

March 30, 2006

Alberta Human Rights and Citizenship Commission  
Southern Regional Office  
310, 525 – 11<sup>th</sup> Avenue S.W.  
Calgary, Alberta  
T2R 0C9

Dear Sirs/Mesdames:

Re: Soharwardy v. *Western Standard*  
Complaint S2006/03/0330

I write on behalf of the *Western Standard* in response to the above-captioned complaint.

#### 1. Overview

The complaint is a frivolous and vexatious abuse of process. It has no basis in fact or Canadian law. It is contrary to Canadian values of freedom of speech, freedom of the press and religious plurality, under which Canadians are free from compulsion to submit to religious edicts. The complaint is an attempt to abuse the power of the state to chill discussion about subjects that are in the public interest. It is also an inappropriate combination of mosque and state, using a secular government agency to enforce a Muslim religious precept, namely the fundamentalist prohibition of the depiction of Mohammed.

From a legal point of view, the bulk of the complaint refers to comments made by Ezra Levant in other media, where the *Western Standard* was not the publisher or broadcaster. As those collateral comments were not published or broadcast by the *Western Standard*, they are irrelevant to the complaint as framed, and will not be dealt with here. The fact that the complainant has not named those other media as respondents strongly suggests that the selective nature of this complaint – against the *Western Standard* only – is malicious and punitive.

This is a nuisance suit that serves an illiberal agenda, and should the Alberta Human Rights and Citizenship Commission (AHRCC) not dismiss it forthwith, the AHRCC itself would become a party to it.

## 2. Perversion of Human Rights Commission

If the AHRCC does not dismiss this complaint, as did the Calgary Police Service in response to a similar complaint brought by the same complainant, the AHRCC will be discredited and its liberal reputation will be brought into disrepute. This complaint perverts the cause of human rights. As Alan Borovoy, general counsel to the Canadian Civil Liberties Association, wrote in the *Calgary Herald* on March 16<sup>th</sup>, in direct response to the within complaint, “during the years when my colleagues and I were labouring to create such commissions, we never imagined that they might ultimately be used against freedom of speech”. Borovoy wrote that censorship was “hardly the role we had envisioned for human rights commissions. There should be no question of the right to publish the impugned cartoons.”

Borovoy was so concerned that the AHRCC would even consider this complaint that he called for an amendment to the AHRCC’s governing statute, to reign in the AHRCC. “It would be best, therefore, to change the provisions of the Human Rights Act to remove any such ambiguities of interpretation,” he concluded.

## 3. AHRCC could chill public discussion

The national debate surrounding the *Western Standard’s* publication of the Danish cartoons touched on many important matters of Canadian public policy, including the separation of mosque and state, the proper response to terrorism, press freedom, diversity of religious opinion, the division between radical and liberal Muslims, and the inculcation of Canadian Charter values in new immigrants. All of these matters are *bona fide* topics of discussion for both private citizens and the media, especially for news media like the *Western Standard*.

If the AHRCC allows itself to be used to attack the publication of a good faith debate on these issues, the AHRCC will become a tool of censorship akin to libel chill. If it does not dismiss this complaint, the AHRCC will send a message that the state, with its unlimited resources, will not hesitate to interfere with and harass media that discuss controversial topics even in a *bona fide* manner. That would be worse than a private lawsuit brought by an illiberal complainant, as such a litigant would have to finance his own prosecution, and would be liable for costs to any defendant for a baseless action. Not so with the AHRCC, which has unlimited resources, and which does not compensate defendants against whom a complaint is dismissed. Even an acquittal, therefore, is a punishment. The process becomes the penalty.

#### 4. Freedom of expression and the right to offend

Freedom of expression cannot be limited to merely innocuous subjects, or else it is not truly freedom. Freedom of expression is only meaningful when it trumps other values, such as political sensibilities, or religious dogma, or personal sensitivities. Indeed, Western Civilization's progress in all realms, ranging from science to art to religion to feminism to civil rights for racial minorities and gays, has come about from the free expression of ideas that necessarily offended some earlier order.

#### 5. Reason for, and style of, publication

The *Western Standard's* exercise of its freedom of expression does not require justification, and we reserve all of our rights and freedoms. That said, the *Western Standard* published the cartoons for a simple reason: they are the central fact in one of the largest news stories of the year, and the *Western Standard* is a news magazine. We publish the facts and let our readers make up their minds. This was a reasonable news decision: According to a February COMPAS poll, fully 70% of Canada's working journalists agreed with the decision to publish the cartoons – and many went further, stating that every other media outlet should have published them, too.

The treatment of the cartoons in the *Western Standard* was reflective and analytical, and was in the style of media criticism. For a fuller exposition of the right to publish the cartoons, please find enclosed the March 13, 2006 edition of the *Western Standard*, featuring the cover story "What were we thinking?" and related columns and letters.

#### 6. Specific reply to the complaint

The complaint is not a coherent legal or factual argument. It is a hand-scrawled, error-ridden, incoherent stream of consciousness that, *prima facie*, shows its frivolous nature. For its formal flaws alone the AHRCC should dismiss it. If the AHRCC does not dismiss the complaint, the *Western Standard* will be subjected to the imprecise and onerous task of trying to understand and meet the case against it. What follows is an attempt to refute an incoherent complaint.

