



Episode 1,208: She Was Brought Before the Ottawa Human Rights Commission

Guest: Janice Fiamengo

WOODS: I of course want to get your story here on the record on my podcast, and I think to start, it might be a good idea to talk about the Human Rights Commission, or I guess is there one for each province in Canada?

FIAMENGO: Yes. As I understand it, there is a Canadian, like a federal body, but each province has its own human rights tribunal.

WOODS: What is the purpose of these tribunals, and how do they compare to traditional courts?

FIAMENGO: Well, they're sort of shadow courts, as far as I understand them, and I don't have a legal background, so I may not understand all of the precise distinctions. But basically, as I understand it, they were formed some 30, 40 years ago in order to deal with problems of discrimination that could not be dealt with in ordinary courts, either because they did not involve criminal activity or because they would be beyond the reach of most complainants simply because they would be too expensive to launch a civil suit or discrimination. So on the website of the Ontario Human Rights Tribunal, which is one of eight bodies that fall under something called the Social Justice Tribunals of Ontario, it says that the purpose of the Ontario Human Rights Tribunal is to resolve — I think it says, "resolve claims of discrimination and harassment in a fair, just, and timely manner."

That last reference to — or "timely way," I think it is, but that last reference to it being timely is a bit ironic, since they aren't timely at all, as far as I can tell. In my case, it took about two years for the entire really very minor issue to be resolved. And I've looked at other cases online. They do publish the cases that go to a formal hearing. Some of them take, you know, four, five years, so what they call "timely" is sometimes a very long, drawn-out process.

But the idea is that they will resolve cases of harassment and discrimination under the Human Rights Code, so there's a long list of grounds of prohibited discrimination. I'm sure it's very similar to the United States. Obviously, race, creed, ethnicity, gender, sexual orientation, gender expression, religion, all those grounds. So anyone, a person who feels that he or she has been discriminated against in applying for housing or in applying for some sort of social service or at university or in a board meeting, on your condo board — I mean, it can be anything — and of course at their workplace in any way, they can make a complaint. And it will be heard by this body.

WOODS: How about expenses? How is that taken care of? I mean, in other words, I'm pretty sure I read that the accusers have their expenses paid. Is that right?

FIAMENGO: Yes, that's right. Yeah, the way it works is that the accuser can have legal assistance from the tribunal in order to carry through their case, and they don't pay any kind of costs, whereas the accused, what they call the respondent, if the accused wants to have a lawyer, obviously we have to pay for our lawyers ourselves. So it's the opposite of – well, not the opposite exactly, but it's very different from a regular court system.

WOODS: So there's no real incentive against frivolous cases being filed.

FIAMENGO: This is the real issue, it seems to me. You put your finger on it. There is a great incentive to launch these complaints, because in most cases, the remedy that the tribunal comes to is a monetary payout to the person complaining, and the cases that I looked at, they range from a few thousand dollars, \$5,000, \$10,000. Those were fairly common amounts that were paid out to the complainant. So there's a huge incentive to say that you were discriminated against, and there's no disincentive at all.

And the way that the process works, the complainant can withdraw from the process at any point without any kind of penalty, so basically they can try out a complaint, and if it seems like it's not going their way, they can simply stop responding or they can notify all of the parties in writing that, for whatever personal reason, they have decided to withdraw, and there's no penalty for that either. The other person, of course, who's had to go through and pay tens of thousands of dollars in lawyers' fees to defend themselves against terrible charges of racism or bigotry or sexism, the case is simply dropped. They're not in any way cleared. And in fact, most of the cases are settled through mediation, where the person who was charged with some heinous offense is never actually cleared anyway.

But as you say, there is an incredible incentive for people to make complaints, so business owners or landlords or office managers or whatever are living in fear of having to endure a lengthy process and a possibly financially crippling payout at the end. But even if it's discovered that the complaint is entirely frivolous, even in cases where it's discovered that the complainant has lied – I looked up one case where the complainant had suborned another witness to support the case she was making, and that other witness eventually confessed and said she didn't want to go through with it and that she'd been encouraged to make up a lie by the original complainant so that they could split the money that the complainant was hoping to get out of the case. Even when that was revealed to the tribunal, nothing was done to the complainant. So lots of incentives, no disincentives. What could go wrong?

WOODS: Well, and also, again, this is just my understanding: it seems that the accused is in a position of having to prove his own innocence as opposed to the accuser having to prove the guilt of the person.

FIAMENGO: It certainly seems that way to me. Now, at one point, I said that to my lawyer, and he said no, no, no, it operates on the presumption of innocence and the accuser has to prove. But what they mean by "prove" in these cases is not what we normally think of as proving beyond a reasonable doubt. There's actually no real investigation in these cases. They don't have the manpower to do full investigations, so it's really just whatever story the accuser produces, and then the person who is accused produces their response to that story.

