

OUR HUMAN RIGHTS COMMISSION

A threat to free speech or a safeguard of human dignity?

By SUZY THOMPSON

The Preamble to Alberta's Human Rights, Citizenship & Multiculturalism Act

WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all persons is the foundation of freedom, justice and peace in the world;

WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in: dignity, rights and responsibilities without regard to race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income or family status;

WHEREAS multiculturalism describes the diverse racial and cultural composition of Alberta society and its importance is recognized in Alberta as a fundamental principle and a matter of public policy;

WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all Albertans should share in an awareness and appreciation of the diverse racial and cultural composition of society and that the richness of life in Alberta is enhanced by sharing that diversity; and

WHEREAS it is fitting that these principles be affirmed by the Legislature of Alberta in an enactment whereby those equality rights and that diversity may be protected...

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IN MAY 2007, A TEENAGED EMPLOYEE at a Lethbridge Tim Horton's posted a sign near the drive-thru window that read "No Drunk Natives." Tim Horton's took the sign down and issued a statement assuring the public that their coffee shop wasn't a racist stronghold. When the media caught up to the employee, she swore it was a joke.

The Alberta Human Rights & Citizenship Commission (HRC) was established to address unjust treatment. The mandate of the commission is to foster equality and reduce discrimination through public education and the resolution and settlement of complaints of discrimination.

Lately the HRC has come under attack, notably in Ezra Levant's widely publicized allegations of suppression of free speech. However, people seemed to have felt no reluctance to freely sound off about the sign at Tim Horton's. The public expressed a wide range of opinions on radio call-in shows and in letters to the editor. Nearly 200 messages were posted at the online news forum topix.com. Online, where people feel even freer to express opinions, the responses were blatantly hateful. A sampling:

"How much longer are you going to sit in limbo living on handouts and pouting because you got your ass's kicked a 100 years ago?"

"I think we have given enough to their cause. Its bad enough that they take our hard earned dollars now they are asking for the change in our pockets... You want your traditional lands then go back to the traditional way of living. Get rid of your cars and housing. Live in teepees and follow the wildlife around like you used to do."

"The problem isn't racism, it's the drunk natives."

"They blew their chance a long time ago... sympathy has run out... tired of seeing them walking around the streets all drunk looking like victims etc."

Statistics Canada reports the most common victims of hate crimes in Canada are Africans, Jews and homosexuals. Aboriginals are low on the list, even relative to their population. However, the fact that Aboriginals aren't reporting hate crimes doesn't mean such crimes are not being committed. According to human rights experts, racism against Aboriginals is the most common form of discrimination or "rights abuse" in Canada. If discrimination against Aboriginals is the most prevalent abuse of human dignity in Alberta, why do Aboriginals not use the HRC to redress grievances?

"WHAT'S AN ANTI-SEMITIC HATE CRIME?" asks Janet Keeping, president of the Sheldon Chumir Foundation for Ethics in Leadership. "It's painting swastikas on buildings, it's throwing a rock through a synagogue window, that kind of thing... How do Aboriginal people get discriminated against?

They get discriminated in everyday ways. Taxi drivers won't pick them up, bar owners won't serve them. These aren't usually categorized as hate crimes; they're just everyday, common [acts of] discrimination which Aboriginal people get all the time."

Keeping is leading a project investigating human rights in Alberta. She says that if you assess discrimination in Alberta based solely on complaints filed with the commission, it would appear that racism, sexism and homophobia are not much of a problem in our province. However, after the Chumir Foundation hosted a series of human rights forums across Alberta last spring, she became convinced that our most substantive human rights issue is "almost assuredly discrimination against Aboriginal people."

Most of the complaints heard by Canada's human rights commissions (including 81 per cent of Alberta cases) are related to discrimination in the workplace. Alberta receives fewer than the average number of complaints on the grounds of race and gender. Keeping says these statistics don't reflect the way Albertans actually treat each other.

Diane Eaglespeaker would know. After living in Seattle for 20 years, she decided to take her family home to Alberta. They lived briefly in Lethbridge, then settled in Calgary in the early 1990s. She was home, but things weren't the way they were in Seattle.

"I've lived here for a long time," she says, "and it's really disconcerting when you're walking and somebody throws something at you... especially if I'm in professional dress, going to work." Eaglespeaker works at Calgary Communities against Sexual Abuse, counselling victims of rape and violence. When asked about Keeping's observations, she's quick to answer. "Oh, it's entirely true, unfortunately, it is. When I came here it was a real shock. You know, to be treated as stupid, or people talking slow to me."

Eaglespeaker describes places in Alberta where Aboriginals advise each other not to stop. She talks about repeatedly seeing transit police question Aboriginal youth while ignoring other passengers, of tripping on a busy street and not being helped by passersby, about her perception that authorities are disinterested in investigating the rapes of Aboriginal women.

