



August 1, 2008

**REGISTERED**

Edmonton Council of Muslim Communities  
Attention: Ms. Yasmeen Nizam

Dear Ms. Nizam:

**Re: Edmonton Council of Muslim Communities v. JMCK Western Publishing Corporation o/a Western Standard [S2006/05/0042]**

After reviewing and considering the above noted complaint filed by the Edmonton Council of Muslim Communities with the Alberta Human Rights and Citizenship Commission, I must inform you that I have dismissed the complaint. The enclosed Notice of Dismissal contains the reasons for my decision.

If you believe I have overlooked something that relates to this complaint, or if you disagree with my decision, you have the right to ask the Chief Commissioner to review my decision.

There is a strict time limit within which you must submit your request for review. According to requirements laid out in sections 26(1) and 43(3)(b) of the *Human Rights, Citizenship and Multiculturalism Act*, **the Chief Commissioner must receive your request by whichever of the following two dates occurs first:**

- 30 calendar days from the date you received the enclosed Notice of Dismissal, **OR**
- September 8, 2008, which is 30 calendar days from the presumed date of receipt of the Notice of Dismissal under section 43(3)(b) of the Act.

**Remember, the Chief Commissioner must receive your request for review by whichever of the above two dates occurs first.** If you would like confirmation of your time limit for submitting a request for review, please contact the Commission. The Act does not allow the Chief Commissioner to extend this time limit.

In addition to meeting the time limit for requesting a review, you must also follow these rules:

- Your request for review must be in writing.
- Your request must include reasons why you believe the Chief Commissioner should review my decision to dismiss your complaint.

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Edmonton Council of Muslim Communities

You may also provide the Chief Commissioner with any additional information you believe is relevant to your complaint.

Send your request for review to the Chief Commissioner, Alberta Human Rights and Citizenship Commission, 800 Standard Life Centre, 10405 Jasper Avenue, Edmonton, Alberta, T5J 4R7. If you prefer, you may also send your request for review to the Chief Commissioner by fax at (780) 422-3563.

The Chief Commissioner will send the Respondent a copy of your request for review. The Respondent may provide the Chief Commissioner with any additional information the Respondent believes is relevant. You will receive a copy of any additional information submitted.

If the Chief Commissioner agrees with my decision, she will uphold the dismissal of your complaint. If the Chief Commissioner decides that your complaint should not have been dismissed, she will offer you the opportunity to have your case heard by a human rights panel. You will be responsible for presenting your case to the human rights panel. Details about this process will be provided to you should your complaint reach this stage.

In this letter, I have outlined the Commission's understanding of provisions in the *Human Rights, Citizenship and Multiculturalism Act* and the *Alberta Human Rights and Citizenship Commission Bylaws*. For purposes of interpreting and applying the law, please consult the Act and Bylaws. They are available on the Commission's Web site at [www.albertahumanrights.ab.ca](http://www.albertahumanrights.ab.ca) or can be purchased from the Queen's Printer Bookstore at (780) 427-4952.

If you require clarification about how to request a review by the Chief Commissioner, please call the Commission at (780) 427-3116 in Edmonton and ask for the Coordinator of Panels and Reviews. To call toll free from any where in Alberta, please dial 310-0000 then enter the area code and phone number.

Yours truly,



Marie Riddle  
Director

Enclosures

cc: Mr. Thomas Ross



## Notice of Dismissal

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In the Matter of the *Human Rights, Citizenship and Multiculturalism Act*

In the Matter of complaint **S2006/05/0042** made by

**Edmonton Council of Muslim Communities**  
(Complainant)

alleging discrimination by

**JMCK Western Publishing Corporation (O/A Western Standard)**  
(Respondent)

in the area of publications and notices,  
and on the ground of religious belief  
contrary to section 3 of the Act

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Take notice that I am dismissing the above noted complaint. My power to dismiss is provided by section 22(1)(a) of the Act, which states that:

*"...the director may at any time...dismiss a complaint if the director considers that the complaint is without merit"*

### **Processing background**

This complaint was accepted by the Commission on May 24, 2006. The Complainant alleged that the Respondent discriminated against them in the area of publications and notices and on the ground of religious belief. The Commission received a response to the complaint from the Respondent dated June 27, 2006. In keeping with standard Commission processes, the parties were offered conciliation, but the complaint was not resolved at that stage of the Commission's process. The complaint was therefore assigned for investigation on August 31, 2007.

