing less will suffice.

[82] While she was in dissent in *Taylor*, the judgment of McLachlin, J. (as she then was) contains cautionary comment that parties would do well to keep in mind during their analysis. She pointed out that the words "hatred" and "contempt" cover a range of emotions. She then added:

> "Moreover, both terms are vague and subjective, capable of extension should the interpreter be so inclined. Where does dislike leave off and hatred or contempt begin? The use of these words in s. 13(1) opens the door to investigations and inquiries for matters which have more to do with dislike than discrimination. The phrase does not assist in sending a clear and precise indication to members of society as to what the limits or impugned speech are. In short, by using such vague, emotive terms without definition, the state necessarily incurs the risk of catching within the ambit of the regulated area expression falling short of hatred."[48]

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[46] *Supra*, paras. 60 & 61.

[47] *Ibid.*, para. 61.

[48] *Ibid.*, para. 151.

[83] Thus the need for great care when applying the true meaning of "hate and contempt" to any impugned message cannot be overemphasized. Any potential restriction upon freedom of expression demands no less.

[84] Indeed the *Act* speaks to this very point. Section 3(2) reads:

> "Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject."

[85] I agree that this subsection does not operate to provide blanket protection for the publication of an otherwise unlawful message through the simple device of describing that message as a political, religious or personal "opinion." The authorities quoted by the Panel at paragraph 340 & 314 of her decision make this clear. Indeed, one can say that every message contains some measure of the author's opinion which he freely seeks to express.

[86] But I also agree with Rooke, J.'s opinion in *Re Kane* that the purpose of s. 3(2) of the *Act:*

> "... is an admonition to balance the two competing objectives of freedom of expression and the eradication of discrimination. This point was made by Dickson C.J.C. in *Taylor,* at 930:
>
> > Perhaps the so-called exemptions found in many human rights statues are best seen as indicating to human rights tribunals the necessity of balancing the objective of eradicating discrimination with the need to protect free expression."[49]

[87] How to approach that balancing activity was set out by Rooke, J.:

> "In my view, a two step process such as that suggested by the Director is what is required under the *Act*. Correctly defining and applying the terms "hatred" and "contempt" in the consideration of s. 2(1)(b)[50] will, by itself, go a long way to ensure that a balance is struck between the two competing rights. However, it is my opinion that once a *prima facie* breach is found, the Panel must go on to specifically balance freedom of expression against the particular breach."[51]

[88] How to conduct that balancing process was set out by Rooke, J. as follows:

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[49] *Supra*, para. 73, see also para. 81.

[50] Now s. 3(1)(b)

[51] *Ibid.*, para. 77.

> What is required to properly balance the two competing interests is an examination of the nature of the statement in a full, contextual manner which recognizes the objectives and goals of the legislation and is *Charter* sensitive. It will also be necessary for the Panel to apply other principles enunciated by the Supreme Court of Canada in relation to s. 2(b). In particular it is essential that the Panel consider the nature and context of the expression and the degree of protection which this type of expression is afforded (*Keegstra* at 766; and *Taylor* at 922). The Panel should also give full recognition to the other provisions of the *Charter* which may come into play. These may include s. 15 (equality rights); s. 25 (aboriginal rights); s. 27 (multicultural rights); s. 28 (sexual equality); and s. 2(a) (freedom of religion).[52]

[89] In my view the Panel erred in its finding that the impugned letter was hateful and contemptuous of homosexuals and the Panel further erred by failing to properly conduct the required s. 3(2) balancing act.

[90] As to the first error, the Panel cited particular passages from the letter at paragraph 322 to provide support for her hate/contemptuous finding. With respect, the words contained in those passages are not of the extreme nature that the applicable definitions require. That the language may be jarring, offensive, bewildering, puerile, nonsensical and insulting may admit of little doubt. But the language does not go so far as to fall within the prohibited status of "hate" or "contempt". In this regard, it is unfortunate that Crown Counsel, in the course of cross examining the appellant's sole expert witness, asked that witness if he could explain the difference between the letter and Adolf Hitler's book *Mein Kampf*.[53] The damning innuendo is obvious. (On the other hand, if a parallel could be fairly drawn it should be noted that, far from being restrained, *Mein Kampf* is available at the Calgary Public Library.)

[91] A comparison of the letter's language to the language or message contained in the cases of *Bell*,[54] *Taylor*,[55] and *Whatcott*[56] suggests a much more benign tone to the letter.

[92] Further, I cannot find that the language in the case at bar is worse in content, implication and tone than that which passed muster in *Owens*.[57] I also observe that the Panel made no

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[52] *Ibid.*, para. 85.

[53] Transcript p. 235/3-5.

[54] *Supra.*

[55] *Supra.*

[56] *Whatcott v. Saskatchewan Human Rights Tribunal* 2007 CarswellSask. 836(Q.B.).

