



Thirty-five Years and Looking Forward!

A Summary of Consultations and Briefs on
New Directions in Human Rights for
New Brunswick



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Introduction

As part of its 2003-2008 strategic planning processes, the New Brunswick Human Rights Commission published a strategy discussion paper *Thirty-five Years and Looking Forward!*, in October 2002 to encourage public participation in the evolution of the Commission, its programs, services and legislation through an open consultative process. The discussion paper was published on the Commission's website and widely circulated. The process included public meetings and written submissions. A one day conference was also held in October 2002.

This report summarises the most substantial or most frequently mentioned comments expressed at those meetings and in the briefs. It is not possible to include all the responses to the discussion paper in this short summary. Comments about two draft guidelines that had been published as part of a separate consultation process are not included here, but have been taken into account in the revision of the draft guidelines.

The views expressed in this report are not those of the Commission, but those views articulated by the public and various stakeholders.

Executive Summary

As part of its 2003-2008 strategic planning processes, the New Brunswick Human Rights Commission published a strategy discussion paper *Thirty-five Years and Looking Forward!* and survey in October 2002 to encourage public participation in the evolution of the Commission, its programs, services and legislation through an open consultative process. The discussion paper was published on the Commission's website and widely circulated.

Numerous recommendations and views were expressed during public meetings conducted throughout New Brunswick between December 2002 and February 2003. In addition, the Commission received briefs from various groups representing labour, religion, women, physicians and other community organisations.

The views expressed in this report are not those of the Commission, but the views articulated by the public. Twenty-nine recommendations were made, of which the main ones are:

1. The inclusion of six new grounds of discrimination (social condition, political belief, language, family status, citizenship and pardoned criminal record);
2. The replacement of the New Brunswick *Human Rights Act* with a New Brunswick Charter of Human Rights;
3. The New Brunswick Human Rights Commission be independent and report to an all-party legislative committee;
4. Additional compliance staff to reduce the complaint intake to resolution time;
5. Additional staff to increase educational and promotional activities; and
6. Increased funding for the New Brunswick Human Rights Commission and its activities.

These six recommendations appear repeatedly in various written briefs and throughout the public meetings.

Responses and Recommendations

Language

“Should a New Brunswick charter specifically include language as a prohibited ground of discrimination?”

The majority of participants involved with the consultation process generally support the inclusion of language as a prohibited ground of discrimination.

They stressed caution concerning language on more than one occasion, particularly due to the sensitive and complex nature of language issues in New Brunswick. For example, would its inclusion require all businesses and professionals to offer services in both official languages?

Some participants argued that more education about human rights would serve the province better than another language law, while others expressed a concern with fairness for those who do not speak French, particularly concerning employment opportunities in the public service.

One group stated that the addition of language would require that bilingualism become the key goal of the education system. A few participants promoted the inclusion of languages other than English and French, so as to provide protection for immigrants.

Overall, inclusion of language as a prohibited ground for discrimination was favoured.

Social Condition

“New Brunswick is the only jurisdiction in Canada where the Human Rights Code does not prohibit some form of discrimination against the poor. How should New Brunswick’s Code deal with this type of discrimination?”

Participants guardedly support the inclusion of social condition and source of income as a prohibited ground of discrimination.

Some participants argued that the inclusion of social condition in the Human Rights Code does not address the core issues that create the condition, such as unemployment, low minimum wage and the soaring

cost of higher education. One person argued that including social condition in the Human Rights Code acknowledges our acceptance of poverty instead of our commitment to eliminate poverty. Some participants raised issues that pertain to social assistance payments and rules, such as social assistance recipients having their income assistance payments reduced or eliminated if they cohabitate. It was also suggested the New Brunswick Human Rights Commission establish a cooperative relationship with anti-poverty groups and work with them to eliminate poverty.

Overall, there is significant support for the inclusion of social condition, in broad terms, as a prohibited ground of discrimination.

