



MAKING HUMAN RIGHTS A REALITY
The Struggle for Human Rights Protections,
at Home and World-Wide

Chief Commissioner Judge David Arnot, SHRC
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1. Introduction

Elders and honoured guests: I would like to begin by thanking Amnesty International and the United Nations Association of Canada for working together with the Human Rights Commission to organize tonight's event.

My topic tonight is "Making Human Rights a Reality: The Struggle for Human Rights Protections." I am happy to be in a gathering of people who are supporters of human rights because it is my belief that human rights protections, where they exist, are fragile.

In many parts of the world, human rights are still unacknowledged and unprotected. Where protections do exist, they are often limited. And – even here in Canada, where there is human rights legislation in every jurisdiction – human rights protections are always vulnerable to attack and neglect. They may be eroded by large and majority interests, by lack of knowledge, and by a lack of opportunities for groups and individuals to express their support for human rights. The struggle to realize human rights and maintain their protection is an ongoing one, and we all have a role to play in that process. We cannot afford to be complacent, or to believe we can rest securely on the accomplishments of the past. But we can take positive actions, and we can have an impact. And that impact can be world-changing and transformative.

In the time that I have been given tonight, I would like to talk briefly about the following subjects:

1. The guiding document we are here to celebrate – the *Universal Declaration of Human Rights*;
2. The process through which its vision is transformed into enforceable rights and protections;
3. Current attacks on human rights protections in Canada; and
4. Some thoughts on how we can continue to pursue – and insist on – human rights protections.

2. December 10th and the UDHR

But to begin at the beginning, tonight we are celebrating the adoption of the *Universal Declaration of Human Rights* (UDHR) by the General Assembly of the United Nations on December 10th, 1948. This document was developed in response to the horrors of World War II, and it reflects a determination to never again allow such atrocities to occur.

The principal author of the first draft was John Peters Humphrey – a Canadian lawyer and native of New Brunswick, who worked closely with the founding chair of the UN Human Rights Commission, Eleanor Roosevelt.

The United Nations' hope for world peace was founded on the belief that peace is only possible if certain basic human rights are recognized and protected. As the opening words of the UDHR state:

“. . . recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

In just 30 short articles, this eloquent and moving document declares the fundamental rights and freedoms of all human beings. It expresses many of the rights now protected by Canadian law. They include fundamental freedoms such as the right to freedom of thought, conscience and religion; anti-discrimination rights; and rights to security of the person and fair treatment by legal authorities. In addition, the UDHR addresses freedom from want, the right to work, the right to an adequate standard of living, the right to education, and numerous other civil, political, economic, social and cultural rights. The Declaration also recognizes that, along with our own individual rights, we each have a responsibility to protect the rights of other human beings. Article 29

speaks of our duties to the community, and of our obligation to secure recognition and respect for the rights and freedoms of others.

3. The Need to Create Protections for Human Rights

The *Universal Declaration* did not create human rights and freedoms – it declared and recognized them. We believe human rights to be inherent, and the essence of our shared humanity. All people have human rights simply by virtue of being born into the human family. As Article 1 states:

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

A person who experiences torture in a distant land has the human right to be free from torture even though he or she may have no immediate or adequate protections from it. However, the gap between human rights and remedies is a world-wide challenge. While declaring human rights to be inherent, the UDHR at the same time recognized the gulf between fundamental human rights, and ways of protecting those rights. In its preamble, it states: “. . . it is essential . . . that human rights should be protected by the rule of law.” The UDHR also calls upon all member states of the United Nations to adopt and enforce human rights laws in their own jurisdictions.

In the UN system, a “Declaration” – once adopted – is a high-level policy statement which guides the development of new international human rights laws and policies. Every major, international human rights treaty developed since the founding of the United Nations (and there are now over 80 of them) harkens back to the *Universal Declaration of Human Rights*. Individual countries may adopt the principles of international declarations, covenants, conventions or treaties, and then create enforceable, “domestic” laws (i.e. constitutional, federal or provincial laws) which reflect those principles.

The process of turning universal human rights principles into enforceable reality can be a long and arduous one. I am by no means an expert in international human rights law, but can give you a couple of examples of how challenging that process can be.

A. The Declaration on the Rights of Indigenous Peoples

This declaration was over 25 years in the making by the Working Group on Indigenous Populations of the UN's Economic and Social Council. After many revisions, the Declaration was ultimately referred to the UN General Assembly for adoption in September 2007. The General Assembly adopted the Declaration by a vote of 143 countries in favour, 4 against, and 11 abstaining. Unfortunately, Canada was one of the 4 countries voting against the Declaration. (The others were Australia, New Zealand and the United States.) Further progress on turning the protections of the Declaration into a reality for Canada's indigenous peoples will have to wait until the government of Canada changes its position.

