

Inadequate: This is an instance where Human Rights Commission practice and Tribunal decisions have bypassed an inadequate legislative framework - they have dealt with systemic or constructive discrimination although not mandated to do so. Ontario has recognized and rectified this problem by enacting S. 10 of its new Human Rights Code.

Proclamation: In the final joint statement of the September 1983 Federal-Provincial-Territorial Ministerial Conference on Human Rights, the Ministers recognized the desirability of a definition of discrimination in their respective anti-discrimination statutes that would include systemic discrimination. Adoption of the Committee's recommendation would enable the Canadian Human Rights Commission to have a mandate to deal effectively with systemic discrimination.

RECOMMENDATION:

Justice Canada should prepare amendments to Sections 7 and 10 of the Canadian Human Rights Act so that they include remedies for the effects of systemic discrimination on visible minorities.

ALLOW CIVIL LITIGATION AGAINST DISCRIMINATORS

Delay: Witnesses appearing before the Committee complained that once a complaint has been lodged with the Human Rights Commission, they lose control of how it is processed. This often results in lengthy delays between the filing of the complaint and its final resolution.

Ruling: Until a 1981 Supreme Court of Canada ruling, it might have been possible for an individual subjected to discrimination to sue the offender for damages rather than taking the case before the Human Rights Commission. But the Court decided that the enactment of such human rights legislation had the effect of preventing any recourse to the civil courts in cases of discrimination on the basis of a prohibited ground.

Option: A person complaining of discrimination should be allowed recourse to the civil courts as an alternative to going to the Human Rights Commission. In this way, he will be able to determine the manner in which his complaint is to be resolved. At the same time, a complainant resorting to the civil courts should not be able to take his complaint to a human rights commission once the civil litigation has been initiated.

RECOMMENDATION:

Justice Canada should prepare amendments to the Canadian Human Rights Act and the provinces should amend their anti-discrimination laws to allow a complainant the option of instituting civil litigation against a discriminator rather than making a complaint to the Human Rights Commission.

RECOMMENDATION

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