A Critical Survey of Human Rights Acts and Commissions in Canada

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I. INTRODUCTION

We can take pride as a country in the fact that we have written into our Constitution a strong, unambiguous commitment to equality rights. It is worth remembering that the strong unambiguous language on equality rights in s. 15 of the Charter did not get there by accident. Women, persons with a disability and other disadvantaged groups lobbied hard to have the wording strengthened, being determined that equality rights in the Charter not be a dismal repeat of the failure experienced with the Canadian Bill of Rights.

Section 15 of the Canadian Charter of Rights and Freedoms speaks therefore not only of equality guarantees in a procedural, formal sense, but speaks of the right to equality in substance, in the actual result — "the equal benefit of the law".

This constitutional commitment to equality rights has great significance for human rights legislation and for human rights commissions for the following reasons:

— section 15 of the Charter guarantees the equal protection and equal benefit of the law;

— human rights laws have been specifically enacted to remedy and prevent discrimination against disadvantaged groups;

— the Supreme Court has clearly stated on a number of occasions that the overall purpose of section 15 is "to remedy or prevent discrimination against groups subject to stereotyping, historical disadvantage and political and social prejudice in Canadian society."[1]

There is therefore a special relationship and relevance between equality rights guaranteed in s. 15 of the Charter and human rights laws as purposefully designed, unique instruments to remedy and prevent discrimination in Canadian society. From a logical, practical and moral viewpoint, human rights laws must live up to Charter standards. If they do not, this discrepancy not only puts into question the sincerity of the constitutional foundation of our country, but also gravely undermines the meaningfulness of the Charter equality guarantees in the everyday lives of disadvantaged groups.

Human rights laws are usually the only mechanism for disadvantaged groups to access their Charter guaranteed equality rights. No other recourse exists other than filing a complaint of discrimination with a Human Rights Commission.

I believe, therefore, that every human rights law and commission in the country should be subjected to a Charter scrutiny to see if they measure up to Charter standards.

It is my view that none would pass.

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1. *Swain* v. *Her Majesty the Queen*, [1991] 1 S.C.R. 933.

They would fail on the basis of both the content of their legislation, its administration and its enforcement.

The reason why such a challenge has not been undertaken is the impoverishment of the groups that encounter discrimination and rely on human rights commissions. Disadvantaged groups by definition lack the resources necessary to mount a major, systemic challenge of human rights legislation and commissions.

The dissatisfaction, frustration and anger, however, that are expressed across the country at the ineffectiveness of human rights commissions should not be ignored.

Human rights laws are vital tools for bringing about a more just society. They have in the past helped expose, discredit and lessen some blatant practices of discrimination. They have much potential for us today. The enshrinement of equality rights as constitutional guarantees ought to enhance the seriousness with which human rights laws are viewed and, in particular, bring new political commitment on the part of the federal, provincial and territorial governments to take the necessary action that will ensure an effective human rights system in their jurisdiction.

II. POSITIVE PROMOTION OF HUMAN RIGHTS

The Supreme Court of Canada has put forward a vision of equality rights as positive, substantive rights with remedial implications. It has thus heightened to a constitutional level the obligation of governments to overcome past practices of discrimination and instead promote substantive equality rights. "The promotion of equality entails the promotion of a society in which all are secure in the knowledge that they are recognized at law as human beings equally deserving of concern, respect and consideration. It has a large remedial component," said Mr. Justice McIntyre in speaking of the import of section 15 in the Supreme Court's first equality ruling.[2]

The Supreme Court has also interpreted human rights laws as including positive duties on the part of employers and service providers to ensure that members of protected groups enjoy equality. For example, the Court has ruled that employers have a duty to provide a harassment-free workplace[3]; it has likewise ruled that employers must accommodate the needs of persons with a disability, unless such accommodation would cause undue business hardship[4].

Because of its positive responsibility to promote equality and its defensive responsibility to protect against discrimination, human rights legislation has been called both a sword and a shield.

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2. *Andrews* v. *Law Society (B.C.)*, [1989] 1 S.C.R. 143, 2 W.W.R. 289, 34 B.C.L.R. (2d) 273, 91 N.R. 255, 36 C.R.R. 193, 56 D.L.R. (4th) 1, 25 C.C.E.L. 255, 10 C.H.R.R. D/5719.

3. *Robichaud* v. *Canada (Treasury Board)*, [1987] 2 S.C.R. 84.

4. *O'Malley* v. *Simpson-Sears Ltd*, [1985] 2 S.C.R. 536.