B. The Convention on the Rights of Persons with Disabilities

This Convention was adopted by the UN General Assembly on December 13, 2006 and Canada was one of the first countries to sign it. However, the government of Canada did not take further action to implement the Convention until December 3, 2009, when it tabled the document in the House of Commons for review and discussion before ratification by Parliament. Ratification, when it occurs, will not make the Convention directly enforceable in Canada, but it will nevertheless be an important statement of commitment to the rights of persons with disabilities.

It should be noted that Amnesty International, an organizer of tonight's event, has been one of the most influential agencies pressuring the Canadian government to ratify the Covenant. Amnesty International is also urging the Canadian government to adopt the Optional Protocol to the Convention, which would make it possible for individuals to file UN level complaints if they believe their rights under the Convention have been violated.

4. Current Attacks on Human Rights Laws and Agencies in Canada and Saskatchewan

And what about the situation in Canada and our own province of Saskatchewan?

Those of you who have had a chance to look through the *Universal Declaration* will have noticed that many of the rights it declares are not yet protected -or

fully protected – by Canada’s provincial, federal or constitutional laws. For example:

- Article 22 declares the right of every person to social security and to the “economic, social and cultural rights indispensable for his dignity and the free development of his personality.”
- Article 25 declares the right of everyone “to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.”

We cannot claim that Canada has adequately fulfilled these promises. Canada’s current legal protections for human rights are limited; they do not yet reflect the full vision of the UDHR.

And – perhaps even more importantly – government and public support for human rights protections has become somewhat unclear. Human rights commissions were established in the 1960s and 1970s in Canada, in an effort to heal the marginalization and injustices experienced by certain groups.

The human rights agencies entrusted with the protection of minorities and disadvantaged groups have always been vulnerable to attack by majority and large interests. But, as I suggested in my opening comments, attacks on human rights agencies have recently reached new and troubling heights. The criticisms of a few prominent detractors – biased, inaccurate and selective as they very frequently are – have unfortunately found traction with a significant portion of the Canadian public. Critics go as far as suggesting there is no longer a need for human rights agencies, and that they should be attacked, “de-normalized” or abolished. These critics suggest that we have pretty much achieved equality in our society, and that “real” discrimination has virtually disappeared, at least in Canada.

Our daily experience receiving human rights complaints tells a different story. These complaints do not involve extreme actions like torture or murder, but the actions complained of can have a profoundly negative impact on peoples’ lives. They also have a profoundly negative impact on our sense of community and on our collective sense of what’s right. They undermine and impair the “common standard of achievement” expressed by the *Universal Declaration of Human Rights* and diminish our understanding of what it means to be a human being. When Saskatchewan enacted its *Saskatchewan Bill of Rights Act* in 1947 – a full

year before the adoption of the UDHR by the United Nations – Attorney General Corman said on introducing the Act: “When my neighbour’s rights are destroyed my own rights are threatened, and the only way . . . to guarantee preservation of one’s rights is to insist on protection for the rights of others.”¹

I’d like to give you a few examples of the kinds of complaints that come to us on a daily basis.

Disability

- A blind person is denied service at an airport by three taxi drivers because his guide dog is not in a carrier.
- An employer refuses to consider ways of adjusting working conditions so that a person with a disability can continue to work.
- An employee who goes on medical leave while awaiting open-heart surgery is terminated after the operation and while she is still on leave. In another situation, an employee is terminated while undergoing chemotherapy for cancer.
- A man who experiences epileptic seizures in a waiting room is handcuffed because his behaviour is perceived as intentionally disruptive.
- An employee with a disability which limits the kind of work he can do is unintentionally prevented by the terms of the collective agreement from ever gaining permanent job status or becoming eligible for disability benefits. He makes a complaint against his employer and his union.

Sex, sexual harassment and pregnancy

- A woman is fired when she tells her employer she is pregnant, or she is denied the right to return to work following maternity leave.
- A woman who complains to her manager about sexual harassment is told to either get along with the perpetrator or leave the company.
- A woman is sexually harassed and stalked by a co-worker who has a romantic obsession with her. When it escalates into aggressive physical behaviour, she approaches the RCMP and obtains a peace bond against the harasser, but it provides her with no protection at work. She seeks support and advice from her supervisors, who do nothing to protect her, and her

¹ Attorney General A.W. Corman, upon second reading of *The Saskatchewan Bill of Rights Act*, 1947.

physical and mental health deteriorates to the point where she must take medical leave.

