

CITATION: R. v. Whatcott, 2021 ONSC 8077
COURT FILE NO.: CR-19-70000064-0000
DATE: 20211210

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
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)
HER MAJESTY THE QUEEN) *Scott Patterson and Rebecca De Filippis, for*
) *the Crown*
)
)
– and –)
)
)
WILLIAM WHATCOTT) *Lindsay Daviau and John Rosen, for Mr.*
) *Whatcott*
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)
)
) **HEARD:** October 4, 8, 15, 18, 19, 20, 25, 26,
2021

R.F. GOLDSTEIN J.

REASONS FOR JUDGMENT

[1] The Pride Parade is held annually in Toronto. It is a significant part of Pride Week, the celebration of the LGBTQ2S+ community.¹ The 2016 Pride Parade included the “Gay Zombie Cannabis Consumer’s Association”. William Whatcott was one of the Zombies. He and five associates marched while dressed in skin-tight green body suits and green masks covering their faces. While marching, the Zombies handed out “Zombie Safe Sex Packets.”² The Zombie Safe

¹ LGBTQ2S+ defined as Lesbian, Gay, Bisexual, Transgender, Queer, Two Spirited, Plus Others.

² Ex. 1. In these reasons I will refer to the Zombie Safe Sex packet simply as “the flyer”.

Sex packets consisted of a flyer warning gay men of the dangers of men having sex with men. Mr. Whatcott wrote the flyer.

[2] The Crown alleges that the flyer contained statements promoting hate against gay men; and that Mr. Whatcott intentionally promoted hatred against gay men. Mr. Whatcott is charged one count of willfully promoting hatred against gay men contrary to s. 319(2) of the *Criminal Code*. What follows are my reasons for judgment.

FACTS:

Mr. Whatcott Applies To March In 2016 The Pride Parade

[3] Mr. Whatcott is a “Christian Truth Activist.” He was the driving force behind the “Gay Zombie Cannabis Consumers Association”. The Zombies, as I will call them, applied online to march in the 2016 Toronto Pride Parade. “Robert Clinton” was listed as the contact person.³ In fact, “Robert Clinton” was Mr. Whatcott. Under the heading “sample items” on the application Mr. Whatcott, masquerading as Robert Clinton, wrote:

We have zombie safe sex packets. They encourage zombies to be safe when having sex or playing with blood sports. Our packages also let the spectators know how to get hold of us.

[4] Under the rules of Pride Toronto, anything to be distributed required pre-approval by the Director of Operations of Pride Toronto.⁴ Mr. Whatcott did not obtain pre-approval to distribute the flyer.

[5] Under the heading “What Pride Means to You” Mr. Whatcott wrote:

Pride is a time to be proud and to have fun. It is a time to acknowledge the great contributions gays, lesbians, trans, highsexuals and others have made to Canada and the world.

[6] Under the heading “Contingent Description” Mr. Whatcott wrote:

Our contingent will consist of zombies who are gay and who smoke pot. Our message will be to have fun and be what you like to be, gay/straight zombie, or high. But be it responsibly and safely. We will have a banner that reads “Gay Zombie Cannabis Consumers Association.”

³ Ex. 2.

⁴ Ex. 3.

[7] Under the heading “Parade Participation”, Mr. Whatcott wrote:

Past Participation: as attendees yes, as marchers no.

2016 Participation: We are just over a year old. We want to participate and let people know we are here.

[8] The Pride Committee approved the application.

Mr. Whatcott And His Associates March In The 2016 Pride Parade; Mr. Whatcott Blogs About It

[9] On July 2, 2016 Mr. Whatcott and five associates marched in the 2016 Pride Parade. They each wore green skin-tight outfits, which included masks that covered their faces. Each also wore some kind of rainbow accessory. Mr. Whatcott wore a rainbow coloured ballet tutu. Mr. Whatcott and his associates also carried canvass shoulder bags. Presumably those shoulder bags carried copies of the flyer. As Mr. Whatcott and his associates marched, they distributed copies of the flyer.

[10] The Pride Parade that year marched along Bloor Street and Yonge Street, Toronto’s two major thoroughfares. Mr. Whatcott chronicled the day’s events on his blog.⁵ He posted several pictures and comments on July 4, 2016.

A Complaint Is Made: Mr. Whatcott Turns Himself In To Police

[11] A recipient of the flyer complained to the police. The police investigated and laid a charge against Mr. Whatcott.⁶ He turned himself in to the police in Calgary, where he lives. Two Toronto Police officers arrested him and took a statement from him.⁷

The Flyer

[12] The flyer consists of a single sheet with photographs and printing on both sides. The front of the flyer features a photograph of two men embracing with their shirts off. Someone obviously photoshopped zombie eyes and blood dripping from their mouths. The caption reads:

Gay Zombies want you to practice safe sex!

⁵ Ex. 5.

⁶ The indictment charges that Mr. Whatcott wilfully promoted hatred against an identifiable minority group, to wit: gays. I will refer to “gay men” as the targeted group.

⁷ Ex. 6.

[13] Below the caption there is a photograph of a male anus with what are said to be anal warts. Below that is an autopsy photograph showing a patient with multiple lesions. The photograph contains the watermark that reads “cutedeadguys.net”. It is an agreed fact that “cutedeadguys.net” is a website where anyone can upload images. Investigators were unable to find the image on the website. There is no evidence that Mr. Whatcott accessed that website. The flyer refers to the patient as an AIDS fatality. The box further states that an average of 15,000 people still succumb to AIDS annually in North America, despite anti-retroviral therapy (which I will refer to as “ART”).

[14] The third box sits beside three photographs. The box, and the photographs, tell the story of a transgender man who transitioned to female and then back to male again. The Crown does not argue that this part of the flyer promotes hatred.

[15] Below the third box and photographs is a paragraph stating that “natural law is clear, homosexuality is incompatible with human nature.” The paragraph goes on to urge attendees of the parade to “abstain from the [sic] homosexuality.” The bottom of the first page indicates that Mr. Whatcott is the “Executive Director Christian Truth Activists” [sic] and provides contact information. The second page has a header that reads:

Gay Zombies believe in speaking the truth, even if it is unpopular!