Eaglespeaker's daughter Autumn is in her senior year at the University of Calgary. She says she didn't notice racism before returning to Canada. In high school in Lethbridge, Autumn was "the only brown kid in my class." Despite good grades, she was encouraged to switch to remedial classes. She refused and requested a meeting with the principal. When she explained why remedial classes were a waste of her time, Autumn says the principal offered her a compliment.

"You're very articulate for a native girl," he said.

The Eaglespeaker family struggles with street-level racism. "Just by having an Indian last name, [employers] look at your application and you won't even get a call back," says Autumn. "I found more discrimination with the lower-level jobs, where they're just expecting anyone with low skills and they automatically think that native people don't have any skills."

“You can’t legislate against people’s own feelings about other people. What you *can* do is stop them from making those comments at the board table. Or at policy development tables. Or at funding tables.” —*Lewis Cardinal*

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IN SPITE OF DISCRIMINATION, ABORIGINALS DON’T usually file complaints. Nearly all the public responses to the Lethbridge Tim Horton’s incident reveal public confusion about Aboriginal rights in Canada. The source of the problem—both the racism and Aboriginals’ reluctance to complain about it—may lie in the nature of the compact between the indigenous First Peoples and the country.

Arguably, Canada’s Indian Act is by definition racist in that it distinguishes, on the basis of race, a category of Canadians with different rights. Pierre Trudeau proposed repealing the Act, but, understandably, First Nations people with rights granted under the Act wanted it retained. Status Aboriginals’ only rights, until recently, were covered by the Indian Act, originally enacted in 1876, which gave the government of Canada the exclusive authority to legislate in relation to “Indians and Lands Reserved for Indians.” The Indian Act, 1985 reaffirmed special rights for status Indians in Canada, including the right to their reserves, an extended hunting season, fewer restrictions on the right to bear arms, an exemption from federal and provincial taxes, free post-secondary education and certain rights regarding the management of gaming and tobacco franchises.

Only with the passage of Bill C-21 in June 2008 was human rights protection extended to Aboriginal people living under the jurisdiction of the Indian Act. Prior to this, only non-status Indians were eligible to use HRCs to redress rights abuses. The rights of status and non-status Aboriginals alike are now protected by the Canadian Human Rights Act.

Alberta HRC director Marie Riddle says that Aboriginals are welcome to come to the agency to redress grievances. But many Aboriginals, like many Canadians, don’t really know what HRCs do.

THE NECESSITY FOR HUMAN RIGHTS TO BE enshrined in law was widely recognized after the horrors of the Second World War. One of the United Nations’ first objectives was the creation of a human rights code. Based in part on the Declaration of the Rights of Man and of the Citizen of 1789, the United Nations Universal Declaration of Human Rights (UDHR) was completed by 1948.

Signatory states recognize a UN convention by creating nationally applicable laws, followed by similar laws at the provincial level. Canada ratified the UDHR in 1948, and subsequently formed its own mechanisms to protect universal

rights. This began with the Canadian Bill of Rights in 1960. Every province followed suit during the 1960s and 1970s, enacting rights legislation and creating commissions to resolve complaints of discrimination. Alberta passed its first Human Rights Act in 1966, and created its first Human Rights Commission in 1973 with Max Wyman, former president of the U of A, as its first chief commissioner. A national HRC was established in 1977. The *raison d’être* of all HRCs is, in the words of our federal commission, to “create a society with equal opportunity and without discrimination.” It pursues this goal by hearing disputes and addressing abuses.

If a person feels their rights have been abused, first, they submit a complaint in writing to the HRC (federal or provincial, depending on the case). If the commission believes there is a case of unlawful discrimination (for there is lawful discrimination, as any 16-year-old would-be bar patron knows), they inform the alleged discriminator about the situation, ask for the other side of the story and relay that information back to the complainant. At this point the complainant decides whether to drop the complaint or participate in a conciliation. About 89 per cent of complaints filed federally are examined, and about 60 per cent of these are resolved at the conciliation stage.

Conciliation is intended to be a civilized alternative to litigation. With the conciliator acting as mediator, the parties come to an agreement on what happened and on an appropriate remedy, ranging from an apology to payment of lost wages. The HRC is not designed to punish, but rather to restore complainants to their condition prior to the incident.

Sometimes parties are too angry at each other to reconcile. Out goes the conciliator, in comes the investigator, who decides whether the case has merit: whether there’s enough information and whether the abused right in question falls within the HRC’s jurisdiction. The investigator may dismiss the complaint outright or prescribe a remedy.

Awards typically are small. “Sometimes we have complainants who actually do want to punish the respondent, but that’s not the purpose [of settlements],” the Alberta HRC’s Riddle explains. “If you’ve lost salary, you get the salary replaced. If you’ve lost benefits, you get them [back]. But sometimes more is needed because it [the rights abuse] has hurt your soul.” Still, even “soul-mending” settlements are small, typically less than \$5,000.

