Saskatchewan (Human Rights Commission) v Whatcott (2013): Anti-Gay Flyers Violate Hate Speech Prohibitions

Introduction

On February 27, 2013, the Supreme Court of Canada ruled that Saskatchewan's hate speech prohibitions are constitutional.[1] Hate speech prohibitions limit freedom of expression and religion as guaranteed under section 2(b) and 2(a) of the *Canadian Charter of Rights and Freedoms* (*Charter*), respectively.[2] The right to free expression and religion conflicts with the right to equality, as guaranteed under section 15(1) of the *Charter*.[3] When *Charter* rights conflict, courts strive to strike an appropriate balance between them. The following Featured Court Ruling demonstrates the process whereby courts reconcile competing*Charter* rights in the context of hate speech prohibitions. Additionally, by clearly defining "hatred" in human rights legislation and explaining the purpose of hate speech prohibitions, the Supreme Court of Canada reaffirmed the importance of equality rights.

Facts

In 2001 and 2002, Whatcott distributed four flyers in Regina and Saskatoon on behalf of the Christian Truth Activists, a religious group supported by Whatcott. Two flyers, titled "Keep Homosexuality out of Saskatoon's Public Schools!" and "Sodomites in our Public Schools," contained graphic comments about the sexual practices of same-sex couples and urged that information on homosexuality be omitted from the school curriculum. The other two flyers, identical to one another, were a photocopy of classified advertisements from a magazine to which Whatcott's handwritten comments stated that the advertisements are for "men seeking boys." Four people, who received these flyers at their homes, filed complaints with the Human Rights Commission. They alleged that the flyers promoted hatred against individuals based on sexual orientation, which violated section 14 of the *Saskatchewan Human Rights Code*.[4] The Human Rights Commission appointed a tribunal to decide the constitutionality of the *Saskatchewan Human Rights Code*and to determine if the flyers offended it.[5]

Procedural History

In 2005, the Saskatchewan Human Rights Tribunal concluded that section 14 of the *Saskatchewan Human Rights Code* was constitutional, and that all of Whatcott's flyers violated section 14 by exposing homosexuals to hatred.[6] The Tribunal prohibited Whatcott from distributing more flyers and ordered him to pay compensation in the amount of $2500

to one complainant and $5000 to each of the other three complainants.[7] Whatcott appealed the decision to the Saskatchewan Court of Queen's Bench on the basis that his constitutional guarantees to freedom of expression and religion were violated.[8]

In 2007, the Saskatchewan Court of Queen's Bench affirmed the Tribunal's findings.[9] Whatcott appealed this decision to the Saskatchewan Court of Appeal, again arguing a violation of his *Charter* freedoms.[10]

In 2010, the Saskatchewan Court of Appeal ruled that the Tribunal and Saskatchewan Court of Queen's Bench erred by isolating certain passages of the flyers for analysis, as opposed to viewing them in context. As a result, the Saskatchewan Court of Appeal ruled that the flyers did not meet the definition of "hatred" and did not violate section 14 of the *Saskatchewan Human Rights Code*.[11] The Saskatchewan Human Rights Commission appealed the decision to the Supreme Court of Canada, arguing that section 14 is constitutional and Whatcott violated the section.[12]

Issues

The Supreme Court of Canada considered the following issues:

1. What is the definition of "hatred" in section 14(1)(b) of the *Saskatchewan Human Rights Code*?[13]

2. Does section 14(1)(b) of the *Saskatchewan Human Rights Code* infringe freedom of expression as guaranteed under section 2(b) of the *Charter*?[14]

3. If so, is the infringement justified under section 1 of the *Charter*?[15]

4. Does section 14(1)(b) of the *Saskatchewan Human Rights Code* infringe freedom of religion as guaranteed under section 2(a) of the *Charter*?[16]

5. If so, is the infringement justified under section 1 of the *Charter*?[17]

6. If section 14(1)(b) of the *Saskatchewan Human Rights Code* is constitutional, are the flyers discriminatory per this section?[18]

