



## Lancaster, Brooks & Welch LLP

BARRISTERS AND SOLICITORS

### Business Bulletin, August 2006 Bill 107, An Act to Amend the Human Rights Code by Leanne Standryk<sup>1</sup>

Bill 107, *An Act to Amend the Human Rights Code* received its second reading on May 8, 2006 and underwent further debate on May 30, 2006. If passed, the Bill will reform Ontario's human rights system.

#### The Complaint Process

Bill 107 changes the way in which complaints are filed. A person who wished to complain would apply directly to the Ontario Human Rights Tribunal (Tribunal). The Tribunal would have the authority to hold a hearing or to dispose of the application through an alternative dispute mechanism. Currently, all complaints are filed with the Ontario Human Rights Commission (Commission), which receives and investigates complaints and decides whether an individual complaint should proceed to a hearing before the Tribunal. If Bill 107 becomes law, the Commission would focus its efforts on the prevention of discrimination.

Complainants would not be permitted to make applications to the Tribunal where they have already commenced a civil proceeding in which they seek a remedy with respect to the alleged infringement of the *Human Rights Code* (Code) and that proceeding is ongoing, or where a court has finally determined the issue of whether a right under the Code has been infringed.

The Tribunal would have the authority to dismiss a complaint, in whole or in part, for a variety of reasons, including:

- the proceeding is frivolous, vexatious or was commenced in bad faith;
- the facts alleged, even if true, do not disclose an infringement of a right; or
- the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the complaint.

#### Tribunal's Powers with Respect to Orders

The Tribunal would have the authority to make three kinds of orders:

- monetary compensation (with no upper limit);
- restitution other than monetary compensation; and
- any other direction that, in the opinion of the Tribunal, the party ought to do to promote compliance with human rights legislation, both in respect of an infringement and in respect of future practices, whether or not such a remedy is requested by a complainant.

#### The Commission's New Role

Although complaints would go directly to the Tribunal, Bill 107 does not exclude the Commission entirely from the process. The Commission would maintain the ability to bring a complaint on its own behalf or to intervene in individual complaints where the Commission believes there are systemic issues affecting the public interest.

The Commission's focus, however, would shift to what the Ontario government is calling "proactive measures" to address systemic discrimination – public education, promotion and public advocacy, research and analysis.

#### Conclusion

Bill 107 includes a variety of transitional provisions, and requires a full review of the implementation and effectiveness of the changes resulting from its enactment five years after it comes into force.

With a streamlined process, Employers should anticipate that the proposed changes may result in an increase in the number of complaints being filed by employees and prospective employees.

*The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.*

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