### **Investigation report**

The Commission's Southern Regional Director submitted his July 29, 2008 investigation report to me, and I have thoroughly reviewed the report.

The report is attached to and forms part of this Notice of Dismissal. It includes summaries of the complaint submitted by the Complainant and the response submitted by the Respondent, a list of sources used for the investigation, a notation of the issue to be explored during the investigation, the findings of the investigation, an analysis, a conclusion and a recommendation. The complaint and response are attached to the investigation report as appendix A and B respectively.

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**My opinion about the analysis included in the investigation report**

The analysis section of the report provides a review of how the *Human Rights, Citizenship and Multiculturalism Act* (the Act) and relevant case law apply to the particular facts of this complaint. I agree with the analysis and adopt it as my own, seeing no need to repeat an analysis with which I agree.

**Dismissal**

Having completed an analysis of how the Act and relevant case law apply to the facts of this complaint, the Commission's Southern Director concludes his report as follows:

*"Given the full context of the republication of the cartoons, the very strong language defining hatred and contempt in the case law, as well as a consideration of the importance of freedom of speech and the 'admonition to balance', the southern director concludes that there is no reasonable basis in the information for this complaint to proceed to a panel hearing." (emphasis in original)*

For the reasons explained in the analysis section of the attached July 29, 2008 investigation report, I agree that there is no reasonable basis for this complaint to proceed to a panel hearing, and I hereby dismiss this complaint.

**Complainant's right to appeal**

The Complainant has the right to appeal my decision to dismiss this complaint. This right is provided by section 26 of the Act, which states that:

*"The complainant may, not later than 30 days after receiving notice of dismissal of the complaint or notice of discontinuance under section 22, by notice in writing to the Commission request a review of the director's decision by the chief commissioner."*

The Complainant's right to appeal is further explained in my August 1, 2008 letter to them.

Attachment: July 29, 2008 Investigation Report, Edmonton Council of Muslim Communities v. JMCK Western Publishing Corporation o/a Western Standard

Dated at Edmonton in the Province of Alberta Government

This 15<sup>th</sup> day of August, 2008

Maree Kiddle  
Director



## Investigation Report

**Edmonton Council of Muslim Communities**  
(Complainant)

v.

**JMCK Western Publishing Corporation**  
o/a  
**Western Standard**  
(Respondent)

**S2006/05/0042**

**July 29, 2008**

This report is not a public document. It is an Investigation Report confidential to the parties to the complaint. This report is for the purpose of concluding a complaint under the *Human Rights, Citizenship and Multiculturalism Act*.

Note: This report is NOT a Human Rights Panel decision.

## WITHOUT PREJUDICE

**THIS IS A CONFIDENTIAL REPORT AND IS NOT FOR DISTRIBUTION EXCEPT TO THE PARTIES OF THE COMPLAINT. THIS REPORT IS SOLELY FOR THE PURPOSE OF CONCLUDING A COMPLAINT UNDER THE *HUMAN RIGHTS, CITIZENSHIP, AND MULTICULTURALISM ACT*, AND NOT FOR ANY OTHER PURPOSE.**

### INTRODUCTION

This report is not a Human Rights Panel decision. This report is prepared pursuant to an investigation under section 21(2) of the Alberta *Human Rights, Citizenship and Multiculturalism Act* (HRCM Act) R.S.A. 2000, c. H-14 and Bylaws and is intended to provide facts and information to the Director of the Human Rights and Citizenship Commission regarding the complaint. An investigation assists the Director in determining whether or not the complaint should proceed to a panel hearing.

### I. THE COMPLAINT

The Complaint filed by the Edmonton Council of Muslim Communities (ECMC) is attached as **Attachment "A."** The Complaint alleges that the publication of certain cartoons by JMCK Western Publishing Corporation (JMCK), operating as the Western Standard, are contrary to section 3 (1) of the HRCM Act. The Complaint alleges that the publication of the cartoons is discrimination on the grounds of religious beliefs, and is "anti-Islamic, racist and reproduced for the purpose of inciting hatred against the Prophet and Muslims." The Complaint alleges that the republication of the cartoons perpetuates negative stereotypes of Muslims and that the "discriminatory effects of the republication are evident in the hate mail received by Muslim organizations following the republication of the cartoons." The ECMC alleges in a post 9/11 world, that Muslims living in the West are at a "greater risk than ever of suffering the effects of systemic discrimination on the basis of their religious beliefs."

