

PLENARY SPEECH

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to the Saskatchewan Federation of Labour
“Building Equity through Solidarity” Conference
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GOOD AND GREEN Morning!!

Thank you for the welcome and introduction, Darren. Larry, it's good to see you again - thank you for your interest in the human rights conference on "lived rights" that I chaired recently. Thank you ALL for this invitation to speak in your opening plenary for this groundbreaking conference - this is my first speech as Chief Commissioner of the Saskatchewan Human Rights Commission, since being appointed just a few weeks ago - on November 1st. It's a pleasure to be here on the morning after the valiant Rough Riders claimed the Grey Cup, to explore with you how unions and the Commission can, **and are**, "building equity through solidarity" - for a welcoming, diverse and productive workforce here in Saskatchewan.

First, I'd like to speak briefly about the history of human rights and *The Saskatchewan Human Rights Code*. Then I'll speak more in depth about the Commission's new Equity program, which some of you here today helped us develop.

Canada has a proud - but far from perfect - history of human rights. Fifty years ago, Saskatchewan passed the first general human rights statute in all of North America. It guaranteed the right to freedom of expression, freedom of association (which facilitated the certification of trade unions), the right to be free from arbitrary arrest and detention, and the right to vote in elections. The fledgling United Nations passed the Universal Declaration of Human Rights one year later - in 1948 - derived from an initial draft principally authored by Canadian lawyer John Peters Humphrey, a native of New Brunswick, who worked closely with the founding chair of the U.N. Human Rights Commission, Eleanor Roosevelt. In the U.N. system, once adopted, a "Declaration" is the high-level policy statement that guides development of new international human rights law and policy implementation.

Every major human rights treaty that has been developed since the UN was founded harks back to the Universal Declaration of Human Rights, which called upon member states of the U.N. to adopt and enforce human rights laws in their own jurisdictions. In the coming year, we look forward to celebrating the 60th anniversary of the Universal Declaration with you.

Eleanor Anna Roosevelt said, "Where, after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any map of the world. ... Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world."

The Government of Canada passed its own Bill of Rights in 1960. Commonly referred to as the Diefenbaker Bill of Rights, the bill was a crucial step for our democracy, but it was just a statute, like any other statute and thus - unlike the *Canadian Charter of Rights and Freedoms* we have today, the Canadian Bill of Rights had no constitutional supremacy

and could be easily over-ruled by existing Federal legislation, which itself might be discriminatory.

In the post-U.N. years, human rights activists - including trade unionists - had been advocating agencies to promote and protect human rights in Canada. Ontario set up the first human rights commission in this country. The mandate of the Ontario Commission was to enforce fair employment and fair accommodation practices. The agency also advanced complaints on behalf of complainants who had previously been left on their own to take their cases forward, often unsuccessfully.

In 1972, the Saskatchewan Human Rights Commission was created, and in 1979, all existing human rights laws were codified into one Act, The Saskatchewan Human Rights Code - most recently amended in 2001. The goal of the *Code* is to promote and protect the individual dignity, fundamental freedoms and equal rights of ALL members of the human family.

It's our job at the Saskatchewan Human Rights Commission to discourage and eliminate discrimination against everyone under provincial jurisdiction - in education, accommodation, public services, contracts, publications – and in employment. Pervasive stereotyping, widespread bias, or systemic barriers can cause discrimination. It can arise from policies, practices and expectations that appear neutral but have an adverse effect because of personal characteristics such as country of origin, ancestry, age, sex, gender or disability.

Sometimes, patterns of inequality are rooted in the discriminatory laws and attitudes of the past. It is no longer legal to restrict the mobility of First Nations persons or deny certain jobs to women, for example, but the effects of such practices are still visible in the make-up of today's workforce. As Canadian Louise Arbour, now the U.N. High Commissioner for Human Rights said at the United Nations headquarters in New York recently, "The global interest in human rights is at an all time high, not least because human rights is a language recognized, however grudgingly, by the powerful - allowing individuals to legitimize claims against the backdrop of international law. At the same time, there are profound challenges to human rights. Prime among them is the resurgence of notions that human rights are not necessarily universal, but are to be restricted because of the imperatives of culture, custom, tradition and religion - ideas often raised in discussions of the rights of women and girls."

