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PROTECTING ATHEISTS WITHIN A RENEWED BC HUMAN RIGHTS COMMISSION

Since 1984, the British Columbia Humanist Association has campaigned for progressive and secular values. Humanism is a worldview that promotes human dignity without belief in a higher power. Humanists have a long commitment to democracy and human rights. We support the principles of social justices and fighting against discrimination. Documents like the Universal Declaration of Human Rights, the Charter of Rights and Freedoms, and various Human Rights Acts across Canada exemplify Humanist values. Henry Morgentaler founded Humanist Canada during the fight for reproductive freedoms and our own Association has been involved in campaigning for secularism in schools, supporting LGBTQ rights and the right to die with dignity.

Statistics Canada's 2011 National Household Survey¹ found that 44.1% of BC reported "no religion", the highest of any province. The survey asks someone's religion "even if they are not currently a practising member of that group." To get a more accurate sense of the true religiosity of British Columbians, we commissioned Justason Market Intelligence in April 2013² and Insights West in June 2016³ to poll British Columbians on a number of questions. When asked "Do you practice or participate in a particular religion or faith?" 69% said no in 2016, a rise from 64% who said no in 2013. Further, 70% said they believed in a higher power in 2013 while only 56% said so in 2016.

Areas of Concern

As a voice for the non-religious, we are concerned about the pervasive levels of religious privilege in our society. While anti-atheist discrimination rarely reaches the levels of more virulent bigotry like racism or homophobia, anti-atheist bias remains prevalent in many of our laws, customs and in smaller communities. A 2015 poll by Angus Reid Institute found that 22% of Canadians and 41% of those who embrace religion "feel a bit uncomfortable around people who have no use for religion."⁴ In another question, 67% do not agree that "the growth in atheism is good for life in Canada" and 22% have negative feelings toward atheists.

We outlined numerous concerns about religious privilege in our recent comprehensive brief to the House of Commons Standing Committee on Canadian Heritage.⁵ At the

provincial level, our concerns include the partial funding of faith-based independent schools, which discriminate in admissions and hiring; the full funding of faith-based healthcare institutions, which use their religion to opt-out of providing certain medical services; providing permissive property tax exemptions to houses of worship; allowing religious groups to perform marriages but affording no equivalent right to non-theists and the fact that the Legislature begins each day's session with a prayer.

We are currently following a Human Rights Complaint by Byron Wood, a former nurse who lost his job after refusing to attend faith-based treatment for a substance abuse issue.⁶ This is particularly an issue where the majority of addictions treatments in the province rely on Twelve-Step models that require submission to a higher power.

Parents have reached out to us with concerns about the promotion of prayer groups in their children's public schools. Until the end of 2016, some public school districts still distributed Gideon Bibles to Grade 5 students.⁷ We have also heard concerns about possible instances where demonstrations of First Nations ceremonies and culture (an important educational aspect of reconciliation) are seen to cross into requiring students to participate in spiritual and religious practices.

The Supreme Court of Canada's 2015 ruling in *MLQ v Saguenay* set a strong precedent that Canadian government's have a duty of religious neutrality.⁸ Similarly, BC's *School Act* explicitly requires all public schools to be "strictly secular and non-sectarian."⁹ These principles help protect Canada's multicultural fabric and protect the rights of marginalized communities.

Beyond questions of religious privilege, the BCHA advocates for human rights more broadly. We and other humanists have actively campaigned in support of LGBTQ rights, feminism and reproductive rights, racial justice, civil liberties and more. There are many other organizations better positioned to speak to these issues and we urge the Government to listen to these voices in its consultation.

Recommendations

1. Make "nonreligion" a protected ground

While we believe jurisprudence has been clear that protection from discrimination based on "religion" includes atheists and non-theistic belief systems, there have been worrying rulings and decisions. Other Human Rights Tribunals and courts in Canada have at times restricted protections for religion to those with a theistic worship.¹⁰ In a Quebec complaint around whether their Marriage Act discriminated against atheists, their Commission said that Humanism was not a religion and therefore Humanists are not protected from discrimination.¹¹

We are therefore concerned that, acting as a "gatekeeper," a new BC Human Rights Commission could similarly decide not to afford Humanists and atheists the same protections as religious believers.

