

As 'human rights' tribunals act like
thought police, there is a simple solution:
Change our human rights statutes

Fire the censors

TERRY O'NEILL

The free-speech controversies currently swirling around *Maclean's* magazine and Alberta journalist Ezra Levant ultimately can be attributed to one thing: the legislation that allows Canada's human rights commissions to act as censors. Amend the various human rights acts blanketing the country and the problem vanishes.

Disturbingly, however, the issue does not seem to be on any government's radar, either in provincial capitals or on Parliament Hill.

The background to the cases in question is fairly well known by now. *Maclean's* and its writer, Mark Steyn, are the subjects of complaints filed at the Canadian, Ontario and B.C. human rights commissions by the Canadian Islamic Congress (CIC). The CIC is claiming that Steyn's writings about Muslims' high birth rate "subjects Canadian Muslims to hatred and contempt." Levant, my former employer at the now-defunct *Western Standard*, was taken to the Alberta Human Rights Commission by complainants upset with the magazine's publishing of the notorious Danish cartoons depicting the prophet Muhammad.

What is legally significant here is that each commission is governed by its own unique human rights act, and that those acts appear to give the commissions varying degrees of power to censor journalists who might have offended some of their readers. Of the above-named jurisdictions, B.C.'s legislation appears to pose the greatest threat to free speech; Ontario's the least.

Section 7 of B.C.'s human rights act makes it an offence for any person to publish "any statement, publication, notice, sign, symbol, emblem or other representation" that so much as "indicates discrimination or an intention to discriminate" against a protected group, or "is likely to expose a person or group or class of persons to hatred or contempt." No actual discrimination or hatred has to occur for an offence to occur. And, as pointed out on these pages over the past few weeks, truth is not a defence.

Alberta's law is similar to B.C.'s,

but adds an important caveat: "Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject." This would seem to give Levant, for example, the ability to trump his critics. But the fact is that last November, in a case involving a Christian pastor who was critical of homosexuality, human rights panel chair Lori Andreachuk ignored this protection and went so far as to rule that even the right of free speech enshrined in the Canadian Charter of Rights and Freedoms "does not trump the protection afforded [homosexuals] under the Alberta human rights legislation."

The human rights act of the last of the three provinces in question, Ontario, contains no provisions similar to B.C. and Alberta's limitations of speech rights.

Section 12 of the Canadian Human Rights Act, on the other hand, makes it unlawful to publish or display "any notice, sign, symbol, em-

blem or other representation that (a) expresses or implies discrimination or an intention to discriminate, or (b) incites or is calculated to incite others to discriminate."

last year, censoring otherwise free speech was never the intention of activists, like himself, who helped bring human rights laws into being in the first place. This may be true in most cases, but in my home province, for example, the B.C. act's infamous Section 7 was specifically enacted in 1993 by the NDP government of the day to gag cantankerous right-wing columnist Doug Collins (since deceased). In 1998, the NDP considered broadening the act even further at the urging of the pro-choice lobby, which tried to persuade then-attorney-general Ujjal Dosanjh to criminalize criticism of abortionists.

Although the episode was virtually ignored by the mainstream media of the day, I remember it quite well because of the growing threat it posed to free speech. I especially recall that, in writing about the pro-choicers' demands, I interviewed an erudite and eloquent public-policy expert who spoke passionately about this threat.

"Human rights commissions, as they are evolving, are an attack on our fundamental freedoms and the basic existence of a democratic society," the man said. "It is in fact totalitarianism. I find this very scary stuff."

That person was the president of the National Citizens Coalition, a politically astute fellow by the name of Stephen Harper, a man who, of course, has now gone on to much bigger and better things.

I don't think it would be too much to ask of Mr. Harper now that he put his words into action, and move to amend the Canadian Human Rights Act to eliminate the commission's censorious powers. Perhaps such a move would inspire Alberta Premier Ed Stelmach and B.C. Premier Gordon Campbell to act similarly.

All three leaders should realize that their governments' human rights laws are badly flawed, and that the longer they remain unamended, they are, in effect, acting as a barrier separating all citizens from their fundamental right to free speech.

In this light then, we should all exclaim: "Mr. Harper, Mr. Stelmach and Mr. Campbell: Tear down this wall!"

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