



CENSURE THE CENSORS

Human rights commissions are being used to silence Canadians. Can anything be done to stop them?

BY KEVIN STEEL



She thought somebody was playing a trick on her. When Connie Fournier tore open the letter from the Canadian Human Rights Commission (CHRC) on the afternoon of July 18—a Wednesday—she read that a complaint had been filed against her and the website she runs with her husband Mark, Free Dominion (www.freedominion.ca). The letter was dated July 16, two days before, and postmarked the 17th. It said she had until the 18th, that very day, to reply. “At first we thought it was some kind of joke because it didn’t seem right that we would be asked to respond in that kind of time frame,” Fournier says. As it turned out, it wasn’t a joke. But it still had a punch line—the letter didn’t say what the complaint was about which made it impossible to respond to, even if she had time.

Sensing that perhaps it wasn’t a joke, the next day the 41-year-old mother of four who makes her home in Kingston, Ont., called the CHRC. “It was like pulling teeth trying to get a real person on the phone,” Fournier says. When she finally did and read the complaint number to the woman on the other end, she was told it couldn’t be right because it was supposed to have one more digit in it. So maybe it was a joke? No; using the last name of the complainant in the letter, they finally determined it was in fact real. Several hours later, Fournier was able to contact someone at the CHRC who knew what was going on; he had the complaint in front of him on his computer screen, he told Fournier. But he wouldn’t tell her what it was about. He said he would have to mail it. They settled on having the CHRC fax it to Fournier’s lawyer the next day, Friday—two days past the official deadline.

When Fournier finally got to see the complaint she discovered it had been filed back in June. Marie-Line Gentes, a college teacher in Quebec, was charging that Free Dominion, a conservative discussion forum, was fostering hatred towards Muslims. Why this was of concern to Gentes was not explained because Gentes stated in the complaint that she herself was not a Muslim. On top of that, it didn't assert that Fournier had written anything untoward. The target was something someone else had written on the site.

The complaint cited comments written on Free Dominion by Saskatchewan activist Bill Whatcott. For instance, in one, Whatcott wrote, "I can't figure out why the homosexuals I ran into are on the side of the Muslims. After all, Muslims who practice Sharia law tend to advocate beheading homosexuals." Whatcott also posted links to another website hosting a digital version of a pamphlet he distributed in Edmonton last year that called the Muslim prophet Mohammad a "man of violence."

Whatcott has been the target of human rights complaints before. He is appealing two Saskatchewan Human Rights Tribunal judgments against him for anti-homosexual literature he produced in 2001 and 2002.

In Free Dominion's case, things didn't get that far. Fournier went public immediately, using her website and contacting the media. "We wanted everybody to know because these things, in our opinion, work best if it's all done in the dark. That way if anything funny went on, then everybody would know about it. And funny things were going on right from the word go," Fournier says. The tactic seemed to be successful. First bloggers, then newspapers, jumped on the story, reproducing Whatcott's somewhat innocuous comments across the country. On August 3, Fournier received a letter informing her that the complaint had been withdrawn, no explanation.

If all this seems a bit unreasonable—the lack of time to respond, the bureaucratic obfuscation, the flimsy premise for the complaint—that's probably because it is. But then, when it comes to the matter of free speech in Canada, human rights commissions and their quasi-judicial tribunals are not exactly known for using reason. Though most human rights codes stress the primacy of fundamental rights to free expression, freedom of the press and freedom of religion, they nevertheless include prohibitions against publications and broadcasts believed to foster hatred. Since every type of communication except direct conversation involves some kind of publication or broadcast, the supposed support of these other rights appears almost meaningless—and those looking to silence Canadians are taking full advantage.

Over the last few years, in a series of cases, human rights commissions have stretched the meaning of their codes to invariably rule against the right to free expression and in favour of those who claim their feelings have been hurt. Slowly, precedents have built up that are intimidating people into keeping silent. Now, media organizations routinely censor themselves for fear of being dragged in front of a tribunal, even going so far as to get people to sign forms where they promise not to offend anyone.

