February 15, 2011

SASKATCHEWAN
HUMAN RIGHTS COMMISSION

Mr. Alex Neve
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Dear Mr. Neve:

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I have received a copy of your recent letter to our province's Minister of Justice and Attorney General, the Honorable Don Morgan Q.C., and have been asked to respond on his behalf. Both the Minister and I thank you for your thoughts regarding Bill 160, which was recently introduced in our legislature.

Recent events across the Middle East remind us that there are pockets of the world where the fight for basic human rights continues. Those of us in free and democratic societies tend to forget that many of our world's populations live without the basic human rights we enjoy. We are lucky and often take our rights for granted.

Indeed, complacency is our enemy. Although our rights and freedoms are well established, they are fragile and require our constant vigilance and care. In Saskatchewan and across Canada, we share a collective responsibility to protect and promote these rights wherever we can, perfect the legislative systems through which these rights are defined and defended, and educate future generations on the democratic values, rights and responsibilities that come with citizenship.

This strong belief has guided our efforts to renew the mandate of the Saskatchewan Human Rights Commission and, specifically, to address the amount of time required to address the issues of complainants.

Over the last year, we have consulted widely and explored best practices from across the country. We have met with over 70 stakeholders who represent the needs of the people we serve. We have conducted an internal assessment of the effectiveness of our operations and programs. We have explored the work of other Commissions, vetted practical solutions and ideas, and identified which ones can be adopted and applied successfully here. The result of this consultation and research is Bill 160 and a renewed direction for the work of our Commission.

First, we want to be efficient and effective in investigation, prosecution, and gate-keeping for complaints of discrimination.

Second we want to see an increased focus on early resolution using mediation, collaboration, and other forms of alternative dispute resolution. That means being prompt and more responsible to people who need our help.

Third, we want to pursue increased systemic advocacy for issues that affect multiple persons or groups.

Fourth, we want to develop a pre-kindergarten to Grade 12 program that teaches citizenship rights, responsibilities and respect in all Saskatchewan schools. At an early age, our children should know that every one of their rights comes with responsibilities to respect and protect the rights of others. We believe some form of citizenship education is needed in our classrooms and, as part of our renewed mandate, we will seek partnerships with educators and school administrators to that end.

As you have noted, one of the innovative changes we have proposed involves the role of the Human Rights Tribunal. We have recommended that its role and function be shifted to the Court of Queen's Bench. Human rights cases shape the way we interpret our rights as Canadians. We believe that judges – whose neutrality and fairness is guaranteed by their judicial independence – are eminently qualified to hear such cases.

As you noted, we are emphasizing case resolution through restorative justice rather than through punitive, retributive justice. We expect to resolve the majority of complaints by alternative dispute resolution, and to resort to prosecution only when necessary.

We want to explore and incorporate a best practice from Manitoba called directed mediation. It is hard to argue with its success. Manitoba settles 98 per cent of its complaints without litigation, prosecution and tribunals. In the last two years, it has conducted only three prosecutions. This should be comforting to those who are concerned about having discrimination claims sent to Queen's Bench for a decision. We, too, will resolve the vast majority of issues long before they require an appearance before any judge.

If prosecution is required, we will continue to provide a lawyer at no cost to the complainant at every step in litigation, up to and including hearings at the Supreme Court. And, in keeping with current practice, the Court of Queen's Bench will adopt a more informal hearing process if it is appropriate to the circumstances. Child protection cases are good examples of where the Court

has been known to relax its rules of procedure and adopt a more informal hearing process.

Created in 2001, the Tribunal has served its mandate, but it has not been without problems. Prompt access to justice was one of the reasons a tribunal model was developed. However, an ongoing challenge has been the time the Tribunal takes to hear cases, deliberate, and render decisions after hearings. The process should serve the people, not vice versa. Under the current model, after investigation by the Commission, there is an additional period of 21 months before first adjudication and the average complaint can take up to three years to be resolved. By any reasonable measure, these delays are unacceptable.

In a 2007 report, the Provincial Ombudsman, an independent officer of the legislature, admonished our province's administrative tribunals (including the Human Rights Tribunal) for not rendering and communicating decisions in a timely fashion. The innovative changes now before the legislature will significantly increase the credibility of the litigation process, reduce the time required to render decisions, and provide an effective, fair and reasoned result.

As mentioned, our consultations have been extensive. We have met with more than 70 stakeholder groups to discuss the proposed changes to the Code. Overwhelmingly, they have embraced alternative dispute resolution over prosecution and litigation. Moreover, they have affirmed the need for substantive structural change.

While there are legal and technical dimensions to our proposed changes, most important is the human impact. The Commission has proposed these improvements through the lens of the people we represent – those who are often voiceless, vulnerable, and marginalized in our community. Citizens want to be heard and to have their issues resolved in a timely and respectful fashion. Their needs, and their needs alone, should be uppermost in our minds as we modernize the system.

As you know, the first Bill of Rights in North America was drafted and legislated by Saskatchewan Premier Tommy Douglas in 1947 prior to the Universal Declaration of Human Rights being proclaimed by the United Nations in 1948 – a compelling, enduring, universal document motivated in large part by the world's response to the senseless tragedy of the Holocaust. Years later, in 1960, Saskatchewan's own Prime Minister John Diefenbaker introduced a Canadian Bill of Rights which was the precursor to the Canadian Charter of Rights and Freedoms.

Saskatchewan boasts a proud legacy of leadership and innovation in the legislation and administration of human rights. As stewards of this legacy, we have a responsibility to protect and promote our human rights and those of our fellow citizens, and to perfect the systems and give them definition, meaning, and relevance for every one of us.

Sincerely,

David M. Arnot
Chief Commissioner
Saskatchewan Human Rights Commission

cc: Honorable Don Morgan Q.C., Minister of Justice and Attorney General