

Kangaroo Courts?

Analyzing the conflict between human rights tribunals
and Canadians' fundamental freedoms



By John Carpay, with James A. McLean

Protecting the constitutional freedoms of Canadians
through education and public interest litigation

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We protect the constitutional freedoms of Canadians through education, communication and litigation.

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Kangaroo Court (Merriam-Webster dictionary):

1 : a mock court in which the principles of law and justice are disregarded or perverted

2 : a court characterized by irresponsible, unauthorized, or irregular status or procedures

3 : judgment or punishment given outside of legal procedure

Table of Contents

I. Introduction	Pgs. 7-11
 II. Freedom of Expression	
Lund v. Boissoin and The Concerned Christian Coalition Inc.	Pg. 12
Johnson and Greenfield v. Roman Catholic Diocese of Calgary and Bishop Frederick Henry	Pg. 12
Ward v. British Columbia Press Council	Pg. 13
McKinlay v. Dial Agencies	Pg. 13
Canadian Jewish Congress v. North Shore Free Press and North Shore News, and Doug Collins	Pg. 13
Attis v. New Brunswick (School District 15)	Pg. 14
Komar v. Whatcott	Pg. 14
Hellquist, et al. v. Owens	Pg. 15
Pardy v. Earle and Ismail Zesty Food Services Inc.	Pg. 15
Keith Dreaver, et al. v. Jim Pankiw	Pg. 15
Edmonton Muslim Council v. Levant and Western Standard	Pg. 16
Elmasry and Habib v. Roger's Publishing and MacQueen (Maclean's Magazine case)	Pg. 16

III. Freedom of Religion

Gray and others v. University of British Columbia Students' Union – Okanagan (No. 2)	Pg. 17
Smith and Chymyshynto v. Knights of Columbus Council in Canada	Pg. 18
M.J. v. Nichols	Pg. 18
Goertzen, et al. v. Saskatchewan	Pg. 18
Heintz v. Christian Horizons	Pg. 19
Rob Wells v. Father de Valk, Catholic Insight Magazine	Pg. 19

IV. Public Policy

Hogan v. Ontario (Minister of Health and Long Term Care)	Pg. 20
Hudler v. London (City)	Pg. 20

V. Private Business

Steve Gibson v. Ted Kindos, Gator Ted's Tap and Grill	Pg. 21
Entrop v. Imperial Oil Ltd	Pg. 22
Sheridan v. Sanctuary Investments Ltd. dba "B.J.'s Lounge"	Pg. 22
Ferris v. Office and Technical Employees Union, Local 15	Pg. 22
Quintin Johnson v. Music World Ltd., HMV Canada, A.V.E. Entertainment (Formerly Known as Top Forty Music)	Pg. 23
Brillinger v. Brockie	Pg. 23
Stoppa v. Just Ladies Fitness (Metrotown) Ltd.	Pg. 24
Shane Coward v. Tower Chrysler Plymouth Ltd.	Pg. 24
Naraine v. Ford Motor Co	Pg. 24
Nixon v. Vancouver Rape Relief Society	Pg. 25
Asad v. Kinexus Bioinformatics	Pg. 25

Introduction

Canadians' fundamental freedoms

Canadians are gradually losing their fundamental freedoms, which have been developed over centuries through common law, from *Magna Carta* in 1215, and onwards. Traditionally, Canadians' freedoms have included:

- Freedom of speech on topics of public interest, without fear of state prosecution;
- Freedom to preach and to practice one's faith in the public square;
- Freedom to associate – or not associate – with other people in business and social relations;
- Freedom to enjoy the use of one's own property.
- Freedom of contract

In conjunction with these freedoms, citizens have also enjoyed a right to equal treatment before the law as individuals, regardless of the person's race, gender or other types of group membership. Being a member of a “disadvantaged group” or an “advantaged group” meant nothing when individuals were treated equally before the law *as individuals* rather than as members of a particular group.

These fundamental freedoms have been exercised by citizens for centuries, with minimal government involvement. Religious freedom, freedom of expression, and freedom of association require only that government protect the lives and property of its citizens by enforcing laws against theft, violence and murder. Beyond that, these fundamental freedoms ask nothing of government, other than to stand back and allow people to make their own choices.

There is no conflict between these fundamental freedoms, most (but not all) of which were enshrined in the *Canadian Charter of Rights and Freedoms* in 1982. For example, two people with opposing views can each exercise their freedom of expression, and can do so without restricting or curtailing the other person's right to peacefully express political or religious opinions. No court is asked to choose between competing claims of freedom of expression; both persons can fully exercise their individual rights to engage in the peaceful expression of opinions.

The new “human rights”

Since the 1980s, the traditional and fundamental freedoms enjoyed by Canadians have been gradually eroded, and partially replaced, by legislation guaranteeing new “human rights.” As the cases in *Kangaroo Courts?* demonstrate, chief among the new “human rights” is a right to be free from hurt feelings or offence caused by another person’s expression of political or religious views. Another new “human right” is to conduct business with another person against her or his wishes, and to impose contractual terms on an unwilling party. These new “human rights” often masquerade under more appealing names, such as “a right to freedom from discrimination,” but that does not alter their essential character.

