

# HUMAN RIGHTS PANELS OF ALBERTA

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**BETWEEN:**

**Darren E. Lund**

**Complainant**

**-and-**

**Stephen Boissoin and  
The Concerned Christian Coalition Inc.**

**Respondent**

**and**

**Canadian Civil Liberties Association and Attorney General of Alberta**

**Interveners**

## DECISION

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**Panel Chair:** Lori G. Andreachuk, Q.C.

**Decision Date:** November 30, 2007

**File Number:** S2002/08/0137

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## Appearances

Darren E. Lund	)	
Complainant	)	
	)	
Stephen Boisson	)	
Respondent	)	Gerald D. Chipeur, Q.C.,
	)	Legal Counsel
Canadian Civil Liberties Association	)	
Intervener	)	Josh Patterson, Legal Counsel
	)	
Attorney General of Alberta	)	
Intervener	)	David Kamal, Legal Counsel
	)	

## INTRODUCTION

1. This matter becomes before the Panel as a result of the complaint filed by Dr. Darren E. Lund ("Dr. Lund") on July 18, 2002, alleging discrimination on the basis of sexual orientation contrary to Section 3 of the *Human Rights, Citizenship and Multiculturalism Act* ("the Act").
2. On Monday, June 17, 2002, the *Red Deer Advocate* Newspaper, published a letter to the editor entitled "Homosexual Agenda Wicked", written by Mr. Stephen Boissoin, executive director, Concerned Christian Coalition Inc. (CCC). On July 22, 2002, Dr. Lund, a professor at the University of Calgary, filed a formal human rights complaint against Mr. Boissoin and the CCC. Dr. Lund complained that the letter contravened the *Human Rights, Citizenship and Multiculturalism Act (2000)* Section 3 on the grounds of sexual orientation and the area of Publications and Notices.
3. The Southern Regional Office of the Alberta Human Rights and Citizenship Commission initially dismissed Dr. Lund's original complaint, due in part to not having the proper respondents named in the complaint.
4. Dr. Lund then filed an appeal to the chief commissioner of the Alberta Human Rights and Citizenship Commission ("the Commission").
5. On May 25, 2005, the chief commissioner allowed the complaint to advance to the Panel hearing stage in accordance with Section 27(1) of the *Act*. The hearing Panel was to hear the case, subject to Dr. Lund agreeing to take carriage of the complaint.
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.*

## **ISSUES**

### ISSUE 1

7. Is Mr. Boissoin's letter published in the *Red Deer Advocate* in breach of Section 3 of the Act?

Section 3 provides:

*Discrimination Re: Publications, Notices*

*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, color, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income or family status of that person or class of persons.*

*(2) - Nothing in this Section shall be deemed to interfere with the free expression of opinion on any subject.*

### ISSUE 2

8. Is Section 3(2) a defence to the breach of Section 3(1)?

### ISSUE 3

9. Does the Commission have jurisdiction to adjudicate on this complaint?

## ISSUE 4

10. What remedy is appropriate?

### **REMEDY SOUGHT**

11. Dr. Lund requests the Panel provide an Order directing Mr. Boissoin and/or the CCC pay Dr. Lund \$5,000.00 as compensation of legal costs associated with this complaint.
12. Dr. Lund requests the Panel provide an Order directing Mr. Boissoin and/or the CCC to donate \$5,000.00 to the *Diversity, Equity and Human Rights Committee of the Alberta Teachers' Association*.
13. Dr. Lund requests the Panel provide an Order directing Mr. Boissoin to publish a full apology in the *Red Deer Advocate* within one month of this Panel's decision. Mr. Boissoin is to apologize for submitting the article and for his views on homosexuality. This apology must address that Mr. Boissoin understands that the expression of his views were inappropriate and likely to expose persons or groups of persons to hatred or contempt.
14. If Mr. Boissoin fails to comply with the Order, that the Panel provide an Order disallowing the publication of Mr. Boissoin's views on homosexuality in any of the major print media in Alberta, including the *Red Deer Advocate*, *Red Deer Express*, *Calgary Herald*, *Calgary Sun*, *Edmonton Journal*, *Edmonton Sun* and *Lethbridge Herald*.

### **EVIDENCE**

#### **Testimony of Dr. Lund**

15. Dr. Lund was a high school teacher in Red Deer, Alberta, starting in 1986/1987 for 16 years. He was involved in a group organized by young people in central Alberta called

the Gay/Straight Alliance who, as a group, was concerned with discrimination faced as a result of sexual orientation.

16. Dr. Lund filed a complaint with the Commission in response to Mr. Boissoin's letter published in the *Red Deer Advocate*. Given his involvement with the young people involved in the Gay/Straight Alliance, Dr. Lund felt a sense of responsibility to launch this complaint, especially since a young homosexual man was bashed on Canada Day, two weeks after the publication of Mr. Boissoin's letter. The young man who was assaulted made a statement to the media in which he mentioned Mr. Boissoin's letter.
17. Dr. Lund's complaint is that the letter written by Mr. Boissoin crossed the line of free speech thus inciting hatred against homosexuals and in particular causes young gay, lesbian, trans-gender, bisexual young people in central Alberta to be especially vulnerable.
18. Mr. Boissoin was the executive director of the CCC when his letter to the editor of the *Red Deer Advocate Newspaper* entitled "Homosexual Agenda Wicked" was published.
19. Dr. Lund reports that this letter has been republished and was consistently made available by Mr. Boissoin and the CCC on various websites.
20. Dr. Lund reported that great strides have been made in terms of acceptance of diversity in central Alberta over the last several decades as the result of the work of a number of individuals, variety of agencies, and government sectors committed to acceptance.
21. Dr. Lund reports being fearful that the writings of Mr. Boissoin are likely to expose people to hatred and contempt as well as the potential for physical danger.
22. *The Red Deer Advocate* published an article on July 4, 2002, entitled "Gay Teenager Beaten." This beating took place less than two weeks following the publication of Mr. Boissoin's letter. Dr. Lund viewed Mr. Boissoin's letter as a "call to arms letter."

23. Dr. Lund believes that Mr. Boissoin's willful publication of his ideas helped foster an atmosphere of violence and intimidation for people, based on their sexual orientation. The 17 year old victim was attacked by a man who asked him "you are a faggot, right?" before shattering his cheek bone. As published in this article, the victim stated that he "doesn't feel safe reading the anti-gay statements like the ones in the *Red Deer Advocate* June 17<sup>th</sup> letter to the editor from Stephen Boissoin." The victim further added "I feel the letter was just encouragement for people to go out and stop the gay rights movement." Dr. Lund reports the letter clearly evokes militaristic language in a manner likely to incite hatred and/or contempt, perhaps even violence, against an identifiable group. He feels the alarmist message steps far over the line of responsible public comment on such a sensitive social issue.

24. Dr. Lund reports that there are several passages within the letter that are militaristic and alarmist that seek to evoke war against homosexuals and their supporters. Dr. Lund feels the passages in the letter which follow are clearly over the line:

*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.*

*Come on people, wake up! It is 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.*

*[The masses] Failure to stand against the horrendous atrocities such as the aggressive propagation of homo and bisexuality"*

25. Dr. Lund reports that this extremist terminology demonizes and dehumanizes individual homosexuals and their supporters.

26. Dr. Lund reports that several passages of the letter aim to eliminate those who promote discrimination, free schools and society. He cites the following passages in support of this position:

*From kindergarten class and 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 pre-mediated strategies, aimed at desensitizing and eventually recruiting our young children into their camps.*

*Furthermore...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.*

27. Dr. Lund states that Mr. Boissoin is posing questions in his letter that are irresponsible and erroneous in regard to HIV infection which also promotes fear and ignorance. Mr. Boissoin states:

“Will your child be the next victim that tests homosexually positive?”

28. Dr. Lund reports that linking sexual orientation with disease and death is likely to expose people to hatred and/or to contempt.
29. One week prior to the publication of Mr. Boissoin’s letter, a group entitled “STOP” (Students and Teachers Opposing Prejudice) was organizing a sexual orientation awareness and acceptance week. The STOP group’s aim was to make educational efforts towards a safe learning environment for all students.
30. Dr. Lund reported that following the publication of the letter, numerous letters to the editor appeared in the *Red Deer Advocate*, and that the vast majority of these subsequent writers described Mr. Boissoin’s letter of being hateful rhetoric.
31. Dr. Lund reported that the *Red Deer Advocate*, in settlement of a separate human rights complaint regarding publication of Mr. Boissoin’s letter, took an unprecedented step of changing and expanding its letter policy. The policy now states that:

*The Red Deer 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 because of... sexual orientation.*

32. Dr. Lund reports that the letter was not political in nature as there were no political remedies even suggested nor any political actions suggested. He states further that this type of speech is hateful and that this type of speech is subject to limitations.
33. Mr. Lund in cross-examination reported that the University of Calgary is not involved in this case nor do they take any particular stance on this issue.
34. On cross-examination, Dr. Lund reported that Mr. Boissoin's letter in his opinion was not a political speech. He reported that Mr. Boissoin's expressions stepped over the line of expressing a viewpoint on a group and further that the words talk about asking for actions that would limit the rights and safety of a certain group.
35. Dr. Lund stated that he was unaware of the motivations of the *Red Deer Advocate* in publishing this letter to the editor.

#### **Testimony of Ms. Janel Dodd**

36. Ms. Dodd was employed in 2002 at the Upper Level Youth Center in Red Deer. Her specific position was office manager.
37. Ms. Dodd reported meeting Mr. Boissoin in the late 1990s when she commenced work at a church where Mr. Boissoin was running a youth program called the Solid Rock Café in 1998.
38. Ms. Dodd stated that the majority of people working at the youth center were religious and services were held for the youth, however, the work relationship with the youth was not dependent about the youth being religious.
39. Ms. Dodd reported that Mr. Boissoin would discuss his writing of this letter in the youth center.

40. Ms. Dodd observed that after the newspaper published the letter, Mr. Boissoin would come into the youth center looking in the paper to see what response he was receiving in the paper. Ms. Dodd reported Mr. Boissoin was very excited about the controversy he created amongst the readers of the *Red Deer Advocate*.
41. Ms. Dodd reported that she was personally aware that one of the youths who beat the 17 year old youth was a person who frequented the youth center quite often. Ms. Dodd further reported that Mr. Boissoin was aware of this and did nothing in response to the beating.
42. Ms. Dodd reported that as a rule if there was any violence within the center, those involved were asked to leave for an extended period of time depending on how violent the situation was. Ms. Dodd reported that the youth who perpetrated this assault was never subjected to any repercussions at the center.
43. Ms. Dodd reported that Mr. Boissoin made the following statement:

“God called him to be active with his beliefs.”

#### **Testimony of Mr. Douglas Robert Jones**

44. Mr. Jones served with the Calgary City Police Service for just under 25 years. He worked within the Diversity Resources Unit and served as the hate/bias crime coordinator as well as the liaison to the gay, lesbian, bi-sexual, tri-sexual, trans-gender communities. He has extensive first hand experience with hate crimes.
45. Mr. Jones reported working on 110 to 130 cases involving hate crimes per year.
46. Mr. Jones reported working on cases ranging from graffiti to property damage to actual assaults related to the inciting of hatred caught by Section 318 and 319 of the *Criminal Code*. Mr. Jones further dealt with issues pursuant Section 718 of the *Criminal Code*

involving a stronger sentence request because of the hate motivation involved in the offence.

47. Mr. Jones reported his history of speaking to police recruits for seven years on hate crimes under the *Criminal Code* in regards to investigating hate crimes and understanding how the specific crimes affect the individual victim as well as the community.
48. Mr. Jones spoke at conferences across Canada and internationally about hate crimes and the difficulty the victims have reporting it, and how police work with diverse communities typically targeted by hate.
49. Mr. Jones reported in his experience less than 10% of victims who are actually targeted with hate motivated crimes actually come forward and report to the police.
50. Mr. Jones' experience as an investigating police officer over the last seven years was that gays are routinely targeted for hate and discrimination in Alberta. The most targeted group for hate crimes were those in the Jewish community and gays are typically the second most targeted group for hate crimes in Calgary.
51. Mr. Jones reported that gay people are members of a vulnerable population in society and gays are likely more vulnerable in smaller settings like Red Deer.
52. Mr. Jones reported having great concern with Mr. Boissoin's letter.
53. Mr. Jones read this letter dated November 20, 2006, to the Panel, as follows:

*I have the following concerns and will speak to these at the Panel hearing in the matter of the Human Rights Complaint against Stephen Boissoin and the Concerned Christian Coalition. I have been with the United Way for the past 18 months. I came to the United Way after finishing 25 years with the Calgary Police Service. For the last 7 years, I held two portfolios within the diversity resources unit, hate/bias crime coordinator and police liaison to the gay, lesbian, bi-sexual and trans-gender communities. I consulted and presented on these issues with other police services and spoke nationally and internationally at conferences. I coordinated the investigation of approximately 125 hate*

*motivated crimes in Calgary annually. Two communities for the leading victims for hate crimes and incidents are the gay, lesbian, bi-sexual and trans-gender, and Jewish communities. This remained consistent year after year, which made it clear these communities were the most vulnerable facing hatred.*

*Initially the first comment, the letter includes the paragraph:*

*“Come on people, wake up! It is 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.”*

*So, I would have concern with anyone reading this article, and especially young people. This article and especially the paragraph above encourages action against those perceived to be homosexual.*

*In schools, 4 out of 5 youth targeted by hate incident are in fact heterosexual. My experience has shown that the majority of gay bashings that occur in Calgary are perpetrated by small groups of two to four young people acting out. Reverend Boissoin’s letter encourages this kind of action by arguing there is a homosexual machine and that “every professing heterosexual is having their future aggressively chopped at the roots.”*

*Secondly, the article is a call to action. There is no information explaining what legal steps should be taken by a person who has concerns about the issue of homosexuality. Nothing is suggested around legal steps such as letter writing or whom to speak to in Government or any other reasonable steps towards political actions. Boissoin’s phrase, “Take whatever steps are necessary”, incites hatred and encourages hate incident at the very least. More importantly, it may also encourage some individuals who might read this article to commit hate crimes motivated against those perceived to be homosexual. So, in other words, heterosexual people.*

*People who are in a position of trust need to choose their words very carefully. This article is signed by a Reverend Stephen Boissoin, Central Alberta Chairman, Concerned Christian Coalition Red Deer. The official sounding source of an article such as this, can have significantly greater negative impact, especially when written by someone who is attached to an organized church or religion. This article comes from someone whom you would expect to hear words such a love thy neighbor. This article was written by someone who would not reasonably be viewed as too young and uneducated or without the opportunity to have read and learned about sexual identity. The fact that this letter was written by someone representing a religious group and a coalition gives a far greater potential impact.*

*And last, I would suggest that we substitute another marginalized community into this article wherever it says “homosexual” and see if we would agree if it promotes hatred and tolerance. If we imagine this article was written depicting heterosexuals and their supporters in such a negative light, would heterosexuals feel targeted? I believe they*

*would reasonably feel this article encourages others to act out against them through verbal abuse, hate messages and hate motivated assault.*

*For these reason, I sincerely believe this letter has violated Section 3 of the Alberta Human Rights, Citizenship and Multiculturalism Act.*

54. Mr. Jones reported that he is concerned that young people are very impressionable to articles like this.

### **Testimony of Dr. Kevin Alderson**

55. Dr. Alderson was qualified as an expert witness as a psychologist with an expertise in gay and lesbian psychology.
56. Dr. Alderson has been a licensed psychologist for 21 years and currently is a professor at the University of Calgary.
57. Dr. Alderson reports that a majority of gays and lesbians have experienced some form or prejudice and discrimination to the extent of about 90% of gay men and a slightly lower percentage of lesbian women. He further reports that approximately 25% of gay men and 10% of lesbian women have been physically assaulted directly due to their identity as gay or lesbian.
58. Dr. Alderson reports that gays and lesbians have been targeted for hate and discrimination for centuries.
59. Dr. Alderson reports that the research is clear that rural communities are known for more homophobic environments compared to larger centers.
60. Dr. Alderson reports that young gay people living in a smaller community such as Red Deer would be more vulnerable to discrimination and hate.
61. Dr. Alderson reports that gays and lesbians are reluctant to report hate crimes.