There's really calling of witnesses or anything like that. So proving is just a matter of telling a very compelling story that the respondent can't rebut.

And the other thing is that it does not operate on the principle of proving guilt beyond a reasonable doubt. It says very clearly in their documents of how they operate that they operate according to the preponderance-of-evidence model, which means that you simply have to prove, I think it's 50+1, that it's more likely than not that the offense occurred.

WOODS: All right, so now let's turn to your particular case. What were you accused of, and who brought the accusation against you?

FIAMENGO: I was accused of discriminating against a student in one of my English courses — I'm a professor of English literature at the University of Ottawa. And I had — well, the background for this is that universities in Canada — I'm sure this is true in the United States, as well — recently adopted legislation to declare that no student can be discriminated against on the grounds of disability, which, you know, everyone can agree with that no student should be prevented from pursuing an education because they have a disability. What that has meant in practice is that a great number of students with what are sometimes called invisible disabilities and things that you and I might not really think of as disabilities at all can claim special accommodation through this university.

So for instance, if you suffer from exam anxiety and you can get a counselor or therapist to say that you suffer from exam anxiety, you can have all sorts of special accommodation measures. You can have extra time on your exam. You can take your exam in a special room where you're not bothered by other people. You can have a lot of extra time. You can have penalties taken away for handing in papers late. Essentially the whole idea now of deadlines has been thrown out the window. If you say you have a problem with deadlines, then you don't have to adhere to them.

There are other things, like depression and memory problems, all of these things, the idea of a disability has been stretched quite widely. So what that means is that there is now a huge office at every university across Canada, and I'm sure in the United States too, that handles these various accommodations. And they mostly involve exams. So every year, a number of students will be registered with the disability office. The exam that I create for the course has to be sent to this office ahead of time so that they can prepare it for the various students who are registered, who then write it separately and have extra time and have special accommodations depending on their particular disability.

So what happened with this one student was that I missed a deadline to send the exam to the office. And there were reasons why I missed it. They need a significant lead time, and it just so happened that the final exam took place the day after the course ended, so I was actually supposed to submit the exam to the disability office three days before the course even ended, and I just couldn't get it — I was trying to prepare it over the weekend, I couldn't get it ready, and I thought I could work out some other accommodation with the student.

Because the other thing is is we're not allowed to know what the disability is that the student has, so all I knew was that the student needed more time for her exam, so I thought that it wouldn't really be the end of the world — I mean, I didn't do it on purpose, but I just thought it wouldn't be the end of the world if I missed the deadline, because I thought I could work out some other accommodation with her, perhaps have her write the exam and have her

send it to me by email, because I thought all she needed was extra time. It turned out in the end that she had dyslexia, and what she needed, she claimed, was not only the extra time, but special software to help her write the exam and that she didn't have that at home, and therefore my offer of accommodation she saw as inadequate.

So that's what happened. The exam was cancelled and was going to be rescheduled at a later time, and at quite a bit later time, so rather than taking place during the regular exam period, it would have taken place about six weeks later, well into the next term. And she felt that this was unacceptable. And you know, in a way, I agree with her that it wasn't a great solution for her, but I tried to make all sorts of other arrangements with her, but none of those were — even like giving her unlimited time to write the exam, but she didn't see those as sufficient. And in the end, she actually didn't have to write the exam. She went to the ombudsperson at the university, and she was given an aggregate mark. She never had to write the final exam.

So I thought that was the end of it, but it wasn't the end of it. A few months later, I received a notice saying that I was being summoned before the Ontario Human Rights Tribunal to respond to her claim that I had discriminated against her on the grounds of her disability. So what seemed to happen was that, as a result of this incident, at the very end of the course, she then thought back over the entire course and felt that I had mistreated her throughout. So she not only complained about the fact that I, as she saw it, deliberately missed the exam — she thought I had a bias or a prejudice against her so that I deliberately missed the exam or at least, out of reckless indifference, didn't bother.

But also, she thought of other things, a number of things that I had said in class that she thought were discriminatory remarks, and she said that the way I had worded certain assignments was a deliberate attempt to confuse her and disadvantage her. She said that I had harassed her over email because I tried to come up with an accommodation for her at the end when we had this trouble with the exam. And basically, she said that I created a poisonous atmosphere that made it impossible for her to really fully participate in the course.

WOODS: And she never —

FIAMENGO: A lot of those charges — sorry?

WOODS: I was just going to ask that she never raised this with you or with your superiors at any time during the semester?

FIAMENGO: No, no, she didn't.

WOODS: Okay, there's a surprise.