In contrast to our traditional and fundamental freedoms, the new “human rights” can only be enforced by coercive government action in the form of orders, prohibitions and financial penalties. The new “human rights” cannot be freely enjoyed simultaneously by all Canadians in the absence of government involvement.

The inherent conflict between Canadians’ constitutional freedoms and the new “human rights” is a never-ending source of litigation, and courts are continually asked to resolve the contradictions. Canadian courts have consistently upheld human rights legislation as a valid restriction on our fundamental freedoms.

Real courts vs. human rights tribunals

Not only do the new “human rights” override Canadians’ fundamental freedoms, but the human rights tribunals, which adjudicate complaints, lack the procedural fairness that is found in real courts.

In real courts, both parties must pay for their own legal bills. In Canada’s human rights tribunals, the complainant pays nothing, while taxpayers foot the bill for the prosecution against the respondent (complained-against party). The respondent must pay for all of her or his own legal costs.

In real courts, both the plaintiff and the defendant run an equal risk of having to pay a substantial portion of the winner’s legal costs at the conclusion of the trial (or final appeal). But in Canada’s human rights tribunals, the complainant incurs no such risk. If the complaint is dismissed (whether before or after a hearing) the complainant has no obligation to indemnify the respondent party for the legal costs that she or he was forced to pay in defending herself or himself against the prosecution..

In real courts, a plaintiff must prove that damages were caused by the defendant’s breach of a contract, negligence, assault, or other tort. In Canada’s human rights tribunals, the

mere assertion of hurt feelings (a claim which is usually impossible to dispute or refute) will entitle the complainant to receive thousands of dollars, a forced apology, and other awards.

Real courts adhere to rules of evidence, rejecting hearsay and conjecture. However, human rights tribunals are not bound by these traditional rules of evidence; a significant departure from common law principles that is demonstrated throughout this report.

In a criminal court, the Crown must prove beyond a reasonable doubt that the accused intended to commit the crime he is accused of. For instance, in a charge of “wilfully promoting hatred” under the Criminal Code, the prosecution must prove that the accused actually intended to, and did, promote hatred—that it was not merely accidental. In human rights tribunals, the complainant need not prove an intent to harm, or that any harm actually occurred; hurt feelings are sufficient to silence a person who expresses “politically incorrect” opinions. In a real court, the defendant in a defamation action can raise the defenses of truth, fair comment, and qualified privilege. Before a human rights tribunal, truth is no defense to a claim of hurt feelings.

Human rights prosecutions are technically not “criminal”

Supporters of human rights commissions are quick to point out that human rights proceedings are not criminal prosecutions, and therefore a person accused of “discrimination” does not need or deserve the procedural protections afforded to a person accused of a crime.

While it’s true that a Canadian who is found guilty of violating a human rights code does not acquire a criminal record, she or he is publicly branded as a “bigot” by the human rights prosecution process. Further, she or he may be subjected to orders which are far more humiliating than those imposed by criminal courts (eg. *Lund v. Boissoin*).

Canadians found guilty of violating a human rights code may be required to pay sums of money to complainants which are far larger than fines imposed by criminal courts.

A person can also face jail time for refusing to obey a tribunal’s order. This may sound like a fair and reasonable consequence. However a human rights tribunals sometimes order people to act in violation of their own conscience (eg. *M.J. v. Nichols*).

In short, while the proceedings before human rights tribunals are technically not criminal, their effect on an accused person is fundamentally similar to the effect of a criminal prosecution:

- a damaged reputation from a public prosecution process;
- humiliation upon a finding of guilt;
- financial and other penalties;
- the very real possibility of jail.

In spite of these similarities between criminal and human rights prosecutions, a low-income person accused of violating a human rights code does not qualify for legal aid, whereas she or he would receive financial assistance to defend against a criminal prosecution in a real court.

A threat to democracy: the chilling effect on freedom of speech

In *Taylor v. Canada (Human Rights Commission)*, [1990] 3 S.C.R. 892, the Supreme Court of Canada narrowly upheld the constitutional validity of section 13(1) of the Canadian Human Rights Act, which bans speech that “is likely to expose a person or persons to hatred or contempt.” Writing for the majority which upheld section 13(1) as a justifiable infringement of freedom of expression, Chief Justice Dickson asserted that “there is little danger that subjective opinion as to offensiveness will supplant the proper meaning of the section.”

The cases listed in *Kangaroo Courts?* suggest that Chief Justice Dickson’s confidence may have been misplaced. Human rights tribunals across Canada are eroding our fundamental freedoms, particularly our freedom of expression.

In “*The Commission of Human Wrongs*,”¹ Nigel Hannaford eloquently describes how human rights commissions threaten our freedom of speech. The “chilling effect” makes no distinctions as to the speech it silences, whether the speech is valuable or marginal. When citizens fear the very real possibility of being prosecuted for speech which someone may find “offensive” or “hurtful,” robust debate no longer takes place, thereby undermining one of the cornerstones of a healthy democracy.

No court has ever ruled that a Canadian government, whether federal or provincial, *must* enact a human rights code. Accordingly, Canadian governments have a choice as to whether they prefer the new “human rights” to our traditional and fundamental freedoms.

¹ Frontier Centre for Public Policy, FCPP Policy Series No. 45, June 2008; http://www.fcpp.org/pdf/PS45_HRC_JN27_D2.pdf.

