



## HATE RAP DOESN'T CONTRAVENE ONTARIO HUMAN RIGHTS CODE... IF SOLD TASTEFULLY

*“Some of the lyrics are violent, hateful and abusive towards women and are clearly contrary to the values of the Code.”<sup>1</sup>*

Toronto, October 15, 2006 – The Ontario Human Rights Commission (OHRC) will not refer the hate rap complaint filed against HMV Canada Inc. to a Human Rights Tribunal for a hearing, in spite of an OHRC investigator's finding that “some of the lyrics are violent, hateful and abusive towards women and are clearly contrary to the values of the Code”. The complaint, filed last fall by Toronto resident Valerie Smith, claimed that HMV was discriminating against women by selling CDs containing misogynist lyrics by performers such as Snoop Dogg, 50 Cent, Eminem, Ja Rule and Jay-Z, in contravention of Section 1 of the *Ontario Human Rights Code*.

The Commission's decision, received late last week by Watson Labour Lawyers the law firm representing Smith, parrots the flawed logic contained in the Case Analysis report prepared by an OHRC investigator and submitted to Commissioners last July. The report focused on whether or not Smith had access to HMV or its website and whether she was able to purchase the misogynist CDs in question. As pointed out by Watson in their August 8 response to the Case Analysis report, that is the wrong focus. Section 1 of the *Code* refers to equal treatment not equal access. Treatment and access are two different things and one should not be confused with the other. The Case Analysis report and the Commission decision also note that HMV has taken some care to prevent misogynist material from poisoning the environment in its stores. Very thoughtful.

“My understanding of the Case Analysis report is that a company won't contravene the *Ontario Human Rights Code* if it sells hate material, as long as the target group is given equal access to it and the hate material is displayed in a tasteful and discreet manner that doesn't 'poison' the environment,” says Smith. “That approach is not only offensive but harmful to women and other vulnerable groups subjected to abuse, so it's disturbing that the Commission bought into it. Obviously, we're not happy with the situation and we're considering our appeal options.” Smith does not believe this decision exonerates HMV Canada, quite the contrary. “Both the Case Analysis report and the Commission's decision specifically refer to the 'misogynist' CDs sold by HMV. That confirms my claim that the company is selling hate material that targets women,” she said.

Continued ...2

---

<sup>1</sup>Case Analysis Report, Ontario Human Rights Commission, July 2006

**Women Excluded from Criminal Code Hate Law:** The OHRC decision is especially troubling given that women have no protection from hate material under the *Criminal Code* and this means women have no protection under the *Ontario Human Rights Code* either. "Given the hands-off attitude of the Commission, it is imperative that the federal government amend the hate propaganda law to extend protection to women and girls," says Smith. "It's been open season on us for years because of the failure of politicians to give us the same legal protections they grant other vulnerable groups, and that simply has to end."

**Poisoned Environment:** One good thing to come out of this decision is that it seems to open the door for people to file poisoned environment complaints with the OHRC if a company plays hate rap in a retail store, bar, restaurant, place of employment, etc., or displays misogynist language on products like t-shirts, hats or posters.

Attached as a Backgrounder are excerpts from the Commission's decision and the Watson response to the Case Analysis report. Complete documents and the original complaint against HMV are posted on The Free Radical web site in the Hate Propaganda section ([www.fradical.com](http://www.fradical.com)).

For further information, please contact Valerie Smith at [valsmith@fradical.com](mailto:valsmith@fradical.com)

-30-

**About the Free Radical:** The Free Radical web site ([www.fradical.com](http://www.fradical.com)) is maintained by Toronto anti-violence activist Valerie Smith to provide information on media violence and strategies for combating it. She is the author of the *Action Agenda: A Strategic Blueprint for Reducing Exposure to Media Violence in Canada*, funded and published by Ontario's Office for Victim's of Crime, an agency of the Ministry of the Attorney General. The report is available for free download from the Free Radical web site.



