



CANADIAN HUMAN RIGHTS COMMISSION

LOOKING AHEAD

CONSULTATION DOCUMENT

September 2004

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For additional information, please consult the Commission's website at

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FOREWORD

Issue:

Since it was established in 1978, the Commission has played a key role in protecting human rights in Canada by responding to the evolving needs of the public. However, the Canadian human rights landscape has changed fundamentally since the Commission was created 25 years ago. The initial approach to investigating human rights complaints which became largely reliant on litigation and conflict resulted in lengthy investigations and recurring backlogs, and no longer responded to the legitimate demands of Canadians for timely and effective service. Dealing with human rights complaints on a case-by-case basis consumed a tremendous amount of time and resources, leaving many of the Commission's broader objectives and purposes unmet.

Process of Renewal:

Against this backdrop, the Commission is transforming the way it works to better protect and promote equality in Canada. As always, the Commission continues to advance human rights and offer Canadians under federal jurisdiction an avenue for resolving complaints. In essence, the Commission is moving towards focusing more of its efforts and resources on human rights problems before they grow into damaging and lengthy disputes that are costly, both emotionally and financially. That means trying to resolve human rights issues early using such instruments mediation, policies, education and training.

The new approach also involves improving the investigation process for handling complaints, the traditional bedrock of the Commission's work. In 2003, the combination of an expanded mediation program, a streamlined investigation process and faster decision-making fueled the Commission's drive toward eliminating its backlog of human rights cases and processing cases in a timely manner.

Results

The Commission's new approach is already leading to better services for Canadians. The striking results for 2003, including significant increases in productivity, are detailed further in the Annual Report. Some highlights include:

- a 70% increase in the number of final decisions reached, including pre-Tribunal settlements;
- an 85% drop in the number of complaints two years or older;
- a 60% increase in the number of case resolution;
- a 50% drop in the average age of complaints, from 25.3 months in January 2003 to 11.7 months in June 2004; a 14% decrease in caseload, from 1,400 to in June 2004.

INVOLVING STAKEHOLDERS

Sustainable relationships with key stakeholders are central to the work of the Commission. In order to develop a long range consultation strategy and establish ongoing dialogue with stakeholders, the Commission established an Outreach Directorate within its new Employment Equity, Policy and Outreach Branch.

In developing its agenda for change, the Commission reviewed the Canadian Human Rights Act Review Panel report as well as reports from other jurisdictions, canvassed the experiences of other human rights commissions and agencies, discussed issues with a number of interested parties and other disciplines to bring new perspectives to its work.

It is now important to step back and look at the principles and values guiding the new approach to human rights management at the Commission. As noted in our Annual Report, the Commission has begun a change process that will take more time and involve parliamentarians, non-governmental stakeholders and other actors in the federal human rights system, before it is fully defined and implemented. Results of this new round of consultations will be documented in the Commission's next Annual Report to be released in the winter of 2005.

THE FIVE KEY PRINCIPLES OF THE CHANGE AGENDA

Throughout its reform process, the Commission has been guided by five key principles which will continue to be at the forefront of our Agenda for Change. The Commission's aim is a human rights system that:

- serves the public interest;
- transforms behaviour;
- is comprehensive;
- is preventive and forward-looking; and
- is independent, impartial and ensures good governance.

I: SERVING THE PUBLIC INTEREST

1. Choosing the right tool for each case

The focus of previous years on adjudication has been resource intensive, and has prevented the Commission from concentrating on its preventive roots. Although an important tool, adjudication is time consuming, adversarial, and often divisive. Many issues are better suited to voluntary compliance instruments and proactive initiatives such as special reports to Parliament or public inquiries. This requires a system of triage within the complaints system to ensure that solutions to cases have the greatest human rights impact.

Key Question:

Which of these measures would have the greatest human rights impact? Are there any others?

2. Alternatives to complaints

Many alternative approaches are already available to the Commission under its current legislation. These include public inquiries, special reports to Parliament, and policy studies. To strengthen its ability to use non-complaint tools, the Commission is proposing a number of legislative or regulatory changes, ranging from the authority to review Parliamentary bills for consistency with the Human Rights Act to a general human rights audit power.

