




CANADIAN
HUMAN RIGHTS
COMMISSION

COMMISSION
CANADIENNE DES
DROITS DE LA PERSONNE

PROTECTED
106-3-2009-00021 / GB1

Mr. Marc Lemire


OCT 5 2009

Dear Mr. Lemire:

I am writing in response to your access to information request for documents in reference to the following:

“Speaking notes and background documents of Chief Commissioner Jennifer Lynch speech given on August 15, 2009 before the Canadian Bar Association’s meeting in Dublin Ireland. Would like the invitation of the Canadian Bar Association, and any CHRC correspondence over this appearance. Also requesting the supporting document used in Lynch’s speech, including the anonymous letter she received stating that she should be shot dead”.

Enclosed you find the records that respond to your request -- exemptions have been applied pursuant to sections 17 and 19 of the Act. A copy of the relevant section is attached.

Please be advised that you may complain to the Information Commissioner, concerning the processing of your request, within sixty days of the receipt of this notice. In the event you decide to avail yourself of this right, your notice of complaint should be addressed to: Ms. Suzanne Legault, The Office of the Information Commissioner of Canada Place de Ville, Tower B, 112 Kent Street, 22nd floor Ottawa, Ontario K1A 1H3.

Should you have any questions, do not hesitate to contact Ginette Bastien, Coordinator, Access to Information and Privacy at 1 (888) 214-1090 or 613-943-8950. Please quote the file number listed above in all correspondence pertaining to this request.

Yours sincerely,



Heather Throop
Director General
Corporate Management Branch

Enclosures: s. 17 and 19
33 pages



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Speaking notes for

Jennifer Lynch, Q.C.

Chief Commissioner of the
Canadian Human Rights Commission

at the

Canadian Bar Association Meeting of Council

Saturday, August 15, 2009

Conrad Hotel, Ballroom

Dublin, Ireland

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Introduction

Thank you all for welcoming me here today.

I asked for this opportunity to speak with you because of the critical role each of you, and the Canadian Bar Association, fulfill in fostering and sustaining a modern and strong administration of justice in Canada.

Fundamental to the administration of justice is access to justice – entry points for the most vulnerable to have their voices heard.

Over time, access to administrative tribunals has been deemed to be an effective vehicle for the disenfranchised and minorities, among others.

Certainly, the Canadian Human Rights Commission and its provincial and territorial counterparts serve this vital purpose.

And yet, certain detractors seek to caricature the human rights system, and undermine its legacy and ability to ensure equality for all Canadians.

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À titre de présidente de la Commission, il est de mon devoir d'attirer votre attention sur ce débat.

Mon but est de vous informer pour vous aider à vous faire une opinion éclairée.

Dans un premier temps, permettez-moi de vous résumer le rôle et le mandat de la Commission.

Ensuite, je vous raconterai ce qui s'est produit en 2007 alors qu'une proportion de seulement 1/10 000^e de notre travail est devenue l'une des questions les plus controversées.

The purpose section of the *Canadian Human Rights Act*, states:

“The Purpose of this Act is to extend the laws in Canada to give effect, ...to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have” ... without discrimination.

Two years ago, this section inspired me to leave my very satisfying career in the private sector to join the public service and lead the Canadian Human Rights Commission.

How do we fulfill this principle? – in two ways:

(1) We serve a screening function - receiving and processing complaints.

- Like all administrative bodies, we adhere to the rules of procedural fairness and we are subject to judicial review.
- For cases not resolved through mediation, we either dismiss the complaint or send it to the independent Canadian Human Rights Tribunal.

In any given year we receive around 10,000 inquiries, from which we get about 700 formal complaints.

We send roughly 10 % of these to the Canadian Human Rights Tribunal.

(2) As important is our second function: We act as catalysts for advances in human rights.

- We perform an education and outreach function;
- We work with employers to help them shift their organizations to a culture of human rights, integrating human rights into daily practice;
- We develop research, policies, and tools; and give advice to Parliament.
- We represent the public interest in the Federal and Supreme Courts.

And now for the story that I promised.

One of the 10,000 inquiries we received in 2007, became a formal complaint by the Canadian Islamic Congress against Rogers Communications, owner of Maclean's magazine.

