SASKATCHEWAN HUMAN RIGHTS COMMISSION
Complaint SK-12-043 dated May 1, 2012

Ashu Solo

Complainant

against

City of Saskatoon and Randy Donauer

Respondents

REASONS FOR DISMISSAL

RELEASE OF MY REASONS

1. Human rights commissions across Canada have differing processes. Pursuant to s. 28.1 of *The Saskatchewan Human Rights Code* (the *"Code"*), I am given the authority to decide whether a complaint should be dismissed rather than proceed to a hearing before the court. In many other Canadian jurisdictions the authority to dismiss complaints prior to a hearing is granted to a tribunal. The tribunals' practice is to release their decisions to the public. My decisions are not typically released publicly. However, the Commission's publication policy allows my decisions to be released publicly in certain circumstances. Mr. Solo's complaints with the City of Saskatoon have received considerable media attention. They have also generated significant public interest. In respect of this complaint, I understand that Mr. Solo, representatives of the City of Saskatoon and Councilor Donauer have spoken to the media about the circumstances surrounding the Complaint. I am advised that Mr. Solo has posted copies of Commission correspondence online and released some of the same to the media. I noted that many of the reports in the media contained inaccurate information regarding the Complaint and the Commission's processes. I anticipate that my decision, or parts of it, will become public irrespective of whether I release it publicly.

2. The Commission's mandate under s. 25 includes an obligation to educate the people of Saskatchewan about human rights and the Commission's work under the *Code*. Misinformation in the media about Mr. Solo's complaint and the Commission's handling of the complaint has created confusion amongst the public and threatens to undermine the work of the Commission. It is important for me to correct the record and educate the citizens of Saskatchewan about the work of the Commission. It is also important for me to inform the public about the issue of public prayer and the right to freedom of conscience and religion under the *Code*. Based on all of the foregoing, I have decided to exercise my discretion to release this decision publicly. Given the notoriety surrounding this complaint there is no benefit in using pseudonyms in an effort to make the parties anonymous in this decision.

THE COMPLAINT

3. The complainant, Ashu Solo, filed a complaint with the Saskatchewan Human Rights Commission which states:

> I am a person who is not a Christian. I feel that the Mayor's Office and the City of Saskatoon are using their position, political authority and/or public monies to convey and/or promote one religion, namely Christianity, over other beliefs. An example of this includes City Councilor, Randy Donauer, performing a Christian prayer at a Volunteer Appreciation Banquet held on or about April 18, 2012 at TCU Place in Saskatoon, SK that was hosted and funded by the City of Saskatoon. I act as a volunteer on the City of Saskatoon Cultural Diversity and Race Relations Committee, which is an advisory committee to Saskatoon City Council, and attended the banquet in this role. I have reasonable grounds to believe and do believe that the promotion of Christianity above other religions and creeds by the Mayor's Office and the City of Saskatoon by conducting Christian prayers at municipal events, such as the Volunteer Appreciation Banquet, discriminates against me, and others who do not share the Christian faith. This practice interferes with my freedom of conscience, contrary to Section 4 and on the grounds of religion and creed contrary to Section 12 of *The Saskatchewan Human Rights Code*.

THE RESPONDENTS

4. Randy Donauer is a City Councilor for the City of Saskatoon. The City of Saskatoon is a municipal corporation pursuant to section 4 of *The Municipalities Act*, hereinafter referred to as the City of Saskatoon.

THE LAW

5. Section 4 of *The Saskatchewan Human Rights Code* (the "*Code*") states:

> **4** Every person and every class of persons shall enjoy the right to freedom of conscience, opinion and belief and freedom of religious association, teaching, practice and worship.

6. Section 12 of the *Code* states:

> **12**(1) No person, directly or indirectly, alone or with another, or by the interposition of another shall, on the basis of a prohibited ground:
>
> (a) deny to any person or class of persons the accommodation, services or facilities to which the public is customarily admitted or that are offered to the public; or
> (b) discriminate against any person or class of persons with respect to the accommodation, services or facilities to which the public is customarily admitted or that are offered to the public.