Governments, however, continue to pretend that there is no conflict between Canadians' traditional, and constitutionally enshrined, freedoms and the new "human rights" created by legislation. But the large number of court cases dealing with precisely this conflict shows that governments are wrong. A conflict exists, and a choice must be made.

Further, Canada's federal and provincial governments also have a choice as to whether to retain or remove the sections of human rights codes which restrict freedom of speech. Nothing stops a government from removing these sections from the human rights code while retaining legislative provisions that limit discrimination in employment, accommodation and services.

The cases which follow in *Kangaroo Courts?* expose the conflict between the new human rights and Canadians' traditional freedoms.

Freedom of Expression

Alberta Human Rights Commission

Lund v. Boissoin and The Concerned Christian Coalition Inc. (2008)

On June 17, 2002, the *Red Deer Advocate* published a letter-to-the-editor by Reverend Stephen Boissoin that questioned the “homosexual agenda” promoted by political activists. The article challenged the morality of homosexual rights activists and called on heterosexuals to “wake up” and “get involved” in opposing the “premeditated strategies, aimed at desensitizing and eventually recruiting our young into their camps.” Taking issue with the article, University of Calgary Professor Darren Lund brought a complaint against Reverend Boissoin to the Alberta Human Rights Commission (AHRC). On November 30, 2007, the AHRC held that Stephen Boissoin and The Concerned Christian Coalition (CCC) were guilty of breaching Section 3 of the *Human Rights Citizenship and Multiculturalism Act* by “exposing homosexuals to hatred or contempt because of their sexual orientation.” On May 30, 2008 the Commission ordered Boissoin and the CCC to pay the complainant \$5,000; prohibited them from publishing (in newspapers, email, on the radio, in public speeches or on the internet) any disparaging remarks about homosexuals; restricted them from publishing remarks about Dr. Lund and his “involvement in the complaints;” and ordered Reverend Boissoin and the CCC to write an apology and request that this apology be published in the *Red Deer Advocate*.

Alberta Human Rights Commission

Johnson and Greenfield v. Roman Catholic Diocese of Calgary and Bishop Frederick Henry (2005-2008)

In March of 2005, Carol Johnson and Norman Greenfield filed a complaint against Frederick Henry, the Roman Catholic Bishop of Calgary, for comments he made in a pastoral letter and in a *Calgary Sun* column that condemned same-sex marriage. Bishop Henry’s column said that the State should curb “homosexuality, adultery, prostitution and pornography [that] undermine the foundations of the family [and] the basis of society...” Carol Johnson and Norman Greenfield filed a complaint against the Roman Catholic Diocese of Calgary and Bishop Henry on the ground of sexual orientation in the area of “goods/services refused and terms of goods/services”, and in the area of “publications, notices, signs and statements.” The complaints were dropped after receiving much attention in the national press. As of this date, the Alberta Human Rights Commission has not provided a formal public statement to announce that the complaints have been dropped.

British Columbia Human Rights Tribunal

Ward v. British Columbia Press Council (2008)

In the summer of 2007, the *Richmond News* published an article titled “Fury rises over First nations fishing and Commercial anglers shut out while natives take dwindling catch.” The article questioned the exclusive right of native bands to fish the Fraser River “despite dwindling sockeye salmon stocks” while non-aboriginal fishermen were denied this opportunity. An Aboriginal complained that the article “failed to present a First Nations perspective” on the issue; that the article’s use of the term ‘native’ and ‘First Nations’ (without identifying the particular First Nation involved) inferred a “negative perception” that all First Nations lacked appropriate conservation values; and that the article pitted First Nations peoples against non-First Nations peoples. The taxpayer-funded complaint was dismissed in May 2008, leaving the parties who were complained against to pay for their own legal costs.

Saskatchewan Human Rights Tribunal

McKinlay v. Dial Agencies (1980)

In 1980, a businessman was brought before the Saskatchewan Human Rights Tribunal for posting a letter in his store window. His letter questioned the aptitude of his elected officials by comparing the provincial government to mentally retarded people. The complainant in this case suffered from a disability and filed a complaint with the Tribunal, alleging that she had been discriminated against on the basis of her physical disability. The Tribunal agreed and ordered the store owner to delete the offending lines from his article.

British Columbia Human Rights Tribunal

Canadian Jewish Congress v. North Shore Free Press and North Shore News, and Doug Collins (1997)

After writing an article in the *North Shore News* dismissing *Schindler’s List* as Jewish propaganda, decorated war hero and controversial journalist Doug Collins was brought before the BC Human Rights Tribunal for making “discriminatory” comments that would likely expose Jewish people to hatred or contempt based on their race. Mr. Collins was found guilty of discrimination but died before his appeal could be heard. This case is noteworthy because it is one of the first such Tribunal cases to limit a journalist’s free speech rights because of a comment that was “likely to offend.”