Key Questions:

In the changes listed in the Looking Ahead document, which ones would you prioritize?

What change would you propose in this area?

3. A system of triage

In order to better serve the public interest, a system of triage has been proposed within the complaints system to enable the Commission to put the greatest resources into those cases which will have the greatest human rights impact. Ten factors have been identified to enable Commission staff to identify the most appropriate approach to deal with a particular case. These are outlined in the Looking Ahead document.

Key Questions:

How has your organization been affected by the application of the factors outlined in the attached Looking Ahead document?

Which of these 10 factors do you see as priority?

Are there other criteria which the Commission should consider for defining high-priority and high-impact human rights cases?

4. Proposed legislative changes

Some legislative amendments are proposed which would give the Commission greater flexibility to triage cases. These include the authority to refuse to deal with certain complaints, increased power to enter premises and compel witnesses, and enforceable time limits for various stages of case management.

Key Questions:

What impact would the proposed legislative changes outlined in the attached Looking Ahead document have on your operations or mandate?

Are there other legislative amendments which should be considered which would further advance the Commission's goals of efficiency and effectiveness?

How will the proposed legislative amendments affect you?

5. Reform of the Canadian Human Rights Tribunal

Cases which proceed to Tribunal are costly and time-consuming. The Commission is advocating a more effective and efficient means of conducting inquiries at Tribunal. Although the Commission sees difficulties with a direct access model, some legislative amendments could make the Tribunal more accessible. This could include greater use of non-adversarial procedures such as case streaming, expedited procedures, use of technology, as well as making legal assistance or duty counsel available.

Key questions:

What role should the Tribunal and the Commission play in a reformed complaints system?

Are there other ways by which the Tribunal could become more accessible, in addition to those identified in the attached Looking Ahead document?

II TRANSFORMING BEHAVIOUR

1. Putting the “Human” back into Human Rights

Formal processes alone, such as investigations, Tribunal hearings and binding, formal remedies, will not always deliver a just, fair and timely solution to human rights problems. The Commission must find ways to work with all parties to find how to best deal with the issues that led to the discrimination, how to repair the damage done and how to ensure it does not happen again.

Key Question:

In your experience, what are the best practices which will lead to changing discriminatory behavioural patterns?

2. Greater emphasis on Alternative Dispute Resolution (ADR)

The Commission proposes a series of legislative amendments to strengthen its alternative dispute resolution approach. As outlined in the attached Looking Ahead document, these may include placing time limits on conciliation, encouraging employers to use ADR, and offering the option of binding arbitration.

Key Questions:

Have you been involved in ADR? How was your experience?

How will these proposed legislative amendments affect you?

Should mediation become mandatory, and if so, in what type of cases?

III A COMPREHENSIVE SYSTEM

1. Widening the scope of action by adding new grounds

For a national human rights system to perform its role, it must be available comprehensively to all Canadians who suffer discrimination. Parliament has recognized that over the years the meaning of discrimination has expanded to include new groups and new grounds. The Commission seeks to address two areas of weakness, related to those which limit its ability to protect Aboriginal peoples and persons discriminated against on the basis of social condition.

Key Question:

What are your views on the addition of these proposed amendments to the CHRA?

Similarly, the Commission proposes that references to international human rights treaties be added to the preamble of the CHRA and that it be given the mandate and resources to report on the government's domestic implementation of its international human rights obligations.

IV A PREVENTIVE AND FORWARD-LOOKING SYSTEM

1. Prevention

The Commission is committed to a broad strategy of prevention that seeks to engage with major respondents to assist them in putting in place a culture of human rights in the workplace. The Commission has established a Discrimination Prevention Branch designed to facilitate this role.

Key Questions:

What are the elements of a good prevention strategy?

Is the Web a good tool to be used in this area of activity? Are there other communication tools that could be used?

What internal mechanisms have you or would you develop to prevent complaints to the CHRC?