Some people argued that the rights of transgender individuals were protected under the existing grounds of “sex.” Nevertheless, we supported explicitly extending protections through the inclusion of the terms “gender identity or expression” in the Human Rights Code because it provides clarity in law that our society stands against transphobic discrimination.

There is precedent for this proposal. In 2015, the city of Madison, WI included “religion and nonreligion” among the list of protected classes in its anti-discrimination ordinance.¹²

Meanwhile, the Ontario Human Rights Code refers to “creed” rather than “religion”. The Ontario Human Rights Commission has released policy that explicitly includes “non-religious belief systems” in its definition of creed.¹³ In reaching that policy, the Commission considered various arguments that ultimately require a broad understanding of “creed”.¹⁴ By including “nonreligion” explicitly, the Legislature can take similar guesswork out of the future Human Rights Commission’s work.

Therefore, we call for an amendment to the BC Human Rights Code to explicitly protect atheists. The simplest way to do this is by following Madison’s lead in replacing “religion” with “religion or non-religion” in the Human Rights Code. As of this writing, 1006 people have signed our petition calling for this change.¹⁵

2. Restore the Human Rights Commission’s mandate to provide education; do research; produce guidelines or policies; conduct inquiries, reviews and special reports; and initiate complaints and interventions.

The BC Humanist Association fully supports the reinstatement of the BC Human Rights Commission as described in *Strengthening Human Rights*.¹⁶ As the only province without a commission, BC has fallen behind in its efforts to promote human rights and fight against systemic discrimination. Where our Human Rights Tribunal has been a reactive and adversarial body, a Commission is needed as a proactive body that can actively promote human rights.

It is our view that a renewed Commission must speak to the importance of working proactively to prevent discrimination, researching the underlying causes of discrimination and to solve underlying and systemic issues. These purposes are well summed up in Section 3d of the Human Rights Code “to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this Code.”

3. Enshrine the use of evidence in the human rights system

In the 15 years since the Human Rights Commission was shuttered, researchers and social scientists have greatly advanced our ability to quantify systemic discrimination and measure the effectiveness of policy interventions. It is therefore imperative that the government ensure a new Commission bases its approaches on the best available evidence.

The new Commission should avail itself of the best tools of sociology, neuroscience, psychology and other fields in all avenues of its work. A core role of the former Commission was to research the state of human rights in the province. This research obviously needs to be guided by the best evidence but beyond that these tools can also be woven into all aspects of its work, from taking a pedagogical approach to public education to investigations of individual complaints.

Additionally, the scientific method is most effective when it's open and transparent. BC was the first province in Canada to adopt an Open Information and Open Data Policy and such an approach must be core to the work and output of the Commission. A transparent approach inoculates the human rights system against criticism by providing direct access to the evidence used to reach conclusions. Similarly, the "file-drawer effect" of non-publication of negative results, which afflicts much of academic and industrial research, can be reduced by being upfront about what studies are underway and providing access to results regardless of their outcome. Obviously safeguards can be put in place to protect confidential and sensitive personally identifying information but transparency should be the default.

4. Close loopholes in the Code

Section 41(1) of the Human Rights Code provides that non-profit organizations that promote the interests of an identifiable group are exempt from the code if they are giving a preference to members of that group. This is commonly known as the "group exemption."

While well intentioned, the group exemption has faced controversy in courts due to its vague and arguably overbroad wording, particularly in comparison to other Human Rights Codes across Canada. The BC Court of Appeal's decision in *Nixon v Vancouver Rape Relief* is the primary example of our legal system testing the limits of this section and found them to give wide deference to an organization's claimed belief.

Associational rights are a Charter value but absent *bona fide* reasons for discrimination, this loophole permits arbitrary discrimination and the perpetuation of bigotry.