**Valerie Smith**  
**v.**  
**HMV Canada Inc. and**  
**Humphrey Kadaner**  
**File No. NRIX-6FEQ44**

Pursuant to subsection 36(2) of the **Human Rights Code**, the Commission has decided not to refer the subject matter of this complaint to the Human Rights Tribunal of Ontario for the following reasons:

1. There is insufficient evidence to indicate that the complainant was subjected to unequal treatment with respect to the provision of goods and services because of sex.
2. The evidence indicates that the respondents did not refuse the complainant access to their website or stores or treat her differently when she visited the website and one of their stores. The respondents did not refuse to sell the complainant Compact Discs or treat her differently when they were selling her Compact Discs.
3. In order for the provisions of the **Code** to be engaged, the sale of the Compact Discs need to result in unequal treatment to the complainant in services on the basis of her gender. The evidence is insufficient to indicate that the sale of these particular Compact Discs created an environment that poisoned or chilled a reasonable woman from purchasing other goods in the HMV store. The evidence indicates that the corporate respondent has taken some care to prevent offensive material from poisoning the environment in its stores:
  - a. Misogynist lyrics are not played over the sound system in the store.
  - b. There are no prominently displayed posters with misogynist images that would be associated with the misogynist lyrics.
  - c. The misogynist material bears warning labels.

4. While the Commission understands the complainant's concern that the distribution of this material promotes hatred toward women in society generally the complaint does not fall under the provision of goods or services or any other of the enumerated social areas under the **Code**.

For the above reasons, the Commission is of the view that the evidence in this case does not warrant referral of the subject matter of this complaint to the Human Rights Tribunal of Ontario.

Approved:   
Barbara Hall  
Chief Commissioner

Date: September 26, 2006

August 8, 2006

**Watson Labour Lawyers**  
Suite 370, 170 Attwell Drive  
Toronto, Ontario M9W 5Z5  
Tel: (416) 253-1967

### **Response to Case Analysis Report**

**Re: Ms. Valerie Smith and HVM Canada Inc. et al**  
**File No. NRIX-6FEQ44**

#### **Introduction**

1. The Complainant appeals the findings contained in the Case Analysis Report (Case Analysis) provided by the Investigation Office of the Ontario Human Rights Commission ("Commission"). Specifically, the Complainant submits that the complaint of Ms. Valerie Smith is of merit and should be referred to the Ontario Human Rights Tribunal for a hearing.
2. The Complainant appeals the Case Analysis of the Commission on the following grounds:
  - i. There is sufficient evidence of adverse differential treatment by HVM in the sale of CDs that promote hate against women to ground a complaint of discrimination.
  - ii. The Complainant challenges the investigation undertaken by the Commission as wholly insufficient to warrant the conclusion in the Case Analysis that women are not discriminated against in the provision of goods and services by HVM.

#### **Adverse Treatment**

##### *Access v. Treatment*

3. Focusing the inquiry on the ability of the Complainant to access the store and to buy the material is inconsistent with the progressive approach adopted by the courts and the legislature with respect to issues of discrimination.
4. The Complainant submits that there is evidence of differential or unequal treatment in the provision of goods and services by HVM. With respect, the

Complainant submits that in its Case Analysis the Commission failed to properly evaluate the merit of the complaint when it stated, at paragraph 18:

...there is no evidence that the respondents subjected the complainant differential or unequal treatment with respect to the provision of goods and services. The respondents did not refuse to allow the complainant to access their website or stores or treat her differently when she visited the website and one of their stores. The respondents did not refuse to sell the complainant CDs or treat her differently when they were selling her CDs.