### II. THE RESPONSE

The Response, a letter written by Ezra Levant and forwarded by Thomas W. R. Ross, counsel for JMCK, is attached as **Attachment "B."** The Response firstly requests that the Commission dismiss the within complaint as another identical complaint has been filed with the Commission by a different Complainant and that it is vexatious for the Respondent to face both complaints. The Response denies that the publishing of the cartoons is in contravention of human rights legislation, emphasizing rights of freedom of speech and section 3 (2) of the HRCM Act. The Response also states that in the human rights context, "prohibited expression must be extreme and involve unusually strong and deep-felt emotions of detestation, calumny and vilification". The Response states that the "complaint is an improper attempt to stifle legitimate expression" and that the cartoons are not hateful; they are just contrary to fundamentalist Islam. The

Response emphasizes that context is an important consideration and points to a subsequent edition of the Western Standard as evidence that the treatment of the cartoons was “reflective and analytical and was in the style of media criticism”. The Response emphasizes that the complaint “confuses active, malicious discrimination with thoughtful, bona fide discussions of public issues.” Additionally, the Response states that the complaint is based in evidence, most specifically the emails, unrelated to and pre existing the Western Standard publication in general. The Response requests that the complaint be dismissed.

### III. SOURCES

- The Complaint (**Attachment A**) initially received by the Commission on March 16, 2006 and accepted May 24, 2006
- The Response (**Attachment B**) written by Ezra Levant from JMCK and provided to the Commission by his legal counsel, Mr. Thomas Ross dated June 27, 2006
- Excerpts from the videotaped interview with Ezra Levant from JMCK on January 11, 2008 (several requests were made to the Respondent’s counsel for a copy of the full video taped interview but a copy of the videotape was not provided)
- Interview notes from telephone interviews on November 20, 2007 and January 9, 2008 with Yasmeen Nizam and Larry Shaben from the ECMC
- February 27, 2006 issue of the Western Standard
- March 13, 2006 issue of the Western Standard

### IV. ISSUES

Is there a reasonable basis in the evidence for this complaint to proceed to a panel hearing?

Section 3(1)(a) and (b) of the HRCM Act state:

*(1) 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*

*(a) indicates discrimination or an intention to discriminate against a person or a class of persons, or*

*(b) is likely to expose a person or a class of persons to hatred or contempt*

*because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income or family status of that person or class of persons.*

Section 3(1) is tempered by 3(2):

*(2) Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject.*

## V. INVESTIGATION

### **Information from Complainant**

The ECMC is an umbrella organization for nine mosques and Muslim organizations in Edmonton representing approximately 35,000 Muslims. It is an organization which develops policy and promotes interfaith activities and is committed to serving the Muslim community in Edmonton.

The position of the ECMC is that any coverage the JMCK wanted to make about the cartoons could have been done without publishing the cartoons. ECMC questions whether there was indeed a story that needed to be told. ECMC emphasizes that the publishing of the cartoons crossed the line and perpetuated stereotypes and hatred against Muslims which in turn increased the risk of harm to the Muslim population, especially after 9/11. ECMC emphasizes that there is a clear difference between fundamentalist Islam, and terrorism. Further, ECMC states that the inclusion of the cartoons in the "Western Standard", a magazine which is said to be widely distributed, gives the cartoons and the images they invoke, a credibility which the cartoons would otherwise not have.

ECMC argues that the publication of the cartoons is discriminatory. The first cartoon which is a picture of the head of the prophet with horns, signifies evil and the devil. By publishing this cartoon, the magazine is "essentially saying that Muslims are followers of an evil personage and followers of a demonic religion." This depiction of the Prophet is hurtful and insulting to Islam and promotes hatred against all Muslims by demonizing the Prophet and therefore the religion.

ECMC alleges that the second cartoon "blatantly characterizes the Prophet as a terrorist by showing him wearing a bomb shaped turban." The message conveyed is that the Prophet is a terrorist and that all Muslims are inherently violent. The purpose of the cartoon is to incite hatred against Muslims by branding their religion as evil and violent.

ECMC states that the third cartoon depicts the Prophet advocating violence and terror. The cartoon perpetuates the stereotypes that Muslim men believe that they are entitled to virgins in heaven. ECMC alleges that the cartoon also "conjures up imagery of the Prophet and male Muslims as depraved and lecherous humans whose ultimate aspiration is sexual gratification." Again, the ECMC states that this "cartoon promotes disdain and enmity against Muslims."

