

## Human Rights Under Attack

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Human rights commissions, and human rights themselves, are under attack from mainstream media and conservative commentators. Jennifer Lynch, Chief Commissioner of the Canadian Human Rights Commission, recently urged members of the human rights community to defend the human rights of vulnerable people and to ensure that discussion about human rights commissions is informed and respectful (Conference of the Canadian Association of Statutory Human Rights Agencies, June 15, 2009).

To respond to these attacks, it is important to consider their ideological underpinnings. A typical example is an op ed piece by Tom Flanagan, published by *The Globe and Mail* recently (Tuesday, May 19, 2009, p. A13). Mr. Flanagan's treasured point is that governments (here in the form of human rights institutions and human rights law) should not interfere in the market or social relations. Tom Flanagan, and others, hold an Americanized view that government intervention to correct discrimination is, by definition, abusive. Flanagan says that the very existence of human rights commissions is an abuse. They enforce anti-discrimination laws, not real rights like freedom of speech and worship, and ownership of property. The market should be allowed to take care of discrimination without government interference, says Flanagan. He claims that, although competitive markets may not immediately abolish discriminatory practices, they tend to erode them over time by making discrimination unprofitable.

For the proposition that the market will – over time – take care of discrimination on its own, no evidence is offered. The evidence indicates the opposite. The market likes discrimination, as it searches perpetually for a cheaper pool of labour. Workers who are more vulnerable, because of sex or race or country of origin, work for less money, in worse conditions. For example, the Latin American workers who came to Vancouver on temporary visas to build the tunnel for the new Canada Line were paid less than European workers, also on temporary visas. The employer claimed that this was due to its “international pay practices”. A human rights tribunal (*C.S.W.U., Local 1611 v. SELI Canada Inc. (No. 8)*, CHRR Doc. 08-935) concluded that “international pay practices” simply meant that SELI Inc. had found that it could pay workers from countries with low wage rates less money than workers from countries with high wage rates, even when they work in Canada. According to Mr. Flanagan, it is an abuse for a human rights tribunal to interfere in this discrimination.

Tom Flanagan's article illustrates that at the centre of the equality project is a struggle between contending views of the role of government: governments should be a redistributive, egalitarian force, intervening in the market and in social relations to correct discrimination vs. governments should be “hands off”, permitting the market and social relations to control the distribution of benefits in our society.

If, as members of the human rights community, we are going to defend commissions and human rights, we should be prepared to address this central issue. For Tom Flanagan, restraining government is the only human rights task. But human rights commissions and human rights laws rest on the understanding that equality requires governments to use both the force of law and public resources to eliminate discrimination.