

## **Recommended changes to s. 3 of the Alberta Human Rights Act**

### **Presented to the Alberta Press Council**

June 6, 2009

Dan Shapiro, Research Associate

Sheldon Chumir Foundation for Ethics in Leadership

- Thanks to Ed for inviting me and to all of you for being here bright-eyed and bushy-tailed on a Sat morning.
- My name is Dan Shapiro and I'm a Research Associate at the Sheldon Chumir Foundation for Ethics in Leadership.
- I consider myself very fortunate to be able to think and write about ethics and human rights as an occupation.
- even at 9 on a Saturday morning!
- Lord knows, the recent debate over Bill 44 shows that clear, well-informed, non-partisan thinking and writing on human rights is crucial in Alberta

(Slide 2) - **Sheldon Chumir** was deeply committed to human rights and civil liberties, especially freedom of expression. As a civil liberties lawyer, he took on many cases *pro bono* and he helped found the Calgary Civil Liberties Association and the ACLRC.

- He was also deeply committed to secular public education.
  - Remember: Save Public Education Campaign
- Needless to say, he would have been appalled by Bill 44, the recent legislation amending Alberta's Human Rights Act.
- One of the chief aims of the Foundation is to nurture public demand for ethical leadership.

(Slide 3) – **About the Foundation:**

- The Foundation's recent focus has been on reform of Alberta's human rights legislation
- and work on diversity, which was the subject of our most recent large symposium in October, 2008
- ("Identity and Polarization: Implications for our ability to live well together")

(Slide 4) **Today's Aims:**

- Background on Human Rights Project
- Discussion of s.3

(Slide 5) - **On the human rights front:**

- 3 year Human Rights Project (Dec 2005 – Jan 2009)
- 3 research reports + final report submitted to government
- Public consultation in 8 Alberta communities moderated by Fil Fraser, former Chief Commissioner of the Alberta HRC
- Final report made 21 recommendations for improvement of HRC and legislation, including:
  - addition of "sexual orientation" as prohibited ground
  - Amendment of s.3 to pre-1996 wording to protect free speech
  - Splitting of adjudicative, investigative and educational functions of HRC to ensure fairness and avoid conflict of interest
- submitted final report to government in September 2008 and to the public on January 29, 2009
- Minister Blackett attended our report release and said that he agreed with "80 – 90%" of our report and that he was definitely in agreement on the need to do something about s. 3
- very encouraging
- then it gets interesting

- after no public consultation and reportedly as a result of a split in caucus over recognizing “sexual orientation” and protecting free speech, we end up instead with no change on s.3 and this bizarre parental opt-out
- note that rather than trimming back the powers of the HRC and returning it to its core mandate of preventing and remedying discrimination in employment, housing and access to services, the Bill instead expands the Commission’s powers by intruding it into the schools and it further restricts free expression and the open exchange of ideas by casting a definite chill over the curriculum
- we are here to talk about s. 3 today, but we can definitely discuss the parental opt-out later if there is interest

**(Slide 6) – S. 3 of the Alberta Human Rights Act**

**- the current wording:**

3(1) No person shall publish, issue or display or cause to be published, issued or displayed before the public any statement, publication, notice, sign, symbol, emblem or other representation that

(a) indicates discrimination or an intention to discriminate against a person or a class of persons, or

(b) is likely to expose a person or a class of persons to hatred or contempt because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons.

- the problems with this section are legion and have been much-discussed in the media firestorm over free speech and HRCs in the last few years
- Is everyone familiar with the issues?

(Slide 7) **Problems**, briefly:

- 3 Key SCF objections to s.3:

(1) **Illegitimately limits expression**, especially with the addition of “statements” and “publications” in 1996

- “likely to expose” clause is too broad and vague

- applies even to statements that are true

- susceptible to politically-motivated use

- limits legitimate political debate

- e.g., in recent years re: gay marriage, Islamic terrorism

(2) **Not the appropriate mandate of HRCs**: even *if* some hate-speech restrictions are necessary/legitimate, they belong in the Criminal Code and should be dealt with in the Courts where the usual defences of truth, fair comment, etc apply and where intention to promote hatred is required and the burden of proof is much stricter

(3) **The firestorm of criticism over free speech cases has severely damaged the reputation of the HRC** and hence its ability to carry out its proper mandate.

- Speech cases make up only about 2% of Alberta HRC cases (80% deal with employment), so they are an unnecessary distraction from the HRCs real mandate of preventing/remedying discrimination in employment, housing services.

- Two high-profile s.3 cases:

- Stephen Boisson, “Homosexual Agenda Wicked,” *Red Deer Advocate*

- Ezra Levant, Danish cartoons in the *Western Standard*

SO,

(Slide 8): **Our recommendation on s.3:**

- **amend it to the pre-1996 wording (remove highlighted words):**

3(1) No person shall publish, **issue** or display or cause to be published, **issued** or displayed before the public any **statement**, **publication**, notice, sign, symbol, emblem or other representation that

**(a)** indicates discrimination or an intention to discriminate against a person or a class of persons, or

**(b)** is likely to expose a person or a class of persons to hatred or **contempt** because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons.

- see pp 37 and 43 - 44 of *Toward Equal Opportunity*

- This would get the HRC out of dealing with the expression of opinion in the press and so on

- But would still deal with the intention to discriminate in employment, housing and access to services

- So, job, apartment or restaurant ads saying “No Indians” or “No dogs or Jews” would fall afoul of the provision, but newspaper columns about corruption on Indian band councils or links between Islam and terrorism would not.

- It would also be acceptable to us to see full repeal of section 3

(Slide 9) - **Our 2<sup>nd</sup> recommendation:**

- **A more active HRC on speaking out about the effects of hateful speech**

- here the idea is to have the HRC carry out its education mandate more fully

- but, note that this is contingent upon one of our other recommendations about splitting the educative and adjudicative functions:

- you can't have the same people educating about human rights and discrimination and also investigating and hearing the cases
- This issue was not addressed by the disastrous Bill 44 either.
  
- In any case, the idea is that the HRC could hold town halls or use other means of publicly addressing the harmful effects of hateful speech without having the jurisdiction to investigate anyone for their opinions or the expression of their opinions
  
- We recognize that **speech can cause real harm:**
  - Loss of dignity, respect and self-respect
  - Marginalization, scapegoating, etc
- So, we are sensitive to the concerns of many, particularly vulnerable minorities, about the effects of hateful and offensive speech
- We think the scope of what is ethically permissible is narrower than the scope of what it should be legally permissible to say.
- So, we are in favour of more—and better—discussion of the ethics of offensive and hateful speech, but we are not in favour of human rights clauses restricting such speech.

(Slide 15) **The classic free speech response!**

- The answer to offensive speech?
  - More speech.
- Thanks very much.