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## Commission statement concerning issues raised by complaints against Maclean's Magazine

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In a recent decision, the Ontario Human Rights Commission (the "Commission") decided not to proceed with complaints filed against Maclean's magazine related to an article "The future belongs to Islam". The complainants alleged that the content of the magazine and Maclean's refusal to provide space for a rebuttal violated their human rights.

Denying a service because of human rights grounds such as race or creed can form the basis for a human rights complaint. However, the Ontario Human *Rights Code* (the "*Code*") does not give the Commission the jurisdiction to deal with the content of magazine articles through the complaints process.

Nevertheless, the Commission has a broader mandate to promote and advance respect for human rights in Ontario, forward the dignity and worth of every Ontarian and take steps to alleviate tension and conflict in the community, including by speaking out on events that are inconsistent with the spirit of the *Code*.

While freedom of expression must be recognized as a cornerstone of a functioning democracy, the Commission has serious concerns about the content of a number of articles concerning Muslims that have been published by Maclean's magazine and other media outlets. This type of media coverage has been identified as contributing to Islamophobia and promoting societal intolerance towards Muslim, Arab and South Asian Canadians. The Commission recognizes and understands the serious harm that such writings cause, both to the targeted communities and society as a whole. And, while we all recognize and promote the inherent value of freedom of expression, it should also be possible to challenge any institution that contributes to the dissemination of destructive, xenophobic opinions.

The Commission intends to further consider these issues in the coming months as it embarks on its new mandate, which places a renewed emphasis on addressing human rights tension and conflict through inquiries, consultation, public education, policy development and constructive debate and dialogue.

### Background

Complaints filed with the Commission against Maclean's magazine concerning an article "The future belongs to Islam" allege that this article violates human rights contrary to the *Code*. The complainants also claim that this article is one of twenty-two (22) Maclean's articles targeting Muslims. Complaints have also been filed with the Canadian Human Rights Commission and other provincial human rights bodies.

The Ontario Commission decided not to proceed with the complaints because it lacks legal jurisdiction to do so under the Ontario *Code*. The Commission has found that the content of the magazine and Maclean's refusal to provide the complainants with space in the magazine for a rebuttal, are not goods or services within the meaning of the *Code*. The Commission has also found that s. 13(1) of the *Code*, which prohibits displaying or publishing a notice, sign, symbol, emblem or other similar representation with the intent to infringe human rights or to incite others to do so, cannot be interpreted to include the content of the magazine article in issue.

As a result of this decision, the complaints will not be referred to a full hearing before the Human Rights Tribunal of Ontario.

Although the Commission has decided that there is no basis in the Code to take these complaints forward, it has a broader duty to express its opinion regarding issues that are brought to its attention which have implications from a human rights perspective.

## Racism and Islamophobia in the Media

The Commission has long emphasized that forms of racism exist in all of society's institutions. In order to effectively respond to racism, it is necessary to clearly acknowledge its existence.

Racism exists in the media and the media has a significant role to play in either combating societal racism or refraining from communicating and reproducing it. Islamophobia is a form of racism that includes stereotypes, bias or acts of hostility towards Muslims and the viewing of Muslims as a greater security threat on an institutional, systemic and societal level.

The Commission is concerned that since the September 2001 attacks, Islamophobic attitudes are becoming more prevalent in society and Muslims are increasingly the target of intolerance, including an unwillingness to consider accommodating some of their religious beliefs and practices.

Unfortunately, the Maclean's article, and others like it, are examples of this. By portraying Muslims as all sharing the same negative characteristics, including being a threat to 'the West', this explicit expression of Islamophobia further perpetuates and promotes prejudice towards Muslims and others. An extreme illustration of this is a "blog" discussion concerning the article that was brought to the attention of the Commission which, among many things, called for the mass killing, deportation or conversion of Muslim Canadians.

