

Tribunal defeats in controversial cases show need for reform, critics say

Two recent controversial human rights cases in Canada have come to an end, and observers say the outcomes show the need to rethink the legislation that enabled them.

On Oct. 22, the B.C. Human Rights Tribunal found a transgender activist who claimed to be the victim of discrimination was actually victimizing others.

Within days, an Alberta human rights case involving parents screening potential babysitters was withdrawn at the urging of the Alberta Human Rights Commission.

The Justice Centre for Constitutional Freedoms, which represented the respondents in both cases, said it's time to review how human rights complaints are handled.

"Human rights commissions and tribunals are susceptible to abuse and need reform," said Justice Centre lawyer Marty Moore.



Yaniv

The B.C. case involved Jessica Yaniv, born a male but identifying as female, who approached several waxing salons asking for a "brazilian," a wax of a woman's groin area.

The owners of the salons, most of them women running home-based businesses and speaking English as a second language, refused to provide the service due to discomfort with handling male genitalia, a lack of training, safety concerns, or religious objections.

The tribunal's Oct. 22 ruling found "human rights legislation does not require a service provider to wax a type of genitals they are not trained for and have not consented to wax."

The tribunal also said Yaniv “engaged in improper conduct” and filed human rights complaints against 15 salons “not to prevent or remedy alleged discrimination, but to target small businesses for personal or financial gain.”

Yaniv’s testimony was found “disingenuous and self-serving” as well as contradictory. The tribunal ruled Yaniv must pay \$2,000 to each of the three respondents named in the case.

The Justice Centre represented the three self-employed aestheticians in the case and was pleased with the ruling.



Jay Cameron

“Self-identification does not erase physiological reality,” said Jay Cameron, JCCF litigation manager and counsel for the self-employed aestheticians. “Our clients do not offer the service requested. No woman should be compelled to touch male genitals against her will, irrespective of how the owner of the genitals identifies.”

Two salon owners in the case were practising Sikhs and said handling male genitalia was against their religious beliefs; all three said they did not have the tools, training, or comfort level to do so.

Meanwhile, the Alberta Human Rights Commission was dealing with a pair of complaints filed by James Cyrynowski, a would-be babysitter who claimed two different Edmonton-area parents violated his rights by asking about his age, gender, and whether he had children of his own.

The HRC urged Cyrynowski to drop both complaints, and while one was withdrawn, the other remains active.

The Justice Centre’s Moore said the commission and the Alberta government “need to take action to prevent parents from being dragged through these legal

processes by bogus complaints.”

Cameron said reforms are needed if the tribunals are to continue.

Current Canadian human rights legislation “disproportionately favours complainants to the detriment of people who are accused of discrimination,” Cameron said. “Complaints of discrimination and bigotry can ruin personal reputations long in advance of being proven.”

He suggested several changes to the legislation, including:

1. Adding defences for expressing the truth, comments based in religious beliefs, and comments in the public interest, similar to those in the Criminal Code for charges of hate speech;
2. Legislated penalties for frivolous complaints;
3. More transparency, including more prompt publication of pending cases;
4. A requirement for tribunals to communicate offers of pro bono representation to all accused persons.

Meanwhile, the Justice Centre is also intervening in another gender-related case in B.C., this one before the B.C. Court of Appeal. The case involves a father who did not consent to his 14-year-old child, born female, taking hormones and puberty blockers to transition to a male. The child’s gender transition is supported by the mother and medical staff.

The JCCF has argued “there should be no irreversible medical treatment until the parents agree, or the child reaches an age with the requisite maturity of a ‘mature minor.’”

In February, B.C. Supreme Court Justice Gregory Bowden ordered the father to refer to his child only with a new male name and male pronouns. In September, the B.C. Court of Appeal heard the case and in a ruling from the bench said the child could continue to receive testosterone therapy despite her father’s objections. The Chief Justice said the court’s reasons for its decision would follow later.