

THIS MATERIAL HAS YET TO BE APPROVED  
BY MR. BASFORD

THE CANADIAN  
HUMAN RIGHTS  
BILL

QUESTIONS and ANSWERS

From: The Honourable Ron Basford, Q.C.,  
Minister of Justice and Attorney General of Canada

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Q: Why have a Human Rights Act at the federal level?

Although every provincial government has laws prohibiting discrimination in employment, accommodation and supply of services, and enabling Human Rights Commissions to be established, there is no such body of laws at the federal level. Existing anti-discrimination provisions of federal statutes and regulations are comparatively fragmentary on human rights. The Bill of Rights, for example, in effect provides criteria for interpreting federal statutes, not regulation of personal or official conduct. There is partial regulation of discrimination in employment in the private sector under federal jurisdiction, but no Act about discrimination in government employment or with respect to federally-regulated services and accommodation. The Canadian Human Rights Bill is designed to improve upon this partial protection and close off any gaps.

Q: What is the relationship between the Canadian Bill of Rights and the proposed Canadian Human Rights Act?

The Canadian Bill of Rights provides rules for the courts and officials to follow in interpreting federal laws. It does not provide rules for individual behaviour or impose any sanctions. The Canadian Human Rights Act is designed to establish comprehensive legislation at the federal level prohibiting discriminatory conduct by officials and private individuals in the federal domain, providing machinery to stop these practices and remedy injury done by such practices.

Q: Who would be protected by the Bill's provisions about Human Rights?

All persons dealing with or employees of federal government institutions or agencies or private companies under federal jurisdiction. This includes interprovincial transport companies, airlines, railways and chartered banks.

...2

Q: Why is discrimination against homosexuals not covered by the Bill?

While the Bill was being drafted various individuals and groups urged that sexual orientation should be included among the prohibited grounds of discrimination. On the basis of experience in other jurisdictions it was decided that the Canadian Human Rights Commission's work should be confined at the outset to areas of discrimination where a considerable body of precedents and experience already exist. Sexual orientation is not a prescribed ground in provincial legislation in Canada, nor in the States in the United States, and it was decided not to include it in the Bill. Of course, as the Canadian Human Rights Commission accumulates experience it could in time seek amendments to authorize extension of its role in other areas such as sexual orientation.

Q: The new Bill introduces the concept of "equal pay for work of equal value" while the previous Bill referred to "similar work". What is the difference in the practical implications of these two concepts?

The previous formulation based on equal pay for similar work meant that many women, for example, were in lower paid jobs because the jobs traditionally were not similar to jobs men traditionally do, even though both jobs might be of the same value in terms of difficulty, training required, etc. For example, in a trucking firm women may typically only be hired for office jobs and men are hired as despatchers. The jobs are probably not "similar" under the present law and therefore the equal pay requirements wouldn't apply. Under the new Bill it will be possible to compare the two jobs to see how they compare for skill, responsibility, and conditions of work to determine if they are of equal value.

Q: If I think I am being discriminated against by any of the organizations covered by the Bill, what should I do?

File a complaint with the Federal Human Rights Commission. They will investigate.

...3

Experience of other countries and of provincial governments in Canada indicates that it is desirable at the outset to seek a solution that would be acceptable to all concerned. This, therefore, is the approach adopted by the bill. If investigators find that your complaint is justified, efforts will be made to resolve the matter as effectively and quickly as possible. In some cases, it may be considered appropriate to assign a trained conciliator as an initial step after the investigator's report has been received.

In those cases where initial intervention fails to bring about a solution, the Commission will appoint a Human Rights Tribunal to inquire into the complaint. This Tribunal would consist of from one to three persons with knowledge and expertise in the human rights field.

If a tribunal to whom a complaint has been referred finds that the complaint is substantiated it may order the offender

- to cease the discriminatory practice,
- to take measures to prevent the same or a similar practice from recurring,
- to make available to the victim on the first reasonable occasion the rights, opportunities or privileges that were denied, and
- to compensate the victim for any or all wages that he or she were deprived of plus any expenses incurred by the victim as result of discrimination.