##### 6(a). Confusion as to the identity of the respondent

The style of cause lists the *Western Standard* magazine as the respondent, but the bulk of the facts refer to comments made by Ezra Levant through other media,

where the *Western Standard* was not the publisher or broadcaster. Because those are irrelevant to this complaint, those points will not be addressed in this response.

6(b). Confusion as to incidents, dates, times and other specifics

The complaint is vague to the point of meaninglessness regarding the impugned facts. Meaningless phrases like “on the media” and “constantly” make such a complaint impossible to answer with specificity, as the case against the respondent is not clear.

6(c). Confusing *bona fide* comments with “hate” or “discrimination”

The bulk of the complaint refers not to the publication of the cartoons by the *Western Standard*, but the defense by Ezra Levant in other media of the *Western Standard's* decision. That defense included public debates in which the complainant himself voluntarily participated. These complaints are not relevant to the within case against the respondent, the *Western Standard*, which was not the publisher or broadcaster of those debates defending the decision to publish the cartoons. However, they serve to illustrate the illiberal, anti-human-rights agenda of the complainant: he seeks not only to prohibit legitimate publications, but also to prohibit arguing, advocating or perhaps even thinking about publishing his list of prohibited publications. He seeks not only to censor the cartoons but to censor the debate about the cartoons.

The complaint deliberately confuses active, malicious discrimination with thoughtful, *bona fide* discussion of public issues. It calls good faith debate “hatemongering” and tries to swallow up as a hate crime any legitimate argument for the publication of cartoons – turning that into a thought crime. The complaint is Orwellian in its language, which is fitting, given that it has been placed before Human Rights Commission, which, as pointed out by Alan Borovoy, will become an Orwellian perversion itself.

6(d). The cartoons are not hateful, they are just contrary to fundamentalist Islam

The complainant does not attempt to justify his Orwellian charge that the cartoons, including several innocuous cartoons, “advocate hatemongering”. How inanimate, inarticulate cartoons achieved this meaning is not explained; nor is it explained how defending the publication of cartoons is “hatemongering”.

The complainant has stated in the news media that his objection to the cartoons is that they violate the fundamentalist Muslim prohibition against any depictions of Mohammed whatsoever, including positive depictions of him. (Several of the cartoons in question were neutral or positive in their tone.) It is not that the

publication of the cartoons was hateful; it is that the publication of the cartoons was a secular, non-Muslim act.

In the news media, the complainant has called for a prohibition of the depiction of other “Muslim prophets” including Jesus, and has stated that the ultimate goal of Muslims is to make the Koran the world’s constitution. The respondent submits that the complainant’s true objection is not the “hate” of the cartoons, but rather their heresy and non-conformity to fundamentalist Islam.

6(e). The complainant contends that he is a personal relative of Mohammed

If the AHRCC allows such absurd, theocratic braggadocio to masquerade as an argument in a secular tribunal it would be an embarrassment to Canada’s liberal, secular, pluralistic democracy and the government of Alberta that is politically responsible for the AHRCC.

6(f). Islamist agenda

The complaint bizarrely includes as exhibits two articles from the *Western Standard* that have nothing to do with the publication of the Danish cartoons, but rather have a critical analysis of Islamic terrorist groups around the world, including the Hamas terrorist group. That these would be included in the complaint suggests that the complainant, who, prior to coming to Canada, taught at an illiberal, anti-Semitic, anti-feminist Saudi Arabian university, has a collateral and inappropriate agenda at hand: the suppression of critical commentary about Islamic, Saudi-financed terrorism.

6(g). Impossible timeline

Another example of the bad faith of the complainant is his brazen claim that the *Western Standard’s* publication of the cartoons caused him to receive “hate mail”, purported examples of which he attached. A cursory inspection of those e-mails shows that each of them were sent to the complainant before the *Western Standard* was printed or shipped – they could not possibly have been received as a result of our publication. Further, an inspection of those e-mails shows that many of them were in the vein of public debate, including the rather reasonable assessment that the complainant was “humourless” and that he should “lighten up”.

7. Suggestion for future steps for the AHRCC

The AHRCC *pro forma* response template calls for a suggestion as to how this matter might be reasonably resolved. There is no acceptable resolution other than the dismissal of the complaint. That a liberal institution like the AHRCC could

be hijacked by an illiberal, theocratic, punitive complaint is troubling and could make Mr. Borovoy's prescription – amending the law to curtail abuses of process like this – necessary.

## 8. Conclusion

This is not a serious human rights complaint. It is a nuisance suit. It is baseless in law and in fact. It has been condemned by the Canadian Civil Liberties Association as an abomination to human rights law.

There has been no violation of the AHRCC code in any way; the commission has the power to dismiss a complaint at any time, and we ask that that be done immediately, as the complaint has no foundation.

Yours truly,

Ezra Levant  
Publisher

enclosure: *Western Standard*, March 13, 2006