

1. What are some of the legal and sublegal issues underlying in this case.

- What is 'hatred' defined as?
- Infringement of S 7 → Right to liberty, security
- Should medium matter in the case

2.

a. What is the purpose of a human rights commission? Conduct Research

The purpose of a human rights commission is to prevent prevent discrimination against people's race, gender, sex, religion, socioeconomic status, and a few more minorities through methods such as investigating complaints of discrimination, promoting and approving equity programs, and educating people about human rights law in Saskatchewan

b. Why did this case go to the human rights tribunal first, and not immediately to a court?

This case was originally a civil case, where people who received flyers from Whatcott filed complaints from , stating that he was promoting discrimination against homosexuals. Then, when the HRC brought charges against Whatcott, it became an infringement on Charter of Rights, as they were a government affiliated association.

3. Why isn't this case called R v Whatcott? Think about it.

It isn't the crown that is throwing this case against Whatcott, it's the HRC, which is a thing that exists in only province. Not crown prosecute.

4. Conduct an Oakes Test (Outline reasoning)

Oakes Test

i) Prescribed by Law

Stated by the Saskatchewan Human Rights Commission s 14 (1) *"No person shall publish or display, or cause or permit to be published or displayed, on any lands or premises or in a newspaper, through a television or radio broadcasting station or any other broadcasting device, or in any printed matter or publication or by means of any other medium that the person owns, controls, distributes or sells, any representation, including any notice, sign, symbol, emblem, article, statement or other representation"*

Any material that "exposes or tends to expose to hatred, ridicules, belittles, or otherwise affronts the dignity of any person or class of persons on the basis of a prohibited ground" **DIRECTLY state that a person's rights would be limited.**

ii) Pressing and SUBSTANTIAL

This issue is important to solve because it is damaging to society, and >endangers minorities<. The distribution of these flyers containing hate message toward homosexuals is damaging to society because it affects the reputation and (possibly, safety) of this minority. It encourages others to view homosexuals in the same negative way Whatcott does. The flyers promote hate, which >infringes on a person's right to life, liberty and security from prosecution.<

iii) Proportionality

a. Rational connection

By limiting a person's ability to send flyers targeted towards certain minorities, they are able to promote hatred and common disdain towards said group. By spreading flyers, Whatcott is interfering directly with people's lives and distributing them in public to hurt. From a previous case, **R v Keegstra**, it has been discussed that by S 315 of the Criminal Code - and paraphrased, it is illegal to be promoting hate speech and similar material in public spaces, and this overrides S 2(b) of one's Charter.

b. Minimal impairment

The law is very specific, and includes lots of very specific examples of hate speech, and promotion of hatred. Whatcott's flyers are listed as "Any printed matter or publication that the person owns, controls, distributes or sells"

c. Proportionate Effect

Pros	Cons
Minorities protected	Limited S 2(b)
Prevent distribution of hate messages	Possible chilling effect if not defined clearly
Enforces people's trust in the gov to be fair	

5. **Critical Thinking Questions:** One of the issues central to this case was the definition of 'hatred' as defined by s.14 (1) of the Saskatchewan provincial code. In their *ratio decidendi*, the SCC examined and clarified the definition of 'hatred.' Look up their definition (SCC Lexum) and **discuss** their definition with respect to the law and our *Charter*. Things you should include in your analysis/discussion are:

Should courts only acknowledge hatred when there is only proof of harm. Makes sense to check out whether or not there was intended harm versus actual harm physical evidence.

Does religious affiliation justify discriminatory actions. Baker who refused to make a cake for a gay couple because of religious reasons.

How do we balance conflicting rights -
Equality Rights, Freedom of Speech and Religion.