



Response to Bill 107: Human Rights Code Amendment Act, 2006

Ontario Association of Interval and Transition Houses (OAITH)

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Who we are

The Ontario Association of Interval and Transition Houses (OAITH) is a 75-member Association primarily of first stage shelters for women and their children escaping abusive intimate relationships. OAITH has been advocating for the rights of women and children in Ontario for 30 years and has since its inception worked for better public responsibility and systemic response on issues of violence against women and its impact on children.

The women's shelter network, as part of a greater women's movement for equality, is the engine that drives most positive change meant to end violence against women. OAITH has responded to a range of concerns raised by abused women and children using women's services, including: social assistance, funding for women's anti-violence community services, systemic responses in policing, courts, social services systems and hospitals, as well as making our own services more inclusive and accessible to all women, to name only a few. Our work involves advocacy on issues of policy and legislation as well as on the decision-making of governments regarding funding to address violence against women.

Women's Rights are Human Rights

According to the United Nations *Declaration on the Elimination of Violence Against Women*, "violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms."

OAITH is well placed to comment on changes to human rights processes, including the reform of the Ontario Human Rights Commission because as a body representing women's frontline services we address the human rights of women on a daily basis. Furthermore, because intersecting forms of human rights and equity violations increase women's vulnerability to sexist violence, we operate within an integrated, anti-racist/anti-oppression framework in our work.

The women who seek the support of women's shelters across Ontario experience many human rights violations and forms of discrimination. In addition to the personal sexist violence they experience, they also confront many forms of systemic discrimination and exclusion when they attempt to use processes that claim to exist for their benefit. Women experience sexual violence, sexual harassment and discrimination in housing, employment, education and training, as well as other areas vital to their ability to escape violence and they experience intersecting violations of their rights (racism, class marginalization, ableism, homophobia, ageism, etc.) that compound the impact of sexist violence.

It is critical that Ontario have a strong human rights system and process that not only protects all individual human rights, but also ensures that those rights enshrined in the Ontario Human Rights Code are monitored and enforced on a systemic level.

We believe that in order to protect the human and equity rights of all women in Ontario, the Government of Ontario must take more seriously the current reform of the Ontario Human Rights Commission through the tabling of *Bill 107*.

Bill 107—Intention

We appreciate the intention of the Attorney General in making an attempt to reform the Ontario Human Rights Commission. There is no shortage of expert opinion on the shortfalls of the current Commission or of the convoluted processes that an individual, already under stress from the experience of a human rights violation, must navigate in order to be heard, never mind receive a remedy in the current situation.

While there are differing positions on the merits of Bill 107, there is agreement that reform of the current process and system is a positive step forward, provided it results in the enshrinement and enforcement of human rights in Ontario.

As advocates for women in many public systems intended to support them, we know that intentions are not enough, however. We are painfully aware of systems established to protect women, which instead re-victimize them and mirror the abuse of the men they fear. Complainants who have used the current human rights process have described similar re-victimization and lack of justice.

Individual human rights and equity violations are rampant because they are supported by deep-seated and pervasive value systems and power imbalances that run through our social, economic and political institutions. Not only must a progressive human rights system address individual violations, therefore, it must also have the unfettered ability to monitor and enforce values and practices that reflect access to justice and equity within the entire community, including within systems that implement public policy.

Do current plans to reform the Ontario Human Rights Commission establish this type of system? What would we like to see a human rights system provide for women who experience violence and forms of oppression that violate their human rights?

Direct Access to a Hearing

Individuals who experience human rights violations must have direct access to a hearing of their case. Lack of direct access to a hearing has been criticized by many human rights experts, both domestically and internationally. We therefore support the proposed reform with regard to allowing direct access for complainants to a Tribunal hearing.

We note, however, that the Tribunal as outlined in Bill 107 will also have the power to dismiss a case without a hearing. Because one of the criticisms of the current system is the “gatekeeping” function of the Commission, how will the Tribunal process of complaint dismissal be made transparent and accountable, so that the Tribunal does not become merely an alternative location for blocking individuals from a hearing of their case?

Bill 107 also does not provide any guarantees that direct access to a hearing will become reality because it does not provide for legislated resources sufficient to ensure publicly funded legal representation for all complainants. Only a amendment legislating and guaranteeing those resources now and in the future will ensure marginalized communities are not prevented by economic barriers from accessing the human rights processes that would allow them to challenge violations against them.

Without legislated guarantees of publicly funded representation, applicants can be easily dismissed by the Tribunal in order to manage caseloads and backlogs—a situation that would simply mirror charges already being made about the operation of the current system.

Legal Supports for Complainants

While the Attorney General has made assurances that all applicants will have legal supports through a legal support centre, the establishment of such a support has not been legislated and its parameters, framework and public funding support are unknown. We know that public resources so far promised to the reform process in no way represent what would be needed to provide individuals with access to justice in the reformed system described in Bill 107.