New Brunswick Human Rights Commission

Attis v. New Brunswick (School District 15) (1996)

Malcolm Ross, a teacher, published various books that contained anti-Semitic material, but did not raise his anti-Semitic beliefs in his classroom. A discrimination complaint was filed against both Ross and the school board. The complainant, David Attis, alleged that the school board's failure to punish Ross for his personal views meant that they had in fact condoned his views. Ross was suspended, without pay, for eighteen months while the decision was appealed up to the Supreme Court of Canada. While there was no evidence that Ross' views had created a "poisoned" learning environment, the Supreme Court upheld the Commission's finding that evidence was not necessary in this case; to be found guilty of discrimination, the complainant only had to prove that Ross' actions created a *possibility* that discriminatory practices would occur.

Saskatchewan Human Rights Tribunal

Komar v. Whatcott (2002)

In September of 2001, and in March and April of 2002, Mr. Whatcott peacefully distributed flyers expressing his political and religious views on a matter of public policy, namely the introduction of homosexuality into the Saskatoon Public School curriculum. The flyers (of which there were four variations) challenged the practice of homosexuality by quoting the Bible; presenting statistics about homosexuals and AIDs; and referred to homosexuals as "sodomites" who want to seduce young boys.² For having peacefully expressed his opinions, Mr. Whatcott was subjected to legal proceedings and summoned before the Saskatchewan Human Rights Tribunal. In May of 2005, the Tribunal ordered Mr. Whatcott to pay a total of \$17,500 to four complainants who were offended by his flyers. The Tribunal also ordered him to refrain from distributing the same flyers or similar flyers. In 2007, the Saskatchewan Court of Queen's Bench upheld the decision of the Tribunal. This case is now before the Saskatchewan Court of Appeal.

² One of the flyers consisted of a photocopy of a page of classified ads in *Perceptions*, a gay magazine, in which one ad stated: "Edmonton GWM, 5'10" 160 lbs, easy going, fit bottom with varied interests, looking for a romantic, caring, taller top, any age, who enjoys passion, closeness and a health sex drive as much as I do, for short or longterm, Reply;" and another ad stated: "I'm 28, 160#, searching for boys/men for penpals, friendship, exchanging video, pics, magazines & anything more. Your age, look & nationality is not relevant. Write..." [Emphasis added by Whatcott on his flyers]

Saskatchewan Human Rights Commission

Hellquist v. Owens (2006)

Hugh Owens was brought before a Board of Inquiry of the Saskatchewan Human Rights Commission for his role in publishing a newspaper advertisement and bumper stickers that reflected his Biblically-based views of homosexuality. Three gay males took offense to the published material (a 'not allowed' symbol imposed on two stickmen holding hands along with select Biblical references pertaining to homosexuality). The Board found that the material was discriminatory and thus breached s. 14(1)(b) of the Saskatchewan Human Rights Code "because it exposed the complainants to hatred and ridicule and was an affront to their dignity because of their sexual orientation." Mr. Owens was ordered to pay each of the complainants \$1,500, and was prohibited from publishing or displaying similar bumper stickers and advertisements. In 2006, the Saskatchewan Court of Appeal found that Mr. Owens' materials did not offend s.14(1)(b) of the Code. While ultimately vindicated, this left Mr. Owens responsible for paying his own legal bills incurred before the Human Rights Commission, the Court of Queen's Bench and the Court of Appeal.

British Columbia Human Rights Tribunal

Pardy v. Earle and Ismail and Zesty Food Services Inc. (Ongoing)

Comedian Guy Earle is facing a discrimination complaint before the BC Human Rights Tribunal for having roasted two hecklers at an open mic night in May 2007. The comedian, who admits to making rude remarks about lesbians, claims that his jokes were a reaction to Lorna Pardy and her partner, who had heckled him and other comedians on stage that night. After the show, an altercation allegedly took place where the complainant threw a drink in his face. Pardy has also filed a complaint against the owner of the restaurant where Earle performed. Both the comedian and the restaurant are raising money to pay for the legal costs of defending themselves against this taxpayer-funded complaint.

Keith Dreaver, et al v. Jim Pankiw (Ongoing)

Former Saskatchewan MP Jim Pankiw will face a human rights tribunal regarding the contents of newsletters and brochures sent to his constituents in 2003. The brochures, titled "Stop Indian Crime" and "It's Clear Who the Racists Are," challenged the Criminal Code's race-based sentencing provisions that require leniency for aboriginal offenders. The brochures also questioned the use of race-based affirmative action quotas for Indians. Nine allegations of discrimination have been filed against the former MP in regards to these controversial brochures. The delay since the 2003 publication has been caused by a court

challenge brought by Parliament to clarify whether Parliamentary privilege would immunize Pankiw from these complaints. Specifically, the House of Commons sought to clarify four major issues: “whether it is permissible for a government agency to investigate communications of MPs; whether the commission’s investigation violates constitutional principles of democracy; whether the review of political speech goes against the democratic principles of the country and; whether interfering with MP constituent communications denies constituents the right to make fully informed decisions on candidates.” A Federal Court judge held that Members of Parliament are not immune from the Human Rights Code in comments they might make. The SCC has refused to hear a further appeal. Mr. Pankiw, now a chiropractor in Saskatoon, has indicated that he may boycott the Tribunal hearing.