2. A Forward-Looking System

The Commission is proposing to undertake new initiatives aimed at advancing the objectives of the CHRA outside the complaints process. The use of proactive initiatives has been identified as a key strategy for achieving this goal. It has been recommended that the Commission should improve its ability to provide qualitative information about the state of human rights in Canada. One option would be for the Commission to use various tools to assess the human rights impact of new government initiatives and legislation.

Key Questions:

Which of these proactive tools would be most effective? Are there any other tools or proactive strategies that you would recommend?

What indicators do you consider most critical for measuring human rights progress?

What information would you find useful in a Human Rights Report Card?

The Commission is also working on the development of human indicators which would form the basis for periodic reporting on the state of human rights in Canada. The Commission will undertake consultations on this issue with interested stakeholders in 2005.

V: ENSURING GOOD GOVERNANCE

1. Independence and Impartiality

The Commission is not an instrument of government policy like any other federal department. It must often be critical of the government, even opposing it before tribunals and courts, which calls for a much different system of responsibility and accountability. The Commission believes that to avoid any perception of conflict, it needs to strengthen its relationship with Parliament in terms of financing and reporting.

Key Questions:

Is a stronger relationship with Parliament the most viable means of safeguarding the Commission's independence while ensuring strong accountability?

How would this help your organization or support your mandate?

What other means could help safeguard the Commission's independence while ensuring strong accountability?

2. Coherent Governance

Increasingly, the Commission has noted examples of other federal agencies making determinations that touch on human rights issues. Specialized bodies can play an important role, but the Commission would like to ensure that there is an overall coherence with regard to the protection of human rights, particularly in light of the quasi-constitutional status of the *CHRA* and CHRC's mandate to administer the Act.

Key Question:

How important is it to your organization/mandate for the Commission to pursue means by which to ensure overall coherence with regards to the protection of human rights?

EXCERPT FROM CHRC ANNUAL REPORT 2003

*For further reference, the complete version of the
2003 Annual Report is available on the
Commission's website at www.chrc-ccdp.ca*

LOOKING AHEAD

Results from the Commission's recent innovations are very encouraging. But there is much to do.

So far, the reform process has been internal. The Commission has acted to improve service in areas under its control.

But there are broader needs that must still be met. Some of these were raised in recent reports on the Commission.¹ A number of these reports call for legislative and regulatory changes beyond the Commission's existing powers.

In the Commission's view, these changes need not be major. The *Canadian Human Rights Act* and related legislation have been effective in guiding the human rights system. The Act is very comprehensive, substantial and continues to be innovative. However, over the last 25 years, all of its provisions and possibilities have not been given full expression and voice. The Commission's renewal process focuses on the premise that Parliament intended the Act to be comprehensively applied. Yet there are aspects of the Act that can be updated to further its original intent.

With that in mind, the Commission is proposing its perspective on the adjustments needed to make the human rights system even more effective in the 21st century. These are outlined in the following section.

A NEW HUMAN RIGHTS LANDSCAPE

Over the past year, the Canadian Human Rights Commission has been engaged in a process of reform-overhauling the complaints system, working hard to reduce the backlog of cases and putting in place a new system to address broad human rights issues. Many of these changes were described earlier in this report.

It is important to step back and look at the principles and values guiding the new approach to human rights management at the Commission. A recent public study determined that Canadians are deeply committed to human rights and equality. It also found that any reform of social policy had to be based on these values.²

¹ Among these reports are the Auditor General Report in 1998, the 2000 Canadian Human Rights Act Review Panel and reports of House of Commons and Senate Standing Committees on Human Rights, Status of Persons with Disabilities and Public Accounts.

² "The resolution of conflicts in the rebuilding of social policy—what is desirable versus what is affordable and manageable—must be based on values.", *Citizens' Dialogue on Canada's Future: A 21st Century Social Contract*, April 2003, page 6.

FIVE GUIDING PRINCIPLES FOR CHANGE

Throughout its reform process, the Commission has been guided by the following five principles. The Commission's aim is a human rights system that:

- serves the public interest;
- transforms behaviour;
- is comprehensive;
- is preventive and forward-looking; and
- is independent, impartial and ensures good governance.