FIAMENGO: Yeah. Yeah, and so a lot of these things, like especially the one about how I had harassed her over email, I mean, it was demonstrably false. I had the emails showing what I thought were kindly, generous, well-intentioned, just a couple of emails saying I really wish there's some way we can accommodate you and, you know, what if you had unlimited time and you simply wrote it at home in whatever conditions you want? I mean, I don't see how that could be construed as harassment. And the charge that I made discriminatory remarks in class, I know what she was referring to. Of course there was no evidence either way, because

she just claimed I said this and she had no proof, and I claimed that I didn't say it, that I said actually something quite different and that she misunderstood. But you know, I don't know how you could have any kind of serious hearing based on such flimsy evidence.

But the tribunal went ahead. The gears began to grind, and I was told that I could be represented by the — She was also, by the way, not only complaining about my conduct, but she was complaining about the entire university system and how it dealt with students with disabilities. The other respondent was the university itself, the disability office. So I was told that I would be represented, so unlike a small business owner, who would just have to deal with it themselves, I was privileged that I had a university lawyer who would represent me for free. But I didn't feel comfortable with that, because I felt that was a clear conflict of interest in the sense that the university lawyer's primary concern was to protect the university from any bad publicity, and basically as soon as the university is involved in one of these cases, they just want to make it go away and they're willing to pay out to the student in order to resolve the issue. They'll pay thousands of dollars to a student to make complaints like this disappear. And didn't feel that the lawyer really cared very much about my reputation or just the truth of the matter, so I ended up hiring my own lawyer.

And we tried mediation. About the eight-month point, I think, we met and we each met, we were in separate rooms, and a mediator went back and forth. And that failed, and so then they scheduled the formal hearing, and there was a long period of preparing for it and waking up in the middle of the night in disbelief and outrage that such a trivial matter should occupy so much public money and thousands and thousands and thousands of dollars for something that I would think anyone reading her very long, detailed account of all the ways she had suffered, anybody could see that there wasn't anything there. But we went ahead, and then finally when the day of the formal hearing arrived, which was two years after, about two years after the time I first received the summons, my lawyer and the adjudicator said they were going to try mediation again. So the entire day went with mediation, and in the end, it just sort of all fizzled out and it was resolved that way. I'm not allowed to say exactly how it was resolved, but basically my name dropped out of the whole thing and the university and the student came to a kind of "we're sorry" resolution.

WOODS: Wow. It's interesting, by the way, your mentioning your reputation, you have a reputation for being controversial, for your opinions on feminism and things like that, and yet it's interesting that that actually had nothing to do with this case at all, even though I bet people on the outside, looking at you being involved in this, might think: oh, what did she get herself into? That's not it at all. This is just a case that obviously should have been handled through the university, through normal, ordinary channels the way any normal human being would have handled it.

FIAMENGO: Yeah, and my friend Steve Brulé, who produces my videos, he was convinced that there was something else going on. He was convinced that some social justice organization on campus had gotten hold of this student and had used her as a kind of proxy against me. But as far as I can tell, that wasn't the case at all. I don't know whether the student was aware that I have this other life of an anti-feminist advocate. I don't bring that into the classroom in any way. I try to be as completely non-ideological as possible in my classroom. So it's possible she found me on the Internet, but it's I think more likely that she didn't. I think it's more likely that this was just a case that could happen to any professor and that is happening more and more to professors and various other people, as well.

Nobody hears about it because most of the cases are settled through mediation. The adjudicator mentioned that to me as a kind of — she saw that as a great triumph of the system, that most cases are resolved through mediation, and so they're never published online in that case. Unless it goes to a formal hearing, it's not made public. So of course there's a huge incentive for people to settle through mediation, because who wants it made public that they were a terrible bigot and they were fined \$5,000 and forced to take some kind of reeducation training or that kind of thing?

So what it means is that hundreds, thousands of people every year are going through these processes where they have to prove that they do not harbor hatred in their hearts on often these very flimsy kinds of grounds, and they're settling in these sort of private cases where they're not allowed to talk about the terms of the settlement, and they're living in fear of offending, knowing that — certainly now my feeling is I do not want to go through that experience again, and it means that whenever I'm in the classroom, I'm aware that if any student takes against me for whatever reason and can make up any kind of plausible or even not particularly plausible scenario about my bigotry, I can be hauled before this tribunal again and have to defend myself against those charges. It's really quite a remarkable situation that we've constructed in Canada.

WOODS: And of course, it's particularly remarkable that you have so many faculty who are willing to just go along with this, because they think the hammer's going to come down on other people.

FIAMENGO: Yeah.

