



Justice Centre for Constitutional Freedoms

News Release

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Procedural fairness in human rights legislation: “From Bad to Worse”

- Ontario, Alberta and P.E.I. ranked worst in Canada for procedural fairness
- Nunavut and B.C. impose smallest degree of procedural unfairness
- Yukon, Nunavut, Ontario and Manitoba do not restrict free expression
- Saskatchewan, B.C., Alberta and federal government are worst violators of free speech

CALGARY: Today the Justice Centre for Constitutional Freedoms (JCCF) released “From Bad to Worse,” a report on human rights legislation in Canada’s provinces, territories, and federal government.

There are significant differences in how different Canadian jurisdictions have drafted their human rights legislation. Some provinces and territories protect free speech rights; others do not. Some provinces put complainants and respondents in human rights proceedings on a more equal footing; others do not.

“From Bad to Worse” compares the extent of procedural unfairness contained in human rights legislation in fourteen Canadian jurisdictions. The report looks at ten different factors that impact the degree of procedural fairness provided by human rights legislation, and ranks fourteen jurisdictions in respect of each of those factors.

The worst jurisdiction for procedural fairness is Ontario, followed closely by Alberta and P.E.I.

Nunavut and B.C. display the least amount of procedural unfairness in their human rights legislation.

“From Bad to Worse” also examines the impact that human rights legislation has on the long-standing right of Canadians to express their opinions about social, political, moral, religious, cultural and other topics.

When it comes to respecting freedom of expression, Yukon, Ontario, Nunavut and Manitoba are among the better jurisdictions in Canada.

Canada’s worst violators of free speech rights are B.C., Alberta, Saskatchewan, and the federal government.

The report notes that most Canadians support the idea of prohibiting discrimination in employment, accommodations, facilities and other areas. However, the report analyzes the growing concern about the lack of procedural fairness in human rights legislation. Firstly, governments typically only assist complainants, while respondents are burdened with paying all their own costs. Secondly, those who adjudicate human rights complaints do not need to have a

law degree, or be trained as lawyers to understand procedural fairness. Thirdly, human rights tribunals can, and often do, accept hearsay evidence which is normally excluded by courts because of its unreliability. Fourthly, people can file frivolous or malicious complaints without risking any consequences, all while forcing respondents to pay for their own legal costs. Fifthly, human rights complaints can be filed by “third parties” who themselves have not suffered any alleged discrimination, thereby allowing “community activists” to advance political agendas. Finally, the legislation authorizes the imposition of large and sometimes unlimited awards in respect of hurt feelings.

In regards to freedom of expression, human rights legislation in Alberta has been used against Stephen Boissoin (letter-to-the-editor about the contents of a public school curriculum), Catholic Bishop Fred Henry (disseminating his Church’s teaching about the definition of marriage) and Ezra Levant (publishing the “Danish cartoons” of Mohammed in the *Western Standard* magazine). In B.C., human rights legislation has been used against *Maclean’s* magazine (publishing excerpts from Mark Steyn’s book *America Alone*) and comedian Guy Earle (dealing with hecklers during his stand-up comedy routine). In Saskatchewan, William Whatcott was ordered to pay \$17,500 to four complainants whose feelings were hurt by the contents of flyers he distributed, in a case awaiting a decision from the Supreme Court of Canada (*Whatcott v. Saskatchewan Human Rights Tribunal*).

“It has often been said that if something matters, you should measure it,” stated JCCF President and Calgary lawyer John Carpay, co-author of the report.

“Procedural fairness, and the protection of free speech rights, are issues of concern when it comes to human rights legislation,” continued Carpay.

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About the JCCF and the authors of the paper

The Justice Centre for Constitutional Freedoms (JCCF) was founded in 2010 for the purpose of advancing and promoting the core principles of freedom and equality through education and litigation. The JCCF is a registered charity (charitable registration number 817174865-RR0001) and issues official tax receipts to donors for donations of \$50 or more. The JCCF is funded entirely by the voluntary donations of Canadians. The centre is independent and non-partisan, and receives no funding from any government or government organization. In addition to its education and research activities, the JCCF also provides *pro bono* legal representation to Canadians whose human rights or constitutional freedoms are violated.

Calgary lawyer and JCCF President John Carpay received the *2010 Pyramid Award in Ideas and Public Policy* from the Manning Centre for Building Democracy, in recognition of John’s work in constitutional advocacy, and his work in building up a non-profit organization to advocate for constitutional freedoms. Student-at-Law Carol Crosson earned her J.D. at the University of Calgary, and will be called to the Alberta Bar in 2013.