

IN THE MATTER OF FOUR COMPLAINTS FILED UNDER SECTION 14(1) OF THE SASKATCHEWAN HUMAN RIGHTS CODE AGAINST WILLIAM WHATCOTT BY GUY TAYLOR, JAMES KOMAR, BRENDAN WALLACE AND KATHY HAMRE DATED DECEMBER 8, 2001, MARCH 28, 2002, APRIL 22, 2002 AND APRIL 25, 2002, RESPECTIVELY

MEMORANDUM OF FACT AND LAW

1 It is critical to distinguish between the person and the action of the person. Although sexual orientation is a prohibited ground, not all actions of homosexual people are protected, and in particular, sodomy.

2 To date, nothing has been established in any leading Supreme Court case, including *Vriend v. Alberta*, [1998] 1 S.C.R. 493, to the effect that it is unconstitutional for Canadian citizens to morally disapprove of homosexual conduct and relationships. Most judges seem to recognize that to do so would be a grave violation of the freedoms of expression, conscience and religion. Only *L'Heureux-Dubé J.*, dissenting alone in *Trinity Western*, claimed at p. 824 that the distinction between persons and action, between *the sinner* and *the sin* as she stated, was unjustifiable in the context of homosexuality.

3 As set out in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at p. 336, the freedoms of conscience and religion clearly have an essential public dimension: *A[t]he 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.* In *Trinity Western*, however, it was recognized that *A[f]reedom of religion, conscience and association coexist with the right to be free of discrimination based on sexual orientation.*

4 A review of the material distributed by Whatcott makes it obvious that it is the conduct of some people that the respondent is objecting to. In particular, he is objecting to sodomy. This is a far cry from saying that all homosexual people are bad. Indeed, heterosexual people can commit acts of sodomy, too. Young people in particular, may wish to try out sodomite behavior in a quest to determine their own orientation, and in some circles may even be encouraged to.

5 Sexual conduct has been a topic of religious discussion for thousands of years. If criticizing acts of sodomy is prohibited because it offends homosexuals, then criticizing premarital sex would offend the Saskatchewan Human Rights Code (Code) as well, as *Amarrital status* is also a prohibited ground, and single people who fornicate would feel offended when anyone referred to their conduct as sinful.

6 We submit that the intention of the respondent in distributing the materials is relevant, contrary to the submission of the Saskatchewan Human Rights Commission (Commission).

It is relevant as it will establish that the materials were distributed not to expose ... to, hatred, ridicule, belittle or otherwise affront the dignity of any person, as set out in the Code, but to raise the dignity of those homosexual persons who are engaging in acts of sodomy, and in particular, raise their status in the eyes of all Christians.

7 It is submitted, that to comment upon the morality of sexual conduct of others has always been part of religion and a safeguard of public morality. No court has yet to declare promiscuous conduct or sodomy to be a virtue. Neither has any court yet to declare sodomy to be no longer immoral. Simply because acts of sodomy have been decriminalized, does not make it state policy that sodomy is moral. In one episode of the popular TV show, *The Simpsons*, one of the characters stated, "Well if it is legal, it must be moral!". The irony of the latter statement has been missed by the Commission.

8 In paragraph 11 of the Commission's brief they set out a definition of hatred as being where "one finds no redeeming qualities in the latter." Whatcott, to the contrary, in the material he distributes that opposes "Sodomy in our Public Schools", points out that God loves the homosexual person, and just wants them to stop sodomizing.

9 In *Owens vs. The Saskatchewan Human Rights Commission (Owens)*, there was a finding of fact that the two stickmen with a line through it referred to:

- A) a person's sexual orientation (as opposed to someone engaging in acts of sodomy), and
- B) the line through the stickmen represented an invitation to kill them.

