

## HUMAN RIGHTS CONFERENCE—2016

PAPER 7.2

# The Protection of Political Belief under BC's Human Rights Code

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## THE PROTECTION OF POLITICAL BELIEF UNDER BC'S HUMAN RIGHTS CODE

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In BC, people are protected from discrimination on the basis of political belief in the areas of employment and membership in unions and associations. The scope of the beliefs protected under this ground is continuously, albeit rarely,<sup>1</sup> tested in cases before the BC Human Rights Tribunal (“Tribunal”). While the Tribunal has yet to articulate a unifying definition, themes emerge through the cases which help to identify some rough boundaries.

In this paper, I begin by identifying those jurisdictions where political belief or activity is a protected characteristic under human rights legislation. I then review the evolution of the ground in BC through the Tribunal’s cases. In particular, I canvass its application in relation to partisan politics, beliefs about social cooperation and political beliefs in the trade union and labour relations contexts. Finally, I review two recent Tribunal cases in light of *Charter* jurisprudence on the importance of political speech to the right to free expression, and conclude that the ground’s expansion continues apace.

### I. Areas of Protection and Jurisdictional Comparison

Not all Canadian jurisdictions prohibit discrimination on the basis of political belief. In particular, it is not a protected characteristic in the federal jurisdiction or in Ontario, Alberta, Saskatchewan<sup>2</sup> or Nunavut. In Ontario, the Court of Appeal declined to read the ground of “political opinion” into the human rights legislation under s. 15 of the *Charter of Rights and Freedoms*.<sup>3</sup> The Court

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1 In 2015-2016, only 14 complaints identified “political belief” as a protected characteristic engaged by the complaint. BC Human Rights Tribunal, Annual Report 2015-2016.

2 While political belief is not a protected characteristic, the *Saskatchewan Human Rights Code*, SS 1979, c. S-24.1 does provide for a right to freedom of conscience (s. 4).

3 *Jazairi v. Ontario (Human Rights Commission)* (1997), 146 DLR (4<sup>th</sup>) 297. Note that this case pre-dated the Supreme Court of Canada decision in *Vriend v. Alberta*, [1998] 1 SCR 493, which established the analysis for reading grounds into human rights legislation.

reasoned that “individuals who possess or express a political opinion are [not] a discrete and insular minority” or a “historically disadvantaged group in need of protection”.<sup>4</sup>

Other jurisdictions protect people on the basis of “political opinion”<sup>5</sup>, “political belief”<sup>6</sup>, “political activity”<sup>7</sup>, “political affiliation”<sup>8</sup>, “political convictions”<sup>9</sup>, and “political association”<sup>10</sup>.

Only PEI’s legislation defines the scope of “political belief”. The definition is quite restrictive:

“political belief” means belief in the tenets of a political party that is at the relevant time registered under section 24 of the *Election Act* R.S.P.E.I. 1988, Cap. E-1 as evidenced by

- (i) membership of or contribution to that party, or
- (ii) open and active participation in the affairs of that party.<sup>11</sup>

Manitoba’s Human Rights Commission has issued a policy with respect to the protected characteristics of “political belief, political association or political activity” under the Manitoba Code.<sup>12</sup> The policy restricts the scope of protection to “belief that has a focused political object” and distinguishes it from “any issue that affects the public well-being.” The ground does not “include beliefs about . . . discrete social, environmental, business, human resources, medical or other issues that bear no connection to the political organization, function or nature of society”. “Political association” and “political activity” are similarly defined to require a link to political

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4 *Jazairi, supra* note 3, para. 52.

5 Newfoundland (*Human Rights Act*, SNL 2010, c. H-13.1 [“Newfoundland Act”], s. 9 (“prohibited grounds of discrimination”) and preamble).

6 New Brunswick (*Human Rights Act*, SNB 2011, c. 171 [“New Brunswick Act”], preamble, ss. 4 (employment, employment agencies, trade unions and employers’ organizations, employment advertising), 5 (housing), 6 (accommodation and services), 7 (discriminatory notices or signs), 8 (professional, business or trade associations)); Nova Scotia (*Human Rights Act*, RSNS 1989, c. 214 [“Nova Scotia Act”], s. 5 (services, accommodation, purchase/sale of property, employment, volunteer public service, publication, membership in associations)); Prince Edward Island (*Human Rights Act*, c. H-12 [“PEI Act”], preamble and s. 1(d) (definition of “discrimination”)); Yukon (*Human Rights Act*, RSY 2002, c. 116 [“Yukon Act”], s. 7 (prohibited grounds)); and Northwest Territories (*Human Rights Act*, SNWT 2002, c. 18 [“NWT Act”] preamble, s. 5 (prohibited grounds of discrimination)).