Maclean's had published an excerpt of a book by Mark Steyn entitled *America Alone: The End of the World as We Know It*.

The CIC alleged that the online Maclean's article exposed members of the Muslim community to hatred and contempt pursuant to section 13

– the section of our Act that gives the Commission jurisdiction over complaints about Internet hate messages.

The CIC also filed complaints in Ontario and British Columbia.

The issue in this case was whether the expression used in the *Steyn* excerpt was so extreme as to fall within the narrow definition of hate messages provided by the Supreme Court.

All three jurisdictions dismissed the complaint. The CHRC and B.C. dismissed it on its merits; the Ontario Human Rights Commission dismissed it for lack of jurisdiction.

Access to the administration of justice is under attack

Even before the three complaints were dismissed, commissions and tribunals experienced a cacophony of protest

– by those who felt that exposing mainstream media organizations to formal complaints is inconsistent with Canada's commitment to freedom of expression.

The discussion quickly degenerated to discrediting Commissions' processes, professionalism and staff.

Much of what was written was inaccurate, unfair, and at times scary:

Maclean's magazine ran an article with the title: *Kangaroo court is now in session*, by Mark Steyn.

This is not the first sign of an attack by a mainstream publication on the administration of justice.

I am sure everyone in this room recalls that 8 months earlier, this same magazine ran the headline: *lawyers are rats*.

Steyn describes human rights commissions and their employees in this way:

- “Gestapo of the ...Canadian Human Rights Commission”
- “human rights racket”
- “... the whacky world of Canadian human rights.”
- “...(i)t sounds like a fetish club for servants of the Crown”
- “a secretive and decadent institution”

In addition to this negative media frenzy:

- Blogs worked to destroy our investigators and litigators’ reputations and credibility with untrue accusations
- groundless complaints were lodged with the law societies
- and here is a sample of just one threat directed at me: “Someone needs to take this fruitcake...shoot her in the back of her head so that her face can’t be recognized, dump her body in a mass grave, and cover it with lime.”

Some human rights experts tried to respond and correct this misinformation.

One human rights expert who wrote a letter to a major daily paper (*Montreal Gazette*) faced an accusation in a response letter by a journalist the next day asking if he could call her a “drunken pedophile.”

As personal attacks were made against anyone who tried to correct the record, the number of people willing to make the effort dwindled.

There is tangible proof of this: half of the interviewees for an upcoming book on human rights have stated that they feel “chilled” about speaking up.

Ironically, some of those who are claiming that human rights commission’s jurisdiction over hate speech is “chilling” to freedom of expression, have successfully created their own reverse chill.

Malheureusement, on a détourné le véritable débat.

L'équilibre entre la liberté d'expression et le droit à l'égalité a fait place à un discours qui déforme et mine notre système de protection des droits de la personne.

Les détracteurs du système faussent les faits.

Ils décrivent mal les activités entourant nos causes.

Ils le font pour promouvoir leur opinion que les commissions et les tribunaux des droits de la personne ne sont plus utiles.

Il semble que ces détracteurs ne croient pas que notre pays devrait garantir l'accès aux tribunaux administratifs pour défendre le principe de l'égalité.

The debate is now the larger debate – beyond balancing rights – and is about the human rights system itself.

Along with attacking the human rights system, processes used by all administrative bodies are under attack – rules of procedural fairness, the rules of natural justice.

Here are some examples, all from mainstream media:

- “Human rights commissions have been set up as a kind of parallel police and legal system, yet without any of the procedural safeguards, rules of evidence, or simple professional expertise of the real thing.” — *Andrew Coyne, Maclean's, April 6, 2009 (online April 2, 2009)*
- “...our human rights commissions have flown under the radar of public attention for too long, ignored by ... a judiciary that has inexplicably allowed these pseudo-courts to flourish under their very noses.” — *Andrew Potter, Ottawa Citizen, April 12, 2009, page B1.*
- A former Cabinet Minister recently wrote: “(the) story of the terrible abuse of power at the Canada Human Rights Commission is a bone-chilling horror story.