The Commission has begun a change process that will take more time and involve parliamentarians, non-governmental stakeholders and other actors in the federal human rights system, before it is fully defined and implemented.

Three important points to note:

- while some of these five principles can be met within the current legislation, others will require changes to the Canadian Human Rights Act. Some preliminary thinking on possible amendments to the Act is offered below for consideration;
- all principles can be met in part through the Commission's own processes, but they cannot be met fully unless other parts of the federal human rights system, namely the Canadian Human Rights Tribunal and federally regulated employers and service providers also change; and
- the Commission's new directions for human rights aim at meeting many of the same objectives of the 2000 report of the Federal Review Panel, *Promoting Equality: A New Vision*, albeit through different means.

PRINCIPLE ONE: SERVING THE PUBLIC INTEREST

Human rights commissions serve a number of purposes.

They are there to redress discrimination against individuals but also to correct persistent patterns of inequality, prevent discrimination before it occurs, inform the public about equality and identify emerging human rights issues.

The "Catch-22" for human rights commissions is that the task of dealing with the crushing weight of individual human rights complaints means that many of these other broader purposes are not fully met. Most of the Commission's resources are consumed in the processing of individual complaints. As a result, the other tools at the Commission's disposal which can help transform societal behaviour – such as information, promotion, research on emerging trends and other preventive measures – receive less focus.

Choosing the Right Tool for Each Case

Due to resource constraints and judicial decisions, the Commission has, over the years, moved away from its preventive roots. Instead, it has focused almost solely on investigation and litigation to resolve human rights disputes.

Adjudication remains important for many key human rights issues, but many other human rights disputes do not always require this adversarial framework. As the Law Commission of Canada writes, the “adjudicative process is two-sided, adversarial and backward-looking. It works to produce winners and losers.”³ But frequently the issues that divide parties are not two-sided; they are complex. Some cases require broad systemic remedies that are not achievable at Tribunal, such as policy changes affecting an entire sector rather than just one individual respondent. Sometimes the relationship between parties is ongoing and an adversarial process might cause more acrimony and damage to the relationship.

Key Question:

Which of these measures would have the greatest human rights impact? Are there any others?

With this in mind, the Commission has begun to implement a system which helps to restore the balance and flexibility in the tools at its disposal.

Some human rights issues will be better suited to voluntary compliance instruments, such as information, alternative dispute resolution or special reports. Others will be best addressed through enforcement instruments such as formal investigation and full Canadian Human Rights Tribunal hearings.

The aim is to allow the best solution for the specific issue at hand.

The Commission is developing a tailored approach including:

- alternatives to the formal complaints route, such as special reports to Parliament or public inquiries; and
- within the complaints stream, a system of triage to ensure appropriate resources and approaches are taken to the cases which will have the greatest human rights impact.

Alternatives to Complaints: Options for Change

The Commission is developing a range of non-complaint tools to address systemic human rights issues. These range from the more “inquisitorial” approaches such as public inquiries or special reports to Parliament, to more “consultative” approaches such as policy studies. Many of these instruments are already available to the Commission under its promotion mandate in the Canadian Human Rights Act.

³ “From Restorative Justice to Transformative Justice,” Law Commission of Canada, 1999, Preface.

In 2000, the Federal Review Panel proposed that the Canadian Human Rights Act and the Employment Equity Act be amended to allow +for systemic complaints – in effect, complaints affecting groups of Canadians or involving human rights issues of broad public interest. The Commission’s triage of cases and use of non-complaint tools for systemic issues meet the underlying aim of the Panel’s recommendations, but through more effective means. Although the Panel recommended that an inquiry power be explicitly added to the Canadian Human Rights Act, the Commission interprets its Act as already giving it the power to undertake policy inquiries.

Key Questions:

Which of these changes ones would you prioritize?

What change would you propose in this area?

However, to strengthen its ability to use non-complaint tools, the Commission is proposing a number of legislative or regulatory changes, including:

- enhanced powers to gather evidence in systemic inquiries;
- a requirement that the government respond within a specified period to special reports;
- confirmation that the Commission can review parliamentary bills for consistency with the Canadian Human Rights Act;
- granting of a general human rights audit power to allow a constructive, non-adversarial process under the Canadian Human Rights Act similar to that in place under the Employment Equity Act; and
- a more sound statutory basis for the Commission’s information, research and policy tools.