7 New Brunswick Act, ss. 4 (employment, employment agencies, trade unions and employers’ organizations, employment advertising) 5 (housing), 6 (accommodation and services), 7 (discriminatory notices or signs), 8 (professional, business or trade associations); Nova Scotia Act, s. 5 (services, accommodation, purchase/sale of property, employment, volunteer public service, publication, membership in associations); and Yukon Act, s. 7 (prohibited grounds).

8 Nova Scotia Act, s. 5 (services, accommodation, purchase/sale of property, employment, volunteer public service, publication, membership in associations).

9 Quebec (*Charter of Human Rights and Freedoms*, c. C-12, s. 10 [“Quebec Charter”], s. 10 (prohibited grounds of discrimination)).

10 Yukon Act, s. 7 (prohibited grounds); and NWT Act, preamble and s. 5 (prohibited grounds).

11 PEI Act, s. 1(m). Interestingly, this legislation has a provision specific to political belief that provides that the “onus of establishing an allegation of discrimination or action on a discriminatory basis in relation to political belief is upon the person making the allegation” (s. 1(3)).

12 Manitoba (*Human Rights Code*, CCSM c. H175 [“Manitoba Code”], s. 9(2)(k) (protected characteristics)).

purposes. Interestingly, political association is defined to include “generalized or philosophical views that one holds about the role that trade unions should or should not play in our society”.<sup>13</sup>

In BC, political belief is only a protected ground in the areas of employment (s. 13) and in relation to unions and associations (s. 14). It is notably absent as a protected characteristic in the area of services customarily available to the public (s. 8) and housing (ss. 9 and 10).

The BC Human Rights Tribunal has taken a broader view of political belief than other jurisdictions. The scope of the ground in BC has moved beyond the narrow notion of partisan politics reflected in PEI’s legislation and currently seems untethered to definitions that would restrict it to the political organization, function or nature of society. Indeed, the Tribunal has also tied the protection of political belief to the fundamental role that political speech plays in our democracy on all matters of public discourse.<sup>14</sup> The next sections of this paper trace this evolution.

## II. Political Belief in BC

The ground of political belief is to be liberally interpreted but is not unlimited.<sup>15</sup> The Tribunal’s early attempts to define “political” drew from the dictionary definition:

political a. 1. of or affecting the State or its government; of public affairs; of politics. 2. (Of person) engaged in civil administration. 3. having an organized form of society or government. 4. belonging to, or taking, a side in politics; relating to a person's or organization's status or influence...<sup>16</sup>

This definition is grounded in the form and function of government, and a person’s participation in partisan politics. Its scope reflects those areas where the Tribunal has comfortably acknowledged political belief: participation in partisan politics and beliefs that are “core to a person’s concept of social cooperation”.<sup>17</sup>

### A. Association with Partisan Politics

The easiest application of political belief is to circumstances where a complainant is associated with partisan politics. For example, in *Trevana v. Citizens’ Assembly on Electoral Reform*, Ms. Trevana was hired by the Citizens Assembly to be its Communications Director. The Citizens Assembly was designed to be a non-partisan body tasked with assessing different electoral systems and making recommendations for the future. Its members and staff were expected to be unbiased and non-partisan. When the Chair of the Assembly discovered that Ms. Trevana had previously been involved at an executive level of the Green Party, he rescinded the offer of employment. Ms.

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13 Manitoba Human Rights Commission Board of Commissioners’ Policy, “Definition of Political Belief, Political Association or Political Activity” (October 14, 2015), online: [www.manitobahumanrights.ca](http://www.manitobahumanrights.ca)

14 *Bratzer v. Victoria Police Department*, 2016 BCHRT 50; *Kjajic v. Vancouver (City)*, 2014 BCHRT 258.

15 *Prokopetz and Talkkari v. Burnaby Firefighters’ Union and City of Burnaby*, 2006 BCHRT 462, para. 31.

16 *Jamieson v. Victoria Native Friendship Centre*, [1994] B.C.C.H.R.D. No. 42.

17 *Croxall v. West Fraser Timber*, 2009 BCHRT 436, para. 22.

