

# THE COLLISION OF RIGHTS

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I want to share with you what Professor Bernice Schrank called “my biased one-sided truth” on the subject of colliding rights. It is all too rare that we have this kind of dialogue between our splendid solitudes of politics and academics and I welcome it. This is not an environment that is completely alien to me; I did spend seven years of my life in university as a student at both the University of British Columbia and at the London School of Economics and, in addition to terrorizing professors, I was active in student politics. In fact, the one and only election I have ever lost was my bid for the presidency of the Student Union. I have sat on a university senate and I have sat on the Board of Governors. In fact, I was the first student to sit on the University of British Columbia Board of Governors, so I know something about the dynamics of these institutions. I have always maintained that academic politics was the bloodiest, the most ruthless and the most vicious politics that I have ever experienced. It makes Parliament look like a piece of cake in comparison. The battles over the allocation of the offices in the Buchanan Tower for Arts professors were staggering.

I have tried to the best of my ability to fight hard, both in Canada and internationally, for respect for a number of principles. Two of those fundamental principles are freedom of speech and equality. As Alan Borovoy will surely attest, we have fought together side by side over the years in many battles, whether it be the Tory pornography legislation, the Tory prostitution legislation or the Liberal CSIS legislation. I have attacked the denial of freedom of speech not only here in Canada but internationally. I remember a press conference I gave in Moscow in 1981 when I said that if I was living in the Soviet Union I would probably be locked up in a gulag somewhere for many reasons, some of which I had not disclosed at that point in my life. I was thrown out of China for saying that it was wrong to lock people up for the peaceful expression of their beliefs.

In the context of this debate, it is important that we remember when we talk about human rights and the collision of rights that human rights do not just include the traditional civil and political rights. Indeed, the *International Bill of Rights* and the *Covenants of the United Nations on Human Rights* include a Covenant on Civil and Political Rights and also a Covenant on Economic, Social and Cultural Rights. I believe it was Frank Scott who said, “The trappings of democracy hang loosely on an emaciated body politic.” Certainly when we examine the collision of rights, the obscenity of thirty thousand children dying every day of preventable disease and hunger is something I think we must confront. Just last Sunday I joined several thousand people on a beautiful sunny

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day in Stanley Park for a walk for AIDS. I was wearing a t-shirt that said "silence equals death" so I need no lessons, I say with respect, about the profound importance of respecting freedom of speech.

In fact, one of the greatest frustrations I feel, and I welcome the opportunity to share this with you in a university setting, is that university professors do not exercise their freedom of speech more often. Tenure exists for a reason, I remind you; it exists as a means of protecting professors from attacks by government and figures of authority when professors challenge those governments, or when they challenge the abuse of power and privilege. Too often the silence from universities has been deafening.

I remember speaking at Simon Fraser University in my own constituency at a time when there was a great debate about whether Simon Fraser University should be involved in a CIDA project in Indonesia. I found it striking, and I made the point when I spoke at the university in opposition to the extension of the contract, that for the entire period of the contract not one voice at Simon Fraser University was raised expressing concerns about the genocide in East Timor, about the brutal suppression of the rights of the labour movement or about freedom of speech in Indonesia. Not a single voice!

It is all well and good to talk about tenure and to defend the principle of tenure, but I suggest as well that it would be nice if, just a little more often, those professors who have that privilege used it for the purpose for which it was intended and ended their silence. Many academics are eloquent and knowledgeable. When minorities are being attacked, when Roseanne Skoke<sup>1</sup> spews her hatred directed at gays and lesbians, I listen in vain for the voices of academia saying: "maybe there is something wrong with this." When she equates homosexuality with paedophilia, I listen for the voices of the sociologists on our campuses, the eminent psychologists and distinguished academics who know better. I wait and I wait and I wait in vain for the great defence of minority rights. Freedom of speech is profoundly important but it is also important that we recognize that too often silence is not golden.

I did have some ideas about living, loving and dying in the nineties that I was going to share with you, but I flew in late last night from Ottawa and I reviewed the local press; the *Brunswickan* newspaper was the first thing I looked at and then, in the wee hours of the morning, I played the tape of Alan Borovoy's very eloquent and very powerful words. I decided to throw caution to the wind – I am so well known for caution – and to wade into the controversy that gave rise to this conference: the *Matin Yaqzan* affair.

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I suppose I should thank him for sparking this very important debate, and I am delighted that we have the opportunity to take a day and a half to deal with the issues that arise from part of the negotiated settlement, if I am not mistaken, between two of the three sponsors of the conference. Let me be very clear about where I stand on the Yaqzan affair. I strongly support the UNB sexual harassment policy. I believe that it was properly applied to Matin Yaqzan and, far from condemning the Student Union at the University of New Brunswick for their awful decision, I salute them for vigorously defending the right to equality on this campus.

