

Features

**Canada's deadly tongue trap**

JAMES ALLAN

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Speak the truth under Canadian law and you'll regret it

HERE is a little known fact about Canada. It is today a country where you can say or write things that are true and yet still be brought before a tribunal.

That tribunal can fine you; it can order you to pay money to the people who complained about your words; it can force you to issue an apology; it can do all three.

That's not all, though. The people who complained will not need to hire a lawyer.

Their costs will be picked up by the state, by the taxpayers.

You, on the other hand, will have to hire a lawyer to defend yourself. And there will be no award of costs at the end, so that even if you win, you will still be out of pocket to your lawyers tens of thousands of dollars.

Of course, you will not win.

Why? Because in the entire history of these Canadian tribunals, hearing these cases, those people like you who have been hauled before these tribunals have never won -- not one single time.

The complainants always win.

This amazing inroad into free speech will surely come as a surprise to most Australians, not least because in so many ways Canada is the country closest to ours in terms of constitutional and democratic history.

And yet it's all true. These things are happening right now -- in Britain's oldest self-governing Dominion, the place where so many of the lawyerly class here in Australia regularly look for inspiration when it comes to bills of rights and how best to protect human rights (which is incredibly ironic, I know).

I don't say any of this lightly. In fact it embarrasses me no end because I am a native-born Canadian, educated there right through law school. I don't much like having to state the obvious, which is that Canada has become a joke as far as the issue of protecting free speech is concerned.

Back in the 1960s and 70s, Human Rights Tribunals were established in Canada at the federal and provincial level.

One of the provisions these codes share is a hate-speech one, that it is an offence for any person to publish ``any statement that ... is likely to expose a person or group or class of persons to hatred or contempt''.

And truth is no defence here. Unlike in regular courts where fair comment and truth are defences to any defamation action, in these so-called Canadian Human Rights Tribunals truth is not a defence.

What you say can be wholly true and accurate, and you can prove it, but you still cannot say it.

These tribunals can decide to hear any complaints they wish and, as I said above, you will have to hire a lawyer but the complainants won't spend a cent of their own money.

To be in breach of these hate-speech provisions you don't have to counsel violence; you don't have to urge discrimination; you don't have to express hatred; you don't even have to have said or written something that did, in fact, subject some group to hatred or contempt. All that is needed is that your comments, in the view of the sort of people chosen to staff these tribunals, are "likely" to expose someone or some group to contempt or hatred.

Wow! John Stuart Mill is presumably gagging in his grave.

Anyway, what's happening in my native Canada is that there are presently two very high-profile defendants in these kangaroo courts/tribunals.

And don't take my characterisation for them, take Alan Borovoy's, general counsel for the Canadian Civil Liberties Association and the key figure in having these things set up four decades ago who now says: "It never occurred to us that this instrument, which we intended to deal with discrimination in housing, employment and the provision of goods and services, would be used to muzzle the expression of opinion." Firstly, there is the publisher of the Danish cartoons, Ezra Levant. And secondly there is the well-known columnist Mark Steyn. The main Canadian weekly magazine excerpted one of the chapters of his New York Times (and Canadian for that matter) No1 bestseller, America Alone.

So both Macleans magazine and Steyn are also defendants, and the first trial they face started this week in British Columbia.

Put aside the awfulness of restricting magazines from deciding for themselves whether to publish the Danish cartoons.

In the Steyn case, what the Canadian Islamic Congress is objecting to are quotations Steyn used. They are quotes of what Muslim leaders have said. So the purported grievance is that a writer is quoting one of their fellow religionists, and that quote (though true) might in the minds of those ideologues staffing these tribunals expose someone to hatred, even though in fact there is not a scrap of evidence that this has actually happened.

And a few years back when these hate-speech provisions were challenged, what did the Supreme Court of Canada say? "They're perfectly fine, thank you very much", said the court. And the Canadian Attorney-General? His department has just published the most fatuous defence of the provision, and this from a Conservative Government.

It notes that history is full of examples of times when lies and distortions have been used by groups such as the Nazis to repress speech, missing the irony that they want to repress speech now so that others can't do so later.

And did I mention that complainants before these kangaroo courts have never lost once, not one single time?

On March 14 of this year, in the Legal Affairs section of this paper, the president of the NSW Bar Association, Anna Katzman argued that Australia needed a bill of rights. The example she cited where a bill of right would help was freedom of speech. According to her, one of these instruments "may make governments think twice before they take away our rights". And one "will make governments more accountable to the electorate".

In fact, Australia, without a bill of rights, gives much, much more scope to citizens to speak their minds and hash things out in the court of public opinion than does Canada, where there is

one of the strongest bills of rights on the planet. Moreover, a bill of rights in no way at all will make governments more accountable to the electorate.

What it will do is make them more accountable to the unelected judiciary (an easy distinction to miss, I suppose, if you're head of a lawyers' lobby group).

Katzman should take a look at Canada and notice what a truly awful job the judges up there have done protecting free speech.

In fact, the best hope right now for Macleans and Steyn and Levant is that the elected Canadian legislators wake up and repeal these awful provisions, if not get rid of the tribunals lock, stock and two putrid barrels.

James Allan is Garrick professor of law at the University of Queensland.