HUMAN RIGHTS LEGISLATION: THE PATH AHEAD

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The theme of this Forum is "50 Years After the *Universal Declaration of Human Rights*: Where Do We Go From Here?" As I write this, the Canadian Human Rights Commission is also at a landmark: the 20th anniversary of the coming into force of the *Canadian Human Rights Act* (the "CHRA"). This milestone presents an excellent vantage point from which to look back on the evolution of Canadian human rights law and initiatives over the last 20 years, particularly in the federal sector, but also with reference to the provincial sphere. It also presents the opportunity to look to the future and consider the decisions and actions that have yet to be taken.

International and Canadian Human Rights Legislation

When enacted, the human rights legislation of many nations, including Canada, found inspiration in the *Universal Declaration of Human Rights* and in the subsequent *International Covenant on Economic, Social and Cultural Rights* and *International Covenant on Civil and Political Rights* (the "Covenants"). In its many forms, domestic legislation was meant to put into practice the principles expressed in the *Universal Declaration*, and to move each nation forward toward the goals set in 1948. These nations were encouraging universal human rights at an appropriate starting place, which reflected Eleanor Roosevelt's often-quoted observation that such rights begin

> in small places, close to home – so close and so small that they cannot be seen on any map of the world. Yet they *are* the world of the individual person: The neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.[1]

The *Universal Declaration* and the Covenants set out a wide range of rights in universal language, whereby "everyone" has particular rights and "no one" is to be subjected to certain kinds of treatment. This principle of universality accompanies the description of enumerated substantive rights and is reinforced by an express right of equality.[2] Attention is drawn to an explicit list of likely grounds for discrimination. This listing makes it easier to pinpoint instances of inequality by examining the lot of

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[1]Eleanor Roosevelt, at a ceremony at the United Nations, New York, 27 March 1958; cited in E. C. Phillips, *You in Human Rights* (New York: U.S. National Commission for UNESCO, 1967) at 2.

[2]Article 2 of the *Universal Declaration*, article 2.2 of the *International Covenant on Social, Economic and Cultural Rights*, and article 2.1 of the *International Covenant on Civil and Political Rights*.

those members of society most likely to be disadvantaged. While the Declaration and Covenants establish universal goals, their effect must be assessed in relation to the individual person. On an overall view, a given society might appear to provide all of its members with the same essential civil and economic rights. Equality, however, must be measured by examining how each individual actually fares under the general provisions. In addition, since many of the rights expressed in the *Universal Declaration* are goals for nations to strive toward, an effective rule of equality will require that individuals be treated equally at all stages as a nation progresses from partial to full achievement of such substantive rights.

Equality rights are the primary focus of Canadian human rights legislation. Particularly, these include rights to equal and non-discriminatory treatment in employment and in the provision of goods, services and accommodation. This legislation governs relationships between private actors, although, effectively, the state may wear a "private actor" hat as an employer, landlord, or provider of goods and services. In comparison, when a state is wearing its "state" hat, the civil rights which define the relationship between the individual and the state and which restrain or compel the state to act (for example, rights of freedom of expression and association, and legal process rights) are addressed by the *Canadian Charter of Rights and Freedoms*.

Like the *Universal Declaration* and the Covenants, the CHRA's section 2 statement of principle lists likely grounds of discrimination. However, the prohibited grounds which may form the basis of a complaint brought to the Commission for adjudication are restricted to those explicitly listed in section 3 and adjudication under the Act of alleged discriminatory practices is limited to those particular prohibited practices which are addressed by sections 5 through 14. Generally speaking, these are matters which could frustrate an individual's participation in society and compromise her ability to make for herself the life of her own choosing. It is assumed that if there is an adequate supply of employment, goods, services and accommodation, then a denial of any of these is likely to have been premised on some personal characteristic irrelevant in a society which embraces a principle of equality.