7. Section 4 falls within the Bill of Rights part of the *Code*. *The Saskatchewan Bill of Rights Act* was repealed in 1979. Many of its provisions were incorporated within the *Code*. The right to freedom of conscience and religion under s. 4 of the *Code* is analogous to the right to freedom of religion in s. 2.(a) of the *Canadian Charter of Rights and Freedoms*, which states:

> **2.** Everyone has the following fundamental freedoms:
>
> (*a*) freedom of conscience and religion ... .

8. It is a violation of section 12 of the *Code* to discriminate on the basis of religion or creed against any person or class of persons with respect to accommodation, services or facilities to which the public is customarily admitted or that are offered to the public. Assessing a complaint under s. 4 *Code* requires an objective analysis as to whether, on an objective basis, the respondent(s) interfered with the complainant's right to freedom of conscience, opinion or belief.

9. Under sections 27.1 and 29.6 of the *Code*, I am responsible for deciding upon the disposition of a human rights complaint. Subsection 27.1(2) gives me the authority to dismiss a complaint for any one of seven stated reasons, including an assessment that the complaint is "without merit". Subsection 29.6(1) gives me the authority to refer a complaint to a formal hearing before the Court of Queen's Bench. In deciding upon the disposition of a complaint, I must look at the evidence on the investigative file and assess whether there is a reasonable likelihood that a court, acting reasonably and considering the evidence as a whole, would find the complaint to be substantiated on a balance of probabilities. My assessment is not a determination in which the evidence is weighed as it would be in a judicial proceeding, where witnesses are examined under oath and opposing sides make legal arguments. However, this preliminary or threshold stage requires some modicum of weighing and considering the evidence. My assessment pursuant to subsection 27.1(2) that a complaint is "without merit" means that it is unlikely the Commission could prove the alleged discrimination at a hearing before the Court of Queen's Bench.

COMPLAINT PROCESS

10. The *Code* was amended in July 2011 to provide the Commission with additional tools for early complaint resolution. Since 2011 the Commission has improved its intake, mediation, investigation and hearing processes. Unfortunately this case is remarkable in that it took considerably longer than normal to proceed through the Commission's processes. I will provide a brief overview of the Commission's handling of this complaint.

11. Mr. Solo first contacted the Commission regarding this complaint in May 2012. The Commission reviewed the circumstances surrounding his complaint, examined relevant case authorities and drafted a formal complaint for his signature in the fall of 2012. Mr. Solo did not attend the Commission's office and sign the formal complaint until March 25, 2013 when the complaint was formalized. During the intervening time period, Mr. Solo discussed his pending complaint with the media. I believe City of Saskatoon officials also publicly commented on the complaint. Although the media was reporting the existence of the complaint in 2012, the

Commission was not able to take any steps to deal with the complaint or obtain a formal response from the City of Saskatoon until March 25, 2013. To be clear, I am not suggesting any wrongdoing by Mr. Solo. Mr. Solo met the time limits for filing his complaint under the *Code*. I am explaining why the Commission was unable to deal with the merits of the complaint in 2012.

12. The complaint was sent to the City Solicitor's Office on March 27, 2013. The Commission sought document production and a formal response to the complaint. The City was asked to provide its reply to the complaint in accordance with the Commission's standard procedure. The parties were contacted about a mediation date in May 2013. The City of Saskatoon was not available for mediation at that time. The complaint was assigned to an investigator. No reply to the complaint was received from the City of Saskatoon. In July 2013, the City Solicitor's office brought an application to dismiss the complaint based on a number of grounds. While I was considering the application on behalf of the City of Saskatoon, Mr. Solo stated his intention to bring an application of his own. The Commission advised Mr. Solo to provide his submission in writing. He requested some additional time to prepare his submission. In December 2013, Mr. Solo filed an application. I received and reviewed submissions from each of the parties. In May 2014, I dismissed the preliminary applications of both parties in a separate decision. The complaint was reassigned to the Commission's investigator.