Pardons, Political Belief, Citizenship and Family Status

“Other grounds of discrimination prohibited by human rights laws elsewhere in Canada, but not under ours, include pardoned criminal record (having received an official pardon for a criminal conviction), political belief, citizenship and family status (e.g. having children). Which of these, if any, should be prohibited grounds in New Brunswick law?”

Pardoned criminal record, citizenship and family status received support for inclusion as a prohibited ground of discrimination.

One group also recommended the inclusion of additional grounds, such as criminal charge, record of conviction, place of residence and seizure of pay.

Participants support the prohibition of political discrimination, but recommend that the term used for the new ground be "political affiliation" instead of "political belief."

Human Rights Charter

“Should our Human Rights Code be replaced by a more comprehensive charter?”

Participants largely support replacing the New Brunswick Human Rights Code with a Human Rights Charter.

Participants suggested a new provincial charter would reinforce the existing rights in the Canadian Charter of Rights and Freedoms. However, some participants were more concerned with the Commission's effectiveness as opposed to its form, structure, or supporting legislation. One employer cautioned that the adoption of a Charter would absolutely

require the Commission to have additional human and material resources. One participant, who was a lawyer, questioned the logic behind this question, arguing that the benefits and disadvantages of a code as opposed to a charter would take years for constitutional lawyers to determine; so, how could the Commission expect the public to provide an opinion?

One group mentioned that important and positive reforms had been made in recent years, but New Brunswick needed to assume the lead in making its human rights legislation consistent with its international obligations. Some participants recommended that the provincial Charter should go beyond the Canadian Charter, and incorporate economic, social and cultural rights. Some also mentioned that it might include developmental rights and possibly environmental and water rights and Aboriginal self-government rights.

One participant wanted to ensure that the proposed Charter recognised all families, including one-parent families and same-sex couples, while another opposed the recognition of same-sex couples. It was also suggested that the Charter include a section guaranteeing equality to men and women.

It was also recommended that the Charter include the right to form a union, bargain collectively, strike, picket, boycott and to get a first collective agreement. Public servants and casual workers should have the same right to collective bargaining as other workers, and strike-breaking should be prohibited.

Some participants recommended the charter be presented to the public in layperson's terms. In addition, participants suggested that all newborn children and new immigrants receive a user-friendly version of human rights legislation.

Participants recommended the establishment of a fund under a new charter to subsidize test cases challenging provincial laws and programs that may be inconsistent with a new provincial charter.

There is broad support for the replacement of the New Brunswick Human Rights Code with a Human Rights Charter.

Complaints Process

“Human rights complaints in all jurisdictions can involve lengthy proceedings, both before and after referral to a Board of Inquiry. What has been your experience with the Commission’s complaint process? Have the interventions been timely and efficient?”

The importance of human rights mechanisms like the Human Rights Code was recognised, but many participants view the complaint process disapprovingly.

A number of participants identified the process as intimidating, confusing and lengthy. Many participants suggested a significant reduction in the lengthiness of the complaint process, in addition to increased staffing to assist complainants and respondents.

One group was of the view that the number of complaints filed was low, the dismissal rate for complaints was high, and the number of referrals to the human rights boards of inquiry was low.

It was suggested that too much time was devoted to frivolous complaints. A number of participants suggested a proactive enforcement mandate, whereby the Commission could initiate investigations on its own without the direct involvement of the complainant. This would offer a solution to the perception of many participants that some people do not file complaints, against their employer for example, because of the fear of retaliation. One group suggested that groups be able to file a complaint for the same reason. It was also suggested that the initiation of complaints by the Commission on its own motion would be a better way of promoting systemic change in cases of systemic discrimination.

Some were concerned that the Commission had only one compliance officer per office. One group was concerned about the decline in the number of complaints received and questioned if this was an indication of the Commission’s success in educating New Brunswickers, or frustration with the complaint process.

It was suggested that there should be more frequent communication to the parties on the status of their complaint. Some participants suggested the periodic release of complaints and the outcome of complaints to the public. Participants suggested that the Commission maintain a toll-free number to provide rural residents with no-cost access to the Commission.