7. If the flyers are discriminatory, what remedy are the complainants entitled?

Decision

The Supreme Court of Canada ruled that "hatred" in hate speech prohibitions must be objectively interpreted to determine whether a reasonable person would view the expression as exposing a vulnerable group to discrimination.[19] The Supreme Court also ruled that the *Saskatchewan Human Rights Code*violates both freedom of expression and religion, but that both limitations were justified under section 1 of the *Charter*.[20] Finally, the Court found that two of the four flyers violated section 14(1)(b) of the*Saskatchewan Human Rights Code*, and the two people who received these flyers were entitled to compensation. The other two flyers, which were the photocopies of classified

advertisements, did not contain expression that satisfies the definition of "hatred," and the people who received these flyers were not entitled to compensation.[21]

Court's Analysis

Issue 1: What is the Definition of "Hatred" in Section 14(1)(b) of the *Saskatchewan Human Rights Code*?

Saskatchewan human rights legislation prohibits hate publications. Section 14 of the *Saskatchewan Human Rights Code* states: "No person shall publish or display…any representation…(b) that exposes or tends to expose to hatred, ridicules, belittles or otherwise affronts the dignity of any person or class of persons on the basis of a prohibited ground."[22] One of the listed prohibited grounds is "sexual orientation."[23]

When interpreting section 14(1)(b) of the *Saskatchewan Human Rights Code*, Saskatchewan courts have consistently defined "hatred" by following the approach set out in *R v Taylor*.[24] *R v Taylor* was one of three hate speech cases ruled on by the Supreme Court in 1990.[25] In that case, the Court considered whether section 13(1) of the *Canadian Human Rights Act* violated freedom of expression as guaranteed under section 2(b) of the *Charter*.[26] Chief Justice Dickson, writing for the majority of the judges of the Court, stated that the section in question did violate section 2(b) but was justified under section 1 of the *Charter*.[27] Furthermore, the Chief Justice noted that "hatred" is defined as "strong and deep-felt emotions of detestation, calumny and vilification."[28]

The legislation that was challenged by Taylor was different than the legislation being challenged by Whatcott; however, the Court in Whatcott's case ruled that the definition of "hatred" from *R v Taylor* is still applicable in a modified format.[29]

In Whatcott's case, the Court determined that in assessing whether a particular form of speech has violated the hate speech provision in Saskatchewan's human rights legislation, a court must consider the following three elements:

1) Courts must objectively apply hate speech prohibitions. Judges must set aside their personal opinions and consider what a reasonable person, who is aware of the relevant context and circumstances, would think.[30]

2) "Hatred" is restricted to extreme emotions described by the words "detestation" and "vilification." "Hatred" does not include merely offensive and hurtful expression.[31]

3) Courts must focus on the **effect** of the expression and not the intentions of the author. Courts consider whether a reasonable person, viewing the expression objectively and with knowledge of the circumstances, would consider the expression as exposing the members of the group to discrimination.[32]

Issue 2: Does Section 14(1)(b) of the *Saskatchewan Human Rights Code* Infringe Freedom of Expression?

Section 2(b) of the *Charter* guarantees everyone "freedom of thought, belief, opinion, and expression."[33]All activity that conveys or attempts to convey a meaning has expressive content.[34] Section 2(b) of the*Charter* protects almost all forms of expressive content, no matter how distasteful or offensive the ideas are to the general public. Section 2(b) of the *Charter* does not, however, protect violence or threats of violence.[35] As a result, hate speech is protected by section 2(b) of the *Charter* because it conveys a meaning and, therefore, has expressive content. By prohibiting hate speech, the *Saskatchewan Human Rights Code*violates freedom of expression.[36]

Issue 3: Is the Infringement of Freedom of Expression Justified?