As advocates who regularly work with women involved in other processes, such as family law, where the Ontario Legal Aid Plan is used to support those in need of financial resources for legal representation, we know that LAO lacks the funds needed even to support those matters they currently handle, and that eligibility for the severely restricted funds of LAO currently results in many women in abusive situations going into court poorly represented or representing themselves. If this is the model envisioned for legal supports on human rights complaints, it will certainly fail unless funding for legal aid in Ontario is substantially increased before the reforms come into force, or another mechanism is put in place to guarantee public funding to applicants.

Because the matters before a human rights protection system are clearly those in which an individual or group of individuals has experienced abuse of power and control, they are matters in which the complainants are likely to require comprehensive supports to counterbalance the reach and resources of more powerful entities. These supports must include publicly funded investigation capacity, publicly funded legal representation, accommodations for people with disabilities and other challenges, support preparing and filing required paperwork, emotional support and practical assistance, such as travel funds, interpretation/translation support and so on.

As noted above, direct access to a Tribunal does not necessarily mean direct access to justice. For that to happen, the legislation must clarify and provide legislated substance to the promise of legal supports, along with the legislated guarantee that adequate funding will be provided (**without** resorting to user fees) to ensure that applicants can make their case with the same diligence and detail that may be available to respondents,

in particular respondents representing large well-resourced entities, including the Province.

Independence and Integrity of Human Rights Protection System

It is critical that any human rights protection system be an independent voice on behalf of human rights. This is especially true when it may receive complaints regarding systemic discrimination and human rights violations by publicly funded systems and the Province itself. It must not only be independent, but must be seen to be independent.

At the same time, the integrity of the process and purpose of the system must not be compromised by conflicting objectives or interests.

The current system, which is overseen by and operated by the Ministry of the Attorney General on behalf of the government of the day, does not meet the level of independence necessary to be seen to be independent. The dual roles of case carriage and case decision-making within the OHRC leave it vulnerable to charges of conflict of interest and purpose.

We support the proposed reform of separating the roles of the Commission and the Tribunal in terms of carriage of cases and decision-making on case outcomes. We hope that this change will reduce pressure on the Commission to close cases quickly and will allow the Commission to take a more pro-active role in protecting human rights in Ontario.

On the other hand, the proposed oversight and management of the Commission under Bill 107 does not advance the human rights protection system as an independent entity in Ontario. The Cabinet will appoint the Commissioners, decide on the Chief Commissioner, decide the terms of office of the Commissioners and report through the Attorney General to the Legislature. Although the Government has had the benefit of the advice of many human and equality rights experts for many years on this issue, including the advice of the Cornish Task Force on reform of the OHRC, it has apparently chosen to reject this opportunity to create a truly independent human rights system.

If the Government can identify the imperfections of a system that inherently operated within a conflict of interest in case carriage and decision-making within the Commission operation itself, it must see that control of the Cabinet in the appointments process also represents a conflict of interest within the overall system. Given that publicly funded systems operated by the Province may often be named in complaints before the Commission and the Tribunal, it is imperative that the advice of equality seeking communities be followed in making the OHRC truly independent of government.

Powers of the Commission

It is important that the Commission assume a greater role than it has previously taken with regard to protecting the community from systemic discrimination of all kinds and to provide the analysis necessary to advise government in its roles to ensure human

rights are protected in Ontario. It is important that it educates and moves all systems and entities in the community to comply with human rights law.

It is also important that any meaningful human rights protection system to have the capacity to investigate and enforce the law with regard to human rights in Ontario. To do that, it must have the power to collect the information and evidence it needs to put before a Tribunal for the decision-makers to assess and provide remedies in cases where human rights have been violated.

Bill 107 does not currently create a human rights system that includes a body mandated to support systemic cases where publicly-funded investigative powers are needed to provide information to the Tribunal. Whether on behalf of individuals attempting to exercise their rights under the Human Rights Code, or on behalf of the community as a whole, reform of the human rights system in Ontario must include public-funded capacity to investigate and the power to do this in a fulsome way on behalf of marginalized communities. Bill 107 should be amended to ensure that these functions are included on behalf of all citizens of Ontario and the legislation should explicitly hold the Province responsible to provide public funding to support them.

With regard to the powers of the human rights system in Ontario, however structured, it is a positive step to provide for the advice of the system to the Government of Ontario with regard to the Ontario Human Rights Code. Advice, however, must be followed to be effective. Bill 107 should provide for accountability with regard to recommendations and advice from an independent Commission and Tribunal. How will the Province be held accountable to respond to the advice and recommendations of the human rights system? No protection system can be truly meaningful while it depends largely on the good will, and in some cases, the whim of those with the power.

Secretariats and Advisory Committees

The Ontario human rights protection system must clearly protect the human rights of all Ontario citizens. At the same time, it is clear that particular communities in Ontario have experienced pervasive and ongoing discrimination that has proved tenacious to uproot. Racism, sexism, class discrimination and ableism, among others, continue to threaten the lives of Ontarians and to limit their access to services and fundamental freedoms. It makes sense, then, to focus particular attention on these inequities.