Alberta Human Rights Commission

Edmonton Muslim Council v. Levant and Western Standard (Ongoing)

During the 2006 furor over the “Danish cartoons,” publisher of the *Western Standard* magazine, Ezra Levant, decided to show Canadians what all the fuss was about. In the February 2006 edition of the magazine, Levant republished eight of the original twelve controversial cartoons, which depicted the prophet Mohammed, and which Muslims found offensive. Levant defended the decision by stating “I’m doing something completely normal. I’m publishing the centre of a controversy. That’s what newsmagazines do.” Syed Soharwardy of the Islamic Supreme Council of Canada, along with the Edmonton Muslim Council, filed a complaint with the Alberta Human Rights and Citizenship Commission on grounds that Levant discriminated on the basis of religion and ancestry. Soharwardy asked the Calgary police to investigate Levant for his “lies” and spreading of hatred, but police did not lay charges. This case drew notable media attention when Levant republished the cartoons on his website prior to the hearings, and then posted his Alberta Human Rights Commission “interview” on YouTube. The Islamic Supreme Council of Canada has revoked its complaint against Levant, but the Edmonton Muslim Council complaint still stands.

Canadian Human Rights Commission; Ontario Human Rights Tribunal; British Columbia Human Rights Tribunal

Elmasry and Habib v. Roger’s Publishing and MacQueen (Maclean’s Magazine/Mark Steyn case) (Ongoing)

Complaints against *Maclean’s* Magazine were filed in three human rights tribunals because the magazine published excerpts of Mark Steyn’s controversial book, “America Alone.”

The complainants accuse Steyn and *Maclean's* of “Islamophobia.” *Maclean's* afforded the public ample opportunity to respond to the article by publishing numerous letters to the editor, including letters critical of Steyn and his views. The Canadian Islamic Congress and three Osgoode Law students demanded that *Maclean's* publish a five-page letter, free from editorial control, to counter the Steyn piece. After *Maclean's* took the position that no article would be printed without editorial oversight, the students filed complaints with the Canadian Human Rights Commission (CHRC), the Ontario Human Rights Tribunal (OHRT) and the BC Human Rights Tribunal (BCHRT). In April, the OHRT rejected the complaint, citing that it did not have the jurisdiction to hear the case, but then publicly condemned *Maclean's* for its “xenophobic”, “destructive” and “Islamophobic” publications. In June of 2008, the CHRC also rejected the complaint. The BCHRT has heard the complaint but has not yet released its decision. *Maclean's*, like all parties complained against, must pay for its own legal bills to defend itself against taxpayer-funded complaints.

Freedom of Religion

British Columbia Human Rights Tribunal

Gray and others v. University of British Columbia Students' Union – Okanagan (No. 2)
(2005)

Okanagan Students For Life (SFL) was granted club status at the University of British Columbia in 2005, and used its club funding (a \$30 start up grant and as much as \$800 per annum) to organize events and films to proclaim its views on abortion. One such film sought to arouse debate by showing dismembered foetuses and comparing abortion to genocide and the Holocaust. After receiving complaints from various students, the University of British Columbia Students' Union – Okanagan (UBCSUO) refused to renew the SFL's club status. SFL filed a complaint with the BC Human Rights Tribunal, alleging discrimination based on religion.

The BCHRT rejected the complaint and sided with UBCSUO, upholding its decision to deny club status to a group for a message that was “offensive in tone and content.”

British Columbia Human Rights Tribunal

Smith and Chymyshynto v. Knights of Columbus Council, Hauser and Lazar (2005)

For refusing to rent their hall to a lesbian couple for wedding purposes, the Knights of Columbus Council in Canada was brought before the BC Human Rights Tribunal for having discriminated based on sexual orientation. The Council defended itself by explaining that the hall was on the same compound as the parish church, and that it was adorned with Catholic symbols such as a crucifix and a picture of the Pope. This, they claimed, meant that they could not perform actions that went against Catholic dogma. The Tribunal acknowledged that the Council had the right to refuse to rent the hall on religious grounds, but it nevertheless ordered the Knights of Columbus to pay \$2,000 for inflicting “injury to dignity, feelings and self-respect” upon the complainants.

Saskatchewan Human Rights Tribunal

M.J. v. Nichols (2008)

In April of 2005, M.J. contacted Orville Nichols, a marriage commissioner, to have him preside over his upcoming marriage ceremony. After M.J. revealed that his partner was of the same sex, Nichols responded that he could not perform the service because of his religious beliefs, but also advised M.J. that other commissioners would be willing to do it. M.J. filed a complaint with the Saskatchewan Human Rights Tribunal claiming that he had been discriminated against on the basis of sexual orientation. In the complaint, M.J. claimed that he “did not have any other place to go” to get married, however the ceremony nevertheless took place three weeks later on the date originally planned. The Tribunal recognized that Nichols was “acting out of his genuine and sincere religious belief in refusing to perform the marriage ceremony” but nevertheless ordered him to pay \$2,500 for “injury of feeling.”

Saskatchewan Human Rights Tribunal

Bruce Goertzen, et al v. Saskatchewan (2006)

In three separate but identical complaints, marriage commissioners Bruce Goertzen, Orville Nichols and Larry Bjerland complained that the Department of Justice had breached their right to freedom of religion because they were compelled to perform same-sex marriages, which was against their religious convictions. The Tribunal rejected their complaint and ruled that a marriage commissioner’s refusal to perform same-sex marriage ceremonies was a form of discrimination that could not be justified by the marriage commissioner’s religious beliefs.