One would hope to see commissions taking the initiative and using human rights legislation in a positive way. Unfortunately, this is not the case. Commissions rarely use their legislation in a proactive, energetic manner to advance equality rights. Although most commissions have the power to do so, seldom do they initiate significant, strategic cases that would have major impact. Instead, they tend to take a passive approach and wait for individuals to knock on their door and file a complaint.

This has a number of negative consequences. It means that discrimination is envisioned and investigated as a particular incident or set of incidents affecting an individual, rather than a systemic, broad-based practice affecting a whole group. Likewise, the remedy tends to be individual based. In addition, persons from disadvantaged groups who file human rights complaints tend to be the ones who have more resources and knowledge. The average member of a protected group is likely to be more disadvantaged and consequently less likely to come forward to file a complaint. Few complaints are filed from persons who are doubly disadvantaged, such as minority women or disabled women. Few complaints come forward from people who are poor. Few complaints come forward from members of First Nations. Yet we all know that these are the very people who encounter the severest and most frequent discrimination in our society.

The consequence of commissions taking no action until a complaint is filed is illustrated when one examines the experience with the provision in the Canadian Human Rights Act on equal pay for work of equal value. This is a provision that is hard for an individual to put in motion. For the most part, the Act covers large employers in federal jurisdiction, as well as the federal government itself. Thus, the equal pay provision requires the comparison of groups of employees, broad-based data and analysis in a large, structured workplace. An individual is not normally in a position to launch such an overwhelming, collective complaint. The Commission is well placed to do so, but did not.

The provision has been in the Act since March 1978. Almost ten years later, in December 1987, the Commission itself expressed its dissatisfaction with the fact that employers were not complying with it. The Commission issued guidelines, expressing the hope that this would encourage employers to comply. It was finally only as a result of complaints filed by unions that any action started to happen, even though it had been well known from the very beginning that serious violations of the provision were widespread. So slow, quiet and lacking in leadership was the Canadian Human Rights Commission in enforcing the equal pay provision that in the federal election politicians were arguing as to whether or not they would introduce an equal pay for work of equal value provision in the Canadian Human Rights Act, unaware that it had been there for five years. One can question how many working women were aware of the provision and its significance.

Where a commission has held an inquiry into a major issue, such as the inquiry by the Quebec Human Rights Commission into racial discrimination in the taxi industry, it failed to take strong, effective action to deal with the widespread discrimination it uncovered, with, as a result, racial minority groups having even less confidence in the Commission than before.

Human rights commissions have thus generally failed to take a leadership proactive approach to promoting human rights.

III. GAPS IN THE SHIELD OF PROTECTION AGAINST DISCRIMINATION

Preambles to Human Rights Acts refer to the reasons and purposes which led to the genesis of the Act. They usually quote the United Nations Universal Declaration of Human Rights and its recognition "of the inherent dignity and of the equal and inalienable rights of all members of the human family".

The purpose of human rights legislation is clearly to ensure that those groups who are subject to bias are enabled to enjoy, in the vital areas of activity necessary for survival in society, the same basic human rights to which *all* are entitled.

Thus the coverage of human rights legislation has been expanded over the years as discrimination against additional groups was shown to exist. From first covering only such grounds as racial, ethnic and national origin and religion, human rights acts have been expanded to cover, for example, discrimination on the basis of sex, physical and mental disability, marital status and source of income.

The Supreme Court of Canada has said that the disadvantaged groups recognized under s. 15 of the Charter will change and evolve over time as new groups may become targets of discrimination in our society.[5]

Thus, when indisputable evidence is put forward showing that a particular group is the target of widespread prejudice and stereotyping and is being unjustly and unreasonably denied basic human rights, it would seem that governments have a Charter duty to include them in the law that has been specifically created to address this problem, namely the human rights law.

Unfortunately, we are witnessing governments deliberately excluding from human rights protection groups that are politically powerless, who are targets of stereotyping and discrimination, who clearly respond to the criteria for s. 15 protection set down by the Supreme Court of Canada in *Andrews*[6] and *Turpin*.[7]

Take, for example, discrimination on the basis of sexual orientation. Discrimination in employment, housing and public services against persons who are gay or lesbian is known to be practised. Prejudice and stereotyping against this group is common. Persons have been killed in Canada because of their sexual orientation.

The failure of the federal government and several provincial governments to provide protection to lesbians and gays is not because of any legal drafting complexities or because of ignorance that the discrimination exists. The legal drafting has already been done in other

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5. *Supra* note 2.