The fourth cartoon shows a “blindfolded and smiling Prophet holding a blood stained sword flanked on either side by two women whose eyes express shock. ECMC alleges that the blindfold suggests that the Prophet must have just indiscriminately killed someone and he is reveling in his actions. The message is that “Muslims are followers of a religion that promotes wanton killing of people and derives pleasure from such acts.”

The ECMC feels that the messages are clear and the imagery obvious. The ECMC feels that a picture is worth a thousand words. ECMC emphasizes that Muslims, since 9/11, are at a higher risk for discriminatory treatment than the general population. The ECMC agrees that free speech includes the right to offend but the republication of these cartoons crosses the line into discrimination.

In terms of the emails, ECMC states that they were in response to the general media attention (Jewish Free Press, CBC interview) surrounding the upcoming republication of the cartoons by JMCK in the Western Standard. The letter/note was received after the republication of the cartoons.

### **Information from Respondent**

Ezra Levant, speaking on behalf of JMCK, takes great exception to the Commission’s jurisdiction to investigate this complaint. Mr. Levant classifies the Commission’s request for a written response and participation in the investigation process (a 90 minute interview), as an “interrogation” which he states is a violation of his inalienable freedoms. He states that the Commission has taken it upon itself to be an “enforcer of the views of radical Islam”. Subsequent to his interview with the human rights investigator, Mr. Levant posted the interview on UTube.

Mr. Levant considers the cartoons part of a political and religious debate and states that there should not be any limits on freedom of speech in this kind of debate (with the exception of crimes which incite violence or conspiracy to commit murder or defamation and fraud). Mr. Levant feels that “unbridled political speech” should not just be allowed but is an “antidote against violence” because it promotes progressive society through challenging the established order. Mr. Levant states that he is not anti-Muslim or racist but he and the Western Standard have an “inalienable” right to publish or say anything about anyone or any group of people, even if done with racist intent. The Respondent further states that the words/pictures speak for themselves.

When asked about the concern of the Complainants that the cartoons exposed Muslims to hatred and contempt, Mr. Levant responded that the last place of worship to be torched in Edmonton was his synagogue and that it was not the cartoons, rather it was the radical Muslims who engage in honour killings, blow things up, torch synagogues, and file nuisance suits which make people hate Muslims.

## VI. ANALYSIS

The protection of freedom of speech in the context of human rights law has been well considered by the Courts and human rights panels. Decision makers have consistently held that the goals of human rights legislation to promote equality and prevent harm to targeted groups are justifiable limits on freedom of expression.<sup>1</sup>

The issue of whether the media should be granted an exemption from human rights legislation on the basis of freedom of expression was examined by Rooke J in *Kane v. Alberta Report*, 2001 ABQB 570 (*Kane* reference case). Rooke J stated that while the importance of a free press is fundamental to a democratic society, “that this freedom must be exercised responsibly, particularly in light of the enormous influence that the media enjoys.” [para 93] He went on to state that “exempting the media from the Act in this regard would be tantamount to presuming that the media is always neutral in its reporting. I am not prepared to make that presumption.” [para 93]

In determining whether section 3 (1) of the HRCM Act has been breached the case law emphasizes that a full contextual approach must be utilized. The following factors and an analysis as applied to the within complaint are as follows:

- **content and tone of the communication.** The tone of the cartoons, viewed in isolation is stereotypical, negative and offensive. However, the cartoons are accompanied by an article which takes other media outlets to task for not reprinting the cartoons for fear of violence by Muslims. The article emphasizes that it is the job of the news media to report the news and summarizes the effect on those news organizations who did print the cartoons in covering the news story that some Muslims had reacted violently to the publication of the cartoons. The article reads like an editorial or opinion piece supporting the view of the magazine that certain groups cannot determine what is or is not printed in the media. The focus of the article is that free speech cannot be limited by the views of some violent Muslims. While the cartoons remain offensive, the stereotypical nature of the cartoons is muted by the context of the accompanying article which focuses on free speech.

In a subsequent edition of the *Western Standard*, letters both condemning and supporting the reprinting of the cartoons were published (March 13, 2006 edition). Additional articles supporting the decision of the JMCK to reprint the cartoons were published in this edition, with one article which did not support the position of JMCK to reprint the cartoons.