13. The investigation of this complaint was completed in August 2014. In October 2014 the Supreme Court heard an appeal from the Quebec Court of Appeal in *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16. The Commission was tracking the *Saguenay* case through the Quebec courts because it involved a similar issue under Quebec's human rights legislation. I decided to delay assessing Mr. Solo's complaint until the Supreme Court decided the *Saguenay* case. I now have that decision and have relied on it in these reasons.

14. I am taking this opportunity to clarify the Commission's process for the benefit of the public. Individuals often report to the media that they have filed a complaint with the Commission. Members of the media and the public often comment on the merits of the complaint. Many assume that the submission of a complaint will automatically result in the Commission undertaking a costly hearing. To be clear, the mere completion and filing of an intake questionnaire with the Commission by a complainant does not mean that a complaint has been accepted by the Commission. Commission personnel review the intake questionnaire and available evidence to assess whether there is sufficient support to indicate a potential breach of the *Code*. If a complaint is accepted by the Commission it is formally drafted by our intake personnel and provided to the complainant for signature. It is then sent to the respondent. However, the formal acceptance of a complaint does not mean that the Commission has deemed it meritorious or that the complaint merits a court hearing. If a complaint cannot be resolved through mediation, the next typical step is investigation. The Commission's investigator interviews witnesses, gathers relevant documents and prepares a report for my consideration. Once the investigation is completed, the evidence from the investigation is reviewed by me and lawyers employed with the Commission. We meet with the investigator and assess whether the complaint has sufficient merit, whether additional investigation is required, or if the complaint should be dismissed. If the complaint is deemed to have sufficient merit for a hearing in the Court of Queen's Bench, I have the option to direct the parties to attend mediation first under s.

29.5 of the *Code*. Within the complaints process, only a Justice of the Court of Queen's Bench can make a finding of discrimination under the *Code*. The Commission's process is explained on our website: www.saskatchewanhumanrights.ca.

15. Over the past several years, the Commission has seen a significant rise in the number of complaints filed with our office. The 2013/2014 fiscal year saw a 42 per cent increase in the number of complaints filed with the Commission over the previous year. The number of complaints filed rose again by 14 per cent in the 2014/2015 fiscal year and by a further 13 per cent in the 2015/2016 fiscal year. During that same period, the vast majority of complaints have been resolved in under 12 months. Approximately 80 per cent of complaints filed with the Commission since the beginning of the 2013/2014 fiscal year have been resolved within 12 months of the date of filing the complaint.

EVIDENCE

16. Mr. Solo attended a Volunteer Appreciation Banquet held by the City of Saskatoon on April 18, 2012. Mr. Solo was invited as a member of the City of Saskatoon's Cultural Diversity and Race Relations Committee. Councilor Randy Donauer presented what Mr. Solo describes as a Christian prayer. Mr. Solo says he was offended by this as a non-Christian. In particular, Mr. Solo takes issue with the City of Saskatoon using public resources to promote Christianity without consideration of other religions or belief systems.

17. Mr. Solo provided a number of written submissions. He was also interviewed by the Commission's investigator regarding the impact of the prayer. Mr. Solo says the prayer was coercive and made him feel marginalized. He told the investigator that he felt he was treated as a second class citizen. Mr. Solo says eating food blessed by a Christian prayer is contrary to his beliefs so he chose not to eat. Mr. Solo says he was left with the impression that he would have to convert to Christianity to fully participate in the City of Saskatoon. Much of Mr. Solo's submissions articulate legal or philosophical arguments in favour of a distinct separation between religion and the state. This is consistent with the outline of his complaint on the Commission's complaint form.