62. Dr. Alderson reported that reading Mr. Boissoin's letter caused a surge of personal fear in himself. Furthermore, he reports that he has talked to hundreds of people in the gay community about Mr. Boissoin's letter and all were horrified and fearful.
63. Dr. Alderson reports that Mr. Boissoin's letter is full of hate speech.
64. Dr. Alderson reports that the research does not support Mr. Boissoin's analogy of homosexuals as pedophiles, as the research clearly indicates that pedophiles are primarily heterosexual men who prey on girls.
65. Dr. Alderson reports that Mr. Boissoin's letter is likely to expose gay persons to more hatred and contempt in the community.
66. Dr. Alderson wrote a letter dated November 22, 2006 in support of Dr. Lund's complaint to the Commission. Dr. Alderson's opinion is that the contents of Mr. Boissoin's letter fit every definition of hate speech. Further, it is his opinion the written word is more harmful than spoken word as it creates a permanent record.
67. Dr. Alderson points to the many statements in Mr. Boissoin's letter which reflect hateful descriptions of homosexuals including the following:  
  
*That gays are sick (suggesting their enslavement to homosexuality can be remedied), that they have caused far too much damage, that they are pedophiles, they recruit, they have done horrendous atrocities, they are wicked, perverse, self centered, morally deprived, they are compared to pedophiles, drug dealers and pimps and furthermore that they are "the enemy."*
68. Dr. Alderson says the effect of hate literature is to increase the threat level to the physical safety of gays.
69. Dr. Alderson also reports that sexual minorities are among the most frequently targeted victims of hate motivated violence in Canada.

70. Hate literature increases internalized homophobia and concomitant compromised mental health for those in the gay community who are subject to negative messages in society. More particularly internalized homophobia is linked to many mental consequences for gays including low self-esteem, depression, self loathing and other forms of psychological distress.
71. Dr. Alderson reports that research conducted in Calgary found that gays, lesbians and bisexuals were 13.9 times at greater risk of making serious suicide attempts compared to heterosexuals.
72. Dr. Alderson reports hate speech increases the dislike people have for the targeted group.
73. Dr. Alderson reports the willful promotion of hatred nullifies freedom of speech for the targeted group as it creates distrust of the identifiable targeted group which is difficult to overcome.
74. Dr. Alderson states in his expert opinion that rhetoric like Mr. Boissoin's necessitated the passing of Bill C-250 (an Act that incorporated sexual orientation into existing hate propaganda sections of the *Criminal Code* in 2003).

#### **Testimony of Mr. Stephen Douglas Boissoin**

75. Mr. Boissoin is currently a parts and service manager for an automotive dealership. At the time of writing the letter, he was the executive director of the Upper Level Youth Center.
76. Mr. Boissoin was the central Alberta chairman (later titled the executive director) for the CCC.

77. Mr. Boissoin reports he did not know the name of the youth who physically assaulted the 17 year old gay male in Red Deer. Mr. Boissoin stated the only thing he knew of the perpetrator was speculation by other teens in the youth ministry.
78. Mr. Boissoin reports that it was a combination of things that caused him to write the letter. One factor was working with teens and having a passion for teens and caring that what they are told is the truth. Another factor was that he was becoming educated about the advances of homosexual rights and how they affect children.
79. Mr. Boissoin reports that he wrote the letter to the editor as a “wake up” call to people to “sound the alarm” as voters in Canada.
80. Mr. Boissoin reports that prior to writing this letter, he became aware that an organization called PFLAG Faith Society had received government funding for their initiative to teach that homosexuality was normal, necessary, acceptable and productive and had been for thousands of years.
81. Mr. Boissoin reports he wrote the letter “hoping to generate some spirited debate in the community.”
82. Mr. Boissoin reports further that he was involved with a political organization at the time and the homosexual movement was an issue that he was educating people about.
83. Mr. Boissoin reports his intent to rally those who had the same views as himself to meet at the ballot boxes. Mr. Boissoin further reports that he wanted to educate people into taking a greater interest in what kids are being taught and who is being brought into schools to educate our children.
84. Mr. Boissoin reports that he believes all people are created equal under God and loved equally by God and should be treated as such.

85. Mr. Boissoin reports that he did not intend his letter to discriminate or encourage other individuals to discriminate against homosexuals.
86. Mr. Boissoin reports that he does not believe that his letter had the effect of discrimination against people based on their sexual orientation.
87. Mr. Boissoin reports he has a right to write the letter to the editor and that he should be protected in terms of his views.
88. Mr. Boissoin on cross-examination admitted he knew by submitting this letter to the editor of the *Red Deer Advocate*, that it may be published.
89. Mr. Boissoin on cross-examination admitted that he was not aware of any writings published in the *Red Deer Advocate* regarding the “political debate” surrounding homosexuality, prior to the publication of his letter to the editor.
90. Mr. Boissoin on cross-examination reports that through his work at the Upper Level Youth Center young people looked up to him as a role model. He reports further that he provided leadership and moral authority as well as moral guidance to that group.
91. Mr. Boissoin reported on cross-examination on signing his name as “Reverend.” He reports further that at the time of writing his letter he was ordained with the Canadian Evangelical Christian Churches who also licensed him in the province of Alberta to perform marriages. He reports he completed and received a degree in Christian Ministry from the United Christian Ministry Institute located in Indianapolis through correspondence.
92. Mr. Boissoin on cross-examination admitted that he no longer holds the credentials in Alberta because he resigned.

93. Mr. Boissoin believes that a person who characterizes themselves as gay can, through counseling, realize that this is not correct and choose to make an alternate lifestyle choice.
94. Mr. Boissoin on cross-examination reports that he ministered to many youths who had issues around being gay and lesbian. Further, he would affirm to these youths that they are loved by God and that their choice to be homosexual is a harmful one.
95. Mr. Boissoin on cross-examination reports feeling at peace under God in writing his letter.
96. Mr. Boissoin stated on cross-examination that:
- When homosexuals or pro-homosexual activists are teaching children that homosexuality is normal, necessary, acceptable, and productive, and as far as I understand, using my tax dollars as well to do so, I not only have a right to speak up about it, but I felt that I had an obligation.*
97. Mr. Boissoin on cross-examination reports that homosexuality is a sin and that it is wrong.
98. Mr. Boissoin stated on cross-examination that:
- Any time you deem something acceptable to a young person, you increase the likelihood that they are going to participate and think it is okay and participate in that lifestyle.*
99. Mr. Boissoin admitted under cross-examination that he was unaware of a specific phrase in his entire article that pointed the reader to political action.
100. Mr. Boissoin under cross-examination admitted that his article did not provide any sources of education, resources within the community for education, groups the reader could join, or references to voting or the ballot box or specific political remedies or actions.

101. Mr. Boissoin under cross-examination admitted that he chose a war metaphor to start his letter with the statement: “war has been declared.” Mr. Boissoin further reports that the warfare he was speaking of was clearly a war of ideologies. Mr. Boissoin believed that readers of this article clearly understood that he was speaking of a political battle.

102. Mr. Boissoin admitted under cross-examination that the message of homosexuality being acceptable as follows:

*And in my opinion, when you tell a young person to conclude that something is normal, necessary, acceptable and productive at mass, which I believe is scientifically proven to be very destructive, very dangerous, I believe, it is a horrendous atrocity.*

103. Mr. Boissoin admitted under cross-examination that:

*I believe the propagation of homosexuality as being normal, necessary, acceptable and productive to a young person is just as immoral under God, according to scripture, as pedophilia, common as drug dealing or any other sin.*

104. Mr. Boissoin reported under cross-examination that he was motivated to write this letter because of his love for homosexuals.

105. Mr. Boissoin under cross-examination states:

“I do not hate the homosexual. I hate the practice and what it propagates and the damage that it causes in our society.”

106. Mr. Boissoin under cross-examination admits he is no longer a member of the CCC. Mr. Boissoin reported under further cross-examination that his intention in writing his letter was to establish a political debate and generate discussion in Red Deer.

107. Mr. Boissoin under cross-examination admitted that the CCC was having a political meeting at the time he wrote the letter and he chose not to announce the political meeting despite having this knowledge at the time.

108. Mr. Boissoin admitted under cross-examination that the Commission was referred to as a “kangaroo court” by either himself or the CCC.

**Testimony of Dr. Barry Cooper**

109. Dr. Cooper was qualified as an expert witness entitled to give opinion evidence in the field of political science as it relates to constitutional and human rights law. Further, he was qualified to give opinion evidence on the issues of equality rights, freedom of expression and freedom of religion.
110. In October of 2005, Dr. Cooper wrote an opinion for Mr. Boissoin in regards to this complaint. On a broad level, he was to analyze the theory of human rights legislation and how human rights legislation interacts with freedom of expression, political debate and how the debate impacts on government. Further, his analysis provided an opinion on whether Mr. Boissoin’s letter was best described as political debate from a political scientist’s perspective.
111. Dr. Cooper reports through an historical analysis the question of limiting or destroying other people’s rights is extremely important in liberal democracy. Dr. Cooper analysis involved the UK, Canada and the United States in this respect.
112. Dr. Cooper points out that the premise of liberal government is that there is a difference between government protecting a right and the exercise of a right by individuals, and that in his expert opinion, the point of the right of free speech is the right to debate not to ensure agreement.
113. Dr. Cooper points out that freedom of speech is found in the United States and the Canadian Constitution, in Section 2(b) of the Charter and in the First Amendment to the United States Constitution. In his opinion the pragmatic rationale for both is the protection of free speech and the security that the government affords for individuals to make their opinions known, are necessary for democratic government. Dr. Cooper reports that Mr. Boissoin was engaging in exercising his right of free speech in

conducting a public debate through his letter to the *Red Deer Advocate*. Dr. Cooper reports further that Dr. Lund is attempting to silence him rather than engaging directly in further debate, by alleging the promotion of hatred as a ground for silencing him.

114. Dr. Cooper reports that the letters that appeared in the *Red Deer Advocate* surrounding the commentary about Mr. Boissoin's letter demonstrate evidence of democratic health.
115. Dr. Cooper reports that Mr. Boissoin's rhetoric was certainly strong but in his expert opinion he does not believe there is any evidence of hatred.
116. Dr. Cooper reports that a large portion of Mr. Boissoin's letter focused on the gay rights movement although it was not identified as such and this, by its very nature, is political commentary.
117. Dr. Cooper reports in his expert opinion that the letter of Mr. Boissoin when read in its entirety, amounts to political criticism with moral exhortation.
118. Dr. Cooper reports that in his opinion Mr. Boissoin was only peripherally concerned with homosexuality in writing his letter. Dr. Cooper reports that Mr. Boissoin was far more concerned with establishing the scriptural basis for his views on homosexual practices.
119. Dr. Cooper reports that what is critical is that the letter lead to a very spirited debate in the letters column of the *Red Deer Advocate* that concerned not homosexuality per se, but Mr. Boissoin's views and his consideration of what is moral conduct.
120. Dr. Cooper reports that Mr. Boissoin is clearly engaged in political debate. Further, in Dr. Cooper's opinion it is clear that Mr. Boissoin was not expressing hatred of homosexuals and that he further shows compassion with respect to people who are suffering from an unwanted sexual identity crisis and are further enslaved to this desire.
121. Dr. Cooper reports that although some people may find Mr. Boissoin's letter offensive, that does not amount to hate or discrimination.

122. Dr. Cooper reports that Mr. Boissoin's letter sparked a vigorous political debate. Mr. Boissoin pointed out that there were certain practices that he regards as immoral and that his beliefs are grounded on and founded in the Bible. Dr. Cooper points out that reasonable people can disagree about whether homosexual practices are immoral and they can further disagree about whether the Bible is authoritative. Dr. Cooper reports that this is the essence of what debate is all about.
123. Dr. Cooper states that if activists use tax payer dollars to promote homosexuality in public schools then Christians have a right to stand up and say they do not think it is okay.
124. Dr. Cooper admits under cross-examination his belief that the Commission would be misguided in agreeing that this debate is hateful.
125. Dr. Cooper admits in cross-examination that laws have been changed in our liberal democracy in one direction supporting the gay rights movement and that they in fact can be repealed. It is his expert opinion that Mr. Boissoin wants to repeal some of the human rights legislation that has advanced in this regard. Further, he states under cross-examination that Mr. Boissoin's rhetoric in this letter is to prompt political action.
126. Dr. Cooper admits under cross-examination that he does not have a degree in psychology.
127. Dr. Cooper admitted under cross-examination that he was not asked to comment upon the psychology involved in the letter writing, or in the fall-out resulting in this assault on the 17 year old boy that followed Mr. Boissoin's letter.
128. Dr. Cooper admitted upon cross-examination that he was not asked to make a psychological analysis in his report. In his comments upon the psychological estate of the young assault victim, Dr. Cooper reported that if this young 17 year old victim does not feel safe reading the letter, then he should not read the letter.

129. Dr. Cooper under cross-examination reports that any connection between reading a letter and not feeling safe does not make sense to him.

## **LEGAL ARGUMENTS**

### **Position of the Complainant, Dr. Darren E. Lund**

130. Dr. Lund relies on five facts in his legal argument, being:

- a. Prior to Mr. Boissoin's letter of June 17, 2002, there were no editorial columns in the *Red Deer Advocate* focusing on the issue of homosexuality.
- b. Mr. Boissoin published his letter on June 17, 2002, entitled "Homosexual Agenda Wicked."
- c. In the week after Mr. Boissoin's letter was published, Mr. Boissoin attended a political meeting with members of the CCC which was not discussed nor advertised in the June 17, 2002 letter.
- d. Two weeks after Mr. Boissoin's letter was published, a young 17 year old homosexual male was beaten in Red Deer.
- e. The story of the 17 year old victim was reported in the *Red Deer Advocate*, in which the victim stated that he does not feel safe in the community after reading the letter.

131. Dr. Lund asserts that the letter entitled "Homosexual Agenda Wicked" is in violation of the *Act*. Section 3 of the *Act* provides:

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

132. Dr. Lund asserts that Mr. Boissoin caused the letter to be published.

133. Dr. Lund relies on *Re Kane*, [2001] A.J. No. 915 which provides at paragraph 32:

“In other words, a Respondent does not need to be involved in the publication, issuance or display of the representation in a “hands on” sense to be liable under the Act.”

As set out in *Re Kane* the conduct of the individual is what needs to be examined in determining whether the person is an appropriate respondent. Dr. Lund advances that Mr. Boissoin, in writing and submitting his letter to the editor of the *Red Deer Advocate*, had the intention and knowledge that the letter would be published.

134. Dr. Lund argues that the case *Canadian Jewish Congress v. North Shore Free Press Ltd.* (No. 7) (1997), 30 C.H.R.R.D-5 (B.C.Trib.) is the authority on the issue of exposing to hatred. Dr. Lund sets out that the two part test is set out at paragraph 62 as follows:

*First, does the communication itself express hatred or contempt of a person or group on the basis of one or more of the listed grounds? Would a reasonable person understand the message as expressing hatred or contempt in the context of the expression.” The second test is:*

*“...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...”*

135. Dr. Lund points out that the definition of hate for the purposes of legal interpretation as being defined by the Supreme Court of Canada in *Nealy v. Johnson* (1989), 10 C.H.R.R.D-6450 which was adopted by the Supreme Court of Canada in *R v. Taylor* [1990] 3 S.C.R. 892. Dr. Lund states that the Supreme Court of Canada has defined

hate as an act of dislike that can be toward the specific quality of a person. Dr. Lund argues that hatred towards a homosexual is an act of dislike of that person's homosexuality.

