



**Submission to the Standing Committee on
Justice Policy regarding Bill 107, Human Rights
Code Amendment Act, 2006**

November 23 , 2006

Introduction

The true strength of a society can be measured in a number of ways. One of the most important ways is how a society treats their most disadvantaged. Ontario showed tremendous strength when it initiated the Human Rights Commission some 34 years ago. Unfortunately, it has abrogated its responsibility in maintaining the timeliness of the commissions' processes since.

For over a decade there has been greater displeasure with the Ontario human rights process. Because of this, OSSTF along with others have recognized that a review of the Human Rights Commission was needed. The context in which the commission was formed has changed since its inception. In this regard, we welcome this engagement but view it with some caution.

Mary Cornish, in her report, recognizes this change and states, "The understanding of equality has evolved significantly since the human rights code was first introduced in 1962. In particular, it is now well accepted and understood that discrimination does not consist of isolated individual acts of intentional discrimination but that the problems of discrimination are systemic-embedded in the systems, structures, and practices of society. In addition, the courts have repeatedly underscored that employers, service providers and governments have a pro-active obligation to build equality into their systems and practices in order to eliminate discrimination."



OSSTF and its role in human rights

The Ontario Secondary School Teachers' Federation (OSSTF) was founded in 1919 and represents over 60,000 members across Ontario. They include public high school teachers, occasional teachers, educational assistants, continuing education teachers and instructors, psychologists, secretaries, speech-language pathologists, social workers, plant support personnel, attendance counsellors, university workers and many others in education.

Our organization welcomes the opportunity to strengthen human rights protection whenever possible. It is the belief of our leadership as well as our entire organization that any level or degree of intolerance, unfair or discriminatory treatment of individuals or groups is unacceptable and must be challenged.

OSSTF, along with its friends in labour, have long played a key role in the struggle for human rights in our society. We have a history of working with the broader community as well and have helped form awareness of the importance of human rights issues in our daily lives and in our schools.



Bill 107 proposes a greater role in the promotion of awareness and compliance in the area of human rights. In this respect OSSTF is uniquely placed as a valued contributor to the ideals of education. As an educational union, we have the willingness and an ability to partner in promoting, creating awareness and understanding in the areas of human rights. Our expertise can be used to develop and deliver positive curriculum in human rights to our younger generations. In this regard we would be an active and eager partner.

Moving forward with reform

As it has been stated already, many groups and individuals share the view that our current system for human rights enforcement and the recognition of complaints needs reform. Delays in receiving a hearing by individuals and the absence of effective remedy are a sad fact of our present system. It is important, however, to approach a solution which does not abandon all aspects of this entity in Ontario.

OSSTF recognizes that the government has taken a bold move forward in bringing change to a tired system and that it has also identified that there is still a role for the commission along with a revised role for the tribunal. At the outset it should be noted that the bill before us is quite unlike that which was developed in British Columbia. The B.C. model is not one that Ontario should emulate, mirror or champion.



Our own vision in OSSTF is one in which we see a well resourced commission that works in the best interests of the public in an aggressive and proactive manner, a commission that can tackle issues of systemic discrimination in a more effective way and a commission that can bring clarity and justice forward in a speedy and just fashion.

There are areas of the bill which we would applaud. One in particular is the inclusion of Section 31.1 which allows for the establishment of such advisory groups as the Chief Commissioner considers appropriate to advise the commission. This inclusion will have the effect of broadening the perspective of the Commission and the Tribunal.

OSSTF Recommendations

The Cornish report has a number of laudable recommendations in which OSSTF would strongly agree. Specifically, the following recommendations would be welcomed:

1. Full independence of the commission and tribunal with respect to policy making and administrative support and public accountability for funding and overall operations. These bodies would report directly to the legislature through a designated minister.
2. The commission would also have the right to report to and appear directly before a legislative Committee on Equality rights.
3. The proposed establishment of an independent Equality Rights Appointment committee composed of persons highly respected for their human rights expertise and independence which would have the mandate to appoint persons with human rights expertise to key positions in the enforcement system (including Commissioners, Chief Commissioners and tribunal chair).



Beyond these recommendations, OSSTF suggests the following eight recommendations which if considered would strengthen this legislation and continue the protections of human rights that now exist in Ontario:

4. The government should clearly identify the resources available to a complainant and guarantee that publically funded representation is available to anyone presenting a complaint to the Human Rights Tribunal throughout all proceedings. Adequate resources are essential if the commission is to perform its functions. Given the revised role of the Tribunal, the Commission should have the ability to properly pursue the elimination of systemic discriminatory practices. It is this role that the commission must now expand. In this regard the Ontario Human Rights Commission (OHRC) should increase the number of public interest complaints it makes on behalf of communities affected by systemic discrimination.
5. The Tribunal must also be properly resourced with skilled human rights adjudicators that should be retained from existing government staff and redeployed as required.
6. In regards to the hearing timelines, we would recommend that everyone who files a discrimination complaint before the Tribunal be given assurances that they will receive a hearing within a twelve month period.
7. Ensure that the Tribunal has the resources and flexibility to provide regional hearings. Regional Offices/Tribunals would be an effective tool in providing access and would have the added consequence of raising the profile of the need for human rights protection.



8. While we welcome the new secretariats we would suggest the addition of an additional secretariat responsible for dealing with discrimination based on sex and sexual orientation.
9. No legal fees or costs should be assessed against complainants. This would most certainly have the consequence of limiting the ability of many to have a just hearing of their complaints. We would also offer that respondents may be charged at the discretion of the adjudicator.
10. We would recommend that no rules or regulations being made by the Tribunal, would take away any existing rights without giving the public notice and a chance for input into those regulations and rules.
11. In the area of enforcement and monitoring, we believe that the commission can continue to play a strong enforcement role and would suggest that this power be expanded so that it may monitor and enforce any remedies which the Tribunal orders.

Conclusion

In conclusion, the status quo is an unacceptable alternative to the changes proposed in Bill 107. What we have now is a system that is widely considered to be flawed. There must be assurances, however, that the necessary and important work of the present commission is expanded and not eliminated.

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