- **the image conveyed including whether the use of quotations or reference sources gives the message more credibility.** While the article does contain mainly quotes from sources which are critical of the position of not reprinting, there were a couple of sources

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<sup>1</sup> *Canadian Human Rights Commission v. Taylor* [1991] 13 C.H.R.R. D/435 (S.C.C.) (*Taylor*); *Canadian Jewish Congress v. North Shore Free Press Ltd.* (No. 7) (1997) 30 C.H.R.R. D/5 (B.C.H.R.T.)

quoted (in part), which supported the position of their particular news organization not to reprint the cartoons.

- **vulnerability of the target group.** There is limited independent research on the vulnerability of Muslims, as a minority group, in Canada. However, research in the United Kingdom supports that Muslims are a vulnerable minority group especially since 9/11.<sup>2</sup>
- **the degree to which the cartoons reinforce existing stereotypes.** The cartoons do reinforce stereotypes; however, the impact of the stereotyping is lessened by the accompanying article. The inclusion of the cartoons had a purpose to the thesis of the article and the cartoons were not simply gratuitously included. There is no commentary in the article, either approving or criticizing the substance or meaning of the cartoons.
- **the circumstances surrounding the message, including whether the messages appeal to well publicized issues.** The message of both the cartoons and the accompanying article related to relevant and timely news in February, 2006. The cartoons were not simply stuck in the middle of a magazine with no purpose or related story.
- **the medium used to convey the message- the circulation of the publication; the credibility to be accorded the publication.** The Western Standard was in print for approximately 3.5 years and then went out of business.

### **“Indicates Discrimination”**

#### Section 3(1)

*(1) 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*

*(a) indicates discrimination or an intention to discriminate against a person or a class of persons, or*

With respect to section 3(1)(a), the panel in *Kane v. Church of Jesus Christ Christian-Aryan Nations* (No. 3) 18 C.H.R.R. D/268 (*Kane v. Aryan Nations*) examined the meaning of “indicates discrimination”. The panel held:

1. There does not have to be an actual act of discrimination for there to be an “indication of discrimination”;

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<sup>2</sup> Dr. L. Sheridan, “Islamophobia Pre- and Post-September 11, 2001, Journal of Interpersonal Violence Vol. 21, No. 3, 317-336 (2006)

2. The display or notice must show “predilection, belief or attitude” to discriminate and reinforce prejudice;
3. There does not have to be evidence of an intention to discriminate to find an “indication of discrimination”.

In *Kane v. Aryan Nations*, as well as in other case law, the impugned action was also of such a prejudicial nature that the rights of the target group to obtain equal opportunities in employment, housing and public accommodation were found by the Panel to be endangered.

The cartoons in the within complaint, viewed in isolation are stereotypical and offensive. However, the cartoons are in the context of an accompanying article about freedom of speech and the media. Subsequent editions of the Western Standard reprinted letters from both sides of the debate including letters which were clearly sympathetic to Muslims. The republication of the cartoons is part of the opinion of the writer that free speech is endangered if the media decide not to publish articles or information that one group believes should not be published. The information and analysis do not support the view that cartoons in this context would “indicate discrimination” or endanger the rights of Muslims to equal opportunity in employment, housing and public accommodation.

### **“Intent to Discriminate”**

#### **Section 3(1)(a)**

*(1) 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*

*(a) indicates discrimination or an intention to discriminate against a person or a class of persons,*

In *Stacey v. Choose Life Canada (No. 2)* 2002 BCHRT and *Stone v. BC Ministry of Health* (2007) 59 C.H.R.R. 204 (BCHRT) the tribunals examined the meaning of “intention to discriminate”. The tribunals stated that while intention is usually irrelevant in human rights law, the specific wording of the section makes intention an essential element. Further, the tribunals in *Stacey* and *Stone* emphasized that the impugned statement must be more than mere opinion.

The information from JMCK as well as a read of the accompanying article, indicates that JMCK, did not intend to discriminate. Rather, the republication of the cartoons was made in the context of an article supporting the position that the media should have exercised freedom of speech and reprinted the cartoons while covering the news story of the Muslim reaction to the cartoons.

**“Exposing a Person or Class of Persons to Hatred and Contempt”**

**Section 3(1) (b)**

*(1) 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*

*(b) is likely to expose a person or class of persons to hatred and contempt concerning:*

With respect to section 3(1)(b) of the HRCM Act, the case law defines hatred and contempt as referring to “unusually strong and deep-felt emotions of detestation, calumny and vilification” [para 60 *Canadian Human Rights Commission v. Taylor* [1991] 13 C.H.R.R. D/435 (S.C.C.)]