[16] Underneath the caption is a photograph of Prime Minister Trudeau beside a photograph of a man’s mouth purportedly depicting genital warts. The flyer states on the second page:

Canada has embarked on a destructive journey towards sexual anarchy and homosexual inspired oppression. The fruit of sexual anarchy is the rejection of God’s plan of life long heterosexual matrimony and replacing the virtues of chastity, fidelity, unconditional love, and life long commitment to one’s spouse with promiscuity, polyamory, pornography, and homosexuality. The clear evidence contained in this package shows Canada’s new sexual ethic is contrary to natural law and no good will come from it.

The rejection of true marriage is also in direct opposition to God’s law and it is our duty to warn you that those who choose to rebel against the God who created them, do so at their eternal peril. For those reading this Gospel package we also want to let you know there is a God who loves you, who is real, and who has made a way for you to come to Him.

If you are tired of your sin and want to come to your Lord and Saviour Jesus Christ and receive the free gift of eternal life, you can call:

[17] The flyer gives Mr. Whatcott’s contact information again. It finishes with a quote from the Gospel of Peter:

To this you have been called, because Christ also suffered for you, leaving you an example, so that you might follow in his steps. He committed no sin, neither was deceit found in his mouth. When he was reviled, he did not revile in return; when he suffered, he did not threaten but continued entrusting himself to him who judges justly. He himself bore our sins in his body on the tree, that we might die to sin and live to righteousness. By his wounds you have been healed.

ISSUES:

[18] Section 319(2) of the *Criminal Code* states:

319 (2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

[19] There are five elements to the offence of willful promotion of hatred in this case:

- First, that Mr. Whatcott communicated statements, in this case the flyer;
- Second, that the flyer was distributed publicly;
- Third, that the flyer promoted hatred;
- Fourth, that the promotion of hatred was against an identifiable group; and
- Fifth, that if the flyer promoted hatred, Mr. Whatcott did so wilfully.

[20] See: *R. v. Harding* (2001) 52 O.R. (3d) 714 (Sup.Ct.).

[21] In this case, only the third and fifth elements are at issue: whether the flyer promoted hatred; and, if so, whether Mr. Whatcott promoted hatred wilfully. There is no doubt that Mr. Whatcott communicated statements; that those statements were communicated publicly; and that the identifiable group was gay men.

[22] Section 319(3) sets out statutory defences to s. 319(2):

(3) No person shall be convicted of an offence under subsection (2)

(a) if he establishes that the statements communicated were true;

- (b) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;
- (c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or
- (d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.

[23] In my view, these are the issues to be determined:

- (a) Did the flyer promote hatred?
- (b) Did Mr. Whatcott promote hatred wilfully?
- (c) Do any of the defences apply?

ANALYSIS:

(a) Did the flyer promote hatred?

[24] Crown counsel, Mr. Patterson, argues that the flyer promotes hatred because it seeks to render gay men as dangerous, disease-ridden, and sinful. The flyer uses several devices to promote hatred, united by a theme of disease, death, and confusion. The flyer preys upon stereotypes of gay men as carrying a disease – AIDS, the “gay plague”. Because they carry this disease, they are unworthy of the very human need for love and contact with others. The flyer uses horrific images to illustrate the point. The most horrific, according to the Crown, is what appears to be the autopsy photograph. Gay men are ridden with other diseases as well, often made worse by the prevalence of HIV in the community. That also renders them unworthy, lawless, and dangerous.

[25] The flyer also contains what the Crown characterizes as inflammatory lies. The most obvious lie is that the gay lifestyle leads to death. According to the Crown, this assertion is simply untrue. Contrary to the “death” theme in the flyer, ART has rendered HIV a chronic, treatable condition. ART now allows HIV+ people to live normal lives and have loving relationships with their partners. Dr. Mona Loutfy was qualified as an expert in infectious diseases. She provided information to the effect that much of the “medical” information in the flyer is scientifically false.

[26] Crown counsel further argues that the context is relevant. Mr. Whatcott infiltrated the Pride Parade through a subterfuge. He lied about his organization and about himself when he applied to march. Mr. Whatcott stated in his police interview that he is well known on the Internet as a Christian Truth Activist who opposes the “homosexual agenda”, as Mr. Whatcott calls it. He well knew that the Parade organizers would not approve his application if they knew the real identity of “Robert Clinton”. Mr. Whatcott and his associates shielded their faces so that Pride organizers and participants would not know who they were and then take steps to remove them.

[27] I agree with Crown counsel that many people would find the flyer offensive; I also agree that some statements in the flyer are inaccurate and some are misleading. Mr. Patterson is obviously correct that Mr. Whatcott lied to gain admittance to the Pride Parade. Overall, however, I find that this is what Chief Justice Dickson referred to as a borderline case: *R. v. Keegstra*, [1990] 3 S.C.R. 697 at para. 120. I have a reasonable doubt about whether the flyer promotes hatred for these reasons:

- The flyer has few, if any, of the hallmarks of hate speech; and,
- The flyer is not sufficiently misleading so as to be inflammatory.

[28] In 1990 the Supreme Court of Canada dealt with a trilogy of cases in the area of hate speech: *Keegstra, R. v. Andrews*, [1990] 3 S.C.R. 870, and *Canadian Human Rights Commission v. Taylor*, [1990] 3 S.C.R. 892. In *Keegstra* and *Andrews* the Supreme Court analyzed the meaning of “hatred” as set out in s. 319(1) of the *Criminal Code*. In *Keegstra* at para. 116, Dickson C.J.C. stated that “the term ‘hatred’ connotes emotion of an intense and extreme nature that is clearly associated with vilification and detestation.” He went on to quote Cory J.A. (as he then was) in the Ontario Court of Appeal’s decision in *R. v. Andrews* (1988), 43 C.C.C. (3d) 193, 28 O.A.C. 161 at para. 63:

Hatred is not a word of casual connotation. To promote hatred is to instil detestation, enmity, ill-will and malevolence in another. Clearly an expression must go a long way before it qualifies within the definition in [s. 319(1)].

[29] Dickson C.J.C. then went on to say in the same paragraph and at para. 117:

Hatred is predicated on destruction, and hatred against identifiable groups therefore thrives on insensitivity, bigotry and destruction of both the target group and of the values of our society. Hatred in this sense is a most extreme emotion that belies reason; an emotion that, if exercised against members of an identifiable group, implies that those individuals are to be despised, scorned, denied respect and made subject to ill-treatment on the basis of group affiliation...

...the sense in which "hatred" is used in s. 319(2) does not denote a wide range of diverse emotions, but is circumscribed so as to cover only the most intense form of dislike.

