

*'Drug dealers get the benefit of the Charter, but not pastors accused of homophobia'*

# ISSUES &

Canada's human rights tribunals, once tools for fighting racism and discrimination, have been transformed into a politically correct shakedown racket

## CENSORSHIP IN THE NAME OF 'HUMAN RIGHTS'

EZRA LEVANT

**T**he Canadian Islamic Congress (CIC) is taking *Maclean's* magazine to a human rights commission. Its crime? Refusing the CIC's absurd demand that *Maclean's* print a five-page letter to the editor in response to an article the CIC didn't like.

It may shock those who do not follow human rights law in Canada, but *Maclean's* will probably lose.

Forcing editors to publish rambling letters is not a human right in Canada. But that's not how the CIC worded their complaint, filed with the B.C., Ontario and federal human rights commissions. *Maclean's* is "flagrantly Islamophobic" and "subjects Canadian Muslims to hatred and contempt" according to a CIC statement. "I felt personally victimized," said Khurram Awan at the CIC's recent press conference. All this



press conference. All this because *Maclean's* dared to run a column discussing the demographic rise of Islam in the West.

It's a new strategy for the CIC, which in the past has tried unsuccessfully to sue news media it disagreed with — including the *National Post* — using Canada's defamation laws. But Canada's civil courts aren't the best tool for that sort of bullying. In a defamation lawsuit, the CIC would have to hire its own lawyers, follow the rules of court and prove that it suffered real damages — and the newspapers would have truth and fair comment as defences. Launching a nuisance suit against *Maclean's* would result in an embarrassing loss for the CIC, a court order to pay the magazine's legal fees and it would deepen the CIC's reputation as a group of radicals who don't understand Canadian values. (Three years ago, Mohamed Elmasry, the CIC's Egyptian-born president, declared that every adult Jew in Israel is a legitimate target for terrorists).

So civil lawsuits won't work. Criminal charges are a non-starter, too: Canada's hate-speech laws are reserved for extreme acts of incitement, and charges can only be laid with the approval of the justice minister. And in criminal court, the accused must be proved guilty beyond a reasonable doubt. No chance there.

That's why human rights commissions are the perfect instrument for the CIC. The CIC doesn't even have to hire a lawyer: Once the complaint has been accepted by the commissions, taxpayers' dollars and government lawyers are used to pursue the matter. *Maclean's*, on the other hand, will have to hire its own lawyers with its own money. Rules of court don't apply. Normal rules of evidence don't apply. The commissions are not neutral; they're filled with activists, many of whom aren't even lawyers and do not understand the free-speech safeguards contained in our constitution.

And the punishments that these commissions can order are bizarre. Besides fines to the government and payments to complainants, defendants can be forced to "apologize"

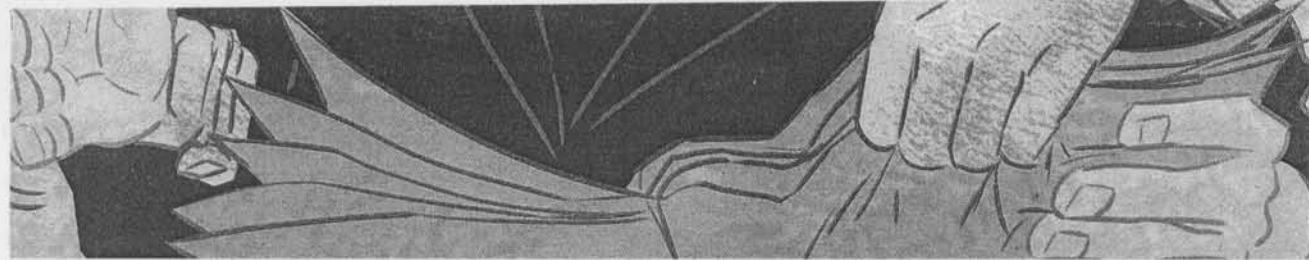


ILLUSTRATION BY LEIF PENG

for having unacceptable political or religious opinions.

An apology might not sound onerous, yet it is far more troubling than a fine. Ordering a person — or a magazine — to say or publish words that they don't believe is an Orwellian act of thought control. The editor of *Maclean's*, Ken Whyte, maintains his magazine is fair. But human rights commissions have the power to order him to publish a confession that he's a bigot — or, as in one Ontario case, even order someone to study Islam. Even convicted murderers cannot be "ordered" to apologize.

Human rights commissions are a relatively new creation, formed in the 1960s and 1970s for political reasons, not legal reasons. The main issues that these commissions were created to address — such as racial discrimination in rental housing and employment — were already covered by established landlord and tenant law, as well as labour and employment law. The commissions were supposed to be an informal, sympathetic forum for vulnerable people who needed extra help; and commissions were limited to dispensing a few thousand dollars. It was like small claims court for minorities; a shield to help them against the sword of discrimination.

