

## FOCUS ON HUMAN RIGHTS

## Will Ontario's human rights reforms achieve reductions in inequalities?

By Mary Cornish  
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The Ontario government has moved one step closer to substantially reform how human rights are enforced in the province as Bill 107 – the *Human Rights Code Amendment Act* – passed Second Reading on June 6. The Legislative Committee on Justice Policy is expected to conduct province-wide public hearings over the summer.

The government has committed itself to achieving an accessible and effective human rights system.

Bill 107 is a major start in that direction, but significant gaps in the Bill must still be addressed to achieve this goal.

The government acknowledges this is a work in progress. Referring to the Bill as “draft legislation”, the premier stated he looked forward to “improving it further” through the committee consultation process. Public hearings on the Bill will enable stakeholders to make submissions on how the details of the system – especially legal services and support – could be developed to ensure access to justice.

Bill 107 establishes what Attorney General Michael Bryant calls a “direct-access-plus-public support” model of human rights enforcement with “three pillars”: the Human Rights Commission, the Human Rights Tribunal of Ontario and a new publicly-funded human rights legal support centre.

Bill 107 draws on the 1992 Ontario Human Rights Review Task Force Report “Achieving Equality” for the basic outline of direct access enforcement supported by a proactive commission, tribunal and publicly-funded legal assistance. However, to date, the Bill has not included some key recommendations needed to

ensure an independent, effective and integrated system. In particular, while Bill 107 sets out the general structure of the first two “pillars”, it does not provide details on the critical third pillar of legal support for human rights claimants. Nor have there been assurances to guarantee the funding necessary for all three pil-

lars.

Bill 107 significantly changes the existing roles of the Human Rights Commission and Human Rights Tribunal of Ontario.

Under Bill 107, claimants will file applications directly with the Human Rights Tribunal rather than the Human Rights Commission. The commission would no longer investigate, mediate or settle complaints, nor would it screen complaints to determine whether the complaint can be heard by the Tribunal.

The commission's re-oriented mandate would focus on proactive efforts to ensure human rights

compliance and to eliminate systemic discrimination, including the power to initiate complaints and to participate in tribunal hearings on issues of systemic discrimination.

The Human Rights Tribunal, which has the power to develop its practices and procedures, will address all complaints through either a hearing or an alternative dispute resolution mechanism which may be developed in its rules. The tribunal's remedial powers will be amended to eliminate the cap on monetary compensation for discrimination.

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### Proactive duty exists for many

#### TRIBUNAL

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The third pillar of publicly funded legal support will be the critical piece in Bill 107's redesign. How these services and representation are structured and how their funding is guaranteed will determine how readily fundamental human rights enforcement can be accessed by those who need the Code's protection.

In introducing Bill 107, the attorney general promised to provide "full access to legal assistance", including information, support, advice and legal representation to all persons seeking a remedy. At First Reading the government committed to "ensure that, regardless of level of income, abilities, disabilities or personal circumstances, all Ontarians would be entitled to share in receiving equal and effective pro-

tection of human rights, and all will receive that full legal representation."

While promised as a cornerstone of the reform, Bill 107 presently contains only a brief provision granting the government power to enter agreements to provide legal and other services which may be publicly funded.

At Second Reading, the attorney general acknowledged that more must be done to shore up this pillar, stating "there's no question that providing public legal support through the human rights legal support office is a critical component of the human rights reforms. ... This is something that needs to be entrenched by way of legislation."

The real measure of success for a human rights system as a whole is whether it can achieve significant and ongoing reductions in the inequalities facing those who are

protected by the *Human Rights Code* and whether it can secure a culture of proactive human rights compliance. This test should provide a useful touchstone as equality seekers review the Bill and assess the alternatives for reform.

As the Bill moves into public hearings, a range of questions arises regarding each of the proposal's three 'pillars'. For example, does Bill 107 give the commission the independence and full range of powers it needs to conduct and require participation in effective proactive inquiries into systemic discrimination? Should the commission have the power to conduct public inquiries — a power that is not unusual for public institutions charged with investigating compliance with legal standards? Are other supports or accountabilities needed to secure human rights compliance, particularly in respect of government's proactive obligations as employer, service provider and policy maker?

What kind of tribunal hearing and dispute resolution procedures will ensure the tribunal can focus on the merits of an application, guarantee natural justice and yet be flexible enough to deal effectively and efficiently with the range of issues and complexities that come before it?

What supports do complainants need to effectively claim their Code rights? How can these services be provided in a way that accommodates the needs of different equality-seeking communities? How can claimants be assisted to obtain and advance the evidence to support their claims? How can community input, independence from government, public accountability and province-wide standards in the system be achieved? How can these services be assured a secure and appropriate funding base?

It is now well-established that employers, service providers, accommodation providers, governments and others who hold

human rights obligations under the Code have a legal duty to secure equality proactively in the absence of any complaint. The human rights system as a whole, then, must not only have a fair and effective way to address and resolve human rights complaints but must also look beyond complaints to set up institutions and policies which will secure compliance without complaints.

Bill 107 and this summer's public hearings present a historic opportunity to work constructively in a non-partisan way to build a solid foundation for advancing human rights into the future.

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