Like all *Charter* rights, freedom of expression is not absolute.[37] Section 1 of the *Charter* allows rights to be infringed if the limitation is reasonable and justifiable.[38] Section 1 of the *Charter* reads: "The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."[39]Once a court finds that a *Charter* right or freedom is violated by a piece of legislation, courts must then consider the arguments put forward by the government about the reasonable and justifiable nature of that legislation. In this case, freedom of expression is violated by section 14(1)(b) of the *Saskatchewan Human Rights Code.* To determine whether section 14(1)(b) reasonably limits freedom of expression, the Court performed a section 1 analysis.[40]

In a section 1 analysis, courts balance competing *Charter* rights and freedoms.[41] In this case, the two conflicting *Charter* rights are freedom of expression and the right to equality. While the Court does not explicitly state that freedom of expression conflicts with the right to equality, it must necessarily consider this conflict in its section 1 analysis.[42]

Is the objective sufficiently important to infringe a *Charter* freedom?

The objective served by the legislation must be sufficiently important to infringe a constitutionally guaranteed right or freedom. The *Saskatchewan Human Rights Code* prohibits hate speech for the purpose of promoting equality, recognizing the dignity of all human beings, and eliminating discrimination. The Supreme Court ruled that these objectives are sufficiently important to limit freedom of expression because hate speech has the potential to expose vulnerable groups to discrimination, ostracism, segregation, deportation, violence, and genocide.[43]

Is the limit on the freedom proportional to the objective?

The limit on the freedom must be proportional to the objective. Three questions are asked to determine proportionality: (1) Is the legislation rationally connected to the objective? (2) Does the legislation limit the constitutional right or freedom as little as possible? (3) Do the benefits of the objective outweigh the negative effects of limiting a constitutionally protected freedom?[44]

1. Rational Connection

Prohibiting expression that exposes vulnerable groups to "hatred" is rationally connected to the objective of reducing discrimination. Additionally, section 14 only prohibits public communication aimed at vulnerable groups that are protected by legislation, such as the disabled and gay people.[45] Private communications that do not target characteristics shared by a vulnerable group are not considered hate speech.[46]

The Court ruled, however, that the words "ridicules, belittles or otherwise affronts the dignity of" in section 14(1)(b) were not rationally connected to the objective of reducing discrimination.[47] These words have been criticized because they make it seem that offensive and insensitive statements count as "hatred."[48]Preventing offensive statements is not a reasonable limitation on freedom of expression, as discussed above.[49] The Court noted that in previous hate speech cases, Saskatchewan courts have essentially ignored these words, but the Court determined that now was the time to amend the statute.[50] As a result, the Court severed those words from the legislation. The legislation now reads: "that exposes or tends to expose to hatred any person or class of persons on the basis of a prohibited ground."[51] After the Court made this change, section 14(1)(b) now limits freedom of expression as little as is reasonably possible.[52]

2. Minimal Impairment

Under the minimal impairment branch of the proportionality test, the legislation being examined, section 14(1)(b) of the Saskatchewan *Human Rights Code* in this case, must achieve its objective while only minimally impairing the *Charter* right or freedom.[53] Whatcott proposed two alternatives that would impair his freedom of expression less than the *Saskatchewan Human Rights Code*.[54] The alternatives proposed to the Court were: (1) eliminate hate speech prohibitions and trust the "marketplace of ideas" to balance competing rights, or (2) hate speech should be prosecuted under the *Criminal Code*, not human rights legislation.[55]

First, the "marketplace of ideas" theory is that open debate with no restrictions is the ideal way for people to ascertain the truth.[56] The search for truth, increased political discourse, and the promotion of individual self-fulfillment are the three underlying purposes of the guarantee of freedom of expression.[57] The Court noted that while the "marketplace of ideas" promotes the search for truth, it also discourages minorities' participation in political discourse and their self-fulfillment. This is because hate speech makes vulnerable groups appear insignificant and less worthy. As a result, when vulnerable groups reply to hate speech, they will largely be ignored, and therefore less likely to participate in a dialogue with the majority.[58] As a result, the Court ruled that this counterargument to hate speech prohibitions has drawbacks.[59]