Ontario Human Rights Tribunal

Heintz v. Christian Horizons (2008)

Christian Horizons (“Horizons”) is an Ontario-based Evangelical Christian ministry which provides care and services to 1,400 developmentally disabled individuals. Horizons has become an influential organization to help the less fortunate, employing 2,500 people in over 180 separate residential homes. As part of its hiring requirements, Horizons asks its employees to sign a “Lifestyle and Morality Statement” (“Statement”) that asks employees to live according to Christian beliefs and values. The complainant in this case, Connie Heintz, took issue with this policy when she was asked to leave the organization for not complying with the Statement after she revealed to Horizons that she was a lesbian. In 2001, Heintz filed a complaint with the Ontario Human Rights Commission (OHRC), alleging that Horizons had discriminated against her on the basis of her sexual orientation. In April 2008, the Commission found that Horizons had discriminated against Heintz, and ordered the organization to:

- pay Heintz lost wages, general damages and damages for ‘mental anguish’ in the amount of \$23,000;
- cease its practice of requiring employees to sign a lifestyle and morality statement;
- develop “anti-discrimination” policies, and train all employees and managers in these new policies; and
- change its employment policies to conform with the Ontario Human Rights Code, thereby abandoning its Christian values.

Canadian Human Rights Commission

Rob Wells v. Father de Valk, Catholic Insight magazine (2008)

In February 2008, *Catholic Insight* editor Father de Valk was notified that he and his magazine were being investigated by the Canadian Human Rights Commission in response to a complaint filed by Edmonton resident, Rob Wells. Wells complained that he had been discriminated against on the basis of sexual orientation because of various articles that *Catholic Insight* had published, condemning homosexual behaviour and gay activism. The articles did not identify or focus on specific individuals. According to an article on the respondent’s website (http://catholicinsight.com/online/editorials/article_826.shtml), Wells had been known to circle an Edmonton Catholic Church in a car that brandished slogans comparing Catholicism to Nazism, but no human rights complaint has been filed against him. After a detailed investigation, *Catholic Insight* was notified on July 4, 2008 that the

complaint had been dropped. Despite this, the magazine is still responsible for paying more than \$20,000 in legal fees that were accrued to fight this case.

Public Policy

Ontario Human Rights Tribunal

Hogan v. Ontario (Minister of Health and Long Term Care) (2006)

Facing a fiscal crisis, the Government of Ontario decided to reduce funding, hospital services and government support for certain medical procedures. As part of this cutback initiative, the Government delisted Sex Reassignment Surgery (SRS) from the Schedule of Benefits, while still agreeing to pay for this surgery in cases where individuals had been recommended for surgery by a recognized clinic by October 1, 1998. Four people challenged this decision in the Ontario Human Rights Tribunal, claiming that it discriminated against them on the basis of disability and sex. The OHRT sided with the complainants, and ordered the Government of Ontario to pay over \$100,000 to the four complainants.

Ontario Board of Inquiry (Human Rights Code)

Hudler v. London (City) (1997)

The Homophile Association of London (HALO) requested that the City of London issue a proclamation to publicly recognize and support the pride festivities it had organized. London's Mayor took the approach that any proclamation on behalf of an event would be akin to promoting it, and this would be unfair because of the politically-charged nature involved. After the Mayor denied repeated requests from HALO to recognize the event, the matter was referred to City Council for a vote. The Council decided against publicly promoting the event, and instead upheld its non-aligned policy of refraining from promoting one side of a controversial topic (ie. abortion, sexuality, anything that would promote an illegal activity, anything that would incite hatred). The denial of the proclamation did not in any way inhibit the ability for HALO members to organize and host the pride festivities. Members of HALO took the City of London and the Mayor to the Ontario Board of Inquiry on the premise that not recognizing the pride celebrations was a form of discrimination. In its ruling, the Board:

- Declared that the Mayor's refusal to proclaim "Pride Weekend" constitutes unlawful discrimination on the basis of sexual orientation;
- Ordered the City of London to proclaim Pride Day/Weekend, and to recognize the service provided to the London community by HALO, if so requested by HALO or any other "Pride" organizing committee;
- Ordered the City of London and London City Council to make a statement of recognition that "the Lesbian, Gay and Bisexual Communities are integral and important communities within the City of London," and ordered the City and Council to investigate ways of fostering a positive relationship between the City of London and the Gay, Lesbian and Bisexual communities;
- Ordered a meeting to take place forthwith between delegated members of HALO and the City of London, to begin discussions toward improving relations between the City of London and the Gay, Lesbian and Bisexual communities;
- Ordered Mayer Haskett to pay \$10,000 to the complainants for hurt feelings; and
- Ordered the City of London to pay \$10,000 to the complainants for hurt feelings

Private Business

Ontario Human Rights Commission

Steve Gibson v. Ted Kindos and Gator Ted's Tap and Grill (Ongoing)

In 2005, Steve Gibson filed a complaint with the Ontario Human Rights Commission because Ted Kindos, owner of Gator Ted's Tap and Grill, did not allow Gibson to smoke marijuana in front of Kindos' establishment. Gibson suffers from debilitating neck injury arising from an earlier accident and has been given the right to smoke marijuana to combat his chronic pain. Gibson claims that he is being treated differently and "segregated from other tobacco smokers" and requests that the OHRC find Kindos' policy to be discriminatory and award him \$20,000 for "mental anguish." Kindos, however, claims that the marijuana smoke detracts from the "family-run operation" and that he has received numerous complaints from disaffected customers. Kindos, now plagued by three years worth of legal fees, has stated in various newspapers that these fees, plus the "remedy" that Gibson pursues, will likely force him into bankruptcy. Kindos also fears that if he allows Gibson to smoke outside the restaurant his liquor license may be revoked for allowing prohibited substances in an area that serves alcohol.