[30] The defences set out in s. 319(3)(b), (c) and (d) of the *Criminal Code* negate the *mens rea* requirement but also aid in making the scope of wilful promotion of hatred more explicit. The defences signal that people engaging in borderline cases will not be subject to criminal liability for expressing unpopular views: *R. v. Keegstra* at para. 120.

[31] Speech that exposes a group to detestation inspires enmity or extreme ill-will; it must go beyond mere disdain or dislike: *Saskatchewan Human Rights Commission v. Whatcott*, 2013 SCC 11, [2013] 1 S.C.R. 467 at para. 41.

[32] Whether the flyer promotes hatred is measured by an objective standard. A court must ask whether the speech in question would be understood by a reasonable person aware of the relevant context and circumstances as exposing or tending to expose members of the target group to hatred: *Saskatchewan Human Rights Commission v. Whatcott* at para. 35.

[33] In *Warman v. Kouba*, [2006] C.H.R.D. No. 50 (Board Member Jensen) the Canadian Human Rights Commission helpfully listed and considered some of the hallmarks of hate speech at paras. 23-81. These hallmarks of hate include:

- (a) The targeted group is portrayed as a powerful menace that is taking control of the major institutions in society and depriving others of their livelihoods, safety, freedom of speech and general well-being;
- (b) The messages use "true stories", news reports, pictures and references from purportedly reputable sources to make negative generalizations about the targeted group;
- (c) The targeted group is portrayed as preying upon children, the aged, the vulnerable, etc.;
- (d) The targeted group is blamed for the current problems in society and the world;
- (e) The targeted group is portrayed as dangerous or violent by nature;
- (f) The messages convey the idea that members of the targeted group are devoid of any redeeming qualities and are innately evil;
- (g) The messages communicate the idea that nothing but the banishment, segregation or eradication of this group of people will save others from the harm being done by this group;
- (h) The targeted group is de-humanized through comparisons to and associations with animals, vermin, excrement, and other noxious substances;
- (i) Highly inflammatory and derogatory language is used in the messages to create a tone of extreme hatred and contempt;
- (j) The messages trivialize or celebrate past persecution or tragedy involving members of the targeted group.

[34] The list is not exhaustive. It is also not a checklist. Something can be hate speech without bearing one of the hallmarks set out in *Warman v. Kouba*. Obviously, the more of these hallmarks contained in a communication the more likely it is that the communication is hate speech.

[35] In *Saskatchewan Human Rights Commission v. Whatcott* at paras. 44-45, Rothstein J. summarized these hallmarks of hate, adopting the list set out in *Warman v. Kouba*:

Hate speech often vilifies the targeted group by blaming its members for the current problems in society, alleging that they are a "powerful menace" (para. 24); that they are carrying out secret conspiracies to gain global control (*Citron v. Zündel* (No. 4) (2002), 41 C.H.R.R. D/274 (C.H.R.T.)); or plotting to destroy western civilization (Taylor). Hate speech also further delegitimizes the targeted group by suggesting its members are illegal or unlawful, such as by labelling them "liars, cheats,

criminals and thugs" (Citron, at para. 140); a "parasitic race" or "pure evil": Warman v. Tremaine (No. 2), 2007 CHRT 2, 59 C.H.R.R. D/391, at para. 136.

Exposure to hatred can also result from expression that equates the targeted group with groups traditionally reviled in society, such as child abusers, pedophiles (Payzant v. McAleer (1994), 26 C.H.R.R. D/271 (C.H.R.T.), aff'd (1996), 26 C.H.R.R. D/280 (F.C.T.D.)), or "deviant criminals who prey on children": Warman v. Northern Alliance, 2009 CHRT 10 (CanLII), at para. 43. One of the most extreme forms of vilification is to dehumanize a protected group by describing its members as animals or as subhuman. References to a group as "horrible creatures who ought not to be allowed to live" (Northern Alliance, at para. 43); "incognizant primates", "genetically inferior" and "lesser beasts" (Center for Research-Action on Race Relations v. www.bcwhitepride.com, 2008 CHRT 1 (CanLII), at para. 53); or "sub-human filth" (Warman v. Winnicki (No. 2), 2006 CHRT 20, 56 C.H.R.R. D/381, at para. 101) are examples of dehumanizing expression that calls into question whether group members qualify as human beings.

[36] The cases involving convictions for willful promotion of hatred contain at least some of these hallmarks of hate:

- In *Keegstra*, the accused was a teacher. He taught his pupils that Jews were "treacherous", "subversive", "sadistic", "money-loving", "power hungry" and "child killers". There is a world-wide Jewish conspiracy and Jewish people seek to destroy Christianity. Jews create depressions, anarchy, chaos, wars and revolution. Jews also "created the Holocaust to gain sympathy". Keegstra gave his students tests and if any did not parrot his teachings they failed.
- In *Harding*, the accused was a minister. He wrote and distributed pamphlets and created a telephone message service. The communications warned that there is a world-wide conspiracy of Muslims seeking to take over Canada. He described all Muslims as terrorists, violent, and hateful towards Christians and Jews. He told Canadians that they must "stand in the way of Muslim believers whose only wish is to control by their religion and to punish anyone they can't control."
- In *Andrews* the communications consisted of white supremacist newspapers published by the Nationalist Party. The communications described non-Aryans as inferior, violent, unclean, and a threat to white people. The Nationalist Party was the only party capable of stopping the international communist Jewish conspiracy. Jewish people used the Holocaust "hoax" to gain sympathy and power. The communications warned that if the alien Jews were allowed to gain and hold power they would destroy the country. Cory J.A. memorably described the communications as "rubbish and offal."