18. The Commission's investigator interviewed a number of witnesses, including some City of Saskatoon officials. These witnesses confirmed that Councilor Donauer gave a prayer or grace at the commencement of the Volunteer Appreciation Banquet. The evidence also confirmed that City of Saskatoon officials invited Councilor Donauer to give the prayer or grace at the banquet. There is contradictory evidence regarding the content of the prayer. Some indicate it was "generic". Others say it contained references associated with Christianity. All witnesses agreed it was brief in duration.

19. The Commission's investigator sent a letter to Councilor Donauer to interview him about the allegations in the complaint. The letter outlined s. 28.1 of the *Code,* which defined the Commission's investigatory powers as they were defined in 2013. The investigator also asked Councilor Donauer to provide a copy of the prayer. Councilor Donauer advised the Commission's investigator that he did not have a copy of the prayer. Councilor Donauer also

advised the Commission that he was refusing to participate in the investigation. Shortly after this communication, Councilor Donauer reported to media that he received a number of threats that the Commission would obtain a search warrant and search his house. Councilor Donauer also expressed some fear the Commission would arrive at his home unannounced and said this was affecting his family. He also reported to media that he feared he would lose his home as a result of the financial consequences of the complaint. If Councilor Donauer had chosen to communicate with the Commission and participate in the process he would have learned that his fears were unfounded. The Commission never had any intention to search Councilor Donauer's home for a copy of a prayer that he said he did not retain. Councilor Donauer also appears to have been misguided in his stated fear that he could lose his home. Firstly, the Commission had made no assessment of the merits of the complaint. Secondly, most complaints are resolved without a hearing. Finally, if the complaint proceeded through a hearing and Mr. Solo was successful, the awards for complaints such as this are relatively modest in Saskatchewan and were limited by the *Code* at the time to a maximum of $10,000.00.

20. It is unusual for a respondent to refuse to cooperate with the Commission's complaint process. Respondents who refuse to cooperate with the investigation of a complaint place themselves at risk because they are abandoning their opportunity to rebut the evidence of the complainant. Mayor Atchison cooperated with the investigation in early 2013. He promptly responded to preliminary questions from the investigator. The City Solicitor's office took carriage of the complaint in July 2013 and brought a preliminary application for dismissal.

21. The City of Saskatoon does not have a practice of prayer at city council meetings. The Commission was advised that no prayer or grace was given at the City of Saskatoon's Volunteer Appreciation Banquet in 2013 or 2014. Mr. Solo has given no evidence that he attended any other City of Saskatoon meetings or events that contained any form of prayer.

22. There does not appear to be any controversy regarding the key facts surrounding the alleged discriminatory incident. Councilor Donauer gave a prayer at the Volunteer Appreciation Banquet that Mr. Solo attended on April 18, 2012. The prayer, although perhaps not the precise content, was authorized by City of Saskatoon officials. The only evidence which is unclear is the precise content of that prayer. Councilor Donauer was in the best position to provide clarity to this issue. Unfortunately the Commission received limited cooperation from him. For the purposes of my analysis, I have accepted Mr. Solo's evidence that Councilor Donauer gave a Christian prayer at the Volunteer Appreciation Dinner, which referred to "Jesus" and concluded with "Amen".

23. In December 2014 the Legislature amended s. 28.1 of the *Code* to clarify the Commission's investigatory powers. The power of search and seizure was removed. The Court of Queen's Bench now has the authority to order uncooperative parties to produce relevant documents and respond to inquiries. Based on the evidence obtained during the investigation, the Commission decided that additional interviews would not affect the outcome of the investigation. This case was unusual because the facts were essentially undisputed. I expect that the Commission will be compelled to bring court applications if we are rebuffed in future investigations.

ANALYSIS

24. I must consider the following issue, in relation to the *Code* and the legal principles set out above, in assessing whether this complaint has sufficient merit to proceed to the Saskatchewan Court of Queen's Bench for a formal hearing:

Did the City of Saskatoon and Councilor Donauer breach either Mr. Solo's right to freedom of conscience and religion under s. 4 of the *Code*, or discriminate against Mr. Solo on the basis of religion or creed in a public service under s. 12 of the *Code* by providing a prayer at the Volunteer Appreciation Dinner?