Recent History of Human Rights in Canada

In proposing a path to take Canadian human rights law into the next century, it helps to look at where we started and the path we have traveled up to now. In 1977, the debates which led to the enactment of the CHRA referred repeatedly to Canada's international commitment to the *Universal Declaration*. Many of the members who spoke in the House of Commons reflected upon the need and the proper role for human rights legislation. One might point, for example, to Gordon Fairweather, later appointed the first Chief Commissioner of the federal Commission. Mr. Fairweather observed:

> Really, what the government is attempting in the human rights legislation might be likened to lighting a candle toward respect for each and every human being. I suggest that the cultivation of such respect requires more than law. It requires a fundamental commitment to the worth of humankind. I do not mean to preach, but it occurs to me that to respect, you have to work at it. ... It requires a fundamental commitment on our part. I am not sure, but I suspect that respect for one's brother is not innate in our psyche; it has to be nurtured and worked on.[3]

In measuring our accomplishments or shortfalls, we should not lose sight of the foundational premise of the *Universal Declaration*, namely the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family." While the Commission would never abandon the importance of the CHRA's discrimination prohibitions, there are other concerns which may – and arguably should – come into focus as the new century approaches. I am thinking, for example, of poverty, which is recognized internationally as a fundamental violation of human rights.[4]

In the preface to the Commission's 1996 Annual Report, I commented on the challenging times we face as we seek to promote human rights. Effectively, there are those who can afford rights but there are also those for whom the word has little practical meaning. As I noted, universal justice can be easily overlooked when basic and essential commodities, including cultivable land and clean water, are increasingly dear and in short supply. However, this observation is neither new or startling, as the concerns voiced in the 1996 Report about Canada's Aboriginal Peoples and the factual links between health, poverty and marginalization have been on the human rights scene for quite some time.

Certainly, from the outset, many more problems have been brought to the Commission's attention than could be resolved by the Commission within its original adjudicative mandate and limited list of prohibited grounds. In fact, some twenty years later, as we consider the path of the Commission for the future, clues as to its direction can in fact be found in the concerns expressed by the Commissioners in the CHRC's early reports. If one goes back to the beginnings of the Commission, both the 1978 Annual Report and the Special Report to Parliament, which arose out of a 1978 National Conference on human rights, point to broader concerns than were expressly contained in the Act at that time.

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[3]Canada, *Commons Debates*, 2980 (11 February, 1977), (Mr. R. Gordon L. Fairweather, Fundy-Royal).

[4]Article 25(1) of the *Universal Declaration* states: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

In its first year of operation, many people sought the Commission's assistance in resolving problems which, on examination, did not relate to a discriminatory practice as defined by the legislation. In the 1978 Annual Report, the Commissioners listed a large number of requests to which the Commission could not respond, and provided specific examples:

> A mother with three children to support claimed that she could not find a job that would provide her with an adequate income. She was in tears. A discreet exploration of her situation did not indicate any discrimination had occurred. An elderly man wrote that his oil bills were rising faster than his pension indexing. He may have to sell his house. ... A woman whose unemployment benefits were cut off had not found out that she could appeal such a decision until after it was too late. She was not disentitled on the basis of a prohibited ground of discrimination. "Don't I have any human rights?" she asked.[5]

The Commissioners stated that they were not arguing that the Commission's jurisdiction should be expanded, but they did observe that the people bringing such problems to the Commission's attention would discover that "... although Canada has a Bill of Rights, a Human Rights Act, and has ratified the United Nations' Covenants on Human Rights, no law guarantees that an individual will receive the basics for a decent and productive life." There was no federal ombudsman to whom such legitimate but "orphan" complaints could be directed – nor has such an office since been created. The people voicing these complaints clearly have been disadvantaged, and they will continue to bring their problems to the federal Commission since, in a broad sense, human rights commissions are supposed to be concerned about the disadvantaged.

Participants in the 1978 National Conference, which coincided with the Commission's first full year of operation, made many and wide-ranging proposals for Canadian human rights law. These proposals were included in a Special Report to Parliament.[6] The concerns presented to Parliament included: that there was a problem of inconsistency between the narrower substantive focus of the CHRA and the broader focus of the international instruments; that the CHRA should be broadened to include "the monitoring of discriminatory situations arising from governmental or non-governmental economic policies or strategies;" that it should be mandatory that "human rights impact studies" be filed with respect to new government and non-government economic policies or strategies; and that there should be a more inclusive legislative concept of disability.

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[5]Canadian Human Rights Commission, *Annual Report 1978* (Ottawa: Minister of Supply and Services, 1979) Cat. no. HR1-1978, at 3.

