

Alberta Human Rights Commission abdicating its mandate

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A troublesome and disheartening occurrence has come to public light: the Alberta Human Rights Commission is writing to complainants advising them that investigators cannot be assigned to handle their complaints due to "heavy staff loads, staff changes and a large backlog." (The chief commissioner has confirmed that at least 25 to 30 such letters have been sent to complainants.) In effect the commission is abdicating its legal mandate to process complaints expeditiously and in a timely fashion. Commission staff are reluctant to speak out publicly (which is understandable given the present lack of job security in the government) or to give precise estimates of anticipated delays. However, some staff estimate that a minimum five-month backlog can be expected. Given that prior to the delay it took about 1 1/2 to two years to reach the hearing stage before a board of inquiry, the addition of five months to this process is unacceptable. (Prior to this, about 50 per cent of complaints were settled within six months and almost 45 per cent were settled within a year.)

The delay constitutes a violation of the complainants' rights. First, the Supreme Court has made it clear that a person can-

not sue in civil court for discrimination but must proceed through the commission. (There are other civil remedies that may be open to complainants to pursue through the courts.) Accordingly complainants do not have an option of bypassing the commission on the issue of discrimination. Second, the well known expression that "justice delayed is justice denied," has been recognized by the courts in the human rights context. The courts have held that delays can be detrimental to the respondent and a violation of the respondent's charter rights to a fair hearing. Accordingly, delay by the commission can result in the summary dismissal of the complainant's case, particularly in the case of sexual harassment complaints.

Another disturbing element of the commission's letter is that the "heavy staff loads, staff changes and a large backlog" have been caused by the actions of the government. When Dianne Mirosh assumed the portfolio of minister responsible for the commission in 1993 there had been no backlog. Mirosh spoke publicly about the abolition of the commission. Further she refused to fill the position of the chief commissioner through the public competition process advocated by the past Conservative government. Mirosh did not hide her anger at the decision by the com-

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mission, then, to process complaints on the basis of sexual orientation. Due to public outrage over her comments the government took the position that it would not abolish the commission, but would place it under review.

Accordingly, taxpayers should ask what is the purpose of the review and what's the cost?

The commission is expending about \$200,000 on the process of reviewing its workings and preparing its report. Operational monies have been redirected towards the review. In other words, staff who used to process complaints are working on the review. Such actions can only result in a backlog in case processing being the "bread and butter" work of the commission.

How committed is the government to implementing positive recommendations of the report? The facts are as follows:

- The government bypassed the commission and wrote directly to commission staff advising them not to process complaints on the basis of sexual orientation in direct contravention of the commission's decision to process the same.

- The government refused to renew the term of the past chief commissioner who raised the profile of the commission and implemented positive changes to the commission.

- The process of open competition for his replacement was abolished in an effort to eliminate committed and competent persons from implementing positive changes in the workings of the commission (as opposed to reviewing the commission).

- The government has allowed the seven-person commission to dwindle to two men. (There is no representation for aboriginal persons, women, visible minorities, the disabled on the commission).

- The government has not yet filled commission vacancies although the positions were advertised last December and the review report will be completed shortly.

- Government members and ministers still openly advocate the abolition of the commission.

- The government has decided to appeal the Delwin Vriend decision which confirmed that sexual orientation is a protected ground in the act.

- Government members are threatening to invoke the notwithstanding clause of the Charter of Rights and Freedoms to bypass the Vriend decision and are speaking openly of abolishing the charter.

Given these facts one can only deduce that the government is not interested in reviewing the commission to strengthen its mandate. On the contrary, the government is taking all possible steps to undermine the commission.

Accordingly taxpayers should question allocation of their monies to the creation of this review and report. They should be especially cautious given that the review process has threatened the processing of valid and substantive complaints of discrimination which have been frustrated due to political and administrative hostility and may not stand the test of time. Accordingly the government will have succeeded in doing indirectly what it cannot do directly: it is submitted that the government cannot by law legislate the demise of the commission (courts have unanimously held that human rights laws are "near constitutional" and "fundamental" laws). However, resource allocation and political control of the commission's workings by the government can achieve the same results without the political and legal risk of the first alternative.

Shirish P. Chotalia is an Edmonton barrister and solicitor who is representing a client who recently received such a letter. He is also a former member of the Alberta Human Rights Commission and author of the recently released text, The Annotated Canadian Human Rights Act 1994.