5. In its findings, the Commission focused on whether or not the Complainant had access to HMV or its website and whether she was able to purchase the material in question. This is the wrong focus. Section 1 of the *Code* refers to equal treatment not equal access.
6. Treatment is defined in the *Merriam Webster Dictionary* as “the act or manner or an instance of treating someone or something.” Access is defined as “freedom or ability to obtain or make use of something.” These two words have clear and distinct meanings and the latter should not be confused with the former. For example, access refers to the ability to enter a store while treatment focuses on the manner of the provision of goods and services once inside.
7. It has been widely recognized that most modern forms of discrimination are more insidious than the older, stereotypical type of discrimination of banning certain ethnic, racial or religious groups from a particular establishment.
8. For example, the Canadian Human Rights Commission stated in *Basi v. Canadian National Railway Company*:<sup>1</sup>

Discrimination is not a practice which one would expect to see displayed overtly. In fact, rarely are there cases where one can show by direct evidence that discrimination is purposely practiced.<sup>2</sup>
9. Access should not be the litmus test for discrimination claims under s. 1 of the *Code*, rather as statutorily mandated, the focus should be on the provision of equal treatment.
10. In the face of other findings made by the Commission, the conclusion reached that women are not treated differently in the provision of goods and services is untenable. At paragraph 13, the Case Analysis states:

Commission staff reviewed the song lyrics in gangsta rap CDs, which are sold by the respondent company. Some of the lyrics are clearly violent,

---

<sup>1</sup> [1988] C.H.R.D. No. 2 T.D. 2/88.

<sup>2</sup> *Ibid.*, at QL p. 8.

hateful and abusive towards women. Furthermore, an academic study, which analyzed portrayals of violence against women in rap lyrics between 1987 and 1993, found that 22% of gangsta rap songs contain violent and misogynist lyrics, including assault, rape and murder of women. An update on the study in 2000 found that the prevalence of misogynist lyrics in gangsta rap had increased.

11. Further, at paragraph 18, the Case Analysis states:

The evidence indicates that the complainant visited the respondent company's retail website and one of its retail stores in Toronto, and found that the respondent company sells gangsta rap CDs, which have misogynist song lyrics. Some of the lyrics are violent, hateful and abusive towards women and are clearly contrary to the values of the *Code*.

12. The Complainant does not dispute that a finding of differential treatment is necessary to ground a complaint of discrimination. However, the Complainant submits that differential treatment in the provision of goods and services is not limited to "access" in the physical sense or conduct of store employees.
13. The Complainant submits that the protection of equal treatment in the provision of goods and services under s. 1 of the *Code* not only ensures that women are given equal access to the good or service but also that the good or service itself is not discriminatory in its treatment of women.
14. Thus, if the good or service provided by HMV adversely impacts women because they are women, then discrimination has occurred. Restricting s. 1 of the *Code* to physical access is not the correct approach.

*The Purposive Approach*

15. The preamble of the *Code* states that its purpose is "to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community."<sup>3</sup>
16. In *Ontario (Human Rights Commission) v. Simpsons Sears Ltd.*,<sup>4</sup> the Supreme Court of Canada stated that human rights legislation should be interpreted in such a manner as to "seek out its purpose and give it effect."<sup>5</sup>
17. This method of interpretation was affirmed in *C.N.R. v. Canada (Human Rights Commission)*:<sup>6</sup>

<sup>3</sup> *Ontario Human Rights Code*, R.S.O. 1990, c. H.19

<sup>4</sup> [1985] 2 S.C.R. 536.

<sup>5</sup> *Ibid.*, at para. 12.

<sup>6</sup> [1987] 1 S.C.R. 114.

Human rights legislation is intended to give rise, amongst other things, to individual rights of vital importance, rights capable of enforcement, in the final analysis, in a court of law. I recognize that in the construction of such legislation the words of the Act must be given their plain meaning, but it is equally important that the rights enunciated be given their full recognition and effect. We should not reach for ways and means to minimize those rights and enfeeble their proper impact. Although it may seem commonplace, it may be wise to remind ourselves of the statutory guidance given by the federal Interpretation Act, which asserts that statutes are deemed to be remedial and are thus to be given such fair, large and liberal interpretation as will best ensure their objects are obtained.<sup>7</sup>

