

Proposed human rights legislation deeply flawed, says Sheldon Chumir Foundation for Ethics in Leadership

Speaking Notes for Press Conference on Bill 44

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Janet Keeping, President

Sheldon Chumir Foundation for Ethics in Leadership

While there are positive aspects to the government's announcements regarding changes to the HRC, there are very worrying aspects as well.

On balance, Bill 44 is stunningly unimpressive, a great disappointment. The legal protection of human rights in the province is an important matter. Most complaints to the Commission are about discrimination in employment – these are vital, meat-and-potatoes issues, people refused work or promotions because of their skin colour or their religion; women demoted when they come back from maternity leave; disabled people turned away from employment or not able to access public services; Aboriginal people treated like dirt.

These are serious on-going issues and in fact getting significantly worse with the economic downturn. We need serious engagement with human rights protections. This is no time to be playing games with the HRC and its legislation.

The Chumir Foundation has devoted considerable resources over more than three years to examining the changes that need to be made to the HRC and its legislation. Our aim has always been to contribute to improvement of the Commission. Through the summer, fall and winter Albertans were led to believe that the provincial government was going to engage in serious law reform on human rights commission issues.

Bill 44 shows the impression created was wrong. Bill 44 does not represent a serious effort to come to grips with the pressing problems that are faced by the human rights commission.

On the positive side: the addition of the words “sexual orientation” to the legislation moves Alberta decisively into the 20th century. This change is long overdue. Still it's a good thing that the words are going to be there.

Giving the HR Commission and the statute that governs it clearer names is also good. At least Albertans can now know which issues the Commission has the legal authority to address.

But on some critical issues we have made no progress at all and with the addition of the parental opt-out in the Human Rights Act we have in fact have gone backwards.

Dan Shapiro, Research Associate
Sheldon Chumir Foundation for Ethics in Leadership

Free Speech:

S. 3 deals with statements or publications likely to expose people or groups to hatred or contempt.

It is deeply misguided legislation. Even if restrictions on speech were appropriate aspects of human rights legislation—and we think they are not—s. 3 is far too broad and far too vague, and so it was foreseeable that it would restrict speech which it was not intended to catch in its net.

Human Rights laws are meant to protect us – all of us – when we are vulnerable, and all of us are vulnerable at some point in our lives because of age or disability or other protected grounds such as gender, sexual orientation, or skin colour.

Free speech is NOT the enemy of vulnerable people.

Quite the contrary, free speech is the weapon of the poor and disenfranchised, the weak and overlooked.

How has any successful rights movement made gains? Anywhere? Ever? Think of black civil rights, gay rights, women's rights and so on.

Through **speech**—protest, letter-writing, talk-radio, e-mail and nowadays through Facebook, perhaps even Twitter, albeit only a few characters at a time.

Leaving section 3 as it stands is bad, bad stuff and Minister Blackett knows this is bad stuff. He has said on many occasions that s. 3 needs to be amended or repealed to better protect free speech.

But what do we get by way of changes to it? – ZIP. ZERO. NOTHING.

Not free speech, but deafening silence when it comes to protecting this fundamental right.

It is a significant failure of leadership that Minister Blackett and the rest of Cabinet did not follow through on the direction in which they signalled they were going with s. 3.

Parental opt-out:

But Bill 44 is not just troubling for what it fails to remove, but also for what it adds to the human rights act.

The proposed parental opt-out is at best ill-considered and at worst an attack on the very idea of educating young Albertans to be critical thinkers capable of examining multiple points of view.

Just like s. 3, the wording of the opt-out is broad and vague. Imagine the lessons that could be thought to deal with “religion, sexuality, or sexual orientation.”

Try to study history without talking about religion: Bye-bye Protestant Reformation and anti-slavery movement. Or literature without addressing sexuality: see you later Shakespeare.

The Premier has even said that students could be exempted from lessons dealing with evolution.

And for every objection to a school lesson, teachers, administrators, and even the Minister of Education could face human rights complaints if they fail to provide advance notice to parents about “objectionable” material.

The chilling effect on teachers and classrooms is obvious.

Wouldn't Albertans rather see education dollars go to improving classrooms rather than policing them?

Parents have the right to opt their children out of sex education under current Education policy. So, there is absolutely no need to confuse the Human Rights Act with the proposed opt-out.

Minister Blackett has said that “if you took the thing literally” and ran with it, “we'd have anarchy.” So, it's not meant to be taken literally? How then is it meant to be taken? How else is law to be taken?

Either this legislation is meant to lead to human rights complaints – and it will be used if available, as we have seen with s. 3 – or it is not meant to be used, in which case it is unnecessary.

The parental opt-out takes us down a very unwise path and I suspect many Albertans – teachers, students, and parents, among them – will be very sorry that this bad idea was ever inflicted on the human rights system and the schools.

Concluding Remarks:

Janet Keeping, President

Sheldon Chumir Foundation for Ethics in Leadership

Four other points, very briefly:

- The conflict of interest which lies at the core of mission of the HRC remains untouched. As currently structured the Commission has essentially two mandates. They are 1) to educate on and promote human rights and 2) to resolve complaints in a procedurally fair way. You want advocates and people who want to advance

human rights to carry out the first task. You don't want them involved in the second. There you want unbiased decision-makers. We pointed that out in our report, as have many others. But with Bill 44 nothing has changed. Other jurisdictions in Canada have taken decisive steps to remedy this conflict of interest by separating the two cleanly. Alberta has chosen to ignore it.

- The position of the HRC in the provincial government: it should report to the legislature directly (as does, e.g., the Information and Privacy Commissioner) but in the absence of that, the Commission should report to the Minister of Justice, as is most common across the country;
- Refusal to add “Aboriginal origin” (race, colour, ancestry – already there, but obviously not enough; Aboriginal people stay away from HRC in droves)
- Refusal to give the Commission the power to launch investigations, a power it once had. E.g., women losing jobs or being demoted after return from maternity leave. Perfect situation for the Commission to launch an investigation.

What does it look like? – superficiality all around. It's good that Bill 44 adds the words “sexual orientation” to the text of the law. But otherwise, Bill 44 represents no progress on improvement of the HRC and will, if adopted, do the Commission real harm by forcing it to act as referee in disputes between parents and the schools on religious matters. This is a destructive, pointless and completely unnecessary addition to the HRC's mandate.

For more information:

Dan Shapiro
Research Associate
Sheldon Chumir Foundation for Ethics in Leadership
403-244-6666
dshapiro@chumirethicsfoundation.ca

www.chumirethicsfoundation.ca