6. *Ibid.*

7. *R* v. *Turpin*, [1989] 1 S.C.R. 1296, 69 C.R. (3d) 97, 48 C.C.C. (3d) 8, 96 N.R. 115, 34 O.A.C. 115, 39 C.R.R. 306.

parts of the country; the legislators have been served notice of the reality and seriousness of the discrimination; they have been asked repeatedly to provide the needed protection.

The refusal to provide protection of equality rights to this group is therefore deliberate and intentional. Because of the widespread prejudice that exists against lesbians and gays and because they lack political power, the federal and most provincial governments have excluded them from human rights protection.

Thus we have the ironic situation of groups needing human rights protection because of widespread prejudice against them being denied human rights protection because of widespread prejudice against them.

The federal government says on the one hand that, in the view of its experts, discrimination on the basis of sexual orientation violates s. 15 of the Charter and that, in order to comply with the Charter, it will take "all measures necessary" to prohibit such discrimination in all areas of federal jurisdiction, yet on the other hand it refuses to include sexual orientation in the Canadian Human Rights Act.

Indeed, the federal government is now in court trying to overturn a ruling of the Ontario Court (General Division)[8] which said that the federal government's failure to include sexual orientation protection in the Canadian Human Rights Act violates s. 15 of the Charter. The government is seeking to obtain a lower standard of protection in human rights legislation than in the Charter.

Human rights laws should live up to the equality standards set down in the Constitution and should provide open-ended coverage so that any group that encounters prejudice and discrimination may have protection. What is even more indefensible is to exclude from human rights protection identifiable groups who are demonstrably and continuously targets of discrimination and who have, as the federal government itself admits, a Charter right to the equal protection of the law. Of course, politically, the more unpopular and powerless a group at any point in history, the easier it is for governments to abuse their rights. This is the very reason why we need a Charter of Rights to require governments to act fairly toward disadvantaged groups.

Other areas where gaps in the shield of human rights protection are evident are discrimination against persons who are on welfare, particularly single mothers seeking accommodation; discrimination on the basis of political belief; discrimination because of a criminal record or charge that does not relate to the job or service sought. Blatant discrimination has been documented across Canada on all these grounds in such basic areas as seeking a job, renting accommodation or accessing a public service. Yet in the face of such documented discrimination, no human rights protection exists in many provincial and federal human rights laws.

The human rights shield has clearly many fatal gaps.

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8. *Haig & Birch* v. *Canada* [1991], 86 D.L.R. (4th) (Ont. Ct. Gen. Div.).

IV. THE CALIBRE OF HUMAN RIGHTS COMMISSIONS AND TRIBUNALS

The effectiveness of a shield will very much depend on the calibre of the metal it is made of. The calibre of a human rights commission and a human rights tribunal (alternatively called a human rights board of inquiry or board of adjudication) is an essential factor which will determine whether the legislation will be implemented effectively. In other words, is the legislation intended to be a shield or just for decoration?

It is as essential that human rights commissions and tribunals be independent of government and independent of powerful interests in our society as it is for auditors general. Just like auditors general they must be fiercely loyal to their legislation and their mandate and not be afraid of treading on the toes of those with a vested interest in the way things are currently done.

The U.N. Covenant on Civil and Political Rights, which Canada has ratified, spells out that persons appointed to the U.N. Human Rights Committee must be "persons with demonstrated expertise in human rights." We need the same standard in Canada. Clear criteria need to be spelled out for appointments to human rights commissions and tribunals. Included in these criteria should be:

1. a demonstrated expertise in human rights and commitment to human rights legislation;

2. credibility among groups whose rights are protected under the legislation;

3. independence;

4. representativity of the population.

No government in Canada has agreed to incorporate such criteria in its human rights legislation.

Many of the appointments to human rights commissions and tribunals across the country read like cheering parties for the powerful and the privileged, not defenders of the disadvantaged. They are doubtless fine people to lead a celebration of the accomplishments of the real estate industry, the insurance industry, the Chamber of Commerce, the corporate law profession, the professional and charitable societies such as Kiwanis, Rotary, Kinsmen. But what are their credentials for being put in charge of the *only* agency in our society with a mandate to enforce anti-discrimination legislation?