Addressing Whatcott's second argument, the Court found that prosecuting hate speech solely under the*Criminal Code* raises issues of effectiveness. Specifically, the Court noted that the *Criminal Code* only prohibits the most extreme forms of hate speech that advocate, justify, or threaten violence. If human rights legislation did not prohibit hate speech, there

is a fear that fewer complainants would have access to justice. While dealing with hate speech through criminal law prohibitions would potentially lessen the infringement on freedom of expression, it would do so by sacrificing the effectiveness achieved by the*Saskatchewan Human Rights Code*.[60]

The Court determined that the legislature does not have to enact the best legislation possible in order to minimally infringe or impair a right. Because reducing discrimination is a complex policy issue, the means chosen by the legislature to remedy the problem are usually respected. If the legislation is one of several reasonable solutions available, the Court must respect the legislature's decision. After canvassing the possible alternatives, in this case, the "marketplace of ideas" and the existing *Criminal Code* provisions, the Court ruled that neither one was so superior as to render the *Saskatchewan Human Rights Code* unreasonable.[61] Therefore, the Court determined that section 14(1)(b) only minimally impairs freedom of expression.

3. Benefits of the Objective and Negative Effects

Finally, the Supreme Court found that promoting equality, respecting human dignity, and reducing discrimination outweigh the negative effects of minimally infringing freedom of expression. The prohibition on hate speech strikes the appropriate balance between respecting freedom of expression and equality rights.[62]

Issue 4: Does Section 14(1)(b) of the *Saskatchewan Human Rights Code* Infringe Freedom of Religion?

Section 2(a) of the *Charter* guarantees everyone "freedom of conscience and religion."[63] A person's freedom of religion is violated if: (1) a person sincerely holds a religious belief, and (2) the legislation substantially interferes with a person's ability to act in accordance with that religious belief.[64]

Whatcott argues that the morality of people's sexual conduct has frequently been discussed and debated by religious groups.[65] The Court did not dispute the claim that Whatcott sincerely holds two religious beliefs: (1) sexual activity engaged in by same-sex couples is harmful; and (2) it is his duty to warn others of the danger.[66]

The Court found that section 14(1)(b) substantially interferes with Whatcott's ability to share his beliefs with the public. As a result, section 14(1)(b) infringes Whatcott's freedom of religion.[67]

Issue 5: Is the Infringement of Freedom of Conscience and Religion Justified?

Once a violation of a *Charter* right or freedom is found, the government then has the opportunity to justify the violating piece of legislation by demonstrating it is a reasonable limit in a free and democratic society.[68]The Court engaged in a section 1 analysis regarding the infringement of freedom of religion by section 14(1)(b) of the *Saskatchewan Human Rights Code*. This section 1 analysis required the Court to balance freedom of religion and the right to equality.[69]

Is the objective sufficiently important to infringe a *Charter* freedom?

The objective served by the legislation must be sufficiently important to infringe a constitutionally guaranteed right or freedom. As mentioned above, the *Saskatchewan Human Rights Code* prohibits hate speech for the purpose of promoting equality, recognizing the dignity of all human beings, and eliminating discrimination. The Supreme Court ruled that these objectives are sufficiently important to limit freedom of religion.[70]

Is the limit on the freedom proportional to the objective?

The limit on the freedom must be proportional to the objective. Three questions are asked to determine proportionality: (1) Is the legislation rationally connected to the objective? (2) Does the legislation limit the constitutional right or freedom as little as possible? (3) Do the benefits of the objective outweigh the negative effects of limiting a constitutionally protected freedom?

