

The human rights set-up

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One of the most preposterous cases in the field of so-called human rights law in recent years has quietly evaporated into the ether, leaving a relieved but nevertheless injured victim.

The victim is John Fulton, owner of the Downtown Health Club for Women in St. Catharines, Ont. In 2006, an individual dressed as a woman visited the club and applied for membership. The person then told Fulton, "I'm really a guy" — a man planning to have a sex-change operation.

With only one change room and shower room in the club, admitting this individual would have meant allowing a man to observe the other patrons — all female — in various stages of undress. As well, the women could have been subjected to seeing a naked man in their dressing room. Unable to figure out how he could distinguish the applicant from a voyeur or an exhibitionist, Fulton hesitated to grant him membership. Within a week, two more "transitioning" men tried to join the women's gym, even though there's a co-ed gym right next door. The whole scenario screamed "set-up!"

But before he could even obtain legal advice, Fulton had been slapped with a so-called human rights complaint.

At mediation, the complainant demanded a large sum of money to drop the complaint. But Fulton declined to capitulate to this example of what author Ezra Levant has labelled a "shakedown." Instead, he hired lawyer Andrew Roman, who tells me the "going rate" for such settlement demands is \$20,000 to \$25,000.

Roman raised legal objections to the Human Rights Tribunal of Ontario's jurisdiction to entertain the bizarre claim. The Ontario Human Rights Code specifically permits facilities to serve a single sex on the grounds of public decency, and ordains that such restrictions do not constitute illegal discrimination. Therefore, how could anyone reasonably claim that the club had a legal duty to admit a biological male to the women's locker room simply because he intended, some day, to become a woman?

Fulton also raised constitutional arguments — most importantly, that admitting the complainant would vio-

late the rights of club members to freedom of association under the Canadian Charter of Rights and Freedoms.

The case was finally set for hearing in late 2009 when the complainant suddenly, without explanation, withdrew the complaint.

Although Fulton was no longer in jeopardy of being "convicted" of a human rights violation, he now had legal bills of roughly \$150,000 to pay. He had also suffered considerable stress from the prolonged, highly publicized proceedings, and he felt maligned by the accusation of bigotry that he was never given the opportunity to disprove. In actuality, Fulton is a model of tolerance who was recently awarded a plaque for community service for his long-standing support of AIDS Niagara.

Fulton applied to the Human Rights Tribunal of Ontario for an award of costs to help pay his legal fees. He was turned down flat. The tribunal lacks the legal authority to award costs, it ruled.

True enough — but things are not quite so simple. The tribunal lacks the authority only because it has never taken the trouble to avail itself of the

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power which the law grants to it of adopting rules relating to costs. The opportunity is there, under sections 17.1 and 25 of Ontario's Statutory Powers Procedures Act, but the tribunal has never bothered to set up a process for enabling it.

And indeed, why bother? The number of cases that end like Mr. Fulton's, with the accused walking away free from conviction or having to pay out a sizable amount of money, are very few indeed. Many cases settle at the mediation stage, when the nature of the shakedown process is first revealed. Targets are told, in essence, "You can settle for \$25,000 now



John Fulton, owner of St. Catharines Downtown Health Club for Women.

or pay \$200,000 in legal fees later. Take your pick." Most pick settlement.

For complainants, the process is virtually risk-free. It costs them nothing to file a complaint, and the tribunal mediator will help explain the shakedown. If they want some legal help filing their complaint, they can get it gratis, at the taxpayer-funded Human Rights Legal Support Centre. And they never have to risk paying costs, no matter how ill-conceived or unjustified their complaint was. Heads, the complainant wins; tails, the accused loses.

I phoned the Human Rights Tribunal of Ontario to ask why they had not adopted rules on costs. The spokesperson told me that any changes to the rules would require public consultation, and they had no public consultation scheduled. Just one feeble excuse after another. Meanwhile, the shakedowns continue.

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