WOODS: But, frankly it's the left pushing this stuff, and as the left begins to eat its own a lot more, a lot of these middle-of-the-road left liberals are going to find themselves in the dock because they're not quite radical enough. And then maybe they'll say: oh, wait a minute, this has gone a little bit too far. Well, how about that? So that's all very frustrating. I remember a case — obviously there's no human rights tribunal, but back in the old days when I was a professor, one of the written assignments I had for my Western civilization course involved reckoning with some primary source documents regarding some of the early Christian martyrs. Now, this is Western civilization. What could be more expected than that? And believe it or not, I had a student who was an atheist who believed this assignment was discriminatory toward her, like I had singled her out, like I know the religious affiliations of the kids in the class, right? I'm trying to remember their names, for heaven's sake.

And I could not get over this, and so I — but instead of approaching me, which they never do, she went directly to my — well, in fact, I believe she even went over the head of my department chair and went right to the dean. And the dean went to the department chair, went and talked to him, went to me, and then came back to her and said, "You're in a course on Western civilization. Of course you're going to have a primary source document that at some point will have something to do with Christianity. What do you think one of the major ingredients of Western civilization is?" And so she was basically told to go pound sand, which I would like to think any dean anywhere with such a frivolous, preposterous complaint as that would have done. But I thought to myself: what would it have taken to just take five minutes to come talk to me? We could have resolved this whole thing, but instead —

FIAMENGO: Oh, she couldn't do that, or he couldn't do that, Tom, because you're in a position of power, right, and you're going to abuse that power if a student in some way irritates you.

WOODS: But if I did abuse that power, that would be the time to go to the dean, and then you'd have a real case.

FIAMENGO: Oh, no, you'd do it in a subtle way and it could never be proved, and the student wouldn't want to risk the terrible trauma of having to deal with you. That's always the way it is. And yeah, indeed, lots and lots of people are finding themselves on the hot seat now, but the problem is that, once it gets to this stage, it's this massive machinery that is really almost incapable of being dismantled. There are thousands of people employed in offering these services, in various human rights offices, equity offices, anti-gender discrimination offices. I mean, you've got your Title IX and all the problems there. People like Laura Kipnis, who is herself a declared feminist, found herself having to undergo a Title IX discrimination case merely because she wrote — well, she wrote something that some students found offensive. So although you may not have your human rights tribunal, certainly within the university itself there are these elaborate machines that put professors through the ringer if a student is offended or disgruntled or feels that in some way this is a professor whose views are unacceptable in the current climate. And yeah, it's a very thorny problem, and I can imagine it's going to keep getting worse for some time, and I don't know what the solution is, actually. It's very difficult.

WOODS: Well, of course I'd like to have you back on to talk about some of the work that you do, so just to lead into that a bit, can you give us a bit of a sneak preview? Because I'd also like to give you an opportunity to promote the work that you do and links and your YouTube channel and stuff like that.

FIAMENGO: Oh, thank you very much. Yeah, I mean, I do have another life, and as I say, I don't bring it into the classroom, but as a result of what I've witnessed in the classroom and on university campuses in general, I have over the last few years become an advocate for men's issues. I'm very concerned about the situation especially of young men on university campuses, all the ways in which their masculinity is being stigmatized and demonized and particularly the way in which they are at risk of having their lives destroyed, or if not that, at least their university careers seriously derailed by a charge of sexual harassment or sexual assault as a result of the institution of these various tribunals to protect young women on university campuses.

And so I started doing lectures, and then a few years ago, I started a video series. And the series is mainly about the situation of men in general in our culture, and the special focus is academia and the way in which academia is ground zero of the anti-male animus that is percolating out through the whole culture. So I have now about 85 videos, I think, at a channel that my friend Steve Brulé has created, and it's called Studio Brulé, so if anybody wants to look me up there, you can see the kinds of things I talk about there.

And I also have recently published a book called *Sons of Feminism*, which I edited, and it's a collection of 27, I believe, personal essays by men, young and old, talking about what it has felt like to grow up under the reign of feminism. Some of these men have been personally affected by terrible divorces where they lost contact with their children and lost everything as a result of an angry, vindictive ex-wife accusing them of being abusive. I have stories from young men who have been expelled from university or had terrible trouble even in high school because of their perceived inappropriate masculinity. And I have a lot of stories of men talking about generally what it feels like to grow up feeling that you were disliked by your culture, that you're held in contempt or disdain by the elite opinion makers of one's culture.

So I would encourage people to check that out, too. It's called *Sons of Feminism: Men Have Their Say*.

WOODS: Well, I will certainly link to both of those things on our show notes page, TomWoods.com/1208. And as I say, sometime in the very near future, let's have you back and maybe we can talk about that book and the other work that you do.

FIAMENGO: Well, thank you very much, Tom. It was great speaking to you.

WOODS: And I'm not quite sure if I should congratulate you, because I don't know the exact terms, but at least I can say: thank goodness the ordeal is over.

FIAMENGO: Thanks a lot. Thank you very much.