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IN BRIEF

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Human Rights at the Crossroads

The last 50 years have been a period of unparalleled human rights affirmations, both internationally and domestically. The question is: where do we go from here? As we enter a new millennium, it seems appropriate to review the state of Canada's human rights system. Are we heading towards a full-scale realization of human rights commitments, or yet another example of downsizing?

In the aftermath of the Second World War, Canada played a leading role in the development of international human rights standards and instruments. Over the last 20 years, this country has been a signatory to a number of international covenants and conventions seeking to advance a broad range of human rights. The Government of Canada has reflected its international commitments in a constitutionally entrenched *Charter of Rights and Freedoms*, as well as in various laws and social programs. One of the questions being raised by human rights advocates today is: how successfully have these commitments been translated into practice through our domestic legislation, policies and programs? Further, do these measures effectively address the problems of people whose human rights are violated?

The most prominent of Canadian human rights laws are the anti-discrimination statutes that exist at the federal, provincial and territorial levels. While there is some diversity among them, most of these statutes prohibit discrimination on specified grounds (e.g., race, sex, age and religion) in contexts such as employment, accommodation and the provision of publicly available services. Administrative bodies, usually in the form of commissions, investigate, settle, dismiss or refer cases of alleged discrimination to tribunal hearings for consideration and resolution. Of late, these statutory human rights systems have generated much criticism. Surprisingly, critics include those who support or operate within them, as well as those who believe that they should not exist.

Some people oppose anti-discrimination laws because, in their view, fostering special interest groups and accentuating differences among individuals creates disputes, rather than resolving them, leads to instances of reverse discrimination, and ultimately contributes to the breakdown of social order and cohesion. Moreover, it is argued, the creation of special entitlements raises expectations that rights will be met immediately and absolutely – expectations that may be unrealistic, particularly when resources are scarce.

The attainability of rights is also a concern of complainants, respondents and even commission staff, all of whom agree that the operation of human rights commissions across the country is too slow, ineffective and bureaucratic. Some, particularly those seeking equality, feel that the system is still not broad, responsive or tough enough. Part of the problem stems from limited resources. As well, it is argued that commissions are stretching themselves too thin by trying to be all things to all people. Moreover, the commission model (an individualized, complaint-redress mechanism originally designed as a self-contained system prohibiting access to the courts for complaints of discrimination) is said to have become outdated. Giving complainants more control over their cases, with possible access to the courts, has been suggested as a means of alleviating the frustrations of complainants. Many respondents are dissatisfied with what they perceive as the conflicting roles played by commissions in the resolution of discrimination complaints.

Finally, human rights advocates assert that equality is not achieved simply by redressing isolated instances of bigotry; rather, system-wide patterns and practices of unintentional discrimination affecting members of marginalized groups in society must also be addressed. From this standpoint, commissions should adopt a radically different and more proactive approach to eliminating discrimination.

Clearly, if statutory human rights systems are to survive into the next century, governments must respond to the calls for new strategies and legislative change. On 8 April 1999, the Minister of Justice, Anne McLellan, announced the start of a review of human rights protection in Canada. Specifically, the review will consist of an examination and analysis of the *Canadian Human Rights Act* and the policies and practices of the Canadian Human Rights Commission. It will address allegations by the Auditor General in his September 1998 Report that the human rights system in this country has become cumbersome, time-consuming and expensive. The Honourable Gérard La Forest, former Justice of the Supreme Court of Canada, has been appointed to chair a four-person review panel that will conduct cross-country consultations and submit a report to the Justice Minister by 8 April 2000.

SELECTED REFERENCES

Alberta Human Rights Commission. "Equal in Dignity and Rights: A Review of Human Rights in Alberta." Edmonton, 1994.

Gentry, John A. "The Cancer of Human Rights." *Washington Quarterly*, 22:95-112, Fall 1999.

Ontario Human Rights Code Review Task Force. "Achieving Equality: A Report on Human Rights Reform." Ontario Ministry of Citizenship, Toronto, 26 June 1992.

Canadian Human Rights Commission. *Annual Report*, 1998.