Chairs of human rights commissions have sometimes been pulled from the ranks of senior government bureaucrats, closely aligned with government policy, such as deputy ministers or executive assistants. In other cases, successful members of the establishment are chosen, such as university presidents or church ministers, who have demonstrated no previous track record of courage and commitment to defend human rights. It would be surprising if such appointees turned into outspoken and effective leaders challenging discrimination in our society.

A review of the résumés of 118 appointments to the federal human rights tribunal panel[9] in 1986 showed that a great many listed their support for and their various contributions to the Progressive Conservative Party, such as campaign manager, party official, donor. Very little, and frequently nothing, was listed indicating an interest in or knowledge of human rights law. Many did, however, profess to have excellent health and a record of athletic accomplishments.

One of the appointees to the Canadian Human Rights Commission, Gerald Kambeitz, put it very baldly. When questioned by a parliamentary committee as to what his qualifications were for being appointed to the Human Rights Commission, he stated that his qualifications were that he had never had any involvement or interest in human rights. Kambeitz said this made him neutral and qualified. His résumé showed that he was a member of the Kootenay East-Revelstoke Progressive Conservative Association.

Another appointee with no human rights qualifications but a long list of political contributions in his résumé, knew of a human rights organization, Amnesty International, but expressed opposition to it, preferring instead martial law.

Being involved with a political party does not necessarily mean a person is not qualified to be appointed to a human rights commission or tribunal. But political involvement with no human rights background is no qualification. On the contrary, it discredits and corrupts the human rights system of any country, whether Canada or a military dictatorship. We should be ashamed as a country for having a human rights appointment system which allows such blatant abuse to flourish.

If the one agency in our society with a mandate to enforce human rights protections is put in the hands of persons with no real understanding of or demonstrated commitment to that legislation, the results will be dismal. Naming persons to commissions without the necessary qualifications, independence or commitment is a way for governments to ensure the legislation will not work effectively.

In a strange, logic-defying pirouette, the government of Alberta expressed dissatisfaction with the calibre of its own appointees to the Alberta Human Rights Commission. In the face of mounting public criticism at the ineffectiveness of the Commission, the government decided to join in the criticism of itself; it bewailed the lack of credibility, independence and outspokenness of its own appointees and appointed replacements.

A particular impropriety in the nomination process is the way governments are selecting on a one-by-one basis who they wish to hear a particular human rights case. Thus, in a situation where the complaint is against the government itself and where the government has a great deal financially at stake in the case, the government gets to hand-pick out of the blue whichever person in the province it fancies to sit as a board of inquiry and rule on the case.

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9. Canadian Human Rights Advocate, Vol II, No. 9, 10.

In Saskatchewan, for example, in a complaint which alleged that the government of Saskatchewan had violated the provincial Human Rights Act by discriminating in welfare payments against single people, the government chose who would hear the case. No list existed from which the board of inquiry would have to be named; no qualifications or criteria for appointment as board of inquiry existed; no due process, no fair and open mechanism existed by means of which the public could see how this particular individual came to be selected by the government to be the judge to hear this particular complaint against the government.

The person selected upheld the government. While he found that it was indisputable that the government had discriminated on the basis of marital status, he ruled that the province's Human Rights Code did not apply because public assistance, available by law to every member of the public in need, was not a "service available to the public", in his view.

The courts overturned his decision.

It is wrong that the government select who is to be the human rights tribunal on any particular case. It is even more wrong when the government gets to choose in an arbitrary, uncontrolled way as is presently the case in Saskatchewan and elsewhere. This closed, secret process by means of which the government handpicks its own judge violates standards of natural justice and Charter guarantees of procedural fairness.

The Federal Court of Appeal has already ruled in the *MacBain* case[10] that a similar though less offensive process in the Canadian Human Rights Act gave the appearance of bias and violated rules of natural justice.

Persons who sit on human rights tribunals and commissions should be clearly independent of government and should be chosen through an open, public process on the basis of their human rights expertise, integrity and credibility.

Commissions and tribunals should also be representative of the population. A study carried out in October 1990[11] documented systemic sex discrimination in the appointment of chairs of tribunals under the Canadian Human Rights Act. Men were picked to chair tribunals 89.4 percent of the time and women 11.6 percent.

Thus, the enforcement system of the Canadian Human Rights Act is discriminatory and, in my view, constitutes in itself a violation of the legislation.

If the Canadian Human Rights Commission were a strong, independent body, it could have challenged the federal government for the blatant systemic discrimination in the tribunal appointment régime. It could also have contested the federal government's handing out of tribunal appointments as political rewards to persons with no demonstrated qualifications apart from loyalty to the party.