18. Furthermore, the courts have directed that a purposive interpretation of human rights legislation should in part be guided by the preamble of the Act.<sup>8</sup>
19. In paragraph 18, the Commission recognized that many gangsta rap lyrics are “violent, hateful and abusive towards women and are clearly contrary to the values of the *Code*.” Despite this recognition, the Commission found that HMV did not violate the *Code*, even though it offers such material for sale. This is a perverse result.
20. The Commission’s logic in the Case Analysis effectively renders the protections in the *Code* meaningless. By restricting the focus of the inquiry to a question of access, it follows that any hateful material could be sold as long as the targeted group had the ability to purchase it. Such an outcome surely violates the spirit and the purpose of the *Code*.
21. The *Code* is to be interpreted in a broad and purposive manner. It would be inconsistent with the purpose of the *Code* to permit HMV to continue to sell material that promotes misogyny merely because women are not explicitly denied the right to buy it or enter the store.
22. In effect, the focus on access means that the content of material is irrelevant if the public has the ability to purchase it. On any objective test, this position is clearly contrary to the purpose of the *Code*. In any event, if the content of gangsta rap is discriminatory, it should be a violation of the *Code* to sell it on the same grounds.

### *Differential Treatment*

23. The Complainant takes the position that by selling misogynistic gangsta rap, HMV is treating women differently than other protected groups under the *Code*.

---

<sup>7</sup> *Supra* note 6 at para. 24

<sup>8</sup> See for example, *Vriend v. Alberta* (1998), 156 D.L.R. (4th) 385 (S.C.C.)



24. Equality is a comparative concept. One can only measure their equality in comparison to the rights and freedoms of others. This approach has been recognized by the Supreme Court of Canada in *Law Society of British Columbia v. Andrews*,<sup>9</sup> and affirmed in *Law v. Canada (Minister of Employment and Immigration)*.<sup>10</sup> Any analysis of the equal treatment provision must involve a comparison between the Complainant and another group.
25. In *Hudler v. London (City)*<sup>11</sup> the Board stated that
- ... a contravention of the Code is made out where it is established that [a)] the respondent has discriminated against the complainant by treating him or her differently from others, [b)] the distinction in treatment is, at least in part, based on a ground prohibited by the Code; [and c)] the distinction in treatment occurred with respect to one of the protected spheres – services, accommodation, contracts, employment or vocational associations.<sup>12</sup>
26. In the present case, HMV has treated the Complainant differently in the provision of goods and services because of her gender. Such conduct is discriminatory and is a violation of the *Code*.
27. The Commission's analysis ignores the issue of whether or not HMV has a policy in place to ensure that the product it chooses to promote and sell does not discriminate against an individual or group on a prohibited ground.
28. The Commission's analysis appears to rely on the assumption that, because HMV has no clear policy surrounding the selection of CDs, HMV treats everyone equally poorly and thus does not discriminate against women in particular. This is not the case.
29. Seemingly neutral policies may have a discriminatory impact. Specifically, in the case of hateful material, women are more vulnerable as they are not protected under criminal hate propaganda laws. Thus a policy that excludes material that is illegal, without more, has a discriminatory impact on women.
30. HMV does not sell music that contains hate lyrics directed against other protected groups on the grounds of race or religion. If it is unacceptable to sell hateful material directed against other groups, why is it appropriate to sell music with lyrics that promote hatred against women?
31. Women are disproportionately represented as the targets of hate in gangsta rap lyrics. Anecdotal evidence indicates that women, often described as

---

<sup>9</sup> [1989] 1 S.C.R. 143

<sup>10</sup> [1999] 1 S.C.R. 497

<sup>11</sup> [1997] O.H.R.B.I.D. No. 23

<sup>12</sup> *Ibid.*, at para. 45

“bitches” or “hos”, are mentioned in virtually every gangsta rap song. The lyrics of Eminem are but one example. He is one of the world’s top selling rap artists, with record sales in the millions. One study found that 78% of Eminem’s lyrics are violent and misogynistic. Out of that 78%, 82% of those lyrics deal with murdering women.<sup>13</sup>

32. Furthermore, there is clear social science evidence that misogynistic gangsta rap encourages and facilitates sexually aggressive behaviour against women.