[6]Canadian Human Rights Commission, *Final Report on the National Conference: "Human Rights in Canada... the Years Ahead"*(Ottawa: Canadian Human Rights Commission, April 1979); Canadian Human Rights Commission, *Special Report to Parliament Incorporating Recommendations from the National Conference: "Human Rights in Canada... the Years Ahead."* (Ottawa: Canadian Human Rights Commission, January 1979). Both reports issued from the National Conference held in Ottawa, December 8-10, 1978.

In 1987, the Commission's tenth anniversary report applauded the progress that had been achieved by the Commission, human rights tribunals and in decisions rendered by the Supreme Court of Canada. Still, the report brought forth proposed amendments to the CHRA. It proposed an elaboration of the Act's pay equity scheme which would clearly shift the onus to the employer to disclose and demonstrate its compliance with pay equity principles without a complaint being made. It also proposed the addition of an employer obligation of reasonable accommodation even where a discriminatory practice was a *bona fide* occupational requirement. Other suggestions included matters which had appeared in previous years' reports: the addition of sexual orientation, political belief, and prior criminal charges or conviction as prohibited grounds, a broadening of prohibited discriminatory practices, and removal of the mandatory retirement exception to age-based discrimination.

The fact that the Commission still has a "wish-list" for the substantive expansion of the CHRA does not deny that much has been accomplished on the federal human rights front. We have witnessed the addition of the broader term of "family status" to accompany the more legalistic ground of "marital status", and a broadening of "disability" as a prohibited ground of discrimination where once the Act referred only to "physical handicap". While discrimination on the basis of sex was prohibited from the outset, the Act now specifies that sex discrimination includes discrimination on the basis of pregnancy or child-birth. We have seen the legislative recognition of harassment and, in particular, sexual harassment as a prohibited discriminatory practice. We have finally seen the legislative addition of sexual orientation as a prohibited ground. We anticipate that the current Parliament will legislate a general right to accommodation and an employer's corresponding obligation to accommodate disadvantaged persons.

Within the context of the Commission's complaints-driven process, we have also seen a shift in focus from individual wrongs to instances in which a group of individuals, sharing certain characteristics, claim a pattern of wrongful and discriminatory behaviour. We have witnessed a concomitant shift from individual remedies to systemic corrections and preventive measures like employment equity audits. These shifts have accompanied our courts' recognition that, although the most blatant form of discrimination is an act meant to disadvantage a particular individual because of his or her personal characteristics, an individual may be disadvantaged, as well, by the application of rules or criteria which are discriminatory in fact although not intentionally so.[7] The courts have recognized that systemic discrimination in the workplace is not just a threshold issue, as it may occur not only at the outset of employment but also as adverse treatment of employees in the course of employment. In the latter case, the workplace has effectively been poisoned. Significantly, where an employee finds herself in such a poisoned work environment, our courts have held an

[7]See, for example, the Supreme Court of Canada decision in *Ontario (Human Rights Commission)* v. *Simpson-Sears Ltd.*, [1985] 2 S.C.R. 536.

employer liable for its own adverse acts or for those of its employees.[8] Although still premised on a complaint brought by an individual or group of specific individuals, the remedies which may be ordered now go beyond correcting the wrong done to that individual or group of specific individuals. The *Action Travail*[9] case confirmed the use of an employment equity programme designed to correct for past discriminatory practices and to open up the workplace for the future.

We have seen the introduction of legal measures to promote equality without first requiring a complaint-based court or tribunal finding of unlawful discrimination. As first enacted in 1986, the *Employment Equity Act* obliged certain employers to identify and eliminate discriminatory employment practices. The Act included an employer obligation to report information about the hiring, promotion, distribution and salary ranges of employees belonging to four designated groups: women, Aboriginal peoples, visible minorities and persons with disabilities. Although there was no explicit role for the Commission, the Government had concluded that the Commission derived powers from its own Act which would allow it to monitor the implementation of employment equity. The Commission undertook joint reviews in cooperation with employers, and dealt with employment equity-related complaints filed under the CHRA. However, enforceability was a major stumbling block. The Commission argued that the *Employment Equity Act* should explicitly assign enforcement powers to the Commission and should include employer obligations to demonstrate that employment equity has been implemented in the workplace. The new *Employment Equity Act*, adopted in December, 1995 and enacted in October, 1996, resulted from these arguments.

