

Saskatchewan Human Rights Commission Bill 160 - Proposed Amendments to the Human Rights Code

Frequently Asked Questions

1. What is the main focus of the proposed changes to the Saskatchewan Human Rights Code?

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, talking circles 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 pre-kindergarten to Grade 12 civics materials and content that teach citizenship rights, responsibilities and respect in all Saskatchewan schools.

In our new direction, 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.

A key part of this package of reforms involves the role and function of the Human Rights Tribunal. We are recommending that cases typically heard by the Tribunal be shifted to the Court of Queen’s Bench.

2. Why the shift from the Tribunal 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.

3. Isn't the court system bogged down as well? Will the courts render a decision on cases in a more timely fashion?

With court oversight and full time judges in place, the Commission expects that most cases will result in a decision being provided in a much more timely fashion. The Tribunal currently is made up of private lawyers who have as their main business their own private law practice. One lawyer is assigned to hear each human rights case. For the past five years the Tribunal average timeframe, from receipt of a complaint from the Commission until a decision is rendered, is approximately 21 months.

4. Doesn't this change mean a more prosecutorial approach to complaint resolution?

We are placing the emphasis on case resolution through restorative justice and away from the punitive approach of retributive justice. We expect to provide several dispute resolution alternatives as a means of settlement of the majority of complaints, resorting to prosecution only when necessary.

We are particularly interested in a best practice from Manitoba called directed mediation. It is hard to argue with its success. They settle 98% 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. See also Question 15.

5. If cases are shifted to the Court of Queen's Bench, will complainants have to pay for their own lawyer?

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.

6. Isn't this shift going to be more intimidating for complainants, now that they'll have to appear in court before a judge?

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.

7. Will all the court rules create a more formal and less flexible process than that of the Tribunal?

Most of the rules of the Court of Queen's Bench will not be applicable to the human rights complaint hearings. Different rules of court apply to different types of hearings. The process will not require exams for discovery as are required for civil actions. There is no reason why the Court will not be able or willing to adopt a more informal hearing process in the human rights context where appropriate given all the circumstances.

8. Specifically, in what way has the Tribunal fallen short of its purpose?

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.

Under the current Tribunal model, investigation by the Human Rights Commission takes approximately 15 months, with an additional 21 months before a decision is rendered by the Human Rights Tribunal, averaging approximately 3 years. By any reasonable measure, these delays are excessive and unacceptable given that such cases are inherently stressful for both complainants and respondents.

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.

9. What consultation on the new legislation was done by the Commission?

Chief Commissioner, Judge David Arnot, along with Commission staff, has met with over 60 stakeholder organizations representing a wide cross-section of Saskatchewan people. There has been overwhelming support from these organizations for a renewed Commission that: speeds up the decision making timeframe and creates more opportunity for alternate dispute resolution of complaints; allows for expanded and more focussed systemic advocacy; and develops a pre-Kindergarten to Grade 12 educational program on citizenship rights and responsibilities for all schools in Saskatchewan.

10. Will the Commission still be able to initiate its own complaints against groups of people?

Yes. Subsection 27(3) is not amended by Bill 160. It is clear in subsection 27(3) that the Commission may initiate a complaint on behalf of any person *or class of persons*. An important component of our work will be systemic advocacy.

11. Bill 160 amends the complaint filing threshold to require that a complaint provide sufficient evidence that reasonable grounds exist for believing that a contravention of the Code has occurred. How will this affect a complainant's ability to file a complaint?

Presently, a complainant may file a complaint where he or she has reason to believe that there has been a contravention of the Code. Under the amendments, any person will still be able to file a complaint with the commission, but whether or not the commission *accepts* the complaint will depend on if sufficient evidence is provided that reasonable grounds exist for believing that a contravention of the Code has occurred. The assessment of whether sufficient evidence is provided will be made by the commission. The commission will request more information from the complainant in order to meet the threshold if enough information is not provided initially.

12. Will the Commission continue to make decisions on complaints independently from other government authorities?

Yes. The Commission is independent and the Chief Commissioner makes the decision as to whether a case has merit in consultation with Commission staff in a case management process with input from staff Lawyers, the Supervisor of Investigations, one or more Investigators, and at times the Policy and Research Coordinator. These decisions are largely reached by consensus but ultimately the Chief Commissioner is responsible for the final determination. The Commission steadfastly protects its independence and the integrity of its processes. There is never any consultation with any other government ministry or board regarding decisions on cases.

13. Why was the time frame for filing a complaint lowered to one year?

Investigation staff at the Commission have long noted that complaints filed after one year has passed are more difficult to investigate and less likely to be proven. People's memories have faded and information or records may no longer be available. The Commission needs to be wise in its use of resources. The majority of provinces have a one-year time frame for making a human rights complaint at present. Manitoba, a province very similar demographically to ours, has a six- month timeframe.

14. Where will complaint hearings be held?

Complaint hearings could be held in one of 11 judicial centres in the province where the Court of Queen's Bench holds hearings. Only 3 human rights hearings have been held outside of these 11 centres in the past 5 years.

15. Will this change to the court create additional cost for the Commission?

The Commission anticipates that the added measures for dispute resolution will result in more cases being resolved prior to a hearing, thus incurring significantly less cost for the Commission. Faster complaint settlement results in substantially less cost.

The Manitoba Human Rights Commission, which has over ten years of experience with a directed mediation process, generally sees only one or two cases a year going to the Board of Inquiry (tribunal). Manitoba's experience

with exit surveys once a case is settled shows that, by a large margin, both complainants and respondents are pleased to have negotiated their own settlements rather than having an outside adjudicator impose a settlement.

16. Will cases be dismissed before a hearing for financial reasons based on a lack of funding within the Commission budget?

No, in cases of insufficient funds for litigation, the Commission has requested additional funds from government and has always received them.

17. Does the new section 25.1 create a new financial arrangement between the Ministry of Justice and the Commission?

No. The new section simply lays out the current financial practices as they have been in place for several decades. Commission funds have long been provided annually through the Ministry of Justice and Attorney General budget appropriation, as approved by the Legislature. Section 25.1 codifies the current practice that the Commission will have input into the budget process and provides that once funds are made available to the Commission it can determine how those funds are spent.

18. Will the Court of Queen's Bench be able to hear the same type of evidence as the Tribunal and provide the same remedies for discrimination as the Tribunal can?

Yes. The Commission was careful to preserve for the courts the ability to call the same evidence and provide the same remedies.

19. The review option is being eliminated. Doesn't this give the Chief Commissioner too much discretion and isn't this unfair to complainants who are not satisfied with the Chief Commissioner's decision to dismiss their complaint?

The Commission has developed internal processes to thoroughly review and rigorously consider a complaint. After receiving a complaint, the Commission will follow its established procedures to determine if a complaint has merit prior to pursuing an investigation, resolution, hearing or dismissal. Many individuals at the Commission are involved in this process. The final decision to either dismiss a complaint or direct a complaint to a hearing is reached at a final case management meeting. Ultimately the Chief

Commissioner is responsible for the final decision. The SHRC steadfastly protects its independence and the integrity of its processes. More information on the decisions made on complaints is provided in questions 11 and 12.

If a complaint is ultimately dismissed and the complainant is not satisfied with the Chief Commissioner's decision, he or she may make an application to the court for judicial review of the decision at his or her own cost. If successful on the judicial review, the commission would represent the complainant at any further hearing or appeal, and the commission would bear that cost. The Commission understands that judicial review applications can be costly and is exploring options for assistance for complainants with limited financial means to receive legal advice.