33. Another study found that:

the presentation of misogynous rap music conveyed the cognitive distortion that violence toward women is acceptable in that it is being portrayed as acceptable in the media. Moreover, because misogynous rap music is not restricted ... it is more readily available to a wider audience, and the availability of rap music may make the cognitive distortions conveyed in the lyrics more acceptable to its listeners.<sup>14</sup>

34. The courts and other regulatory bodies have echoed the concern about the effect of misogyny on women.

35. The Canadian Association of Broadcasters has an explicit policy against airing material that “sanctions, promotes or glamorizes any aspect of violence against women.”<sup>15</sup> In a recent decision, the Canadian Broadcast Standards Council found that by airing misogynistic gangsta rap, the radio station in question clearly violated this policy. It states “the lyrics, in their sanctioning, promotion or glamorizing of violence against women, constitute abusive commentary on the basis of gender and are insensitive to the dangers of stereotyping generally and to the exploitative linking of sexual and violent elements in dealing with women.”<sup>16</sup>

36. The highest court in Canada reiterated this concern in its decision of *R v. Butler*.<sup>17</sup>

if true equality between male and female persons is to be achieved, we cannot ignore the threat to equality resulting from exposure to audiences of certain types of violent and degrading material. Materials portraying women as a class as objects for sexual exploitation and abuse have a

---

<sup>13</sup> Edward G. Armstrong “Gangsta Misogyny: A Content Analysis of the Portrayals of Violence Against Women in Rap Music, 1987-1993” *Journal of Criminal Justice and Popular Culture* 8(2) (2001) 106.

<sup>14</sup> Christy Barongan and Gordon C. Nagayama Hall “The Influence of Misogynous Rap Music on Sexual Aggression Against Women” *Psychology of Women Quarterly* 19 (1995) 204.

<sup>15</sup> Canadian Association of Broadcasters “Voluntary Code Regarding Violence in Television Programming” Part III, 7.0

<sup>16</sup> *CIOX-FM re the Song Entitled “Boyz in the Hood”* (2000) CBSC Decision 99/00-0619

<sup>17</sup> [1992] 1 S.C.R. 452 at para. 88

negative impact on "the individual's sense of self-worth and acceptance."<sup>18</sup>

37. As a result, the Complainant submits that the application of HMV's selection criteria for the product it chooses to sell and promote discriminates against women in so far as it tends to result in a disproportionate amount of hateful material being sold to the public, both online and in its retail stores that advocates hatred and contempt for women.
38. This result singles women out as unworthy of protection, penalizes women and imposes an obligation on women to ignore the presence of the offending material in order to take advantage of other services provided by HMV.
39. The Court in *Simpson Sears* stated:

It is the result or the effect of the action complained of which is significant. If it does, in fact, cause discrimination; if its effect is to impose on one person or group of persons obligations, penalties or restrictive conditions not imposed on other members of the community, it is discriminatory.<sup>19</sup>
40. Differential treatment is defined as being singled out and treated in an adverse manner that is different than how others are treated. Women are exposed to hatred in the goods and services sold by HMV solely because they are women.
41. The Commission has recognized that systemic discrimination, which may be neither overtly nor intentionally discriminatory, occurs when a seemingly neutral policy or practice has a disproportionately adverse effect on a group of people as defined by the *Code*.
42. HMV is a commercial enterprise and in offering a specified service (the sale of CDs) to the public, it must provide these goods and services in a way that is consistent with its human rights obligations.
43. To accept the Commission's Case Analysis, complete with its recommendation not to proceed with the complaint, is tantamount to accepting that the sale of hate propaganda against women is not contrary to human rights legislation so long as everyone has access to it. This logic is fundamentally at odds with the provisions of the *Human Rights Code* that protect women from discriminatory treatment in the provision of goods and services.