- *Taylor* was a case before the Canadian Human Rights Commission. Taylor was a member of the Western Guard, a white supremacist organization. He and his organization were responsible for a series of telephone messages. (In the days before the internet organizations advertised numbers and recorded communications setting out their messages. People could then listen to those messages.) The messages posited that there was a Jewish conspiracy controlling Canadian society. The messages stated that: “The conspirators cause unemployment and inflation; they weaken us by encouraging perversion, laziness, drug use and race mixing. They become enriched by stealing our property. They have founded communism which is responsible for many of our economic problems such as the postal strike; they continue to control communism and they use it in the furtherance of the conspiracy.”
- *R. v. Popescu*, 2020 ONCJ 427 the accused targeted gay people. He argued that God hates homosexuals. His material stated that "Jesus destroys the wicked"; "God hates the wicked"; God makes the land “vomit out the inhabitants”; "God has proven our depravity for electing a Premier he calls abominable"; God commanded that “her and her kind” be put to death, meaning the former Premier of Ontario. Mendes J. of the Ontario Court of Justice specifically found that:

... this material specifically invites the reader to take aggressive and violent action against homosexuals by calling for the death of the former Premier due to her sexual orientation. Further, I find that the clear conclusion from anyone who reads these statements is that homosexuals are worthy of death and should be put to death because of their sexuality.
- In *R. v. Sears*, 2019 ONCJ 104 the accused published “Ynot News”, which targeted women and Jews. The material promoted hateful ideas: that it was insane to give women the vote, as they do not have the mental acuity to exercise it properly; women are chattels and that it could not be a crime for men to rape their wives; men serving on juries should always vote to acquit men charged with sexual assault. The material also portrayed Jews as having horns and reptilian features while drinking the blood of children; glorified Hitler and the Nazis; and claimed that the Holocaust was a hoax.
- *Warman v. Kouba* was a case before the Canadian Human Rights Tribunal. The respondent posted messages on white supremacist and neo-Nazi websites. The respondent targeted aboriginal people, gay people, Jews, and non-white minorities. He called aboriginal people “savages” and rapists. He argued that Jews have taken over the media, education system, and governments. He portrayed Black men as cannibals who have sex with animals and warned that Black people might move in next door. He also said aboriginal people should be sent to Asia and Black people should live in the jungle, where they belong.

[37] I now turn to the flyer itself. Would a reasonable person, aware of the context and circumstances, understand the flyer as exposing or tending to expose gay men to hatred? The first page of the flyer states:

Natural law is clear, homosexuality is incompatible with human nature. Disease, death, and confusion are the sad and sordid realities of the homosexual lifestyle. The ‘Gay Zombies’ are concerned about the spiritual, psychological, and physical welfare of all potential homosexual pride attendees, so we want to give you this accurate information and encourage you to abstain from homosexuality.

[38] The paragraph is obviously offensive to many people. It does not, however contain hallmarks of hate comparable to those one sees in the cases. The paragraph does not call for violence against gay men. The flyer does not suggest that society segregate gay men because they are dangerous or a menace to others. While the flyer does suggest that the sexual practices of gay men are dangerous to each other, there is no suggestion that they threaten the rest of society. There is also no allegation of a plot or a secret cabal of gay men set on taking over Canadian society. Mr. Whatcott did refer to the “homosexual agenda” in his police statement but not in the flyer. It is very clear that he opposes the extension of legal rights to gay people. It is also clear that he decries the political culture that led Canada to extend legal rights to gay people. With the greatest of respect for those with the opposite view, that is something that Mr. Whatcott is within his rights to express.

[39] The assertion that homosexuality is contrary to human nature and that “disease, death and confusion” are the realities of gay men is surely an expression of disdain or dislike. To use the language of Chief Justice Dickson in *Keegstra*, however, I cannot find that the paragraph states that gay men are to be vilified and “made subject to ill-treatment.” It is not “the most intense form of dislike”. Like many of the statements in the flyer, it is in the grey zone between legitimate free expression and hate speech; its placement in that grey zone is what leaves me in a state of reasonable doubt.

[40] Professor Douglas Farrow is a professor of theology, Christian thought, and ethics at McGill University. He was qualified as an expert in Christian thought and theology. It is clear that Professor Farrow’s views are traditional, such as his public opposition to same-sex marriage. Nonetheless, I found him to be an honest witness who took his duty to the Court seriously. The Crown did not suggest he was biased or that he was unable to comply with his duty to the court.

[41] Professor Farrow testified that there are religious, and specifically Christian elements to the flyer. The reference to God’s plan reflects the divine plan found in the Book of Genesis – that there is a creator and that His creatures and the cosmos are laid out according to that plan. Humans are rational agents who can identify the features of God’s plan and govern themselves by use of their own reason. Just as a polis is governed by civil law and anarchy reigns when it is not, the cosmos is organized by divine law and anarchy reigns in its absence. “God’s plan” of lifelong faithful marriage between a man and a woman is grounded in scripture, particularly Genesis and

the Gospel according to Matthew.⁸ According to Christian teaching the virtues of chastity and fidelity allow human flourishing. The vices of polyamory, pornography, and homosexuality do not. A healthy sexual life involves the union of a man and a woman for the purpose of producing children. Sexual activity for any other purposes is considered immoral.

[42] According to Professor Farrow, the references to natural law and no good coming of Canada's new sexual ethic are also grounded in scripture and Christian teaching. Natural law in the Christian tradition refers to a person's ability to discern God's plan and purpose and understand it to the extent any human can. Natural law is premised on the notion that humans should pursue good and avoid evil. Violating natural law means that a human is pursuing bad or evil and will not experience the good as intended by God. Human sexual acts that violate the paradigm of God's plan will be contrary to natural law and thus a sin against God and nature.⁹

[43] Professor Farrow further testified that the idea that death is the reality of the homosexual lifestyle also has at least some grounding in scripture and in Christian thought. In Genesis, humans are told that they will suffer death if they deviate from God's plan. Paul, in his letters to the Romans, also says that the failure to conform to God's plan will result in consequences.

[44] A duty to warn is also rooted in scripture. According to Professor Farrow, it is basic to Christian thought and has roots in Jewish thought. The prophet Ezekiel, for example, warns the that failure to follow God's law will bring divine consequences. The invitation portion of the flyer is basic to the Christian mission, which is to bring the nations to God's love. The warning and the invitation must go hand in hand. Christians are sent out into the community to bring the good news that Jesus died for our sins. The references to spiritual welfare and encouragement to "refrain from homosexual activities" is also grounded in Christian thought.

[45] Ms. De Filippis, for the Crown, cross-examined Professor Farrow on the application to march in the Pride Parade. The application obviously contained falsehoods. Professor Farrow agreed that there is an injunction against bearing false witness. Whether it is a sin or not depends on the context. Professor Farrow gave the example of forging a baptismal certificate to save a child during the Holocaust. Under those circumstances a falsehood is obviously not sinful. Professor Farrow did not suggest that Mr. Whatcott's Pride application was comparable to forging a baptismal certificate to save a child from the Nazis. Let me be clear: it is clearly not comparable. Ms. De Filippis also cross-examined Professor Farrow about the notion of a plague, quoting the

⁸ I use the term "scripture" throughout these reasons as a neutral term. I am aware that there is a debate among scholars of different religions about terminology. I simply use scripture or scriptural as a neutral shorthand for the Hebrew Bible (also called the Torah or the Old Testament), or the various groups of books of what is often called the New Testament, such as Acts, Gospels, and the Epistles.

