

Canada's Speech Impediment

Our northern neighbors learn the limits of free expression.

By Michael Brendan Dougherty

"THE FOLLOWING is not intended for those who are suffering from an unwanted sexual identity crisis. For you, I have understanding, care, compassion and tolerance. I sympathize with you and offer you my love and fellowship." That is how Rev. Stephen Boissoin began his 2002 letter to the editor of the *Red Deer Advocate*, his local Alberta newspaper. The youth minister wrote to protest a government-funded initiative to "teach school-aged children in grades K through 12 that homosexuality was normal, necessary, acceptable and productive." He could hardly have guessed that six years later a divorce lawyer working for the Alberta Human Rights Commission (AHRC) would deem his remarks a violation of human rights, demand a public apology, and require that he pay \$5,000 to the heterosexual university professor who filed the complaint. Free speech in Canada is now subject to review.

Boissoin's letter denounced what he called "the homosexual machine." He wrote, "these activists are not morally upright citizens, concerned about the best interests of our society. They are perverse, self-centered and morally deprived individuals who are spreading their psychological disease into every area of our lives." He extended his jeremiad to include a "Modern society [that] has become dispassionate to the cause of righteousness. Many people are so apathetic and desensitized today that they cannot even accurately define the term 'morality.'"

Boissoin says that some Christians have contacted him saying he should have softened his message and made his case from Scripture. But he tells *TAC* that the letter was meant to provoke a strong reaction. "You can word it as fluffy as you want," Boissoin says, "and then it's just chuckled at. There would be no response. It was a letter designed to make people think, to make people angry."

The letter certainly angered Darren Lund, a local teacher and now assistant professor at the University of Calgary. Lund had made a small name for himself by agitating against the work of Samaritan's Purse, a Christian charity, in public schools. The charity had an evangelistic aim, he claimed. Then Lund filed his complaint to the AHRC alleging that Boissoin's letter contributed to a climate of hatred against homosexuals.

The AHRC derives its quasi-legal authority from Canada's Human Rights and Multiculturalism Acts. Operating outside the constraints of the conventional justice system allows Canadian Human Rights Commissions to judge motives and use testimony of hurt feelings as evidence—things that would be inadmissible in criminal court. Failing to comply with the HRC's rulings, however, can result in criminal charges. Lund's complaint was originally dismissed when an investigator determined that the *Red Deer Advocate* was responsible for the publication of the letter, not Reverend Boissoin. Lund appealed, and the case came before Lori G. Andreachuk—not an expert in human rights or free speech but a former divorce attorney.

On Nov. 30, 2007, Andreachuk, after collecting testimony from Boissoin, Lund, and several legal experts, issued the substantive ruling in the case. Paragraph 357 concluded bluntly, "the publication's exposure of homosexuals to hatred and contempt trumps the freedom of speech." Furthermore, "it cannot be the case that any speech wrapped in the 'guise' of politics or religion is beyond reproach." The findings were rendered with stunning informality. One pro-Boissoin witness's testimony was summarized this way: "Dr. Cooper states that if activists use taxpayer dollars to promote homosexuality in public schools then Christians have a right to stand up and say they do not think it is okay."

Boissoin's sentence—or "the decision on remedy" in the AHRC's language—was delivered in May. In it, the AHRC stated, "In this case, there is no specific individual who can be compensated as there is no direct victim who has come forward." By the commission's own admission, no human was directly harmed by Boissoin's human-rights violation. But the AHRC ruled, "Mr. Boissoin ... shall cease publishing in newspapers, by email, on the radio, in public speeches, or on the Internet, in future, disparaging remarks about gays and homosexuals." In other words, Boissoin will endure a lifetime ban on publicly expressing his sincerely held religious beliefs about homosexuality.

The AHRC partly rationalized its decision by saying it would be good to make an example of Boissoin:

There is also a **significant symbolic value in the public denunciation of the actions that are the subject of this complaint.** Similarly, there is the **potential educative and ultimately larger preventative** benefit that can be achieved by open discussion of the principles enunciated in this or any Tribunal decision. [Bold theirs]

Boissoin was also compelled to submit an apology to the *Red Deer Advocate* for his views, although forced apologies are considered cruel and unusual in criminal cases.