God help you if you get caught in (a human rights commission's) crosshairs, because if it investigates you, the ordinary rules of justice don't apply, including the normal legal protections for the accused.” - *Monte Solberg, Sun Media, April 14, 2009.*

- Sitting MP Russ Hiebert, writing in the National Post this summer, about the Canadian Human Rights Commission wrote: “Defendants have no guarantee of a fair hearing.”
- And many of you will be aware of the writings of Ezra Levant, whose book “Shakedown” encourages the abolition of human rights commissions.

All of this reflects a lack of understanding of the requirements of procedural fairness applicable to administrative tribunals and of the vital role that such bodies play in ensuring access to justice.

Governments have been prodded to react:

- Federally, the Justice and Human Rights Committee has a motion before it to examine the Canadian Commission’s mandate over hate on the Internet – a forum we welcome for this dialogue.
- In Alberta, the recent passing (June 2, 2009) of Bill 44, the Human Rights, Citizenship and Multiculturalism Amendment Act maintained the Alberta Human Rights Commission’s role over hate– this was the subject of heated debate.

- In Ontario, the abolition of the Ontario Human Rights Commission and Tribunal was a platform issue in the recent Conservative leadership campaign.

The Canadian Human Rights Commission welcomes improvements to the human rights system.

Bien entendu, il n'y a rien d'immuable dans les droits de la personne, dans les systèmes qui les protègent – ni dans la manière dont ils sont perçus par la population.

Il incombe à la Commission de reconnaître les changements de notre société.

Nous devons faire preuve de leadership dans nos politiques ou en proposant des modifications législatives si c'est nécessaire.

Bref, nous devons tenir compte de l'évolution de la société.

Il est devenu évident que la Commission doit mieux expliquer ce qu'elle fait au public.

In June, the Commission presented a Special Report to Parliament to provide legislators and the Canadian public with a thorough analysis of Freedom of Expression and Hate in the Internet Age.

And of course I am personally meeting with each Member of Parliament who has human rights in their committee portfolios.

The job of fulfilling the vision created by the CHRA 31 years ago - ensuring that individuals can make for themselves the lives that they are able and wish to have without discrimination - is still a work in progress.

In the 30 + years since its creation, the Commission has contributed to positive changes in the lives of Canadians.

Many of you will know of some of the precedent setting cases that have made a huge difference for different communities seeking equality:

- Via Rail, which provided accessibility for persons with disabilities who travel on trains;
- Sangha, which confirmed that discrimination on the basis of over qualification can be discrimination on the basis of race; and
- Bell Canada, where the Supreme Court of Canada confirmed the institutional impartiality of the Canadian Human Rights Tribunal and contributed to the development of administrative law;
- to name but a few.

Yet Canada continues to face human rights challenges. Much remains to be done to achieve the vision of equality.

Conclusion

La campagne de dénigrement visant le système de protection des droits de la personne et les processus du droit administratif est à la fois inquiétante et frustrante.

Nous pouvons faire beaucoup plus pour implanter des changements systémiques – un rôle important pour la Commission, et auquel j’entends bien me consacrer.

Mais, pour le moment, l’obligation qui nous est faite de défendre notre propre existence monopolise nos énergies.

A recent study shows that the most trusted source of information comes from conversations within our sphere of influence.

High on the list are independent experts and academics.

In our world, these are senior members of the legal community such as you, plus law professors specializing in human rights and law deans.

At the bottom of the list come the organizations speaking for themselves.

Ensuring the promotion and protection of human rights is a responsibility that belongs to all of us.

I encourage you, as officers of the court and as lawyers, to speak out when you can, on these issues.

I am here to ask for your help:

- by using your skills and expertise to ensure that informed discussions take place;
- by writing letters to correct misinformation;
- by encouraging academics and experts to engage in the debate; and
- by promoting public education about the role of administrative tribunals and the processes of the justice system.

I am gratified, Guy, by your response and that of your colleagues, when I made similar remarks in early June at a meeting of your board of directors and you mentioned the CBA's responsibility to engage in public education.

This is a critical time for us at the CHRC and there is growing evidence that this negative campaign is affecting provincial, territorial human rights commissions.

There is no telling how far it will go into the broad administration of justice.

Together, we can ensure that informed discussion takes place, and the manner in which it takes place is respectful of our system of justice.

When you have had the opportunity to discuss this amongst yourselves, I would be very interested in knowing the course of action that you may be able to undertake.

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I welcome your questions and input.

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