



## PROTECTED B

### **Decision of the Commission Canadian Islamic Congress v. Rogers Media Inc. (20071008)**

In this complaint, the Canadian Islamic Congress ('CIC') alleges that the respondent Rogers Media Inc. committed a discriminatory practice contrary to subsection 13(1) of the *Canadian Human Rights Act* (the "*Act*"). The subject matter of the complaint is an article written by Mark Steyn (the "Steyn article") posted on the website of *Maclean's* magazine in October 2006 under the heading "The Future Belongs to Islam". Rogers Media Inc. owns and controls *Maclean's* and the *Maclean's* website.

The CIC complaint alleges that the Steyn article makes a number of statements and assertions, both explicit and implied, that are likely to expose Muslims to hatred or contempt because of their religion, a prohibited ground of discrimination under the *Act*. The complaint form and supporting materials identify in detail the aspects of the Steyn article that are claimed to violate subsection 13(1).

Having reviewed the complaint and considered the submissions of the parties, the Commission has decided, for the reasons below, to dismiss the complaint pursuant to section 44 (3)(b) of the *Act*.

#### Purpose and scope of section 13

Section 13 of the *Act* appears under the heading "Hate Messages", and the subsections relevant to the CIC complaint are as follows:

13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, ***any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.***

#### Interpretation

(2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.

(Emphasis added)

**Decision of the Commission  
Canadian Islamic Congress v. Rogers Media Inc. (20071008)**

A function of the Commission under the *Act* is to assess complaints of discriminatory practice, and to determine whether the procedural and remedial provisions of the *Act* are required to resolve such complaints. In the present case, this function involves consideration of the purpose and scope of section 13 of the *Act*, and in particular, the legal meaning of the terms ‘hatred and contempt’. We must also bear in mind that section 13 represents a limitation on the rights guaranteed by section 2(b) of the *Canadian Charter of Rights and Freedoms*, which reads as follows:

2) Everyone has the following fundamental freedoms:

(b) freedom of thought, belief, opinion, and expression,  
including freedom of the press and other media of communication

The Supreme Court of Canada ruled in *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892 that this legally prescribed limitation of fundamental *Charter* rights was reasonable and justifiable, but warned that caution and restraint would be required in the application of the section so that the limitation on free speech would be minimized to the greatest possible extent.

*Definition of ‘hatred and contempt’:*

In the *Taylor* case, supra, Dickson C.J., writing for the majority of the Supreme Court of Canada, used the term ‘hate propaganda’ in relation to section 13 and indicated that he is using this as a shorthand term to denote “expression intended or likely to circulate extreme feelings of opprobrium and enmity against a racial or religious group” (emphasis added). The Court interpreted ‘hatred’ to mean a feeling of extreme ill-will that allows for no redeeming qualities in the person towards whom it is directed, while ‘contempt’ encompassed looking down upon or treating as inferior the object of one’s feelings.

More recently, in *Warman v. Kouba*, 2006 CHRT 50, the Tribunal identified a number of ‘hallmarks’ of material likely to expose persons to hatred or contempt, based on section 13 jurisprudence. The CIC complaint herein alleges that the Steyn article bears these ‘hallmarks’. The material which was considered in *Kouba*, however, was more extreme in nature and was described as follows:

The messages in the present case...make use of allegedly true stories to justify the portrayal of members of the targeted group as dangerous and violent sub-humans who are worthy of nothing but the highest degree of contempt and hatred. They use racist epithets and slurs to create a tone of profound denigration and disgust. The messages advocate the exile or segregation of members of the targeted groups and exhort readers to ‘take action’ to stop the evil menace created by these people.

**Decision of the Commission  
Canadian Islamic Congress v. Rogers Media Inc. (20071008)**

*The obligation to Interpret section 13 in a manner that minimally interferes with rights guaranteed by the Charter:*

In the *Taylor* case Dickson C.J. weighed the conflicting imperatives of section 13 of the *Act* and section 2 of the *Charter* and concluded that “[t]he terms of the section, in particular the phrase ‘hatred or contempt,’ are sufficiently precise and narrow to limit its impact to those expressive activities which are repugnant to Parliament's objective of promoting equality and tolerance in society.”

Dickson C.J. also stated that “as long as the Human Rights Tribunal continues to be well aware of the purpose of s. 13(1) and pays heed to the ardent and extreme nature of feeling described in the phrase “hatred or contempt”, there is little danger that subjective opinion as to offensiveness will supplant the proper meaning of the section.” (Emphasis added) The Court also added that “...it is important to recognize that expressive activities advocating unpopular or discredited positions are not to be accorded reduced constitutional protection as a matter of routine...”

Notwithstanding the Court’s affirmation of the need for a broad approach to interpreting human rights legislation, the Court also observed that “the purposive definition to be given a human rights code cannot extend so far as to permit the limitation of a *Charter* right or freedom not otherwise justified under s. 1” of the *Charter*. In discussing the absence of a provision in the *Act* expressly recognizing the right of freedom of expression, Dickson C.J. further stated that “even in the absence of such an exemption an interpretation of s. 13(1) consistent with the minimal impairment of free speech is necessary.”

Application of Section 13 to the Present Complaint

The Steyn article discusses changing global demographics and other factors that the author describes as contributing to an eventual ascendancy of Muslims in the “developed world”, a prospect that the author fears for various reasons referred to in the article. The writing is polemical, colourful and emphatic, and was obviously calculated to excite discussion and even offend certain readers, Muslim and non-Muslim alike.

**Decision of the Commission  
Canadian Islamic Congress v. Rogers Media Inc. (20071008)**

Overall, however, the views expressed in the Steyn article, when considered as a whole and in context, are not of an extreme nature as defined by the Supreme Court in the *Taylor* decision. Considering the purpose and scope of section 13 (1), and taking into account that an interpretation of s. 13(1) must be consistent with the minimal impairment of free speech, there is no reasonable basis in the evidence to warrant the appointment of a Tribunal.

For these reasons, this complaint is dismissed.

Decision rendered by the Canadian Human Rights Commission on June 25, 2008.

A handwritten signature in black ink, appearing to read 'Lucie Veillette', written in a cursive style. The signature is positioned above a horizontal line.

---

Lucie Veillette  
Secretary to the Commission  
Canadian Human Rights Commission