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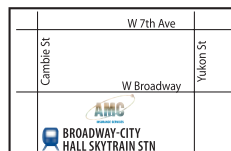


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Zesty's comedian loses appeal

Comedy not exempt from discrimination law, judge rules

FREE SPEECH
NATHANIEL CHRISTOPHER

The BC Supreme Court has upheld a decision by the province's Human Rights Tribunal that found that Lorna Pardy's 2007 complaint against comedian Guy Earle and the owners of Zesty's restaurant was justified.

Pardy testified that Earle, during and after his performance, called her a "fucking dyke" and a "fucking cunt," suggested she take her girlfriend home and fuck her up the ass with a strap-on, and suggested somebody stick a dick in her mouth to shut her up.

She also testified that Salam Ismail, the owner of Zesty's (now Zawa's) "did not intervene to prevent the tirade or the harassment from continuing."

Earle and Ismail argued that Section 8 of the BC Human Rights Code, which prohibits discrimination by any service or facility customarily available to the public, should be declared unconstitutional because it is



Lorna Pardy leaves BC's Human Rights Tribunal after testifying in 2010.
NATHANIEL CHRISTOPHER

"impermissibly vague, overbroad and an unjustified infringement of the right to freedom of expression guaranteed to all Canadians.

"The prohibition has the potential of a chilling effect on free expression,"

they told the BC Supreme Court.

Earle is disappointed with the court's June 19 decision against him and Ismail.

"So the bottom line is that in BC, a comedian must not make a remark that a human rights tribunal member later finds to be discriminatory," Earle says. "It's unbelievable."

In his 87-page decision, Justice JS Sigurdson finds the limits on freedom of expression in Section 8 are reasonable.

"I do not think that [Section 8] requires a provision that it does not apply to artistic performances or comedic performances in order for it to be minimally impairing," Sigurdson writes.

"And Mr Earle was not giving a comedy performance when he launched into his tirade of ugly words directed at Ms Pardy," Sigurdson adds.

"In the end, this is not a case about the scope of expression in a comedy performance or an artistic performance," Sigurdson rules. "It is about verbal and physical abuse that amounts to adverse treatment based on sex and sexual orientation."

"It is gob-smacking stuff," Earle says, "that an artist is not protected during an act."

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