Trevana's association with a political party was plainly a factor in that decision and so was *prima facie* discriminatory.<sup>18</sup>

In *Trevana*, the discrimination was justified as a *bona fide* occupational requirement. The Tribunal Member was satisfied that the "neutrality of the Assembly's staff was so essential to its functioning that ... it would be impossible to have accommodated Ms. Trevana".

Another example is *Siemens v. Vanderhoof (District)*, a complaint founded on a perceived affiliation with a political alliance. In that case, Ms. Siemens alleged that she was terminated from her job with the District because she had been seen in the company of one of the mayor's political rivals. The Tribunal refused to dismiss the complaint on a preliminary basis. In doing so, it acknowledged that terminating Ms. Siemens' employment because she was perceived to be politically allied and aligned against certain political operators in the District could amount to discrimination on the basis of political belief.<sup>19</sup>

## B. Beliefs Core to Concepts of Social Cooperation

The Tribunal's first expansion of the ground beyond partisan politics happened in *Jamieson v. Victoria Native Friendship Centre*, and it remains a leading case on the scope of the ground.<sup>20</sup> Mr. Jamieson was a member of the Mohawk First Nation and part of the Mohawk Warrior Society. He alleged that the Victoria Native Friendship Centre refused to re-hire him once it learned of his beliefs. Those beliefs, which the Tribunal accepted as political, are worth including in full:

I belong to the Mohawk Nation and the Mohawk Warrior Society. I am a member of the Mohawk Longhouse and ... therefore ... I guess [I] could be categorized as a traditional native person. Our heritage as sovereign nations has been in existence ... thousands of years on this land and our heritage is a cultural one; it's a political one; it's a geographical one; it's a very holistic one. (Transcript, p. 139)

[W]e believe that everything is interrelated and so such things as culture, economics, social well-being of the community are all inevitably related to the political nature, political workings of our communities and the relation our communities have with other communities. Sovereign nations, some are political entities whether or not you believe that we were still a sovereign Union Nations have not conquered, and we also have political aspects within the Mohawk nation and within the structure now known as the Six Nations confederacy. There are various societies. There are medicine societies. There are various political functions that we all have roles of each community. We have clan mothers that decide who are the leaders. That's a political decision. We have currently still the Six Nations Confederacy Council still maintaining meetings and decisions based on things that come to the council, and those are political decisions. We also have political relations with other entities, perhaps the Canadian Government, Municipality of

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18 *Trevana v. Citizens' Assembly on Electoral Reform*, 2004 BCHRT 24. While this was a preliminary application to dismiss the complaint, the Tribunal Member was of the view she had sufficient information before her to draw this conclusion.

19 *Siemens v. Vanderhoof (District)*, 2015 BCHRT 172. See also *Reekie v. International Longshore and Warehouse Union Local 400*, 2008 BCHRT 336, where the Tribunal accepted that the complainant's candidacy for mayor in a civic election protected him under the ground of political belief (at para. 69).

20 At this time, it was the BC Council of Human Rights. I refer to it as the Tribunal here for ease of reference.

Oka, various provinces, various other native nations, and within each nation there are various clans and clans can have political relations with each other.<sup>21</sup>

Applying a broad and purposive interpretation to “political belief”, the Tribunal expressed satisfaction that many of Mr. Jamieson’s articulated beliefs were political in nature. This is because they “concern the way First Nations communities are organized and governed and how these communities relate to each other and to other levels of government”. It held that “political beliefs are not limited to beliefs about or involvement in recognized or registered political parties . . . beliefs about the organization and governance of First Nations communities are political”.<sup>22</sup>

This case led the Tribunal to identify systems of “social cooperation” as political.<sup>23</sup>

In *Wali v. Jace Holdings Ltd. (c.o.b. Thrifty Foods)*, the Tribunal once again applied the ground of political belief to somewhat novel circumstances. Mr. Wali was a pharmacist who had been outspoken about his opposition to a bylaw proposed by the College of Pharmacists to expand the role of pharmacy technicians. His position was in opposition to that of his employer, Thrifty Foods, and he was terminated.