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10. *Mac Bain* v. *Lederman* [1985] 1 F.C. 856, 16 Admin L.R. 109 (*sub nom. MacBain* v. *Canada (Canadian Human Rights Commission)* 85 C.L.L.C. 17, 023, 18 C.R.R. 165, 22 D.L.R. (4th) 119, 6 C.H.R.R. D/3064 (C.A.).

11. (1990) 6:9 Can. H.R. Advoc. 1.

V. THIN RESOURCES AND DELAYS

The process for selecting human rights commissions and tribunals is, as we have seen, seriously flawed. The calibre of commissions and tribunals is, as a result, far from satisfactory and their credibility among the groups they are supposed to protect is poor.

The extraordinarily few resources allocated to most commissions compounds the problem. For the most part, their budgets are tiny and clearly inadequate for fulfilling their mandate. The small number of staff results in unacceptable delays in handling complaints. In the best of circumstances obtaining evidence to prove discrimination is not easy; long delay before an investigation is started can make it virtually impossible.

Of concern also is the fact that human rights laws deal with discrimination in basic, crucial areas of life, such as denial of a job or an apartment. Thus it is not of great practical help to those who encounter this kind of discrimination to know that there will be many months delay before an investigation of their complaint will even begin.

It is not surprising therefore to find that among the groups that experience discrimination, commissions have lost credibility as a viable and effective recourse because of the inordinate delays. Many who encounter discrimination simply will not bother to file a complaint with the commission because they know timely action will not be taken.

In turn, respondents have argued that their rights under s. 7 of the Charter are violated by the excessive delays of commissions in processing human rights complaints. On this basis, the Saskatchewan Court of Queen's Bench blocked a hearing into sexual harassment complaints saying that "the rights guaranteed to Kodellas (the respondent) under the Charter must take priority over the rights granted to the complainants under the Code."[12]

Mr Justice Lawton attributed the blame to "a lack of commitment either by the government to fund the Commission to carry out its mandate or by the Commission to seek the funds and organize itself to perform its duties."

The decision was appealed and the Saskatchewan Court of Appeal ruled in June 1989 that because of the long delay, the complaint against the person alleged to have carried out sexual harassment could not be heard; the complaint against the company could.[13] In a dissenting opinion, Mr Justice Bayda thought the complaint should proceed against the individual respondent. An order preventing the Board of Inquiry would result "in the certainty of injustice to the complainants and a probability of injustice to the community at large. On the other hand, the failure to make the order has only the potential, but not the certainty and perhaps not even the probability, of an injustice to Mr. Kokellas," said Mr Justice Bayda.

Thus proper human rights protection is denied by delay.

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12. *Kodellas* v. *Saskatchewan Human Rights Commission*, [1987] 2 W.W.R. 195 (Sask. Q.B.).

13. *Saskatchewan (Human Rights Commission)* v. *Kodellas*, [1989] 5 W.W.R. 1 (Sask. C.A.).

Even once a case has been referred to a human rights tribunal, the problem of delay is not over. The hearing of a case sometimes stretches out for more than a year. Decisions by human rights tribunals are often handed down one to two years after the hearing. In the case of Richard Beaulieu, for example, the complaint was filed under the Canadian Human Rights Act on December 15, 1985; a tribunal was appointed on October 5, 1988; the hearing took place almost a year later from August 28 to 31, 1989; and the decision was not rendered until July 10, 1991, almost two years later. This six year delay is in no way unusual.

Persons who experience discrimination may thus eventually get a decision four, six or more years after they filed their complaint. This is without any appeals being made.

VI. THE WRONG TARGET

As the Supreme Court of Canada has said in *Andrews* and *Turpin*, the purpose of s. 15 guarantees is to deal with discrimination against certain groups in our society who suffer social, political and legal disadvantage. Likewise, human rights legislation is supposed to advance the equality rights of members of certain groups who have historically and systematically been targets of discrimination.

In other words, human rights legislation did not come into being just because of idiosyncratic aberrations. It did not come about because of isolated, freak instances of discrimination. It is there because of ongoing and profound patterns of discrimination in our society against members of certain groups.

If it is to be effective as a tool, this reality has to be recognized and the legislation has to be used as a tool to remedy profound, systemic patterns of discrimination against certain groups of people.