25. The leading case on the separation of religion and state from Saskatchewan is *Fancy v. Saskatoon Public School Board* (1999), 35 CHRR 9, a decision of a Board of Inquiry. This case involved the practice of reciting the Lord's Prayer and bible study in public schools. The evidence clearly established that conducting prayer and bible study in public schools violated the rights of students, who were not Christian, on the basis of religion and creed. Non-Christian students testified that they felt ostracized by being excluded from the larger cohort of students. Expert evidence demonstrated that the practices of the Saskatoon Public School Board were coercive. The Saskatoon Public School Board did not seriously contest that its actions were discriminatory under the *Code*. Its defence was based on a 1905 constitutional provision which allowed prayer and bible study in schools under *The Saskatchewan Act*. The Board of Inquiry found that the Saskatoon Public School Board interfered with the complainants' right to freedom of religious practices and denied their children's right of education without discrimination on the basis of religion. Based on the specific practice of the Saskatoon Public School Board, its actions were not constitutionally protected. The Saskatoon Public School Board was directed to cease its practice of sanctioning the recitation of the Lord's Prayer and bible study in public schools.

26. The issue of prayer at municipal meetings was recently considered by the Supreme Court of Canada in *Mouvement laique quebecois v. Saguenay (City)*, 2015 SCC 16. Alain Simoneau attended the City of Saguenay's municipal council's public meetings on a number of occasions. The City of Saguenay had a practice of reciting a Christian prayer at the commencement of those meetings. In 2006, Mr. Simoneau asked the Mayor of Saguenay to discontinue the prayer. The mayor refused. Mr. Simoneau filed a complaint under the *Quebec Charter of Human Rights and Freedoms* alleging that the prayer interfered with his freedom of conscience and religion. The complaint prompted council of the City of Saguenay to pass a bylaw which endorsed the continued recitation of the prayer and adopted a two minute delay between the prayer and the commencement of the council meeting. The purpose of the two minute break between the prayer and the commencement of the meeting was to allow people who did not want to participate in the prayer to remain outside.

27. Mr. Simoneau is an atheist. When Mr. Simoneau raised his initial concerns with the mayor, council passed a bylaw which ensured that the prayer would continue. The bylaw also presented Mr. Simoneau with the unpalatable option of remaining outside the meeting while the mayor, councilors and the majority of other citizens participated in the prayer. Once the prayer was concluded, Mr. Simoneau was required to walk into the meeting while the majority were already seated. Mr. Simoneau testified that this practice made him feel isolated, uncomfortable and excluded.

28. Mr. Simoneau's complaint was successful before a tribunal appointed under the *Quebec Charter of Human Rights and Freedoms*. The Quebec Court of Appeal set aside the decision of the tribunal. The Court of Appeal accepted that culture, historical reality or heritage prevented the state from adopting religious neutrality. The Supreme Court of Canada overturned the decision of the Quebec Court of Appeal and reinstated the Tribunal's finding that the City of Saguenay prayer interfered with Mr. Simoneau's freedom of conscience and religion and was therefore discriminatory.

29. The Supreme Court outlined the state's duty of religious neutrality at para. 83:

> In a case like this one in which a complaint of discrimination based on religion concerns a state practice, the alleged breach of the duty of neutrality must be established by proving that the state is professing, adopting or favouring one belief to the exclusion of all others … and that the exclusion has resulted in interference with the complainant's freedom of conscience and religion ….

30. The Supreme Court summarized the criteria for assessing whether state actions have interfered with an individual's right to freedom of religion at para. 86:

> …To conclude that an infringement has occurred, the court or tribunal must (1) be satisfied that the complainant's belief is sincere, and (2) find that the complainant's ability to act in accordance with his or her beliefs has been interfered with in a manner that is more than trivial or insubstantial …

31. It is appropriate for me to assess the evidence derived from the investigation of Mr. Solo's complaint pursuant to the criteria set by the Supreme Court in the *Saguenay* case.

a. Is Mr. Solo's belief sincere?