[57] *Owens v. Saskatchewan (Human Rights Commission)* 2006 CarswellSask. 217(C.A.).

reference to the observations of E.G.A.L.E. Canada who castigated the content but supported the publishing of the letter.[58]

[93] I am also concerned that by simply listing particular passages from the letter the Panel was not fairly keeping those phrases within the context of their use in the letter. Extracting the phrases from their context makes them appear much more controversial, threatening and jarring. This undermines the validity of any interpretation.

[94] In paragraph 323 of her reasons the Panel supported her finding that the letter expressed hatred and contempt of homosexuals by making two particular observations.[59]

[95] The first was that the letter "makes erroneous connections between homosexuality and disease" and "draws false analogies between homosexuality and pedophilia". With respect, complaints about factual error or false reasoning by the author would seem to be properly met, at least at first instance, by counter speech correcting those failures - not by restraining the remarks.

[96] But more importantly, the Panel appears to have misread the letter. For example, the only reference to "disease" in the whole letter was to "psychological disease" -whatever that might be. But clearly the reference wasn't to bodily diseases or illnesses as that word is usually defined. Secondly the letter's reference to homosexuals and pedophilia was only to individuals involved with NAMBLA - the North American Man/Boy Lovers Association. Inasmuch as such an organization did exist (and may still exist), the Appellant's comment can hardly constitute a false analogy.

[97] The second example of hatred and contempt cited by the Panel was the "militaristic tone" of some of the letter's contents. eg "My banner has now been raised and war has been declared." However a fair reading of the letter reveals that the author's language choice was for metaphorical purposes. With respect, no one could reasonably read the letter as an actual "call to arms." By analogy, critics might reflect upon the language contained in the well-known hymn "Onward Christian Soldiers". Surely no one can reasonably suggest that Christians singing the hymn at Sunday church service are being called upon to march into an actual war against non-Christians.

[98] But for the sake of argument, let us presume an interpretation initially supporting a *prima facie* case of hatred or contempt. That takes one to the second step in the s. 3(2) balancing process. Rooke, J. reminds us that balancing freedom of expression against the particular breach requires "an examination of the nature of the statement in a full, contextual manner".[60] Let us examine how the Panel considered this issue.

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[58]Transcript pp. 300-301.

[59]To similar effect, see also para. 324E.

[60]*Re Kane* see para. 77 above.

[99] The Panel set out the Appellant's explanation for writing the letter at paragraph 338:

> "His position is that the letter was in pure form, religious discussion or political debate. He states that his letter was rhetoric as a plea to like-minded Albertans to form a broad-based political movement in opposition to the provincial government's mandate and the initiative spurred on by the Commission to "teach school aged children in grades k through 12 that homosexuality was normal, necessary, acceptable and productive."
>
> Mr. Boissoin states that, given he was an indirect funder of this program through tax dollars, he had the right to communicate his opinion publicly and chose to do so in the Red Deer Advocate".

[100] The Panel concluded that these testimonial claims of the Appellant were not credible.

[101] At paragraph 324F the Panel said the following:

> While Mr. Boissoin gave evidence that his statement was a political one, in the context of a political discussion going on in the community at the time, there was absolutely no evidence of any pre-existing debate on the subject in the letters of the editor to the Red Deer Advocate prior to Mr. Boissoin's letter.
>
> There appeared to be no independent circumstances prompting a response of the nature of the one Mr. Boisson gave.
>
> In fact he was not responding to anything.
>
> Mr. Boissoin testified in cross examination that the CCC was having a political meeting in the week that followed publication, yet he made no mention of it or reference to it.

This was closely followed by the Panel's finding at paragraph 324 I:

> Once again, there appeared to be no raging debate in the community on the issue, at the time the letter was published.
>
> I agree with Dr. Lund's position that Mr. Boissoin's letter was not political in nature, but rather was a moral criticism of homosexuality.
>
> I agree with Dr. Lund that Mr. Boissoin did not mention any specific political avenue or action in his letter, nor did he even advise the public in his letter about a political group meeting, which was to be held one week after he published his letter, even though he had the opportunity to do so.

> If Mr. Boissoin was writing a political piece, he would have publicized the meeting.
>
> Therefore the context of the letter is not within the context of a public debate, in my view, and the context cannot be considered as part of the debate.

[102] All of these findings were based upon a significant misapprehension of the evidence.

[103] Regarding the absence of pre-existing debate (and presuming that "political expression" can only be relied upon by an author who writes in response to earlier published commentary) I do not understand why the Panel restricted a consideration of "pre-existing debate" solely to previous letters to the editor of a particular newspaper. Such a narrow construct seriously skews the inquiry concerning the scope of public debate or discussion of public issues. But the factual error lies in the Panel's oversight of the Affidavit with attached Exhibit of Joe McLaughlin, editor of the Red Deer Advocate[61] which specifically documents the newspaper reports, columns and letters to the editor pre-existing the publishing of the Appellant's letter. This material clearly indicates that there was an ongoing debate concerning the general topic in question.

