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Instant Memo

Memo To: Marie Landry, Marie Landry Spy Shop

File: No File Selected

Research ID: #400030508fcd818

Jurisdiction: New Brunswick, Canada

Date: July 13, 2024

Issue

Does Canadian law recognize claims of systemic transphobia within law enforcement agencies as a basis for civil rights violations?

Research Description

FOR IMMEDIATE RELEASE

Marie Landry Condemns RCMP Inaction: A Call for Justice Against Systemic Transphobia

Moncton, NB, Canada [Date] – Marie Landry, CEO of Marie Landry's Spy Shop (www.marielandryceo.com), today issued a scathing condemnation of the Royal Canadian Mounted Police (RCMP) for their alleged inaction and systemic transphobia, culminating in a seven-year ordeal that has deeply impacted her life.

Landry, a renowned OSINT expert, expresses profound disappointment at being forced to combat serious threats, including those posed by a neo-Nazi group founder, with no tangible assistance from the RCMP or CSIS. Despite providing both agencies with substantial evidence of potential criminal activity, Landry has been met with apathy and told to simply accept the situation. This lack of support, she argues, not only jeopardizes her safety but also undermines the fundamental values of justice and equality in Canada.

This latest incident follows a protracted legal battle that began in 2016 when Landry was falsely accused of a crime, a charge later withdrawn by the court. Despite the charges being dropped, a clerical error led to the RCMP maintaining a false record of conviction against Landry. This misinformation, which Landry believes was fueled by transphobia, had dire consequences, including severe damage to her personal and professional reputation, false imprisonment in psychiatric institutions, and discriminatory treatment by law enforcement officials.

Landry fought tirelessly to correct these inaccuracies, encountering resistance and transphobic discrimination from certain RCMP members. She ultimately succeeded in having her record updated, but only after obtaining a certificate from a judge confirming the withdrawal of charges.

Despite the RCMP's admission of error and ongoing investigations by the Civilian Review and Complaints Commission (CRCC) and the Canadian Human Rights Commission (CHRC), Landry remains deeply critical of the RCMP's conduct and the systemic issues her case exposed. She highlights a pervasive culture of transphobia within the RCMP, pointing to repeated misgendering, dismissal of her claims, and disregard for her rights under Canadian law.

Landry's demands for justice extend beyond her personal case. She is advocating for a comprehensive overhaul of RCMP policies to address systemic transphobia, mandatory LGBTQ+ sensitivity and inclusivity training for all RCMP members and relevant personnel within the justice and healthcare systems, and a thorough review of her entire criminal record to ensure no further errors persist. Landry also calls for accountability for those responsible for perpetuating the false accusations and discrimination, including RCMP Constable Gabriel Gallant and RCMP Informant Tania Mallet, as well as a group of individuals identified as false witnesses.

Landry views her case as symbolic of a larger struggle for transgender rights in Canada. She remains resolute in her pursuit of justice and accountability, determined to use her platform to

advocate for systemic change and an end to transphobia within law enforcement and beyond. She is actively pursuing mediation to achieve a just resolution and to ensure that no one else endures the same ordeal.

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Answer

Only two decisions were identified that discussed the issue.

Canadian law requires claimants to establish discrimination in a substantive or purposive sense, which goes beyond mere proof of a distinction on enumerated or analogous grounds.

Discriminatory treatment, under s. 15(1), does not need to be essential for a successful claim if a legislative provision or other state action perpetuates or promotes the view that the individual is less capable, or less worthy of recognition or value as a human being or as a member of Canadian society. Discrimination includes practices or attitudes that limit an individual's or group's right to opportunities due to attributed rather than actual characteristics, and it can be present regardless of the intent. Discrimination occurs when there is a distinction based on personal characteristics of the individual or group, which imposes burdens not imposed on others, or which limits access to opportunities, benefits, and advantages available to others. The purpose of s. 15(1) is to prevent the violation of human dignity and freedom through the imposition of disadvantage, stereotyping, or prejudice, and to promote a society where all persons enjoy equal recognition at law. Discrimination has at its root prejudice, stereotyping, or devaluation of the group or individual in society's eyes, and for a claim to be successful, a court must be satisfied that the claimant's assertion that differential treatment imposed by legislation demeans his or her dignity is supported by an objective assessment of the situation.