136. Dr. Lund relies on the *Nealy* case in regards to "expose" as well as "likely." Dr. Lund asserts that it is not necessary that evidence be adduced to prove that any particular individual or group took the message seriously and directed hatred and contempt to others. Further that it is not necessary to show that anyone was victimized.
137. Dr. Lund asserts that all elements of the test for exposing a person or a group of persons to hatred or contempt have been met in this case in advancing that Mr. Boissoin's letter will be exposing persons to hatred if it leaves a person open to an act of dislike of their homosexuality. The standard to be met is a balance of probabilities that the letter is likely to expose persons to hatred or contempt.
138. Dr. Lund points out that sexual orientation was read into the *Act* in April 1998 as a protected ground of discrimination in Alberta.
139. Dr. Lund points to the case of *Warman v. Harrison*, [2006] C.H.R.T. 30 where at paragraph 19 the following is stated:

"...the Tribunal in this case stated that the most persuasive evidence was the language used in the messages themselves."

Dr. Lund argues that the statements used in Mr. Boissoin's letter must be examined to determine if they are likely to expose homosexuals to hatred and contempt.

140. Dr. Lund uses several examples which leave homosexuals vulnerable to hatred, contempt and active dislike in Mr. Boissoin's letter as follows:
1. *Where homosexuality flourishes, all manner of wickedness abounds.*
  2. *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.*
  3. *Know this, we will defeat you, then heal the damage you have caused.*

4. *It is time to stand together and take whatever steps are necessary to reverse the wickedness....*
5. *...Horrendous atrocities such as the aggressive propagation of homo-and bi-sexuality.*
6. *From kindergarten class on, our children, your grandchildren are being strategically targeted, psychologically abused and brainwashed...*
7. *Our children are being victimized by repugnant and premeditated strategies, aimed at desensitizing and eventually recruiting our young into their camps.*
8. *Your children are being warped...*
9. *Will your child be the next victim that tests homosexuality positive?*
10. *It is time to start taking back what the enemy has taken from you. The safety and future of our children is at stake.*

141. Dr. Lund argues that the statements in Mr. Boissoin's letter do serve to develop mistrust and fear of homosexuals by making erroneous connections between homosexuality and psychological diseases. He asserts that the tone is militaristic and the letter serves to dehumanize people who are homosexuals and is degrading, insulting and offensive. Dr. Lund points out that false analogies have been drawn in the letter by Mr. Boissoin of homosexuality being linked with pedophilia. Dr. Lund argues further, that the letter encourages hostility towards homosexuals as Mr. Boissoin makes a call to war and encourages readers to use whatever steps are necessary to take back what the enemy has taken. It is the position of Dr. Lund that Mr. Boissoin's letter insinuates that violence against homosexuals is acceptable.

142. Dr. Lund points out that statements made by Mr. Boissoin in this letter are strikingly similar to statements found in *R v. Keegstra*, [1990] S.C.R. 697 wherein the Supreme Court of Canada found hate propaganda existed. The parallels in the rhetoric used, Dr. Lund argues, is that they both employ stereotypes to expose a target group to hatred. In particular, he points out that Mr. Boissoin characterizes homosexuals as morally bankrupt and diseased ridden enemies. Dr. Lund states that Keegstra employed the same stereotypes with Jewish persons. Dr. Lund further points out that, as in *Keegstra*, Mr. Boissoin is identifying homosexuals as a threat to children. Dr. Lund also points out that, similarly in *Keegstra*, Mr. Boissoin evokes fears that the identifiable homosexual is a dangerous threat to Christian institutions.

143. Dr. Lund also argues that Mr. Boissoin's letter is identical to a pamphlet that was the subject of the case of *R v. Harding*, 2001 Carswell Ont. 4398, 160 C.C.C. (3d) 225 (Ont.

C.A.). In the *Harding* case a pamphlet that depicted Muslims was found to expose persons to hatred. Dr. Lund argues that the only difference between Mr. Boissoin's letter and the *Harding* case was the group of persons who were targeted. Dr. Lund argues that both Mr. Boissoin and Harding distorted school programs that aimed to promote acceptance and diversity in schools and re-cast them by showing children as victims of harmful and malicious adults who were involved in these public school programs. Further, Mr. Boissoin's letter and Harding's pamphlet both suggest that children are put in dangerous and perilous positions because of an identified group. Dr. Lund points out that Mr. Boissoin states that children are "being victimized by repugnant and pre-meditated strategies, aimed at desensitizing and...recruiting them into their camps."

144. Dr. Lund argues that the test to be employed is outlined in *Nealy v. Johnson* and that is, would a reasonable person find that the statements were hateful? Dr. Lund asserts that Mr. Boissoin's letter employs militaristic language creating a hateful and violent tone which further reinforces stereotypes about homosexuals including false assumptions about some correlation of homosexuality and pedophilia. It is Dr. Lund's position that Mr. Boissoin's letter is not political and full of hatred.
145. Dr. Lund points out that Mr. Boissoin's letter generates several themes of hatred against homosexuals including that:
  - a. Homosexuals conspire against society;
  - b. Homosexuals are sick, diseased and mentally ill;
  - c. Homosexuals are a threat to children or are seeking to have sexual relations with children;
  - d. Linking homosexuality with pedophilia;
  - e. References to homosexuality or a gay agenda to a homosexual machine or a homosexual conspiracy; and
  - f. References to homosexuals as wicked or dangerous.
146. It is Dr. Lund's position that these themes are present in Mr. Boissoin's letter and they clearly meet the test for exposing persons to hatred.

147. Dr. Lund points out that the second part of the legal test as set out in the *Canadian Jewish Congress v. North Shore* case as follows:

*...assessed in its context, is the likely affect of the communication to make it more acceptable for other to manifest hatred or contempt against the person or group concerned?*

148. Dr. Lund points out that this analysis must be a contextual one. He points out that the targeted group is homosexuals in central Alberta. Further, that Mr. Boissoin was a pastor, an executive member of the CCC at the time of writing this article. The mode of publication is reputable daily newspaper, the *Red Deer Advocate*.

149. Dr. Lund points out that factors of a group's history of vulnerability to hatred and contempt must be examined. He points to the Supreme Court of Canada case *Egan v. Canada*, [1995] 2 S.C.R. 513 (1995), 124 D.L.R. (4th) 609 ; (1995), 12 R.F.L. (4th) 201; (1995), 29 C.R.R. (2d) 79; (1995), 96 F.T.R. 80 where the Supreme Court of Canada stated that:

"Gays and lesbians are an identifiable minority who have suffered and continue to suffer serious social, political and economic disadvantage."

150. Dr. Lund points out that Red Deer and furthermore, central Alberta, when looked at contextually, are areas in which homosexuals are exceptionally vulnerable. He points out that Constable Doug Jones gave evidence that confirmed that homosexuals are more vulnerable in rural areas in regards to hate crimes. Constable Jones pointed out that a lack of proactive educational work in Red Deer is a factor leading to an increased vulnerability of the homosexual people living in that community. Dr. Alderson also testified that homosexuals in central Alberta are at increased risk of vulnerability supported by the fact that homosexual victims have a reluctance to come forward in reporting discrimination and hate incidents. Looked at contextually, Dr. Lund asserts that the evidence establishes that homosexuals are a targeted group and in central Alberta homosexuals are a vulnerable marginalized group who have historically experienced extreme discrimination.

151. Dr. Lund argues that Mr. Boissoin's position of authority within the community is a factor that must be considered in determining whether or not his statements would be accepted and promote hatred. Specifically, Mr. Boissoin, at the time of writing his letter, was a pastor in Red Deer and from his own evidence has contacted thousands of people in this area in his capacity as a youth pastor. Mr. Boissoin's ministry was focused in the community towards troubled youths and youths who were at risk. Mr. Boissoin was a co-founder and executive director of a popular youth drop in center. Furthermore, in his own evidence, Mr. Boissoin testified that he worked as a restorative youth justice facilitator within the community.
152. Dr. Lund asserts that through Mr. Boissoin's own evidence at the time of writing his letter he had a powerful role of moral authority over the readership of the *Red Deer Advocate* with the support of the CCC.
153. It is Dr. Lund's position that Mr. Boissoin's opinions published in the paper are more likely to be believed by the readership because of his official title.
154. Dr. Lund urges the Panel to consider the fact that this hateful letter was written by a "Man of God" as being a contextual factor in the effects of this publication.
155. In considering the context of this publication, Dr. Lund points out that the *Red Deer Advocate* is the largest and most reputable daily newspaper in the Red Deer region and further that written word creates a permanent record.
156. It is Dr. Lund's position that people are psychologically more suggestible to the written word and considered as a whole, the context lends to Mr. Boissoin's view having legitimacy and thus increasing a likelihood of promoting hatred of a targeted group.
157. Dr. Lund points out that the *Red Deer Advocate* has a circulation well over 100,000 copies daily to a readership throughout central Alberta. The choice of submitting his letter to this venue, Dr. Lund asserts, increases the likelihood that hatred toward homosexuals would be promoted.

158. Dr. Lund argues that there was not a “healthy” political debate about homosexuality or gay rights prior to Mr. Boissoin’s letter to the editor.
159. Dr. Lund asserts that on the evidence of this hearing, Mr. Boissoin’s letter was not part of a public ongoing debate at the time it was published.
160. It is Dr. Lund's position that Mr. Boissoin’s letter was not political in nature but rather a moral analysis of homosexuality. It is Dr. Lund’s position that Mr. Boissoin is trying to circumvent Section 3 of the *Act* using the principles of the freedom of expression and freedom of religion to argue that this rhetoric was political.
161. Dr. Lund points out that a plain reading of Mr. Boissoin’s letter reveals themes that are hateful including homosexuals conspiring against society, homosexuals as sick, diseased or mentally ill, homosexuals as a threat to children or seeking to have sexual relations with children, the linking of homosexuality to pedophilia, references to a homosexual or gay agenda, the homosexual machine or conspiracy and further references to homosexuals as wicked or dangerous and that these themes are not, by nature, political.
162. In considering the context, Dr. Lund asserts that Mr. Boissoin did not mention any specific political avenue or action in his letter or phrase of political disclosure. Dr. Lund asserts that Mr. Boissoin had knowledge of a political group meeting one week after he published his letter and yet did not make any mention of the public political meeting. Dr. Lund asserts that if Mr. Boissoin was writing a political piece he could have chosen to do so clearly.
163. Dr. Lund points to *R v. Harding*, 2001 Carswell Ontario 4398, 160 C.C.C. (3d) 225 (Ont. C.A.) which stated at paragraph 46:

*Although expression of religious opinion is strongly protected, this protection cannot be extended to shield [hate speech] simply because they are contained in the same message and the one is used to bolster the other. If that were the case, religious opinion could be used with impunity as a Trojan Horse to carry the intended message of hate...*

164. Dr. Lund asserts that no right including freedom of religion and freedom of expression is absolute and furthermore that civil liberties in our democracy must be balanced with responsibility.
165. Dr. Lund points to in *Owens v. Saskatchewan* (Human Rights Commission), [2006] S.J. No. 221, which states:
- “No right, including freedom of religion is absolute... This is so because we live in a society of individuals in which we must always take the rights of others into account.”
166. Dr. Lund points to *Re Kane*, in which stating Justice Rooke stated:
- The Supreme Court of Canada affirmed in R v. Keegstra...Ross v. New Brunswick... and in Taylor, that protection from discriminatory and hate/contempt based expression is oppressing and substantial objective, and it is justified in a free and democratic society. The preamble of the act speaks of the inherent dignity and inalienable rights of all persons, of the importance of multiculturalism as a fundamental principle and a matter of public policy. Such guarantees and eloquent statements would be hollow if Section 2 (2) is interpreted as an absolute defense, with the Respondent merely having to establish that his or her expression was opinion.*
167. It is Dr. Lund’s position that Mr. Boissoin does have civil liberties of freedom of expression and freedom of religion, however, he does not have the right to promote hate and contempt against homosexuals.
168. Dr. Lund asserts that Mr. Boissoin’s motivations are irrelevant to this complaint. Further, that the letter had the effect of promoting hatred against a vulnerable targeted group.
169. Dr. Lund argues that a plain reading of this letter as well as the evidence of Mr. Boissoin’s own testimony this rhetoric is not of a political nature. Dr. Lund asserts that this letter was a call to hate, contempt, fear and discrimination, and not of anything political.
170. Dr. Lund acknowledges Mr. Boissoin’s right to his own political and religious views, however, it is his position that this letter went far beyond the parameters of public debate and clearly contravenes the provisions of the *Act*. It is Dr. Lund’s assertion that the

inflammatory language used by Mr. Boissoin falsely attributes degrading and humiliating characteristics to homosexuals and insinuates acceptable violence against this targeted group in a free and democratic society.

171. Dr. Lund, in conclusion, submits that Section 3 of the *Act* has been contravened by Mr. Boissoin's letter entitled "Homosexual Agenda Wicked." Further, that the legal test for "likely to expose to hatred" has been satisfied upon the evidence.

### **Position of the Respondent, Mr. Stephen Boissoin**

172. Mr. Boissoin sets out the entirety of Section 3 of the *Act* as follows:

#### *Discrimination re publications, notices*

- 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 person to hatred or contempt because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, course of income or family status of that person or class of persons.*
- (2) *Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject.*
- (3) *Subsection (1) does not apply to*
- (a) *the display of a notice, sign, symbol, emblem or other representation displayed to identify facilities customarily used by one gender,*
  - (b) *the display or publication by or on behalf of an organization that*
    - (i) *is composed exclusively or primarily of persons having the same political or religious beliefs, ancestry or place of origin, and*
    - (ii) *is not operated for private profit,**of a statement, publication, notice, sign, symbol, emblem or other representation indicating a purpose or membership qualification of the organization, or*
  - (c) *the display or publication of a form of application or an advertisement that may be used, circulated or published pursuant to section 8(2),*

*if the statement, publication, notice, sign, symbol, emblem or other representation is not derogatory, offensive or otherwise improper.*

173. It is Mr. Boissoin's position that the letter does not indicate discrimination or an intention to discriminate. Further, it is Mr. Boissoin's position that a letter was written in an effort to spur political debate only.

174. It is Mr. Boissoin's position that his letter was his opinion of honestly held religious beliefs. He cites the case *R v. Big M Drugmart*, [1985] 1 S.C.R. 295 in which Chief Justice Dickson states:

*A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear or hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.*

175. Mr. Boissoin relies on Section 3(2) of the *Act* which states:

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

He argues that as a matter of statutory construction, this section was included in the *Act* to protect religious discussion from attempts to silence the same. It is Mr. Boissoin's position that this should be the end of the Panel's analysis in this regard as his letter was, in pure form, religious discussion.

176. In written submissions, Mr. Boissoin points out that his letter was originally written in response to the information he had obtained on the Commission website which highlighted an initiative that it was funding with money granted to it by the provincial government whose mandate was to "teach school aged children in grades K through 12 that homosexuality was normal, necessary, acceptable and productive." Mr. Boissoin asserts his letter was in disagreement with this initiative on both a political and religious ground. Given that he was an indirect funder through his tax dollars, Mr. Boissoin asserts that he had the right to communicate his opinion publically and chose to do so in the *Red Deer Advocate*.

177. It is Mr. Boissoin's position that his rhetoric was a plea to like minded Albertans to form a broad based political movement and was further directed at two distinct groups. The first group was to individuals who supported his view of stopping the advancement of the gay movement and the second distinct group was to the "many people who are so apathetic and desensitized today that they cannot even accurately define the term (morality)." These are the people he urged towards political involvement.

178. Mr. Boissoin points out that Section 3(1)(a) states that:

"No person shall publish...or cause to be published."

and points out that he did not publish the letter, *the Red Deer Advocate* did so, therefore, he should not be liable.

179. Mr. Boissoin cites *Re Kane* whereby Justice Rooke determined that a direct or indirect causal connection between the respondent and the publication of discriminatory material must be established for the A.H.R.C.C. to proceed with an investigation. Justice Rooke states at paragraph 39:

*An individual who is a director or officer of an entity that is alleged to have breached Section s. 2(1) may be named as a Respondent where there is a prima facie evidence on the face of the complaint, or upon investigation, which demonstrates that he or she is causally connected, directly or indirectly, to the publication, issuance, or display, of the allegedly prohibited material. In so doing the term "cause" should be given a broad definition. It is a question of fact in each case.*

180. Mr. Boissoin points out he is not a director nor an officer of the *Red Deer Advocate*.

181. In regards to Section 3(1)(b) of the *Act*, Mr. Boissoin asserts that his letter did not:

"expose a person or class of persons to hatred or contempt because of...(sexual orientation.)"

because the purpose of his letter was to spur political debate and discussion. Further, Mr. Boissoin's letter was a call to political action upon Mr. Boissoin discovering that his tax dollars were funding a particular ongoing controversial program which was the

subject of intense political debate throughout Canada and in similar free and democratic nations throughout the world.