Alan Borovoy, in his keynote address, said that equality is not a key value of the university; it is not an "institutional truth", it is not in an exalted position where it cannot be challenged. Yet I am troubled by the inherent contradiction in what he suggests, that there is one institutional truth, one value which is in an exalted position where it cannot be challenged and that value is freedom of speech. I have to ask who made the decision that freedom of speech is the one God-like exalted institutional truth and that equality is not as important. I do not accept that; I think that there can be a legitimate debate on that point.

I do not want to take a lot of time exploring the specific words of Matin Yaqzan. I think he did issue an invitation to the panellists to suggest if there is anything inaccurate. He pointed out that there are co-ed residences but, and I quote, "They do not provide an opportunity for sexual gratification for all the male students and therefore the reason and the need for so-called date rape." He says, "It is obvious that a girl who has had sexual intercourse with a large number of boys would not suffer as a result of unwanted sexual encounters to the same degree as a girl for whom it might be the first sexual experience." He goes on to make a number of other statements and finishes by declaring, "If a promiscuous girl becomes a victim of an unwanted sexual experience, it would be more reasonable for her to demand some monetary compensation for her inconvenience or discomfort" because she really has not been raped after all, she has been inconvenienced or suffered discomfort. Well, in the words of Neil Reynolds who wrote in his *Telegraph Journal* editorial, "A young virgin and an aging whore possess exactly the same right to say 'no' and nothing has occurred in our time to lessen it."

It seems to me that in those kinds of circumstances, there is an entirely legitimate right and interest on the part of the university to claim that the harassment policy has in fact been breached. These harassment policies exist in the classroom and workplace for a reason; in many cases because there is a profound power imbalance in those relationships, a power imbalance which can be and indeed is open to abuse. There are many examples. Bernice Schrank said that if language is persistently used as racist or sexist then it can be dealt with like

any other dereliction of duty. Last Night, Alan Borovoy talked about the workplace and the power imbalance that can exist between employer and employee and the right of the state to intervene to circumscribe freedom of speech in those circumstances, presumably partly because of that power imbalance. It is entirely legitimate for a university to say that one of the fundamental values and rights on this campus is that students are not going to be subject to harassment or to intimidation on the basis of gender, religion, sexual orientation or the number of other grounds which are included in most harassment policies. If that is acceptable, it seems to me to be equally logical and acceptable that if there is language which is in breach of this policy or actions which are in breach of it there has to be some remedy; otherwise the policy is completely ineffectual. One of the examples given last night was that of a professor using sexist cartoons in a classroom. What do we do in a situation in which a university professor in a classroom refers to Aboriginal Peoples as lazy, dirty, no good bums on welfare? What do we do in an environment in which a university professor dismisses the rights of gays and lesbians in language which is clearly abusive, language like Roseanne Skoke used during one of her speeches in a debate last May with me. She said:

There are those innocent victims that are dying of AIDS and then there are those homosexualists that are promoting and advancing the homosexual movement and that are spreading AIDS. AIDS is a scourge to mankind and there will be no cure for AIDS and so this love, this compassion between homosexuals based on an inhuman act defiles humanity, destroys family and is annihilating mankind.

What if a professor claims that Jews are part of an international conspiracy, lying about the Holocaust, trying to convert our children? It is interesting when you examine groups that have historically been victims of discrimination to find that children are used as weapons. The Gypsies were going to abduct our children. The Jews were going to convert our children to another religion. Homosexuals were going to seduce our children. These are bigoted, ugly, hateful lies using children, and we know what happened to at least three of those groups during the Holocaust.

So what do we do when abusive language is used in a classroom? Alan Borovoy claims that, when there is an incitement to imminent violence, it may be okay to act. I suggest that it is a perverse and dangerous logic to say simply that we can challenge it through the freedom of our own speech. The university is a very important institution, but it is also an environment in which we have the right to say that certain fundamental values will be respected. You have the right to go into a classroom and not be harassed. You have the right as an employee not to be harassed. It seems to me that this is an entirely reasonable and defensible position for a university or any other place of employment to take.