32. Mr. Solo identified himself as an atheist when he filed the complaint. The City of Saskatoon questioned the sincerity of Mr. Solo's beliefs. The City of Saskatoon's submissions included some information regarding Mr. Solo taking an oath on a prior occasion. Notably, the alleged oath occurred some years ago. It was not alleged that Mr. Solo took a Christian oath. The City of Saskatoon also asserted that Mr. Solo is insincere because his motivations are political.

33. The evidence does not establish that Mr. Solo took an oath on a prior occasion. However, the City of Saskatoon never alleged that Mr. Solo was ever a Christian or participated in Christian prayer. Whether Mr. Solo is atheist, agnostic or follows some other non-Christian faith or belief system does not affect the veracity of his objection to the prayer at the Volunteer Appreciation Banquet.

34. I reject the City of Saskatoon's submission that Mr. Solo's complaint is motivated by improper political purposes. There is no question that Mr. Solo's complaint is tied to politics. Randy Donauer, Mayor Atchison and the other councilors are elected in a political process. They have the authority to determine City of Saskatoon policies. Mr. Solo lobbied for changes to the City of Saskatoon's policy on prayer. I see nothing unusual about this. Mr. Solo may have other political motivations pursuing his Complaint, but this does not mean that his beliefs are insincere, or that he is acting in bad faith.

35. Having reviewed all of the evidence, I find Mr. Solo's beliefs regarding state endorsed Christian prayer are sincere. I accept that Mr. Solo's spiritual beliefs are inconsistent with Christianity and/or Christian prayer. I also accept that Mr. Solo was deeply offended when he attended a Volunteer Appreciation Banquet in his capacity as a member of City of Saskatoon's Cultural Diversity and Race Relations Committee and was welcomed with a non-inclusive prayer.

36. The *Saguenay* case is the first time in Canadian jurisprudence that the Supreme Court of Canada has clearly defined the separation of religion and state. Mr. Solo's analysis of the issue of state sanctioned prayer is remarkably consistent with the approach subsequently espoused by the Supreme Court of Canada in the *Saguenay* case.

b. Did Councilor Donauer's recitation of a Christian prayer at the City of Saskatoon's Volunteer Appreciation Banquet interfere with Mr. Solo's ability to act in accordance with his beliefs in a manner that is more than trivial or insubstantial?

37. The circumstances of Mr. Simoneau's complaint against the City of Saguenay case differ from Mr. Solo's complaint in a number of areas:

- Mr. Simoneau experienced the prayer at City of Saguenay council meetings on numerous occasions despite raising his concerns with the mayor. Mr. Solo experienced the prayer on a single occasion. The City of Saskatoon does not have a practice of reciting a prayer at the commencement of City Council meetings.
- In response to Mr. Simoneau's human rights complaint the City of Saguenay passed a bylaw regularizing the practice of reciting a prayer. In response to Mr. Solo's complaint the City of Saskatoon chose not to have a prayer at subsequent Volunteer Appreciation Banquets.

- The City of Saguenay prayer occurred at the commencement of a public council meeting which falls within the core of the political function of a municipality. Mr. Solo's complaint relates to an event outside of the core of the City of Saskatoon's function, a single prayer at a City sponsored banquet intended to thank volunteers.
- The City of Saguenay prayer appears to have been longer and more ceremonial than the prayer at the Volunteer Appreciation Banquet.
- The Mayor of the City of Saguenay stated publicly that he supported the continued practice of prayer to promote his personal religious beliefs. The evidence in this case does not establish that the City of Saskatoon had a goal of promoting Christianity at the expense of other belief systems.
- In the *Saguenay* case the interference with Mr. Simoneau's beliefs was deemed intentional. The evidence suggests that any interference with Mr. Solo's beliefs was inadvertent or perhaps negligent, but not intentional.
- The evidence in the *Saguenay* case established that continued practice of prayer at council meetings made Mr. Simoneau feel isolated, uncomfortable and excluded. The focus of Mr. Solo's evidence and submissions is on the inappropriate use of the state to promote religion. Mr. Solo has not articulated how this single incident had any substantive impact on his ability to exercise his freedom of conscience or religion.