182. Mr. Boissoin argues that there is no evidence that the effect of his letter has been to:

“expose a person or a class of persons to hatred or contempt.”

Further, it is his position that there is no evidence in this case that supports the assertion of Dr. Lund that the letter promotes hatred or that Mr. Boissoin intended the letter to do so.

183. Mr. Boissoin urges the Panel to analyze freedom of expression and offensive speech in a comparative way including Canada, the United States, the United Kingdom and Sweden. It is Mr. Boissoin’s position that the outcome of this complaint will send a message to those individuals participating in democratic political debates and to those who are concerned with the preservation of their freedom of expression within the democratic process.

184. Mr. Boissoin asserts that the Supreme Court of Canada case reference re *Alberta Statutes* [1938] S.C.R. 100 as critical to the Panel’s analysis regarding the division of power’s argument and quotes from the Supreme Court of Canada at page 145:

*Under the British system, which is ours, no political party can erect a prohibitory barrier to prevent the electors from getting information concerning the policy of the Government. Freedom of discussion is essential to enlighten public opinion in a democratic state; it cannot be curtailed without affecting the right of the people to be informed through sources independent of the Government concerning manners of public interest. There must be an untrammelled publication of the news and political opinions of the political parties contending for ascendancy. As stated in the preamble of the British North American Act, our Constitution is and will remain, unless radically change, “similar in principle to that of the United Kingdom.*

*At the time of Confederation, the United Kingdom was a democracy. Democracy cannot be maintained without its foundation: free public opinion and free discussion throughout the nation of all matters affecting the state within the limits set by the Criminal Code and the common law. Every inhabitant in Alberta is also a citizen of the dominion. The province may deal with his property in civil rights of a local and private nature within the province; but the province cannot interfere with his status as a Canadian Citizen and his*

*fundamental right to express freely his untrammelled opinion about Government policies and discuss matters of public concern.*

185. Mr. Boissoin quotes further from the case at page 146:

*The Federal Parliament is the sole authority to curtail, if deemed expedient and in the public interest, the freedom of the press in discussing public affairs and the equal rights in that respect of all citizens throughout the Dominion. These subjects were matters of criminal law before Confederation, have been recognized by Parliament as criminal matters and have been expressly dealt with by the Criminal Code. No Province has the power to reduce in the Province the political rights of its citizens as compared with those enjoyed by the citizens of other Provinces of Canada.*

186. Mr. Boissoin asserts that this authority from the Supreme Court of Canada should end the Panel's jurisdiction. Stated simply, Mr. Boissoin believes that freedom of expression is a matter of the federal government, rather than a provincial matter.

187. Mr. Boissoin points out that the parliament has in fact addressed issues of hate crimes and has occupied this field. Further, penalties for hate crimes are within the jurisdiction of the Criminal Code.

188. Mr. Boissoin asserts that the rhetoric in his letter is political and religious speech. He argues the legislation at question was not intended to restrict speech of this nature in any respect.

189. Mr. Boissoin quotes the Honourable Beverley McLachlin in her speech on "Freedom from Religion and the Rule of Law", as follows:

*After the past 250 years, the issue of religious freedom has matured along the growing diversity of the Country. The days of the Treaty of Paris have passed and the law is no longer solely concerned with striking a right balance between the Church of England and Roman Catholicism. We have all come to understand that there were religions in this Country before either of these traditions took route and that the people that have since become part of the Canadian mosaic have introduced a numerable other faith perspectives. As the cultural diversity of our nation has developed, I think we have come to recognize that a multiplicity of world views grounded in alternative sources of authority does not necessarily threaten the rule of law but, rather, strengthens and completes public life and discourse. Even more critically, we have come to a fuller appreciation of the intrinsic connection between respecting religious conscience and attending the inherent dignity of all persons. Freedom of conscience and religion has become a component of the Canadian experience of the Rule of Law.*

*Freedom from Religion and the Rule of Law: A Canadian Perspective*” published in Pharo, Douglas (ed), *Recognizing Religion in a Secular Society:*

Essays in Pluralism, Religion and Public Policy (McGill Queen’s University Press 2004, 33)

190. It is Mr. Boissoin’s position that the Commission is not about settling moral disputes or taking sides about offending feelings or sensibilities of others. He points to the Supreme Court of Canada decision, *McKinney v. University of Guelth*, 1993 S.C.R. 229 where Justice La Forest spoke about applying the Charter standard to non-governmental actors stating:

*...the Charter is confined to Government action. This Court has repeatedly drawn attention to the fact that the Charter is essentially an instrument for checking the powers of Government over the individual... The exclusion of private activity from the Charter was not a result of happenstance. It was a deliberate choice which must be respected...Government is the body that can enact and enforce rules and authoritatively impinge on individual freedom. Only Government requires to be constitutionally shackled to preserve the rights of the individual.*

191. It is Mr. Boissoin’s position that Dr. Lund is seeking a constitutional remedy in silencing Mr. Boissoin from speaking in public about his views of politics and religious beliefs. Furthermore, Mr. Boissoin asserts that the *Act* is not intended to apply to expressions of opinion. Mr. Boissoin points out that Dr. Lund is seeking to have him punished for the words he used in a public debate.

192. Mr. Boissoin cites Professor Cooper’s testimony and his submissions to this Panel at page 17 stating:

*It is more important, it is the obvious and basic fact that a spirited debate was under way in the letters column regarding not so much homosexuality per se but the source, the basis and the grounds of moral conduct.*

193. It is Mr. Boissoin’s submission that it is irrelevant to consider whether he started or joined into the public debate surrounding issues of homosexuality. Mr. Boissoin cites Professor Cooper further at page 18 stating:

*It seems to me to be as clear as possible that Boissoin is engaged in political debate in elaborating the grounds of his belief. It is also clear that far from expressing hatred of*

*homosexuals, he has expressed understanding and practiced compassion with respect to those to whom he considers are suffering from an unwanted sexual identity crisis, and to those who are at least metaphorically enslaved to one or another kind of personal problem.*

194. Mr. Boissoin admits that his rhetoric was highly inflammatory but did not rise to the level of discrimination and hatred that the *Act* was intended to prohibit.
195. Mr. Boissoin submits that the Alberta legislature intended to maintain a place in our society for diverse opinions, even opinions that individuals would find offensive and distressing. Mr. Boissoin points to the case of *Owens v. Saskatchewan* (Human Rights Commission), [2006] S.J. No. 221. His submission is that the Saskatchewan Court of Appeal stated in this case that public debate is not prohibited by human rights statutes.
196. It is Mr. Boissoin's position that should this Panel attempt to limit freedom of expression it must do so in a contextual analysis of the Charter. Mr. Boissoin asserts that there are two kinds of speech that the province has a jurisdiction over, namely:
  1. A common law limitation when someone defames an individual resulting in a penalty of damages for defamation;
  2. Human rights legislation itself enacted to promote a non-discriminatory society including advertisements to discriminate against someone on the basis of their sexual orientation to not offer them examples of public services or matters of a private nature including accommodations.
197. Mr. Boissoin argues that there must be a place within society notwithstanding the language found in the human rights legislation in Alberta for individuals to take strong positions with respect to moral questions and talk about hatred, talk about wickedness, and talk about their opinions about the activities and actions of others without finding that those comments, notwithstanding that they may be offensive, are hateful and therefore prohibited by the legislation in this case.
198. Mr. Boissoin asserts that if the *Act* was intended to apply to religious and political speech it would render the *Act* unconstitutional and *ultra vires* the power of the province of Alberta.

199. Mr. Boissoin points out Section 2(b) of the Charter as follows:

Fundamental freedoms

2. *Everyone has the following fundamental freedoms:*
- a) *Freedom of conscience and religions;*
  - b) *Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;*
  - c) *Freedom of peaceful assembly; and*
  - d) *Freedom of association.*

200. Mr. Boissoin points out that the *Constitution Act 1867* preamble states that:

Preamble -

*Whereas the Provinces of Canada, Nova Scotia and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom...*

and further, Section 129 of the *Constitution Act, 1867* reads as follows:

Continuance of existing Laws, Courts, Officers, etc.

129. *Except as otherwise provided by this Act, all laws enforcing Canada, Nova Scotia or New Brunswick at the Union, and all Courts of Civil and Criminal Jurisdiction, and all legal Commissions, Powers, and Authorities, and all Officers, Judicial, Administrative and Ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick, respectively as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland), to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the Authority of the Parliament or of the Legislature under this Act.*

201. Mr. Boissoin cites *Saumur v. The City of Quebec* [1953] 2 S.C.R. 299 at paragraph 195 where Justice Kellock states:

*The Federal Parliament is the sole authority to curtail, if deemed expedient and in the public interest, the freedom of the press in discussing public affairs and the equal rights in that respect of all citizens throughout the Dominion.*

202. Mr. Boissoin asserts that a concept of an implied Bill of Rights grew from a tradition of constitutional federalism. He asserts that when provincial legislation intrudes deeply into

fundamental freedoms of speech, religion, association or assembly, the provincial legislature is said to be creating criminal legislation, which under the federal distribution of powers, is reserved exclusively to the parliament of Canada by Section 91(27) of the *Constitution Act*, 1867. It is Mr. Boissoin's position that free political discussion is too important to Canada as a whole to be treated as a local and private matter within the jurisdiction of the province of Alberta.

203. Mr. Boissoin points out that at page 133 of the reference re: *Alberta Statutes* that Justice Duff speaks in respect to the appropriate jurisdiction regarding free public discussion as follows:

*Under the constitution established by the British North American Act, legislative power for Canada is vested in one Parliament consisting of the Sovereign, an upper house styled the Senate, and the House of Commons. Without entering into detail upon an examination of the enactments of the Act relating to the House of Commons, it can be said that these provisions manifestly contemplate a House of commons which is to be, as the name itself implies, a representative body; constituted, that is to say, by members elected by such of the population of the united provinces as may be qualified to vote. The preamble of th statue, moreover, shows plainly enough that the constitution of the Dominion is to be similar in principle to that of the United Kingdom. The statue contemplates a parliament working under the influence of public opinion and public discussion. There can be no controversy that such institutions derive their efficacy from the free public discussion of affairs, from criticism and answer and counter-criticism, from attack upon policy and administration and defense and counter0attack; from the freest and fullest analysis and examination from every point of view of political proposals. This is signally true in respect of the discharge by Minister of the Crown of their responsibility to Parliament, by member of Parliament of their duty to the electors, and by the electors themselves of their responsibility in the election of their representatives.*

204. Mr. Boissoin asserts that the Saskatchewan Court of Appeal case of *Owens* is the seminal case in regards to this Panel's current analysis. Mr. Boissoin points out that Dr. Lund's complaint is not designed to improve the position of any group protected under the human rights legislation but rather an attempt to hamper free political debate by all groups within our society.
205. Mr. Boissoin asserts that even if his views are not politically correct, debate in Alberta can occur on controversial matters.

206. Mr. Boissoin asserts his letter did not speak for or against homosexuality.
207. Mr. Boissoin asserts his letter neither spoke for nor against public policy as it relates to the promotion of homosexuality or of homosexual practices. Further, this is a political debate about public policy.
208. Mr. Boissoin asserts his letter enjoys the constitutional protection found in Section 2(b) of the Charter and therefore falls outside of the jurisdiction of the province of Alberta.
209. Mr. Boissoin asserts that the Supreme Court of Canada has always been vigilant to protect speech up to the point of actual harm. Mr. Boissoin points to the Supreme Court of Canada case of *Ross v. New Brunswick School District No. 15* [1996] 1 S.C.R. 825 wherein a teacher was alleged to have made racist and discriminatory statements in books, pamphlets and letters to the newspaper and on public television, was ultimately held to have protection of freedom of speech in regards to Section 2(b) of the Charter the Court as stated at paragraph 59 - 60:

*Section 2(b) must be given a broad, purposive interpretation; See Irwin Toy Ltd. v. Quebec (Attorney General), [1989] 1 S.C.R. 927. The purpose of the guarantee is to permit free expression in order to promote truth, political and social participation and self fulfillment; See Zundel, supra. As Cory J. put it in the Edmonton Journal v. Alberta (Attorney General), [1989] 2 S.C.R. 1326 at p. 1336, "It is difficult to imagine a guaranteed right more important to a democratic society"; as such, freedom of expression should only be restricted in the clearest of circumstance.*

*Apart from those rare cases where expression is communicated in a physically violent manner, this Court has held that so long as an activity conveys or attempts to convey a meaning, it has expressive content and prima facie falls within the scope of the guarantee of freedom of expression; See Irwin Toy, supra. at p. 969. The scope of constitutional protection of expression is, therefore, very broad. It is not restricted to views shared or accepted by the majority, nor to truthful opinions. Rather, freedom of expression serves to protect the right of the minority to express its view, however unpopular such views may be.*

210. Mr. Boissoin asserts that this case is distinguishable from *R v Keegstra*, [1990] S.C.R. 697 where the Supreme Court of Canada found actual harm. In this case, the Supreme Court of Canada at paragraphs 2 and 3 stated as follows:

*Mr. James Keegstra was a high school teacher in Eckville, Alberta from the early 1970s until his dismissal in 1982. In 1984 Mr. Keegstra was charged under Section 319(2) (then Section 281.2(2)) of the Criminal Code with unlawfully promoting hatred against an identifiable group by communicating anti-semitic statements to his students. He as convicted by a jury in a trial before MacKenzie J. of the Alberta Court of Queen's Bench. Mr. Keegstra's teachings attributed various evil qualities to Jews. He thus described Jews to his pupils as "treacherous", "subversive", "sadistic", "money loving", "power hungry" and "child killers". He taught his classes that Jewish people seek to destroy Christianity and are responsible for depressions, anarchy, chaos, wars and revolution. According to Mr. Keegstra, Jews "created the Holocaust to gain sympathy" and in contrast to the open and honest Christians, were said to be deceptive, secretive and inherently evil. Mr. Keegstra expected his students to reproduce his teachings in class and on exams. If they failed to do so, their marks suffered.*

211. It is Mr. Boissoin's position that there is no direct evidence of harm to any person or persons because of his letter.
212. Mr. Boissoin asserts that the only consequence of his letter has been unrestricted political debate.
213. Mr. Boissoin asserts his message was to urge fellow Albertans to become politically engaged so as to adequately respond to the political issues currently before our society therefore his letter should be afforded constitutional protection pursuant to Section 2(b) of the Charter. He further asserts that whether political speech is consistent with the dominant political order, the government should not be called upon to silence or censor it.
214. It is Mr. Boissoin's position that successful prosecution and conviction of his letter will produce a chilling effect on citizens' participation in political debate and will bring about disunity and distrust between individuals. It will further set a precedent that individuals who express their views through letters to the editor will be vulnerable to litigation if their views are offensive to some in the democratic process.
215. Mr. Boissoin requests that this hearing Panel find no violation of the *Act* as asserted by Dr. Lund.