In addition to the order the Tribunal may order the offender to pay the victim special compensation up to \$5,000 if the Tribunal finds that the offender was wilful or reckless in engaging in the discriminatory practice or if the Tribunal finds that the victim has suffered in respect of feelings or self-respect as result of the practice.

For purposes of enforcement the order of a Tribunal to cease a discriminatory practice and to pay compensation may be made an order of the Federal Court and is then enforceable by proceedings for contempt in the same manner as an order of the Federal Court.

An Order of a Tribunal is subject to review by the Federal Court of Appeal under the Federal Court Act.

...4



Q: Would equal opportunity or special advancement programs be legal under this bill?

Yes. The bill would permit and encourage the carrying out of special programs, plans or arrangements designed to overcome long-standing imbalances, such as existing racial patterns of employment.

Q: How does your treatment of hate messages differ from that presently in the Criminal Code?

The Human Rights Bill provides a much simpler technique to deal with the problem. The complexities of the criminal law procedure, including the delays involved in any criminal prosecution and the difficulties with proving the intent of the accused, are avoided by the mechanism of complaint to the Human Rights Commission.

Q: How will the hate message provisions be enforced?

The proof of the newly-created discriminatory practice would not be obtained by wiretapping or anything resembling snooping. The existence of the repeated telephone message can be established by anyone who dials the relevant telephone number.

Q: What organizations would be covered under the personal information section of the bill?

The eighty-nine federal government institutions and agencies are set out in a schedule appended to the Bill. They are, in alphabetical order:

...5

### *Departments and Ministries of State*

Department of Agriculture  
 Department of Communications  
 Department of Consumer and Corporate Affairs  
 Department of Energy, Mines and Resources  
 Department of the Environment  
 Department of External Affairs  
 Department of Finance  
 Department of Indian Affairs and Northern Development  
 Department of Industry, Trade and Commerce  
 Department of Insurance  
 Department of Justice  
 Department of Labour  
 Department of Manpower and Immigration  
 Department of National Defence  
 Department of National Health and Welfare  
 Department of National Revenue  
 Post Office Department  
 Department of Public Works  
 Department of Regional Economic Expansion  
 Ministry of State for Science and Technology  
 Department of the Secretary of State  
 Department of the Solicitor General  
 Department of Supply and Services  
 Department of Transport  
 Treasury Board Secretariat  
 Ministry of State for Urban Affairs  
 Department of Veterans Affairs

### *Other Government Institutions*

Agricultural Stabilization Board  
 Atlantic Pilotage Authority  
 Atomic Energy Control Board  
 Auditor General  
 Belleville Harbour Commissioners  
 Bureau of Pension Advocates  
 Canadian Dairy Commission  
 Canadian Film Development Corporation  
 Canadian Grain Commission  
 Canadian International Development Agency

Canadian Livestock Feed Board  
 Canadian Patents and Development Ltd.  
 Canadian Penitentiary Service  
 Canadian Pension Commission  
 Canadian Radio-television and Telecommunications Commission  
 Canadian Saltfish Corporation  
 Canadian Transport Commission  
 The Canadian Wheat Board  
 Central Mortgage and Housing Corporation  
 Crown Assets Disposal Corporation  
 Defence Construction (1951) Ltd.  
 Export Development Corporation  
 Farm Credit Corporation  
 Fraser River Harbour Commission  
 Great Lakes Pilotage Authority  
 Industrial Development Bank  
 Laurentian Pilotage Authority  
 Law Reform Commission of Canada  
 Medical Research Council  
 National Arts Centre Corporation  
 National Battlefields Commission  
 National Capital Commission  
 National Energy Board  
 National Harbours Board  
 National Library  
 National Museums of Canada  
 National Parole Board  
 National Research Council  
 Office of the Custodian of Enemy Property  
 Pacific Pilotage Authority  
 Pension Review Board  
 Prairie Farm Assistance Administration  
 Prairie Farm Rehabilitation Administration  
 Privy Council Office  
 Public Archives  
 Public Service Commission  
 Restrictive Trade Practices Commission  
 Royal Canadian Mint  
 Royal Canadian Mounted Police  
 St. Lawrence Seaway Authority  
 Science Council of Canada  
 Standards Council of Canada  
 Statistics Canada  
 Superintendent of Bankruptcy  
 Tariff Board  
 The Hamilton Harbour Commissioners  
 The North Fraser Harbour Commissioners  
 The Seaway International Bridge Corporation Ltd.  
 The Toronto Harbour Commissioners  
 Unemployment Insurance Commission  
 Uranium Canada Ltd.  
 War Veterans Allowance Board



Q: If I want to exercise my rights under the bill with respect to personal information, what should I do?