Attacks on free speech continue across the country, even in supposedly freedom-loving Alberta. In a tribunal hearing which began on July 16, a former pastor, Stephen Boissoin, has been charged with inciting hatred towards homosexuals. Like in the Free Dominion case, an academic—in this instance University of Calgary assistant professor David Lund—claims that

Boissoin violated the province's human rights code in a 2002 letter-to-the-editor Boissoin wrote to the *Red Deer Advocate* under the title "Homosexual Agenda Wicked." Similar to the Free Dominion complaint where Gentes said she is not a Muslim, Lund says he is not gay.

The Boissoin case has been notable so far for a pre-hearing ruling that represents a small reversal of the trend to limit speech. Back in 2005 after Lund made his complaint, Boissoin decided to go public by publishing the human rights complaint material on the website of the Concerned Christian Coalition to support fundraising for his defence. Lund tried to shut him down, claiming the material was confidential and so requested a publication ban. The panel ruled against Lund on May 4, 2006.

That ruling came right on the heels of larger reversal of the trend against speech in Saskatchewan. On April 13, 2006, the Saskatchewan Court of Appeal overturned a 2002 Court of Queen's Bench ruling that supported a 2001 decision of the Saskatchewan Human Rights Commission against Hugh Owens. In 1997, Owens published an ad in the Saskatoon *StarPhoenix* that referred to Biblical passages which condemned homosexuality. Accompanying the citations was an illustration of two male stick figures holding hands inside a circle with a bar through it. The SHRC had fined both Owens and the newspaper \$1,500 for violating s. 14(1)(b) of The Saskatchewan Human Rights Code. It was only a partial victory for freedom because the Appeal court didn't rule that the section of the code was in violation of the Canadian Charter of Rights. The judges simply stated that the SHRC had been too lenient in its interpretation of the Code. Whether that ruling will have any impact remains to be seen. Tom Ross, a labour employment lawyer with McLennan Ross in Calgary, thinks other HRCs were paying attention. "This case certainly helps to rebalance the jurisprudence in Saskatchewan and I think it will have some impact elsewhere," he says.

Human rights commissions were never meant to control the press or be arbitrators of expressions of opinion. They were set up to combat discriminatory acts in areas like employment and housing. Alan Borovoy was a young lawyer in the 1950s and one of those who lobbied the Ontario government to establish the first human rights commission in Canada in 1961. He has been general counsel to the Canadian Civil Liberties Union since 1968, but Borovoy wrote a letter to the editor of the *Calgary Herald*, published on March 16, 2006 in which he bemoaned the way the human rights bodies were being abused. "During the years when my colleagues and I were labouring to create such commissions, we never imagined that they might ultimately be used against freedom of speech," Borovoy wrote.

In interview, Borovoy says that early human rights legislation did address communication. "But those communications essentially were really ways to shore up the discriminatory acts that the legislation was primarily designed to deal with. So if they said, "No blacks allowed," or "No Jews allowed," that would be the kind of speech that was always seen as subject to this kind of legislation," Borovoy says. Discriminatory advertisements and discriminatory application forms were not permissible.

Borovoy says he first started noticing the attack on free speech back in the 1990s. In particular, he recalls referring to two cases that caused him concern. The first was in Ontario. In 1993, feminists attempted to bring a human rights complaint against a convenience store owner for selling pornographic magazines, claiming the

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publications constituted discrimination against women. "They tried to squeeze it within the framework of that legislation, talking about discrimination. I remember arguing that if this were to hold, they could go into libraries and police them for what they've got on the shelves, *Oliver Twist* and *The Merchant of Venice*," Borovoy says. That complaint was eventually dismissed. The second was the Doug Collins case.

In 1999, a BC human rights tribunal found *North Shore News* columnist Collins guilty of "likely" exposing Jews to "hatred and ridicule" for four columns he wrote in 1994. It was actually

The image shows two screenshots of the Free Dominion website. The top screenshot displays a forum post titled "THE'S AN ENEMY OF THE REPUBLIC!!!!!!!" with a warning icon. The bottom screenshot shows the website's navigation menu and a list of forum topics under the heading "Free Dominion was threatened with a human rights complaint for allowing someone to voice their opinion on their site".