## Position of the Intervener the Attorney General of Alberta

216. The Attorney General confirms that this Panel will apply Charter values in its analysis. The Attorney General submits that Mr. Boissoin's position is fundamentally flawed insofar as Mr. Boissoin did not bring a constitutional challenge against Section 3 of the Act, yet Mr. Boissoin is seeking a constitutional remedy of the reading down of Section 3 to exclude political and religious speech but he has done so without actually challenging the constitutionality of the legislation. It is the Attorney General's position that absent a constitutional challenge Mr. Boissoin cannot receive a constitutional remedy. The Attorney General points to the case of *Bell Express Vu Limited Partnership v. Rex*, [2002] S.C.C. 42 wherein the Supreme Court rejected the use of Charter values in interpreting the *Federal Radio Communication Act* stating:

*Statutory enactments in body legislative will...[w]hen a statute comes into play during judicial proceedings the Courts (**absent any challenge on Constitutional grounds**) are charged with interpreting and implying it accordance with the sovereign intent of the legislator. In this regard, although it is sometimes suggested that "it is appropriate for Courts to prefer interpretations that tend to promote those [Charter] principles and values over interpretations that do not" (Sullivan, supra., at p. 325 at para. 62), **it must be stressed that, to the extent this Court has recognized "Charter values" interpretive principle, such principle can only receive application of circumstances of genuine ambiguity, i.e., where a statutory provision is subject to differing but equally plausible, interpretations.***

217. The Attorney General points out that the Supreme Court again rejected the application of Charter values in interpreting Section 487.055 (1) of the *Criminal Code* in *R v. Jackpine*, [2006] S.C.C. 15 where at paragraphs 18 through 19 the Court stated:

*[I]t is equally well settled that, in the interpretation of a statute, Charter values as an interpretative tool can only play a role where there is a genuine ambiguity in the legislation. In other words, where the legislation permits two different, yet equally plausible, interpretations, each of which is equally consistent with the apparent purpose of the statute, it is appropriate to refer the interpretation that accords with Charter principles. However, **where a statute is not ambiguous, the court must give effect to the clearly expressed legislative intent and not use the Charter to achieve a different result.***

*If this limit were not imposed on the use of the Charter as an interpretative tool, the application Charter principles as an overarching rule of statutory interpretation could well frustrate the legislator's intent in the enactment of the provision. Moreover, it would deprive the Charter of its more powerful purpose – the determination of the constitutional*

*validity of the legislation: Symes v. R, [1993] 4 S.C.R. 695 (S.C.C.), at p. 752; Willick v. Willick, [1994] 3 S.C.R. 670 (S.C.C.), at pp. 679-80; Vriend v. Alberta, [1998] 1 S.C.R. 493 (S.C.C.), at paras. 136-42; Bell Express Vu, at paras. 60-66; Charlebois c. Saint John (City) (2005), [2005] 3 S.C.R. 563, 2005 SCC 74 (S.C.C.), at paras. 23-24. [emphasis added].*

218. The Attorney General submits that Mr. Boissoin did not challenge the constitutionality of the *Act*.
219. It is the position of the Attorney General that Section 3 of the *Act* limits all forms of discriminatory expression.
220. The Attorney General points out that pursuant to Schedule I of the *Designation of the Constitutional Decision Makers Regulation*, A.R. 69-2000 this Panel does not have jurisdiction to decide Charter issues.
221. The Attorney General points out that the province clearly has jurisdiction to limit discriminatory expression. Furthermore, that legitimate political and religious expression is conceptually distinct from discriminatory expression.
222. The Attorney General argues that freedom of expression is subject to a limitation. Further, that if people were allowed to simply hide behind the rubric of political and religious opinion, they would defeat the entire purpose of the human rights legislation.
223. The Attorney General points to two cases that clearly highlight that freedom of expression can be limited by the necessity to protect public safety, order, health and morals and the fundamental freedoms and rights of others. The Attorney General points to the case of *Linklater v. Winnipeg Sun*, 1984 Carswell Manitoba 383 where the Manitoba Human Rights Commission stated at paragraph 41:

*It would appear unrealistic that on one hand the legislature would enact and lighten legislation whose objection was to lessen discrimination of all types and on the other hand would concurrently enact in the same statute legislation which would permit absolutely any type of discriminatory remark or comment and excuse same under the guise of freedom of expression.*

224. The Attorney General further points out that in the *Big M* case the Court discusses freedom of religion and states at paragraph 74:

*Freedom in a broad sense embraces both absence of coercion and constraint, and the right to manifest beliefs and practices. However: freedom means that, subject to such limitations as are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others, no one is to be forced to act contrary to his beliefs or his conscience.*

225. The Attorney General asserts that Section 3(2) of the Act is not an exemption as argued by Mr. Boissin.

226. The Attorney General points to the case of *Canada v. Taylor*, 1993 S.C.R. 892 where the Supreme Court of Canada was dealing with a challenge to Section 13(1) of the *Canadian Human Rights Act* and doing a subsequent Section 2(b) Charter analysis in terms of an apparent “exemption” section in the legislation, the Court pointed out:

*Connected with the argument that Section 2(b) guarantee is not sufficiently protected by the use of the words “hatred” and “contempt” in the Canadian Human Rights Act is the observation that nowhere in the statute is the scope of Section 13(1) tempered by an interpretive provision or exemption designed to protect the freedom of expression. This observation arises out of a comparison of the Act with human rights statutes and most other Canadian jurisdictions. The practice being to prohibit discriminatory notices, signs, symbols or messages, yet to follow such prohibition with an exemption stating, to use an example words of Nova Scotia’s Human Rights Act, S.N.S. 1969, c.11 s. 12, “nothing in the Section shall be deemed to interfere with the free expression of opinion upon any subject in speech or in writing.” As the norm is to include in Human Rights statutes an exemption emphasizing the importance of freedom of expression, the Appellants forcefully argue that the absence of such a provision in the Federal Statute contributes to it being over broad.*

*Though not wishing to disparage legislative efforts to bolster the guarantee of free expression, for several reasons I think it mistaken to place to great an emphasis upon the explicit protection of expressive activity in the Human Rights Statute...[H]aving decided that there exists and objective in restricting hate propaganda of sufficient importance to warrant placing some limits upon the freedom of expression, it would be incongruous to require that Section 13 (1) exempt all activity following under the rhetoric of “expression”.*

227. The Attorney General submits that in *Re Kane*, 2001 A.B.C.B. 570 Justice Rooke rejected the view that there was an exemption for “opinion” in the human rights legislation stating:

*In my view, excluding opinions from the reach of Section 2(1) would go a long way in defeating the purpose of the legislation. For example, if one wanted to issue, publish or display statement which were likely to expose persons to hatred or contempt they could do so and avoid any remedial orders under the Act by framing them as opinions.*

228. The Attorney General points out that the influential text of Professor Tarnopolsky that has been considered in several decisions including *Linklacter v Kane*, Tarnopolsky, Justice Walter Surma, *Discrimination in the Law* (Looseleaf Edition) (Toronto: Carswell, 1993) p. 10 -33. Professor Tarnopolsky states:

*One has to conclude that although these prohibitions are intra vires the Provinces, the exemption provisions are probably superfluous. On the one hand, whether the message indicate discrimination or an intent to discriminate, prohibition of them is a valid restriction on speech and expression and therefore cannot be said to infringe either of those freedoms. On the other hand, if the prohibition was to touch the essence of free speech, free press or free expression, in this sense that it is not related to discrimination in those matters covered by the Provincial Human Rights Act, then it is ultra vires the provincial legislature. In either case, the exemption provision is superfluous, unless it is intended merely as an indication to Human Rights Commissions that is necessary to balance, on the one hand the importance and the seriousness of the communication and, on the other hand, its effect on discrimination against those groups protected by the legislation.*

229. It is the Attorney General's position that the interaction between Section 3(1) and Section 3(2) is an admonition to balance the necessity of eradicating discrimination with the need to protect freedom of expression.

230. It is the position of the Attorney General that the *Charter* does not *prima facie* preclude the province from limiting the "free expression of opinion". The Attorney General points out that the Panel is being asked to do a balance of the interests under Section 3 of the *Act* rather than an *Oakes* analysis in a Charter challenge. The Attorney General points out that in *Re Kane* Justice Rooke stated:

"...application of the *Oakes* test will only be necessary where the constitutionality of the legislation is at issue."

231. The Attorney General asserts that the balance of competing interests under Section 2(1) and Section 2(2) was further referred to by Justice Rooke in *Re Kane* stating:

*...it would turn every complaint into a constitutional challenge and would require the Director...to justify the legislation in each instance. Requiring the application of that analysis is part of a determination of every complaint made under Section 2(1) would...be an unnecessary impediment to achieving the purpose of the Act.*

232. It is the position of the Attorney General that the Panel having decided to apply the Charter can do its job without delving into an *Oakes* analysis with respect to the Charter as this matter is not a constitutional challenge.

233. It is the Attorney General's position that the *Act* is a piece of legislation that addresses the gap between federal and provincial powers in this instance. The Attorney General asserts that Mr. Boissoin's letter is in a provincial publication and it has local effects and because of these local effects it is the Attorney General's position that the province has the power to deal with the effects.

234. The Attorney General asserts that the ability of the province to limit discriminatory expression begins with the well-established proposition that speech is a matter of shared jurisdiction. The Attorney General cites this Supreme Court decision in *Attorney General for Canada v. Dupond*, 1978 Carswell Q.U.E 77; [1978] 2 S.C.R. 770 at paragraph 69:

*None of those freedoms [speech, assembly, association] is a single matter coming within exclusive federal or provincial competence. Each of them is an aggregate of several matters which depend on the aspect, come within federal or provincial competence.*

235. The Attorney General submits that the provinces clearly have jurisdiction to prohibit discriminatory expression so long as it relates to a class of subjects listed in Section 92 of the *Constitution Act*, 1867.

236. The Attorney General points out that the Courts have recognized an extensive provincial power to regulate discriminatory expression on the basis that any such expression has effects that are linked to Section 92 of the *Constitution Act*. The Attorney General points to the Supreme Court decision in *Scowby v. Saskatchewan (Board of Inquiry)*, [1986] 2 S.C.R. 226 where at paragraph 4 the Court points out:

*One 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 matter of merely local or private nature. They deal, for example, to questions of discrimination in housing and employment and equal access to goods and services. The legislative protections are valid not because the affirm interests such a liberty, or human dignity, but because they activities legislated, that is, for example, housing, employment, and education, are themselves legitimate areas of provincial concern under Sections 92 and 93.*

237. The Attorney General points out that the Supreme Court of Canada has consistently emphasized and upheld the purposes of provincial human rights legislation. They point to the case *Canadian National Railway v. (Human Rights Commission)*, [1987] 1 S.C.R. 1114 where at paragraph 4 C.J.C. Dickson states:

*It is the discriminatory practice itself which is sought to be precluded. The purpose of the Act is not to punish wrongdoing but to prevent discrimination.*

*The last point is an important one and it deserves to be underscored. There is not indication that the purpose of the Canadian Human Rights Act is to assign or to punish moral blameworthiness.*

238. The Attorney General argues that it is important to note that consideration should be given to the insidious harm created by discriminatory expression at the local level. Further it is asserted that federal criminal power may never attach to the harm created on a local level.

239. The Attorney General points out that this Supreme Court of Canada in *Keegstra* that Justice McLachlin (as she then was) forcefully argued for the preferential use of human rights legislation over the criminal law power in dealing with discriminatory expression stating at paragraph 341 through 344 as follows:

*The very fact of criminalization itself may be argued to represent an excessive response to the problem of hate propagation...Moreover, the chilling effect of prohibitions on expression is at its most severe when they are effected by means of the criminal law...The additional sanction of the criminal law may pose little deterrent to a convinced hate-monger who may welcome the publicity it brings; it may, however, deter the ordinary individual.*

*It is arguable whether criminalization of expression calculated to promote racial hatred is necessary. Other remedies or perhaps more appropriate and more effective. Discrimination on grounds of race and religion is worthy of suppression. Human Rights legislation focusing on reparation rather than punishment, has had considerable success in discouraging such conduct.*

*It is true that the focus of most Human Rights legislation is acts rather than words. But if it is inappropriate and ineffective to criminalize discriminatory conduct, it must necessarily be unjustifiable to criminalize discriminatory expression falling short of conduct.*

*Finally, it can be argued that greater precision is required in the criminal law than, for example, in Human Rights legislation because of the different character of the two types of proceedings. The consequences of alleging a violation of Section 319(2) of the Criminal Code are direct and serious in the extreme. Under the Human Rights process a tribunal has considerable discretion in determining what message or conduct should be banned and by its order may indicate more precisely their exact nature, all of which occurs before any consequences inure to the alleged violator.*

240. It is the Attorney General's position that there is no such thing as "discriminatory political and religious expression", speech is either legitimate or it is discriminatory. Further, it is their assertion that the province clearly has jurisdiction to limit discriminatory expression. The Attorney General cites the Supreme Court of Canada case *Keegstra* on this point quoting at paragraph 95:

*I recognize that hate propaganda is expression of a type which would generally be characterized as "political", thus putatively placing it at the very heart of the principle extolling freedom of expression as vital to the democratic process. None the less, expression can work to under mind our commitment to democracy where employed to propagate ideas and anathemic to democratic values. Hate propaganda works in just such a way, arguing as it does for a society in which the democratic process is subverted and individuals are denied respect and dignity simply because of racial or religious characteristics. This brand of expressive activity is thus wholly inimical to the democratic aspirations of the free expression guarantee.*

241. It is the Attorney General's submission that the case of *Canada Jewish Congress v. North Shore Free Press Ltd.* (No. 7), 1997 Carswell B.C. 3175 as the case which is exactly on point with the one at hand. The Attorney General asserts that the fundamental issue with respect to the division of power's analysis is whether the letter is discriminatory not whether it is political. In the *Canadian Jewish Congress* case the respondent argued that an impugned editorial which made various anti-semantic comments constituted political expression and so was beyond the purview of the provincial jurisdiction of the province of British Columbia. In that case, the Human Rights Tribunal upheld the validity of the Act which is similar to our Alberta Act. The Court pointed out at paragraphs 76 through 77:

*If hate speech is only tenuously related to the democratic rationale underlying s. 2(b) of the Charter, as described in Keegstra, cannot be maintained that it falls within the category of speech removed from provincial jurisdiction by the implied bill of rights doctrine because it is so essential to the functioning of Parliamentary institutions that restricting it would substantially interfere with the workings of those institutions. **Even if s. 7(1)(b) did affect some speech that could be so described, it is well-established that provincial legislation may validly impinge on matters outside provincial jurisdiction as long as it is intra vires the provincial in its pith and substance:** for example, see the unanimous judgment of the Supreme Court of Canada in *G.M. v. City National Leasing*, [1989] 1 S.C.R. 641 at 669-70.*

*Therefore, I conclude that, **to the extent that s. 7(1)(b) prohibits “political” speech by restricting expression that is likely to expose a person or group to hatred or contempt, it does not exceed provincial legislation jurisdiction either by trenching on federal jurisdiction in s. 91(27) or under the implied bill of rights doctrine.** Since the argument that s. 7(1)(b) creates a criminal law within the meaning of s. 91(27) also fails, I conclude that the enactment of the provision is a constitutionally valid exercise of provincial legislative jurisdiction under the Constitution Act, 1867. [emphasis added]*

242. It is the Attorney General's position that Mr. Boissoin's letter is discriminatory and it clearly falls within in the purview of Section 3 of the *Act*. The Attorney General's position is that the Intervener C.C.L.A. agrees on the point that the province of Alberta has jurisdiction to legislate with regard to discriminatory expression that is directly linked to areas of prohibited discriminatory practices. It is the position of the Attorney General that the discriminatory messages in Mr. Boissoin's letter need only likely cause others to engage in prohibited practices. Furthermore, it is the position of the Attorney General that no link to actual discriminatory acts need be established in this regard.
243. The Attorney General submits that evidence before this Panel of Mr. Doug Jones and Dr. Kevin Alderson have established that Mr. Boissoin's letter contains messages that have the effect of enhancing discrimination against homosexuals living in central Alberta. The messages as asserted by Mr. Boissoin add to the misperception of gay people as being inherently evil. Further, Mr. Boissoin condones the mistreatment of gay people through his message creating an atmosphere that is conducive to discrimination.
244. The Attorney General asserts that on a plain reading of Mr. Boissoin's letter he is seeking that readers do whatever they can within their own sphere of influence to stop the homosexual machine. Furthermore, Mr. Boissoin is encouraging discrimination in employment tenancy and in goods and services.