38. The purpose of the Volunteer Appreciation Dinner was to thank volunteers for their service. The recitation of a Christian prayer at this event represents poor judgment. It was disrespectful and insensitive to a multicultural, multi-ethnic and multi-theist audience. The volunteers attending the dinner, like the citizens of Saskatoon have varied religious, spiritual and cultural traditions. The decision to incorporate a Christian prayer ignored this reality.

39. Mr. Solo was attending the Volunteer Appreciation Dinner as a member of the City of Saskatoon's Cultural Diversity and Race Relations Committee. Mr. Solo does not follow the Christian faith. He is a proponent of state religious neutrality. Given this context, it is not surprising that Mr. Solo was offended by the decision of the City of Saskatoon to give preference to the Christian spiritual practice of grace at the expense of all other belief systems.

40. Mr. Solo reports that he was derided in social media because of this complaint. I am advised that many of the comments exhibited racism. He reports receiving threats. The individuals who ridiculed Mr. Solo fail to understand the rights and responsibilities of being a Canadian citizen. Mr. Solo had legitimate grounds to file a complaint. His insistence on the neutrality of the state in religious matters is consistent with the view of the Supreme Court of Canada. This is an important issue. Many of Mr. Solo's detractors are exhibiting the intolerance and lack of understanding that the *Code* is designed to prevent. Ultimately, however, the City of Saskatoon is not responsible for misguided comments by members of the public.

41. In assessing whether the *Code* was breached it is important to consider the context of the prayer. The prayer occurred at a purely voluntary social event that was outside the core function of the City of Saskatoon. The prayer was brief and occurred on a single occasion. In response to the complaint, rather than reasserting its position and/or exacerbating the problem like the City of Saguenay, the City of Saskatoon appears to have recognized Mr. Solo's concerns by

eliminating prayer from subsequent Volunteer Appreciation Banquets. Given Mr. Solo's philosophical beliefs, I have no doubt he was offended by the prayer. However, I do not accept that the prayer impeded him from acting in accordance with his beliefs. I do not believe that Mr. Solo is in a position to establish that this single and brief prayer meets the test set out in the Saguenay case. Given the context of the prayer, any interference with Mr. Solo's ability to act in accordance with his beliefs would be nothing more than trivial or insubstantial. I do not believe Mr. Solo can establish that the prayer caused him sufficient harm to breach the *Code*.

Observations and Recommendations

42. Although, I have found that Mr. Solo's complaint does not have sufficient merit to proceed to a hearing under the *Code*, many of his concerns regarding inclusiveness in the City of Saskatoon appear justified. Commentary regarding Mr. Solo's complaint revealed confusion regarding the rights of religious minorities under the *Code*. Some commentators suggested that the City of Saskatoon conduct a vote to decide the issue of prayer at municipal events. A similar majority-rules argument was made in favour of prayer in schools. Some City of Saskatoon officials suggested that individual councilors decide on the content of their prayers at public events. These propositions ignore the primary purpose of human rights legislation, which is to protect minority rights. There are numerous examples in Canadian history where the majority of Canadians either supported or accepted discriminatory practices against racial or religious minorities. The Board of Inquiry dismissed the notion that the preference of the majority could justify discrimination in the *Fancy v. Saskatoon School Division* case. Furthermore, allowing individual City Councilors to select their own prayers will not result in full representation of the diversity of beliefs of Saskatoon's citizenry.

