

# An oppressive, perverse act



**RORY  
LEISHMAN**  
NATIONAL AFFAIRS

The case of Elijah Elieff should be an alarm to wake us up about the human rights legislation.

By Rory Leishman

Elijah Elieff can count himself lucky. The Ontario Human Rights Commission has failed in its initial attempt to hit him with more than \$450,000 in penalties for allegedly discriminating against Asian tenants in the apartment buildings he used to own at 95 and 105 Cheyenne Ave. (now Oakville Avenue) in London.

Elieff, an immigrant from Macedonia who bought the heavily mortgaged buildings in 1985, could not afford to prevent them from deteriorating into a filthy, cockroach-infested mess. The result was endless recriminations between him and his tenants, many of them refugees from Cambodia. On Nov. 8, 1989, The Free Press quoted him as having told a reporter: "They're like little pigs ... they think they're still living in the jungle."

Was that remark legally libelous? We'll never know, because the question never came before a regular court. Instead, at the instigation of a community activist, Reverend Susan Eagle, one of Elieff's Cambodian tenants, Chippeng Hom, brought an action before the Ontario Human Rights Commission, charging Elieff with infringing "her rights to equal treatment in accommodation ... due to her race, ancestry, place of origin, and ethnic origin."

The commission took almost three years to investigate and mediate the dispute. Throughout, Elieff denied that he was a racist and refused to apologize to Hom.

Finally, Ontario Citizenship Minister Elaine Ziemba exercised her authority under the Human Rights Code to appoint a board of inquiry into the matter. There was nothing unusual about this arrangement. All board adjudicators serve only part-time. They do not have the security of tenure or the political independence of a judge.

Is that not alarming? How does a trial before a politically appointed, part-time, human rights adjudicator relate to the common-law principles of fair and impartial justice that have evolved over centuries to protect the innocent?

However, despite the lack of safeguards, Ajit John, the person she selected to head up the board of inquiry proved his political impartiality last week, by throwing out the main charges against Elieff on grounds that commission counsel had failed to provide any evidence that Elieff's failure to repair the apartment buildings, "represented unequal treatment based on the race of the Asian tenants." Instead, John concluded that everyone in the building, regardless of race, suffered

the same poor living conditions.

Testifying on Elieff's behalf, Irina Secur, a former superintendent in the Cheyenne apartments, told the inquiry that some of the destruction in the Cheyenne buildings occurred, "because the Asian tenants fought among themselves." She also complained about children running wild, petty vandalism and misuse of apartment appliances.

"Cleaning the building became an impossible task for her," writes John in his decision. "She eventually left in 1987, bitter about the fact that Elieff appeared sympathetic to the plight of the immigrants, whom she blamed for the deteriorating conditions."

Another former superintendent, John Pipe, testified that an apartment occupied by non-Asians had been "trashed beyond recognition." John concluded that although Elieff, his wife, and two grown children tried to clean and repair the apartments themselves, the task was beyond them, especially as they were trying to make ends meet by simultaneously operating a take-out restaurant.

**FACES CHARGES:** However, John has not left Elieff completely off the hook. While rejecting the charge he discriminated against Asian tenants contrary to the Human Rights Code, John has found him guilty of harassing Hom after she had laid her complaint against him, by unduly raising her rent, cutting off her electricity and signalling her out for eviction. On this basis, John has ordered Elieff to pay Hom \$2,500 in compensation.

That's not nearly sufficient for Geri Sanson, counsel for the Ontario Human Rights Commission during the tribunal hearing. She says the commission is now contemplating an appeal of John's decision to the Ontario divisional court. That's bad news for Elieff who cannot afford a lawyer, but is not so destitute as to qualify for legal aid.

During the tribunal hearings, Sanson called on John to order Elieff to undergo a recognized course in anti-racism, to pay \$40,000 to Hom in compensation for injury to her dignity and self-respect, and to contribute \$409,900 to the Cheyenne Community Tenant's Board so that it could carry out repairs to his apartment buildings.

In support of such drastic penalties, Sanson cited various provisions of the Ontario Human Rights Code, particularly Section 41 which provides that in cases of unlawful discrimination, a board of inquiry may direct the offending party, "to do anything that, in the opinion of the board, the party ought to do to achieve compliance with this act."

What were Ontario legislators thinking when they passed such an oppressive provision into a so-called human rights act? Imagine what a tyrant would do with a law like that on the books. Is it not about time that all of us woke up to the dangers posed by perverse human rights legislation to freedom under law?

“Many incidents of disrepair and poor maintenance ... raise the spectre of discrimination on the part of Mr. Elieff because a large proportion of the tenants ... were Cambodian ... However ... the poor conditions in the apartment affected all tenants regardless of ethnic origin.”

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— Ajit John  
in his inquiry  
report