The CHRA's pay equity provisions have not evolved in a parallel fashion even though the Commission has called repeatedly for amendment of that part of the Act to oblige employers to demonstrate compliance irrespective of whether individual complaints have been made. On the other hand, although not strictly a matter of pre-complaint employer compliance, the law governing an employer's duty to accommodate disadvantaged employees or applicants for employment has evolved with court decisions which oblige an employer to accommodate unless that accommodation would entail undue hardship. Within the context of a complaint brought to the Commission, once a discriminatory policy or practice has been shown, the employer must justify its failure to accommodate. In a way, this rule of law is preventive since shifting the legal burden in the complaints process provides an additional incentive to each employer to examine its practices for adequate accommodation before an employee or unsuccessful applicant brings complaint of discrimination.[10]

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[8] *Robichaud* v. *Canada (Treasury Board)*, [1987] 2 S.C.R. 84.

[9] *Action Travail des Femmes* v. *Canadian National Railway*, [1987] 1 S.C.R. 1114.

[10] Bill S-5 would implement an explicit legislative rule of mandatory accommodation, short of undue hardship.

While it is important that prohibited grounds and practices and an obligation to accommodate should be explicitly part of the CHRA, the most recent of these amendments and proposed amendments have been a matter of playing legislative "catch-up" with our courts, rather than innovating. Unlike the corrective nature of the pregnancy and childbirth addition to section 3, other amendments have trailed considerably.[11] For example, the 1992 *Haig* decision established that sexual orientation was a prohibited ground of discrimination and should have been an explicit part of the CHRA.[12] The legislative addition of sexual orientation as a prohibited ground took place only some four years later. Similarly, an employer duty to accommodate within the limits of undue hardship was clearly established in the 1990 *Alberta Dairy Pool* decision.[13] Its legislative equivalent is just now pending before Parliament. Leaving aside common perceptions of the impenetrability of many legislative texts, legislation remains the clearest explanation of the law for many Canadians and its currency is vital.

At the very least, the primary legal text for human rights law should explicitly coincide with court interpretations which advance the lot of disadvantaged Canadians. However, it seems to me that one is obliged to ask whether this role of "follower" rather than "leader" is appropriate to the federal legislature of a country which, under the *International Covenant on Economic, Social and Cultural Rights*, has pledged itself to progressive measures leading to "the full realization of the rights recognized in the [Covenant] by all appropriate means, including particularly the adoption of legislative measures"[14] and which, under the *International Covenant on Civil and Political Rights*, has pledged itself to undertake "steps... to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in [that Covenant]."[15] Moreover, our courts, bound to the language of the CHRA, will not always be in a position to nudge forward our understanding of the existing human rights legislation to produce the outcome which fair-minded individuals find most desirable.[16]

Issues for the Future

Among the problems which lie ahead for legislation intended to protect employees from discrimination and ensure an equal opportunity workplace is the changing workplace itself. The nature of "employment" in Canada has changed substantially in recent

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[11]In response to the outcome in the 1979 decision in *Bliss* v. *Attorney-General for Canada*, [1979] 1 S.C.R. 183.

[12]*Haig* v. *Canada*, (1992), 9 O.R. 495, 94 D.L.R. (4th) 1.

[13]*Central Alberta Dairy Pool* v. *Alberta (Human Rights Commission)*, [1990] 2 S.C.R. 489.

[14]*International Covenant on Economic, Social and Cultural Rights*, Art. 2.2.

[15]*International Covenant on Civil and Political Rights*, Art. 2.2.

[16]In the *Haig* decision (*supra* note 12), the CHRA's inconsistency with the *Charter* provided the impetus for the Court's reading in of sexual orientation as a prohibited ground. However, in some instances, even the *Charter*'s enumerated and analogous grounds may not go as far as we might wish.

years.[17] Many individuals are now "independent contractors" where once they were employees and single workplaces are being replaced by networks of piece-workers and tele-workers. To ensure that the rules which govern pay equity and employment equity and which prohibit discriminatory employment practices continue to apply, it may be necessary for Parliament to redefine "employment" in the legislation so that it would encompass the new and fractured workplace.