1. Rational Connection

As explained above, prohibiting expression that exposes vulnerable groups to "hatred" is rationally connected to the objective of reducing discrimination. The Supreme Court ruled that section 14(1)(b) is not concerned with whether the expression at issue is religiously motivated. The author's intent is irrelevant; what matters is the effect of the expression. If a reasonable person, objectively viewing the expression, would believe that it exposes a vulnerable group to "hatred" and discrimination, then the speech is caught by the legislation.[71]

2. Minimal Impairment

Section 14(1)(b) of the Saskatchewan *Human Rights Code* must achieve its objective while only minimally impairing freedom of religion. The Supreme Court acknowledges that it is important for people to adhere to their religious beliefs. However, the *Saskatchewan Human Rights Code* only minimally impairs Whatcott's ability to follow his religious beliefs. The Court ruled that Whatcott is still free to argue that same-sex sexual activity is harmful and immoral, but he cannot use hate speech to express his religious views.[72]

3. Benefits of the Objective and Negative Effects

This case demonstrates that people's religious beliefs sometimes conflict with other *Charter* rights. The Supreme Court balanced these competing *Charter* rights and freedoms by prohibiting hate speech, regardless whether it is religiously motivated or not. The Supreme Court ruled that section 14(1)(b) is not concerned with whether the expression at issue is religiously motivated. People are free to disagree with same-sex sexual activities, argue for its censorship, and convert others to their viewpoint. The freedom to express religious views is limited only by the requirement that religious views not be conveyed through hate speech. As a result, the Court determined that the infringement of freedom of religion is justified.[73]

Issue 6: Are the Flyers Discriminatory per Section 14(1)(b) of the *Saskatchewan Human Rights Code*?

The Supreme Court ruled that the flyers titled "Keep Homosexuality out of Saskatoon's Public Schools" and "Sodomites in our Public Schools" exposed homosexuals to detestation and vilification, both of which fulfill the definition of hatred. These flyers violated section 14(1)(b) of the *Saskatchewan Human Rights Code*.[74]

The flyers of the photocopied classified advertisements, however, did not contain expression that would cause a reasonable person to believe that homosexuals were being exposed to hatred. As a result, these flyers did not violate section 14(1)(b) of the *Saskatchewan Human Rights Code*.[75]

By distinguishing between the four flyers, the Court demonstrated the difference between publications that are considered "hatred" and those that are not. Speech that is offensive or distasteful to the public does not satisfy the definition of "hatred."[76] The "hatred" definition requires a protected group to be exposed to detestation or vilification, and the expression must lead an objective observer to conclude that the group may be subject to discriminatory treatment.[77] The two flyers found to violate section 14(1)(b) of the*Saskatchewan Human Rights Code* expressly state that homosexuals should be subjected to discriminatory treatment.[78] Alternatively, the two flyers of the photocopied classified advertisements contain offensive expression, but they do not expose homosexuals to hatred or discrimination.[79]

Issue 7: What Remedy are the Complainants Entitled?

Section 31.4 of the *Saskatchewan Human Rights Code* allows courts to make an order for compensation to people who have been injured by someone's violation of the *Saskatchewan Human Rights Code*.[80] As demonstrated above, Whatcott violated section 14(1)(b) of the *Saskatchewan Human Rights Code* by delivering flyers that promoted the "hatred" of homosexuals.[81] As a result, the two people who received the flyers titled "Keep Homosexuality out of Saskatoon's Public Schools" and "Sodomites in our Public Schools" were entitled to compensation.[82] The two people who received the flyers of the photocopied classified advertisements were not entitled to compensation because these two flyers did not violate the*Saskatchewan Human Rights Code*.[83]

Significance of the Ruling

Freedom of expression and equality are protected in the *Charter* and both are central to a democratic society.[84] Hate speech prohibitions encourage a society where everyone is treated with dignity and respect: two hallmarks of equality. In this case, freedom of expression and religion conflicted with the right to equality, and the Court was forced to strike an appropriate balance between the competing *Charter* rights and freedoms.

The Court ruled that hate speech prohibitions limit freedom of expression by prohibiting certain kinds of speech from entering the public sphere, but this infringement was justified.