The tests for whether a person or class of persons is exposed to hatred and contempt, as set out in the case law and reiterated by Rooke J in the *Kane* reference case, are:

- 1) Does the communication itself express hatred or contempt of a person or group on a basis of one or more of the listed grounds? Would a reasonable person, informed about the context, understand the message as expressing hatred or contempt; that is, did the republication of the cartoons collectively convey “unusually strong and deep felt emotions of detestation, calumny and vilification”?

While the cartoons do, in isolation, reinforce existing stereotypes of Muslims, the cartoons, placed in the context of the accompanying article, cannot be said to express deep seated feelings of hatred and contempt against Muslims. Reasonable people, informed about the context would not understand the message in the cartoons and the accompanying article as expressing strong feelings of vilification, hatred and contempt against Muslims.

- 2) Assessed in its context, is the likely effect of the communication to make it more acceptable to others to manifest hatred or contempt against the person or group concerned? Would a reasonable person consider it more likely than not to expose members of the target group to hatred and contempt?

Certain members and organizations in the Muslim community did receive insulting and hateful emails and a letter/note, against Muslims generally and the religion of Islam. Contrary to the position of JMCK, it is not necessary for only the Complainant to have received the emails and letter, for the emails to be evidence of hatred and contempt. Some of the emails predated the actual republication of the cartoons in the *Western Standard* and appeared to be in response to other general media attention surrounding the upcoming republication of the cartoons. The letter was received after the republication of the cartoons. In contrast to the emails and letter, the printing of numerous letters to the editor in a subsequent edition of the *Western Standard*, demonstrates that a great number of people were outraged by the cartoons, sympathetic to Muslims and opposed to the actions of the *Western Standard* to reprint the materials.

Assessed in its context of a discussion that media outlets were wrong to not republish the cartoons, the likely effect of the communication does not make it more acceptable to others to manifest hatred or contempt against Muslims. A reasonable person would not consider that the republication of the cartoons in the context in which they were republished, would expose Muslims to the very strong feelings of hatred and contempt. Again, while the republication of the cartoons in isolation would likely promote existing stereotypes, and Muslims are a relatively vulnerable group, the effect of this communication as a whole (cartoons and accompanying article) would not make it more acceptable to others to manifest hatred or contempt against the Muslims.

### **Admonition to Balance Freedom of Speech with the Eradication of Discrimination**

Section 3(1) is tempered by 3(2):

*(2) Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject.*

Section 3(2) has been interpreted in the case law as an “admonition to balance”: (*Taylor supra*)

Rooke J in the *Kane* reference case accepted that section 2(2) (now 3(2)) is neither a defence nor a justification for a breach of section 2(1) (now 3(1)). Rooke J emphasized that a consideration of freedom of speech will occur indirectly in determining whether there has been a prima facie breach of section 2(2) (now 3(2)).

Rooke J then emphasized that if a prima facie breach of section 2(1) was found to have occurred, there still must be an additional direct consideration of free speech under section 2(2). A decision maker must then consider the “necessity of balancing the objectives of eradicating discrimination with the need to protect free expression.” [para 89] Only then will a contravention of the Act be found.

The admonition to balance emphasizes the high standard required for finding a contravention of the Act. Given the context of the republication of the cartoons in a discussion on freedom of expression, Section 3(2) provides support that there is no reasonable basis in the evidence to send this matter to panel.

The case law to date is also instructive. Most of the cases where complaints have been sent to a panel hearing pursuant to section 3 (or similar sections in other jurisdictions) involve cases where the respondents have used clear hateful and contemptuous language, or have set up displays and signs against a protected group and have urged adverse action be taken against that protected group. Contextually, the case at hand is different than most of the other s. 3 cases that have gone to panel hearings.<sup>3</sup>

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<sup>3</sup>. *Lund v. Boissoin and The Concerned Christian Coalition Inc.* (Andreachuk, Q.C. Alta. HRP, November 29, 2007), *Taylor, Kane v. Aryan Nations*


The concerns of the Respondent about there being two complaints against it on the same issue need not be addressed as one of the complaints has been withdrawn.

## VII. CONCLUSION

Given the full context of the republication of the cartoons, the very strong language defining hatred and contempt in the case law, as well as a consideration of the importance of freedom of speech and the “admonition to balance”, the southern director concludes that there is no reasonable basis in the information for this complaint to proceed to a panel hearing.

## VIII. RECOMMENDATION

It is recommended that the Complaint be dismissed.



Pardeep S. Gundara  
Southern Director