Aboriginal ancestry

- An Aboriginal woman who is interested in an apartment is told it is already rented. Soon afterwards, it is rented to her Caucasian friend.
- An Aboriginal woman is accused by a store clerk of stealing a coat. The store's security tape shows that the Aboriginal woman was wearing the coat when she entered the store.
- An Aboriginal man with a disability that affects his gait is accused of drunkenness by a grocery store employee who then turns him over to a police officer he has just called.
- An Aboriginal student in kindergarten is teased by other students about his braids and told he should use the girls' washroom. His teacher does not intervene.

Ancestry, racism, place of origin

- An immigrant from an African country is subjected to such severe racial harassment in the workplace that he develops a mental disability.
- A man of Chilean ancestry is racially harassed at work for almost 20 years through anonymous notes and posters, and damage to his equipment and vehicle. Although he has reported the incidents to his manager, no action has been taken to end the harassment.
- A man of African ancestry who has just returned home from work and parked in his driveway is surrounded by police officers who point guns at him, order him to lie on the ground, handcuff him and search his car. They tell him they suspected a "Black" person was going to drop off illegal drugs at a house down the street, but acknowledge that the suspect's car is different from his.

Sexual orientation

- A gay man is fired after disclosing his sexual orientation to his co-workers.
- A man distributes flyers suggesting that all homosexuals are pedophiles.

Family status

- A man is denied time off work to attend the birth of his child, in circumstances where the delivery is expected to be a difficult one.

These are simply a sample of the problems people bring to us, when they are seeking protection from damaging, discriminatory treatment. I could speak at great length about our work – patterns of discrimination, both individual and systemic, how we process complaints (we encourage mediation wherever we can), and the ways we try to prevent discrimination and address it through public education and proactive programs – but that is a talk for another day.

Although we do have certain formal legal protections for human rights in Canada, they must be preserved and made accessible if they are to be meaningful. The importance of legal safeguards against violations is captured in the legal maxim, “There can be no right without a remedy,”² which can be roughly translated as meaning “Where there is a right, there should also be a remedy.”

In Canada and Saskatchewan today, there is a need to expand human rights, and to preserve the protections that we have. We need greater understanding of and support for human rights. And, we need to develop a culture of equality, inclusion and mutual respect through education and dialogue.

5. How Do We Progress Towards the Ideals of the UDHR?

How can we, as groups and individuals, respond to current attacks on human rights laws and agencies, and progress towards the ideals of the UDHR?

I believe some of the answers can be found in the UDHR itself, which is not a dusty, historical document but a call to action that is as urgent today as it was 61 years ago.

In its Preamble, the UDHR calls upon nation states to make human rights a reality in the following ways:

1. through legal protections;

³ This legal maxim (*Ubi jus, ibi remedium*) is commonly understood as meaning that if the law recognizes your right, the law must provide you with a remedy when your right is violated. Otherwise the right is meaningless.

2. through teaching and education;
3. by progressive measures; and
4. by keeping respect for human rights and freedoms “constantly in mind.”

It asks not only nation states, but also “every individual and every organ of society” to strive constantly towards the achievement of human rights and freedoms.

I therefore urge you to add your voices and your actions to the current public debate over the need for human rights protections. Change happens at local, national and global levels, and we have seen that positive change very often begins with the passions and efforts of individual citizens, NGOs, and grass roots organizations.

As Eleanor Roosevelt once said,

“Where, after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any map of the world. ... Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”

Dr. Sa’ke’j Henderson, Research Director of the Native Law Centre at the University of Saskatchewan, gives another positive perspective on the struggle for human rights. Dr. Henderson was very involved in the lengthy process leading to the adoption by the UN of the Declaration on the Rights of Indigenous Peoples, and in *Indigenous Diplomacy*, he states:

“We must . . . place action and hope above memory. The art of achieving the impossible resides in a belief in the unlimited potential of problem solving through human effort, ingenuity and dignity. The vast problems we confront – racial oppression, colonial prejudice, inequality, poverty – yield to the effect of many small solutions. You have to do what’s necessary, then what’s possible, and suddenly you are doing the impossible.”

Eleanor Roosevelt had very high hopes for the recognition of human rights throughout the world. Dr. Sa’ke’j Henderson also expressed hope when he so

skillfully crafted provisions of the Declaration and wrote the compelling words I have just quoted. And I have hope that we can work together to make the promises of the *Universal Declaration of Human Rights* become a reality, both at home and world-wide.

I hope we can do this through protections for human rights. I hope we can do this through teaching and education. I hope we can do this by progressive measures. And I hope we can do this by keeping respect for human rights and freedoms “constantly in mind.” The hope I have is with us here tonight in this room because, fundamentally, the hope I have is in your hearts and minds.

Thank you.