



What Does the New Human Rights Legislation Mean for People Of Colour

By Dr. Lorne Foster

The McGuinty government's recent legislation to “modernize” Ontario's human rights system has now been forwarded for second reading in the Legislature. The new model is purported to be a more open, accessible and faster complaint resolution process, where applications are made directly to the Human Rights Tribunal for adjudication. This eliminates the Commission's investigation and compliance functions which have been in place for forty years.

Given that the Ontario Human Rights Commission's own statistics indicate that 30% to 40% of complaints filed each year are based on “race” or race-related grounds, one might legitimately wonder: How does Premier McGuinty's new and improved “Direct Access” human rights system intend on meeting the needs of Ontario's rapidly changing and increasingly diverse population?

What does “Direct Access” mean for racialized communities?

People of colour come from diverse socio-economic backgrounds, that include the working poor to highly skilled professionals. Many people of colour, even foreign-trained professionals, fall into the category of the economically vulnerable.

For instance, picture this: you are a neurosurgeon originally from Iran who drives a taxi cab; or a nurse from the Philippines who is a live-in caregiver; or a university professor from Uganda working as a court interpreter. You may not be familiar with the legalese. English is your second or third language, and you probably speak with an 'accent.' Do you have enough money to hire a lawyer? Probably not. You're the working poor so you don't qualify for legal aid. Therefore, you have to draft your own complaint of discrimination against your employer, and you tell it like a story. Your complaint is served. Your employer's lawyer responds to your complaint with a fifteen page answer and two inches of supporting documents. The package sets out that you were fired for cause, and accuses you of being an inveterate liar, and charges that your complaint is vague.

That is how direct access begins. You are caught in an immediate power imbalance. What do you do now?

If the Liberal government has its way this will be the new human rights system in Ontario – a legal maze that traps people of colour, and instead of protecting their human rights disempowers them. Will there be road maps? Will there be signposts along this yellow brick road? Then how do you get the Wizard of Oz to hear your complaint? You have to do more than simply click your heels and make a wish.

The preamble of the human rights code states that we are to respect the dignity and worth of every person. Yet, a system of human rights that leaves individuals to navigate the process on their own, or have to hire a lawyer to help them navigate, is a policy of erosion not inclusion. It is an incremental degradation of benefits and services that have taken forty years to accrue. Using the term “progress” to define a restriction of public services is outright misleading and potentially harmful in a mixed society.

The irony is, those who are now talking about changing human rights are not the ones who need protection. Human rights protections mean nothing to people who have never experienced the trauma of racial discrimination, and this is why they can afford to be academic. For people of colour, the affirmation of human rights is not merely an abstract proposition, it is a cornerstone of a full and complete existence.

For people of colour, the Ontario Human Rights System is a sacred trust and legacy bestowed to them by parents and grandparents who at great sacrifice fought to break down systemic barriers, because they knew their children's' lives and futures depended on it.

The government must be made to understand the concerns of racialized communities that a restructured human rights system cannot solely rely on the privileged suppositions of direct access. Because of the historical foundations of racism, people of colour must have options for enforcing their human rights. Those options should include mediation, investigation and compliance mechanisms. Any new structure must ensure that human rights gains achieved to date are not clawed back by Bill 107. For the reality is, if passed, the new legislation will allow the government to walk away from its international and historic obligation to promote and protect human rights.

In an exclusive interview with Share, Premier McGuinty did not promise the broad based public consultations that many have demanded, but did assure there would be opportunities for the government to hear the publics' concerns. No matter how small this opportunity, it is critical that the voices of people of colour are not silenced or ignored. Earlier generations bore the burden of breaking down barriers to equality and securing our human rights entitlements. It is now our burden and responsibility to our children and future generations to safeguard these hard-fought gains like their lives depend on it.

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