[104] Secondly, regarding the matter of the Appellant's letter failing to mention the political group meeting scheduled to occur one week later, the Panel overlooked the unchallenged explanation the Appellant gave under oath when asked why the meeting wasn't mentioned:

> "Again, the article was a letter to the editor. It wasn't an advertisement. It was just another letter to the editor".[62]

[105] Had the Panel been alive to all this evidence, she could not have come to the conclusions that she did. Her erroneous conclusions stripped the Appellant of any credible, contextual basis to claim the letter manifested political or religious expression. The proper context of his remarks is fundamental to the balancing process required by s. 3(2) of the *Act*. The erroneous handling of the Appellant's testimony led the Panel to devalue the integrity of his explanation of the message as was made clear when the Panel dismissed the letter as merely containing "statements under the guise of political speech or opinion".[63]

[106] In the result I am satisfied that the individual and cumulative errors committed by the Panel permit of little deference to her various findings of fact and/or application of the law to those facts. Her errors of law led her to incorrect conclusions. The panel's decision cannot stand.

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[61]Exhibit 8 in the proceedings.

[62]195/8-11.

[63]Paragraph 345 & 357.

[107] I also wish to comment upon an additional contextual consideration when discussing allegedly hateful or contemptuous speech or writings and the likelihood that they might lead to discriminatory activity proscribed by the *Act*.

[108] The federal statutory provision being considered in *Taylor* required the repetitive delivery of the hate propaganda. A single message of hate (as is alleged in the case at bar) escaped the statutory net. The Supreme Court took time to consider how messages of hate may affect some persons.

[109] Dickson, C.J. in *Canada v. Taylor* when, referencing the Cohen Committee's work with approval, noted the following:

> "As well, the Committee observed that hate propaganda can operate to convince listeners, even if subtly, that members of certain ... groups are inferior."[64]

[110] This would suggest that persons likely to be influenced by the hateful message are those who are susceptible to being unconsciously affected by such messages due to a lack of critical judgment skills. But in the Alberta Act context, such persons must also be affected to the point where they are convinced of the truth of the message such that discriminatory actions might be undertaken.

[111] Further insight was provided by Dickson, C.J. when he cited with approval the expert testimony of Dr. Ravault who described some affected listeners, in the context of white supremacist messages, as follows:

> "... those in the community who are for one reason or another bewildered or disaffected by events and forces over which they feel they have no control ... the authors of hate messages are able through subtle manipulation and juxtaposition of material to give a veneer of credibility to the content of the messages."[65]

[112] In the context of the *Alberta Act*, a panel is concerned with persons who are at risk of being manipulated by the hateful message to the point where they might be triggered to act in a discriminatory way; persons who may be described as marginalized members of society susceptible to messages of hateful content, lacking in critical judgment faculties to resist the message's content and, further, lacking in inhibitions to refrain from reacting in a discriminatory manner that is specifically prohibited in the *Act*. There was no evidence led concerning the existence of such persons within the newspaper's readership area and therefore no basis to determine the risk, let alone likelihood, that discriminatory activity might result.

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[64] *Supra*, para. 40

[65] *Ibid.*, para. 78

[113] But even if such individuals existed, it is far from clear whether such individuals could reasonably be presumed to be affected in such a manner by the publishing of one solitary letter to a newspaper editor. Frankly I am unconvinced of such a possibility occurring. If the contention is that such a letter, added to an accumulated pile of similarly themed messages, might lend itself to such a result (as reflected in Dr. Alderson's testimony - see paragraph 65 of these reasons), then, at least, evidence of that "pile" should be forthcoming in order to properly examine and determine context.

[114] In this regard we may learn something from the American jurisprudence. When considering the meaning of the phrase "clear and present danger" which describes the singular basis upon which freedom of speech as guaranteed by the First Amendment to the U.S. Constitution may be restrained, a majority of the U.S. Supreme Court[66] adopted the interpretation of that phrase offered by Chief Judge Learned Hand:

> "In each case (courts) must ask whether the gravity of the "evil", discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger."[67]

[115] The underlined phrase identifies the need to closely examine the impugned language with a critical eye when assessing the likelihood that the danger - the discriminatory activity - will come to pass. Similarly, in a concurring opinion, Frankfurter J. referred to previous decisions of Holmes & Brandeis JJ who had dismissed allegedly seditious commentary as only really amounting to

> "expressions of opinion and exhortations ... puny anonymities ... impotent to produce the evil against which the statute aimed[68]

These remarks serve to remind one to temper interpretations with an appreciation of the reality that some language choices fail to deliver any comprehensible message or fail to deliver a comprehensible message to those who are otherwise able to undertake prohibited discriminatory activity. In neither situation is there a likelihood that mischief will result and the message can be safely ignored for the purposes of s. 3(1)(b) of the *Act*.

