

“Justice Impeded: A Critique of the Nova Scotia Human Rights Regime” by Equity Watch – Executive Summary

Equity Watch has prepared a 50-page report on the Nova Scotia human rights regime. We are marking the third anniversary of the historic settlement of the case of [Liane Tessier](#), a Halifax firefighter subjected to years of gender discrimination by her employer and neglect by the Human Rights Commission. The report can be accessed at <http://equitywatch.ca/equitywatch/2021/01/03/equity-watch-critique-of-the-nova-scotia-human-rights-regime/>

Despite demands from Equity Watch, to date there has been no public disclosure of progress on six promises made by Tessier’s employer, Halifax Regional Municipality (HRM). Because the Tessier case is emblematic of much of what is wrong with how the Human Rights Commission pursues human rights offences, we have decided to submit the human rights regime to a thoroughgoing critique.

Twenty years have passed since the last critical review of the human rights regime and a new one is long overdue. Our report reviews the behaviour of the Nova Scotia Human Rights Commission and associated institutions, as well as several key cases in recent years. It then explores alternatives to the regime, and finally makes recommendations for reform.

WHAT IS EQUITY WATCH?

Equity Watch (www.equitywatch.ca), formed by human rights activists in the wake of the Tessier settlement: promotes workplaces free of bullying, harassment and discrimination; advocates for better governmental regulation of employment equity; encourages hiring, development and promotion of target groups; monitors bodies, like the Human Rights Commission and decisions of associated Boards of Inquiry; scrutinizes employers and their human resources departments to ensure they are upholding the principles of employment equity; assists, where possible, the bullied, the harassed, or discriminated-against at work; and encourages and helps unions to do even better at doing their part to fight against discrimination and for equity

LIMITATIONS OF THE NOVA SCOTIA HUMAN RIGHTS APPROACH

A statutory human rights regime is designed, and can do much, to promote fairness in employment, housing and services. But we list 35 serious, sometimes fatal, flaws of the Nova Scotia system. Among those are:

- ❖ The regime is oriented to unadventurous and re-active response to cases of individual discrimination and eschews aggressive, pro-active approaches to *systemic discrimination*.
- ❖ Even where systemic discrimination by a respondent is found or admitted, new cases are not acknowledged to be part of the pattern
- ❖ Even when remediation is agreed to, those remedies are seldom publicly monitored, and possibly ignored
- ❖ Answerable to the Attorney General and not the legislature, the regime is a creature of the government of the day, to manage, solve, or spin, as it sees fit.
- ❖ The system is dangerously underfunded and under-resourced compared to any reasonable need,
- ❖ Many potential claimants, especially from the African-Nova Scotian and Indigenous communities, have simply lost faith that the human rights regime will handle their complaints with sensitivity, respect, understanding and alacrity.
- ❖ The Human Rights Commission has total control over whether a complaint gets their “day in court” and far too few cases make it to adjudication.
- ❖ Cases take way too much time to process – often more than three years.
- ❖ The one-year time limit to file complaints is inadequate; it ignores the trauma that impedes many people in stepping forward.
- ❖ The Commission’s staff is all too often neglectful and dilatory in handling cases
- ❖ In many instances, complainants are better off with legal representation, but there is no publicly available legal assistance program, leaving clients on their own.

- ❖ At Boards of Inquiry, the Commission represents, not the complainant, but the “public interest.” Unless the complainant affords their own lawyer, the strength of their case is jeopardized.
- ❖ Although some adjudicators write comprehensive decisions, important details of hearings, especially ones that last over a long time, are not available to the public.
- ❖ Too many cases settled privately between complainant and respondent are subject to “non-disclosure agreements” or “gag orders,” Thus the crucial element of public education is sabotaged.
- ❖ Another barrier to transparency and public education is the Commission’s penchant for “restorative justice.” This approach, perhaps appropriate to keep vulnerable populations away from incarceration in the criminal justice system, is less appropriate in human rights matters, where respondents are often employers or landlords and are powerful.
- ❖ The Commission’s approach to remedies stresses training in “diversity and inclusion,” a very passive approach to redress and improvement. There is no reliable proof that ticking the boxes of the currently popular “implicit bias” technique results in significant behavioural change.
- ❖ The list of grounds upon which discrimination is prohibited in Nova Scotia has glaring omissions and needs revision and flexibility. Blatant causes of discrimination have evaded justice for far too long.

REVIEW OF SALIENT CASES

The document critically reviews a raft of cases in some detail, among them Tessier (gender harassment and discrimination in employment), Andrella David (racial profiling in services), Kirk Johnson (racial profiling by police), the Halifax Black Firefighters Association (racial discrimination in employment), YZ (racial discrimination in employment), Kathy Symington (gender harassment and discrimination in employment), Reed et al. (disability discrimination in services), and McLean et al (disability discrimination in services) and concludes that:

- ❖ All too often, cases are rejected on trivial technicalities
- ❖ Either the Commission or the Board of Inquiry followed an overly timid orientation.
- ❖ Each case took an inordinate amount of time to conclude.
- ❖ Each case suffered from a lack of transparency and accountability to the public.
- ❖ Where the respondents made promises of rectification, there is no follow-up so the public remains ignorant of its progress.
- ❖ There is little evidence that the respondents are engaging in melioration over the long term
- ❖ Most cases began from individual complaints, each was very limited in its ability to solve deep systemic problems and required, but seldom if ever received, community involvement for complete success.

THE ONTARIO TRIPARTITE SYSTEM

In response to major problems similar to Nova Scotia’s, Ontario moved in 2008 to a system of three autonomous agencies. Such an approach, adequately resourced and properly resourced, has much to recommend it:

Human Rights Commission. Its role is restricted to policy matters and public education and in bringing forward complex issues, like systemic discrimination and racial profiling, to the Tribunal.

Tribunal. This is the direct-access body dealing with complaints and adjudication. While screening, mediating and promoting settlement, it still allows complainants the possibility of a hearing. ***In other words, no complainant is denied access to their “day in court” of some sort if that is what they wish.***

Legal Support Centre. The Centre offers legal advice to applicants, assists them in framing their complaints and can act for clients before the Tribunal

WHY THIS REPORT IS CRUCIAL TO HUMAN RIGHTS

It has been nearly twenty years since the Nova Scotia Human Rights Commission has been critically evaluated. Yet in the last thirty plus years, the landscape of human rights has changed dramatically throughout Canada, due to [immigration, demographic, cultural and other changes in Canadian society](#). More than one in five Canadians were born abroad and over 22% are visible minorities. The proportion who are non-Christians has expanded. [Women](#), who made up 37.6% of the workforce in 1976, now constitute 47.4%. Individual rights to sexual

identity and gender identity are firmly on the agenda. While people want to privilege their own individual rights, there are groups who have suffered systemic discrimination. While blatant and outright bigotry still exists, more subtle and systemic discrimination requires much more attention.

Much about the human rights regime needs to change.

TWENTY-FIVE RECOMMENDATIONS FOR REFORM

Finally, Equity Watch's Report makes twenty-five recommendations for reform. We want a bolder, more aggressive, more responsive, more creative, in short a more activist human rights regime. Some notable recommendations are:

- ❖ Moving to a tripartite set of agencies, similar to Ontario
- ❖ Clear service delivery standards/time limits, including lengths of investigations
- ❖ Adequate resourcing
- ❖ No imposed non-disclosure agreements
- ❖ Less reliance on "restorative justice," especially where power resources are tilted toward respondents
- ❖ A move away from the passive "diversity and inclusion" model of remediation toward more activist approaches



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