After the Bill becomes law, the government must publish an annual list of its information banks containing personal information.

This information would include the name of the person responsible for providing access to any particular bank.

The index would be available throughout Canada. First check the index to determine the bank or banks of interest to you, then apply to the person named for each bank in the index, asking for access to your file.

You are then entitled to find out what information is on the file, to request corrections where you believe errors exist and to find out for what purposes the information has been used since the coming into force of the part of the act covering personal information.

Q: What if I am not satisfied with the handling of my request for information?

A Privacy Commissioner would be created by the bill to receive complaints by individuals who allege they are being refused their rights under the act. The Commissioner would be a member of the Human Rights Commission especially designated for this purpose and would perform an ombudsman-type role. The Commissioner would have wide powers to investigate fully any complaint received, including the power of a court to obtain documents and other pertinent material from the government. The Commissioner would be required to report at least once a year to Parliament and to include in the report any difficulties that may have arisen with respect to personal information rights. If the Commissioner found a complaint justified, he would first report his findings to the minister responsible for the information bank. He may make recommendations about what steps the minister should take to rectify the situation. The Commissioner may also request that he be informed within a specified time what action has been taken. After this, he reports to the complainant. The Commissioner could also make reference to the complaint and its handling in his annual or special Reports to Parliament.

...7



Q: If I am not satisfied with the treatment I receive from a government institution why must I take my case to the Privacy Commissioner rather than to the Courts?

The objective of the approach chosen by the Government is to place responsibility for decisions concerning denial of access to information with an elected representative and, secondly, to provide for a mechanism for complaints which is simple, inexpensive, effective, and available to all.

Placing the power to deny access solely in the hands of a Minister rather than an official is in keeping with the tradition of Ministerial responsibility and ensures that the person exercising this discretion must answer ultimately to the electorate for his decisions. Reports by the Privacy Commissioner to Parliament will ensure that the Minister's decisions can receive scrutiny by Parliament and the public.

The use of a Privacy Commissioner or ombudsman to hear complaints has many advantages over direct appeals to the courts. The Commissioner's sole function will be to hear such complaints and he will therefore rapidly become expert in such matters. In general people are reluctant to become involved in judicial proceedings in order to enforce their rights. The experience in other jurisdictions has shown that they have far less reluctance to consult an ombudsman. The Commissioner will have wide powers of access to Government establishments and in relation to the carrying out of an investigation, will have the powers of a superior court of record to obtain documents, etc. Whereas a court may proceed on a piecemeal case-by-case basis, the Commissioner, through his reports to Parliament, can make proposals regarding general principles and has a better chance to promote changes to the Act or regulations made thereunder, or their administration, if these prove necessary. Finally, I believe it would be a misuse of the court's time to become involved in questions of this nature which can be better handled by a Commissioner of the type proposed when there are already so many demands on the courts' time.

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Q: Why is it not possible for an individual to see any file about him held by the Federal Government?

The basic principle is that every individual is entitled to see any file about him held by any of the (90) Federal Government institutions listed in the schedule.

However, because of the nature and scope of Government activities involving matters of national defence and security, law enforcement and so on, situations arise where it is not in the public interest that access by an individual be permitted to a particular information bank or file concerning him. It is a basic question of balancing the interest of society in efficient and effective government, which in some instances may involve restricting access to information, against the interest of the individual in having access to that information.

The situation where access may be refused is clearly spelled out in the Bill and in each case where access is denied, the Minister responsible for that information bank is accountable for that decision.

Q: How would the bill help rationalize and restrain the government's own information - gathering activities and help protect me from harassment from government fact-gatherers?

A minister would be made responsible for co-ordinating the management of personal information banks within government institutions covered by the bill. This role would include examining costs and ensuring that proposed new banks are actually needed, thus eliminating waste and duplication.