Discrimination can also be unintentional and indirect - for example:

- "Word of mouth" hiring practices can limit the pool of job applicants to people who are similar to current employees.
- A physical environment designed 40 years ago for male employees without disabilities may now be unsuitable for employees of different abilities, sizes and genders.

The term "systemic discrimination" has been coined to refer to these patterns of exclusion and disadvantage caused by systems, policies and practices. Inequality and

discrimination do not result only from the deliberate actions of a few wrongdoers motivated by malicious prejudice. Discrimination is also built into systems and institutions. It flows from the accumulated effect of many years of doing things in particular ways that exclude and harm individuals and groups, often unintentionally.

The Saskatchewan Human Rights Code protects workers from discrimination and addresses incidents of discrimination through a complaint system which mediates the settlements of complaints, investigates complaints that cannot be settled, dismisses them if they have no merit, or sends them to the Saskatchewan Human Rights Tribunal for a hearing and decision. The Tribunal is an independent, quasi-judicial provincial body that conducts public hearings of human rights complaints.

The Commission itself does not have the authority to order remedies to a human rights complaint or to penalize a person who has violated the *Code*.

More information about these specific protections will be addressed later today and tomorrow in the workshops entitled: “Human Rights are Worker’s Rights – Employees with Disabilities.”

The Commission also protects workers and others from discrimination through public education by means of our popular seminars, workshops to specific groups, publications, including our annual report, involvement with community partnerships, media coverage of human rights issues, and resources on our website. We are excited about our new online equity resources - available in the New Year - with news and events, strategies for equity involvement, and links to other organizations leading on equity.

Historically, unions and human rights agencies have shared many of the same values and aspirations. Sometimes we do find ourselves on opposite sides of some issues. More often, however, we see unions as allies in the fight against discrimination. This relationship was cemented with the Supreme Court of Canada decision in *Parry Sound*, which found that human rights codes were a base of rights inserted into every collective agreement and that union reps could advance human rights claims through the grievance process, including asking for remedies consistent with human rights codes.

Let me turn now to how the Commission and unions are working to build equality in workplaces.

As a province, we face a future of opportunity, challenge and change. Unemployment in Saskatchewan at a 25-year low, but our workforce is aging and significant labour shortages are emerging. Employers will meet greater competition for employees as economic opportunities increase. Consider the following:

- Saskatchewan’s young and growing Aboriginal population will play a crucial role in our province’s future economic well-being.
- Programs are being expanded to attract and retain new immigrants, while some employers are turning to persons with disabilities as a valuable source of labour.

- The law eliminating mandatory retirement in Saskatchewan - effective just last week - will allow older employees to continue working.

So, the good news is that invitations into the workforce are being extended to workers from groups which in the past were marginalized or excluded from employment opportunities.

But...do we need to continue to build upon this trend with more and broader equity initiatives?

For the Human Rights Commission, the reality of an Equity program became possible in 1979 when section 47 became part of the *Code*. It acknowledged that sometimes, in order to correct a historical disadvantage, such as those experienced by Aboriginal people or people with disabilities, special measures are needed to help them to gain equal footing. The *Code* gave the Commission the authority to approve and monitor voluntary special programs that counter disadvantage and pursue equality goals in the areas of employment, public services, accommodation, and education.

Since the first Equity program was approved in 1980, these programs and the anti-discrimination provisions of *The Saskatchewan Human Rights Code* worked hand-in-hand to fulfill the *Code*'s underlying purposes:

- to promote recognition of the inherent dignity and the equal inalienable rights of all members of the human family;
- to further public policy in Saskatchewan that every person is free and equal in dignity and rights; and
- to discourage and eliminate discrimination.

To date, the Commission has used section 47 to approve employment equity and education equity programs reaching out to people in four key groups that have been excluded from full participation: Aboriginal people, people living with disabilities, members of visible minorities, and women. The Commission refers to them as equity groups, and to the organizations with approved programs as equity sponsors or equity partners.

The 1990s proved to be an important developmental period for equity programs. In cooperation with sponsors, the Commission developed best practices, indicators of success, and the core components of effective programs. The accomplishments of these equity programs were particularly remarkable because they occurred during difficult economic times. Employers facing layoffs, retrenchment and downsizing sometimes had limited opportunities to hire equity candidates.

