

Speaking out better than prosecuting

Written by John Carpay

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By John Carpay, For The Calgary Herald

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Can government coerce people into becoming tolerant, respectful and sensitive? It's a question raised by human rights legislation in Alberta, in other provinces and federally. These laws make it illegal to say or write things which offend people on the basis of their race, age, sexual orientation, religion, gender and other factors.

Youth pastor Stephen Boissoin was prosecuted under Alberta's human rights law for a letter to the editor published in the Red Deer Advocate in 2002, in which he vociferously denounced teaching children about homosexuality in the public school curriculum. After incurring tens of thousands of dollars in legal bills to defend himself against this human rights complaint, Boissoin in 2008 was ordered by an Alberta Human Rights Panel to pay \$5,000 to the University of Calgary professor who filed the complaint, plus pay \$2,000 to a witness in the proceedings, plus refrain forever from making "disparaging remarks" about homosexuals. This ruling was overturned by the Alberta Court of Queen's Bench in 2009, but the complainant professor has appealed this decision to the Court of Appeal, so Boissoin's ordeal is not over yet.

In Saskatchewan, the Human Rights Tribunal ordered Bill Whatcott to pay \$17,500 to complainants offended by his polemical flyers, also on the topic of what children in public schools should -- or should not -- be taught about homosexuality. This human rights ruling was reversed by the Saskatchewan Court of Appeal, but the tribunal wants the Supreme Court of Canada to restore its original ruling against Whatcott. So this story, too, might not be at an end.

Citizens prosecuted for violating human rights laws do not have the right to a timely trial, or to be presumed innocent.

Supporters of these laws describe the process as conciliatory, but people like Whatcott and Boissoin, who refuse to apologize for expressing their deeply held convictions, will be on the

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hook for their own legal bills. However, the complainant pays nothing, even if her or his complaint is eventually dismissed. Supporters of these restrictions on free speech will argue that they are needed to raise the level of respect and civility in society, by protecting people from hurt feelings. But just how effective are these laws, and what is their collateral damage?

On the surface, a legal right to be free from hurt feelings sounds like a good idea, but it's incompatible with free speech. For example, an atheist's right to attack religion cannot exist if religious people have a right to be free from offence. A Christian's right to say that gay sex is sinful cannot exist if gays enjoy a right to not have their feelings hurt by others' speech.

Free and offensive speech has always been a requirement for social progress, from the abolition of the slave trade to the extension of voting rights to women. Think about how offensive the slave traders in the 1700s would have found the speech of William Wilberforce, who denounced their means of earning a livelihood as evil and barbaric. And the notion that women should be allowed to vote would have been very offensive to many male ears in the year 1900. In the realm of science, Darwin's theory of evolution caused great offence, as did Galileo's insistence that the Earth revolves around the sun. In other words, trying to outlaw offensive speech will undermine the quest for truth in science, philosophy, religion, politics and other domains.

And how can citizens in a democracy develop good public policies without frank and honest debate?

Rather than government prosecutions of "extreme" speech (can anyone define "extreme" objectively?), the better way to a more tolerant and respectful society lies in counter-speech. Telling someone -- firmly but politely -- that his speech is unacceptable will actually strengthen civil society. Admittedly this is difficult to carry out; much easier to file a complaint with a human rights commission and trigger a government prosecution. But counter-speech and direct feedback keep people connected with each other, and strengthen civil society. Taxpayer-funded prosecutions do just the opposite.

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