The Commission has never been solely an adjudicative, complaints-driven body. From the outset, its legislation has *allowed* the Commission to undertake research and public education relating to matters falling within the Act's section 2 statement of principle, and to consider the impact of federal regulations and rules on matters falling within that statement of principle. The Act has obliged the Commission to report its activities to the Minister of Justice on an annual basis.[18]

While the Commission's Annual Reports have been a forum for requests for the amendment of the CHRA – in particular, the addition or expansion of prohibited grounds – they have also reflected its concerns about many disadvantaged Canadians whose difficulties have not fit neatly into the Commission's adjudicative scheme. For example, in the 1996 Report, we encouraged the federal government to give serious consideration to the recommendations of the Royal Commission on Aboriginal Peoples.[19] We pointed to many other symptoms and situations of disadvantage in Canadian society, and noted that current economic stringencies have a clear, negative and disproportionate impact on those who are most reliant on social services.

> Every year brings newly documented accounts of sexual violence and harassment, of race-related injustices even in our justice systems, of too many children who are undernourished both physically and mentally, or of sick, elderly and disabled people who are increasingly let down by our systems of social support.[20]

In certain provinces, some aspects of poverty have been included amongst prohibited grounds of discrimination. Thus, one may not discriminate on grounds of "source of income" or "social condition/origin" with respect to employment or the provision of goods, services, facilities or accommodation. There are no such comparable provisions in our federal human rights legislation, although a public bill, sponsored by the Honourable Erminie J. Cohen, was introduced in the Senate on 10

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[17]See, for example, "The Report of the Advisory Committee on the Changing Workplace" in *Collective Reflection on the Changing Workplace* (Ottawa: Public Works and Government Services Canada, June 1997) Cat. no. MP43-370/1997E.

[18]If the current Bill S-5 is enacted without amendments, that duty to report will be redirected to the federal parliament.

[19]*Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Minister of Supply and Services Canada, 1996) Cat. nos. Z1-1991/1-1E to 5E.

[20]Canadian Human Rights Commission, *Annual Report 1996* (Ottawa: Minister of Public Works and Government Services Canada, 1997) Cat. no. HR1-1996, at 16.

December, 1997. This bill would add "social condition" as a prohibited ground.[21] On further examination, however, it becomes clear that simply prohibiting discrimination on poverty grounds does not correct all poverty-based disadvantages. Such disadvantages may preclude a poor person from applying for employment because that person lacks the necessary skills, experience or education, may preclude a poor person from competing in the job market because the salary that might be obtained would not compensate for the expense of caring for a child or other family member during working hours or may preclude an application for accommodation because that poor person would not have enough money for rent, irrespective of its source.

At the same time, poverty denies the "inherent dignity" of human beings which is a basic precept of *Universal Declaration* and the Covenants. Poverty is the economic outcome of an absence of opportunity, whether the absence of opportunity results from discriminatory conduct, rules or policies, or a "vicious circle" of employment status, income level, self-worth, prospects for education and relations with the law.[22] If an individual is unfairly or systemically deprived of employment, the disadvantage suffered quite likely will end in poverty. Once poor, these individuals will be dependent on government social benefits and services which should allow them to obtain goods, services and accommodation and, because of that dependence, will be particularly susceptible to apparently neutral shifts in fiscal and social policy.

While not explicitly addressed by the CHRA, poverty in Canada can be linked to the discrimination prohibited by the Act since many of the groups enumerated in the prohibited grounds are over-represented amongst the nation's poor.[23] It would be wrong, however, to assume that all poor persons arrive at that condition because they have been unlawfully discriminated against on a prohibited ground. Poverty is itself a disadvantage which throws up barriers to individual dignity, social participation and the powers of self-determination and self-fulfilment.

Supposing that the duties and functions currently assigned to the Commission by the Act could be read to extend to questions and problems of "poverty" and, in particular, the poverty-related markers of "social condition" and "source of income," the Commission's role in addressing such emerging issues would be less adjudicative than it has been in the past. This role as critic, commentator and auditor would not be entirely unfamiliar, although it might be necessary to place certain obligations of response on the critiqued or audited entity. However, if one decides that it would be better to amend the legislation so that matters of poverty are explicitly assigned to

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[21]Bill S-11, *An Act to amend the Canadian Human Rights Act in order to add social condition as a prohibited ground of discrimination*, 1st Sess., 36th Parl., 1997.

