

# 10 MYTHS AND REALITIES:

How can the government strengthen the enforcement of human rights by weakening our only public human rights enforcement agency?

MYTH	TRUTH	WHAT WE WANT:
<p>1. The proposed reforms only seriously affect the Commission's current gatekeeping or "veto" role over the right of every claimant to a hearing. Under the new system, everyone will have a "right to a hearing."</p>	<ul style="list-style-type: none"> <li>• Michael Gottheil, Chair of the Human Rights Tribunal has publicly acknowledged that the Tribunal will not be able to handle the Commission's current caseload of about 2400 complaints a year.</li> <li>• This means that the gatekeeping role will simply be transferred to the Tribunal. This may result in increased costs and may make the proceedings more "court like", resulting in further barriers with respect to access to justice.</li> <li>• The "right to hearing" is meaningless where individuals cannot afford lawyers and investigators to advance their case.</li> <li>• The Government says this new system will be quicker. Yet its plan just moves the long line-up from the Commission's door to the Ontario Human Rights Tribunal's door.</li> </ul>	<ul style="list-style-type: none"> <li>• Consult with the community about how best to reform the dismissal process before legislation is tabled.</li> <li>• Discuss lowering the legal threshold for the commission to refer a case to the Tribunal.</li> </ul>
<p>2. The reforms will not duplicate the B.C. Human Rights Disaster.</p>	<ul style="list-style-type: none"> <li>• The proposals as announced have clearly indicated that the Commission will remain as a shell, but its teeth are being ripped out. This replicates the situation in B.C.</li> <li>• A recent paper examining the B.C. experience has demonstrated that the reforms, as they are currently proposed, will likely result in the following:               <ul style="list-style-type: none"> <li>○ The Tribunal will spend most of its time "screening out inappropriate cases" rather than adjudicating the substantive merits of human rights allegations.</li> <li>○ Without the support of the Commission through every stage, unrepresented individuals face the burden of presenting and investigating their own cases without sufficient expertise, and as a result, face high dismissal rates.</li> <li>○ Under the so called "direct access" model, recognition of the public element of human rights cases has been removed. Human rights is simply becoming a private interaction</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Listen to the experienced voices from B.C. and consult with the community before legislation is tabled.</li> <li>• Strengthen the Commission, don't weaken it.</li> </ul>

	<p>between the parties, akin to civil litigation, as opposed to a public interest.</p> <ul style="list-style-type: none"> <li>o Statistics reveal that individual and community groups are more unlikely to pursue systemic complaints given the time and resource constraints. And without proper funding for the "clinics" set up after the Commission's death, no one is properly equipped to assume the independent human rights monitoring role the Commission occupied.</li> <li>o Respondents under the new system are also hampered under the new system as they are also forced to engage a lawyer at the outset and the process is public from the beginning.</li> </ul> <p>For more information on the B.C. Experience go to:  <a href="http://hrdefenders.bc.ca/route64.html">http://hrdefenders.bc.ca/route64.html</a></p>	
<p><b>3.</b> The publicly-funded investigation process is not designed to assist the claimant.</p>	<ul style="list-style-type: none"> <li>• The right to an investigation is designed to assist both the claimant and the respondent. An investigation is not supposed to be biased in favour of one side or the other. It should be an unbiased effort to get at the truth.</li> <li>• The proposed plan largely privatizes human rights enforcement. It forces discrimination victims to investigate their own complaints. Few organizations will voluntarily cooperate with such investigations. The Government's plan also forces discrimination victims to hire their own lawyer to present their case to the Tribunal at long hearings. With no lawyer, a discrimination victim is completely out-matched.</li> </ul>	<ul style="list-style-type: none"> <li>• Consult with the community before tabling legislation.</li> <li>• Discuss the option of making the Commission independent of Government - the Human Rights Commission should report directly to the Ontario Legislature, rather than a ministry of the Ontario Government that it often investigates.</li> </ul>
<p><b>4.</b> Claimants currently wait over a year for an investigation to begin and the new system will speed up this process.</p>	<ul style="list-style-type: none"> <li>• With a Commission budget that has remained at pace for roughly 10 years, while the complaints filed with the Commission have increased from roughly 1700 cases to approximately 2400 cases in 2003 and has remained in that range since that time, yes, there are unreasonable delays.</li> <li>• No one from the community is opposed to reforms and improvements to the Commission.</li> </ul>	<ul style="list-style-type: none"> <li>• Discuss imposing enforceable time-lines for major steps in the human rights process.</li> <li>• Immediately increase and stabilize funding to the Human Rights Commission to enable prompt, effective investigation and prosecution of human rights violations.</li> </ul>