Increased funding and staff levels are the suggested solution for this problem, in conjunction with a review and update of the Commission's communications plan.

Human Rights Education and Promotion

"How could the Human Rights Commission improve its performance in the area of human rights education?"

The dominant opinion regarding education and promotion is that New Brunswickers are not adequately informed about human rights.

A few participants found the Commission's web site tedious and argued for increased advertising in newspapers and for attendance at job fairs, festivals and special events. Again, participants encouraged increased involvement with schools, businesses and community groups. It was also suggested the Commission dedicate staff to conduct workshops and in-service training.

Participants overwhelmingly recommended increased funding for educational and promotional activities. In addition, participants argued for increased staffing to support the educational and promotional activities of the Commission.

Educational Activities

"How accessible and informative have you found the Commission's current educational activities and services?"

Many participants were not aware of these activities and services, while some offered praise for specific educational services and products.

Participants had few comments regarding the Commission's current educational activities except to state that additional efforts would be required to adequately meet the needs for human rights education in New Brunswick. One group suggested that the Commission's educational mandate be extended to include the Canadian Charter of Rights and Freedoms, as well as international human rights instruments.

Autonomy and Authority

“How could reforms best ensure the Commission’s autonomy and independence?”

Participants suggested the Commission be autonomous and independent from government departments and ministers in an effort to remove a perceived political relationship between the Commission and government.

Some participants suggested the Commission’s reporting and funding structure should be similar to the Ombudsman’s Office. It was also widely proposed that the Commission receive its own budget, and report directly to an all-party legislative committee. It was also recommended that the Commission Chair be appointed by the legislature and that the Commission include a labour representative.

Increased involvement with private and government sector employers, employees, students and community groups through education and on-site training would be beneficial to all concerned.

In short, participants recommend the Commission move to an autonomous operation, report directly to an all-party legislative committee, receive a suitable budget, and be proactive as opposed to reactive.

Profile of the Human Rights Commission and Importance of Human Rights in New Brunswick

“What importance do you place on human rights considerations in your workplace? Has the Commission assisted in raising the profile of human rights matters in your work or in the services you provide? What perception do you have with respect to the profile of the Commission and of the importance of human rights in New Brunswick?”

A number of presenters argued that the Commission should be the vanguard for human rights advancement and protection in New Brunswick.

One group noted that the recognition of sexual harassment as a form of discrimination by the courts and by human rights commissions and tribunals was a key advance. It also mentioned that the adoption of anti-harassment policies by many employers was positive. While sexual harassment had not disappeared, and was not adequately remedied, it was no longer considered acceptable in the workplace. However, the

group was surprised by the decline in formal sexual harassment complaints in recent years, though it wondered whether this was explained by increased reliance on informal complaint resolution. Another group noted an improvement of human rights in the workplace in relation to pay equity and male-female relations. It recommended that more emphasis be placed on the responsibilities of both employers and employees. No effective Human Rights Commission efforts to promote human rights in their workplace were identified by the participants.

Many suggested the Commission should work more closely with industry, government and business to provide training and support for employers and employees. A number of participants argued that the Commission was biased towards special interest groups and often promoted the rights of a few to the detriment of the many. The participants applauded the Commission's initiative for commencing this review process and seeking input from the public.

While one group saw the Human Rights Commission as a leader in the promotion and protection of human rights, some participants viewed it as ineffective, politically influenced, and called for its abolition.

General Comments

The majority of participants offered strong support and praise for the Commission's initiative to seek public opinion and guidance in its efforts to advance human rights in New Brunswick. However, some participants at the Saint John meeting criticized the timing and location of that meeting. Another participant thought that meetings should have been held in much smaller communities throughout New Brunswick.

Conclusion

The New Brunswick Human Rights Commission would like to thank and commend the participants for their input.

The solicited briefs and public consultations clearly support a new direction for the New Brunswick Human Rights Commission.

The general perception of the New Brunswick Human Rights Commission is that it should be a more effective and autonomous organization that has adequate resources, and assumes a proactive approach concerning the protection and advancement of human rights issues in New Brunswick.