[116] For all of the foregoing reasons I am satisfied that the complainant has not established on a balance of probabilities that the impugned letter violated s. 3(1)(b) of the *Act*. The Panel erred in concluding otherwise.

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[66] *Dennis et al v. United States* (1951) 71 S.Ct. 857.

[67] *Ibid*, page 868, emphasis mine.

[68] *Ibid*, page 881.

E. The Charter

[117] Assuming I am wrong and the letter did violate s. 3(1)(b), as I have interpreted that legislation, the appellant argues that the letter is reflective of his s. 2(a) right to freedom of conscience and religion and, further, falls within the protection of his right to freedom of expression as set out in s. 2(b) of the *Charter*. He argues therefore that s. 3(1)(b) is an unconstitutional restriction upon his Charter rights. Without wishing to demean the appellant's claims I think it clear that the real Charter focus would lie with s. 2(b), for his letter is really but a manifestation of his religious beliefs. Further, the letter actually makes few religious references. Finally, I believe the appellant can mount the most compelling *Charter* complaint by relying upon s. 2(b) and not s. 2(a). Accordingly it is s. 2(b) that will be my focus.

[118] All parties agree with the Crown who properly concedes that s. 3 of the *Act* infringes s. 2(b) of the *Charter*. As such, the legislation, as I have interpreted it, must be justified under s. 1 of the *Charter* or it will fall.

[119] In my opinion the Supreme Court's decision in *Taylor* continues to bind me and resolves the debate in favour of the s.1 justification. I note that the Saskatchewan Court of Appeal in *Bell* came to the same conclusion.

[120] The Appellant, however, sought to distinguish *Taylor* in a number of ways.

[121] I am not persuaded that the added feature in this case of the freedom of the press being implicated undercuts the application of *Taylor*. While I acknowledge the vital public role of the media in gathering and disseminating news[69] and the value of letters to the editor in particular,[70] I am not satisfied that the appellant can properly claim some type of super-added right by riding the newspaper's constitutional coattails simply because of the latter's involvement in choosing to publish the letter. I also fear that if it were otherwise then some mischievous writer may choose to reconfigure his letter as a newspaper journal solely to claim a greater freedom of expression. That cannot be what the framers of the *Charter* intended.

[122] I am satisfied that the remedies provided in the federal legislation and considered by *Taylor* bear essential similarities to the Alberta legislation - principally the authority to direct the offending party to "cease and desist" in the contravention complained. No penalty or fine may be levied in either statute. To use the description from *Taylor*, the impugned section is less confrontational than would be the case with a criminal prohibition. Further, the legislative framework reflects an encouragement of conciliatory settlements.[71]

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[69] *Edmonton Journal v. A.G. of Alberta* [1989] 2 S.C.R. 1326; *C.B.C. v. A.G. for New Brunswick* [1991] 3 S.C.R. 459.

[70] *Cherneskey v. Armadale* [1979] 1 S.C.R. 1067, para.'s 76 - 79.

[71] *Taylor, supra* [1990] 3 S.C.R. 892 and page 32 of 63.

[123] The similarity of statutory language satisfies me that the Supreme Court's finding of a s. 1 *Charter* justification is properly applicable to the *Alberta statute*. I should also observe in passing that a contrary result would result in the *Act* not applying to hateful speech linked to discriminatory practices directed at gays. How strange that result given the Supreme Court's decision in *Vriend*[72] which mandated the inclusion of sexual orientation in the *Act*.

[124] The appellant commends the recent decision of *Warman v. Canadian Human Rights Commission and Lemire*, 2009 CHRT 26 (Sept. 2/09). In that case the Commission concluded that the amendments to the federal statute, principally the present availability of punishment for the publication, wrought an entirely different legal landscape from that surveyed in *Taylor*. Factually, the Lemire Commission also observed that the conciliatory philosophy of the legislation was ignored in that case when, after the offending material had been removed from the internet and its author sought a mediated resolution, the complainant had refused to participate in mediation; thus necessitating litigation.

[125] Together, all these factors prompted the Lemire Commission to conclude that the legal and factual circumstances were vastly different from the *Taylor* circumstances and that, accordingly, *Taylor* no longer applied. Accordingly the Commission found that the section of the Federal Act restraining hate speech could no longer be justified by s.1 of the *Charter*[73] and found the legislation to be invalid.[74]

[126] I am not prepared to adopt *Lemire* on the simple basis that neither the *Alberta Act* nor the factual circumstances of this case are comparable to the statutory and factual circumstances at play in *Lemire*. No analogy can be fairly drawn. As previously noted, I am therefore bound by *Taylor* and obliged to apply its ratio, and I do so.

F. The Concerned Christian Coalition

[127] The Appellant's letter to the editor was signed by the Appellant as "Rev. Stephen Boissoin, Central Alberta Chairman, Concerned Christian Coalition, Red Deer."