245. It is the Attorney General's position that evidence is before the Panel in regards to a beating of a 17 year old boy on the basis of his sexual identity insofar as that victim actually mentioned Mr. Boissoin's letter. The Attorney General asserts that the province has jurisdiction over discriminatory practices and the evidence of this assault is the linkage to violence against homosexual persons as urged by Mr. Boissoin in his letter being a "call to arms for people to take action" against the homosexual machine.
246. The Attorney General argues that Mr. Boissoin, through his letter, is sending a message that is likely to cause others to engage in further discriminatory practices. The Attorney General asserts that the province intended that Section 3 of the *Act* apply to all forms of discriminatory expression including political and religious speech. Furthermore, the *Act* does not endorse the right of religious groups to engage in discriminatory expression.

**Position of Canadian Civil Liberties Association (CCLA), Intervener**

247. The CCLA is Canada's leading advocates for both freedom of expression and against discrimination generally and discrimination against gays and lesbians in particular.
248. The CCLA does not defend Mr. Boissoin's views. They reject the opinion he expressed in his letter.
249. The CCLA asserts their position is to argue for the fundamental rights to freedom of expression, of conscience and of religion.
250. The CCLA is of the view that the effective way to respond to Mr. Boissoin's offensive speech is by further counter speech.
251. The CCLA reports that Mr. Boissoin's views may be jarring, extreme, polemical, offensive and confrontational. However, it is the position of the CCLA that when offensive speech is subject to legal prohibition, serious dangers arise. First, expression that is fundamental to the rigorous debate and individual decision making that underlines a functioning democracy may be prohibited. Second, such prohibition casts a chill over all future speakers leading to self-censorship.

252. It is the CCLA's position that Section 3 of the *Act* must be interpreted narrowly. Furthermore, it is the CCLA's position that Section 3 only prohibits what is directly linked to specific discriminatory actions prohibited by the *Act*.
253. The CCLA asserts that Sections 91 and 92 of the *Constitution Act, 1867* does not allow any province to restrict expression which may be considered offensive simply because it has the capacity to offend.
254. The CCLA submits that the provincial legislature may only legitimately curtail such expression linked directly to specific discriminatory acts.
255. The CCLA submits that the Saskatchewan Court of Appeal interpreted an analogist section to Section 3(1) of our *Act* in the case *Saskatchewan (Human Rights Commission) v. Engineering Students' Society*, (1989), 56 D.L.R. (4<sup>th</sup>) 604 (Sask. C.A.). The Court stated at pages 2 - 3:

*Having regard especially for the division of powers between the Federal and Provincial Governments, this 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.*

256. The CCLA asserts that the Court of Appeal held the provinces have jurisdiction over property and civil rights. Furthermore, it is the CCLA's position that provincial jurisdiction over discriminatory expression is limited to matters otherwise within provincial jurisdiction.
257. It is the CCLA's assertion that the affront has to produce a specific discriminatory effect. The CCLA cites from the book *Discrimination and the Law* written by W. Tarnopolsky and W. Pentney, 611 (D.L.R.) at 3-56.3. stating:

*The prohibition of discrimination is a "matter" concerning primarily "property or civil rights" or "matters of a merely local and private nature" or "local works and undertakings" - all three being classes of subjects listed in Section 92 of the Constitution Act, 1867 is coming within the exclusive legislative authority of the provinces. 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.*

258. The CCLA relies on Tarnopolsky in his assertion that there must be a direct link between the discriminatory expression and a prohibited discriminatory practice.
259. It is the CCLA's position that Mr. Boissoin's letter to the editor lacks this crucial link in terms of a discriminatory practice to fall within the ambit of the human rights legislation.
260. The CCLA does agree that criminal law is a clumsy instrument with which to deal with the expression that society has an interest in limiting, however, it is their assertion that it is not for the province to reach beyond its powers to deal with the problem of hate speech itself.
261. The CCLA quotes from the *Engineering Students' Society* case where the Saskatchewan Court of Appeal state at page 11:

*This section requires, by implication that the message have a specific effect or effects in order to be caught by the section. The message not only ridicule, belittle or otherwise affront the dignity or the class, it must be such as to cause or be likely to cause others to engage in one or more of the discriminatory practices prohibited by ss. 9-13 and 15-19.*

262. It is the CCLA's assertion that Mr. Boissoin's repugnant opinion cannot be restricted expression because the province does not have jurisdiction in this case as it lacks the requisite nexus to actual discriminatory acts. It is the CCLA's position that the *Engineering Students' Society* case is the strongest guide to the Panel on the issue of jurisdiction.
263. It is the CCLA's position that the Panel has to dismiss this complaint against Mr. Boissoin simply on the basis of federalism and the division of powers argument.
264. It is the CCLA's position that the Charter values must be considered in this case because of numerous Supreme Court decisions that speak to this requirement of a human rights Panel to consider Charter values when applying restrictions on speech. Furthermore, the CCLA asserts that the proper framework for considering Charter values is the *Oakes* test used by the Courts under Section 1 of the *Charter*.
265. CCLA submits that Section 3(2) which states that subsection 3(1) should not be applied so as to infringe upon the "free expression of opinion on any subject" effectively raises

the bar providing more robust protection for free expression than a simple consideration of the values enshrined in Section 2(b) of the *Charter* would otherwise provide.

266. The CCLA points to three Supreme Court decisions which confirm the requirement that Charter values are considered when applying Section 3 of the *Act*.
267. The first Supreme Court Case the CCLA points to is *Taylor v. Canada (Human Rights Commission)*, [1990] S.C.J. No. 129. In *Taylor* CCLA points that Chief Justice Dixon stated at paragraph 65:

*Perhaps the so-called exemptions found in many Human Rights statutes are best seen as indicating to Human Rights tribunals the necessity of balancing the objective of eradicating discrimination with a need to protect free expression. In any event, I do not think it in error to say that even in the absence of such an exemption, an interpretation of Section 13 (1) consistent with the minimal impairment of free speech is necessary.*

268. The CCLA asserts that the *Taylor* reasoning was applied by Justice Rooke of the Alberta Court of Queen's Bench in *Re Kane*, 2001 A.B.Q.B. 570 where Justice Rooke held at paragraph 85:

*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 Section 2(b). In particular, it is essential that the Panel consider the nature and context of the expression and the degree of protection with which this type of expression is afforded (Keegstra at 766; and Taylor at 922).*

269. It is the position of the CCLA that if this Panel does not consider *Charter* values and perform the requisite balancing of rights any result the Panel may reach may be rendered unconstitutional.
270. This CCLA submit that a Section 1 analysis is required whenever *Charter* values are at play not just where there is a constitutional challenge. The authority for this submits the CCLA is *Multani v. Commission Scolaire Marguerite-Bourgeoys*, 2006 S.C.C. 6. In *Multani* Madam Justice Charron stated at paragraph 16:

*The rights and freedoms guaranteed by the Canadian Charter establish a minimum constitutional protection that must be taken into account by the legislature and by every person or body subject to the Canadian Charter. The role of constitutional law is therefore to define the scope of the protection of these rights and freedoms. An infringement of a protected right will be found to be constitutional only if it meets the requirements of Section 1 of the Canadian Charter. Moreover as Dixon C.J. noted in *Slaight Communications v. Davidson*, [...], the more sophisticated and structured analysis of Section 1 is the proper framework in which to review the values protected by the Canadian Charter.*

271. The CCLA points out that Justice Rooke was wrong in *Re Kane* where he stated that the *Oakes* test only applies when the constitutionality of a provision is at issue or is being challenged because the Supreme Court case of *Multani* specifically overrules *Re Kane* on this point.
272. The CCLA asserts that subsection 3(2) of the *Act* that the legislature is telling decision makers for the province we want you to give an even greater amount of protection to freedom of expression. Furthermore, the CCLA asserts that Section 3(2) is meant to strengthen the already considerable protection of freedom of expression. The third case the CCLA provides is *Vreind v. Alberta*, [1998] S.C.J. No. 29. The CCLA asserts in *Vriend* the Supreme Court of Canada decided where a legislature enacts legislation effectively extending a Charter right to a sphere of activity otherwise beyond the Charter's reach, it cannot enact a standard lower than that guaranteed by the Charter.
273. This CCLA asserts that by including subsection 3(2) the legislature meant to provide even more robust protection for free expression of opinion such as that found in Mr. Boissoin's letter to the editor.
274. The CCLA asserts that freedom of expression is an essential value in society and that this is widely accepted. Further, the CCLA points out that the Supreme Court has held that the guarantee of free expression in Section 2(b) of the Charter applies equally to speech that is regarded as wrong, false and offensive.
275. In the case of *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326. Justice Cory stated for the majority of the Supreme Court of Canada at paragraph 3:

*It is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression. Indeed a democracy cannot exist without that freedom to express new ideas and to put forward opinions about the functioning of public institutions. The concept of free and uninhibited speech permeates all truly democratic societies and institutions. The vital importance of the concept cannot be over-emphasized. No doubt, that was the reason why the framers of the Charter set forth Section 2(b) in absolute terms which distinguishes it, for example, from Section 8 of the Charter which guarantees the qualified right to be secure from unreasonable search. It seems that the rights enshrined in Section 2(b) should therefore only be restricted in the clearest of circumstances.*

276. The CCLA points out that the Saskatchewan Court of Appeal in the case *Saskatchewan (Human Rights Commission) v. Bell*, (1994) 114 D.L.R. (4<sup>th</sup>) 370 (Sask. C.A.) at page 10 the Court of Appeal stated that:

“The very purpose of Section 2(b) is to protect expression which is offensive to somebody.”

277. The CCLA asserts that this applies with particular force to polemical statements on matters of morality such as those made by Mr. Boissoin.

278. In terms of freedom of religion, the CCLA asserts that the right to freedom of religion is guaranteed in Section 2(a) of the Charter and this should be considered when applying Section 3 of the Act to Mr. Boissoin’s letter because the opinions he expressed are apparently founded on his religious beliefs.

279. The CCLA asserts that the Supreme Court stated in the case reference *Re Same Sex Marriage*, [2004] 3 S.C.R 698 at paragraph 53 that:

“The protection of freedom of religion afforded by Section 2(a) of the *Charter* is broad and jealously guarded in our *Charter* jurisprudence.

And further stated at paragraph 55 that:

“...Human Rights codes must be interpreted and applied in a manner that respects the broad protection granted to religious freedom...”

280. CCLA submits that the Supreme Court of Canada in *R v. Big M Drug Mart Limited*, [1985] 1 S.C.R. 295 at paragraphs 95 through 96 stated that:

*The essence of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching an dissemination.*

*[...] Freedom in a broad sense embraces both the absence of coercion and constraint, in the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.*

281. The CCLA agrees with the Attorney General that freedom of religion may be subject to reasonable limits. The CCLA submits that a restriction on Mr. Boissoin's freedom of religion contemplated in this hearing would be unreasonable as Mr. Boissoin publically expressed his deeply held religious beliefs. The CCLA asserts that Mr. Boissoin is entitled to freedom of expression and freedom of religion. Further, Mr. Boissoin has the right to spread his opinions, his religious beliefs, and his convictions and to participate in public debate through his letter to the editor. A letter to the editor is one of the most effective means to communicate ones' ideas and opinions to the community at large.
282. The CCLA asserts that Justice Rooke's opinion in *Re Kane* should not be treated as persuasive by this Panel. The CCLA asserts that Justice Rooke indicates at paragraph 84 that the *Oakes* test should only be used when the constitutionality of the legislation is at issue and that it is not required as part of the balancing process. The CCLA argues this position by Justice Rooke was in error. It is the CCLA's position that *Re Kane* was a reference and as such is not binding on this Panel in this matter. It is the CCLA's assertion that legal references are only advisory and this Panel should treat it as such.
283. The CCLA points out that the *Oakes* analysis is a contextual one. It is based on the facts and the situation given the reality of society at the specific point in time.

284. The CCLA submits that there are a number of important contextual factors that must be considered in the balancing process under the *Oakes* analysis.
1. Mr. Boissoin expressed his opinion on what he believed was a moral issue and he expressed his position in a letter to the editor.
  2. Mr. Boissoin expressed his opinion in a letter to the editor of a newspaper.
285. The CCLA submits that people who oppose equality for gays and lesbians are absolutely wrong and further condemn discrimination on the ground of sexual orientation and affirm the complete equality of gays and lesbians. However, the CCLA also submits the question surrounding sexual orientation and equality have attracted significant social and political debate in the past number of years and further this debate has been vigorous and confrontational. The CCLA confirms that the right to debate issues like the one at hand is fundamental to our notion of democracy. CCLA supports that Mr. Boissoin is entitled to the freedom of expression and that Mr. Boissoin has the right to disseminate his opinions, his religious beliefs and convictions, and to participate in public debate.
286. The CCLA submits that Dr. Lund is seeking a ruling from this Panel that Mr. Boissoin has breached the *Act* by expressing his personal beliefs in polemical terms. The CCLA submits grave concern on how far this limitation could potentially extend. The CCLA submits that Mr. Boissoin's messages while undeniably jarring, may be regarded fundamentally as expression of opinion on matters of morality, religion and politics. The CCLA submits that on moral issues, emotions often run high. Further, to a person who is convinced that homosexuality is a mortal sin, and who feels a religious and moral duty to persuade others of that fact, putting opinions in polemical terms may be a natural response and from a *Charter* perspective Courts should display a high degree of tolerance for such expression and only uphold its limitation where there is a compelling case of justification for doing so.
287. The CCLA urges the Panel to consider the context in which Mr. Boissoin expressed his opinion through a letter to the editor of a newspaper. The CCLA further submits that Courts have repeatedly said that media and the press are a crucial platform for free

expression, and that they play a pivotal role in building and maintaining a free and democratic society. The CCLA points out that Justice McLachlin (as she then was) stated in the *Canadian Broadcasting Corp. v. Lessard*, [1991] 3 S.C.R. 421 case that:

*Freedom of the press is also important to participation in the community and individual self-fulfillment. One need only think of the role of a community newspaper in facilitating community participation, or the role of arts, sports and policy publications to see the importance of freedom the press to these goals.*

288. The CCLA point to the case of *Cherneskey v. Armadale Publishers Limited* (1978), 90 D.L.R. (3d) 321 where Justice Brian Dixon commented on the importance of letter to the editor stating in dissent:

*A free and general discussion of public matters is fundamental to a democratic society. The right of persons to make public their thoughts on the conduct of public officials, in terms usually critical and often caustic, goes back to the earliest times in Greece and Rome. The Roman historian, Tacitus, spoke of the happiness of the times when one could think as he wished and could speak as he thought (1 Tacitus, History, Par.1). Citizens, as decision makers, cannot be expected to exercise wise and informed judgment unless they are exposed to the wildest variety of ideas, from diverse and antagonistic sources. Full disclosure exposes and protects against false doctrine.*

*It is not only the right but the duty of the press, in pursuit of its legitimate objectives, to act as a sounding board for the free flow of new and different ideas. It is one of the few means of getting the heterodox and controversial before the public. Many of the unorthodox points of view get newspaper space through letters to the editor. It is one of the few ways in which the public gains access to the press. By these means, various points of view, old and new grievances, and proposed remedies get aired. The public interest is incidentally served by providing a safety valve for people.*

289. The CCLA points out that Justice Dixon on the *Cherneskey* case stated further that:

*Newspapers will not be able to provide a forum for dissemination of ideas if they are limited to publishing opinions with which they agree. If editors are faced with the choice of publishing only those letters which espouse their own particular ideology, or being without defense if sued for defamation, democratic dialogue will be stifled. Healthy debate will likely be replaced by monotonous repetition of majoritarian ideas and conformity to accept a taste. In one newspaper towns, of which there are many, competing ideas will no longer gain access. Readers will be exposed to a single political, economic and social point of view. In a public controversy, the tendency will be to suppress those letters with which the editor is not in agreement. This runs directly counter to the increasing tendency of North American newspapers generally to become less devoted to the publishers opinions and to print, without fear or favor, the widest possible range of opinions on matters of public interest. The integrity of newspaper rests*

*not on the publication of letter with which it is in agreement, but rather on the publications of letters expressing ideas to which it is violently opposed.*

290. It is the CCLA's position that even when a letter to the editor expresses a view that is reprehensible or unpalatable, they perform a vital function in society by stimulating debate and the exchange of ideas. It is the CCLA's assertion that this Panel keeping in mind the freedom of expression should be extremely reluctant to limit the freedom of the press and the ability of individuals to express themselves through letters to the press.
291. The CCLA submits although it vehemently disagrees with Mr. Boissoin's views, the CCLA is equally vehement that Mr. Boissoin has the right to express his opinions without the fear of legal reprisal.
292. The CCLA asserts that the Panel must consider that a lively public debate was sparked in Red Deer in which a number of people other than Mr. Boissoin wrote to the newspaper to express their views. The CCLA asserts that this is a sign of a healthy and functioning democracy.
293. The CCLA confirms that our freedoms and rights are not absolute and each may be limited where there is an appropriate and rigorous justification that meets a very high standard. The CCLA supports the restriction of expression that is directly connected with specific prohibited discrimination or that which is even likely to cause specific discrimination.
294. In conclusion, the CCLA submits that when *Charter* values are considered by conducting a Section 1 analysis sensitive to the specific context of this case, compounded by the added protection for freedom of expression provided by subsection 3(2) of the *Act*, all this is more than sufficient to remove Mr. Boissoin's letter to the editor from the ambit of subsection 3(1) of the *Act*.
295. The CCLA submits that Section 3(1) must be interpreted narrowly, in a way that minimizes its impact upon freedom of expression, conscience and religion. It is the CCLA's position that it is far better to respond to Mr. Boissoin's message by repudiating it than by seeking to prohibit its expression. It is the CCLA's submission that an unduly broadened interpretation of Section 3(1) that permits Mr. Boissoin's letter to the editor to

fall within this subsection 3(1)(b) would have a major chilling effect on the participation of members of the public in public debates on important political issues for fear that they may misspeak or be punished for expressing an unpopular opinion.