Ontario Human Rights Commission (Board of Inquiry)

Entrop v. Imperial Oil Ltd. (2000)

To improve safety and security among its many oil installations, Imperial Oil Ltd. instituted a policy that any employee engaging in substance abuse while working in a “safety-sensitive” position would be reassigned to a post that did not involve safety concerns. This policy allowed reassigned individuals to resume their previous position after five years of abstinence and the completion of a rehabilitation program. Essentially, the policy was a response to various industrial accidents that had occurred as a result of alcohol and drug abuse, most notably, the Exxon Valdez disaster. After being reassigned to a “non-safety-sensitive” position because of a history of alcohol abuse, Martin Entrop brought a complaint to the Ontario Human Rights Commission, alleging that he had been discriminated against on the basis of handicap. The OHRC agreed that Entrop had been discriminated against on the basis of his alcohol “handicap” and ordered Imperial Oil to pay Entrop \$21,000 in damages. Imperial Oil also had to pay its own legal costs incurred in defending against the taxpayer-funded complaint.

British Columbia Human Rights Tribunal

Sheridan v. Sanctuary Investments Ltd. dba “B.J.’s Lounge” (1999)

In 1999, a Victoria nightclub was brought in front of the BCHRT after one of its bouncers refused to allow a cross-dressing man to use the female washroom. While the transsexual involved was in fact pre-operative, and thus physically male, the BCHRT held that a person who represents himself as a female must be given the same rights and privileges that exist for women, including access to their bathroom facilities. The BCHRT ordered the nightclub to pay \$2,000 to the complainant for causing personal anguish.

British Columbia Human Rights Tribunal

Ferris v. Office and Technical Employees Union, Local 15 (1999)

A pre-operative transsexual claimed that he had been discriminated against on the basis of sexual orientation because his employer opposed his use of the female washroom. In a notable statement, the Tribunal administrator stated that “direct evidence is not necessary to establish a *prima facie* case [of discrimination] or to find a complaint justified.” Although no direct evidence was produced to substantiate the complaint, the BCHRT ordered the employer to pay the complainant \$6,000.

Alberta Human Rights Commission

Quintin Johnson v. Music World Ltd., HMV Canada, A.V.E. Entertainment (Formerly Known as Top Forty Music) (2003)

Mr. Johnson claimed that the respondent music stores discriminated on the basis of gender, race, colour and religious beliefs by displaying and selling controversial compact discs (CDs). Although the CDs had warning labels, Johnson claimed that two songs on the CDs in question (“Kill the Christian” by Decide and “Kill all the White People” by Type O Negative) were discriminatory and should be removed from the store. Johnson sought the following remedies: “(1) an order revising the policies of the respondents regarding the distribution and sale of discriminatory material; and (2) removal of the display of discriminatory material.” The respondent music stores defended themselves by asserting that they did not produce the offensive material; that warning labels were visible on the CDs and; that buyers did not have to buy the discs if they found them to be discriminatory. The Alberta Human Rights Commission dismissed the taxpayer funded complaint, still leaving the stores to pay for their own legal costs.

Ontario Board of Inquiry (Human Rights Code)

Brillinger v. Brockie (2002)

The Archives is a corporation that celebrates the lives of lesbians and gay men by acquiring and preserving records and histories of homosexual people and events. On April 4, 1996, the president of the Archives, Mr. Brillinger, sought a quote from Imaging Excellence to print envelopes, letterhead and business cards. When Mr. Brockie, one of the salespersons, discovered that the quote would be for a homosexual organization, he refused to quote on or print any of the requested items. Brockie was a born-again Christian who opposed homosexuality and felt he could not do anything which might assist or promote a homosexual organization. The Archives managed to find another printing service, which caused some delay in the production of the materials. Brillinger brought a complaint to the Ontario Board of Inquiry (Human Rights Code), alleging that both Brockie and Imaging Excellence discriminated on the basis of sexual orientation. The respondents countered by saying that it wasn't Brillinger himself who was denied the service, but his organization, and that Brockie's refusal to provide the service because of religious convictions is protected by s.2(a) of the *Charter*. The Board rejected this defence, and ordered both Brockie and Imaging Excellence to provide the printing services to Archives, and to pay \$5,000 to Brillinger and Archives.

British Columbia Human Rights Tribunal

Stopp v. Just Ladies Fitness (Metrotown) Ltd. (2006)

After being denied membership to an all-women's gym, Mr. Stopp filed a complaint with the British Columbia Human Rights Tribunal (BCHRT) alleging that Just Ladies had discriminated against him on the basis of sex. Just Ladies claimed that its women-only policy was the result of women feeling uneasy in co-ed gyms. The BCHRT ruled in Just Ladies' favour, upholding the denial of a public service to men as acceptable.

