



Evans, Philp LLP  
Barristers and Solicitors

Breakfast Series:  
***FASTEN YOUR  
SEATBELT: THE NEW  
HUMAN RIGHTS  
CODE***

May 27, 2008

A thick, solid orange horizontal bar with rounded ends, positioned at the bottom of the slide.

# THE NEW *HUMAN RIGHTS CODE*

Presenters:

**BRENT J. FOREMAN and JANE M. GOODING**

Evans, Philp LLP  
Barristers and Solicitors  
1 King St. W., 16<sup>th</sup> Fl.  
Hamilton, ON  
L8N 3P9  
(905) 525-1200  
[www.evansphilp.com](http://www.evansphilp.com)

Evans  
Philp

A steadfast commitment to our clients, since 1919

# CHANGES TO THE *HUMAN RIGHTS CODE*

Several significant changes, including:

- expanded role of courts
- elimination of caps on monetary awards
- significantly reduced role of Human Rights Commission in regard to complaints
- significantly expanded role of Human Rights Tribunal of Ontario in regard to complaints

## THE *HUMAN RIGHTS CODE*-BACKGROUND

- provides for “*equal treatment*” with respect to services, occupancy of accommodation, right to contract, employment, etc.
- prohibits discrimination on enumerated grounds under the *Code*

## THE *HUMAN RIGHTS CODE*- BACKGROUND

- Ontario's human rights system was created in 1962 – the *Code* was one of the first such laws in Canada
- however, in recent years, the system has been heavily criticized for taking too long to resolve complaints

## CALL FOR CHANGE

April 2006: the A.G. introduces changes:

*“A modernized Ontario Human Rights Commission would become a stronger champion of human rights, focusing on the prevention of discrimination, while the Human Rights Tribunal of Ontario would be given greater powers to resolve individual disputes fairly, quickly and effectively”*

## TIMING OF CHANGES

- December 2006: *Human Rights Code Amendment Act, 2006* receives Royal Assent
- June 30, 2008: launch date for the changes – transition period begins
- December 31, 2008: transition period ends – amended processes to be fully implemented

## COMPLAINTS: THE CURRENT SYSTEM

Complaints under the *Code* currently are dealt with by two statutory bodies:

- Ontario Human Rights Commission (the “*Commission*”)
- Human Rights Tribunal of Ontario (the “*Tribunal*”)



# COMPLAINTS: THE CURRENT SYSTEM

Currently, complaints proceed as follows:

- complaints are filed with the Commission
- Commission investigates & determines whether complaint ought to be referred to Tribunal
- if referred, then a hearing is held, with the Commission having “carriage” of the case

# COMPLAINTS: THE NEW SYSTEM

The process under the new system changes substantially:

- Commission's role in regard to complaints largely eliminated
- Tribunal's role in regard to complaints substantially expanded
- a new entity created: *Human Rights Legal Support Centre*

## THE COMMISSION'S ALTERED ROLE

The Commission will no longer:

- X automatically screen or investigate complaints
- X act as “gatekeeper” with respect to referral of complaints to Tribunal

# THE COMMISSION'S ALTERED ROLE

## Attorney General:

*“The Ontario human rights system would be improved by strengthening the role of the ...Commission...in preventing discrimination by focusing its work on proactive measures such as public education, systemic advocacy, promotion, research and analysis.”*

## THE TRIBUNAL'S ALTERED ROLE

- all complaints to be filed directly with the Tribunal
- Attorney General: filing claims in this way will allow them to be “*resolved quickly and effectively through mediation, adjudication and enforcement*”

# HUMAN RIGHTS LEGAL SUPPORT CENTRE

- will provide information, support, advice and free legal representation
- note: available only to those seeking a remedy at the Tribunal (i.e. complainants/applicants)

## SIX MONTH TRANSITION PERIOD

June 30, 2008 To Dec. 31, 2008:

- the Commission will continue to deal with pre-June 30<sup>th</sup> cases
  - special procedures for such pre-existing cases still not finalized at this point
  - all **new** discrimination complaints/applications filed **on June 30<sup>th</sup> or later** will be dealt with by the Tribunal only in accordance with the **new** process

## TIME LIMIT FOR FILING A COMPLAINT

- currently: complaints generally must be filed within six (6) months of the alleged incident of discrimination
- under the new system: the time period will be doubled to one (1) year from the date of the alleged incident



## TRIBUNAL: NEW RULES OF PROCEDURE

- the Tribunal's rules of practice and its procedures will change significantly
- s. 43(3) – *“The Tribunal rules may ...provide for... practices and procedures...that are alternatives to traditional adjudicative or adversarial procedures”*

# NEW APPLICATION (COMPLAINT) FORM

The Application (Form 1) must contain:

- a first person account of the situation
- a list of key witnesses
- a list of key documents in the Applicant's possession
- a list of key documents in the Respondent's possession
- identify anyone else who may be affected by the Application

# DISMISSAL OF AN APPLICATION

The Tribunal may dismiss an Application if:

- it is outside provincial jurisdiction;
- it does not relate to a ground of discrimination or an area of activity covered by the *Human Rights Code*; and,
- the claim is already before the courts or subject to a court decision.