In our submission to the Supreme Court of Canada in the cases of *Trinity Western University vs Law Society of BC* and *Law Society of Upper Canada*, we argued against the court recognizing organizations as being able to claim religious freedoms.¹⁷ Should the court choose to make that recognition, we provided a test to evaluate such claims. Specifically, organizations seeking to make such a claim should be not-for-profit and have as its purposes to promote the welfare of members of an identifiable group. Having met those two conditions, the organization must then show that its belief or practice is consistent with the promotion of the group and that any impugned action interferes in a non-trivial or insubstantial way with the promotion of that group.

This test focuses on the specific belief or practice at issue and does so in context. Many religious organizations have secular activities that are inconsequential to their beliefs. A

religious organization should not be able to discriminate in hiring of cashiers at its thrift store or a women's-only fitness facility requiring that after-hours janitors not be men, since neither of those requirements are necessary to protect the interests of the identifiable groups.

While the current exemption in the Human Rights Code meets the first two requirements (that an organization be not-for-profit and that it exists to promote the interests of an identifiable group), it is silent on whether the Human Rights Tribunals ought to probe deeper into whether an alleged discriminatory action is consistent and necessary with the organization's purposes. By taking these claims at face value, we desert victims of discrimination to the whims of an organization.

Section 42, which exempts employment equity programs, by comparison sets out a test that discrimination that furthers such a program "achieves or is reasonably likely to achieve" its objective. Section 18 of the Ontario Human Rights Code is also narrowly tailored to exempt restrictions on "membership or participation" in an organization to an identifiable group.

5. Streamline and properly fund BC's Human Rights system

Finally, anecdotally we have heard a number of complaints over the current state of BC's Human Rights Tribunal. These include the short time to file a complaint, delays and backlogs that can lead to justice denied, the risks posed to individuals filing complaints and the difficult bar that individuals must meet in order to file a complaint. The previous government said its decision to shutter the Human Rights Commission was based on its own failings to provide complainants with the right to a timely resolution.¹⁶

At a minimum, the Government should provide adequate funding for existing Human Rights Tribunals to handle the current caseload. A renewed Commission will require further resources to be effective. Beyond that, amendments should explicitly protect complainants from action from their employer or others involved in the complaint.

¹ Statistics Canada, 2011 National Household Survey, Statistics Canada Catalogue no. 99-010-X2011032.

² http://www.bchumanist.ca/2013_bc_religious_and_secular_attitudes_poll

³ http://www.bchumanist.ca/religious_and_secular_attitudes_2016

⁴ <http://angusreid.org/faith-in-canada/>

⁵ http://www.bchumanist.ca/recognize_discrimination_against_nonreligious

⁶ <https://www.canlii.org/en/bc/bchrt/doc/2016/2016bchrt91/2016bchrt91.html>

⁷ http://www.bchumanist.ca/humanists_call_on_sd27_to_end_bible_distribution

⁸ *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [2015] 2 S.C.R. 3

⁹ Section 76, School Act. http://www.bclaws.ca/Recon/document/ID/freeside/96412_06#section76

¹⁰ Summary policy CSP-R06. Canada Revenue Agency. Oct 25, 2002.

<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/summary-policy-r06-religion.html>

¹¹ <http://bit.ly/QCmarriage>

¹² <https://ffrf.org/publications/freethought-today/item/22785-making-history-nonreligion-now-protected-class>

¹³ <http://www.ohrc.on.ca/en/policy-preventing-discrimination-based-creed>

¹⁴ <http://www.ohrc.on.ca/en/iv-defining-creed/2-arguments-not-limiting-definition-creed-religion-and-including-secular-ethical-and-moral-beliefs>

¹⁵ A copy of the petition, with current signature count, is available at:

http://www.bchumanist.ca/nonreligious_human_rights

A list of those signatures can be provided in a secure manner.

¹⁶ Gwen Brodsky and Shelagh Day, *Strengthening Human Rights: Why*

British Columbia Needs a Human Rights Commission (Vancouver: The Poverty and Human Rights Centre and Canadian Centre for Policy Alternatives - BC Office, 2014).

¹⁷ http://www.bchumanist.ca/bcha_scc_twu_arguments