---

<sup>18</sup> *Supra* note 17 at para. 88

<sup>19</sup> *Supra* note 4 at para. 12

## **Poisoned Environment**

44. The Complainant did not argue that HMV created a poisoned environment in its initial submissions, however, given the conclusions reached in the Case Analysis; the Complainant makes the following submissions.
45. Specifically, the Complainant submits that the care HMV has supposedly taken to preventing the misogynist material from poisoning the environment in its stores, as outlined in the Case Analysis at paragraph 21 (not playing misogynist lyrics over the sound system, not prominently displaying posters with misogynist images and putting warning labels on misogynist material) is both offensive and irrelevant to her complaint.
46. First, the fact that HMV apparently has some form of policy in place to minimize the presence of misogynist material in its stores is indicative that HMV has deliberately chosen not to cease from the sale of the material altogether. While intent is not a necessary element of discrimination, the after-the-fact actions of HMV certainly indicate that it is both aware of the content and aware that it is offensive to its women customers.
47. Second, HMV would be hard pressed to argue that it has never promoted, by way of signage, display, online advertising or stock, the mainstream gangsta rappers named in the Complaint.
48. Third, the “care” provided by HMV, as outlined in paragraph 21 of the Case Analysis is not enough. HMV’s after-the-fact attempts to minimize the damage done do not change the fact that the discrimination has occurred.
49. Fourth, many musicians make two versions – one “clean” copy and another containing explicit lyrics.<sup>20</sup> The fact that HMV chooses to sell the more explicit version further highlights the presence of some form of selection policy regarding the material offered for sale online and in its stores.
50. Forcing women to ignore the fact that HMV is selling material that they know is blatantly hateful towards their gender, is the equivalent of giving women access to the workplace but forcing them to ignore the hate expressed towards them once they are inside. Such an environment creates a culture where hatred, contempt and often violence against women is sanctioned, promoted and glamorized.
51. There is scholarly work that supports the Complainant’s position. In a recent article, Adams and Fuller comment on the effect of misogynistic gangsta rap:

[it] serves as a means to desensitize individuals to sexual harassment, exploitation abuse and violence toward women. In addition, it serves as

---

<sup>20</sup> *Supra* note 16.

an ideological support mechanism that legitimizes the mistreatment and degradation of women. ... the terms *bitch* and *ho* ... and the images they create oppress women as a group.<sup>21</sup>

52. The oppression and degradation of women is precisely the result that human rights laws are supposed to prevent. Therefore, the Commission has an obligation to further investigate this complaint.

### **The Commission's Investigation**

53. The Complainant respectfully submits that the information the Commission possessed was inadequate to reach the conclusion that HMV is not discriminating against women in the provision of goods and services by promoting and selling gangsta rap CDs that contain lyrics that are hateful and misogynist towards women.
54. According to the Commission's *Policy and Guidelines on Racism and Racial Discrimination*, a policy statement on systemic discrimination by the Commission, organizations must be aware that their "normal way of doing things" may have a negative impact on protected groups. In the policy statement, the Commission sets out three considerations to help identify and address systemic discrimination.<sup>22</sup>
55. One of the considerations identified by the Commission is the policies, practices and decision-making processes of the organization. Once the materials being sold by HMV were found to be "hateful", "misogynist" and "contrary to the values of the Code", more information was required about how these materials were selected for sale to the public by HMV. Does HMV have a policy in place? If so, on what criteria is this policy based?
56. Another consideration outlined in the Commission's policy statement is numerical data. Numerical data serves as an indicator or red flag that there is a problem. The numerical data provided by the Commission was that 22% of gangsta rap songs contain violent lyrics, which discuss the assault, rape and murder of women. This study also indicated that this number was on the rise. The Complainant has provided further numerical data showing the prevalence of misogyny in gangsta rap lyrics.
57. Once the Complainant has provided numerical data that demonstrates that women are disproportionately affected by the material sold by HMV, HMV should be required to show that there is a non-discriminatory explanation. They were not required to do so.<sup>23</sup>

---

<sup>21</sup> Terri M. Adams and Douglas B. Fuller "The Words Have Changed but the Ideology Remains the Same: Misogynistic Lyrics in Rap Music" *Journal of Black Studies* 36(6) (July 2006) 953.