However, by 2002, the Commission found itself challenged to revamp equity programs. In October 2002, the Commission produced a discussion paper entitled *Towards a Culture of Equality, Inclusion and Respect* - as a backgrounder for its review of special programs.

During 2002-2003, the Commission consulted more than 100 groups and individuals through individual meetings, round table discussions, and written surveys which resulted in a wealth of insights and recommendations. After the comprehensive review, fundamental changes were made and the Commission began rebuilding the program based on a more flexible and more open approval process.

In keeping with the consultation recommendations, the emphasis of the new program will shift from approvals and monitoring to capacity building and partnerships.

Although the new equity program builds on the Commission's history and experience with equity programs, it is a major departure from the past. I feel privileged to be arriving as we move to implement the goals of the new program, to promote flexibility, accessibility, expansion, innovation and accountability. The new Equity program offers a simpler, faster process, which takes only a couple of weeks to be approved.

The annual monitoring process has changed as well. Continued approval of an equity program will typically be automatic upon the submission of a brief, standard report in the required format, within requested timelines.

The new approach no longer requires all employment equity sponsors to address the needs of all four traditional equity groups. The new program enables sponsors to limit the number of equity groups they will address, and also allows sponsors to provide programs for new equity groups, if they wish. The Equity program also makes it possible for sponsors to address multiple discrimination that can be experienced by individuals within equity groups. For example, a single-focus program for Aboriginal people should consider the particular barriers experienced by Aboriginal women and Aboriginal people living with disabilities.

In terms of language, some people view diversity as a broader term than equity. However, the Commission sees value in continuing to use the term "equity" to describe its initiatives. In practice, our equity programs share many features of other programs you may be familiar with that promote diversity, inclusion or a representative workforce. The Commission has reclaimed the term "equity" for other reasons as well.

- In financial circles, equity means the value of assets;
- In law, equity means the quality of being just, impartial, and fair;
- The human rights definition encompasses both meanings and also helps keep our eyes on results - we need to see the stats on inclusion increase.

Equity is the principle and belief that all groups are entitled to genuine equality of opportunity and that achieving this ideal will promote social harmony and prosperity. The word "equity" therefore captures the essence of the program, while reflecting both the social justice and business arguments for diversity.

Specifically, Equity programs include positive measures that remove barriers to equality for designated equity groups. For example, a "respect at work" policy may be most helpful to those who are vulnerable to sexual or racial harassment, it also improves the

working conditions for all employees. These are measures which benefit others as well and do not require legal approval.

Equity programs also include special or preferential measures - actions, policies or decisions that take a prohibited ground of discrimination into account in order to reduce disadvantages experienced because of that ground. Because they identify opportunities based on prohibited grounds of discrimination, special measures require Commission approval.

For instance, employers cannot consider ancestry, gender or disability in their hiring decisions – that would be a violation of *The Saskatchewan Human Rights Code*. But an employer with an equity program can choose to consider a prohibited ground when hiring for the purpose of developing a representative workforce and within the context of certain parameters established by the Commission. For example:

- An equity employer may have five qualified applicants for a job opening, including a person with a disability. Because equity plans are voluntary, the employer is not required to hire the equity group member. Nonetheless, the employer may choose to hire the candidate with a disability in order to promote equality goals. In this example, the Commission’s approval makes it legal for the employer to consider disability in the hiring decision.
- Scholarships for students from equity groups, special recruitment initiatives to increase the representation of Aboriginal people, and special access to training for women in non-traditional occupations are also examples of special measures.

Special measures are constitutional, reasonable, necessary and justifiable, because equity programs are dedicated to the same equality goals as the anti-discrimination provisions of the *Code*. They simply use different means of achieving them.

Accommodating measures also remove barriers to equal benefit and participation. The duty to accommodate applies to all persons covered by human rights legislation whether or not they have an approved equity program. While it is not explicitly mentioned in the *Code*, the duty to accommodate flows from general human rights principles and legal concept of “discrimination.” Therefore, employers, unions and service providers must take reasonable steps to accommodate, up to the point of undue hardship.

