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IN ALBERTA

Human rights and freedom of the press

Early in 1998, Alberta Report magazine published a long story on Indian residential schools. The cover referred to the experience of the schools as "Canada's mythical holocaust," while the story's headline read: "Scapegoating the Indian residential schools: The noble legacy of hundreds of Christian missionaries is sacrificed to political correctness."

The most interesting thing about the story was the number of quotations it contained from Indian people who cherish fond memories of their days in residential schools. With little effort, Alberta Report found half a dozen graduates willing to credit the schools with treating them kindly and preparing them for a successful life.

Whether the story's conclusions were right or wrong, the reporter, Patrick Donnelly, made a genuine contribution to public debate by locating and talking to these people, because recent media coverage has put so much emphasis on claims of victimization. An open-minded reader of the story might well conclude — rightly, in my view — that the issue of Indian residential schools is not as simple as portrayed in almost all the media.

Not surprisingly, Phil Fontaine, National Chief of the Assembly of First Nations, did not like the story. His first response was the right one: he had an assistant call Alberta Report to ask it to print a rebuttal that he would submit. But, for reasons that are unclear, he did not follow through, even though the magazine claims it agreed to publish such a piece.

Instead he told his legal consultant, Kathleen Mahoney, professor of law at the University of Calgary, to complain to the Alberta Human Rights and Citizenship Commission. According to Ms. Mahoney's written complaint, the story violated Section 2(1) of the Alberta Human Rights, Citizenship and Multiculturalism Act by promoting both discrimination and ha-

head of a large and powerful interest group, would like to punish a magazine for publishing an article that interferes with his group's agenda. It is less obvious why a professor of law, an expert on the Charter of Rights and Freedoms, would become involved in this assault on freedom of the press.

Even if Alberta Report's story were defective, the right response would be to point out the errors, not to ask a human-rights commission to punish the author and publisher. John Stuart Mill dealt with this situation when he wrote in *On Liberty* that "though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied."

Fortunately, this story has a relatively happy ending. The Human Rights Commission has, after six months of investigation, dismissed the complaint without bringing it before a tribunal for adjudication. The letter of dismissal cites Section 2(2) of the act: "Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject."

The result shows the value of careful legislative drafting. Because I have often been critical of human-rights bodies, it was a pleasure to discover a sturdy streak of common sense in the words of Alberta's commission: "The contents of the article in question could very well be offensive and discriminatory to Chief Fontaine and the First Nations Peoples. However, this is not the issue — the issue is 'freedom of the press.' It is the view of this Office that freedom of the press is the cornerstone of a democratic society. The Commission is not in the business to censor or to regulate the printed media. Individuals who feel offended by certain articles printed in the news media have other avenues available to them to remedy the situation."

One can only hope that this common sense will spread to other Canadian jurisdictions, such as British Columbia, Saskatchewan and Ontario, where human-rights commissions are busily entertaining complaints against newspapers — not for printing "whites only" ads, but for publishing (or even not publishing) specific political opinions.

It is debatable whether we need human-rights commissions at all. Authors such as Gary Becker, Thomas Sowell and Richard Epstein have shown in great detail how, at least in open markets, discrimination tends to be self-correcting because of the penalties that discriminators impose upon themselves when they refuse to deal with whole categories of potential employees, customers, tenants or clients. But regardless of where one stands in that debate, using human-rights commissions to impose post-publication censorship is a terrible idea, and one that is bound to discredit whatever useful role the commissions may otherwise play.

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