

Amended Additional Response of Bill Whatcott to Human Rights Complaint

The Context

The complainant (the candidate) was a public figure in a general provincial election.

The personal life of a public figure is legitimately subject to scrutiny by the electorate.

There is no expectation of personal privacy by a candidate running for public office, when that candidate publicly exploits unique personal characteristics.

Assumed Facts

The candidate in question was born a biological male. The candidate body has unchangeable characteristics proving male sex: XY chromosomes, male hormones, and internal and external male anatomy.

The candidate's current social and cultural self-image and self-identity is feminine. This choice is consistent with a psychiatric condition described in DSM-V, to be gender dysphoria. The gender choice to be feminine is the opposite of the candidate's male biological sex. The candidate's behaviour fits people who identify with the transgender community.

Facts

The candidate complains that the content of the literature distributed by the respondent offends s. 7 (1) of the BC Human Rights Code (Code) in two ways: first by discriminating or expressing an intention to discriminate against the complainant individually or against transgender people generally contrary to a specific ground, gender identity or expression; and secondly by publishing and distributing literature that is likely to expose the complainant individually or transgender people generally to hatred or contempt.

Denial

The respondent denies any illegal discrimination or intent to illegally discriminate against the complainant or to arouse any hatred or contempt against the complainant individually or against transgender people generally.

The Respondent's Position

The respondent exercised his constitutional rights to express his opinion that the candidate is morally unfit to hold public office. The respondent asserts that the moral life of a candidate is a legitimate ground to publicly question the fitness of any candidate to hold public office, including the complainant.

Notice may be taken of recent notorious events when immoral conduct by electoral candidates led to their downfall. Judge Roy Moore was publicly criticized in Alabama for his history of allegedly immoral sexual behaviour, and was defeated in his bid to be elected to the United States Senate.

President Trump will face the same scrutiny should he be a candidate in the next presidential election, for his adultery with a porn star, who was paid hush money just before the last presidential election. Patrick Brown was pressured to resign as leader of the Ontario Conservative Party because of alleged immoral conduct with women.

The respondent is a devout Christian and sincerely believes that Biblical values are the basis of Western culture and civilization. The Bible teaches believers like the respondent that immoral behaviour is sinful and in previous civilizations was unlawful. Gender dysphoria is sexual deviation from sexual and gender norms and is immoral and unlawful according to the Bible.

The respondent believes that an individual whose conduct is immoral and sexually deviant from the general population is unfit for public office. The reasoning is that an individual who makes immoral decisions in life may make immoral decisions in the discharge of public duties. Adultery, infidelity, fornication outside of marriage, prostitution, transgender identification and homosexually are legal in Canada. However, these kinds of human behaviour are viewed by the respondent as immoral, and are legitimate reasons to disqualify a candidate from being elected to public office.

Other people may hold an opposing viewpoint and may consider immorality in a candidate's personal life to be irrelevant to talent and ability to discharge their public duties. The electoral success of a publicly gay man, Svend Robinson, to Parliament, is an example of electability, in the face of opposition by members of the electorate who view homosexual behaviour as immoral, even if legal. The content of the pamphlet distributed by the respondent thus questions the fitness of the complainant to hold public office. While some members of the electorate may be appalled at the respondent's perspective to view legal behaviour as immoral, the reality is that many people from diverse faiths may agree with the respondent's position that making certain human behaviour legal does not transform that behaviour into moral conduct.

The right to individual freedom of expression is at its highest in a public election to choose a candidate to hold public office. The free exercise of democracy requires public scrutiny of the moral fitness of every candidate for public office. This disapproval is not illegal discrimination. The pith and substance of the respondent's position is that the electorate has the right to choose a candidate that is not only able to perform the responsibilities of public office, but also to make morally sound decisions. Individual members of the electorate have both a legal right and duty or responsibility to participate in the democratic process to influence the outcome by exercising freedom of speech and expression.

Rejecting a candidate on the basis of moral unfitness for public office thus does not fall within the jurisdiction of the BC Human Rights Tribunal, for an administrative body may not deprive an individual of constitutional rights in a free and democratic society. It does not constitute the incitement of hatred or contempt toward an individual or a class of persons on a prohibited ground. If this were so, then the publishing, distribution, of Christian, Jewish, and Islamic literature, that disapproves of gender self-identification and gender dysphoria, on the ground of immorality, is illegal and offends the Code.

Charter Challenge

If the Tribunal finds it has jurisdiction to proceed, and the respondent is found to have offended s. 7(1) of the Code, the respondent argues in the alternative, that the Constitution of Canada, both

written and unwritten, which guarantees the respondent's freedom of religion, conscience, thought, belief, opinion, expression, and association, is paramount over section 7(1) of the Code, and seeks a Charter remedy from the Tribunal to declare that section 7(1) of the Code is unconstitutional, to the extent it is inconsistent with s. 2(a), (b), and (d) and s. 15(1) of the Constitution of Canada, and is of no force and effect, contrary to s. 52 of the *Constitution Act, 1982*. The respondent asserts his constitutional rights associate or to disassociate with any individual candidate or political party that is not morally acceptable to him.

The respondent asserts that he is denied equality, as the candidate is an advocate for transgender legal rights, and the candidate is using these proceedings to intimidate and to chill opposing viewpoints rooted in principled moral and religious objections to transgender behaviour.

The respondent says these proceedings, if successful against him, will silence moral opponents of transgender behaviour, and end democratic debate about societal values held by candidates for political office. Legislation like s. 7(1) of the Code is improperly used when it is used as a tool to silence moral opposition to legal behaviour that was once illegal.

For example, at one time abortion was illegal and considered immoral. It was viewed by religious people as murder. Today abortion is legal. But religious people still view abortion to be morally wrong, and consider abortion to be legalized murder. Abortion might one day revert to being unlawful again. While supporters of abortion might wish to silence continued opposition to abortion with the denial of eligibility to run for public office in the Liberal Party, or to deny funding for summer jobs unless opposition to abortion is abandoned, or to enact boundaries to outlaw peaceful freedom of assembly to picket and express an opposing viewpoint to abortion, all of which is intended to protect the status quo, none of these steps will ever transform the views of religious people that abortion will always be immoral, and candidates who hold immoral positions ought to be defeated.

The respondent also relies upon the preamble to the Charter, which acknowledges the Supremacy of God and the Rule of Law. The moral foundation of the rule of law is natural law based upon Judaeo-Christian principles, religious laws, religious morals, community precepts and God's commandants. Any law passed by an elected body may have the force, as a law that may be enforced by coercion, but an immoral law will never have moral authority in a society governed by the rule of law. That is why in a democratic society, there is never a final answer to matters subject to moral debate. An attempt to stop that debate, like in this case is illegal discrimination against the respondent by the complainant, contrary to s. 15(1) of the Charter and s. 43 of the Code.

Counter Complaint Pursuant to s. 43 of the Code and s. 15(1) of the Charter

For this reason, the respondent counter complains against the complainant pursuant to s. 43 of the Code and s. 15(1) of the Charter. The complainant is seeking to intimidate or otherwise discriminate against the respondent for expressing his moral opposition to political endorsement of transgender status and the transgender legal, political and legislative agenda endorsed and promoted by the complainant. The respondent is a victim of discrimination, as he is a person named in a complaint, and faces intimidation, coercion and penalties for holding a democratic and constitutionally protected opposing viewpoint to that of the complainant.