

Proposed human rights legislation gets failing grade

by Shelagh Day

For the second time in twenty years, the Government of British Columbia has decided to abolish its Human Rights Commission. If the draft legislation set out in Bill 53 passes, the Commission will be erased again, this time in the name of providing British Columbians with a new, more efficient “direct access” model of human rights enforcement.

A fundamental principle underlying human rights legislation is that eradicating discrimination is in the public interest. Discrimination is not just a problem for the individual that experiences it. It is also an offense against shared public values of equality and fairness for all individuals and groups. Because of this, the elimination of discrimination has been understood to require a many-pronged approach, including education and preventive measures as well as complaint-handling. As well, complaints of discrimination have been viewed not as disputes between private parties, but rather as matters in which the community as a whole has a stake.

However, if Bill 53 is enacted, there will be no body responsible for protecting this public interest, or for undertaking any of the more complex tasks that are designed to prevent discrimination from occurring. Under Bill 53, there will be no independent public body with a mandate to provide education, conduct public hearings, make special reports to the Legislature, deal with systemic discrimination, initiate complaints, investigate complaints, or ensure that complainants receive legal representation at hearings. The human rights system in B.C. will be reduced to a complaint-handling system only, and complaints will become a private matter between complainants and respondents.

What is particularly troubling about this is that human rights advocates who have pointed to legitimate problems with the current system, such as delays and the Commission’s “gate-keeper function” —which permits the commission to dismiss complaints without hearing—have been used by the government to justify eliminating the Commission. But, in spite of using these problems to justify the changes, the government’s proposed legislation fails to do anything about them.

Not only do BC residents lose an independent public body with a mandate to eliminate discrimination, they do not gain “direct access” to the Tribunal, as promised. In fact, the gate-keeper function of the Commission, which is seen to be the barrier to complainants receiving Tribunal hearings on the merits of their cases, is not narrowed or eliminated. It is merely transferred over to the Tribunal. Under Bill 53, the Tribunal will have virtually the same authority to dismiss complaints without hearing as the Commission has now. If the gate-keeper function is the problem, there is no cure for its defects in Bill 53.

In addition, there are aspects of this proposed legislation which will have a chilling effect on potential complainants, particularly the most disadvantaged ones. Costs can be awarded against complainants who lose at hearings; mediation can be made mandatory; a

complaint can be dismissed because a complainant refuses a “reasonable settlement offer”; there is no statutory obligation to provide complainants with legal representation.

This gutting of the current human rights system effectively removes its public interest function and reduces it to a mechanism for the settlement of private disputes. Ironically, it is precisely this kind of narrow, individualized system that the Commission and current legislative framework was designed to correct. The evolution over the past thirty years from a weak model of individual enforcement to a model with an independent and multi-faceted commission was seen as a way to connect the issues of individuals to the larger community, to promote human rights values broadly, and to provide community support for people who had experienced discrimination. Bill 53 takes us back to the past.

Bill 53 appears to have been hastily drafted. If passed, it will do damage to human rights in B.C. and it will not deliver a more efficient and effective human rights system. If any changes are to be made, the Government should hold full public consultations, as the B.C. Branch of the Canadian Bar Association has formally requested. British Columbians deserve better than Bill 53.

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