Recommendations of Participants

Many briefs and consultations provided recommendations to the Commission. The recommendations listed below are in no particular order and assimilated from various briefs and public consultations. These are responses and recommendations made by those consulted by the Commission:

1. The establishment of a fund under a new charter to subsidize test cases challenging provincial laws and programs that may be inconsistent with a new provincial charter;
2. A clear policy to ensure that the Commission's resources are devoted equitably toward existing and future inequalities faced by women;
3. The procedures for asserting human rights be easier and be non-threatening to the social and economic security of the most vulnerable;
4. Pay equity be clearly set out in a new charter and employers should be required to submit their pay equity plans to a Pay Equity Commission, so as to take the burden of enforcement off individual complainants;
5. Proactive enforcement mandate for the New Brunswick Human Rights Commission;
6. Community organizations and groups that arrange for personal care staff for persons with disabilities receive an automatic exemption when they need to hire a specific gender to match the gender of the person requiring the support;
7. The New Brunswick Human Rights Commission act as a forum for domestic implementation of international human rights instruments, by conducting periodic social audits, for example;
8. Complaints outcomes be made public;
9. Human rights education in the early levels of public education;
10. The New Brunswick Human Rights Commission be independent and report to an all-party legislature committee;

11. That the Human Rights Commission's staff and budget be increased;
12. Minority rights do not infringe upon majority rights, and that the development and application of principles and rules be fair;
13. Return to the basics: prayer in schools and democratic principle allowing majority rule, and the freedom to express Christian beliefs;
14. A speedier and improved complaint procedure;
15. Increased cooperation of the Commission with other government services and agencies such as the Ombudsman's Office;
16. On-site training be provided by the New Brunswick Human Rights Commission;
17. Re-establishing the "Native desk" at the New Brunswick Human Rights Commission;
18. The inclusion of Genetic code use for such things as human cloning in a new charter;
19. The inclusion of clean water rights in a new charter;
20. Increased promotion of the New Brunswick Human Rights Commission and the services it performs;
21. The inclusion of a right prohibiting strike-breakers, and the cessation of casual employees;
22. That more emphasis be placed on the discrimination issues related to the non-recognition of foreign training;
23. That the human rights legislation provide for alternative dispute resolution methods;
24. That the Human Rights Commission's good offices be used for community dispute resolution;
25. That a section dealing explicitly with employment equity be added to the human rights legislation;
26. That the Ferris Report recommendations on increasing the role of the Cabinet and the Legislature in human rights protection be implemented;

27. That amendments to human rights legislation be implemented in a short time, and that emphasis be put on the implementation process to enforce the changes;
28. That the Commission conduct a study on racism faced by immigrants; and
29. That mandatory retirement be prohibited except when agreed to through collective bargaining.

Appendixes

- Appendix A – Location of Public Meetings
- Appendix B – Written Briefs

Appendix A – Location of Public Meetings

Moncton, December 3, 2002, Moncton Public Library

Saint John, January 15, 2003, New Brunswick Community College

Grand Falls, January 16, 2003, New Brunswick Community College

Miramichi, January 20, 2003, New Brunswick Community College

Bathurst, January 30, 2003, New Brunswick Community College

Fredericton, February 12, 2003, Centre communautaire Saint-Anne

Appendix B – Written Briefs

Group Briefs

Atlantic Human Rights Centre

Canada Family Action Coalition, Fredericton Chapter

Christian Action Federation of New Brunswick

College of Physicians and Surgeons of New Brunswick

Fredericton Anti-Poverty Organization

Institut féminin francophone du Nouveau-Brunswick

New Brunswick Advisory Council on the Status of Women

New Brunswick Coalition for Pay Equity

New Brunswick Federation of Labour

Premier's Council on the Status of Disabled Persons

Université de Moncton

University of New Brunswick, Faculty of Law

Individual Briefs

Allison Fanjoy-Ouellette

David Jory

Charles LeBlanc

J.S. Mathew

Tom Oland

Lana Poirier

David Watts

Sarah Werner