Canada prohibits hate speech because certain types of expression make it impossible for vulnerable groups to achieve equality. Importantly, the ruling only prohibits speech that is "likely to expose a person or persons to detestation and vilification on the basis of a prohibited ground of discrimination."[85] The Court emphasized that hate speech prohibitions catch a very specific type of speech. People are still free to express opinions on controversial public policy, to debate the legitimacy of censorship, and to argue contrary viewpoints. Hate speech prohibitions violate a constitutionally guaranteed freedom of expression, but the infringement is justified because it creates a more inclusive society, one free from harmful discriminatory practices.

[1] *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11 <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/12876/index.do> .

[2] *Canadian Charter of Rights and Freedoms,* s 2(a)-(b), Part I of the *Constitution Act,1982*, being

Schedule B to the *Canada Act 1982* (UK), 1982, c 11 ("[e]veryone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication," s 2(a)-(b)).

[3] *Ibid*, s 15(1) ("[e]very individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability," s 15(1)).

[4] *Saskatchewan Human Rights Code*, SS 1979, c S-24.1 ([n]o person shall publish or display…any representation…(b) that exposes or tends to expose to hatred, ridicules, belittles or otherwise affronts the dignity of any person or class of persons on the basis of a prohibited ground," s 14(1)(b)).

[5] *Ibid*; *Whatcott*, *supra* note 1 at paras 8-9.

[6] *Whatcott,* supra note 1 at para 10; *Code*, *supra* note 4.

[7] *Whatcott*, *supra* note 1 at paras 11, 203 (double the compensation was awarded to three complainants because their complaints occurred after section 31.4 of the *Saskatchewan Human Rights Code* was amended to increase compensation).

[8] *Charter*, *supra* note 2.

[9] *Whatcott v Saskatchewan (Human Rights Tribunal)*, 2007 SKQB 450, 162 ACWS (3d) 809 <http://www.canlii.org/en/sk/skqb/doc/2007/2007skqb450/2007skqb450.html>.

[10] *Charter*, *supra* note 2.

[11] *Whatcott v Saskatchewan (Human Rights Tribunal)*, 2010 SKCA 26, 218 CRR 2(d) 145 <http://www.canlii.org/en/sk/skca/doc/2010/2010skca26/2010skca26.html>; *Code*, *supra* note 4.

[12] *Ibid*.

[13] *Ibid.*

[14] *Ibid*; *Charter*, *supra* note 2, s 2(b).

[15] *Ibid*, s 1 ("[t]he *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society," s 1).

[16] *Code*, *supra* note 4; *Charter*, *supra* note 2, s 2(a).

[17] *Charter*, *supra* note 2, s 1.

[18] *Code*, *supra* note 4.

[19] *Whatcott*, *supra* note 1 at para 56.

[20] *Ibid* at para 206; *Code*, *supra* note 4; *Charter*, *supra* note 2, ss 1, 2(a)-(b).

[21] *Whatcott*, *supra* note 1 at paras 193-94.

[22] *Code*, *supra* note 4.

[23] *Ibid*, s 2(1)(m.01)(vi).

[24] *Whatcott*, *supra* note 1 at para 20; *Canada (Human Rights Commission) v Taylor*, [1990] 3 SCR 892 <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/697/index.do> .

[25] *R v Keegstra*, [1990] 3 SCR 697 <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/695/index.do> (tension between freedom of expression guaranteed under s 2(b) of the *Charter*and hate speech prohibitions); *R v Andrews*, [1990] 3 SCR 870 <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/696/index.do> (tension between freedom of expression and hate speech prohibitions).

[26] *Canadian Human Rights Act*, SC 1976-66, c 33; *Charter*, *supra* note 2, s 2(b); *Whatcott*, *supra* note 1 at para 21.

[27] *Charter*, *supra* note 2, ss 1, 2(b); *Whatcott*, *supra* note 1 at para 22.

[28] *Taylor*, *supra* note 24 at 928.

[29] *Whatcott*, supra note 1 at para 55.

[30] *Ibid* at para 35.

[31] *Ibid* at para 57.

[32] *Ibid* at para 58.

[33] *Charter*, *supra* note 2, s 2(b).