<p><b>5.</b> The Commission currently dismisses three out of every four cases (or 75%), and the new system will result in more hearings of valid cases.</p>	<ul style="list-style-type: none"> <li>• The actual dismissal rate of the Commission, as revealed in the annual report for the year 2004-2005, is only 11%. That figure rises to only 18 % when you include complaints that are not dealt with pursuant to s.34 of the <i>Code</i>.</li> <li>• Throughout the years 2000-2004, the dismissal rate remained steady between 12 and 13%. It was only 1999-2000 year that the Commission had a spike in the dismissal rate at 20%. No matter how you add up the numbers, the picture is clear - it is no where close to 75%.</li> <li>• Moreover, as the B.C. experience has shown, the bulk of hearings that make it to the Tribunal are motions and other administrative processes, not hearings about substantive human rights claims.</li> </ul>	<ul style="list-style-type: none"> <li>• As aforementioned, consult with the community about how best to reform the dismissal process before legislation is tabled.</li> <li>• Discuss lowering the legal threshold for the Commission to refer a case to a Tribunal.</li> <li>• Simplify and reduce the number of internal formal decisions the Commission must make in a single case</li> </ul>
<p><b>6.</b> The proposed reforms will maintain publicly funded legal and investigation support.</p>	<ul style="list-style-type: none"> <li>• The Government vaguely said it will provide some new means for discrimination victims to get legal advice and help, but hasn't answered requests for details.</li> <li>• The proposal to stream this work into the already underfunded legal clinic system is not a solution.</li> <li>• Legal Aid serves only the very poor. Under-funded Legal Aid budgets aren't guaranteed year after year, and are already stretched beyond the limit. Even if the Government adds to Legal Aid this year, it is easily cut next year. Many victims aren't so severely poor as to qualify for Legal Aid, but still can't afford steep legal fees.</li> </ul>	<ul style="list-style-type: none"> <li>• As aforementioned, immediately increase and stabilize funding to the Commission to enable prompt, effective investigation and prosecution of human rights violations.</li> </ul>
<p><b>7.</b> Investigations and dismissals of complaints occur behind closed-doors. The new system will make this process more transparent.</p>	<ul style="list-style-type: none"> <li>• A "case analysis" that summarizes the evidence and allows both parties to respond is provided to every complainant. The Commissioners base their decisions to dismiss on the "case analysis" as well as the submissions of the parties.</li> <li>• This practice has been upheld by the courts repeatedly as complying with the principles of procedural fairness.</li> </ul>	<ul style="list-style-type: none"> <li>• Instead of shifting the gate-keeping role, substantially improve the way that the Commission exercises this function, to make it more fair, prompt, open, and accurate.</li> </ul>
<p><b>8.</b> There has been adequate community consultation.</p>	<ul style="list-style-type: none"> <li>• Public discussion and debate on this topic since the Government's February 20, 2006, announcement has focused on the pros and cons of the Government's single proposed option, an option, which many community organizations</li> </ul>	<ul style="list-style-type: none"> <li>• Before introducing a Bill into the Legislature, hold an open, accessible, province-wide public consultation on how to</li> </ul>

	<p>oppose</p> <ul style="list-style-type: none"> <li>• Many community voices have not yet been heard. Here is a listing of just some of the groups that are calling for consultation before the legislation is introduced: <ul style="list-style-type: none"> <li>• ARCH Disability Law Centre</li> <li>• Disabled Women's Network of Ontario</li> <li>• Canada's Association for the Fifty Plus</li> <li>• Ontario Coalition of Senior Citizens' Organizations</li> <li>• Ontario Council of Agencies Serving Immigrants</li> <li>• South Asian Legal Clinic</li> <li>• The 519 Church Street Community Centre</li> <li>• Metro Toronto Chinese and Southeast Asian Legal Clinic</li> <li>• National Anti-Racism Council of Canada</li> <li>• Accessibility for Ontarians with Disabilities Alliance</li> <li>• Canadian Arab Federation</li> <li>• Autism Society of Ontario</li> <li>• Multiple Sclerosis Society</li> <li>• League for Human Rights of B'nai Brith Canada</li> <li>• Ontario Association of the Deaf</li> <li>• Bob Rumball Centre for the Deaf</li> <li>• The Canadian Hearing Society</li> <li>• Canadian Paraplegic Association</li> <li>• Canadian National Institute for the Blind</li> <li>• Alliance for Equality of Blind Canadians</li> <li>• Community Living Ontario</li> <li>• Thunder Bay &amp; District Injured Workers' Support Group</li> </ul> </li> <li>• Chief Commissioner Barbara Hall herself has publicly acknowledged that the proposal "leaves more questions than answers" and is in support of wide consultation.</li> </ul>	<p>improve Ontario's system for enforcing the Ontario <i>Human Rights Code</i>.</p>
<p>9. There is consensus on the model proposed.</p>	<ul style="list-style-type: none"> <li>• There is only consensus on the fact that reform is required and long overdue. There is <u>no consensus</u> on the most appropriate, effective and socially responsible model.</li> <li>• The LaForest and Cornish reports, which are often cited by Attorney General Michael Bryant and other supporters of the</li> </ul>	<ul style="list-style-type: none"> <li>• Given this lack of consensus and accurate information on which to base reforms, hold open, wide and accessible consultations <u>before</u> tabling</li> </ul>

	<p>legislation, are in fact 15 and 6 years old respectively. The human rights landscape has significantly changed during that time. Further, the proposed reforms do not even fulfill some of the most critical recommendations in these reports, namely the requirement for effective and guaranteed legal representation.</p>	<p>legislation to bring <u>everyone</u> to the table.</p>
<p><b>10.</b> Meaningful public consultation has already been promised. Whether it happens before or after legislation is introduced does not matter.</p>	<ul style="list-style-type: none"> <li>• Consultation after the legislation is tabled, by the rules of the House, is seriously constrained and is not designed to address fundamental or substantial elements of the Bill.</li> <li>• In order for genuine, and effective public consultation to occur, it needs to happen BEFORE the bill is introduced</li> <li>• If the Bill is introduced without widespread public consultation first, it is the government's signal to the public that they do not require input from the communities that most use and need the system.</li> </ul>	<ul style="list-style-type: none"> <li>• Hold genuine and meaningful consultations when they can make a difference, namely, before the legislation is introduced.</li> </ul>