

Requisite changes to the Canadian Human Rights Commission

The current mandate of the Canadian Human Rights Commission under section 27 of the *CHRA* includes most of the activities which are necessary for the effective promotion of social and economic rights at the federal level. Transforming the role of the Commission with respect to poverty and social and economic rights is therefore primarily a matter of expanding the ambit of the rights which are protected under the *CHRA*, rather than redefining the powers, duties and functions of the Commission. In addition to its duties under Part III of the *Act* with respect to complaints, the Commission currently has the mandate to engage in public education and research on issues of compliance with the *CHRA*; establish close liaison with provincial human rights commissions to foster common policies and deal with areas of overlapping jurisdiction; consider and comment on recommendations concerning human rights from any source;⁴³ conduct studies; and issue recommendations.

Two changes would be required to the present mandate of the Commission, however, in order to enable it to meet the requirements of the *Paris Principles* and to carry out the duties of a national institution under the *ICESCR*. Both the *Paris Principles* and *General Comment No. 10* require the Commission to have an explicit mandate to review legislation.⁴⁴ As it is presently formulated, the *CHRA* permits the review of “regulations, rules, orders, by-laws and other instruments made pursuant to an Act of Parliament” but does not expressly provide for review of legislation or draft legislation. In addition to the power to review domestic legislation, both the *Paris Principles* and *General Comment No. 10* require that the Commission have the mandate to consider domestic compliance with international human rights treaties which Canada has ratified.⁴⁵

While the Commission’s current mandate under section 27 of the *CHRA* could be read as including this power, the Commission’s role in reviewing Canada’s compliance with human rights treaties should be explicitly included among the Commission’s duties and functions.

The *Paris Principles* also suggest that national human rights institutions may play a role in the reporting process before U.N. treaty monitoring bodies, although the precise nature of that role is not clearly set out.⁴⁶ The Committee on Economic, Social and Cultural Rights does not include this as one of the required activities of a national human rights body under *General Comment No. 10*. In view of the increasingly “adjudicative” approach of the Committee to state party review under the *ICESCR*, it would be inappropriate for the Human Rights Commission to represent, or to speak on behalf of, the Canadian government. Submitting an independent opinion on matters of compliance would be more appropriate. However, it is essential that the Commission remain independent of government in the treaty monitoring review process. In its 1998 review of Canada’s performance under the *ICESCR*, the Committee requested the independent opinions of federal and provincial human rights commissions on a number of matters within their area of expertise, including on the question whether workfare programs discriminate against welfare recipients; on the

⁴³This would include the *Concluding Observations* of treaty monitoring bodies.

⁴⁴*Paris Principles*, *supra* note 3 at paragraph 3(b); *General Comment No. 10*, *supra* note 16 at paragraph 3(b).

⁴⁵*Paris Principles*, *ibid.* at paragraph 3 (b)(c); *General Comment No. 10*, *ibid.* at paragraph 3(b).

⁴⁶*Paris Principles*, *ibid.* at paragraph 3(d).