⁹ Although there was no evidence called on the point, I am aware that there is a diversity of views in the Christian community about sexuality and same-sex relationships. I am also aware that not all Christian scholars share Professor Farrow's views. A discussion about debate within Christian circles is unnecessary in this legal ruling, and would involve information that is not in evidence before the court.

Prophet Zacharia. Professor Farrow agreed that in the Christian tradition a plague is generally the consequence of an attack on the divinely created order, or as divinely meted judgment. Professor Farrow was cross-examined about the duty to warn and the use of the term “sodomite”. The use of that term may or may not be insulting, depending on the context.

[46] Legitimate expressions of religious belief cannot be used to shield a message that contains hate speech: *R. v. Harding* (2001), 57 O.R. (3d) 333, 160 C.C.C. (3d) 225 (Ont.C.A.) at para. 49. In *Popescu*, Mendes J. at para. 42 found that the accused “used the Bible as a cover for his hateful beliefs”. He used the Bible to spread “violent and cruel” messages. Mr. Popescu used scriptural passages to justify violence towards gay people.

[47] The use of scripture to justify or encourage violence would undoubtedly be a hallmark of hate, but the flyer does not use scripture to justify violence. The scriptural passages obviously condemn men having sex with men but the flyer does not suggest that gay men are subhuman or compare them to animals. Leviticus 20 – which famously prescribes the death penalty for men who have sex with men – is not quoted. There is also no call that gay men should be segregated from the rest of the society. I cannot find that the flyer uses religious and scriptural language as a cover for hateful beliefs.

[48] I turn now to the scientific and medical assertions and photographs in the flyer. Crown counsel argues that these are untrue and inflammatory.

[49] The Crown called Dr. Mona Loutfy as an expert witness. Defence counsel did not contest Dr. Loutfy’s expertise. Dr. Loutfy is an infectious disease specialist with a master’s degree in public health. Her specialty is clinical HIV research. She is certified as a specialist in infectious diseases and internal medicine and is a full professor of medicine at University of Toronto Medical School. She currently practices at the Maple Leaf Medical Clinic in Toronto where she specializes in HIV and sexual transmitted infections. Dr. Loutfy is also a physician at the Maple Leaf PREP Clinic where she cares for discordant couples. A discordant couple is one where one partner is HIV+ and the other is HIV-. PREP stands for Pre-Exposure Prophylaxis. Where an HIV+ patient has an undetectable viral load thanks to ART, PREP drugs are taken to prevent transmission to the HIV- partner.

[50] Dr. Loutfy is a highly qualified physician. Her expertise is impressive and it is no exaggeration to call her brilliant. Mr. Rosen did not suggest otherwise. He did, however, argue that Dr. Loutfy showed a bias. He argued that she was reluctant to acknowledge that there were studies that may have contradicted her own scientific conclusions. Mr. Rosen argued that she acted more as an advocate than as an unbiased expert witness who understood her duty to the court.

[51] Regrettably, I found that Dr. Loutfy did act as something of an advocate, although I want to stress that this is hardly the worst case of advocacy by an expert. She condemned most of the medical assertions in the flyer as scientifically false. In cross-examination, however, it became clear that many of the flyer’s medical assertions were either in the ballpark of plausible or at worst an exaggeration. Some, of course, were untrue. Several papers were put to her in cross-

examination. She agreed with some conclusions in some of the papers and disagreed with others. There were occasions where she termed assertions she disagreed with “creative writing.” I found that difficult to accept. It is fair enough to disagree with other eminent scientists. I cannot accept that scientists who come to different conclusions are guilty of “creative writing”. Dr. Loutfy did sometimes display a bias that was not worthy of someone of her great skill and accomplishment. Dr. Loutfy’s expertise and knowledge was helpful, but her bias detracted somewhat from her evidence.

[52] Overall, I found the medical assertions in the flyer to be, at best scientifically debatable and at worst hyperbole (leaving aside the false assertions about the parasitic diseases). The real question, of course, is not whether each assertion was simply false (or validated) but whether the medical assertions promoted hatred against gay men. One of the hallmarks of hate is the use of “true stories, news reports, pictures and references from purportedly reputable sources to make negative generalizations about the targeted group.” Does the flyer do this? I find myself left with a reasonable doubt on the point. Dr. Loutfy was cross-examined at length but it is not necessary to go through each medical assertion in detail. I will instead mention some examples.

[53] I start first with the statement that “disease, death, and confusion” are the realities of the gay lifestyle. Dr. Loutfy gave very helpful background information about HIV. She testified that HIV is a virus that can be transmitted sexually (although transmission is not exclusively sexual). HIV is the virus that causes AIDS. Most people who contract AIDS die of opportunistic diseases and infections because they no longer have immunity. In Ontario about 10-15% of gay and bisexual men are infected with HIV. In the early 1980’s there was no treatment for HIV. By 1989 to 1990 anti-retroviral drugs became available to treat HIV. In 1996 new drugs and combinations of drugs began to be used to combat HIV. The results were remarkable. People with HIV began to have much higher life expectancy and much higher quality of life. The treatment is so successful that HIV+ people can have a viral load that is virtually undetectable. A person with an undetectable viral load cannot transmit the virus. Based on Dr. Loutfy’s evidence the Crown argues that disease and death are obviously not the reality of the gay lifestyle.¹⁰

[54] I partly agree with the Crown on this point. Death and disease were the tragic reality for many gay men when the HIV/AIDS crisis was at its worst. The introduction of anti-retroviral drugs in 1989-90 prolonged many lives but came with unfortunate toxic side effects. Highly effective drugs introduced around 1996 had fewer side effects and have dramatically prolonged life. By the time of the 2016 Pride parade, between ART and PREP an HIV+ gay man was able live a full life, have a partner without danger of infecting him, raise children, and be a productive citizen.

¹⁰ The Crown did not put any emphasis on “confusion,” which related to the part of the flyer dealing with transgender issues. Dr. Loutfy was not questioned about that issue.