10 The evidence ought to establish that Christians are called to hate the sin, and many believe that sodomy is a sin. Indeed, Canada's forefathers and those who built our nation considered it so wrong that it was criminalized. To tell a Christian that he can no longer comment in public on what is proper and what is an improper form of sexual conduct is to deny a significant part of the Christian heritage, and making a value judgment, that the promotion of sodomy by some people is moral, and opposing sodomy is hateful, and therefore immoral. The respondent hopes that the Tribunal realizes that sodomy is immoral, and at the very least, hopes that the Tribunal will not impose its own morality and give preferential treatment to what the respondent believes is immoral conduct. It is a sign of oppression, religious bigotry and intolerance that one can be charged with "hate", for proclaiming what has always been a historical part of the Christian message and until the last 30 years part of Canadian law. Whatcott was simply upholding his faith and speaking the truth as he knows it.

11 It is important to recognize the difference between people who have a sexual orientation, whether the orientation tends to draw them towards having sexual relations with a person of the same sex, or orientated towards animals, or orientated towards children, all of which are morally neutral, and that of the *action* itself, which is sodomy, bestiality and pedophilia, all of which many people may object to, and have the right to object to under the Code and under the Charter of Rights and Freedoms.

12 It is conceded, that not all religious beliefs can be acted upon. Similarly, not all sexual impulses can be acted upon, and not all sexual impulses are moral, and it is not up to the Tribunal or the Courts to decide what is moral and what is immoral.

13 Turning to the materials in question, it is submitted that the Commission failed to point out what it was in the material that the Commission objected to.

14 In the material entitled "Sodomites in our Public Schools", it is clear that it was the promotion of sodomy as moral, and not sexual orientation that the material objected to.

15 In the material entitled, "Saskatchewan's largest gay magazine allows ads for men seeking boys!", it is clearly objecting to the possibility of someone engaging in acts of pedophilia, not someone being orientated towards pedophilia. Although it ought not to make any difference to the morality of the conduct, pedophilia is still against the law. It is appalling that the Commission, funded by the state would prosecute Whatcott for pointing out the obvious. Even if some think sodomy is not wrong, sodomizing boys is at least illegal depending upon their age, and immoral regardless of the age.

16 If Whatcott is fined for upholding what he believes to be the truth, and what has been upheld and taught not only by the Christian religion for two thousand years, but the government of Canada for most of its existence, it will be part of a process of oppressing the religious convictions of the many people who still believe in the traditional Christian, Jewish, Muslim and many other religions. To make a finding that a Christian who criticizes those who participate in sodomy, adultery, fornication or living common law has the effect of discriminating against the religion of religious people, as religious people believe that have an obligation to point out the errors of their ways and to correct those that sin. In the case of teaching the acceptance of sodomy in schools, Christians also believe that they have an obligation to protect those who cannot protect themselves, and in particular school age, university age children, and yes, even adults.

17 The right to promote the validity of sodomy by some homosexual people has taken on many of the attributes of religion. Not only do some want to be able to sodomize, but they want the right to promote their lifestyle among young people at University of Saskatchewan and convert them to their system of beliefs.

18 The Commission appears to want to protect homosexuals who wish to promote a certain lifestyle of sodomy, but not protect the religious freedom of the Christian community that has historically taught in Canada what sexual conduct was moral and what was immoral.

19 In doing so, the Commission is itself breaching section 14 of the code. This prosecution of Whatcott exposes Whatcott to hatred and ridicules, belittles or otherwise affronts the dignity of Whatcott and all other Christians and people of faith for that matter. A conviction by the Tribunal would be an offence as well! This is so, because the conviction would expose Whatcott (and other Christians) to hatred and

belittle his religion, causing others to hold Whatcott in contempt. He, too, is also entitled to the protection of the Code because Acreed@ and Areligion@ are protected and they too are a prohibited ground of discrimination under section 14 of the code.

20 Our Charter is based upon our belief in the Supremacy of God. God has historically been associated with religion, and religion is a collective expression of what some people believe God wants of them. Although one can no doubt find some people who would claim they have a religion that blesses sodomy, bestiality or the holding of nudist camp church services, these religious expressions are exceedingly rare.