A Tailored Approach to Cases: Triage

“Resolving discrimination . . . on a case-by-case basis puts human rights commissions in the position of stamping out brush fires when the urgency is in the incendiary potential of the whole forest.”⁴

As a public body, the Commission has an obligation to deliver solid public administration from both a resource utilization perspective and a justice perspective. Therefore, it requires a solid public administration and a complaint process which is timely and efficient. After analyzing its role, the Commission has concluded that the public interest requires that human rights bodies be able to put the greatest resources into those cases which will have the greatest human rights impact.

The Commission has identified 10 factors to allow it to do this:

- whether the complaint raises broad-based policy or systemic issues;

⁴ Abella Report

- whether the complaint addresses a pressing public policy concern as identified by the Commission;
- whether the complaint raises a new point of law, will settle one that remains in doubt or change legislation, policies or programs;
- whether the complaint will significantly advance the purposes of the Act;
- the degree of factual, technical or legal complexity the case entails;
- the impact on the parties;
- the potential remedy;
- whether credibility is a key issue;
- whether the evidence on the record is sufficient; and
- the similarity of facts, issues or grounds with other complaints.

Key Questions:

How has your organization been affected by the application of these factors?

Which of these 10 factors do you see as priority?

Are there other criteria which the Commission should consider for defining high-priority and high-impact human rights cases?

These factors enable Commission staff to identify the most appropriate approach to deal with a particular case.

A Tailored Approach to Cases: Proposed Legislative Change

The Commission interprets its Act to allow it discretion, consistent with standards of procedural fairness, to triage – or sort–cases. Some legislative or regulatory amendments to introduce further procedural flexibility include:

- legislative amendments to allow the Commission to refuse to deal with a complaint where it does not advance the purposes of the Act;
- legislative or regulatory changes to confirm more flexible investigation procedures, power to enter premises and compel witnesses; and
- enforceable time limits for various stages of case management.

Key Questions:

What impact would these proposed legislative changes have on your operations or mandate?

Are there other legislative amendments which should be considered which would further advance the Commission’s goals of efficiency and effectiveness?

How will the proposed legislative amendments affect you?

Again, these are not exhaustive proposals and will be further developed through discussions with stakeholders.

The Canadian Human Rights Tribunal - Possibilities for Reform and the Problem with Direct Access

It has been recognized that the Commission’s compliance and education functions had been given short shrift over the years. The Review

Key question:

What role should the Tribunal and the Commission play in a reformed complaints system?

Are there other ways by which the Tribunal could become more accessible?

Panel proposed a system of direct access, where the Commission’s complaints-handling function would be transferred to the Tribunal, leaving the Commission free to undertake information and policy work.

The Commission sees difficulties with the direct access model. In many instances, the more litigious approach at Tribunal can drive parties farther apart, rather than bringing them to a solution. The time it takes to bring a complaint from initial filing to final decision at Tribunal can be both lengthy and costly – a fact which raises both efficiency and justice concerns. The remedies needed to address systemic issues cannot always be easily arrived at through the Tribunal process. In other words, although there will always be a need for the Tribunal in a human rights system, not all human rights complaints can be best resolved through the Tribunal. Many types of complaints are better resolved earlier and through other means.

Even under the current system, there are elements of the Tribunal process that, in the Commission’s view, need reform in order to better serve the public interest. The Tribunal process has become increasingly formal, cumbersome and costly through the years. As a result, many cases which are relatively straightforward become protracted over several days or weeks, frequently over a period of months. It is important that the Tribunal consider more effective and efficient means of conducting its inquiries as is contemplated by the legislation.

This raises justice concerns as well as efficiency concerns. The more complex the procedures, the higher the cost to the parties and to the taxpayer. For instance, a complaint which is resolved through alternative dispute resolution at the Commission costs roughly \$4,000. A case which proceeds all the way to the Tribunal likely costs close to \$100,000, including costs to the Commission, to the Tribunal and to the parties involved. In terms of delivering timely and fair justice, and in terms of ensuring an affordable and therefore sustainable system, the Tribunal is not always the best approach to resolving human rights complaints.