Legal Principles

Claimants must establish 'discrimination in a substantive or purposive sense, beyond mere proof of a distinction on enumerated or analogous grounds'. Discriminatory treatment is not essential to a successful claim under s. 15(1), and can be established if a legislative provision or other state action perpetuates or promotes the view that the individual is less capable, or less worthy of recognition or value as a human being or as a member of Canadian society. Discrimination has, at its root, prejudice, stereotyping or devaluation of the group or individual in society's eyes. A court must be satisfied that the claimant's assertion that differential treatment imposed by legislation demeans his or her dignity is supported by an objective assessment of the situation. ([McNee v. Brown, 2003 NBQB 236 \(CanLII\)](#))

Discrimination was defined as practices or attitudes that limit an individual's or group's right to opportunities due to attributed rather than actual characteristics, regardless of whether the discrimination is intentional or not. It emphasized that if a barrier affects certain groups in a disproportionately negative way, it may be indicative of discriminatory practices. Discrimination was also described as a distinction based on personal characteristics of the individual or group, which imposes burdens not imposed on others, or which limits access to opportunities, benefits and advantages available to others. The purpose of s. 15(1) was stated to prevent the violation of human dignity and freedom through the imposition of disadvantage, stereotyping, or prejudice, and to promote a society where all persons enjoy equal recognition at law. ([Price v. Fredericton \(City\), 2004 CanLII 66255 \(NB LEB\)](#))

Discussion of Law

In [McNee v. Brown, 2003 NBQB 236 \(CanLII\)](#), the Court of Queen's Bench of New Brunswick explained that claimants must establish 'discrimination in a substantive or purposive sense, beyond mere proof of a distinction on enumerated or analogous grounds'. Discriminatory treatment was acknowledged as state action corroborating or exacerbating an existing prejudicial stereotype, but this is not essential to a successful claim under s. 15(1). A stereotype may be described as a misconception whereby a group is unfairly portrayed as possessing undesirable traits, which the group, or at least some of its members, do not possess. Any demonstration by a

claimant that a legislative provision or other state action has the effect of perpetuating or promoting the view that the individual is less capable, or less worthy of recognition or value as a human being or as a member of Canadian society, will suffice to establish an infringement of s. 15(1). Discrimination has, at its root, prejudice, stereotyping or devaluation of the group or individual in society's eyes. A court must be satisfied that the claimant's assertion that differential treatment imposed by legislation demeans his or her dignity is supported by an objective assessment of the situation:

[60] ... a court must be satisfied that the claimant's assertion that differential treatment imposed by legislation demeans his or her dignity is supported by an objective assessment of the situation. All of that individual's or that group's traits, history, and circumstances must be considered in evaluating whether a reasonable person in circumstances similar to those of the claimant would find that the legislation which imposes differential treatment has the effect of demeaning his or her dignity. (Law, supra) (Emphasis added)

75 In Law, the 30-year-old appellant was denied survivors benefits under the Canadian Pension Plan (CPP). The CPP gradually reduces the survivors pension for able-bodied surviving spouses without dependent children who are between the ages of 35 and 45 so that the threshold age to receive benefits is age 35. The appellant unsuccessfully appealed first to the Minister of National Health and Welfare and then to the Pension Plan Review Tribunal, arguing that the law discriminated against her on the basis of age contrary to s. 15(1) of the Charter. A further appeal was made to the Pension Appeals Board, which, in a trial de novo, concluded that the impugned age distinctions did not violate the appellant's equality rights. The majority of the Board also found that, even if the distinctions did infringe s. 15(1) of the Charter, they could be justified under s. 1. A subsequent appeal to the Federal Court of Appeal was dismissed. A final appeal to the Supreme Court of Canada was dismissed. A unanimous Court found that neither the purpose nor the effect of the impugned CPP provisions violated the appellant's dignity so as to constitute discrimination within s. 15(1).

76 In discussing the concept of "dignity" Iacobucci, J, asked the following questions:

[75] And at ¶ 72 to 80:

72 The claimants must establish "discrimination in a substantive or purposive sense, beyond mere proof of a distinction on enumerated or analogous grounds". (per Iacobucci, J. in Law , supra, at § 38)

73 What is discriminatory treatment? Iacobucci, J. acknowledged that state action corroborating or exacerbating an existing prejudicial stereotype, while a hallmark of discrimination, is not essential to a successful claim under s. 15(1):

[64] ... A stereotype may be described as a misconception whereby a person or, more often, a group is unfairly portrayed as possessing undesirable traits, or traits, which the group, or at least some of its members, do not possess. In my view, probably the most prevalent reason that a given legislative provision may be found to infringe s. 15(1) is that it reflects and reinforces existing inaccurate understandings of the merits, capabilities and worth of a particular person or group within Canadian society, resulting in further stigmatization of that person or the members of the group or otherwise in their unfair treatment. This view accords with the emphasis placed by this Court ever since *Andrews*, supra, upon the role of s. 15(1) in overcoming prejudicial stereotypes in society. However, proof of the existence of a stereotype in society regarding a particular person or group is not an indispensable element of a successful claim under s. 15(1). Such a restriction would unduly constrain discrimination analysis, when there is more than one way to demonstrate a violation of human dignity. I emphasize, then, that any demonstration by a claimant that a legislative provision or other state action has the effect of perpetuating or promoting the view that the individual is less capable, or less worthy of recognition or value as a human being or as a member of Canadian society (whether or not it involves a demonstration that the provision or other state action corroborates or exacerbates an existing prejudicial stereotype), will suffice to establish an infringement of s. 15(1). (Emphasis added)