# DEFERRAL OF AN APPLICATION

The Tribunal may defer consideration of an Application:

- on its own initiative
- upon application by the Applicant in the Application
- upon request by the Respondent during proceedings

# DEFERRAL OF AN APPLICATION

A deferral will be ordered:

- “on such terms as the Tribunal may determine”
- where there is another legal proceeding dealing with the matter (other than a Court proceeding), i.e., a grievance arbitration

# RESPONDING TO AN APPLICATION

The Response (Form 2) **must**:

- be filed no later than 35 calendar days after a copy of the Application is sent by Tribunal
- contain a list of key witnesses
- contain a list of key documents in the Respondent's possession
- contain a list of all relevant documents in the possession of the Applicant

# PRELIMINARY OBJECTIONS

- Respondent not entitled to raise technical or procedural issue as reason for delaying the Response

## **Exception:**

- where Respondent asks Tribunal to dismiss Application

## THE REPLY

The Reply (Form 3) must:

- be submitted no later than 14 calendar days after the Response
- deal only with new matters raised



# RESOLUTION OF COMPLAINTS BY THE TRIBUNAL

The Rules provide a number of mechanisms that the Tribunal may use in dealing with an Application including:

- **Summary Hearing**
- **Conference Calls**
- **Integrated Mediation**
- **Pre-hearing Assessments**
- **Hearings**

# SUMMARY HEARINGS

A Summary Hearing may be scheduled where:

- important preliminary issue must be decided
- no facts are in dispute and the Application can be determined in a day or less
- a Respondent has failed to respond to the Application

# CONFERENCE CALLS

Conference calls will be scheduled:

- as an exceptional step only
- if information in the Application or Response is unclear and a discussion would help determine the best next step

# INTEGRATED MEDIATION

## Integrated mediation:

- may be **offered or requested** by a party after the Application is filed
- subject to confidentiality agreements being signed
- any proposed settlement must be accepted by both parties

# PRE-HEARING ASSESSMENT

## Pre-hearing disclosure:

- Documents
  - **21 days** after Confirmation of Hearing a copy of all relevant documents must be provided to other party
  - **45 days** prior to first day of hearing a list of all documents on which the party intends to rely provided to other party and filed with Tribunal
- Witnesses
  - **45 days** prior to first day of hearing a witness list must be provided to the other party and filed with the Tribunal

# PRE-HEARING ASSESSMENTS

The Adjudicator can, for example:

- determine the issues in the proceeding
- determine the order of the evidence
- question a witness
- permit a party to give a narrative before questioning
- limit the evidence or submissions on any issue

# TRIBUNAL HEARINGS

## At the hearing:

- the Adjudicator will have greater control than even the Courts
- process will be much more intrusive than currently
- Adjudicators will have unprecedented powers to control the proceeding

# ORDERS OF THE TRIBUNAL

Following a hearing, the Tribunal may:

- dismiss the Application
- make an Order



## ORDERS OF THE TRIBUNAL

Tribunal may make one or more of the following orders:

- an order for monetary compensation
- an order for non-monetary restitution
- an order directing a party to do anything the party ought to do to promote compliance with the *Act*

# WHAT IF A PARTY DISAGREES WITH THE DECISION?

- **no right of appeal** from a Tribunal decision, BUT a party can ask for a reconsideration
- grounds for reconsideration include:
  - new facts or evidence
  - a party did not receive notice of the hearing
  - the decision is in conflict with established jurisprudence or Tribunal procedure and involves a matter of public importance

## TRIBUNAL REMEDIES

- Tribunal has the power to order monetary compensation and non-monetary restitution, including compensation or restitution for losses caused by injury to dignity, feelings, and self-respect
- *Human Rights Code Amendment Act* places no limitation on the quantum of such awards

## THE TRIBUNAL vs THE COURTS

- currently, individuals alleging discrimination essentially limited to pursuing remedies before the Commission
- the amended *Code* still does not permit a person to commence a court action based **solely** on an alleged infringement of a right under the *Code*
- however, under amended *Code*, Courts have expanded powers to address issues having a human rights component

## REMEDIES – THE COURTS

Under the amended *Code*, the Courts can order remedies for infringement of rights under the *Code*, including:

- monetary compensation
- reinstatement into employment
- provision of letters of reference
- posting letters of apology in the workplace or in the media

# FUTURE BREAKFAST SEMINAR – PLEASE JOIN US

Mark your calendar...

*We look forward to seeing you again in the Fall!*