Three factors appear to have satisfied the Tribunal that Mr. Wali’s belief was political. First, the College operated within a legislative framework and was given an express regulatory mandate in respect of pharmacy technicians. This anchored the belief as related to a law. Second, the College’s initiative involved the public welfare and was the subject of debate within the community. Finally, the Tribunal described Mr. Wali’s belief as related to social cooperation because it related to “the social contract between the government, the College and the public regarding the safe distribution of pharmaceutical medication”.<sup>24</sup>

The Tribunal has distinguished between political beliefs and beliefs about *how* to effect social change, finding the latter is not political.<sup>25</sup> In *Potter*, the College criticized the complainant for engaging with MLAs and publically discussing the refusal of a doctor to provide artificial insemination to lesbians. The College’s view was that the matter was better addressed internally. The Tribunal held that the complainant’s belief about how to effect change was not a political belief.

### C. Political Beliefs in Trade Unions

Trade unions represent a form of social cooperation that the Tribunal has described as political. In particular, the Tribunal has held that “[v]iews and beliefs about trade unions, and the appropriate scope of their power, authority and actions, are inherently ‘political’ in the broad sense of the word.”<sup>26</sup>

Unions are prohibited by s. 14 of the *Code* from discriminating against their members on the basis of political belief. The Tribunal has applied a contextual analysis to this ground in the union context, to account for the role of trade unions as the democratic representatives of collective interests, and their ability to take effective collective action. That balance has generated a distinction between beliefs related to a union activity (not protected) and other political beliefs (protected).

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21 *Jamieson*, *supra* note 16.

22 *Jamieson*, *supra* note 16, paras. 15-16.

23 *Croxall*, *supra* note 17 at para. 22.

24 *Wali v. Jace Holdings Ltd. (c.o.b. Thrifty Foods)*, 2012 BCHRT 389 at paras. 117-118.

25 *Potter v. College of Physicians and Surgeons of British Columbia*, [1998] B.C.H.R.T.D. No. 3

26 *Manning v. Sihota*, 2004 BCHRT 281; see also *Croxall*, *supra* note 17, para. 22.

Union members cannot look to political belief for protection in circumstances where they act to undermine the political stances, or collective actions, of their unions.

The genesis of this analysis is *Manning v. Sihota*. Ms. Manning was a member of the Sooke Teachers' Association and the BC Teachers' Federation ("BCTF"). She disagreed with what she perceived as the union's "radical left NDP politics", and says she was shunned in the workplace as a result. She chose not to participate in a number of the union's job actions and on one occasion crossed a picket line. This prompted the Association to file a complaint with the BCTF alleging that Ms. Manning had breached the BCTF's Code of Ethics. Ms. Manning filed a human rights complaint alleging that the union discriminated against her on the basis of her political belief.

The Tribunal situated the ground of political belief in the context of the role and nature of trade unions, ruling that to confer protection on Ms. Manning in these circumstances would be to undermine the effectiveness of trade unions more broadly:

Membership in a trade union involves, at its core, a number of trade-offs. In return for gaining the financial and other advantages of collective bargaining, members agree to be bound by the collective decision-making of the union. Instead of individual workers bargaining directly with their employer about the terms and conditions of their employment, their union is given the right, and the employer the obligation, to bargain with one another. The member also gives up the right, with some exceptions, notably a complaint under the *Human Rights Code*, to take individual action against their employer about workplace issues, and instead gains the right to use the grievance procedure established under the collective agreement. The member is, in turn, given the right to participate in the democratic decision-making of the union about the goals and objectives and workplace strategies which it will adopt. Members of a trade union are typically expected to honour the collective actions of their trade union, and unions are entitled, in accordance with their internal constitutions, to take actions to require them to do so. Modern labour legislation, and the labour relations boards set up to administer it, have been created to establish, maintain and oversee this complex system of interactive rights and responsibilities.

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If Ms. Manning's complaint to the Tribunal were accepted as valid, it would mean that anytime a union member disagreed with their union's actions, and a dispute arose between the member and the union as a result, the member would be able to make a complaint to the Tribunal that the union had discriminated against them on the basis of their political beliefs. Such a result would be inconsistent with the very nature of trade unions. It would mean that trade unions would have no power to discipline their members where their members disagree with and take steps contrary to the union's political stance as expressed in its collective action. I do not accept that was the intention of the Legislature in enacting s. 14 of the Code. Such an interpretation would represent a severe encroachment on the independence of trade unions and their ability to take collective action.<sup>27</sup>

The Tribunal affirmed the authority of unions to enforce their internal rules, subject to oversight by the Labour Relations Board. In doing so, it was careful to distinguish circumstances where a trade union would discriminate against a member "purely as a result of their political beliefs or the expression of those beliefs, as opposed to their decision not to participate in collective action".<sup>28</sup>

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<sup>27</sup> *Manning, supra* note 26, paras. 15 and 17

<sup>28</sup> *Manning, supra* note 26, para. 19.