Parliament may wish to consider amendments to the legislation to make the Tribunal more accessible. These could include allowing for greater use of non-adversarial procedures already in place in other administrative tribunals, such as case streaming, expedited procedures and use of technology. Parliament might also consider taking up some form of the proposal made by the Federal Review Panel that legal assistance or duty counsel be made available at Tribunal. The Canadian Human Rights Commission has concluded an administrative Memorandum of Understanding with the Tribunal to discuss possible improvements to procedures in both bodies.

PRINCIPLE TWO: TRANSFORMING BEHAVIOUR

Putting the “Human” Back into Human Rights

Discrimination is something that is lived and felt by Canadians in their daily lives. A person with a disability has to ask a stranger for help with a bank machine if the machine is too high to reach from a wheelchair. A woman is sexually harassed by her manager at work. An Aboriginal person is denied a job because of his race. A visible minority member is singled out for differential treatment.

A human rights system needs to be able to answer two simple questions to be credible and effective: What does the victim of discrimination need to begin healing? And what will make the person or the organization responsible for discrimination change its behaviour?

Key Question:

In your experience, what are the best practices which will lead to changing discriminatory behavioural patterns?

The traditional reaction of the Canadian Human Rights Commission and other similar bodies has been to turn to formalized processes to resolve human rights issues – investigation, an adversarial process before a tribunal and binding, formal remedies.

However, formalized processes are not the only way, and often not the best way, to deliver what is just, fair and timely.

The primary goal of a public body like the Canadian Human Rights Commission should be to establish what is and is not acceptable behaviour under the Canadian Human Rights Act. Then, the Commission should work with all parties to find the best way to repair the damage, deal with the issues that led to the discrimination and ensure it does not happen again.

Procedures have to be highly flexible and creative. They have to allow for the active participation of complainants and people responsible for discrimination in finding solutions. They have to be accessible. They should include a range of remedies to repair the harm done to the individual and to address the root causes that led to the discrimination in the first place. Processes need to encourage the development of respectful relationships among the parties.

Alternative Dispute Resolution

Current Situation

Under the Commission’s new approach to human rights, the focus is on finding solutions that are better able to resolve human rights issues and restore dignity. This idea is at the heart of the Commission’s approach to alternative dispute resolution (ADR), described in the section 2003: A Year of Change and Results.

Proposed Legislative Change

The Commission has already taken a number of steps over the past year to strengthen its alternative dispute resolution capacity and to ensure that the public interest is met throughout the ADR process. Areas for possible legislative, regulatory or policy change include measures to make the processes more efficient and effective, such as:

- binding timeliness for conciliation;
- encouraging the development and use

Key questions:

Have you been involved in ADR? How was your experience?

How will these proposed legislative amendments affect you?

Should mediation become mandatory, and if so, in what type of cases?

- of internal ADR mechanisms consistent with human rights in federal departments, agencies and Crown corporations, and federally regulated companies; and introducing the option of binding arbitration.

PRINCIPLE THREE: A COMPREHENSIVE SYSTEM

For a national human rights system to be credible, it must be available to all Canadians who suffer discrimination. This has been recognized by Parliament as, over the years, the meaning of discrimination has expanded to include new groups and new grounds.

Aboriginal People: There are still groups of Canadians who do not have access to human rights protection at the federal level. In 1977, when the Canadian Human Rights Act was first introduced, an exception was included in the legislation preventing Aboriginal people who have suffered discrimination under the Indian Act from filing complaints (s. 67). This means that government action or action by band councils which flows from powers in the Indian Act are exempt from scrutiny by the Canadian Human Rights Commission and the Canadian Human Rights Tribunal. Aboriginal people are the only people in Canada who do not have full access to a human rights complaint mechanism when they encounter discrimination. Until the exemption in section 67 of the Act is amended, they will continue to be unable to file the same range of human rights complaints as all other Canadians.