74 Discrimination has, at its root, prejudice, stereotyping or devaluation of the group or individual in society's eyes. In assessing the claim:

In [*Price v. Fredericton \(City\)*, 2004 CanLII 66255 \(NB LEB\)](#), the New Brunswick Labour and Employment Board defined discrimination as practices or attitudes that have, whether by design of impact, the effect of limiting an individual's or group's right to the opportunities generally available because of attributed rather than actual characteristics. It is not a question of whether the discrimination is motivated by an intentional desire to obstruct someone's potential, or whether it is the accidental by-product of innocently motivated practices or systems. If the barrier is affecting certain groups in a disproportionately negative way, it is a signal that the practices that lead to this adverse impact may be discriminatory. This is why it is important to look at the results of a system. Discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits and advantages available to other members of society. The purpose of s. 15(1) is to prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration:

45. This commentary by Mr. Justice Iacobucci is furtherance of the Supreme Court of Canada's comment on the fundamental nature of work in society where the Court stated as follows:

"Work is one of the most fundamental aspects of a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self worth, and emotional well being."

Reference Re Public Service Employee Relations Act (Alta), 1987 CanLII 88 (SCC), [1987] 1 S.C.R. 313 (S.C.C.) at para 91.

46. The concept of discrimination has been dealt with for some time and in counsel for the Commission's lengthy brief on law, this Board was referred to various case law. In 1987, the Supreme Court of Canada defined discrimination as follows:

“Discrimination...means practices or attitudes that have, whether by design or impact, the effect of limiting an individual’s or group’s right to the opportunities generally available because of attributed rather than actual characteristics. . .[page 1139] It is not a question of whether the discrimination is motivated by an intentional desire to obstruct someone’s potential, or whether it is the accidental by-product of innocently motivated practices or systems. If the barrier is affecting certain groups in a disproportionately negative way, it is a signal that the practices that lead to this adverse impact may be discriminatory. . . This is why it is important to look at the results of a system. . . ”

C.N.R. v. Canada (Human Rights Commission), 1987 CanLII 109 (SCC), [1987] 1 S.C.R. 1114 at para. 34.

47. Then in 1989, the Supreme Court of Canada provided what is deemed to be the most authoritative definition of discrimination when it stated as follows:

“ . . . discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits and advantages available to other members of society.”

Law Society British Columbia v. Andrews, 1989 CanLII 2 (SCC), [1989] 1 S.C.R. 143 at para. 37

48. The Supreme Court of Canada, in referring to s. 15 of the Charter, further refined the definition by placing emphasis on the importance of the violation of one’s human dignity when it quoted as follows:

“...It may be said that the purpose of s. 15(1) is to prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration. Legislation

which effects differential treatment between individuals or groups will violate this fundamental purpose where those who are subject to differential treatment fall within one or more enumerated or analogous grounds, and where the differential treatment reflects the stereotypical application of presumed group or personal characteristics, or otherwise has the effect of perpetuating or promoting the view that the individual is less capable, or less worthy of recognition or value as a human being or as a member of Canadian society. . .

What is human dignity? There can be different conceptions of what human dignity means. For the purpose of analysis under s. 15(1) of the Charter, however, the jurisprudence of this Court reflects a specific, albeit non-exhaustive, definition. As noted by Lamer C.J. in *Rodriguez v. British Columbia (Attorney General)*, 1993 CanLII 75 (SCC), [1993] 3 S.C.R. 519, at p. 554, the equality guarantee in s. 15(1) is concerned with the realization of personal autonomy and self-determination. Human dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. Human dignity is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits. It is enhanced by laws which are sensitive to the needs, capacities, and merits of different individuals, taking into account the context underlying their differences. Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups within Canadian society. Human dignity within the meaning of the equality guarantee does not relate to the status or position of an individual in society per se, but rather concerns the manner in which a person legitimately feels when confronted with a particular law. Does the law treat him or her unfairly, taking into account all of the circumstances regarding the individuals affected and excluded by the law?"

Law v. Canada (Minister of Employment and Immigration), 1999 CanLII 675 (SCC), [1999] 1 S.C.R. 497 at paras. 51 and 53.

Cited Authorities

McNee v. Brown, 2003 NBQB 236 (CanLII)

Price v. Fredericton (City), 2004 CanLII 66255 (NB LEB)