Along similar lines, in *Nesdoly v. Okanagan University College Faculty Assn.*, the Tribunal held that the union's requirement that members walk on the picket line to collect strike pay was not discriminatory.<sup>29</sup> In that case, Mr. Nesdoly held political views that conflicted with his union's and in particular did not agree with the job action taken by the union. Nevertheless, he was compelled to walk in a picket line in order to receive strike pay. The Tribunal held that the union's actions did not restrict Mr. Nesdoly's ability to hold and express his political views, which he freely did. It held that Mr. Nesdoly's complaint was, at its core, about labour relations matters and did not amount to discrimination. The complaint was dismissed on a preliminary basis.

These cases are distinguished from *Ratsoy v. BCTF*, where Mr. Ratsoy alleged that the BCTF discriminated against him by censuring him and accepting a Code of Ethics complaint against him for comments made in his capacity as a member of the Council of the BC College of Teachers.<sup>30</sup> In that role, he had made public statements in favour of changes made by the provincial government to the College, which were opposed by the BCTF. This prompted the BCTF to ask Mr. Ratsoy to resign his position on the Council and to take steps against him. Mr. Ratsoy filed a human rights complaint and the BCTF applied to have it dismissed on a preliminary basis.

While the Tribunal did not determine whether Mr. Ratsoy's comments were "political", it did find that the circumstances could amount to discrimination. It distinguished the case from *Manning* on the basis that Mr. Ratsoy's comments were unrelated to "internal union activity or job action".<sup>31</sup> The Tribunal refused to dismiss the complaint. Unfortunately there was no final decision in this case.

#### **D. Political Belief in Labour Relations**

Beliefs about human resources and labour relations policies are not political. The Tribunal has held that to confer human rights protections on individuals who disagree with their employer's decisions would be an overly expansive and untenable interpretation of the ground.<sup>32</sup>

For example, in *Williams v. North Vancouver (City)*, the complainant's opinion that the City should rely on internal staff rather than contracting out services related to the City's business decisions and was not political.<sup>33</sup> And in *McKenna v. Grobell v. Grayhurst and Young*, the complainants' and employer's disagreements about conditions in the workplace did not engage political beliefs. In that case, the complainants had written to their union, WorkSafeBC and the employer's licensing body to complain about safety in the workplace. The employer responded by letter, in which he described the complainants as part of a minority disgruntled faction of the workforce. The competing assertions of fact and opinion about working conditions were not political.<sup>34</sup>

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29 *Nesdoly v. Okanagan University College Faculty Assn.*, 2005 BCHRT 422.

30 *Ratsoy v. BCTF*, 2005 BCHRT 53.

31 *Ratsoy*, *supra* note 30 at para. 41.

32 *Williams v. North Vancouver (City)*, 2004 BCHRT 441, para. 56; *Prokopetz*, *supra* note 15, paras. 31-32.

33 *Williams*, *supra* note 32, para. 56. See also *Quarrington v. Salt Spring Island Community Services Society*, 2003 BCHRT 59.

34 *McKenna v. Grobell v. Grayhurst and Young*, 2009 BCHRT 30.



Along similar lines, an employee's beliefs about their rights in the workplace are not political. These include the belief that everyone has the right to be free from discrimination<sup>35</sup> and the belief that a union has a duty to fairly represent all members.<sup>36</sup>

Finally, beliefs about how to run a business are not political. In *Brar*, the complainants' decision to provide low-cost veterinary services was categorized as a business decision and not political.<sup>37</sup>

## E. Engagement with Government

At its most expansive, political belief may capture any beliefs and activities that engage or have the potential to engage government on matters of public interest. It is here that the Tribunal's interpretation of the ground begins to dovetail with the right to free expression guaranteed by s. 2(b) of the *Charter of Rights and Freedoms*.