43. Some attempted to justify Christian prayer based on tradition. This argument was rejected by the Supreme Court of Canada in the Saguenay case. The cultural adoption of Christian traditions, and the City of Saskatoon's history as a Temperance colony does not justify interfering with freedom of conscience and religion. The citizens of Saskatoon have diverse backgrounds with a broad range of religious, spiritual and cultural traditions. The state has a duty of religious neutrality. The state also has an obligation to support multi-culturalism under the Charter. The following excerpts from the *Saguenay* case represent the Supreme Court Canada's analysis of these obligations:

> [74] By expressing no preference, the state ensures that it preserves a neutral public space that is free of discrimination and in which true freedom to believe or not to believe is enjoyed by everyone equally, given that everyone is valued equally. …The neutrality of the public space therefore helps preserve and promote the multicultural nature of Canadian society enshrined in s. 27 of the *Canadian Charter*. Section 27 requires that the state's duty of neutrality be interpreted not only in a manner consistent with the protective objectives of the *Canadian Charter*, but also with a view to promoting and enhancing diversity…

> [75] I would add that, in addition to its role in promoting diversity and multiculturalism, the state's duty of religious neutrality is based on a democratic imperative. The rights and freedoms set out in the *Quebec Charter* and the *Canadian Charter* reflect the pursuit of an ideal: a free and democratic society. This pursuit requires the state to encourage everyone to participate freely in public life regardless of their beliefs. …The state may not act in such a way as to create a preferential public space that favours certain religious groups and is hostile to others. It follows that the state may not, by expressing its own religious preference, promote the participation of believers to the exclusion of non-believers or vice versa.
>
> [76] When all is said and done, the state's duty to protect every person's freedom of conscience and religion means that it may not use its powers in such a way as to promote the participation of certain believers or non-believers in public life to the detriment of others. It is prohibited from adhering to one religion to the exclusion of all others. …
>
> [77] The Tribunal was therefore correct in holding that the state's duty of neutrality means that a state authority cannot make use of its powers to promote or impose a religious belief (paras. 209-11). ...
>
> [78] … State neutrality means … that the state must neither encourage nor discourage any form of religious conviction whatsoever. If the state adheres to a form of religious expression under the guise of cultural or historical reality or heritage, it breaches its duty of neutrality. ...

44. The principles of inclusion and belonging that fundamentally underpin Canadian citizenship are democratic imperatives that should be promoted, enhanced and demonstrated by political leaders at every level. The actions of the Saguenay City Council were exclusionary, which represents the antithesis of these principles. The state's policy and practices must be consistent with the preservation of the multicultural heritage of Saskatchewan and Canada (see: *Saguenay*, para. 75 above).

45. The Supreme Court's decision in the *Saguenay* case does not mean that prayer or spiritual ceremonies can never be combined with municipal activities. City officials must respect multi-culturalism and ensure that they do not favour one religion or belief system over others. This includes recognizing that many people have no religious or spiritual beliefs. The context of an event is important. Similarly, the *Saguenay* case does not prevent municipalities from having events or ceremonies to recognize religious celebrations in the Christian, Jewish, Muslim, Hindu or other faiths. State promotion of multiculturalism does not violate the *Code*. However, it seems that religious practices should not typically or regularly be incorporated into either the core function of government or social events organized by municipalities. The adoption of a general practice of reciting prayers at municipal events is contrary to the *Code*.

CONCLUSION

46. After having carefully considered the whole of the evidence on the file, the quality and nature of that evidence, and the legal principles relevant to this complaint, I find that there is no reasonable likelihood that a court, in looking at the evidence as a whole, would find this complaint to be substantiated on a balance of probabilities. For these reasons, I find that the complaint does not have sufficient merit in law to warrant a court hearing.

DECISION

47. This complaint is without merit. I hereby dismiss it pursuant to paragraph (b) of subsection 27.1(2) of the *Code*.

Dated this 14th day of April, 2016, at Saskatoon, Saskatchewan.

David M. Arnot
Chief Commissioner
Saskatchewan Human Rights Commission