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- Homes
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Why not all speech should be free

Pearl Eliadis, Citizen Special
Published: Monday, November 29, 2010

Readers might argue that this is a criminal matter and not one for human rights commissions. I will come to commissions later. But if the argument is really about censorship, then readers who oppose such restrictions would do so regardless of where they occur. Most don't and run straight for argument that "censorship" should be in the courts and not in commissions without the slightest awareness of the contradictions in their own positions.

The free speech extremists conflate efforts to limit extreme forms of speech, like the ones mentioned above, with authoritarian and heavy-handed censorship. This is as intellectually dishonest as if I called Mercer a supporter of genocide because of his free speech position.

Mercer criticizes me and Maisonneuve magazine for re-publishing web comments that advocate genocide against Muslims ("The Controversy Entrepreneurs," Fall 2008). He argues that doing so gives more exposure to the comments.

The article in question quoted reader comments from a blog that had republished Mark Steyn's polemic, "The Future Belongs to Islam." The comments were, in turn, submitted as evidence to the B.C. Human Rights Tribunal to show the alleged effect of the impugned Steyn article on readers. All of these writings and proceedings had already been widely distributed on the web and were well known to anyone following the issue.

Even if this had not been the case, it is important for people to see and understand the kind of vicious attacks that our fellow Canadians, sadly, are still experiencing.

Finally, there is the issue of why commissions like the federal Canadian Human Rights Commission receive and investigate speech-related complaints. It is because it is in their legislation and, in one form or another, always has been. They are not "overstepping" or "expanding their jurisdiction" as many allege. Commissions are doing their jobs as mandated by Parliament in accordance with international human rights law.

It does not make them or their staffs thieves or criminals, despite what Mercer's throwaway last line suggests.

Pearl Eliadis is a human rights lawyer based in Montreal.

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◀ previous 1 | 2 |

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- Sports
- Entertainment
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- Technology
- Travel
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- Cars
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Philosophy professor Mark Mercer's recent Citizen op-ed ("What the denouncers do want you to hear," Nov. 20) shows why the right is so wrong about hate speech and human rights commissions.

Mercer -- who purports to be a free speech defender -- denounces "denouncing." I hold no brief for the people who yelled at Christie Blatchford. But the last time I checked, denouncing some-one's views was itself a protected form of speech.

Regardless, the Blatchford incident, regrettable as it was for all concerned that her public appearance at the University of Waterloo had to be cancelled, has nothing to do with human rights commissions, the main targets of Mercer's ire.

Second, Mercer's unqualified opposition to "censorship" runs contrary to the law, both here and in most countries with legal systems worthy of that name. This raises the issue of what kind of speech is constitutionally protected, and about the way in which the word "censor" has been thrown around of late.

The most recent chapter of the free speech/human rights commission controversy offers a good example.

Ontario's Superior Court of Justice ruled on Nov. 18 that Giacomo Vigna, a lawyer for the Canadian Human Rights Commission, had been defamed by blogger Ezra Levant. According to the Court, Levant was on a campaign to discredit human rights commissions.

While that was in itself not inherently problematic from the perspective of the libel case, seeking to achieve that goal by defaming others was not a lawful objective. The court said that Levant showed "reckless disregard" for the truth in publishing the posts in question.

This does not make the Superior Court of Justice a "censor." What it does is to remove the "rights-shield" from defamatory speech, thus protecting Vigna's rights and, for that matter, the rights of anyone similarly situated. The point, to borrow a phrase, is that people's reputations and rights should not become roadkill on the path to free speech.

It is completely unacceptable that commission staff in Canada and human rights defenders here or anywhere else should be harassed, defamed and threatened simply for doing their jobs. Having worked in and with commissions before (and, by the way, having also represented respondents), I am acutely aware of the foibles and limitations of these institutions. But this does not justify the inaccuracy and lack of fairness to which they and their staffs have been subjected.

Defamation and libel are one kind of lawful exception to speech rights. Speech that incites violence against groups is another form of speech that is not protected in this country. There are significant differences between supporting well-established legal exceptions to free speech and being a "censor."

On Nov. 22, the National Post reported that police charged a fugitive Ontario resident with hate crimes for website content that advocated genocide against Jews. This is a limitation on speech but it is not "censorship" in the authoritarian and arbitrary sense Mercer wants and intends us to think of as an inherent violation of Charter rights. It is about protecting the lives and well-being of Canadians.

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