In-Depth

The Malcolm Ross Case: Religion or Discrimination?

By Luke Peterson
In-Depth Editor

The New Brunswick Human Rights Commission appears to have found an unlikely ally in its fight to keep a controversial Moncton school teacher out of the classroom.

Alan Borovoy, General Counsel to the Canadian Civil Liberties Association, is applying to the Supreme Court of Canada for leave to intervene in the Malcolm Ross case.

Given that two recent appeal court decisions have obviated a previously imposed order removing Ross from the classroom, it would seem that the Human Rights Commission could use all the help it can get.

Almost four years ago the province acted upon a complaint made by Moncton citizen David Attis, by authorizing a Board of Inquiry to investigate the claim that School District 15 was violating the New Brunswick Human Rights Act. Attis, a Jewish father, alleged that the School Board had violated the rights of both he and his children, by failing to provide a learning environment free of discrimination.

Although his daughter, Yona did not attend Magnetic Hill School, where Ross taught junior high language and mathematics, she testified before the inquiry that she feared attending a basketball tournament at the school because she had heard from her friends and the media of Ross's anti-semitic writings.

Ultimately the Board of Inquiry - which was comprised of a single member, UNB Law professor Brian Bruce, determined that Ross's writings were indeed "discriminatory against those of the Jewish faith and ancestry," and because of substantial media coverage of his writings, Ross's views were made well known to the general public. Deeming Ross's writings to have "poisoned" the environment in School District 15, the board concerned itself with rectifying the situation.

According to the Board of Inquiry's final decision:

"Malcolm Ross, by his writings and his continued attacks, has impaired his ability as a teacher and cannot be allowed to remain in that position if a discrimination-free environment is to exist. ... the only viable solution is that Malcolm Ross must be removed from the classroom."

Thus, Prof. Bruce ordered the School Board to remove Ross from the classroom, place him on a leave of absence and appoint him to a non-teaching position if one became available. Further, the Board ordered that Ross's future employment be contingent upon his agreeing to refrain from distributing any of his past publications and also from not writing anything further about a Jewish conspiracy or anything that attacked followers of the Jewish religion.

Ross subsequently appealed the Board's decision to the Court of Queen's Bench and Justice Paul Creaghan quashed that portion of Prof. Bruce's orders that prohibited Ross from writing or publishing, while under the employ of the province.

Following this, Ross lodged a further appeal with the New Brunswick court of Appeals, the province's highest court, in an effort to have the remainder of Prof. Bruce's orders overturned. This second appeal, also proved successful for Ross, insofar as the court deemed the orders removing him from the classroom to be an unreasonable limitation of his rights to free expression and religion as guaranteed under the Charter of Rights and Freedoms.

Essentially the two appeals quashed all of the directives that the Board of Inquiry had issued to the School District with respect to Ross's employment. For all intents and purposes, Ross was free to pursue another teaching position. However by this time he had already taken an administrative posting in a neighboring School District.

Given this turn of events, the New Brunswick Human Rights Comission decided to appeal the case to the highest court in the land. UNB Law Professor Tom Kuttner, acting as counsel to the Human Rights Commision, is presently drafting arguments to present to the court.

While not able to discuss specifics of the case, it seems likely that the Human Rights Commision will adopt a similar position to that argued before the New Brunswick Court of Appeals. The Human Rights Commision is seeking to have Prof. Bruce's original orders reinstated and, prevent Ross from returning to the classroom.

As the case is soon to be argued to the Supreme Court, it seems to revolve around whether Ross's rights to religious freedom and expression should allow him to advocate the views he does, while remaining in the public employ. While all sides agree that Ross's freedom is being curtailed, the Human Rights Commission holds that such a limitation is reasonably justified given that it will further the goal of providing a discrimination free school environment. Thus the case is clearly one where the court must attempt to strike a balance between several fundamental, yet competing, values.

Despite being one of the most vocal critics of Canada's anti-hate laws, Alan Borovoy professes to have difficulty with the test used by the New Brunswick Court of Appeal, to determine if Ross's freedoms were unreasonably limited. Borovoy contends that the Supreme Court should adopt a different test, one which takes into account more than a teacher's classroom demeanour:

"The test should be: has a teacher's pronouncements and his total record, both in and out of the classroom, created a reasonable apprehension that he will mistreat the youngsters in his classes."

Maintaining that a teacher has "significant power over vulnerable adolescents," Borovoy elucidates his point by pointing to the general disapprobation which would likely accompany the hiring of a teacher, who, while outside of the classroom, had expressed interest in having sexual relations with juveniles. Borovoy claims that we would be "damn fools" to allow such a teacher into the classroom:

"If there is a reasonable apprehension on the basis of a teacher's activities, no matter where they are, that he's going to mistreat any of those vulnerable youngsters, that could be a valid basis for removing such a teacher from the classroom."