Governments have shown unwillingness to let human rights legislation deal with fundamental patterns of discrimination, preferring instead that commissions deal with discrimination as if it were isolated incidents affecting one individual only. In Alberta, for example, the very title of the legislation: *The Individual's Rights Protection Act*, clearly indicates an unwillingness to recognize discrimination as more than an individual's problem. In the same way, the Alberta legislation fails to address the issue of systemic discrimination and the need for systemic remedies such as affirmative action plans.

Even in those jurisdictions where the legislation provides for affirmative action, commissions have thus far done little to tackle systemic discrimination or to require affirmative action plans as a remedy.

Where governments are able to control the process, they have shown unwillingness to let systemic complaints go forward, either by the simple expedient of refusing to set up a board of inquiry, or by appointing persons to their commission who are not likely to show too much independence. It is therefore not surprising that issues of systemic discrimination have come to light more by special inquiries, such as the Donald Marshall Inquiry, the Manitoba Justice Inquiry, the Inquiry into health care in northern Ontario, the Abella Inquiry into employment discrimination, and by the work of active community groups, such as the Urban

Alliance on Race Relations' exposure of systemic racial discrimination by employers in Toronto, the Canadian Civil Liberties Association's exposure of systemic racial discrimination by personnel agencies and fire forces, and Action Travail des Femmes exposure of systemic discrimination against women blue collar workers.

Because of strong, ongoing criticism by community groups of the failure of human rights commissions to deal with systemic discrimination, commissions are now beginning to make efforts in this area. But it may be too late. Groups are asking for new, separate agencies to address systemic discrimination. For example, in Ontario groups are calling for the establishment of an employment equity commission; at the federal level groups are asking for the same thing. Across the country we are starting to see pay equity commissions take over the issue of systemic sex discrimination in wages from human rights commissions.

VII. THE REMEDY

A major issue under human rights legislation and under the Charter for the coming years is the question of remedy. To date, remedies under human rights legislation, whether negotiated or ordered, have tended to be minimal. Remedies have failed to live up to the proper human rights standard of making the person whole, that is, restoring to the person the rights and benefits lost because of the discrimination, and making compensation for the losses, costs and damages suffered because of the discrimination, so that the person is advanced to the same position they would have been in, had it not been for the discrimination.

In other words, remedying discrimination does not mean eliminating discrimination by taking away from the non-disadvantaged group; it does not mean equalizing downwards. In what possible way would that help disadvantaged groups achieve equality?

Because many commissions are not sensitive to issues of disadvantage and power imbalance, the settlements they negotiate are frequently token and unsatisfactory. A study of the Quebec Human Rights Commission published in August 1988 showed that the average settlement was a minimal $626[14].

An additional disturbing feature of settlements reached by commissions is that they are often kept secret and complainants are sometimes required to promise never to divulge the details of the settlement. The complainant is very rarely on an equal power basis with the respondent. It thus appears that the victim of discrimination is being subjected to pressure and being bought off, while the overriding issue of discrimination, and the public interest responsibility of the commission to deal with that discrimination, are being ignored.

Human rights tribunals and the courts have not recognized the true costs born by the victim of discrimination. Instead awards have usually been small and failed to recognize the seriousness of the harm caused by discrimination. The issue of appropriate remedy was argued in front of a Canadian Human Rights Tribunal — not by the commission, but by Bonnie Robichaud. She argued that the time and costs she had to bear in order to fight her complaint of sexual harassment should be paid as part of the remedy ordered. In her case, as in most cases, the time and costs of the discriminators are paid by the government or by the company; the time and costs of the commission and the tribunal are paid; only the costs of the victim of discrimination are not paid. She must pay those herself.

Robichaud argued that she should be paid $162,000 for the costs of pursuing her case and $100,000 for the emotional damage she suffered. She argued that the $5,000 maximum limit for special damages in the Canadian Human Rights violated the Charter by treating harm caused by sexual harassment and other forms of discrimination as less serious than other harms in other legal forums. Unfortunately, the tribunal turned down her argument without saying why.

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14. A. Côté & L. Lemonde, *Discrimination et Commission des droits de la personne* (Montreal: Saint-Martin, 1988).

VIII. CONCLUSION

Human rights laws and human rights commissions are the obvious instruments to access in the daily reality of our lives as Canadians the fine equality guarantees enshrined in the Canadian Charter of Rights and Freedoms. Groups representing racial and ethnic minorities, women, persons with a disability and others concerned with social justice fought hard to get human rights laws on the books. The challenge in these Charter days is to address the deficiencies in content, administration and enforcement of these laws. The challenge is to make them work effectively.