Topic	Posts	Last Post
General News	13461	120101
Conservative Party of Canada Issues	12741	200905
Freedom Party of Canada	56	1891
Political Party News	1026	21461
From Ottawa	1481	9803
Miscellaneous Articles	13611	220811
FD Exclusive	1138	47121
Gatherings & Activism	1511	14221

the second attempt at trying to nail Collins. In 1996, Victoria B'nai Brith member Harry Abrams had lodged a complaint against Collins for one column he had written titled "Swindler's List" an attack on the Steven Spielberg movie *Schindler's List*. A 1997 tribunal ruled in Collins favour. Abrams then lodged another complaint, this time citing four columns, including the one he originally complained about, claiming that together the columns exposed Jews to hatred. This time the commission ruled in Abrams favour. Though the BCHRC fined Collins and his paper \$1,500, it also ordered them never to print similar material again. With that ruling, the BCHRC effectively claimed control over the press. Collins appealed to a real court, asserting that human rights legislation was unconstitutional because it infringed on freedom of the press. The BC Court of Appeal ruled against Collins and the case never did reach the Supreme Court after Collins died in 2001.

Murray Mollard, executive director of the B.C. Civil Liberties Association, is one who would like to see the Collins ruling—that human rights legislation has the ability to control the press—tested at the Supreme Court level, though he is concerned that there it could get upheld. "Given jurisprudence in Canada on hate speech provisions in the Criminal Code, for example, there's a bit of an uphill legal battle to strike down that legislation as unconstitutional," Mollard says. There are good argu-

ments for it being struck down, Mollard believes, but the t has been in the Supreme Court of Canada regarding the speech provisions to uphold the constitutionality of those.

You can't prohibit ideas, he believes, whether offensive to s or to everyone. "So it's the responsibility of democratic peop take the arguments, have access to those arguments, and be to express those sentiments. That's really the function and resp sibility we have as sovereign citizens." Mollard says. Theref if we allow government to censor that, we have diminished ability to govern ourselves. "Our organization would say that because we don't censor those ideas, that doesn't mean we d have a responsibility to act or respond to abhorrent ideas. We But we do that with more speech. So if there are particularly c ous and reprehensible ideas that denigrate some on the basi race, religion, sexualization, etc . . . we as a society have a resp sibility to fight back with words, using words to condemn th ideas that we don't believe are valid to the rules and policies t we govern ourselves by," he says.

Given that they are prone to rule against fundamental fi doms and thus are grad towards a soft form socially destructive tyrar not to mention bogged down the courts with t payer-funded nuisa suits, should the hun right commissions destroyed? Borovoy doe think so. "I think hun rights commissions have important role to p There is still much discr ination in our society : this is a big help in coun acting it. The fact that sc of them have gone off rails, doesn't mean that t can't perform very im tant functions," s Borovoy. He believes th is enough discriminatio

our society to warrant this kind of response. "I've never chan my mind about that. I haven't changed my mind at all. I ne favoured using this against speech," he says.

So perhaps the solution is to merely curtail them and lol governments to get rid of the provisions in human rights le lation that suppress free speech, freedom of religion and fi dom of the press. It would have to be done soon, however, as case of Free Dominion demonstrated; the commissions are n attempting to stick their fingers of censorship into that great l tion of free expression, the Internet.

On August 16, the online publication WorldNetDaily quc CHRC investigator Dean Steacy, whose actions dictate whet a complaint goes to a tribunal, stating how the CH approaches the liberty to speak freely. "Freedom of speech is American concept, so I don't give it any value," he quipped t lawyer representing a website. Apparently, Steacy has ne heir of John Milton or Martin Luther, and with that kind ignorance at the CHRC, it should be obvious the commissi can't be reined in soon enough.