Few human rights complaints still fall into those categories. A quick canvass of Alberta's cases over the past few years, for example, reveals not a single complaint from someone denied rental housing based on race. The most common cases seem to be employees quitting over squabbles with other staff — a female backhoe operator claimed her rights as a woman were violated for being called "honey" and other locker-room talk on a construction site; a male

hair stylist claimed his rights were violated because the girls at salon school called him a "loser." Another common complaint is sick or injured people being dismissed for not being able to do their jobs anymore, claiming that they have a "human right" not to be fired. In 2004, Albert's Family Restaurant in Red Deer was ordered to pay \$4,900 to a kitchen manager who was fired because she had contagious Hepatitis C — illegal discrimination based on disability, said the commission.

Most cases are not about real rights, and the rulings are wildly inconsistent. The commissions have become

Borovoy, the general counsel of the Canadian Civil Liberties Association — and one of the architects of modern Canadian human rights law — wrote last year, "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." Censoring debates was "hardly the role we had envisioned for human rights commissions."

Borovoy's warning has gone unheeded. The opposite, actually — it signalled to the CICs of the world that human rights commissions are the perfect instrument to pursue

## In one case, a male hair stylist claimed his rights were violated because girls at salon school called him a 'loser'

a whimsical tax-man, where businesses are charged a few thousand dollars for making the mistake of hiring thin-skinned employees. For most companies, it's not even worth paying a lawyer to contest the complaint, other than on principle.

But besides sorting out office politics, some of Canada's human rights codes cover "publications." Those powers were originally meant to cover things like signs saying *No Jews Allowed* or *Whites Only* (in human rights jargon, symbols that "indicate discrimination") or a swastika or burning KKK cross planted on someone's yard.

You don't need to be a lawyer to know that a magazine article is not what the founders of human rights commissions had in mind. As Alan

their agenda of censorship. At the federal Canadian Human Rights Commission, for example, one single activist — a lawyer named Richard Warman, who used to work at the commission himself — has filed 26 complaints, nearly 50% of all complaints under that commission's "hate messages" section. He's turned it into a part-time job, winning tens of thousands of dollars in "awards" from people he's complained about in the past few years. Warman is a liberal activist, who likes to complain against Web sites he calls racist or homophobic. He's had the common sense to stick to suing small, oddball bloggers who can't fight back. But surely the CIC has observed Warman's winning streak, and will use his precedents to go after *Maclean's*.

An even more terrifying precedent recently was set in Alberta. The case involved a letter to the editor written by a Christian pastor and published in the *Red Deer Advocate* newspaper. The letter was a zealous, even rude, expression of the pastor's belief that homosexuality was a sin, and that there was a homosexual political "agenda" that had to be stopped. But instead of joining the debate by writing a letter to the editor, a local teacher complained to the human rights commission.

The commission's one-woman panel — a divorce lawyer with no expertise in constitutional rights — ruled that "the publication's exposure of homosexuals to hatred and contempt trumps the freedom of speech afforded in the Charter." That was it: Freedom of speech, and of the press, and religion, all of which are called "fundamental freedoms" in our Constitution, now come second to the newly discovered right of a thin-skinned bystander not to be offended.

In a rare move, the Alberta government sent a lawyer to intervene in the case — against the pastor. The government lawyer argued that "if people were allowed to simply hide behind the rubric of political and religious opinion, they would defeat the entire purpose of the human rights legislation." Borovoy's well-intentioned laws aren't about making sure aboriginals can get taxi rides anymore.

The human rights panelist in question — Lori Andreachuk, a former Tory riding association president — wholeheartedly embraces this expansion of the definition of "human rights." "It is, in my view, nonsensical to enact ... human rights legislation, to protect the dignity and human rights of Albertans, only to have it overridden by the

expression of opinion in all forms," she wrote. Though no harm was proved to have come from the pastor's letter, it "was likely to expose gay persons to more hatred in the community" — precisely the same language used by the CIC in their complaint against *Maclean's*.

In a ruling that spanned some 80 pages, Andreachuk spared just two paragraphs to explain why she was overruling the Charter's guarantee of freedom of speech. In real courts, a demanding legal hurdle called the Oakes Test must be passed before that can be done. The reason for infringing a Charter right must be "pressing and substantial," the infringement couldn't be "arbitrary or irrational" and it must be as "minimal" as possible. None of that analysis was even attempted by Andreachuk — that's boring legal stuff for real judges in real courts. The Oakes Test was named after David Oakes, a man charged with trafficking of hash oil, who beat the rap using the Charter. Accused drug dealers get the benefit of the Constitution, but not accused pastors.

There will be more human rights complaints like the CIC's, and more staggering rulings like the Alberta decision. It's odd: Mohamed Elmasry, an apologist for Islamo-fascism, using the same tools as an "anti-racist" leftist like Richard Warman. At first glance, they may seem like opposites, but they're actually identical: Both are illiberal censors who have found a quirk in our legal system, and are using it to undermine our Western traditions of freedom. Until last week, I would have thought that *Maclean's* magazine was too big a fish for them to swallow. I don't think that anymore.