[128] The complaint form filled in and filed by the Respondent described who was being complained about - "Stephen Boissoin, Executive Director, Concerned Christian Coalition."

[129] The complaint form had space for the complainant to identify a second party to complain about but that space remained empty. One might reasonably have concluded therefore that only one person was being complained about in that complaint. (Further, the record is clear that Dr.

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[72] *Supra*.

[73] *Lemire*, para.'s 260- 290.

[74] *Ibid.*, para. 307.

Lund did file a separate complaint against the Red Deer Advocate which was resolved between those parties.)

[130] Regardless of appearances, the complaint proceeded on the assumption that the Concerned Christian Coalition, hereafter the C.C.C., had also been complained about. As a result the C.C.C. brought a preliminary application to be removed as a party.

[131] The parties filed materials with the Panel who issued her decision on September 8, 2006 ruling that the C.C.C. would remain a party.

[132] In her decision she provided an overview of each parties' submissions. Ultimately she concluded that since no party had provided evidence, there was no evidentiary basis upon which she could decide the application.

[133] The Panel observed that there were two issues to be resolved; the first, whether the C.C.C. was a party in some fashion or another to the impugned letter; the second, whether there was any connection between the Appellant and the C.C.C. "either through agency, ability to bind, or other form of legal relationship."

[134] The Panel held that it was impossible to decide these issues without a full hearing and therefore dismissed the application.

[135] It is surprising the Panel held that she had no evidence before her having acknowledged that she had the Appellant's sworn affidavit. There was no affidavit in response. Nor was the Appellant examined on his affidavit. Thus she had no contradictory evidence. All she had were contradictory submissions.

[136] The submissions of the Respondent warrant some comment. In seeking to keep the C.C.C. joined in the complaint - notwithstanding the complaint form does not make that especially clear - Dr. Lund relied principally upon the fact of Mr. Boissoin's executive position with the C.C.C. as reflected in the style of the signing off on his letter. The simple rejoinder might be - so what? Even if this suggested that the C.C.C. did agree with what Mr. Boissoin wrote it can hardly be the basis to properly target the C.C.C. as a respondent to the complaint. The issue isn't about the C.C.C.'s sympathies or support of Mr. Boissoin. The issue is whether the C.C.C. was properly before the Panel on a s. 3(1)(b) complaint.

[137] The Respondent's second basis to argue some sort of ongoing connection between Mr. Boissoin and the C.C.C. was to detail radio broadcasts involving the two which occurred in 2005. With respect that could provide no insight into the C.C.C.'s alleged involvement in the June, 2002 letter.

[138] The Respondent's third basis to seek the continued involvement of the C.C.C. as a respondent is of particular concern. Dr. Lund wished the C.C.C. to remain in order to ensure he had a greater opportunity to recover damages from the C.C.C. since Mr. Boissoin was impecunious. That is not, of course, a basis for joinder. The liability or responsibility of the

C.C.C. is the required connection - not its financial situation. This is wholly apart from the fact that the *Act* would not grant Dr. Lund "damages" in any event.

[139] With respect, there was no basis for the C.C.C. to be a respondent. Regardless, however, the hearing proceeded with the C.C.C. as a named party.

[140] During the hearing, the Appellant, in cross-examination took full responsibility for his letter and swore that no one and no group nor organization directed or requested that he write the letter.[75] He swore he wrote the letter on his own behalf as the C.C.C.'s chairman, that he had never been told he couldn't publish his own thoughts on matters and that the C.C.C. never censured or punished him for the letter.[76] He admitted that with his letter he was hoping to ride on the coat tails of the C.C.C.- that is, that he would be associated with some of their political work.[77]

[141] The Panel asked some questions of the Appellant, the most pertinent of which had the Appellant confirming that his views did not necessarily reflect the views of the C.C.C.[78]

[142] In her decision the Panel made a brief reference to some evidence not particularly relevant to the issue at hand but made no reference to any of the above testimony - all of which stood unchallenged.

[143] The Panel then concluded as follows:

> "Hearing no evidence from the C.C.C., I find that they too have contravened s. 3 of the *Act* in the same manner as Mr. Boissoin has contravened s. 3 of the *Act.*"[79]

[144] With respect, the Panel's conclusion is mystifying. She relies on the absence of evidence from or on behalf of the C.C.C. to come to her conclusion without identifying any evidence that could support a conclusion that the C.C.C. contravened the *Act.* The Panel appears to have worked from the position that the Appellant's fault, automatically became the C.C.C.'s fault , absent evidence to the contrary. This of course ignored the burden of proof reposing on the complainant to establish his case and, worse, imposed a form of reverse onus upon the C.C.C. The Panel also failed to explain why the unchallenged sworn testimony of the Appellant on this point should be wholly ignored.

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[75]158/5-24.

[76]160/26-161/17.

[77]175/18-26.