21 Turning to the pamphlets in question, the pamphlets are facts. They are entered into evidence. The interpretation of the pamphlets, and whether the pamphlets contravene section 14(1) of the Act, is a question of law. It is improper to call Aexperts@ or to parade several witnesses, each with his own interpretation as to whether the pamphlet was offensive, or whether one found the pamphlet not offensive. The proceedings would become a question of whether the Commission could muster more witnesses who were hurt by the pamphlets than the respondent could find to say the signs were not hurtful and part of religious belief. It is respectfully submitted that it is for this Tribunal to decide whether the factual content of the material contravened section 14 of the Act.

22 Section 14(2) protects freedom of speech. But more important to the respondent is his freedom of religion. Critical to religion historically and today, is providing moral guidance in sexual ethics. Religions of the world have always created formulas for living a happy life, and usually indicated what sexual activity is morally permissible.

23 Mr. Whatcott=s material must be recognized for what it is, namely, an expression of his faith. He is saying that those people who commit sodomy are committing an immoral act.

24 Referring to another=s conduct as Asinful@ or Aimmoral@, will usually result in the person who is being accused of sinning, of feeling that his rights under section 14(1) have been violated. It goes without saying that a person whose conduct is referred to as Asin@, may feel Ahated, ridiculed, belittled,@ and their dignity affronted.

25 If calling sodomy immoral becomes illegal in Saskatchewan, than any expression that calls certain other lifestyles immoral, such as living common law, fornicating or adultery would also be illegal, as these relationships are also protected under the Code. It is included under the definition of Amarital status@. All universal religions have at times condemned sexual relationships outside of marriage, and reserved marriage for the union of one man and one woman. Will it now be a crime to say someone is living in sin? Or that adultery is a sin, or fornication is a sin? Or is sodomy the only protected sin under the Code?

26 If the Tribunal decides in favor of the Commission, it will send a chill through every person who follows the creed of any organized religion or faith. The decision would result in the prohibition of any condemnation of sodomy, adultery or common law relationships, all of which have historically been considered immoral by most religions.

27 It is submitted that if Whatcott can show that he was sincerely motivated by religion in making his comments, he ought to be granted at least as much protection as the complainants.

28 ACreed@ and AReligion@ are as protected as Asexual orientation@ and Amarital status@, and in every section of the Code. Indeed, section 4 specifically protects freedom of conscience and section 5 protects freedom of expression. Most religions also have a component that requires adherents to Apreach@ and Aconvert@ sinners, and to lead others away from what they consider sin, because they believe sin hurts the sinner and the community. Religion requires that adherents attempt to not only Asave@ sinners, but also to save others who may fall into sin; hence, the necessity to preach outside of their own religious community. For Mr. Whatcott that means telling others what God thinks of sodomy. To deliver his message, Mr. Whatcott utilizes his pamphlets.

29 The decision of the Tribunal could result in the outlawing of one aspect of the faith of Mr. Whatcott. This decision could have the same effect on Whatcott as his pamphlet had on the complainants! If Whatcott cannot proclaim that portion of his religion that says sodomy is immoral, the Tribunal decision exposes him and his religion to hatred and ridicule, and belittles and affronts his faith and dignity as a person, contrary to section 14(1) of the Code, as it prevents him from preaching about improper sexual practices and in particular bringing his faith to sodomites as Whatcott feels he is called by God to do.

30 Although it would be preferable to call evidence from all major religions of the world to prove the conflict between religion and the special rights granted on the basis of sexual orientation, it is not practicable in this case. However, an agreement has been reached for the admission of Roman Catholic doctrine and teachings on the subject of homosexuality, and the Tribunal will be asked to take judicial notice that the Roman Catholic faith is one of the largest, if not the largest religious congregation in Canada. That faith teaches that Sodomy is not only morally wrong (from the Catechism), but that Catholics have a responsibility to promote family life and the public morality of the entire civil society on the basis of fundamental moral values, and in particular in relation to homosexual sexual activity. (see paragraph 16 on schedule C, the letter from The Congregation of the Doctrine of the Faith dated July 22, 1992)

31 It is respectfully submitted, that freedom of creed, religion and conscience requires that the complaints against Mr. Whatcott be dismissed.

All of which is respectfully submitted this 8<sup>th</sup> day of February, 2003.  
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