

LEADER-POST

Human rights: we can be a leader

By David Arnot, Special to The Leader-Post December 16, 2010

Professors Ken Norman and John Whyte have taken note of the legislative changes now before our legislature on the role and function of Saskatchewan's Human Rights Tribunal in their Dec. 11 commentary.

They are not alone. Many human rights commissions across Canada are watching our progress very carefully. They, too, are facing challenges with the complex nature and volume of cases before them, and concerned about the amount of time it takes for complainants to have their issues addressed. The innovative changes we have proposed will give us better tools to best serve the people of Saskatchewan. And, when these changes are adopted, Saskatchewan will be a Canadian leader and model of 21st century best practices.

Professors Norman and Whyte are in error when they state the changes we have proposed will strip the Saskatchewan Human Rights Commission's ability to initiate a complaint on behalf of a class of persons experiencing discrimination. An important component of the commission's work is -- and will continue to be -- systemic advocacy. We will retain that power and ability to act on behalf of groups of persons after our reforms have been adopted.

Norman and Whyte raise other issues that require clarification, if not correction.

We have asked for legislative changes to support the "Four Pillars" of a renewed mandate for the 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 responsive to the people who need our help.

Third, we want to pursue increased systemic advocacy for issues that effect 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.

As part of this package of reforms, we are requesting the role and function of the Human Rights Tribunal be shifted to the Court of Queen's Bench. We believe that judges are imminently qualified to hear such cases. These cases are too important to be relegated to administrative adjudicatory bodies overseen by lawyers acting as part-time quasi judges. Human rights cases shape the way we interpret our rights as Canadian citizens. These cases should be heard by full-time judges whose neutrality and fairness is guaranteed by their judicial independence.

We are placing the emphasis on case resolution through restorative justice and away from the punitive approach of retributive justice. We expect to resolve the majority of complaints by alternate dispute resolution, resorting 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. They settle 98 per cent of their complaints by resolution and settlement without litigation, prosecution and tribunals. In the last two years they have conducted only three prosecutions. This should be comforting to those who are concerned about having discrimination claims sent to the Court of Queen's Bench for a decision. In the vast majority of cases, we will resolve the issue long before an appearance before any judge will be required.

If prosecution is required, we will continue to provide a lawyer at no cost to the complainant at every step in the litigation process, up to and including hearings at the Supreme Court of Canada.

And, in keeping with current practice, the court will adopt a more informal hearing process if appropriate to the circumstances. Child Protection cases are good examples of situations where the court has been known to relax its rules of procedure and adopt a more informal hearing process to meet the needs of the parties involved.

Created in 2001, the Human Rights Tribunal has served its mandate, but it has not been without problems. Prompt access to justice was one of the reasons the tribunal model was developed. However, an ongoing challenge has been the amount of time the tribunal takes to hear cases, deliberate, and render a decision after a hearing.

The process should serve the people, not the other way around. Under the current tribunal model, investigation takes approximately 15 months, with an additional 21 months before first adjudication, averaging approximately three years. By any reasonable measure, these delays are excessive and unacceptable given that such cases are inherently stressful for both complainants and respondents. Justice delayed is justice denied. Myopically clinging to a demonstrably broken process does not serve the people well.

The Ombudsman of Saskatchewan, an independent officer of the legislature, in a report dated December 2007 admonished provincial tribunals (including the Human Rights Tribunal) for not providing their 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.

We have met with more than 50 stakeholder groups to discuss the changes we have proposed to the Human Rights Code. They overwhelmingly embrace alternative dispute resolution over prosecution and litigation. Moreover, they have affirmed the need for change.

While there are various legal and technical dimensions to the changes we have proposed, most important is the human impact. The Saskatchewan Human Rights 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 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 for the people of Saskatchewan.

Others are indeed watching, and eagerly awaiting, our next steps. Instead of marching to the beat of other jurisdictions, or remaining stuck in the past, Saskatchewan has an opportunity to lead. Together, we can set a new standard for timely decision-making and citizen service, and become a best practice leader in human rights promotion and dispute resolution.

Saskatchewan citizens deserve nothing less.

- Arnot is chief commissioner of the Saskatchewan Human Rights Commission.

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