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Sasha Borissenko: Free speech too convenient a justification for thinly disguised hate speech



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NZ Herald • 25 Mar, 2023 10:00 PM ⌚ 5 mins to read

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Posie Parker is rushed from Albert Park. Photo / Dean Purcell

OPINION:

British anti-trans campaigner Kellie-Jay Keen-Minshull - widely known as Posie Parker - left the country last night after she was doused in tomato juice and blocked from speaking at an event in Auckland's Albert Park.

Parker's moves to tour New Zealand prompted a coalition of rainbow groups to file for judicial review on Thursday, questioning immigration minister Michael Wood's decision to allow Parker to enter the country. The group also sought

an interim order to prevent Parker from entering the country.

Gender Minorities Aotearoa, InsideOUT Kōaro, and Auckland Pride cited section 16 of the Immigration Act, where visa waivers can be removed if deemed they're likely to commit a serious offence or be a likely risk to security or public order.

Wood said although he condemned Parker's rhetoric, saying her views were repugnant, it didn't meet the criteria for intervention. Instead, he said it was a decision for Immigration New Zealand, where it was decided Parker didn't reach the high threshold.

High Court justice David Gendall said it was a finely balanced decision, ruling the Government's decision to allow Parker into the country as lawful. The interim orders failed due to technical and procedural reasons, he said.

He expressed sympathy for the applicants and gender-diverse communities that were deserving of protection from discrimination.

The Free Speech Union joined the proceedings as an intervener to ensure "some aspects of [Parker's] voice would be heard".

The facts

It seems convenient for free speech to be used to justify harmful rhetoric against a vulnerable population.

For context, although underreported, last year saw 327 reported murders of trans and gender-diverse people between October 1, 2021 and September 30, 2022. With 222 cases, Latin America and the Caribbean remains the region that reported most of the murders.

The data continues to indicate a worrying global trend when it comes to the intersections of misogyny, racism, xenophobia, and whorephobia, with most victims being Black and migrant trans women of colour, and trans sex workers.

A New Zealand survey dating back to 2019 found more than half of trans and non-binary respondents had considered suicide that year and one in five respondents had experienced homelessness. Ultimately, the study found trans people were four times more likely to be victims of violent crime.

If that's not enough, in 2020 the Human Rights Commission made 31 recommendations for resolving failures of the human rights framework to legally protect gender-diverse people from the right to freedom from discrimination, the right to information, the right to recognition before the law, and the rights to health, education, and work.

The PRISM report found self-declaration for identity documents - namely driver's licence records and passports can apply but not for birth certificates, for example.

It found having to meet a medical threshold and involvement of the Family Court to amend birth certificates presented barriers for people enrolling in school, getting married, and other areas of life. The most common complaint received related to employment discrimination.

Between 2008 and 2019, the Commission received 1947 complaints on the ground of sex and 377 on the ground of sexual orientation.

Free speech v hate speech

Following the Christchurch Mosque terror attacks in 2019, the Royal Commission of Inquiry found New Zealand's hate speech laws were not fit for purpose in 2020.

The Government pledged to make sweeping changes and a discussion document in June 2021 included protecting groups from hate speech on the basis of sex, gender, marital status or political opinion. It also boosted the maximum offence from three months to three years imprisonment or a \$50,000 fine.

Currently, the Human Rights Act 1993 creates civil remedies and criminal offences in cases that incite racial disharmony by way of threats, abuse, or insults. In a criminal context, a person could be imprisoned for up to three months, or be subject to a \$7000 fine.

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Under justice minister Kiri Allen, the final hate speech proposal extended provisions to cover religious beliefs only.

In early February, Prime Minister Chris Hipkins withdrew the Human Rights (Incitement on Ground of Religious Belief) Amendment Bill, referring the matter to the Law Commission.

Green MP Golriz Ghahraman raised an interesting point in January that hate speech is a threat to free speech as it silences and shuts down communities.

As hate speech remains unregulated, it means the only option for those bearing the brunt of abuse online is to either report said abuse to social media platforms who have little skin in the game, or limit engagement entirely. The result is a vacuum of the loudest voices, which threatens democracy.

An ode to Georgina Beyer

Tangentially, it's been less than a month since the formidable Georgina Beyer passed away at the age of 65.

Believed to be the world's first transgender person to become a member of parliament, the trailblazing MP was also the first female mayor of Carterton and first Māori mayor in the Wairarapa district.

During her maiden speech, she said it was a first not only in New Zealand but also in the world.

"This country of ours leads the way in so many aspects. We led the way for women getting the vote, we have led the way in the past, and I hope we will do so again in the future – in social policy and certainly in human rights."

Rather than entertaining further arguments put forward by the trans-exclusionary radical feminist movement or the likes of Posie Parker, let's leave this column with the incredible words of one of New Zealand's national treasures:

"I'm happy to stare you in the eye," Beyer said, when she stood on the steps of parliament and addressed religious groups protesting civil unions. "Why do you hate people like us?"

"I have trust in New Zealanders that they will be fair-minded, as they always have been – that the democracy that I live in made it possible for somebody like me to be here, in this place."