ALBERTA’S HUMAN RIGHTS, CITIZENSHIP & Multiculturalism Act, s. 3(1) reads: “No person shall publish, issue or display or cause to be published, issued or displayed before the public any statement, publication, notice, sign, symbol, emblem or other representation that indicates discrimination or an intention to discriminate against a person or a class

of persons, or is likely to expose a person or a class of persons to hatred or contempt..." This section is followed by the mitigatory: "Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject."

Ezra Levant's attack on the Human Rights Commission for allegedly limiting his freedom of speech has created confusion about the commission's role. In February 2006, Levant reprinted in his now-defunct *Western Standard* magazine the notorious Danish cartoons depicting the Islamic prophet Mohammed. In doing so, argued complainant Syed Soharwardy of the Islamic Supreme Council of Canada, Levant incited hate against Muslim Canadians. Levant responded with a passionate defence of the principle of freedom of expression, delivered to Alberta HRC officer Shirlene McGovern. He also videotaped his interview, posted it on YouTube (where portions of it have been viewed over 130,000 times), and wrote about it on his blog for months.

Over the past couple of years, Albertans have weighed in on the supposed threat to freedom of expression posed by the commission dealing with the complaint against Levant—and by similar complaints against *National Post* columnist Mark Steyn, Red Deer pastor Stephen Boissoin and *Maclean's* magazine. Although HRCs were originally envisioned, as *Calgary Herald* columnist Nigel Hannaford once wrote, "to address insupportable abuses in the areas of employment and accommodation," Levant sympathizers seem to think that whatever the HRCs' original intentions, they've been replaced by censorship and social engineering.

In an *Edmonton Journal* column on January 24, 2008, Paula Simons wrote, "I don't usually agree with Levant, but he is right on free speech." The HRC's chief commissioner at the time, Charlach Mackintosh, responded in a letter: "Simons writes of Levant being hauled before a provincial human rights commission staff member to answer a complaint laid against him and in the process raises concerns about the implications of that investigation for free speech... Firstly, I would like to point out that no one is ever 'hailed' before a commission investigator. Individuals who have had a complaint made against them are invited to respond in person or in writing to the allegations of the complainant. This opportunity is provided to ensure fairness in the process."

Since no decision had been brought down in the Levant case—in fact, the commission had merely been investigating whether there was a reasonable basis to proceed, when the complaint was withdrawn—Levant seemed to be railing against the very fact that anyone should have a right to complain.

Commissioner Mackintosh continued: "Freedom of speech is a Charter right guaranteed to every Canadian. In addition, Alberta's human rights legislation confirms that every individual is entitled to free expression of opinion. What is missing in [Simons's] column is an acknowledgement of the right of every Albertan to file a complaint if they feel they have been a victim of discrimination. If such a complaint is lodged, staff and commissioners are bound by law to deal with it.

"To prejudice the outcome of the process of the complaint against Levant and to suggest that the commission is working

to limit free speech is unfair to everyone involved. Those who provide important service to Albertans through the Alberta Human Rights & Citizenship Commission continually strive to resolve conflict and promote respect for the dignity of every person. A key part of their work is to ensure that, in the resolution of complaints, a balance is maintained between one person's right to say and do what they want and another person's right to file a complaint."

Soharwardy's complaint against another publisher who ran the Danish cartoons—Richard Bronstein of Calgary's *Jewish Free Press*—was resolved with a handshake after the two met with an HRC mediator in March 2007. Bronstein later accepted an invitation to speak to Muslims at the mosque at which Soharwardy serves as imam.

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TEN YEARS AGO, TO HELP ABORIGINAL PEOPLE understand their rights, prominent Aboriginal members of front-line agencies started the Aboriginal Commission on Human Rights. Last year they received an \$89,000 grant from Alberta's Human Rights & Multiculturalism Education Fund.

Lewis Cardinal is chair of the Global Indigenous Dialogue, VP of Aboriginal Voices Radio Network and has been involved with the Aboriginal Commission on Human Rights since its inception. He says the Aboriginal Commission isn't intended to resolve complaints as the general HRC does. Instead, its goal is for Alberta's Aboriginals to understand universal rights, when they're being denied and how to achieve equality. The Aboriginal commission aims to educate and listen to stories of discrimination to help potential complainants decide whether they have a valid issue and, if so, how to proceed. The project already receives "a ton of phone calls" from Aboriginals who want exactly this kind of help.

"The next project is an Aboriginal relations index... a monitoring report of cases, of perceptions, of human rights violations," says Cardinal. He adds that the Aboriginal community needs reliable numbers about racism in order to make a case to policy makers and the public about the severity of the situation. "Instead of just working with anecdotal evidence we can start to muster up some real issues without being accused of 'whining.'"

"You can't legislate against people's own feelings about other people," Cardinal says. "What you can do is stop them from making those comments at the board table. Or at policy development tables, or at funding tables, or anywhere else where decisions are made. That's where we want to stop it... We know that in some regards it's kind of pie-in-the-sky... but racism is still a huge issue within the Aboriginal community." ■

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