Social Condition: There are also other gaps in the legislation that the Commission proposes be filled. Chief among them is the addition of “social condition” as a ground of discrimination. Since 1976, when Canada ratified the International Covenant on Economic, Social and Cultural Rights, the government has had an obligation to look at poverty as a human rights issue. In many respects, Canada has fallen short in meeting this duty. The United Nations Committee on Economic, Social and Cultural Rights has commented on the persistence of poverty in our country for particularly vulnerable groups and has called on Canada to “expand protection in human rights legislation . . . to protect poor people . . . from discrimination because of social or economic status.”

The Commission is therefore proposing that Parliament consider adding the ground of “social condition” to the Canadian Human Rights Act to respond to this need. Most provincial human rights codes include grounds related to poverty, such as “social condition” or “source of income.” The idea is that a person’s social condition must not be used to discriminate against him or her. For instance, financial institutions may assume that all people who have low paying jobs are an unacceptable risk for a loan. Or, an employer may impose unnecessary job requirements that deny employment to capable people who have low literacy skills as a result of their social disadvantage.

Key Question:

What are your views on the addition of these proposed amendments to the CHRA?

In the past, it has been proposed that “social condition” be added to the list of prohibited grounds of discrimination in the Canadian Human Rights Act (CHRA). In addition, the CHRA Review Panel recommended a number of other precisions to the grounds, including clarification of the definition of disability, prohibition of mandatory retirement and the addition of gender identity, among others. It was also proposed that references to international human rights standards be added to the preamble

and that the Commission be given the mandate to report on the government's domestic implementation of its **international human rights treaty obligations**. The Commission supports these legislative changes.

PRINCIPLE FOUR: A PREVENTIVE AND FORWARD-LOOKING SYSTEM

Prevention: Future Directions

The Commission is committed to a broader strategy of prevention that seeks to work with the major respondents and assist them in putting in place a culture of human rights in the workplace. The Commission is proposing that departments and other federal entities should ensure that their internal responsibility systems dealing with conflicts in the workplace are consistent with human rights. The CHRA Review Panel, in its proposals regarding internal responsibility systems, suggested that a number of elements be in place. These include policies and programs to promote equality, training for all managers and employees, monitoring and documenting of equality issues, liaison with the Commission and other bodies, and management-labour cooperation to ensure the balance and independence of the internal process.

Key Questions:

What are the elements of a good prevention strategy?

Is the Web a good tool to be used in this area of activity? Are there other communication tools that could be used?

What internal mechanisms have you or would you develop to prevent complaints to the CHRC?

In addition to internal responsibility systems, employers should train managers and employees, and ensure strong workplace policies and awareness of human rights standards and remedies to prevent human rights abuses. The Commission is currently designing a human rights prevention function which will assist employers in this regard.

A Forward-Looking System: Options for Change

A primary objective of human rights legislation is to change persistent patterns of inequality and identify emerging human rights issues. It has been recommended that the Commission should improve its ability to provide qualitative information about the state of human rights in Canada. All of these recommendations point to the need to improve the Commission's policy research capacity.

The Commission's new approach to human rights is guided by a desire to strengthen the information

and voluntary compliance functions. Many of the policy inquiries and studies mentioned above will fulfil the purpose of identifying emerging and pressing human rights issues. Options for new policy tools include the development of human rights impact analysis to allow the Commission, Parliament and other stakeholders to assess the human rights effect of new government initiatives or legislation. Other options include a periodic report on the state of human rights in Canada by developing human rights indicators to allow assessment of progress.

Key Questions:

Which of these proactive tools would be most effective? Are there any other tools or proactive strategies that you would recommend?

What indicators do you consider most critical for measuring human rights progress?

What information would you find useful in a Human Rights Report Card?

PRINCIPLE FIVE: ENSURING GOOD GOVERNANCE

Independence and Impartiality

Current Situation

Part of the mandate of the Canadian Human Rights Commission is to ensure that all employees and recipients of services under federal jurisdiction have access to a system for resolving human rights complaints. As a result of its complaint and audit activities, the Commission is often involved in proceedings where the federal government is a party. In fact, over 50% of signed complaints received by the Commission name a federal department, agency or Crown corporation as the respondent. In addition, the Commission appears before parliamentary committees and other bodies to comment on proposed government legislation and programs.