[55] Mr. Whatcott's assertion that "death is the sordid reality of the gay lifestyle" is simply wrong for the 85-90% of gay men in Ontario who are HIV-. The assertion is an exaggeration for the 10-15% of gay men in Ontario who are HIV+, because there is, regrettably, a kernel of accuracy in it. As one of the articles put to Dr. Loutfy indicated, there is still a discrepancy in life expectancy between HIV+ and HIV- individuals. An HIV+ individual starting ART at age 20 could expect a further 43 years of life, about two-thirds as long individuals in the general population.¹¹

[56] The question of disease is more complicated. The first picture on the flyer is of a male anus. The flyer asserts that the anus contains anal warts. Dr. Loutfy testified that it is an extreme case. She testified in chief that the rest of the medical "information" in the box is scientifically false. The box asserts that studies in San Francisco and Vancouver have found that "nearly 100% of HIV+ and 67% of HIV- homosexuals are infected with HPV of the rectum. This virus leads to anal warts and anal cancer."¹²

[57] Dr. Loutfy explained that there are about 200 genotypes of HPV. Only about 40 of these infect the anal area. These 40 can cause either anal warts or anal cancer, but not both. She testified that the prevalence of HPV in HIV- gay and bisexual men ranges from 12% to 61%. The prevalence of HPV in HIV+ men is up to 93%. Dr. Loutfy looked at the studies from Vancouver and San Francisco and testified that the flyer mis-represents the numbers. She disputed that 93% is "nearly 100%"; to her, nearly 100% means something like 98% or 99%.

[58] Mr. Rosen put a paper by Dr. Joel Palefsky from the University of California, San Francisco to Dr. Loutfy.¹³ Dr. Loutfy agreed that Dr. Palefsky is a leading expert. The study found a 60% incidence of anal HPV infection among men who have sex with men; that, of course, is not 67% as Dr. Loutfy and the Crown pointed out. Dr. Loutfy took issue with several other assertions in Dr. Palefsky's paper but did acknowledge that her expertise is in Canada. Dr. Loutfy ultimately did say that instead of asserting that HPV leads to anal warts and anal cancer – as the flyer did – it is better phrased that some types of HPV lead to anal warts and anal cancer. These contrasting statistics – nearly 100% vs. 93%, and 60% vs. 67% - show that Mr. Whatcott's claims about HPV in the flyer are not inflammatory falsehoods but better characterized as exaggerations or inaccuracies, or even hyperbole.

[59] The flyer further states that "homosexuals are at high risk of acquiring: anal cancer, chlamydia, cryptosporidium, giardia lamblia, herpes, cystospore belli, microsporidia, gonorrhea, hepatitis A, B, and C, and syphilis." The flyer also asserts that "some of these diseases are almost exclusively homosexual in nature" while others such as gonorrhea and syphilis are "rapidly becoming epidemic in the homosexual subculture."

¹¹ Exs. 20, 21.

¹² HPV is human papilloma virus.

¹³ Exs. 22, 25.

[60] From a medical point of view, “homosexual” is a generalization that does not account for the fact that different people engage in different sexual practices. Dr. Loutfy did comment that men who have sex with men are at high risk of anal cancer and that HIV+ men who have sex with men are at even greater risk.¹⁴ Her own study noted that anal cancer is strongly linked to HPV infection, at different rates for HIV+ and HIV- men.¹⁵ Dr. Loutfy also agreed that men who have sex with men are at higher risk of contracting giardia. She disputed that men who have sex with men are at greater risk of other parasites, such as cystospore belli, microsporidia. She did not agree with an Australian study of cryptosporidium.¹⁶ Mr. Rosen conceded that parasites are not an STI but rather opportunistic infections that may attack HIV+ patients. Dr. Loutfy agreed that men who have sex with men are at high risk of gonorrhea and syphilis. She also agreed that men who have sex with men are at a higher risk of contracting hepatitis A and hepatitis B but opined that the risk was still low due to vaccination and other factors.

[61] Dr. Loutfy did eventually concede that the numbers throughout the flyer were “slightly higher” than those is in the journals.

[62] I turn to the second box and the second photograph. The second photograph is of a deceased patient on what appears to be an autopsy table – the photograph from cutedeadguys.net. The flyer identifies the patient as an “AIDS fatality”. The patient is covered with lesions. Dr. Loutfy testified that she had never seen a case like that. She could not say, from merely looking at the photograph, whether the patient was an AIDS fatality. She could also not say whether the patient died of Kapozy’s Sarcoma, a form of skin cancer. In cross-examination however, she did agree that it was possible that the lesions indicated Kapozy’s Sarcoma but she had never seen anyone die of that affliction in her medical career.

[63] The photograph of the deceased patient on the autopsy table is very troubling. The patient may or may not have died of a condition related to AIDS. The photograph is clearly designed to inspire fear of the consequences of AIDS infection. It must be seen in conjunction with the rest of the flyer. Although it is a close call, simply identifying the dead patient as an AIDS fatality as a warning without other hallmarks of hate does not, in my respectful view, make it the kind of inflammatory photograph that promotes hatred.

[64] The second box states:

Many homosexuals falsely believe that sodomy is safe and with the advancement of new anti-retroviral therapy medications and that there is no need to worry about AIDS anymore. While anti-AIDS medications are prolonging life dramatically, the truth is an average of 15,000 people still succumb to AIDS annually in North

¹⁴ Exs. 23, 24.

¹⁵ Ex. 26.

¹⁶ Ex. 27.

America, and the anti-retroviral regimen in and of its self is a source of suffering that can shorten the lives of HIV+ people.

Common side effects of anti-AIDS medications are: Nausea, vomiting, rashes, heart disease, liver problems, lipodystrophy, diabetes.

[65] Dr. Loutfy testified that she was unable to find a source for the figure of 15,000 AIDS fatalities in North America. She testified in chief that in Canada it is very rare to die of AIDS. In cross-examination, however, she was presented with statistics from HIV.org, a U.S. government website.¹⁷ The website indicated that in 2019 there were 15,815 deaths among people diagnosed with HIV in the United States. Dr. Loutfy explained that people generally don't die of AIDS. They usually die of opportunistic infections associated with AIDS. Dr. Loutfy was also cross-examined on a U.S. Centres for Disease Control website. The website indicated that HIV-related deaths are likely under-reported.¹⁸ As well, Dr. Loutfy was cross-examined on a paper examining HIV-related deaths in Mexico. Mexico – which is part of North America, obviously – reported 4,965 AIDS-related deaths in 2013.¹⁹

[66] I agree with Mr. Rosen's point that the number of 15,000 is not false. Based on the papers put to Dr. Loutfy, and Dr. Loutfy's testimony, it might have been more accurately worded – something along the lines of 15,000 deaths related to HIV infection and opportunistic infections related to AIDS. Again, with great respect to those with the opposite view, that hardly makes it the kind of inflammatory lie that is capable of promoting hatred.