The Supreme Court of Canada has placed "political speech" at the heart of the right to free expression. It is a touchstone of democracy, and its importance has been variously described by the Court in lofty terms:

"Political expression contributes to our democracy by encouraging the exchange of opposing views."<sup>38</sup>

"The right of the people to discuss and debate ideas forms the very foundation of democracy."<sup>39</sup>

"... full political debate ensures that ours is an open society with the benefit of a broad range of ideas and opinions ... This, in turn, ensures not only that policy makers are aware of a broad range of options, but also that the determination of social policy is sensitive to the needs and interests of a broad range of citizens"<sup>40</sup>

Notable in the Supreme Court of Canada's discussion of political speech is that it is not limited by a connection to the form a government takes, or modes of social cooperation. It extends into the realm of public discourse on any number of issues relating to social policy. Where that discourse is ultimately intended to influence government action on an issue, it gains political status. In *Harper*, a case concerning limits on third party election advertising, the majority noted that political expression could be "partisan or issue-based" and, either way, "enriches the political discourse".<sup>41</sup>

The BC Court of Appeal's decision in *BCTF v. BCPSEA* exemplifies an analysis focused on whether activities are aimed at government. This was a challenge brought by the BCTF and HEU to restrictions imposed by the *Labour Relations Code* on their ability to engage in 'political protest strikes' against the government in reaction to legislation that affected schools and the health care sector respectively. In its reasons, the Court of Appeal accepted that the unions' strikes were

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35 *Smith v. Salt Spring Island Parks and Recreation Commission*, 2009 BCHRT 89; *Prokopetz*, *supra* note 15.

36 *Prokopetz*, *supra* note 15.

37 *Brar and others v. BC Veterinary Medical Association and Osborne (No. 22)*, 2015 BCHRT 151, para. 819.

38 *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, para. 117.

39 *Harper v. Canada (A.G.)*, 2004 SCC 33, para. 12, per McLachlin C.J. and Major J., dissenting.

40 *Figueroa v. Canada (A.G.)*, 2003 SCC 37 at para. 28.

41 *Harper*, *supra* note 39, para. 84.

political in nature because they were “directed at government action” and aimed to exert pressure on the government.<sup>42</sup> The Court noted the unique nature of public sector unions and the fact that the “political dimension of such strikes cannot be ignored”: “[u]nlike the private sector, the *primary target of the strike weapon is the government and public opinion; the strike is in that sense political.*”<sup>43</sup>

Somewhat further afield is *Kempling v. BC College of Teachers*. There, a teacher challenged his discipline by the College based on an article and letters he wrote expressing hateful views on homosexuality. The BC Court of Appeal ultimately found that the restriction on the teacher’s freedom of expression rights was justified. In doing so, however, it recognized that there was a “political element” to the expression:

There is undoubtedly a political element to Mr. Kempling’s expression, and portions of his writings form a reasoned discourse, espousing his views as to detrimental aspects of homosexual relationships. Though his views may be unpopular, he was, in his more restrained writings, engaged in a rational debate of political and social issues; such writing is near the core of the s. 2(b) expression....<sup>44</sup>

*Kempling* was cited by the SCC in *Whatcott*, in which Mr. Whatcott challenged the prohibition on hate speech in Saskatchewan’s human rights legislation. The Court accepted that speech on controversial topics may be characterised as “moral” or “political”.<sup>45</sup> It concluded that the legislation provided “an appropriate means by which to protect almost the entirety of political discourse as a vital part of freedom of expression”.<sup>46</sup>

In the context of *Charter*-protected free speech, then, any speech oriented toward influencing public opinion on matters which may be the subject of government action is political, regardless of its subject matter. Discourse around issues like climate change, homelessness or education reform is political.

For the most part, the scope of “political belief” under the *Human Rights Code* has developed completely independently from the courts’ characterization of political speech in *Charter* law. This may be changing, marked in particular by the Tribunal’s interpretation of the ground in *Bratzer*, which I will discuss below. Marrying the protected characteristic under the *Code* with the *Charter* concept of political belief would mean that matters that are the subject of public debate in respect of how our laws and communities should be structured (ie. those aspects of public life which governments control) may be understood as political.

Two recent examples from the Tribunal illustrate, in my view, the evolution in this direction.

In *Kljajic v. Vancouver (City)*, the Tribunal had no difficulty concluding that engagement with the government on a given topic will be captured by political belief.<sup>47</sup> Mr. Klajic was employed by the City as a truck driver in the sanitation department. He was also the president of his local Community Association. He had been outspoken against a new partnership agreement adopted by the Vancouver Park Board to govern relationships with community centre associations. He put in a

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42 *BCTF v. BCPSEA*, 2009 BCCA 39, paras. 2 and 37.

