
Ontario introduces “direct access” model for human rights process

On April 26, 2006, the government of Ontario introduced Bill 107, legislation which would overhaul the human rights system in Ontario. The principal feature of the legislation is the elimination of the investigative and screening function currently performed by the Ontario Human Rights Commission and the provision of direct access by complainants to the Ontario Human Rights Tribunal.

FROM INVESTIGATOR AND PROSECUTOR TO HUMAN RIGHTS PROMOTER

Currently, access to the Tribunal is controlled by the Commission, which can take up to a year to commence an investigation of a complaint, and another two before deciding on whether to refer the complaint to the Tribunal. It can take up to five years or more to traverse the entire system from beginning to end. While complainants may find the current system ponderous in its ability to process complaints, they do benefit from the fact that, if their complaint reaches the Tribunal, carriage of the complaint is assumed by the Commission, and complainants generally do not have to hire their own counsel to represent them at the hearing.

If the Bill is passed, the Commission's principal role will involve functions such as advocacy, education, research and analysis on human rights issues. The Commission is also given a particular role in reviewing systemic discrimination in Ontario society and economy, and developing solutions in respect of this discrimination. Consistent with this aspect of its functions, the Commission will retain the ability initiate Tribunal proceedings where it believes that:

- systemic discrimination is occurring that it has not been able to address,
- an order by the Tribunal would address the systemic discrimination, and
- the application to the Tribunal is in the public interest.

The Bill would also establish within the Commission an Anti-Racism Secretariat and a Disability Rights Secretariat. The function of these new bodies will be to research disability and racism, make recommendations designed to prevent discriminatory practices based on race and disability and to conduct public education on these issues.

DIRECT ACCESS TO THE TRIBUNAL

If the Bill is passed, the Commission's screening role in determining access to the Tribunal would be replaced with a direct access model, under which anyone who believes their rights have been infringed can apply directly to the Tribunal for a remedy. The Tribunal will be able to make its own rules governing its procedures, including rules providing for when a hearing is not required, limiting the parties' right to be heard, and regarding the use of alternative dispute resolution.

Currently, the Commission has the power to dismiss a complaint without taking it to a hearing on certain grounds. These grounds have largely been preserved with respect to the Tribunal's power to dismiss complaints without a hearing. The significant change in this regard is that the Tribunal would be able to dismiss the complaint where it is of the opinion that another proceeding has appropriately dealt with the substance of the complaint. Under the existing legislation, the Commission can refuse to refer a complaint where it believes the matter could more appropriately be dealt with under another statutory procedure, such as grievance arbitration.

The new provision would seem to narrow the scope for dismissing the complaint, as currently, the Commission may dismiss a complaint even if no recourse has been made to the procedure that the Commission believes is better suited to deal with the complaint, or if the procedure was utilized and the complainant was unsuccessful. Under the new system, this discretion is limited to only those instances where the matter was, in the Tribunal's view, appropriately dealt with in the other proceeding. Therefore, if grievance arbitration is available, but the complainant did not use it, the Tribunal will not be able to dismiss the matter for this reason alone.

While appearing to allow complainants more than one "kick at the can" in the manner noted above, the new legislation bars the pursuit of a complaint both before the Tribunal and in court, where the relief sought in the court is for damages for injury to dignity, feelings and self-respect. There is no such prohibition in place currently.

The government has also announced an intention to create Human Rights Legal Support Centre to assist those seeking a remedy from the Tribunal. However, although the Bill contains provisions allowing the Minister to enter into agreements to provide and pay for legal services for "applicants and other parties" to Tribunal proceedings, the Bill makes no mention of the proposed Centre.

In Our View

The legislation received second reading on June 6, and the government has announced a public consultation process, including an Implementation Advisory Committee to advise on the development of the Bill. Critics have suggested that, by deferring public hearings until after Second Reading, the debate on the Bill will be much narrower. While both complainant and respondent (which includes employers) groups have expressed frustration with the cumbersome Commission process, it is likely that complainant groups will be more concerned about the fact that the new system will remove the role of the Commission in investigating complaints and taking carriage of them if they are referred to the Tribunal for hearing.

For further information, please contact [Lynn Harnden](#) at (613) 940-2731.

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