The creation of a Racism Secretariat and a Disabilities Secretariat on the face of it is appropriate. These Secretariats as described in the current Bill, however, provide none of the powers that would be needed to take seriously the perniciousness of racism and ableism or to give assurances to affected communities that they will have the protection they need from the Human Rights Commission. Secretariats must address the needs of their affected communities beyond education, research and the making of lists of recommendations. Representatives of communities experiencing both racism and ableism have expressed concerns about the current Bill 107 provisions for specifically addressing racism and ableism. Amendments to ensure that their concerns are alleviated are required for the Bill to be meaningful.

We would suggest the Human Rights Commission also adopt a specific Secretariat focussed on the continuing lack of equality for women in Ontario, manifested often in sexual harassment and gender discrimination that often does not make its way to the Commission in individual complaints but must be addressed systemically by rigorous enforcement of rights. As advocates who work with women experiencing violence, we hear daily of situations in which systems, workplaces, educational institutions and so on refuse to acknowledge the impacts of sexual and gender discrimination or fail to uphold their own responsibilities within systems and institutions to address gender equity issues.

While we believe a revamped human rights system in Ontario must respond to these specific areas of human rights discrimination, the response must be more pro-active and not limited to education, research and more lists of recommendations. Bill 107 will be a much more progressive legislation if it is amended to also advance enforcement and accountability within these areas.

Groups Cannot Make a Complaint or Intervene

If the government is serious about creating a human rights system in Ontario that monitors equity issues and protects the marginalized, it will provide access to the system by advocates for the marginalized and excluded in the province. Bill 107 as it is now written does not do this.

Currently, the Bill does not provide access by community advocates and groups to make application to the Tribunal or to intervene in cases before the Tribunal where these advocates and/or groups believe there is a public interest beyond the individual case. This should be remedied with an amendment to the Bill.

The Human Rights Commission as it is currently operated seldom takes up the cause of marginalized communities on its own. If the reform of the system is meant to provide more pro-active work on systemic issues and it is amended to provide the Commission the ability and the responsibility to do so, that could be a significant support for marginalized groups. An even stronger support would be to include community advocacy groups to also work pro-actively through the reformed system to advance the rights of affected communities. Frontline community equity-seeking advocates are the most informed community members with regard to equality issues and they have the most relevant and timely information to put before the human rights system.

A system that is serious about creating equality in Ontario will use the expertise and energy of community advocates to create changes that government is often unable to realize alone.

Recommendations:

1. That Bill 107 outline a structure for the system within the legislation that will ensure the human rights system in Ontario is fully independent of government direction and influence.
2. That no applicant coming before the Tribunal will have their case dismissed without a hearing and that the hearing must be provided within a specified and reasonable time period after filing of their complaint.
3. That Bill 107 be amended to guarantee within the legislation that applicants will have access to full public funding for investigation and legal representation, as well as any other necessary supports that they will need to have genuine access to justice.
4. That the Human Rights Commission be held accountable and responsible for protecting the rights of Ontarians as outlined in the Human Rights Code, in the public interest and that, within that framework, the Commission have the power and resources to investigate and collect evidence to support the advancement and enforcement of human rights in Ontario.
5. That no user fees be applied within the Human Rights Commission processes in Ontario.
6. That any secretariats or other departments of the Human Rights Commission charged with challenging specific pervasive human rights inequities, such as racism and ableism, be mandated to investigate and enforce the Code in those areas and not be restricted to education, research and advisory roles.
7. That a specific secretariat or department with adequate resources and staffing also be created to address issues of gender discrimination and that it similarly be mandated not only to advise or educate, but to investigate and enforce women's equality rights.
8. That Bill 107 be amended to allow community equality-seeking advocacy groups and public interest groups to make application to the Commission and the Tribunal on behalf of designated groups and to have intervenor status in cases where they have a substantial and direct interest in the outcome of behalf of affected communities.

Conclusion

As advocates for women's equality, OAITH is pleased to see that the Liberal government has taken on the daunting task of reforming an outdated, underfunded and seriously challenged Human Rights Commission in Ontario. We would like to support that effort and to urge the government to make the effort meaningful.

We are worried, however, that at this time the efforts of the government may very well be squandered if amendments are not made quickly to ensure independence, full publicly funded legal representation and investigation for applicants, power to enforce compliance with the Human Rights Code and the ability of community advocacy and public interest groups to apply and intervene in human rights processes.

In addition, we would like to see more attention and action outlined in the legislation with regard to addressing the ongoing issues of inequity and systemic discrimination against women in Ontario.

The Ministry of the Attorney General has an opportunity now to significantly improve the human rights conditions of Ontarians with legislation to reform the Human Rights Commission. Make the amendments to Bill 107 that will make a difference and create a truly meaningful legacy for this government on human rights progress in Ontario.

Respectfully,

Eileen Morrow, Coordinator
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