

Remedy Decision Released in the Lund v. Boissoin Case

By Linda McKay-Panos

Cases Considered:

[Darren E. Lund v. Stephen Boissoin and the Concerned Christian Coalition Inc. \(May 30, 2008 Lori G. Andreachuck, Q.C. Panel Chair\)](#)

In an earlier decision released on November 30, 2007, which dealt with a complaint about a hateful message against the gay community published in a [letter to the editor](#) of the Red Deer Advocate, online, the Alberta Human Rights Panel ("Panel") found that Stephen Boissoin and The Concerned Christian Coalition Inc. had contravened s. 3 of the Alberta *Human Rights, Citizenship and Multiculturalism Act* ("HRCMA"), R.S.A. 2000, c. H-14. The Panel released its decision on the remedy on May 30, 2008. The original case, together with a few recent cases involving similar provisions in other provinces' and the federal government's human rights legislation, has spawned outcry across Canada about limiting the powers of human rights commissions or even doing away with commissions altogether. The remedy ordered in this case has also sparked renewed criticism of the HRCMA (see for example: ["Keep Your Promise, Premier: Stand up for freedom of speech"](#) Calgary Herald 06 June 2008 online).

Under the HRCMA, s. 32, the Panel has broad powers to order an appropriate remedy for any contravention of the Act. In making the remedy in this case, the Panel stated that it was going to determine the appropriate remedy that would ameliorate the effects of the discrimination rather than punish the perpetrator. This is the usual approach taken to violations of the HRCMA, as its purpose is to educate rather than punish. Indeed, the Panel agreed with Dr. Lund that there should be a symbolic and educational value to the remedies provided for hate propaganda.

The Panel noted that while Dr. Lund was not a direct victim of the offending speech, he did expend "considerable time and energy and suffered ridicule and harassment as a result of his complaint" (at para. 13). Thus, both Mr. Boissoin and The Concerned Christian Coalition were ordered to pay \$5,000 damages to Dr. Lund. Also, the Panel ordered the respondents to pay one of the witnesses, Ms. Dodd, up to \$2,000 for her expenses related to providing testimony in the matter. In addition, the Panel ordered Mr. Boissoin and The Concerned Christian Coalition Inc. to:

- Cease publishing in future any disparaging remarks about gays, about Dr. Lund or his witnesses as they relate to the complaint. They are also restrained from making the same or similar contraventions of the Act;
- Remove all disparaging remarks against gay people on their websites or in their publications;
- Write an apology to Dr. Lund for the article that appeared in the Red Deer Advocate; and
- Request the Red Deer Advocate to publish the written apology to Dr. Lund (at para. 14).

The Herald editorial, in its critique of these remedies, and in calling for the repeal of the publication section of the *HRCMA*, argued that had Mr. Boissoin been in court (instead of before the Panel), he could have defended himself by pleading fair comment, or the absence of intent to harm. However, the editorial fails to note that before the Panel Mr. Boissoin could have relied on the defence available in s. 11 of the *HRCMA*, which says,

11. A contravention of this Act shall be deemed not to have occurred if the person who is alleged to have contravened the Act shows that the alleged contravention was reasonable and justifiable in the circumstances.

There is nothing to prevent respondents from arguing that a contravention under s. 3 was reasonable and justifiable. This section was available to the respondents, but was not relied upon. It has also not been adjudicated in the context of publications in other cases.

Others have argued that it would have been available to Dr. Lund to complain to the police who could have charged Mr. Boissoin with a violation of the *Criminal Code* hate crimes provision. However, at the time the letter to the editor was published in the Red Deer Advocate (2002), the hate crimes provision did not include hate crimes based on sexual orientation (this was added in 2004). Hence, that avenue of redress was not available.

Much of the outcry against human rights commissions is based on misinformation about their powers. For example, the Alberta Human Rights and Citizenship Commission does not have the power to launch investigations of human rights issues without first receiving a complaint. Furthermore, it must be remembered that the vast majority of complaints involve employment and not public notices. These represented only 1 percent of the complaints received by the Commission in 2006-7. At least the Calgary Herald editorial is somewhat circumspect in calling for the repeal of s. 3(1)(b) of the *HRCMA* rather than advocating the elimination of the entire human rights commission.

For the post on the original decision in *Lund v. Boissoin and the Concerned Christian Coalition Inc.*, see http://ablawg.ca/wp-content/uploads/2008/02/lmp_lund_v_boissoin.pdf. Boissoin has said that he will not apologize, and will seek an appeal of the remedy.