296. In conclusion, the CCLA submits that Section 3(1) of the *Act* is not meant to remedy or protect against hurt feelings. It further asserts that *Charter* values including the commitment to free expression, as well as the division of powers in Sections 91 and 92 of the *Constitution Act, 1867* mean that this Panel must find that Section 3(1) of the *Act* be limited to expression, such as notices, that directly causes or intends to cause specific acts of discrimination. The CCLA asserts that to prohibit any expression beyond that scope would threaten *Charter* values and would be unconstitutional as *ultra vires* the province of Alberta, it would also threaten to cast a chill on the expression of all Albertans. Further, the CCLA asserts that any such finding would be a destructive blow to the health of democracy in Canada, which depends on vigorous public participation and on the setting out of multiple, often conflicting and controversial views.

297. The CCLA submits that this complaint against Mr. Boissoin should be dismissed.

## **DECISION**

### **ISSUE 1**

298. Is Mr. Boissoin's letter to the editor of the *Red Deer Advocate* a breach of Section 3 of the *Act* (2000) of Alberta?

299. Section 3 provides:

*Discrimination Re: Publications, Notices*

*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 representations 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, color, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income or family status of that person or class of persons.*

(2) *Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject.*

300. The first question that must be answered within the ambit of issue 1 is whether or not Mr. Boissoin and the CCC did publish/display or cause to be published, issued or displayed a publication within the meaning of the *Act*. Reverend Boissoin (as he was then) described himself in the *Red Deer Advocate* as a Reverend and the central Alberta chair of the CCC (Red Deer) in an article which he submitted to the *Red Deer Advocate*. Mr. Boissoin admitted that he wrote a letter to the editor of the *Red Deer Advocate* to “sound the alarm” to voters in Canada and to “generate spirited debate in the community.” He admitted in cross-examinations that he submitted the letter to the editor knowing that it may be published. It would defy logic to accept that, in submitting a letter to the editor of a newspaper, Mr. Boissoin did not intend the letter to be published. In order to fulfill Mr. Boissoin’s goal of sounding the alarm and generating spirited debate, it is obvious that his intentions were that the letter would be published by the newspaper for public consumption. Mr. Boissoin further acknowledged in cross examination that he had prior articles published as letters to the editor in the *Red Deer Advocate*, albeit relating to different subject matter.

301. On this issue, both parties rely on the decision of Mr. Justice Rooke of the Alberta Court of Queen’s Bench in *Re Kane*, [2001] A.J. No. 915.

302. Dr. Lund relies on the statement at paragraph 32:

*In other words, a Respondent does not need to be involved in the publication, issuance or display of the representation in a “hands on” sense to be liable under the Act.*

303. Mr. Boissoin relies upon paragraph 39 of the same decision, which states:

*An individual who is a director or officer of an entity that is alleged to have breached Section s. 2(1) may be named as a Respondent where there is a prima facie evidence on the face of the complaint, or upon investigation, which demonstrates that he or she is causally connected, directly or indirectly, to the publication, issuance, or display, of the allegedly prohibited material. In so doing the term “cause” should be given a broad definition. It is a question of fact in each case.*

304. I find that whichever portion of the decision of Justice Rooke in *Re Kane* is relied upon, the evidence and law is clear that the respondents, Mr. Boissoin and the CCC, are appropriate respondents in these proceedings.
305. Although Mr. Boissoin and the CCC are not officers or directors of the *Red Deer Advocate*, there is clear and *prima facie* evidence of a direct causal connection between the CCC and the publication of the letter in question.
306. Any individual, especially an individual espousing the goals of Mr. Boissoin, in submitting a letter to the editor, clearly intends for their letter to be published in the newspaper. In submitting a letter to the editor, an individual is making a request of the publication that his letter be published. Further, Mr. Boissoin had the knowledge that his letters were published in the *Red Deer Advocate* in the past. There is no other reason to forward a letter to the editor. I find that this is a direct causal connection between the creator of the letter to the editor and the publisher of the newspaper. Therefore, there is a direct connection between the respondents and the publishing of the letter.
307. Justice Rooke states that the word “cause” should be given a broad interpretation and the issue of “causing a letter to be published” is a question of fact in each case. On the facts in this case, Boissoin’s intention was clear, that being to have his letter published in the *Red Deer Advocate*.
308. Justice Rooke, in *Re Kane*, also stated that:

“Cause to be published, for purposes of this Section of that Act must be given broad interpretation.”

He found that an individual respondent did not need to be involved in the publication in a “hands-on sense” to be liable under the *Act*. He found that indirect involvement will ground liability and that liability must be considered on a case-by-case basis as part of the full contextual review of the matter.

309. Justice Rooke invites the Panel to review the remedial nature of the *Act* in making a determination on the issue of “cause to be published.”

310. This remedial view of the act requires the Panel to consider whether or not an individual may attempt to shirk responsibility from his actions in hiding behind a corporation. At paragraph 35, Justice Rooke stated:

*The remedial nature of the Act dictates against limiting the pool of potential respondents to the publishing corporation. If corporate entities were the appropriate respondents, any remedial order ultimately made by a Panel may be of little effect as it would permit the individual(s) responsible to shield themselves behind a corporation. Obviously this would do little to advance the purpose of the Act.*

311. I find, for these reasons, and in considering the intent of Mr. Boissoin in submitting his letter to the editor, that Mr. Boissoin and the CCC did indeed publish, or cause to be published, Mr. Boissoin’s letter in the *Red Deer Advocate*.

312. The next requirement is Section 3(1)(b) is to determine whether the publication was “likely to expose” a class of persons to hatred or contempt.

313. Dr. Lund argues that the publication was likely to expose a person or class of persons to hatred because of their sexual orientation.

314. Mr. Boissoin argues that there was no evidence at the hearing to the effect that his letter has been to expose a person or class of persons to hatred or contempt.

315. Dr. Lund relies upon *Nealy v. Johnson* (1989) 10 C.H.R.R. D-6450 (Can Human Rights Trib), which was adopted by the Supreme Court of Canada in *R. v. Taylor* [1990] 3 S.C.R. 892, in which the Tribunal in *Nealy* discussed the meaning of the word “expose”.

316. Justice Rooke also deferred to the tribunal in Nealy on the issue of the meaning of “expose”. At paragraph 109 of the *Re Kane* Decision, Justice Rooke, in quoting from *Nealy*, quoting with approval from Taylor states:

*‘Expose’ is an unusual word to find in legislation designed to control hate propaganda. More frequently, as in the Broadcasting Act Regulations, Post Office Act provisions and in the various related sections of the Criminal Code, the reference is to a matter which is abusive or offensive, or to statements which serve to incite or promote hatred.*

*‘Incite’ means to stir up; ‘promote’ means to support actively. ‘Expose’ is a more passive word, which seems to indicate that an active effort or intent on the part of the communicator or a violent reaction on the part of the recipient are not envisaged. To expose to hatred also indicates a more subtle and indirect type of communication than vulgar abuse or overtly offensive language. ‘Expose’ means: to leave a person unprotected; to leave without shelter or defence; to lay open (to danger, ridicule, censure etc.). In other words, if one is creating the right conditions for hatred to flourish, leaving the identifiable group open or vulnerable to ill-feelings or hostility, if one is putting them at risk of being hated, in a situation where hatred or contempt are inevitable, one then falls within the compass of s. 13(1) of the Human Rights Act.*

317. Justice Rooke further quoted from *Nealy* on the phrase “likely to expose” a person or persons to hatred or contempt, and stated at paragraph 110:

*We note, as the excerpts suggest, that there is no need for the complainants to prove an active effort or intent on the part of the respondents to produce the adverse consequence contemplated by this section. Moreover, the use of the wording ‘likely to expose a person or persons to hatred or contempt’ means that it is not necessary that evidence be adduced that any particular individual or group took the messages seriously and in fact directed hatred or contempt against another or others, still less that anyone has in fact been victimized in this way. It is enough to prove that the matter in the messages is more likely than not to spark a positive reaction amongst some of the listeners to it which will likely in turn manifest itself ‘hatred’ or ‘contempt’ towards the targets of the messages.*

318. Justice Rooke described that the standard in *Nealy* as a “standard of (persuading) a gullible, or malevolent listener, to the potential impact of the communications” (paragraph 111). He contrasted the *Nealy* test with the test in *Canadian Jewish Congress v. North Shore Free Press Ltd.* (1997), 30 C.H.R.R. D/5 (“CJC”). The “CJC” decision concluded that the issue was whether the effect of the communication would

increase the likelihood that members of the target group will be exposed to hatred or contempt.

319. Justice Rooke, in analyzing this issue, came to the conclusion that the test as set out in *Abrams v. North Shore Free Press Ltd.* (1999) 33 C.H.R.R. D/435, would be a standard to be applied in the context of the *Act*. He states in *Re Kane* at paragraph 125 that such a test might require the following inquiries:

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

Additionally, Justice Rooke states at paragraph 122:

*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.*

320. In response to the questions posed by Justice Rooke, in my view it is clear that the letter expresses 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 heard at the hearing.
321. It is clearly established in our case law that homosexuals are a vulnerable minority. Further, the evidence of the expert on hate crimes at the hearing highlights how this is the case, particularly in smaller areas within Alberta.

322. Also, I am of the view that the effect of the communication would make it more acceptable to others to manifest hatred against homosexuals. I would also conclude that a reasonable person would consider it more likely than not that this letter exposes members of the target group being homosexuals, to hatred or contempt. I agree with Dr. Lund's examples which leave homosexuals vulnerable to hatred, contempt and active dislike in his reference to the following portions of the letter:

1. *"Where homosexuality flourishes, all manner of wickedness abounds."*
2. *"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."*
3. *"Know this, we will defeat you, then heal the damage you have caused."*
4. *"It is time to stand together and take whatever steps are necessary to reverse the wickedness..."*
5. *"...Horrendous atrocities, such as the aggressive propagation of homo and bisexuality."*
6. *"From kindergarten class on, our children, your grandchildren are being strategically targeted, psychologically abused and brainwashed..."*
7. *"Our children are being victimized by repugnant and pre-mediated strategies, aimed at desensitizing and eventually recruiting our young into their camps."*
8. *"Your children are being warped."*
9. *"Will your child be the next victim that tests homosexuality positive."*

323. I agree with Dr. Lund that statements such as these in the letter serve to develop mistrust and fear of homosexuality by making erroneous connections between homosexuality and disease. I further agree with Dr. Lund's comments that the tone in the letter is militaristic and the letter serves to dehumanize people who are homosexuals by referring to them in degrading, insulting and offensive manners. I also agree with Dr. Lund that the letter draws false analogies between homosexuality and pedophilia. In this context, the letter does indeed express hatred and contempt for homosexuality and no one could help but understand the letter in such context. Further, this type of fear mongering, in my view, may make it more acceptable for some others to manifest hatred

or contempt against homosexuals and any reasonable person would consider it more likely than not to expose homosexuals to hatred and contempt.

324. Justice Rooke, in considering the “likely to expose” test, invites Tribunals to consider a number of factors in relation to the communication, the target group, and the method of publication in order to determine whether or not the test has been satisfied. I have reviewed the factors as follows:

A. The content of the communication. The content of the communication, in my view, exposes homosexuals to contempt. The themes in the correspondence are themes of hatred against homosexuals, as pointed out by Dr. Lund. These include:

- a. Homosexuals conspire against society;
- b. Homosexuals are sick, diseased and mentally ill;
- c. Homosexuals are a threat to children;
- d. Homosexuals are linked with pedophilia;
- e. There is a gay agenda and a homosexual machine;
- f. Homosexuals are wicked or dangerous.

B. The tone of the communication. The tone is militaristic in nature. It uses words such as:

- a. War has been declared.
- b. My banner has now been raised.
- c. The greatest weapons you have encountered to date. We will defeat you.
- d. Stand together and take whatever steps are necessary.

The effect of the tone of the communication may convey that violence against homosexuals of a physical nature is acceptable.

C. The image conveyed, including whether the issue of quotations and reference sources, gives the message more credibility.

The fact that the letter is written by a “Reverend” who is a “chairman” on behalf of a “Coalition” tends to give the letter credibility. Further, the polemic references to the Bible gives the message an air of more credibility, given the ancient nature of the text.

The fact that the letter is published in a leading newspaper in the province also gives it credibility.

D. The vulnerability of the target group.

The evidence is clear that the target group is vulnerable. As Constable Jones pointed out, homosexuals are more vulnerable in rural areas, especially in regards to hate crimes. He reported that homosexual victims have a reluctance to come forward and report discrimination and that homosexuals are a vulnerable, marginalized group who have historically experienced extreme discrimination, especially in small communities. This is further bolstered by the fact that sexual orientation is now an enumerated basis for protection within our Charter.

E. The degree to which the expression reinforces existing stereotypes.

This comes from the decisions in *Kane*, *Abrams* and *Nealy*. The stereotypes used, as pointed out by Dr. Lund, are that homosexuals are morally bankrupt and disease ridden enemies, and further, that homosexuals seek out children with erroneous analogies to pedophilia. The letter evokes fear of an identifiable homosexual group as a dangerous threat to Christian institutions.

F. The circumstances surrounding the message, including whether the messages appeal to well publicized issues.

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. Boissoin 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.

G. The medium used to convey the message.

The medium was a newspaper which created a public long-lasting written record of the message. Further, the article is easily accessed on the internet and it continues to generate many hits. There is no doubt the article in written form has been and continued to be reproduced.

H. Circulation of the publication and its credibility.

The *Red Deer Advocate* had a circulation of well over 100,000 copies daily to a readership within central Alberta.

I. The context of the publication, for example whether it is part of a debate or whether it is presented as news or as a purportedly authoritative analysis.

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 a debate.

325. Having considered all of these issues, the evidence before me and the case law, I find that the publication of Mr. Boissoin and the CCC was, on the balance of probabilities, likely to expose homosexuals to hatred and/or contempt.