[78]191/27-192/5.

[79]Paragraph 360.

[145] I find the Panel erred in law in determining the onus of proof and erred in law in fixing any sort of liability upon the C.C.C. I find the Panel misapprehended or ignored evidence on this issue before her, such that no deference to her findings is warranted.

[146] Having reviewed the matter in detail I am satisfied that there is no evidence that establishes the C.C.C. contravened s. 3(1)(b) of the *Act*.

G. Remedies

[147] This matter may be resolved fairly quickly given the concessions properly made by the Respondent.

[148] By brief background the parties had provided written submissions upon the matter of remedies after the release of the Panel's decision on November 30, 2007. The Panel then issued its written decision on remedies on May 30, 2008.

[149] The remedies imposed are set out at paragraph 14 of that decision. All are without legal foundation or beyond the authority granted by s. 32 of the *Act* for the following reasons:

a) the direction to cease and desist the publishing of "disparaging remarks about gays and homosexuals' is beyond the power of the Panel. "Disparaging remarks" were not defined by the Panel. But clearly, "disparaging remarks" are remarks much less serious than hateful and contemptuous remarks and are quite lawful to make. They are beyond the power of the *Act* to regulate and the power of the Province to restrain.

b) the direction to cease and desist "from committing the same or similar contraventions of the *Act*" is unlawful as, again,"same or similar contraventions" are not defined and leave the parties in a state of uncertainty as to what precise speech is proscribed. To the extent that this "remedy" is linked to (a) it suffers from the same absence of legal foundation.

c) the direction to issue a written apology to Dr. Lund is beyond the power of the Panel to order in this case. The classic example, where it is appropriate, would be an apology to an individual who lost out on an accommodation because of discrimination. Here Dr. Lund suffered no loss of any kind. He does not qualify to receive an ordered apology.

d) the order that the Red Deer Advocate be requested to publish the written apology to Dr. Lund fails on the basis that no written apology could be properly ordered. The related order that the Red Deer Advocate be requested by the Appellant to publish a copy of the Remedy Order of the Panel fails on the basis that there is no authority in the *Act* which allows a panel to make such an order.

e) the direction that Dr. Lund be awarded $5,000 in damages (assuming "damages" falls within the scope of s. 32 (1)(b)(v) of the *Act)* fails on the basis that there was no evidence that Dr. Lund met the criterion of being a person "dealt with contrary to this *Act*". But further Dr. Lund's "damages" related to what he described as the retaliatory lawsuit launched by the Appellant directly related to the complaint, which lawsuit he says was frivolous and without merit. But Dr. Lund also advised that the parties agreed to the discontinuance of that lawsuit "without costs." The $5000 "damages claim" was asserted to be partial compensation of the more than $30,000 in legal costs he incurred in defending that lawsuit. Bluntly stated, parties can't claim for costs and damages in one proceeding relating to costs or damages said to arise in a different proceeding; particularly where costs were abandoned.

f) the Order directing the payment of expenses incurred by a witness called by Dr. Lund fails on the basis that there is no authority in the *Act* to permit such an Order. In addition to the curious fact that the Panel ruled that she would privately decide what witness expenses would be honoured and up to a $2000 ceiling amount, there is the additional fact that Dr. Lund had only sought damages for the witness's "pain and suffering". It's not clear how that claim was transformed into the remedy ordered. Regardless neither matter is a permitted remedy under the *Act*.

[150] Accordingly, had the Panel correctly decided that the Appellant's letter violated the *Act*, all of the resultant remedies imposed were without legal foundation or beyond the authority granted by s. 32 of the *Act*. All remedies are, accordingly, set aside.

H. Troubling Aspects of the Process Leading Up To the Panel's Decision

[151] A number of matters occurred prior to and during the hearing which warrant comment. They are offered to assist future Panels.

[152] The Appellant at various points in his oral & written submissions complained of the unfairness in being hailed before the Panel, in being "prosecuted" by a complainant in that case and not the Commission, the procedure involved, etc. One might also keep in mind the compelled involvement of the C.C.C. which I have already found to have been in error.

i. That the Complainant was a Private Prosecutor with a Cause

[153] The appellant describes his experience with the following observation: "The history of this complaint demonstrates why human rights laws should not be available to private prosecutors with a cause."[80] This echoes the remarks of columnist Mark Steyn who, in an article

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[80]Appellant's brief, para. 81.

commenting upon the *Lemire* decision, described the complainant in that case as "serial plaintiff (and former CHRC employee) Richard Warman, Canada's self-appointed Hatefinder-General."[81]

[154] Hyperbole aside, this case did proceed with the complainant, Dr. Lund, having carriage of the proceeding. This is permissible pursuant to s. 29 of the *Act* which mandates the complainant take over proceedings when the Chief Commissioner decides that a complaint should not have been initially dismissed, which is what occurred here.

