www.minnews.org

Blunt Talk About The New Human Rights Legislation

Dr. Lorne Foster
July 27, 2006

Are you *sure* your son will never be rejected for a job because of the colour of his skin, his religion or how his last name sounds? Are you *sure* your wife, sister, or daughter will never be sexually harassed by her boss or a coworker? Are you sure you will never develop diabetes, cancer or any other disability in your working life? If you are ***sure*** these circumstances will never enter your life, then stop reading right now. Do not give a second thought to the up-coming hearings on Bill 107.

If you are at all concerned about your right to work, your family's well-being, or your children's future, then be prepared to attend the committee hearings on Bill 107 and the new "*Direct Access Human Rights*" system that are scheduled for London, Ottawa, Thunder Bay and Toronto.

The London, Ottawa, and Thunder Bay hearings will take place immediately following the long-weekend in August on the 8th, 9th and 10th respectively. The dates for the Toronto hearings are being set for late September.

The importance of these upcoming hearings to the future of Ontario in particular and multicultural Canada as a whole cannot be overstated. Yet the profound gravity of this historical moment is at risk of being lost in a barrage of misstatements, political opportunism, and flawed vision.

Before you attend the hearings, be advised that the public discourse from the proponents of the Bill has been filled with deflective arguments about the inefficiency of the current system, and seductive imagery about the "modernization" of human-rights delivery – obscuring the overriding importance of human rights protections.

If passed, complainants and respondents will lose the right to a public investigation by the Ontario Human Rights Commission, currently armed with legal powers to search and compel evidence from an employer or business. Instead, Bill 107 would see a complaint go directly to the Ontario Human Rights Tribunal without investigation; the bill provides no statutory guarantee of legal support through the complex process. In addition, Bill 107 gives the Tribunal sweeping powers to toss out a complaint, to charge the individual for filing it, as well as

dispensing other costs and fines beyond legal expenses. The bill also takes away the broad right of appeal – severely limiting recourse if a verdict is felt to be unfair. And the bill virtually wipes out the Human Rights Commission's authority to intervene in individual cases, to bring systemic issues before the Human Rights Tribunal and to ensure public interest remedies form part of a settlement.

The fact is, direct access bureaucracy is not new to the Canadian experience, and for proponents of the bill to present it as such only diverts the public discourse from the relevant information needed to ensure sound judgments in social policy.

Canadians in Ontario and elsewhere need only consider the state of our immigration system to understand the implications of a direct access bureaucracy. The 1967 Immigration Act (and the formal introduction of “the point system”) created a direct access selection grid for skilled workers. Every independent application for permanent residence, regardless of the country of origin, is now given universal accessibility to the immigration system. The particulars of every case are determined on the basis of criteria related to education, age, language abilities, employment experience, arranged employment, and adaptability. In the last forty years this has resulted in a significant influx of visible minority immigrants. While the country has arguably attracted one of the most highly skilled workforces in the world, many immigrants of colour are still unable to obtain work that matches their education and past experience. An estimated six out of ten immigrants from non-traditional, non-White source countries take jobs outside their fields of specialization. So, we now have a country where neurosurgeons end up driving taxis and PhDs deliver pizzas. Direct access immigration has lead to a non-racist selection system that is rife with racialized consequences and outcomes for newcomers once they arrive.

Direct access bureaucracy has already taught us that there is a difference between equal treatment and equal justice in a mixed society. The proponents of Bill 107 have promoted the seductive illusion of giving everyone their “day in court” – ignoring the power and social structure disparities that cause them to be in court in the first place. This so-called equal treatment model will inevitably result in unequal consequences imposing a new layer of disadvantage on those who are already disadvantaged.

Critics of Bill 107 argue that the Ontario's human rights system has a duty to accommodate as well as to be accessible. Under the accommodation model, an effective human rights system depends upon empowering the people who experience discrimination by giving them the tools to take charge of their lives. So, rather than merely guaranteeing a “day in court,” legislative reform should ensure a “fair hearing” – streamlining the Commission and introducing a well-funded, hybrid or two-pronged process that provides user-options and maintains the true democratic integrity of the human rights process. In other words, if we are serious

about effective reform, it is suggested Ontarians should think about giving claimants the choice to move forward to the adjudicative stage, or to avail themselves of the expertise in the Commission's human rights jurisprudence and investigative resources.

In a dynamic multicultural and multiracial province, where people are separated by vast socioeconomic inequities, the understanding of discrimination is an emerging process that makes the reform of our human rights system an absolute necessity. In order to meet the needs of Ontario's rapidly changing and increasingly diverse population, the true challenge of a modern human rights system is to craft legislation in a way that recognizes the overriding importance of human rights protections, and that is flexible enough and fluid enough to allow for evolving knowledge and new insights about human rights and discrimination.

We don't need a new vision of human rights. We need to find new ways to embrace and preserve the extraordinary vision that we already own.

Lorne Foster is a professor of Public Policy and Administration at York University who teaches in the areas of social justice and human rights studies.