The Commission strongly condemns the targeting of Muslims, Arabs, South Asians and indeed any racialized community by the media as being inconsistent with the values enshrined in the Code. The impact on a community both in terms of the intolerant messages being conveyed and the knowledge that society is willing to accept their dissemination is profound. The United Nations Special Rapporteur on Racism has confirmed the role of the media in contributing to a sharp increase in Islamophobia and its acceptance as normal in 'the West'. Further, the Commission's 2003 report *Paying the Price: The Human Cost of Racial Profiling* illustrates the social cost of stereotyping to individuals, families, communities and Ontarians as a whole.

## Freedom of Expression and Human Rights

The Commission supports freedom of thought, belief, opinion and expression, as enshrined in the *Canadian Charter of Rights and Freedoms*. Freedom of expression is recognized as a cornerstone of a functioning democracy. It promotes many societal values and has a role in individual self-fulfillment, attaining the truth, securing participation by members of society in social and political decision-making, and maintaining a balance between stability and change in society.

It is often said that with rights come responsibilities. It is the Commission's view that the media has a responsibility to engage in fair and unbiased journalism. Bias includes both an unfair and one-sided portrayal of an issue as well as prejudicial attitudes towards individuals and groups based on creed, race, place of origin, ethnic origin and other *Code* grounds. Freedom of expression should be exercised through responsible reporting and not be used as a guise to target vulnerable groups and to further increase their marginalization or stigmatization in society.

In Canada, the right to freedom of expression is not absolute, nor should it be. There are examples of reasonable limits on the right that can be demonstrably justified in a free and democratic society. Human rights codes themselves contain some limits on the right. The Supreme Court of Canada has ruled that a provision in the *Canadian Human Rights Act* that prohibits the telephonic spreading of hatred or contempt on the basis of a prohibited ground of discrimination is a justifiable limit on freedom of expression. The *Criminal Code* also puts limits on freedom of speech in order to deal with situations it defines as hate crimes.

The Ontario *Human Rights Code* prohibits discrimination and harassment in five social areas: (1) goods, services and facilities, (2) housing accommodation, (3) employment, (4) contracts and (5) membership in unions, trade and vocational associations. The Code cannot prevent people from holding intolerant views but does prohibit people from acting on them when one of the above social areas is engaged.

Section 13 of the *Code* makes it illegal to display or publish certain kinds of offensive material. But its limits on freedom of expression are narrow. For the *Code* to apply, the offending item must be a notice, sign, symbol, emblem or other similar representation that indicates an intent to infringe, or incite others to infringe, a right under the *Code*. Therefore, a sign would fall within this section, but a five-page article conveying the same message would not.

Limits to freedom of expression under some other human rights legislation in Canada are broader, stating that no person shall publish, issue or display before the public **any statement, publication**, notice, sign, symbol or other representation.

The different approaches in various human rights statutes across Canada can send a confusing message and give rise to inconsistencies, depending on where a complaint is filed. For example, it is possible to initiate complaints about a magazine article in more than one province and, if the article appears on the internet, with the Canadian Human Rights Commission. It is also unclear what matters trigger the application of the hate law provisions of the *Criminal Code*.

Clearly more debate on this issue is required in Canada. A comprehensive approach to the issue should be one of the goals. The discussion should be about how narrowly or broadly society places limits on freedom of expression in order to protect the human rights of its vulnerable members.

## Looking Forward

The Maclean's article and others like it raise important human rights issues for the affected communities and those who are concerned with the balance between freedom of expression and equality rights.

Even though the Commission is not proceeding with these complaints as a result of its jurisdiction under the *Code*, it still has a broader role in addressing the tension and conflict that such writings cause in the community and the impact that they have on the groups that are being singled out.

Starting July 2008, human rights complaints will no longer be filed with the Commission but will be made directly to the Human Rights Tribunal of Ontario. At the same time, the role of the Commission in preventing discrimination and promoting and advancing human rights in Ontario will be strengthened. The Commission will expand its work in promoting a culture of human rights in the province. This will include taking a leadership role in fostering constructive debate and dialogue among concerned individuals and organizations regarding the issues raised by Islamophobia in the media and the ways in which the Commission, the media and others can begin to address them.

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