The independence of the Commission is key. The UN Principles Relating to the Status of National Institutions for the Protection and Promotion of Human Rights (Paris Principles) guarantee the independence and impartiality of national human rights institutions. The concern in Canada is that the relationship between the Commission and government is structured in a manner which can raise perceptions of conflict.

The lawyers who represent the federal government before the Canadian Human Rights Tribunal come from the Department of Justice. This is the same department that approves Commission budgets and Treasury Board submissions. It is also the Department of Justice that is

Key Questions

Is a stronger relationship with Parliament the most viable means of safeguarding the Commission's independence while ensuring strong accountability?

How would this help your organization or support your mandate?

What other means could help safeguard the Commission's independence while ensuring strong accountability?

responsible for proposing amendments to the Canadian Human Rights Act. The Treasury Board is the official employer of all public servants and is implicated in many cases dealing with employment in the public service. The Treasury Board is also the central agency that oversees the Commission's budget and mandates our reporting requirements. Audits carried out under the Employment Equity Act often challenge policies and programs for which the Treasury Board is responsible.

The governance issue is clear – the Commission must often be critical of the government, even opposing it before tribunals and courts. The Commission is not, like a federal department, an instrument of government policy. This calls for a much different system of responsibility and accountability.

Options for Change

The Commission believes that the solution is to strengthen the relationship between it and Parliament in terms of financing and reporting. A strong relationship with Parliament will help to enhance the Commission's independence while ensuring accountability. It will also help to address the "democratic deficit" by increasing Parliament's engagement in the Commission's mandate. Other federal agencies, such as the Office of the Auditor General and the Office of the Chief Electoral Officer, have arrangements that ensure a closer relationship with Parliament. The Commission believes that many of these provisions could apply equally to this organization and doing so would strengthen overall human rights governance.

Coherent Governance

Current Situation

A related issue is the coherence of the overall human rights governance structure. The Canadian Human Rights Act is a fundamental and quasi-constitutional law. It enshrines basic rights that are fundamental to Canadian democracy. Where there is conflict between the Act and other legislation, the Act has primacy. It is therefore important to ensure that the mandate of the Commission is not unduly encroached upon by other agencies or tribunals.

Otherwise, the federal government could develop a patchwork of human rights standards. Depending on which body is interpreting them, the specialized knowledge of the Canadian Human Rights Commission and the Tribunal would not be brought to bear on human rights disputes and the independence of the Commission would be diminished.

Key Question:

How important is it to your organization/mandate for the Commission to pursue means by which to ensure overall coherence with regards to the protection of human rights?

Increasingly, however, the Commission has noted examples of other federal agencies making determinations that, in whole or in part, touch upon fundamental issues of human rights. These decisions are not always made according to the same standards and jurisprudence that would be applied by the Commission or the Tribunal.

Options for Change

The Commission does not believe it should have exclusive jurisdiction over all matters dealing with human rights. Specialized bodies have an important role. The point is to ensure that there is an overall coherence with regard to the protection of human rights. The Commission sees two options to ensure overlap is reduced and coherence enhanced:

- Parliament may wish to consider amending the Canadian Human Rights Act to ensure that the Commission has the opportunity to take jurisdiction, if necessary, to advance human rights when fundamental issues relating to the interpretation of the Act are raised in other fora; and
- the Commission will continue to work with other regulatory bodies, federal departments, agencies and Crown corporations, and federally regulated employers to enhance partnerships, through Memoranda of Understanding such as those concluded with the Clerk of the Privy Council and the Canadian Transportation Agency, to promote implementation of human rights standards.

CONCLUSION

At this stage, the ideas for legislative change set out above are presented as options only. More conversations with stakeholders and with Parliament are required before they can be fully defined. The Commission's aim is to build a system that serves human rights better: one that meets many of the underlying objectives of the 2000 CHRA Review Panel, Promoting Equality: A New Vision, but in a manner which avoids many of the pitfalls of the direct access claims model.