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Hate Speech and Human Rights in Alberta

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Motion commented on: Motion 502 ([Alberta Legislative Assembly, March 17, 2014](#))

It was a tumultuous time in the Alberta Legislature last week, culminating with the resignation of Alison Redford as Premier (for an excellent recap see [Susan on The Soapbox](#)). And of course there were significant events at the national level as well, with the resignation of Jim Flaherty as finance minister and the [Supreme Court of Canada](#)'s decision that Marc Nadon was ineligible for appointment to its ranks. Readers therefore may be forgiven if they missed last week's debate in the Alberta Legislature on the repeal of section 3(1)(b) of the *Alberta Human Rights Act*, [RSA 2000, c A-25.5 \(AHRA\)](#).

Section 3(1)(b) provides that "No person shall publish, issue or display ... before the public any statement, publication, notice, sign, symbol, emblem or other representation that ... is likely to expose a person or a class of persons to hatred or contempt because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons." The debate about repeal occurred in the context of a motion introduced by Wildrose Justice Critic Shayne Saskiw, which stated: "Motion 502: Be it resolved that the Legislative Assembly urge the government to introduce legislation to repeal section 3(1)(b) of the Alberta Human Rights Act to restore the freedom of speech of all Albertans" ([Alberta Hansard](#), March 17, 2014 at 280).

Previous posts on ABlawg have discussed judicial decisions concerning the constitutional validity and application of section 3(1)(b) (*Lund v Boisson*, [2009 ABQB 592](#), aff'd on other grounds [2012 ABCA 300](#) (see [here](#) and [here](#))), as well as the justifiability of a similar provision in the *Saskatchewan Human Rights Code*, SS 1979, c S-24.1 as a reasonable limit on freedom of expression (*Saskatchewan Human Rights Commission v Whatcott*, [2013 SCC 11](#) (see [here](#))). In spite of decisions upholding the constitutionality of human rights based hate speech provisions, however, the political discourse around repeal has not abated (see e.g. [here](#) and [here](#)). The arguments of the critics are often tied to broader allegations about human rights commissions and tribunals as "kangaroo courts" (see e.g. [here](#)). Most recently, the federal government repealed the equivalent hate speech provision in the *Canadian Human Rights Act*, RSC 1985, c H-6, section 13, which will take effect in June 2014 (see [An Act to amend the Canadian Human Rights Act \(protecting freedom\)](#)).

In support of Motion 502, Saskiw referred to section 3(1)(b) as "hurt feelings legislation", and noted that (now former) Premier Redford had promised to repeal the section during her

leadership campaign on the basis that it interfered with freedom of expression. He also noted that hate speech is a criminal offence under the *Criminal Code*, RSC 1985, c C-46, section 319, and argued that this is sufficient protection. Moreover, criminal complaints will be investigated by the RCMP and adjudicated by “real Queen's Bench judges” (as opposed to what he called “state-controlled commissions [which] are not part of our justice system”). He also claimed that “If we repeal paragraph 3(1)(b), we have the opportunity to make Alberta the freest place in Canada” ([Alberta Hansard](#), March 17, 2014 at 280-281).

Justice Minister Jonathan Denis spoke next. He noted that “section 3 complaints to the Human Rights Commission are relatively rare”, with less than 1 per cent of all complaints citing section 3 in 2012, and only 1 or 2 complaints a year citing section 3 before that. He also referred to the Alberta Court of Appeal decision in *Lund*, which criticized the language of section 3(1)(b), noting that its “lack of clarity will cast a chill on the exercise of the fundamental freedoms, such as freedom of expression and religion.” ([2012 ABCA 300](#) at para 94). Minister Denis questioned “whether or not having a section like this works against its intended purpose by drawing more attention to the hateful views of an individual than if they had not been prosecuted” (though it should be noted that individuals are not actually “prosecuted” under the *AHRA*). He pointed out that organizations such as the Rocky Mountain Civil Liberties Association and the Sheldon Chumir Foundation, “hardly bastions of right-wing thought”, support changes to section 3 of the *AHRA*. Although he recounted the hatred experienced by his German family members in the 1940s and 1950s, which led to them leaving their community in Saskatchewan, Minister Denis indicated that he would support the motion. ([Alberta Hansard](#), March 17, 2014 at 281-282).

