

# The right to refuse

Can printers turn down jobs that offend them? Courts are sorting it out

Should a printer be allowed to refuse a print job that offends his beliefs? Scott Brockie, owner of Toronto's Imaging Excellence, has spent the better part of six years and \$100,000 in legal fees arguing that the answer for him, and any printer with firmly held religious or moral beliefs, is unequivocally yes. However, it was up to the courts to decide and on June 17, a three-judge panel from the Ontario Divisional Court gave Brockie his long-awaited answer. In effect, the judges replied, "Maybe, well, sort of, in certain circumstances."

Granted, their ruling was a little more precise than that. The court decreed that Brockie could refuse jobs "which could reasonably be considered to be in direct conflict with the core elements of his religious beliefs or creed." What's reasonable or what constitutes core beliefs is anybody's guess. But we're going to take a shot at determining the implications of this decision for printers.

Brockie's lengthy legal battle began in April 1996. Ray Brillinger, then president of the Canadian Lesbian and Gay Archives (CLGA), went into Imaging Excellence and asked Brockie to print the archive's letterhead and various stationery. Brockie, a devout born-again Christian, refused on the grounds that it went against his religious beliefs to print material for an organization whose sole purpose, he believed, was to "promote" gay and lesbian lifestyles.

Brillinger lodged a complaint with the Ontario Human Rights Commission (OHRC), citing that he and his organization had been discriminated against by Brockie on the basis of sexual orientation. The case went to OHRC's Board of Inquiry and a ruling came back in March 2000. It found Brockie and his shop guilty of dis-



A stationery job for the Canadian Lesbian and Gay Archives set off a \$100,000 legal battle

crimination and ordered him to pay the archives \$5,000 in damages and to print the material in question.

Brockie appealed the decision. He and his lawyers argued it was the nature of the organization—the archive's work in support of the gay and lesbian community—and not Brillinger's identity as a gay man that compelled Brockie to refuse the job. And while all businesses that offer a service to the public are subject to their province's human rights laws, Brockie argued that his personal, religious beliefs should be allowed to influence his business decisions and how he chose to offer a service.

The case, then, as it was argued before the Divisional Court pitted two equal, enshrined rights in the Charter of Rights and Freedoms against each other: freedom from discrimination regardless of sexual orientation and freedom of conscience and religion. Suddenly, it became about much more than a printer's right to choose his

clientele. How do you determine whose rights trump who's?

That brings us back to June 17. Both sides declared victory with the ruling. While the court did declare that Brockie could now refuse jobs that would directly compromise his core beliefs, the court also found that in this instance the materials in question (the archive's stationery) could in no way be viewed as threatening the core of Brockie's religious being and upheld the original fine of \$5,000. As for what could be found threatening, the court said that would have to be determined on a job-by-job basis. And it should be noted that the court said, "Mr. Brockie's exercise of his right of freedom of religion in the commercial marketplace is, at best, at the fringes of that right." In other words, in identifying his personal beliefs with his business practices, Brockie was pushing it.

So what does all this mean for Brockie, other printers and small-business owners in the future? The short answer is we don't know. Both Philip McMullen and David Corbett, the lawyers who acted for Brockie and Brillinger, respectively, say the full parameters of the ruling will not be known until a similar case is tried and the decision is put to the test. The two sides don't even agree on whether the decision limits the right to refuse a job on the grounds of religious beliefs alone, or whether that right is extended to secular conscience as well. For example, could a staunch feminist printer refuse to print a pamphlet in support of the pro-life movement?

Corbett, the CLGA's lawyer, surprisingly takes a much wider reading of the court decision than Brockie's counsel. He says, yes, any printer with strongly held beliefs, religious or not, could use those beliefs to defend their refusal to print something—as long as it attacked or offended the core beliefs of that person. Corbett adds, however, that while a printer could refuse the job on those grounds, a complaint could still be lodged with the OHRC or any province's human rights commission. If that happens, he says, "the human rights commission will

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