[67] I need not delve into the lengthy question of the common side effects of anti-AIDS medications in great detail. Dr. Loutfy testified that ART is today much less toxic and that side effects are considerably less significant than early anti-AIDS and anti-HIV drugs. A fact sheet from the U.S. Food and Drug Administration did list the common side effects of various anti-retroviral drugs; those drugs did have some of the side effects listed in the flyer.²⁰

[68] As for the assertion that “many homosexuals believe that sodomy is safe”, Dr. Loutfy agreed in cross-examination that the majority of HIV infections come from men having sex with men. She agreed that in 2016 HIV infections went up from 2015 by 11.6% and that 44.1% of new HIV infections were from men having sex with men.²¹ The chances of men who have unprotected anal sex with other men becoming infected are 1 in 1000 for the insertive partner and 1 in 20 for the receptive partner. For women the chances are 1 in 1000 for vaginal sex.²²

¹⁷ Ex. 10.

¹⁸ Ex. 13.

¹⁹ Ex. 14.

²⁰ Ex. 18.

²¹ Ex. 16.

²² Ex. 17.

[69] In my view, and in summary, the medical assertions in the flyer are hyperbole, and in some ways misleading. As a document prepared by a layman, however, the flyer’s assertions are mostly in the ballpark of plausibility – or at least not the type of inflammatory lies that are the hallmarks of hate.

[70] Moreover, it is not a crime to communicate something that is false, or even a deliberate lie. Section 319(2) obviously does not criminalize falsehoods; if it were otherwise the jails would be full of journalists, politicians, cheating spouses, and possibly even some lawyers. It is only falsehoods that promote hatred that are criminalized

[71] The flyer may be broken down into discrete parts for analysis as I have done, but it must be viewed in totality to determine whether it promotes hatred. The flyer is, no doubt, distasteful and obnoxious to many people. I understand that many may believe that the flyer contains “dog whistles.”²³ “Dog whistles” can and often do communicate hate speech; indeed, that is often the purpose of a dog whistle. Respectfully, however, I do not agree that the flyer contains “dog whistles” that are the hallmarks of hate speech; at best, it is debatable. The fact that there can be a debate about it means that it is in the “grey zone” between legitimate expression and hate. Ultimately, I am left with a reasonable doubt that the flyer promotes hatred.

(b) Did Mr. Whatcott wilfully promote hatred?

[72] It is obviously not necessary for me to analyze this element of the offence in detail. I will, however, do so briefly for completeness.

[73] Mr. Patterson, for the Crown, argued that a trier of fact can infer that Mr. Whatcott had the *mens rea* to promote hatred from the content of the flyer itself, from the surrounding circumstances, and from the lie that Mr. Whatcott told to the police. Mr. Whatcott used subterfuge to infiltrate the parade. He told a lie about the origin of a photograph in the flyer. His own words to the police and the comments on his blog indicate his state of mind. He is unable to avail himself of the defence of religious belief in s. 319(3)(b) of the *Criminal Code* because the contents of the flyer disclose his true, hateful beliefs.

[74] Respectfully, I have a reasonable doubt that Mr. Whatcott intended to promote hatred.

[75] The offence imports a stringent standard of *mens rea*. In considering the minimal impairment aspect of the *Oakes* test Dickson C.J.C. stated in *Keegstra* at para. 112:

... this stringent standard of *mens rea* is an invaluable means of limiting the incursion of s. 319(2) into the realm of acceptable (though perhaps offensive and

²³ A “dog whistle” is a communication that appears anodyne or uncontroversial on its face, but contains a message intended to be understood in a certain way by a particular group.

controversial) expression. It is clear that the word "wilfully" imports a difficult burden for the Crown to meet and, in so doing, serves to minimize the impairment of freedom of expression.

[76] Mr. Whatcott can only be found guilty of willful promotion of hatred if his conscious purpose was to promote hatred against gay men; and that he foresaw that the promotion of hatred against gay men was certain, or morally certain, to result from the distribution of the flyer. His goal must have been the intentional promotion of hatred against gay men: *R. v. Buzzanga and Durocher* (1979), 49 C.C.C. (2d) 369 (Ont.C.A.) at paras. 46, 54. Willful blindness will satisfy the stringent *mens rea* requirement; but recklessness as to the consequences of distributing the flyer will not: *R. v. Harding* (Ont.C.A.) at paras. 57, 66. When a communication promotes hatred the trier of fact can infer that the accused intended to promote hatred: *Keegstra*, at para. 117. The most powerful evidence of Mr. Whatcott's intent would be the flyer if I were not left with a reasonable doubt that the flyer promotes hatred.

[77] Beyond the flyer, the other evidence of Mr. Whatcott's intent does not persuade me beyond a reasonable doubt that he intended to promote hatred. Mr. Whatcott blogged about his foray into the Pride Parade. The Crown argues that his words on the blog are evidence of his state of mind. Mr. Whatcott posted a picture of himself and four of his associates arriving by subway at the Pride Parade. Under the photograph he wrote:

Here is my Elite Top Secret Special Forces Crack Christian Commando Anti-Sodomite Counter Intelligence Unit leaving the Sherbourne Subway Station disguised as the 'Gay Zombies Cannabis Consumers Association' to infiltrate and strike the dark forces of the Toronto Homosexual Shame parade and bring about a glorious victory for the Gospel of Jesus Christ by delivering 3000 'Zombie Safe Sex' packages to the parade goers.

[78] Mr. Whatcott then quoted from the Epistle of Paul to the Ephesians:

For our struggle is not against flesh and blood, but against the rulers, against the powers, against the world forces of this darkness, against the spiritual forces of wickedness in the heavenly places.

[79] Mr. Whatcott commented on several aspects of the parade. He mentioned a Black Lives Matter protest, including a demand for "affirmative action for Black sodomites". He posted several pictures of participants, himself, and associates. He described his actions as a "truth assault". He also posted a photograph of another associate handing out the copies of the flyer. He described the photograph:

Here is one of my commandos delivering Biblical, medical, and sociological truth on the harms of homosexuality. Sadly, in order to deliver this much needed truth he had to disguise himself as a 'gay' zombie because the parade was too intolerant

to accept him as an ‘out of the closet’ Christian man who speaks the truth about homosexuality.