326. Is the communication likely to expose the target group being homosexuals to hatred or contempt, due to their sexual orientation? This is the next inquiry that must be made on this issue. Further, sexual orientation is an enumerated ground in s.15 of the Charter.
327. Sexual orientation was read into the protected grounds in Alberta human rights legislation in *Vriend v. Alberta* [1998] 1 S.C.R. 493.
328. The definition of “hatred” and “contempt” for purposes of human rights legislation is well established in Canada by the Supreme Court of Canada in *R. v. Taylor* [1990] 3 S.C.R. (Supreme Court of Canada) paragraph 60, wherein the following was stated by the Supreme Court of Canada:

*In my view, there is no conflict between providing a meaningful interpretation of s. 13(1) and protecting the s. 2(b) freedom of expression so long as the interpretation of the words ‘hatred’ and ‘contempt’ is fully informed by an awareness that Parliament’s objective is to protect the equality and dignity of all individuals by reducing the incidence of harm-causing expression. Such a perspective was employed by the Human Rights Tribunal in *Nealy v. Johnston* (1989), 10 C.H.R.R. D/6450, the most recent decision regarding s. 13(1), where it was noted, at p. D/6469, that:*

*In defining ‘hatred’ the Tribunal [in Taylor] applied the definition in the Oxford English Dictionary (1971 ed.) Which reads:*

*“Active dislike, detestation, enmity, ill-will, malevolence.”*

*The Tribunal drew on the same source for their definition of ‘contempt’. It was characterized as*

*“the condition of being condemned or despised; dishonour or disgrace.”*

*As there is no definition of ‘hatred’ or ‘contempt’ within the [Canadian Human Rights Act] it is necessary to rely on what might be described as common understandings of the meaning of these terms. Clearly these are terms which have a potentially emotive content and how they are related to particular factual contexts by different individuals will vary. There is nevertheless an important core of meaning in both, which the dictionary definitions capture. With ‘hatred’ the focus is 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. It is a term, however, which does not necessarily involve the mental process of ‘looking down’ on another or others. It is quite possible to ‘hate’ someone who one feels is*

*superior to one in intelligence, wealth or power. None of the synonyms used in the dictionary definition for 'hatred' give any clues to the motivation for the ill will. 'Contempt' is by contrast a term which suggests a mental process of 'looking down' upon or treating as inferior the object of one's feelings. This is captured by the dictionary definition relied on in Taylor...in the use of the terms 'despised', 'dishonour' or 'disgrace'. Although the person can be 'hated' (i.e. actively disliked) and treated with 'contempt' (i.e. looked down upon), the terms are not fully coextensive, because 'hatred' is in some instances the product of envy of superior qualities, which 'contempt' by definition cannot be.*

329. It is further stated at paragraph 61 of the *R. v. Taylor* decision:

*The approach taken in Nealy gives full force and recognition to the purpose of the Canadian Human Rights Act while remaining consistent with the Charter. The reference to 'hatred' in the above quotation speaks of 'extreme' ill-will and an emotion which allows for 'no redeeming qualities' in the person at whom it is directed. 'Contempt' appears to be viewed as similarly extreme, though is felt by the Tribunal to describe more appropriately circumstances where the object of one's feelings is looked down upon. According to the reading of the Tribunal, s. 13(1) thus refers to unusually strong and deep-felt emotions of detestation, calumny and vilification, and I do not find this interpretation to be particularly expansive. To the extent that the section may impose a slightly broader limit upon freedom of expression than does s. 319(2) of the Criminal Code, however, I am of the view that the conciliatory bent of a human rights statute renders such a limit more acceptable than would be the case with a criminal provision.*

330. There is no doubt in my mind that the Mr. Boissoin's letter speaks of extreme ill-will and emotions which allow for no redeeming qualities to be found in the persons to whom the statements are directed, i.e. homosexuals. The letter refers to unusually strong and deep-felt emotions of detestation, calumny, and vilification. I also find that homosexuals are being referred to in a contemptuous manner, that their condition of being condemned and despised, dishonoured or disgraced, is clear from the tone of the letter. The themes of hatred rampant in the letter have already been referred to in this decision.

331. Having considered the matter in its entirety, the evidence and the case law, I find that the statements made by Mr. Boissoin and the CCC are likely to expose homosexuals to hatred and contempt due to their sexual preference.

332. The purpose of human rights legislation is to protect the dignity and equality of all individuals by preventing exposure to hatred and contempt and, in this case, by

protecting homosexuals from exposure to hatred and contempt because of their sexual preference.

333. I find that in all regards, Mr. Boissoin and the CCC are in breach of s. 3(1) of the *Act* by causing to be published before the public, statements which are likely to expose homosexuals to hatred and contempt due to their sexual preference.

## ISSUE 2

334. Does s. 3(2) provide a defence to the breach of s. 3(1) or, in other words, is freedom of expression a defence to statements made by Mr. Boissoin and the CCC?
335. Section 3(2) of the *Act* states that nothing in s. 3(1) shall interfere with the freedom of expression on any subject.
336. Mr. Boissoin takes the position that his letter is an expression of honestly held religious beliefs and he further states that he did not intend to disseminate hate, only to spur political debate.
337. Mr. Boissoin relies on the statement of Chief Justice Dickson in *R. v. Big M Drugmart*, [1985] 1 S.C.R. 295, in which Chief Justice Dickson states at paragraph 94:

*A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct...The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.*

338. Mr. Boissoin argues that this authority from the Supreme Court of Canada should end the inquiry by the Panel and that, as a matter of statutory construction, this section in the *Act* was included to protect religious discussion. 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*.

339. Dr. Lund argues that no right, including the freedom of religion and expression, is absolute, and furthermore, that civil liberties must be balanced with responsibility.
340. I find, based on the evidence and an analysis of the law and case law, that in the within case s. 3(2) does not act as a defence to the breach by Mr. Boissoin and the CCC of s. 3(1) of the *Act*. I find, as did the Supreme Court of Canada in *R v. Keegstra*, [1990] S.C.R. 697, as quoted by Justice Rooke at paragraph 67 in *Re Kane*, the following:

*The harm caused by discriminatory and hate/contempt-based expression is well-recognized. The Supreme Court of Canada affirmed in R. v. Keegstra [1990] 3 S.C.R. 697 (S.C.C.); Attis v. New Brunswick District No. 15 Board of Education, [1996] 1 S.C.R. 825 (S.C.C); and Taylor, that protection from discriminatory and hate/contempt-based expression is a pressing and substantial objective, and is justified in a free and democratic society. The Preamble of the Act speaks of the inherent dignity and inalienable rights of all persons, of the importance of multiculturalism as a fundamental principle and a matter of public policy. Such guarantees and eloquent statements would be hollow if s. 2(2) is interpreted as an absolute defence, with the respondent merely having to establish that his or her expression was opinion.*

In short, I agree with the sentiments of the majority in *Taylor*, per Dickson C.J.C., at 930, that:

*...having decided that there exists an objective in restricting hate propaganda of sufficient importance to warrant placing some limits upon the freedom of expression, it would be incongruous to require that s. 13(1) exempt all activity falling under the rubric of ‘expression’.*

341. It is, in my view, nonsensical to enact broad and paramount and remedial legislation, such as human rights legislation, to protect the dignity and human rights of Albertans, only to have it overridden by the expression of opinion in all forms. I agree with Justice Rooke, at paragraph 70 of the *Re Kane* decision, where he quotes:

*In my view, excluding opinions from the reach of s. 2(1) would go a long way in defeating the purpose of the legislation. For example, if one wanted to issue, publish or display statements which were likely to expose persons to hatred or*

*contempt, they could do so and avoid any remedial orders under the Act by framing them as opinions.*

342. Surely our legislature did not intend to protect hatred under the guise of opinion or political speech by enacting s. 3(2).
343. It is true, as argued by the respondent and intervener, the CCLA, that there is the necessity for the weighing of two objectives of freedoms in this matter. Those freedoms are the freedom of expression and the freedom from discrimination. In this context, I have examined the statements made by Mr. Boissoin and the CCC in a full contextual manner, recognizing the goals of the *Act* and the Charter of Canadian Rights and Freedoms.
344. I am cognizant of the statements of Justice Rooke in *Re Kane* at paragraph 93, wherein he states:

*While I acknowledge the importance of free press to a democratic society, I am also of the view that this freedom must be exercised responsibly, particularly in light of the enormous influence that the media enjoys. It is, therefore, crucial that limits and counterbalances, such as s. 2(2), apply to the media.*

345. It is my view that the views of individuals expressing their opinions or expressing political statements must be made in a responsible manner. I am not prepared to afford Mr. Boissoin and the CCC an absolute defence to their responsibility for statements they made, simply because they are attempting to express their statements under the guise of political speech or opinion. Mr. Boissoin argues that s. 3(2) serves to effectively raise the bar in affording freedom of speech protection. On an analysis of the case law, I disagree that s. 3(2) creates further protection for political speech. I find that the inclusion of s. 3(2) bolsters the necessity to balance competing rights using Charter values.
346. I do agree that s. 3(2) is an admonition for Panels to balance the freedom of expression with the eradication of discrimination in the consideration of complaints under Section 3 of the *Act*, but I do not find that s. 3(2) is a complete defence, nor a justification, for a breach of s. 3(1). In this case I find, in balancing the two freedoms, that the eradication of hate speech, such as that promulgated by Mr. Boissoin and the CCC is paramount to

the freedom Mr. Boissoin and the CCC should have to speak their views. I find, therefore, that s. 3(2) in this case is not a defence to the breach of s. 3(1).

## JURISDICTION

347. Mr. Boissoin argues that the Commission does not have jurisdiction in the matter because:

- a. Freedom of expression is a matter exclusive to the federation, not provincial authority;
- b. Hate is the jurisdiction of the *Criminal Code* and the Parliament of Canada;
- c. Mr. Boissoin seeks a constitutional remedy without launching a charter challenge; to the legislation;
- d. There is no direct evidence of harm arising from the statements, therefore the province has no jurisdiction to rule on the letter. Further, there is nothing linking this to s.91 of the Constitution to make the province have jurisdiction.

348. The CCLA, who intervened in this matter, also argues that the Panel lacks jurisdiction over hate speech unless there is a direct link between the discriminatory expression and a prohibitive discriminatory act.

349. I agree with the CCLA that in order for Mr. Boissoin's publication to come within the ambit of provincial jurisdiction, it must fall under the ambit of matters reserved to the provinces under s.91 of the Constitution. I agree that such matters include property or civil rights, matters of a merely local or private nature, or local works and undertakings. However, I do not agree with Mr. Boissoin and the CCLA that the publication of Mr. Boissoin lacks the crucial link to matters under provincial jurisdiction.

350. I find that the Commission has jurisdiction to deal with this complaint on two bases:

- a. The article of Mr. Boissoin is, in fact, a matter of local and private nature related to, albeit perhaps somewhat indirectly, the educational system in Alberta.
  - b. Secondly, I find that there is a circumstantial connection between the hate speech of Mr. Boissoin and the CCC and the beating of a gay teenager in Red Deer less than two weeks following the publication of Mr. Boissoin's letter.
  - c. Without evidence of a crime as captured in the Criminal Code, after finding this letter is likely to expose people to hate and or contempt, there is a void in jurisdiction. Without the crime, the Parliament has no jurisdiction. 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.
351. Mr. Boissoin's letter is, on the face of it, a critique of the homosexual agenda which he alleged existed in the school system in Red Deer, Alberta. His statement that "our children are being victimized by repugnant and pre-mediated strategies," his statement that "our children are being recruited, subjected to psychologically and physiologically damaging pro-homosexual literature and guidance in the public school system, under the fraudulent guise of equal rights" is, in fact, a criticism of the school system in Alberta in Red Deer, which, in my view, is within the provincial domain. The reference to an agenda by teachers, politicians and lawyers is also a matter within the public provincial domain.
352. Mr. Boissoin, by his own evidence, indicated that his letter was "spurred on", or the genesis of his letter was, in response to steps taken at the instance of the Commission, with money granted to it by the province of Alberta "to teach school aged children in grades k through 12 that homosexuality was normal, necessary, acceptable and productive." The school curriculum is a provincial matter. In founding his letter on the basis of actions of the government of Alberta, Mr. Boissoin accedes to the authority of the provincial jurisdiction.

353. Further, Mr. Boissoin stated that he is an indirect funder of this initiative through his tax dollars, which again, is an initiative within the provincial purview and further evidence of the acceptance of provincial jurisdiction by Mr. Boissoin.
354. While the evidence of the beating of the gay man two weeks after the publication of the letter was indirect, I find in addition, that there was sufficient nexus to conclude circumstantially, that the two matters may be connected. In that regard, I rely on the evidence of Mr. Douglas Robert Jones that homosexuals are a vulnerable population in society and are more vulnerable in settings like Red Deer, which is a smaller community. I also accept his evidence that homosexuals are marginalized in the community and that young people are more impressionable to letters like this than others. I also accept the evidence of Dr. Alderson, who reported that in reading Mr. Boissoin's letter, it caused a surge of personal fear in himself and that he had talked to hundreds of people in the gay community about Mr. Boissoin's letter and all were horrified and fearful. It was adduced into evidence that it was reported in the *Red Deer Advocate* that the 17 year old victim (at the time) did mention Mr. Boissoin's letter as making him feel fearful. I also accept Dr. Alderson's evidence that Mr. Boissoin'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 to the physical safety of gays.
355. Given all of this evidence, I find that the matter before the Panel is within the jurisdiction of the Commission and it is local in nature and, therefore, I take jurisdiction over the complaint. I do not find that the province, through this legislation, is attempting to reach beyond its mandate. Further, the use of Charter values in this decision further ensures this Panel is not acting *ultra vires* the provincial jurisdiction.

## THE CHARTER

356. I have considered Charter values in reaching my decision. I agree with the argument of the CCLA that Charter values are at play, not only when there is a constitutional challenge. Further, the case law is clear that in any analysis of competing rights, the balance must be done in light of the Charter. I accept the authority as submitted by the

CCLA from *Multani v. Commission Scolaire Marguerite-Bourgeoys*, [2006] S.C.C. 256. In quoting from Justice Charron at paragraph 16:

*The rights and freedoms guaranteed by the Canadian Charter establish a minimum constitutional protection that must be taken into account by the legislature and by every person or body subject to the Canadian Charter.*

357. In balancing the freedom afforded under the Charter and the degree of protection afforded through the provincial legislation, I considered s. 2(b) of the Charter in regards to the fundamental freedoms of conscience and religion, the freedom of thought, belief, opinion and expression, including the freedom of the press and other media, the freedom of peaceful assembly and the freedom of association. Having considered the Charter and the balancing of the freedoms set out in the Charter, I have interpreted the *Act* in a manner which respected the broad protection granted to religious freedom. However, I have found that this protection does not trump the protection afforded under the Alberta human rights legislation in s. 3. to protection against hatred and contempt. I also take the view that s.3(2) required a balancing of these freedoms afforded to individuals under the Charter, with the prohibitions in s. 3(1) of the *Act*. In this case, the publication's exposure of homosexuals to hatred and contempt trumps the freedom of speech afforded in the Charter. It cannot be the case that any speech wrapped in the 'guise' of politics or religion is beyond reproach by any legislation but the *Criminal Code*.

#### CONCERNED CHRISTIAN COALITION

358. No evidence was presented by the CCC as to its position regarding the statements made by Mr. Boissoin. Mr. Boissoin did state on cross examination that Mr. Craig Chandler was aware and supported what he was doing.

359. Early in the proceedings, Ms. MacIntosh, representing Mr. Chipeur, Q.C., made an application, as instructed by Mr. Craig Chandler on behalf of the CCC, only with respect to the issue of whether or not the CCC should be removed as a party.

360. I rendered a preliminary decision in the matter in which I held that the Panel could not deal with extricating the CCC from the complaint until all evidence was heard. The matter proceeded with the CCC as a party to the proceedings. Hearing no evidence

from the CCC, 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*.

361. In conclusion, I find that the respondents, Mr. Boissoin and the CCC, have contravened s. 3 of the *Act* by causing to be published in the *Red Deer Advocate*, before the public, a publication which is likely to expose homosexuals to hatred or contempt because of their sexual preference.
362. I will hear submissions from the parties on the issue of remedy at a later date. The parties may contact the Commission to set up a process for the determination of a remedy in this matter.
363. I want to thank all of the parties and their counsel for their participation in this process.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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LORI G. ANDREACHUK, Q.C.,  
Panel Chair

Decision Rendered:  
November 29, 2007