New Democrat Opposition House Leader Rachel Notley then weighed in to oppose Motion 502. She quoted from the Supreme Court decision in *Whatcott*, where the Court said that “Hate speech is antithetical to [democracy] in that it shuts down dialogue by making it difficult or impossible for members of the vulnerable group to respond, thereby stifling discourse.” ([2013 SCC 11](#) at para 117). Notley also argued that Motion 502 was part of a “three-plank effort ... through the combined efforts of this Conservative government and the Wildrose opposition, to undermine human rights in this province.” She referred to the other planks in this strategy as the introduction of section 11.1 of the *AHRA* in 2008, which requires school boards and teachers to notify students of curriculum content involving issues of sexuality, sexual orientation and religion, as well as the failure of the government to include reference to the *Canadian Charter of Rights and Freedoms* in the preamble to the *Education Act*. She argued that the criminal response to hate speech was not an adequate alternative, as the standard of proof is much higher, it is punitive rather than remedial, and it operates at the discretion of the police, to whom only a fraction of hate speech cases are reported. She also noted that a “broad range of different minority communities” were present in the Legislature for the debate, who “concluded that section 3 in our human rights code continues to serve a very, very important purpose in our province and that its removal will result in more discrimination, more discriminatory acts, and fewer opportunities to resolve those issues.” ([Alberta Hansard](#), March 17, 2014 at 282-283, and see the blog [Disability Action Hall](#)).

Then followed Raj Sherman, Leader of the Liberal Opposition, who spoke about the hatred he had experienced as a child immigrant to Canada in the 1970s and how words have the power to do serious harm. His speech is available on YouTube: <http://www.youtube.com/watch?v=IUpJuZkcDjE>. Sherman spoke of a competing freedom to freedom of expression: “we must be allowed to walk freely without being called bad names and horrible names that promote hatred and contempt.” He urged all members of the Legislature to

vote against the motion, and closed by stating: “I would say that all of those who aren’t coloured in this Assembly, who aren’t visibly different – you know what, I’m not even going to stand up and vote on this, Mr. Speaker. I think everyone else who isn’t a visible minority should be the ones standing up fighting for this.” ([Alberta Hansard](#), March 17, 2014 at 283-284).

In a short statement, Official Opposition House Leader Rob Anderson noted that hate speech could also be directed at religious minorities, and expressed his view that hate speech should be dealt with “in the court of public opinion” rather than under human rights legislation. ([Alberta Hansard](#), March 17, 2014 at 284).

Teresa Woo-Paw, the Associate Minister of International and Intergovernmental Relations, was the first Conservative MLA to speak in favour of section 3(1)(b). She argued that “the Alberta Human Rights Commission serves an important role that cannot be substituted by the criminal justice system at the current time”, noting the remedial functions of the commission and the ability “for those on the receiving end of hateful incidents to seek recourse and justice.” She quoted extensively from a paper prepared by the Ethno-Cultural Council of Calgary in support of section 3(1)(b), and noted that “When we discuss hate speech, we also need to understand and recognize that power is not equally shared in our society, that certain groups continue to have more power than others, that men continue to make more money than women, that people of colour are at greater risk of discrimination, that members of the LGBTQ communities are more likely to be victims of violence than straight people, and that people with disabilities face greater barriers to employment than those without disabilities. ... Hate speech serves to further marginalize and silence groups who are already marginalized and leads to conditions where hatred and violence against minority groups are acceptable.” ([Alberta Hansard](#), March 17, 2014 at 285).

Short statements in opposition to the motion were also made by MLAs Laurie Blakeman (Liberal – Edmonton Centre), Frank Oberle (Deputy Government House Leader) and Deron Bilous (New Democrat - Edmonton-Beverly-Clareview), and in support of the motion by Rick McIver (Minister of Infrastructure). ([Alberta Hansard](#), March 17, 2014 at 286-287).

Motion 502 was subject to a free vote, and the results were 38 votes against and 8 votes for the motion. Former Premier Redford did not vote on the motion, and current Premier Dave Hancock voted against. ([Alberta Hansard](#), March 17, 2014 at 287).

Despite the Justice Minister’s support of Motion 502, it is unlikely that the government will introduce legislation to repeal section 3(1)(b) this term, especially in light of recent events surrounding the leadership of the PC party. But this debate is likely to rear its head again at some point. My hope is that people in this province will take the time to inform themselves about the critical role of human rights legislation and procedures in this province, including the important role played by section 3(1)(b) of the *AHRA*. When our next election rolls around – perhaps sooner than we thought a week ago – it is important to have an informed debate on the subject of hate speech and human rights, and the protection of human rights more broadly.

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