[155] Thus the appellant's complaint is misplaced. The *Act* permitted Dr. Lund to take carriage of his complaint. Further, the *Act* does not limit a complainant to only one or a restricted number of complaints. Section 20(1) allows anyone, of any age to make a complaint in that case provided that person "has reasonable grounds for believing that a person has contravened this *Act*."

[156] A complainant's motivations to complain are, strictly speaking, irrelevant. Whether they may have "a cause" or whether they appear to be a "serial complainant" is not, strictly speaking, relevant. If the appellant has a complaint about this process it should be directed at the legislature, not the court.

ii. Alleged Prejudgment of the Complaint

[157] As may be recalled, the original complaint was dismissed but after review the Chief Commissioner determined otherwise. This is a process made permissible by the *Act*. The reasons for dismissal and for reinstatement of the complaint are not of any moment.

[158] But what is of concern to the Appellant is that in deciding that the complaint against the Appellant and the C.C.C. should not have been dismissed the Chief Commissioner said the following in a written decision which issued on May 25, 2005:

> Determinations / Reasons: Having completed a documentary file review it is my view that respondents were at least partially responsible for the publication of the letter *which they wrote and which contained the inflammatory, hateful and untruthful comments* being complained about. (my emphasis)
>
> I believe there is a reasonable basis in the evidence to advance this case to the panel hearing stage. In accordance with s. 27(1) I shall appoint a hearing panel to hear the case subject to the complainant wanting to take charge of it.

[159] The Chief Commissioner's decision was referenced by the Panel at paragraph 5 of her decision.

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[81]Macleans Magazine, September 21, 2009, p. 78.

[160] Clearly the Chief Commissioner's decision suggests findings that both the Appellant and the C.C.C. had violated the *Act*. Small wonder the Appellant complains of an appearance of bias on the part of the Panel inasmuch as she was appointed by the Chief Commissioner who had already given an opinion on the matter. The panel was clearly aware of the Chief Commissioner's decision because she referenced it in her own judgment.

[161] Unfortunately the Panel did not express a cleansing self instruction that she had disabused her mind of both the unfortunate words and apparent prejudgment expressed by the Chief Commissioner. In such circumstances this was mandatory self instruction I suggest.

[162] The Chief Commissioner's language was problematic for another reason. It provided an early signal to the complainant to maintain his complaint and to take carriage of the proceeding. After all, the Chief Commissioner had essentially told him that his was a provable complaint. Fairness requires that no party perceives they are at an advantage or disadvantage over the other party based upon interlocutory communication from the adjudicative body.

[163] The Chief Commissioner should not have said what she did but having done so, the Panel was obliged to express the required self direction.

iii. Prejudicial Cross-Examination of the Appellant

[164] The Appellant was asked in cross-examination if he had ever referred to the Human Rights Commission as a "kangaroo court." He testified that he wasn't certain he had said this or whether a Mr. Craig Chandler had said this in their radio program. The Appellant's objection to the question because of irrelevancy was overruled by the Panel on the basis that this evidence would be relevant to the connection between the Appellant and the C.C.C., which was an issue tied to the question whether the C.C.C. was properly named in the litigation (196/11 - 198/11).

[165] With respect, whether either or both individuals called the commission a "kangaroo court" was irrelevant to that or any other issue and was highly prejudicial to the Appellant's interests at the hearing. If he said it, it might suggest to a reasonable bystander that the Appellant felt nothing but disdain for the Panel and the Panel's work.

[166] Again, this was a situation where the Panel ought to have expressed the self instruction that she had not been prejudiced by this line of inquiry and that she would ignore this testimony and disabuse her mind of it when coming to her decision.

[167] Similarly the Panel ought to have made some mention of ignoring the controversial and hurtful innuendo contained in Crown Counsel's cross-examination of the defence expert which suggested that the content of the letter had some sort of parallel to *Mein Kampf*. Being compared to Adolph Hitler is no minor accusation to be levied against anyone. It is offensive and damning if not proven.

[168] I hasten to add that in all those situations involving unfortunate language or intemperate cross-examination, I am not suggesting that the Panel was, in fact, prejudiced against the

Appellant or had prejudged the complaint. I am also aware that a panel is not bound by the usual evidentiary rules.[82] Still it is important to remember that in human rights litigation, where passions on either side of an issue may easily be raised and where a person's sense of individual self is being exposed, probed and critiqued by others of a different bent, a panel must strive to convey that decisions will be arrived at based solely upon fact, logic and the law. Thus the benefit of the cleansing, self-instruction cannot be understated.

iv. Disposition of the Respondent's Complaint against the Red Deer Advocate

[169] In her introduction to her decision the Panel said the following at paragraph 6:

> The Red Deer Advocate is not a part of this complaint. Due to a settlement of a prior human rights complaint against its publication of Mr. Boissoin's letter, it has expanded its "letter policy." Commencing on April 10, 2004, the newspaper now includes a policy statement that states:
>
> > The Advocate will not publish statements that indicate unlawful discrimination or intent to discriminate against a person or class of persons, or are likely to expose people to hatred or contempt because of ... sexual orientation.