<sup>22</sup> Ontario Human Rights Commission *Policy and Guidelines on Racism and Racial Discrimination* June 2005

<sup>23</sup> *Ibid.*

58. In fact, the Commission failed to seek information comparing these numbers to other protected groups or how much of HMV's sales are accounted for by gangsta rap albums containing misogynistic lyrics. This information was necessary in order to make a firm determination that women are not adversely impacted by HMV's sale of gangsta rap.
59. The third and final factor to be considered by the Commission is the organizational culture of the organization. According to the Commission, organizations must ensure that they are not unconsciously engaging in systemic discrimination. This practice takes vigilance and willingness to monitor and review numerical data, policies, practices and decision-making processes. It is not acceptable from a human rights perspective for an organization to choose to remain unaware of systemic discrimination or to fail to act when a problem comes to its attention.
60. HMV has not shown that it in fact has any policy to monitor the content of the material that it sells. It is the complete lack of vigilance and failure to act on the part of HMV, despite the overwhelming evidence that gangsta rap lyrics are blatantly hateful towards women that the Complainant seeks to remedy in her complaint.
61. Both the Commission and HMV's dismissive response to the complaint is inconsistent with the stated objective of the Commission to eradicate systemic discrimination and HMV's obligation to take note of and address systemic discrimination in the goods and services it is providing to the public.
62. In cases of systemic discrimination, it has been noted that the causal connection is often difficult for the plaintiff to prove. Thus, once a prima facie case of discrimination has been made out, the onus shifts to the company to show that there is no discrimination.<sup>24</sup>
63. The Commission did not elicit this information from HMV before making its decision that the complainant had not been discriminated against. The lack of relevant material and further inquiry into HMV's policy and practices creates the impression that the complaint was not treated seriously from the outset.

## **Conclusion**

64. The Complainant appeals the findings contained in the Commission's Case Analysis on the grounds that there is evidence of adverse treatment by HMV in the provision of goods and services on the basis of sex.
65. Discrimination in the provision of goods and services is not determined by equal access but by equal treatment. By selling misogynistic gangsta rap,

---

<sup>24</sup> *Supra* note 22.

HMV treats women differently than other protected groups. The Commission has recognized that gangsta rap contains harmful and offensive lyrics. If the lyrics are contrary to the *Code* it must also be a violation to sell them.

66. In addition, the Complainant appeals on the basis that the Commission did not conduct an adequate investigation. The Commission did not collect sufficient information to make the assessment that the complaint is without merit. No data was gathered from HMV relating either to its sales policy or its efforts to comply with the *Code*. The Commission erred in finding the complaint without merit in the absence of such information.
67. Section 1 of the *Code* prohibits discrimination against a number of groups on the basis of irrelevant personal characteristics such as, *inter alia*, sex. These groups are protected by statute because they have faced overt discrimination and historical marginalization. The purpose of the *Code* is to eradicate these practices and to promote equality. These aspirations are clearly undermined by the finding that while the material sold by HMV is clearly misogynistic, it is not against the *Code*.
68. As stated by the Court of Appeal in *Saskatchewan Human Rights Commission v. The Engineering Students' Society*:<sup>25</sup>

A stereotypical image of a certain protected class of persons, namely women, is presented when they are consistently deprecated as ridiculous objects and when sexual violence and other forms of discriminatory depiction and descriptions are directed at them because of their sex. The class consisting of this gender is then ridiculed, belittled and their dignity affronted. Discrimination like this jeopardizes their opportunity to obtain equality rights including employment, education and security of their persons on an equal footing with the dominant gender grouping.<sup>26</sup>

69. Based on all of the foregoing, the Complainant submits that this matter should be referred to the Ontario Human Rights Tribunal.

---

<sup>25</sup> (1989) 56 D.L.R. (4<sup>th</sup>) 604 (C.A.).

<sup>26</sup> *Ibid.*, at 610.