

## Anti-gay flyers violated hate law, Supreme Court rules

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The Supreme Court of Canada has ruled a Saskatchewan anti-gay crusader violated the province's human rights rules when he distributed pamphlets denouncing homosexuals.

But the high court also refined the definition of hate speech by striking down some language in Saskatchewan's Human Rights Code as unconstitutional.

In a unanimous 6-0 decision, it found two of four flyers William Whatcott distributed to mailboxes in Regina and Saskatoon in 2000 and 2001 violated the provincial code, while two others did not.

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The Supreme Court of Canada in Ottawa, Thursday, Oct. 7, 2010. (Adrian Wyld / THE CANADIAN PRESS)



Bill Whatcott is seen in this undated image taken from video.

The self-described Christian street preacher produced leaflets with titles such as "Sodomites in our Public Schools" and called same-sex relationships "filthy." They urged residents to lobby the government to prevent homosexuals from working as teachers.

The handouts prompted complaints to the Saskatchewan Human Rights Commission, and a tribunal decided Whatcott had violated the provincial code.

But in 2010, the Saskatchewan Court of Appeal reversed the lower court ruling, saying that the leaflets might have been crude and offensive, but they didn't promote hatred.

In Wednesday's ruling, the Supreme Court found that passages in two of the documents did violate the provincial code because they sought to incite hate by portraying homosexuals as "carriers of disease, sex addicts, pedophiles" who prey on vulnerable children and cause their premature death.

The offending passages portrayed homosexuals "as a menace that threatens the safety and wellbeing of others," and used "vilifying and derogatory representations to create a tone of hatred," the court said.

The flyers also "expressly call for discriminatory treatment of those of same sex orientation," the justices added.

"It was not unreasonable for the tribunal to conclude that this expression was more likely than not to expose homosexuals to hatred," they said.

The Supreme Court explained that prohibitions on expression that expose anyone to hatred "is a reasonable limit on freedom of religion and is demonstrably justified in a free and democratic society."

But the justices also struck down prohibitions of the provincial code that banned publications that "ridicule, belittle or otherwise affront dignity of persons."

Such offences do not meet the definition of inciting hatred, and are unconstitutional because they "unjustifiably infringe freedom of expression," the court said.

The Saskatchewan tribunal had directed Whatcott to pay the four original complainants a total of \$17,500. He must pay one complainant \$2,500 and another \$5,000.

Whatcott told CTV News he was "profoundly" disappointed by the court's decision.

"I see today as a dark day, not only for myself personally, but for religious freedom and freedom of speech in Canada," he said.

Whatcott said he will not tone down his message.

"My faith in Jesus Christ takes precedent over seven liberal justices that clearly don't know what right or wrong is."

Saskatchewan Human Rights Commission chief commissioner David Arnot told CTV's Power Play that he was pleased with the decision which he called strong, unambiguous and unanimous.

It's a "very strong judgment outlining what hate speech is, how it's to be analyzed in the future, it's very helpful," he said.

"Hate causes real harm to real people and when hate occurs it needs to be sanctioned," said Arnot.

While the decision applies to Saskatchewan, Arnot said other legislatures in Canada should be looking at the judgment because it is so direct.

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Since a number of other provinces use similar language in their human rights codes, the ruling could have implications for other human rights commissions in Canada.

The court offered guidance to human rights tribunals, saying even if an expressed idea is repugnant, that doesn't justify restricting its expression -- unless the publication or speech is likely to expose the targeted person or group to hatred.

"The repugnancy of the ideas being expressed is not sufficient to justify restricting the expression, and whether or not the author of the expression intended to incite hatred or discriminatory treatment is irrelevant. The key is to determine the likely effect of the expression on its audience, keeping in mind the legislative objectives to reduce or eliminate discrimination," the court wrote.

Lawyer Mark Freiman, former president of The Canadian Jewish Congress, said he hoped the ruling would serve to clarify the definition of hate speech.

"It reaffirms the case law as we have understood it for the last 25 years," Freiman told The Canadian Press. "It reaffirms that there is a very high standard in order for communication to qualify as hatred."

However, David Koschitzky, co-chair of the Centre for Israel and Jewish Affairs, said much more work must be done to prevent ongoing discrimination and abuse.

"Canada's hate speech protections need significant overhaul in terms of both content and process to ensure a proper balance between freedom of speech and protection from hate," Koschitzky said in a statement.

"The Jewish community of Canada understands all too well the corrosive impact of hate speech on vulnerable minorities."

The Canadian Constitution Foundation condemned the ruling, telling The Canadian Press it silences free speech.

"The Supreme Court missed an excellent opportunity to rein in the power of various human rights commissions and tribunals to censor the expression of unpopular beliefs and opinions," said foundation director Chris Schafer.

"Free expression is the lifeblood of democracies and all forms of expression, especially the offensive kind, needs to be protected."

The court's decision also disappointed John Carpay, president of the Justice Centre for Constitutional Freedoms. While he disagreed with Whatcott's views, he said it would be better to explain why Whatcott was wrong rather than prosecuting him for his opinions.

The Canadian Civil Liberties Association, while condemning the content of Whatcott's pamphlets, said such provisions in human rights codes do little to prohibit hate speech.

"We certainly don't agree with what Mr. Whatcott has to say and we strongly condemn what he put in those pamphlets," Cara Zwimbel, director of the fundamental freedoms programs at the CCLA, told CTV News Channel.

"But we've had experience with these human rights provisions prohibiting hate speech for many years, and in our view they don't work. And they do put a chill on freedom of expression."


*With a report from CTV's Richard Madan*

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