[34] *Irwin Toy Ltd v Quebec (AG)*, [1989] 1 SCR 927 at para 41 <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/443/index.do>.

[35] *Ibid*.

[36] *Whatcott*, *supra* note 1 at para 62; *Code*, *supra* note 4; *Charter*, *supra* note 2, s 2(b).

[37] *Ibid*.

[38] *Charter*, *supra* note 2, s 1.

[39] *Ibid*.

[40] *Code*, *supra* note 4; *Charter*, *supra* note 2, s 2(b); *R v Oakes*, [1986] 1 SCR 103, 26 DLR (4th) 200 <http://www.canlii.org/en/ca/scc/doc/1986/1986canlii46/1986canlii46.html> (established the test for a section 1 analysis).

[41] *Charter*, *supra* note 2, s 1.

[42] *Ibid*, ss 1, 2(b), 15.

[43] *Whatcott*, *supra* note 1 at paras 73, 77; *Code*, *supra* note 4.

[44] *Oakes*, *supra* note 40.

[45] *Code*, *supra* note 4.

[46] *Whatcott*, *supra* note 1 at paras 79-80, 83-84; *Code*, *supra* note 4.

[47] *Ibid*; *Whatcott*, *supra* note 1 at para 92.

[48] *Ibid* at para 85.

[49] *Ibid* at para 90.

[50] *Ibid* at para 88.

[51] *Ibid* at paras 93; *Code*, *supra* note 4.

[52] *Whatcott*, *supra* note 1 at para 111.

[53] *Code*, *supra* note 4; *Charter*, *supra* note 2.

[54] *Code*, *supra* note 4.

[55] *Whatcott*, *supra* note 1 at para 102; *Criminal Code*, RSC 1985, c C-46.

[56] *Whatcott*, *supra* note 1 at para 103.

[57] *Ibid* at para 109.

[58] *Ibid* at para 75.

[59] *Ibid* at para 104.

[60] *Ibid* at para 105; *Criminal Code*, *supra* note 55; *Code*, *supra* note 4; *Charter*, *supra* note 2, s 2(b).

[61] *Whatcott*, *supra* note 1 at paras 101, 106; *Criminal Code*, *supra* note 55; *Code*, *supra* note 4.

[62] *Whatcott*, *supra* note 1 at para 148.

[63] *Charter*, *supra* note 2, s 2(a).

[64] *Whatcott*, *supra* note 1 at para 155.

[65] *Ibid* at para 152.

[66] *Ibid*.

[67] *Charter*, *supra* note 2, s 2(a); *Code*, *supra* note 4; *Whatcott*, *supra* note 1 at para 156.

[68] *Charter*, *supra* note 2, s 1.

[69] *Ibid*, ss 2(a), 15(1); *Code*, *supra* note 4.

[70] *Ibid*; *Charter*, *supra* note 2, s 2(a); *Whatcott*, *supra* note 1 at para 164.

[71] *Code*, *supra* note 4; *Whatcott*, *supra* note 1 at paras 58, 143.

[72] *Code*, *supra* note 4; *Whatcott*, *supra* note 1 at para 163.

[73] *Ibid* at paras 163-64; *Code*, *supra* note 4.

[74] *Whatcott*, *supra* note 1 at para 186; *Code*, *supra* note 4.

[75] *Whatcott*, *supra* note 1 at para 201; *Code*, *supra* note 4.

[76] *Whatcott*, *supra* note 1 at para 196.

[77] *Ibid* at para 191.

[78] *Ibid* at para 192; *Code*, *supra* note 4.

[79] *Whatcott*, *supra* note 1 at para 196.

[80] *Code*, *supra* note 4, s 31.4.

[81] *Ibid*, s 14(1)(b).

[82] *Whatcott*, *supra* note 1 at para 205.

[83] *Ibid* at para 205; *Code*, *supra* note 4.

[84] *Charter*, *supra* note 2, ss 2(b), 15(1).

[85] *Whatcott*, *supra* note 1 at para 59.