43 *BCTF*, *supra* note 42, para. 37 (emphasis added).

44 *Kempling v. BC College of Teachers*, 2005 BCCA 327, para. 76.

45 *Whatcott*, *supra* note 38, para. 119.

46 *Whatcott*, *supra* note 38, para. 120.

47 *Kljajic*, *supra* note 14.

request to speak at a Park Board Committee meeting in his capacity as president of the Community Association. The City intervened to prohibit him from making submissions on the basis that it would violate the City's Code of Conduct for employees.

The Tribunal accepted, without analysis, that Mr. Kljajic's intended participation in the Park Board meeting was a political activity. As such, it engaged the ground of political belief. The Tribunal emphasized the importance of political freedom:

... I note that the freedom to hold and to express one's political opinions is one of the touchstones of our democracy. Any interference with that right must be strictly circumscribed with the onus being squarely on those who would restrict it.<sup>48</sup>

*Kljajic* was a preliminary decision. The Tribunal has not yet issued a decision on the merits.

While this decision may seem unremarkable on its face, in my view it does represent somewhat of a novel interpretation of the ground. Without reference to the 'belief' underlying Mr. Klajic's intended submissions to the Park Board, the Tribunal was satisfied that interacting with a governmental body on an issue amounted to a political activity protected by "political belief".

The next, and more significant, development of the ground came in *Bratzer v. Victoria Police Department*.

Mr. Bratzer was a constable with the Victoria Police Department. He was also an active member of Law Enforcement Against Prohibition ("LEAP"), an organization that advocates for the legalization and regulation of all illicit drugs. In his personal time, he made frequent public appearances and statements advocating for fundamental reform to Canada's drug laws. In his capacity as a police officer, the evidence was unanimous that he was an excellent officer and that his views on drug laws posed no impediment to his ability to enforce those laws on the street.

The Tribunal ultimately concluded that the Police Department had discriminated against Mr. Bratzer on the basis of his political beliefs when it attempted to, and on two occasions did, restrict Mr. Bratzer's ability to speak publically on the issue of drug policy under threat of discipline.

The Police Department conceded that Mr. Bratzer's beliefs about drug laws were political. The Tribunal said that this was a proper concession:

... I find that, regardless of what the limits of "political belief" may be, advocacy for changes to the drug laws or engagement in the level or cost of policing in a municipality may both be classified as "political beliefs". In both cases, they involve *public discourse on matters of public issue which involve or would require action at a governmental level, be it the federal government, as with drug laws, or a municipal council with policing issues...*<sup>49</sup>

The Police Department argued, however, that there was a distinction between Mr. Bratzer's right to *believe* in a political issue and his right to *express* himself on that issue. The Tribunal rejected such a distinction, holding that "where restrictions on the mode of expressing those political beliefs may reasonably interfere with holding or expressing a political belief, then discrimination on the basis of political belief may be found to have occurred".<sup>50</sup> It concluded that "the protection of 'political

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48 *Kljajic*, *supra* note 14, para. 63.

49 *Bratzer*, *supra* note 14, para. 271 (emphasis added).

50 *Bratzer*, *supra* note 14, para. 274.

belief' must involve an expansion protection of both the beliefs and their manner of expressions, with minimal impairment of free expression".<sup>51</sup>

Ultimately, the Tribunal found that the Police Department had discriminated against Mr. Bratzer and awarded him \$20,000 for injury to his dignity, feelings and self-respect.

This case is significant, in my view, for two reasons. First, it follows a *Charter* concept of "political" subject matter being anything that has the potential to engage government action or influence public opinion. Second, it clearly holds that the ground's protection is not limited to a strict definition of "belief". Individuals are also protected in their employment and union membership on the basis of their political activities and expression. This protection extends to treat infringements on the ability to express oneself on political issues as adverse treatment for the purposes of the human rights analysis.

### III. Conclusion

In BC, employees and union members are protected from discrimination on the basis of their political beliefs. Political beliefs include association with partisan politics, beliefs about modes of social cooperation and beliefs in trade unionism. The ground also includes interactions with government actors, and beliefs and activities which engage public discourse on matters that could be the subject of government action. It will be interesting to watch whether the Tribunal's definition of "political" for the purposes of the *Code* will continue its expansive trend, and in particular whether the Tribunal will draw on *Charter* freedom of speech jurisprudence to further influence its meaning.

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51 *Bratzer, supra* note 14, para. 276.