Because the AHRC also found that Lund, “although not a direct victim, did expend considerable time and energy and suffered ridicule and harassment as a result of his complaint,” Boissoin was ordered to apologize to Lund and to cut him a \$5,000 check. Of course, “remedies” like this create a financial incentive for Canadians to freelance as human-rights police. Richard Warman, a former member of Canada’s Human Rights Commission, has initiated dozens of complaints under Section 13 of the Canadian Human Rights Act that empowers the HRC to deal with hate messages sent over the Internet. All Section 13 cases have resulted in conviction.

The Boissoin ruling and sentence have come down just as Canadian Human Rights Commissions have been investigating two right-of-center journalists, Ezra Levant and Mark Steyn. In 2006, Levant, a self-described classical liberal and then editor of the *Western Standard*, republished the infamous Dutch cartoons depicting the prophet Mohammad. Syed Soharwardy of the Islamic Supreme Council of Canada was offended and took his case to the HRC.

When he was asked to appear before the commission in early 2008, Levant’s lawyers demanded that their client’s testimony be recorded on video. In the clips

posted on YouTube, Levant delivers a fiery denunciation, rejecting rattled investigator Shirley McGovern’s authority, stating that he published the cartoons “for the most offensive reasons imaginable,” and daring the HRC to find him guilty. The videos were watched over half a million times. Soharwardy eventually withdrew his complaint, telling the *National Post*, “Over the two years that we have gone through the process, I understand that most Canadians see this as an issue of freedom of speech, that that principle is sacred and holy in our society.” Soharwardy might have concluded otherwise if he had waited to see the Boissoin ruling.

Columnist and author Mark Steyn has also been under investigation by the British Columbia Human Rights Commission for an article published in *Maclean’s*, “The Future Belongs to Islam.” The Canadian Islamic Congress alleges that Steyn’s piece, and other articles published between 2005 and 2007, are “flagrantly Islamophobic” and “subject Canadian Muslims to hatred and contempt.” Steyn has told the media that he hopes to put the investigating commissions themselves on trial: “We want to lose so we can take it to a real court and if necessary up to the Supreme Court of Canada and we can get the ancient liberties of free-born Canadian citizens that have been taken away from them by tribunals like this.”

The *New York Times* took notice of the Steyn case in a front-page article, “American Exception, Unlike Others, U.S. Defends Freedom to Offend in Speech.” Aden Fine, a senior staff attorney with the ACLU who specializes in free-speech cases, told *TAC* that the strength of First Amendment jurisprudence is so well established that “even after September 11, when these issues have been presented in a more difficult way, the courts have correctly and consistently rejected any further restric-

tions on speech.” But the *Times* found several American legal thinkers who recommended revising that consensus. New York University professor Jeremy Waldron said that other countries may not be wrong “when they say that a liberal democracy must take affirmative responsibility for protecting the atmosphere of mutual respect against certain forms of vicious attack.” Anthony Lewis, a former *Times* columnist, averred that the Supreme Court’s judgment that incitement can be criminalized only when it is likely to result in “imminent violence” may be too restrictive and leave some “genuinely dangerous” speech beyond the reach of law. These scholars, along with an entire class of sensitivity trainers and diversity experts, will be carefully monitoring the challenges to Canada’s human-rights tribunals by Steyn and others.

For his part, Boissoin is staking out a position of respectful defiance. Asked whether he intends to perform in the manner prescribed by the AHRC’s “remedy,” he promises to “exercise my God-given choice to be an autonomous being and continue being who God is calling me to be. I will not apologize.” He has appealed the decision and is seeking vindication in civil court. Boissoin and lawyers also plan to expose the AHRC for providing funds to PFLAG (Parents, Families, and Friends of Lesbians and Gays), the group whose education initiative Boissoin protested in his letter to the *Advocate*. If proven, Boissoin’s charges would reveal the AHRC to be a racket—giving favored activists public funds then shielding them from criticism.