As Justice Rosalie Abella has explained it: “Sometimes equality means treating people the same, despite their differences, and sometimes it means treating them as equals by accommodating their differences.”

But is the Equity program working? We believe it is - and here’s why...

The SHRC Equity program currently encompasses 38 employers with approximately 43,000 employees, including the Government of Saskatchewan. Preliminary data from the 2007 round of EE monitoring indicates that equity employers have made significant progress towards developing a representative workforce.

Of particular note is the long-term goal for the representation of Aboriginal people in the workforce, which is currently set at 13.9%. Preliminary data indicates the representation of Aboriginal people in the sponsor workforce was 9% in 2006-2007, as compared to 5.2% in ten years ago.

The performance of some individual sponsors has been even better. In 2006-2007, the Government of Saskatchewan, for example, achieved 11.2% representation of Aboriginal people in its workforce of more than 13,000 employees. This can be compared favourably with external markers, such as the proportion of Aboriginal employees in the Saskatoon Health Region which was 2.7% in 2006. Employers who reached or exceeded representative workforce levels for Aboriginal people – for their workforce as a whole – included: Northlands College, Regina Women’s Community Centre, the Saskatoon Community Clinic, the Saskatchewan Gaming Authority, the John Howard Society, and the Prince Albert Cooperative Health Centre.

The Commission acknowledges the proactive role unions have played in addressing issues of equity, including the rights of women, of Aboriginal peoples, of persons with disabilities, as well as leadership on social and economic rights. The Commission looks for union support for its equity program when it is considering an employer choosing to become an equity sponsor.

The Commission is also careful to ensure that equity programs do not override collective agreements; we encourage sponsors to seek modifications of seniority provisions that will protect equity groups from the “last hired, first fired” syndrome, although these must be negotiated by the parties to a collective agreement.

The Commission also takes into consideration if an alternative process, such as a union grievance, would be a more appropriate process for resolving the matter and may defer to that process. We believe that unions are helping to lead the way in developing a labour force founded on cooperation, inclusion and mutual respect.

Unions may find value in supporting an equity employer for a variety of reasons:

- An equity program will help an employer to recruit and retain a diverse and qualified workforce;
- A diverse workforce brings with it energy, creativity, and a competitive edge;
- The knowledge and skills of a diverse workforce will better serve a diverse clientele;
- By addressing historical and systemic discrimination, these workplaces tend to have positive employment practices;
- An equity employer is perceived as a good corporate citizen, which may be especially compelling for public sector employers or employers in regions with a high proportion of Aboriginal residents.

The Commission can assist an equity employer by:

- empowering them to use preferential measures to achieve faster results in the progress of equity (based on s. 47 approval);

- acting as clearing-house of information and resources, because of its developmental, supportive and “monitoring “ role;
- facilitating the development of resources, networks and dialogue providing access to resources including the SHRC Equity site, and use of the Equity seal.

To be successful, equity programs must dismantle barriers to equal participation and take steps to prevent and redress discrimination. Creating a culture of inclusion requires the efforts of many players and stakeholders, including unionized employees.

In closing, I’d like to say that the challenge unions and the Human Rights Commission face together is in developing a culture of inclusion which is committed to the engagement, contribution, and success of all residents of the province.

The Commission, with its broad legislated mandate, is a small agency with limited resources. To fulfill its mandate and improve its effectiveness, the Commission seeks partnerships with other organizations having similar needs or goals. The Saskatchewan Federation of Labour is one of those valued partners we count on to support the kinds of equitable measures needed to achieve full participation by all members of our society.

We encourage your involvement by asking you to educate your members and the public on the importance of equality in the workplace - just as you are doing with this important conference. Let’s continue to work together.

If you have any questions about our processes or our equity program, please call any of us at the Regina or Saskatoon offices. My colleague Commissioners and staff look forward to the further participation of unions as partners, as we move ahead with in our common equity goals of social and economic justice for all.

Let me close with my favourite quote from T.C. Douglas, voted our greatest Canadian in a CBC national poll: “We should never, never be afraid or ashamed about dreams. The dreams won’t always come true and we won’t always make it, but where there is no vision, a people perish.”

Thank you.