Alberta Human Rights Commission

Shane Coward v. Tower Chrysler Plymouth Ltd. (2007)

Mr. Coward, a car salesman, alleged that discriminatory comments had been made against him by colleagues, and that his employer condoned this conduct. The car dealership claimed that the comments were part of the ongoing teasing and joking between work colleagues in which the complainant equally participated. Further, the employer spoke with the individual who insulted Mr. Coward, and warned him that if he made similar comments in the future, he would have to be let go. Feeling that this was not enough, Mr. Coward filed a complaint with the Alberta Human Rights Commission (AHRC), which awarded him \$5,600 for pain, suffering and loss of respect, and ordered the employer to implement a policy towards curbing workplace discrimination.

Ontario Human Rights Commission (Board of Inquiry)

Naraine v. Ford Motor Co (1996)

Mike Naraine, an East Indian born in Guyana, began working as an electrician for Ford Motor Company of Canada in the spring of 1976. In 1985, after a physical altercation took place between Naraine and another individual, Naraine was let go. Naraine filed a complaint with the Ontario Human Rights Commission, alleging that Ford had fired him because of his race. Four years later, Naraine was also fired from General Motors, also for a quarrel. The OHRC agreed with Naraine, finding that "The real reason for [Mr. Naraine's] termination was not the altercation with a fellow worker, but the underlying factors of racial discrimination and harassment. By disciplining an employee in such circumstances, an employer is condoning the discriminatory conduct." In its decision, the OHRC ordered Ford Motor Company of Canada to pay \$30,000, declared that the company must reinstate Naraine, and compensate him for the income that he lost between his dismissal at Ford and his employment at General Motors. In 2001 the Ontario Court of Appeal upheld the damages award but ruled that Ford was not obligated to reinstate

Naraine to his position in the company. This decision ended a sixteen-year legal battle, the costs of which have been borne by Ford.

British Columbia Human Rights Tribunal

Nixon v. Vancouver Rape Relief Society (2002)

The complainant Kimberly Nixon, was born a male but began living as a female in 1989, completing the transition in 1990 by undergoing sexual reassignment surgery. In 1993, Nixon became a victim of psychological and physical abuse and sought relief by attending “Battered Women’s Support Services” at the Vancouver Rape Relief Society (“Rape Relief”). After some time, Nixon wanted to give back to the organization for its help, and applied to be a peer counsellor for victims of male violence. After holding a pre-screening process, Rape Relief informed Nixon that she could not be a counsellor because “a woman had to be oppressed since birth to be a volunteer at Rape Relief,” and that because Nixon had lived as a man she could not participate, and that “men were not allowed in the training group.” Rape Relief defended its decision regarding Nixon by stating that it is entitled to have a “women only” hiring policy, and to be able to determine who is a woman for the purposes of this policy.

Nixon filed a complaint with the British Columbia Human Rights Tribunal (BCHRT), alleging that she had been discriminated against on the basis of sexual orientation. The Tribunal agreed with Nixon and ordered Rape Relief to accept Nixon as a volunteer counsellor. This decision was overturned in 2005 by the BC Court of Appeal, which found in that Rape Relief “was entitled to exercise an internal preference in the group served, to prefer to train women who had never been treated as anything but female.”

British Columbia Human Rights Tribunal

Asad v. Kinexus Bioinformatics (2008)

Ghassan Asad, a native Jordanian who spent many years in Saudi Arabia, began working for Kinexus Bioinformatics Corp. (“Kinexus”) shortly after immigrating to Canada. In the summer of 2001, Asad received his Canadian citizenship and chose to celebrate by travelling around North America, visiting cities such as New York, Washington, D.C., Boston and Detroit. Shortly after returning from his trip, the terrorist attacks of September 11 took place in New York City and Washington D.C. In the weeks that followed, Mr. Asad claimed that the atmosphere in his work environment had drastically changed as many had suspected his involvement in the attacks. In fact, one employee was so concerned about Asad that she or he alerted the RCMP of Asad’s trip to New York City and Washington. After conducting several interviews with Asad, the RCMP ended their

investigation and concluded that he was not involved in the terrorist attacks. Despite this, on a variety of occasions, Asad alleged that harmful comments had been made in his presence, stating that his trip was “suspicious” and accusing him of conferring with the terrorists prior to the attack. These allegations were later denied by the employees that were alleged to have made the remarks.

In March 2003, Asad’s employment with Kinexus was terminated. Asad then filed a complaint with the BC Human Rights Tribunal (BCHRT) claiming that Kinexus had “discriminated against him with respect to his employment and terminated that employment because of his race, religion, place of origin, and political belief.” Asad complained that the comments made by his colleagues created a poisoned work environment that eventually led to his termination. Asad’s complaint also alleged that the employer discriminated against him by refusing to instruct Asad’s colleagues that Asad was to be presumed innocent of the allegations.

In July 2008, the BCHRT agreed with Asad and ordered Kinexus to pay him \$11,000. It should be noted that the BCHRT found that Kinexus had fired Asad because of “personal priorities and commercial reasons,” and thus did not discriminate against him in this instance.