[80] Mr. Whatcott quoted the Book of Joshua on his blog:

Now Joshua the son of Nun sent out two men from Acacia Grove to spy secretly, saying, “Go, view the land, especially Jericho.”

[81] Professor Farrow testified that the expression “Christian Commando” is not something one finds in scripture. The concept of going undercover to spy is not common but does, however, exist in the quote from Joshua 2:1.

[82] Mr. Whatcott also posted multiple photographs of naked or nearly-naked Pride-goers. Two of the photographs show Pride-goers alongside children. He noted children exposed to the “disordered sexuality on display at the shame parade.” He quoted from the Gospel of Luke:

He said to his disciples, “Temptations to sin are sure to come, but woe to the one through whom they come! It would be better for him if a millstone were hung around his neck and he were cast into the sea than that he should cause one of these little ones to sin.”

[83] Professor Farrow testified that this is a scriptural reference in Luke where Jesus tells his disciples that those who lead innocent children astray will face harsh consequences.

[84] In my respectful view, the blog is not evidence that Mr. Whatcott intended to promote hatred. There is no doubt that Mr. Whatcott used disparaging language in describing the parade. He called it the Toronto Homosexual Shame Parade. He referenced Black Lives Matter protesters as “Black sodomites”. He posted pictures of “naked sodomites”. He also noted that his group was

... embraced by the parade and the police. We had no opposition to the delivery of the much-needed 3000 Zombie Safe Sex Packages, which contained accurate truth on the harms of the homosexual lifestyle and the good news that Jesus died for the redemption of homosexuals!

[85] The “Good News” of course, is a reference to the message of Jesus.

[86] Mr. Whatcott used the blog to criticize Pride and all it stands for. For example, he posted a photograph of a group of marchers, the “Sisters of Perpetual Indulgence”. The Sisters of Perpetual Indulgence is, apparently, a satirical organization. “Indulgences” appear to refer to the old Roman Catholic practice of trading absolution of sin for money. One of the marchers had a picture of Christ crucified on his crotch. Mr. Whatcott criticized the organization for showing hatred and disrespect towards Christians. Again, with respect to those with a contrary view, Mr. Whatcott was within his rights to do so.

[87] I find it puzzling that if Mr. Whatcott intended to promote hatred, he would have distributed the flyers to the very group he intended to promote hatred against. I cannot imagine an audience less receptive to his communications than the people attending Pride. I understand the Crown's point that the distribution of the flyer must be seen in conjunction with the blog entry – perhaps on the theory that the readers of the blog were the real intended target audience – but in my view that is still not enough to get over the hurdle of the stringent *mens rea* requirement. After all, when he blogged about the parade he did not post a copy of the flyer – acknowledging, of course, that an attempt to promote hatred does not have to be well thought-out or competently executed.

[88] I turn now to the police interview.²⁴ Mr. Patterson argues that Mr. Whatcott lied to the police. Mr. Whatcott told the police that he obtained the photograph of the patient with lesions from a medical website. In fact, as noted, the photograph came from the website called cutedeadguys.net. Respectfully, I cannot agree that this lie – if it was a lie – is indicative of an intention to promote hatred. The transcript reads:

BISLA (Toronto Police officer): I don't know where those images were obtained from –

WHATCOTT: Um medical websites –

BISLA: Okay is there a particular medical website that you refer to –

WHATCOTT: I believe it was the university, yeah –

BISLA: Do you remember –

WHATCOTT: No I've had that picture for years and it – its been used in many contexts – I was also a public health nurse ah a home care nurse to be specific so

[89] As Mr. Rosen pointed out, it appears that Mr. Whatcott may have been referring to the photograph of anal warts, rather than the patient with lesions. I have my doubts that this was a lie; and if it was a lie it was hardly a major lie. I do not accept that it is evidence of an intention to willfully promote hatred.

[90] Finally, it is not enough that Mr. Whatcott intended to create a controversy, a furor, or an uproar: *R. v. Buzzanga and Durocher* at para. 54. There is, of course, evidence that Mr. Whatcott's intention was exactly that: to create a controversy, furor, or uproar. He and his associates wore disguises. They dressed in outlandish costumes. Mr. Whatcott wore a rainbow-coloured ballet tutu. They passed out pamphlets they surely knew would cause a stir. In other words, they engaged in a stunt. Arguably it was a juvenile and offensive stunt. I suspect that for Mr. Whatcott and his associates, that was the point.

²⁴ Ex. 6.

[91] When Mr. Whatcott filled out the online application he was required to acknowledge that his organization agreed to abide by the parade terms and conditions. The Mission, Vision, And Values were appended to the parade terms and conditions; the following is an excerpt:

Our Mission

Pride Toronto brings people together to celebrate the history, courage, and diversity of our community.

Our vision

As a leader in the Pride movement, we aspire to unite and empower people with diverse sexual orientations, gender identities, and gender expressions.

[92] Mr. Whatcott and his associates obviously did not support the Mission, Vision, And Values of Pride Toronto. The information on the form is clearly a series of lies designed to facilitate Mr. Whatcott's participation in the parade. The lies may or may not have been consistent with an attempt to promote hatred; they were certainly consistent with an intent to create a controversy, uproar, or furor.

[93] I am, therefore, left with a reasonable doubt that Mr. Whatcott intended to promote hatred.

(c) Do any of the statutory defences apply?

[94] There is no need for me to deal with this question.

CONCLUSION:

[95] Although I find Mr. Whatcott not guilty, he should not take this result as a vindication or as an endorsement of his views. I have found him not guilty because the flyer is in the grey zone between legitimate expression and hate speech. Our values as a free society and our centuries-old legal tradition requires that our system not criminalize those who hold views that are merely obnoxious and unpopular. We take this approach not because we like or approve of Mr. Whatcott's views but because protection of speech we dislike, or even despise, protects everyone in a free and democratic society.

[96] I thank counsel for their professionalism. The high quality of advocacy by all four counsel made my job in this challenging case considerably easier.



R.F. Goldstein J.

CITATION: R. v. Whatcott, 2021 ONSC 8077
COURT FILE NO.: CR-19-70000064-0000
DATE: 20211210

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN

– and –

WILLIAM WHATCOTT

REASONS FOR JUDGMENT

R.F. Goldstein J.