The reverend is prepared to lose. “I’ll have a jailhouse ministry before I apologize,” he says. Boissoin is already considered a kind of Christian martyr. It’s up to Canada’s human-rights tribunal and courts to prove whether, in this case, he is also a prophet. ■

Looking Into the Lobby

The American Israel Public Affairs Committee's annual conference is one of Washington's most important—and least reported—events.

By Philip Weiss

FOR THREE DAYS in the capital in early June, suspense built over the question of how the American Israel Public Affairs Committee conference would greet Barack Obama. There was a lot of grousing about Obama in the hallways of the Washington Convention Center, and AIPAC officials repeatedly warned the faithful to be respectful. "We are not a debate society or a protest movement. ... our goal is to have a friend in the White House," executive director Howard Kohr said in a strict tone. It wasn't hard to imagine things going poorly: Obama gets booed on national television. He feels insulted. Conservative Jewish donors and voters turn off to Obama. He becomes president without their support. AIPAC has no friend in the Oval Office.

But of course, Obama complied. His speech became the annual example the conference provides of a powerful man truckling. Two years ago, it was Vice President Cheney's red-meat speech attacking the Palestinians. Last year, it was Pastor John Hagee's scary speech saying that giving the Arabs any part of Jerusalem was the same as giving it to the Taliban. Obama took a similar line. He suggested that he would use force to stop Iran from getting nuclear weapons, made no mention of Palestinian human rights, and said that Jerusalem "must remain undivided," a statement so disastrous to the peace process that his staff rescinded it the next day. Big deal. The actual meeting had gone swimmingly.

This was my first AIPAC conference, and the first surprise was how blatant the business of wielding influence is. The conference makes no bones about this function, the most savage expression of which is the Tuesday dinner at which AIPAC performs its "roll call," where the names of all the politicians who have come to the conference are read off from the stage by three barkers in near auctioneer fashion. The pols try to outdo one another in I-love-Israel encomia. House Speaker Nancy Pelosi surely won the day when she teared up while dangling the dogtags of three Israeli soldiers captured by Hezbollah and Hamas two years ago.

The second big surprise was that apart from coverage of the headline speakers, the AIPAC conference is a media no man's land. It would be hard to imagine a more naked exhibition of political power: a convention of 7,000 mostly rich people, with more than half the Congress in attendance, as well as all the major presidential candidates, the prime minister of Israel, the minority leader, the majority leader, and the speaker of the House. Yet there is precious little journalism about the spectacle in full. The reason seems obvious: the press would have to write openly about a forbidden subject, Jewish influence. They would have to take on an unpleasant informative task that they have instead left to two international relations scholars in their 50s—Stephen Walt and John Mearsheimer, authors of last year's book *The Israel Lobby*.

The press is missing a phantasmagorical event. Imagine a basement meeting in the Warsaw Ghetto transplanted to the biggest hall in Vegas, and you have something of the feeling of the thing. The staging is faultless. Little documentaries called "Zionist Stories" play on the Jumbotron, complete with footage of Auschwitz, and then the subject of the documentary comes out on stage to thundering applause. There is breakout session after breakout session on Middle East policy and Jewish identity and anti-Semitism, with star turns by Natan Sharansky, Bill Kristol, and Leon Wieseltier. The press was excluded from "Advanced Lobbying Techniques," but still this is a feast of the political condition. And posh. The roll call is described by AIPAC as the largest seated dinner in Washington. The wine flows. I went about in a daze of awe and admiration.

My awe was for men like Haim Saban, a toymaker and giant donor to the Democratic Party. After his Zionist story, Saban came out on stage wearing a platinum tie and white shirt and silver gray suit. He has wonderful presence and something of an Arab look—black-haired, wide forehead. He was surrounded by 200 college students, veterans of the Saban Leadership Seminars he sponsors at AIPAC.

On Middle East policy, Saban is barely distinguishable from his Republican counterparts, who are there in equal force. The main hall of the conference