While Borovoy and the C.C.L.A. are opposed to prosecuting Ross under Canada's Anti-Hate laws they question whether teachers with such views should be in the classroom; says Borovoy, "disciplining him, insofar as a job involving a delicate trust, with significant power over vulnerable youngsters, that's a different story."

While appearing to side with the Human Rights Commision in their quest to keep Ross out of the classroom, Borovoy is quick to qualify his organization's position:

"I do know from having been involved in these debates, that there are people who when they hear of an anti-semitic teacher they just want to get rid of him.

That is not our approach. Our approach depends upon a certain test. I know for example, some people have talked about setting bad examples for kids - the role-model theory of a teacher - that has a lot of risk in it; if one were to adopt an approach like that, you'd raise some serious questions about how far it could be used to exclude a wide variety of people from teaching. So we have formulated a narrower test which in our view is consistent with the principles of free speech and with the protection of vulnerable youngsters."

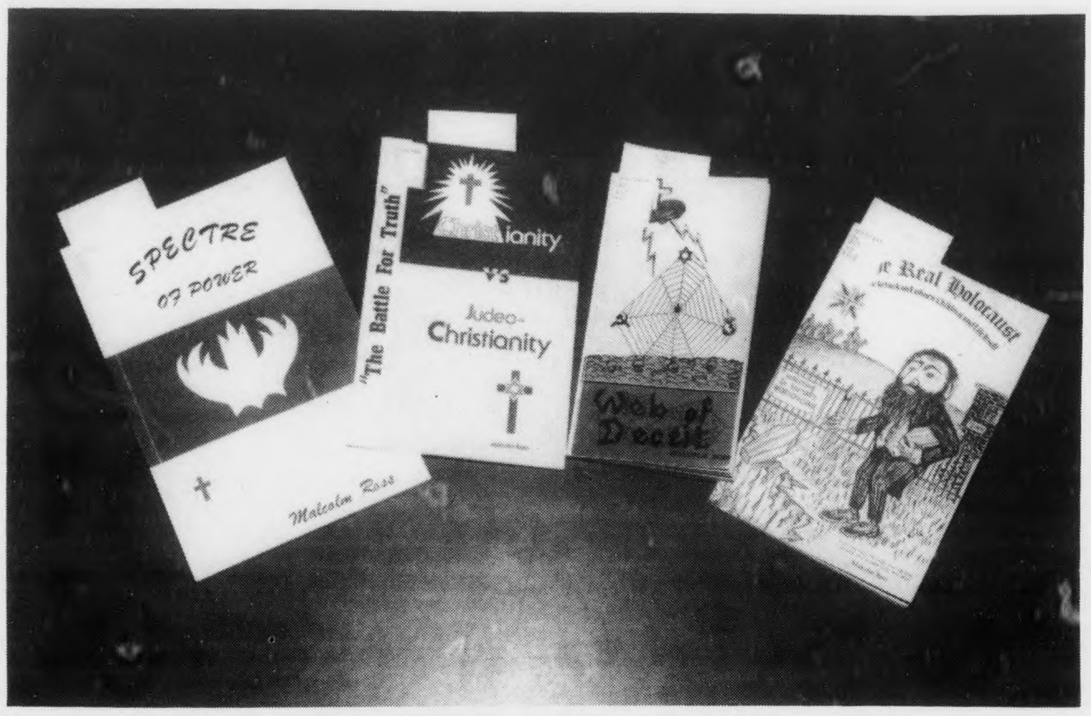
Despite Alan Borovoy's attempts to qualify his support for any measure that might limit Malcolm Ross's fundamental freedoms, Ross's lawyer Douglas Christie is quite candid about Borovoy's leave to intervene in the case:

"With friends like that, liberty doesn't need too many enemies."

When reached at his Victoria, B.C. Law Office, Christie indicated that his arguments to the Supreme Court on Malcolm Ross's behalf will be similar to those used at the New Brunswick Court of Appeal:

"that it's an unreasonable intrusion on freedom of speech to insist that a person in their private life must satisfy some test of an employer's views of acceptability, or Human Rights Commission's, views of acceptability, before they can express their sincerely held religious beliefs."

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While most bookstores refuse to carry these books by controversial Moncton school teacher Malcolm Ross, they are available in the archives of UNB's Harriet Irving Library. Outlining Ross's theory of an "International Conspiracy" against Christianity, they are a major partof the reason why the New Brunswick Human rights Commision wants to see Ross kept out of the classroom.

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