

Proposed Amendments to Human Rights, Citizenship and Multiculturalism Act Off the Mark

By Linda McKay-Panos

Legislation Considered:

Bill 44, [Human Rights, Citizenship and Multiculturalism Amendment Act](#)

Over the past twenty years, Alberta's human rights legislation has been examined and changes have been recommended on more than one occasion. In the early 1990s, Alberta initiated a review of the *Individual's Rights Protection Act* (as it was then named) and accepted submissions from people across Alberta. The final report of the review, *Equal in Dignity and Rights: A Review of Human Rights in Alberta* by the Alberta Human Rights Review Panel (O'Neill Report) contained 75 recommendations for reform. Some of the recommendations were implemented in amendments to the legislation. For example, "family status" was added as a protected ground in 1996 and the protection from retaliation for making a complaint was broadened in 1996. But, many of the recommendations were never implemented.

In September 2008, the Sheldon M. Chumir Foundation for Ethics in Leadership presented the Minister of Culture and Community Spirit with a study comparing Alberta's human rights commission with those across Canada, analyzing the implementation of the Education Fund, and examining procedural and legal issues under the legislation. The report was released to the public in January 2009. Some of the key recommendations included in the Chumir report ([Toward Equal Opportunity for All Albertans: Recommendations for Improvement of the Alberta Human Rights Commission](#)) include:

- Fully enshrine "sexual orientation" as a protected ground in the legislation
- Amend section 3 (the publications section) so as to read as it did prior to amendments made in 1996
- Amend the statute so as to give the Commission authority to file complaints where there are reasonable grounds for believing that a person has contravened the Act
- Consider implementing a direct service model as implemented in Ontario; thus the adjudication of complaints would be carried out by a fully independent Tribunal which is separate from the Human Rights Commission
- Eliminate "citizenship" and "multiculturalism" from the title of the act and the Commission to remove confusion regarding the function of the Commission

- Have the commission report to the legislature rather than a ministry; at minimum have the Commission report to a ministry with related responsibilities (e.g., Justice)
- Provide publicly funded legal assistance to people involved in human rights disputes

In introducing Bill 44, the Minister of Culture and Community Spirit, Lindsay Blackett, also produced a chart in which he addresses some of these recommendations, the response taken by the government in the Bill, and the reasons behind those responses ([Summary of proposed changes to Alberta's human rights system](#)). According to Lindsay Blackett, some of the recommended changes also were proposed by others (Alberta Hansard, April 29, 2009).

While I have some deep concerns about some of the proposed amendments and the lack of others, some of the proposed amendments are positive. First, the legislation will be called the “Alberta Human Rights Act” and the Commission the “Alberta Human Rights Commission”, thus addressing the confusion in the former names. Also, “sexual orientation” is to be explicitly provided as a ground of discrimination in all the relevant sections of the legislation. This too is long overdue (in the *Vriend* case in 1998, the Supreme Court of Canada had ordered that the words “sexual orientation” be read into the Preamble and various sections of the legislation - see my previous post [Vriend Ten Years Later](#)).

There are a number of troubling amendments. First, the “Human Rights Panel” is now referred to as the “Human Rights Tribunal”, which has no legal significance (e.g., it doesn’t create an independent tribunal or create an independent Commission). It is merely a cosmetic change.

Second, of the troubling omissions and suggested changes, the proposed “parental rights” section is the most disturbing. Bill 44 provides that the following be added:

11.1(1) A board as defined in the School Act shall provide notice to a parent or guardian of a student where courses of study, educational programs or instructional materials, or instruction or exercises, prescribed under that Act include subject-matter that deals explicitly with religion, sexuality or sexual orientation.

(2) Where a teacher or other person providing instruction, teaching a course of study or educational program or using the instructional materials referred to in subsection (1) receives a written request signed by a parent or guardian of a student that the student be excluded from the instruction, course of study, educational program or use of instructional materials, the teacher or other person shall in accordance with the request of the parent or guardian and without academic penalty permit the student

(a) to leave the classroom or place where the instruction, course of study or educational program is taking place or the instructional materials are being used for the duration of the part of the instruction, course of study or educational program, or the use of the instructional materials, that includes the subject-matter referred to in subsection (1), or

(b) to remain in the classroom or place without taking part in the instruction, course of study or educational program or using the instructional materials.

This proposed amendment is troubling for several reasons. First, although I object to it being anywhere, it more properly belongs in the *School Act*, R.S.A. 2000, c. S-3. Under the *School Act*, parents in Alberta currently have the right to exempt their children from religious exercises or instruction and under school board policies, students can be exempted from human sexuality instruction.

Second, the proposed amendment will now provide the Human Rights Commission with the onerous job of investigating complaints that teachers, schools or administrations have infringed the new legislation, and already overburdened teachers will have the untenable job of determining whether the curriculum and what they discuss in class might offend parental rights.

Third, the proposed legislation does not define any of the terms (religion, sexual orientation or sexuality). David Hancock [says](#) that this amendment codifies rights that already existed and will not affect the curriculum in any way. However, what is subject matter that deals with “religion”? This is extremely broad. The Supreme Court of Canada has consistently held with regard to “religion” that it will not look into the content of “sincerely held beliefs.” Thus, someone could have the sincerely held belief that women are inferior and are to be subservient to men. Does the teacher then have to exempt from discussion any reference to women being independent and equal members of our society? Even if this is a “specious” argument, a parent could launch a complaint to the Human Rights Commission believing his or her rights under the *Human Rights Act* were infringed on this basis. Premier Stelmach has publicly stated that parents will have the right to opt their children out of classes regarding evolution (which some people believe for religious reasons is not true), despite what Dave Hancock and Lindsay Blackett say.

Additionally, although it has not garnered much attention, the Chumir Foundation’s recommendation that section 3 needed to be amended was not followed. Section 3 deals with publications and is quite controversial. It provides as follows:

Discrimination re publications, notices

3(1) No person shall publish, issue or display or cause to be published, issued or displayed before the public any statement, publication, notice, sign, symbol, emblem or other representation that ...

(b) is likely to expose a person or a class of persons to hatred or contempt because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income or family status of that person or class of persons.

(2) Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject. ...

Although relatively few complaints are made under this section, lately, it has been the subject of a great deal of debate. As currently worded, it violates freedom of expression and chills public debate (even though the legislation admonishes that it shall not be “deemed to interfere with the free expression on opinion on any subject”). Also, hate speech is dealt with currently under the *Criminal Code* of Canada, whereby a person’s intention to incite hatred is relevant. Under Alberta’s *Human Rights, Citizenship and Multiculturalism Act*, intention is not relevant to discrimination. Thus, any publication which has the effect of being “likely to expose a person or class of persons to hatred or contempt” based on one of the grounds covered would be said to violate the Act. The Chumir Foundation recommended that the section be amended to read as it did before it was expanded from discriminatory signs and symbols to include statements, publications and notices that indicate discrimination and that expose one to hatred or contempt. It should be noted that a report commissioned by the federal government also recommended similar amendments to the *Canadian Human Rights Act*: Richard Moon, October 2008 [Report to the Canadian Human Rights Commission Concerning Section 13 of the Canadian Human Rights Act and the Regulation of Hate Speech on the Internet](#)

Despite these recommendations, the Alberta Government’s reasoning for declining to recommend the change is that “removing publications from the Act could have serious consequences. Ultimately, Albertans need a balance between freedom of speech and responsibility.” ([Summary of proposed changes to Alberta’s human rights system](#)).

Paula Simons of the Edmonton Journal describes the amendments to Alberta’s human rights legislation as “[One step forward, two steps back](#)”.

I agree.