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Human rights agency's goal to lead Canada

By David Arnot, Special to Postmedia News December 16, 2010

Following is the viewpoint of Arnot, chief commissioner of the Saskatchewan Human Rights Commission.

Professor Ken Norman recently observed that the Saskatchewan Human Rights Commission is "marching to a different drum" (SP, Dec.3). He is absolutely correct.

The commission has proposed innovative changes to the Human Rights Code designed to give it the tools to provide the best service to Saskatchewan citizens. That is our goal.
Many human rights commissions in Canada, who all face similar challenges with the complex nature and volume of cases, are watching our progress very carefully. We intend to be a leader in the country as a new model of 21st century best practices. 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 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.

As part of these reforms, we requested that the Human Rights Tribunal's role and function be shifted to the Court of Queen's Bench.

We believe that judges are eminently qualified to hear such cases. These cases are too important to be relegated to administrative adjudicatory bodies overseen by lawyers who act as part-time quasi judges. Human rights cases shape the way we interpret our rights as Canadians. These cases should be heard by full time judges whose neutrality and fairness is guaranteed by their judicial independence.

We are emphasizing case resolution through restorative justice and away from the punitive, retributive justice. We expect to resolve the majority of complaints by alternative dispute resolution, and 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 the 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 will adopt a more informal hearing process if that's 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 Human Rights Tribunal has served its mandate, but it's 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 time the tribunal takes to hear cases, deliberate, and render decisions after hearings. The process should serve the people, not vice versa. Under the 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. The provincial ombudsman, an independent officer of the legislature, in a December 2007 report 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 proposed changes to the code. They overwhelmingly embrace alternative dispute resolution over prosecution and litigation. Moreover, they have affirmed the need for 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 have their issues resolved, in a timely and respectful fashion. Their needs, and their needs alone, should be kept uppermost in mind as we modernize the system.

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 complaint resolution.
The drums of change are beating. We are responding to the call.

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