What is the alternative? Alan Borovoy came up with one answer – you say “Buster, we are not going to rely on anyone but ourselves”; in other words, no

judges, no anti-harassment policies. This argument profoundly denies the reality of power and powerlessness in the classroom and elsewhere. I will give you an example. Let us examine Martin Yaqzan's classroom. Donna Gallant, one of the students interviewed by the *Telegraph Journal* said she had a very serious problem with what Yaqzan was saying. She said, "I'm not impressed sitting in that class thinking that he wouldn't think anything of it if I was raped. He doesn't care – he thinks I would deserve it." But Gallant, who finds her professor's views personally abhorrent, still would not jeopardize her university degree by speaking out against him. She needs this credit to graduate. "I need this course and I don't want to say anything which might affect that. I don't want to get an F or anything." So she is silent. Is it such an amazing revelation that students in the university environment might be somewhat reluctant to challenge that kind of hatred? Of course it is not. Anyone who has been in a classroom knows that. There has to be some alternative mechanism in place to say that this type of thing is not acceptable. It is simply not good enough to ask the victims of that kind of harassment to tackle the discrimination head on.

I will give you another example. There are young gay students in classrooms; I was one of them. I remember some of the most distinguished law professors telling jokes about "queers" that were deeply offensive and painful to hear. But I was married and I was deep in the closet and I certainly was not going to stand up and say, "This hurts, this is wrong." It is absolute nonsense to suggest that freedom of speech is the only mechanism that should be available. Bernice Schrank says that if it is persistent, if it happens often, then maybe we should do something about it. Alan Borovoy says if it is an imminent threat to your security maybe we had better do something about it. I am sorry, that is not good enough. It seems to me that harassment policies are important because, again to take the example of gays and lesbians, too often when people are physically beaten, they do not report. Why? People are afraid to go to the police because, if it becomes public, they may lose their job, or they may not be "out" to their families. They are not going to challenge this type of behaviour in a classroom. It sounds good in theory – buster get up there and challenge that – but it does not happen in reality. In reality, the absence of these harassment policies allows the infliction of pain and verbal violence on minorities, women and others. It also gives a licence to the broader community; when a member of Parliament from the government caucus makes those kinds of statements, when a distinguished university professor makes those kind of comments and they are recorded, it suggests that this kind of thinking is okay. A psychologist who testified at the trial of five ordinary teenagers talked about the subtle societal permission to beat up gay people. In this case a gentle teacher, Kenneth Zeller, was kicked to death in Hyde Park. Language that suggests it is okay to rape a woman, it is okay to physically attack gay people, it is okay to demean Blacks or Aboriginal Peoples, that kind of harassment has no place on the campuses of this country.

Alan Borovoy has suggested that today, discrimination is no longer overt. Today it is done surreptitiously over public opinion and public objection. Unfortunately, this is not always true. Bill 167 in Ontario, which was attempting to deal with blatant discrimination, that is, the denial of the reality of the relationships of gay and lesbian people, was shot down in flames. I am not suggesting that Emily Post should be the arbitrator of conduct at a university. But I do believe very strongly that there is an important role for anti-harassment policies.

I was walking from the plane yesterday and I overheard the conversation between three maintenance workers at the airport: "If you're a white, English-speaking male, you're in trouble, man." I think there are some fascinating debates around the entire issue of employment equity; the clash between historical, systemic discrimination and the rights of an individual who is a member of a group who has benefitted historically from that discrimination. When I last looked, white English-speaking males were doing just fine, thank you very much. I could not resist looking at the *Globe and Mail* this morning, the Business Section, to check out how many people of colour – or women – there were in the new appointments to the corporate boardrooms. Well, by my count, there were 19 white, English-speaking males and one woman – white as well – so white males are doing okay.

I want to address some of the issues that surround the area of dying with dignity and euthanasia. A tremendous clash can occur there and we are seeing it now. I often think of the question posed by Sue Rodriguez to the Parliamentary Committee in October of 1992, when she asked, "I want to ask you, gentlemen, if I cannot give consent for my own death then whose body is this? Who owns my life?" We have a very powerful movement in this country that says that the state has the right to intervene. It is the same movement, in most cases the same people, that claim that Henry Morgentaler has no right to establish a clinic in Fredericton to ensure the right of reproductive choice for the women of this province. I find it unbelievable and shameful that, five years after the Supreme Court of Canada said that this is a decision to be made by a woman in consultation with her doctor, Henry Morgentaler should still be fighting for that right. That as well raises some interesting equations in the context of colliding rights. There are questions around the issue of gun control; the rights of the individual to have his Uzi – I guess you know where I stand on this one. Are the gun owners really the new Jews, as one placard suggested in the demonstration on Parliament Hill last week? What are the tensions in that particular debate? I hope and I trust and I look very forward to a challenging, stimulating and, of course, a very respectful exchange of views.