[170] If anything needed to be said at all about Dr. Lund's complaint against the newspaper, the Panel should have ended at her first sentence. By continuing on as she did, she left the impression that the newspaper had agreed that it had breached the *Act* when it published the Appellant's letter and had taken steps not to repeat that transgression in the future.

[171] The implication for the Appellant's case is rather obvious: (i) that the newspaper's admission of guilt adversely affects the integrity of the Appellant's denial dealing, as it does, with the same document; (ii) that the newspaper's willingness to go so far as to change its editorial policy suggests that the newspaper recognized its fault in publishing the letter as being a matter of some fundamental magnitude. In short, the newspaper was right to mediate, recognize its error in being complicit in the publishing of the letter and change its behaviours so as not to err again. The Appellant was wrong in failing to do the same.

[172] This was, in fact, the essence of Dr. Lund's opening remarks to the Panel. (23/16 - 24/12).

[173] In such circumstances it would have been preferable for the Panel to have expressed some sort of caution or self-instruction that nothing of what the newspaper did would have any bearing on her decision involving the Appellant.

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[82]Section 30(2) of the *Act*.

I. Costs

[174] The court has the authority to make any order that the Panel could have made under s. 32 of the *Act*.[83] Section 32(2) of the *Act* permits a Panel to make any order as to costs that it considers appropriate. In this case the Panel did not do so.

[175] The Appellant's brief seeks costs from the Respondent on a full-indemnity basis. This exceptional remedy is vigorously opposed in the Respondent's brief.

[176] The Appellant cites no authority. The Respondent does.[84]

[177] The Appellant supports his application by arguing:

(i) *The complaint against the Respondent was ill conceived and prosecuted.* But that can be said by every successful litigant. It would hardly qualify for solicitor-client or indemnity costs.

(ii) *That such an order "will send a clear message that the human rights process should not be available to private citizens with no personal interest in a case, other than a political cause."*[85]
Two responses are in order. First, there is no evidence that Dr. Lund was motivated by a "political cause" in making his complaint. What did motivate him has been discussed earlier in these reasons. Secondly, the fact that the Legislature has, in any event, put no complainant criteria in place has also been earlier discussed. Anyone can make a complaint, even someone who has not been personally discriminated against. The Respondent was given the carriage of the proceedings. The Respondent can hardly be faulted for taking advantage of a lawfully ordained procedure.

(iii) *That the Appellant had to endure the costs associated with defending himself before the Panel.*
But, again, that can be said by every successful litigant and thus does not qualify for solicitor - client or indemnity costs.

(iv) *That the Respondent failed to litigate the Red Deer Advocate.*

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[83]Section 37(4)(a).

[84]*Alberta (Human Rights & Citizenship Commission Panel) v. Tequila Bar and Grill Ltd.*, [2009] A.J. No. 430 (Q.B.).

[85] Para. 81 of Appellant's brief.

This strange submission overlooks the fact that the newspaper settled Dr. Lund's complaint without any hearing, which is permitted by the *Act*. It would have been quite impossible to have then compelled the newspaper to participate in the subsequent litigation.

(v) *That the Appellant had been ordered by the Panel to pay certain financial awards to the Respondent's benefit and to refrain from future public pronouncements.*
Beyond the fact that I found all of the Panel's remedies to be illegal, it is not readily apparent how the Respondent can be made financially responsible by way of a costs order for the Panel's errors.

(vi) *That the Respondent used the resources of a public institution, the University of Calgary to prosecute his complaint.*
The only "transgression" I can find here is the complaint that Dr. Lund used the University's letterhead in some of his correspondence. He explained he did so because he didn't want the Appellant to know his home address. (61/13 - 62/24) There is nothing to this complaint.

[178] With respect, there is no merit to the Appellant's request for solicitor-client costs. Accordingly it is denied.

[179] However I will consider the usual application for costs following the event. I accept the Respondent's request that the parties should address the court specifically on this matter.

[180] The Appellant will file a written submission on costs, copied to the Respondent within 10 days of the release of this decision. The Respondent will file a written reply within 5 days of receipt of the Appellant's materials. No oral argument will be necessary.

Heard on the 16 & 17th day of September, 2009.

Dated at the City of Calgary, Alberta this 3rd day of December, 2009.

E.C. Wilson
J.C.Q.B.A.

Appearances:

Gerald D. Chipeur, Q.C
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Patrick Nugent/Jo-Ann Kolmes
for the Respondent

David Kamal
for the Intervener Attorney General of Alberta

John V. Carpay
for the Intervener Canadian Constitution Foundation

J.P. Peacock, Q.C./Janet L. McCready
for the Intervener Canadian Civil Liberties Association