[22]*Supra*, note 20 at 45.

[23]We have observed close relationships between poverty and other forms of social disadvantage: persons with disabilities, aboriginal peoples, women, children and families, the elderly and persons belonging to more than one "disadvantaged" group are substantially over-represented amongst Canadian poor.

Commission jurisdiction, it might be better to forego piecemeal alteration of the Act in favour of an overall legislative review of the Commission's mandate, powers and obligations. As I noted in my recent testimony before the Standing Senate Committee on Legal and Constitutional Affairs, our Act has not been overhauled since its 1977 adoption and a comprehensive review would be appropriate to mark our 20th anniversary.[24] In fact, we expressed our pleasure that the introduction of Bill S-5 was accompanied by the Minister's announcement of a forthcoming review of the CHRA.[25] It has become clear that moving forward may require substantial changes to the Act, and, as discussed above, simply keeping up with change may also require amendments to ensure that the Commission can continue to do the job it was assigned 20 years ago.

If "poverty" were an enumerated ground in federal human rights law, then discrimination in the delivery of federal social benefits could be addressed by the Commission. However, where the federal government does not legislate to provide such benefits or is only indirectly involved in the reduction of (provincial) social services through reduced transfer payments, it would be difficult to argue that the government has engaged in a "discriminatory practice" of the sort contemplated by the CHRA. Even if changes to federal legislation such as the *Income Tax Act* were to affect the poor more negatively than other Canadians, it is highly unlikely that this would be a matter for adjudication by the Commission (although if poverty were an analogous s.15 ground, it might be the subject of a *Charter* challenge).

An adjudication model simply will not provide the answers. Rather, if the Commission is to have a role with respect to the impact of federal legislation, regulations and rules on the poor, it must have the tools to draw public attention to such laws, preferably before the laws are in place and able to compound the disadvantage suffered by the poor.

Consistent with the "self-auditing" procedures under the *Employment Equity Act* and with the Commission's desire for a self-auditing scheme for pay equity, a process of review would be initiated by the publication of a "human rights impact analysis statement" at the first reading of legislation or the gazetting of proposed regulations.[26] The Commission's role would be mandatory[27] and the review process would have to be

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[24] *Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs*, 1st Sess., 36th Parl., 1997, Issue No. 3, Second Meeting on the Examination of Bill S-5, Wednesday 5 November 1997 at 3:7.

[25] *Ibid.*, at 3:9.

[26] The analogy here is to the Regulatory Impact Analysis Statement ("RIAS") which must accompany proposed regulations when those regulations are first gazetted. However, the Human Rights Impact Analysis Statement I have in mind would have to be published in conjunction with the first stages of primary legislation as well as regulations, and the public scrutiny of the process would be enhanced by requiring that all HRIAS's be published in a separate HRIAS document or attached to each individual bill.

[27] That is to say, the first part of paragraph 27(g) would be "*shall* review any *legislation*, regulations, rules, orders, by-laws and other instruments made pursuant to an Act of Parliament... ."

public and publicized. The sponsoring department would be required to respond publicly to the Commission's review as a condition of the valid enactment of the proposed legislation.

It might be argued that the formalized certification process which the Department of Justice follows to ensure legislative compliance with the *Charter* and the *Bill of Rights* should also ensure consistency with the *Canadian Human Rights Act* anti-discrimination provisions. However, this overlap would not be ensured if "poverty" were an explicitly added ground, but only to the CHRA. More importantly, the existing certification review is conducted privately, and, as a matter of practice, solicitor-client privilege will be claimed so that the public – including parliamentary committee members – will never see these opinions.

Arguably, consideration of human rights issues – although not poverty issues – is entailed in the review of proposed regulations by the Justice Department's Regulations Section since one of the mandatory questions is whether the proposed regulations "trespass unduly" on existing rights and freedoms or are inconsistent with the *Charter* or *Bill of Rights*. Again, however, this review would be conducted away from public view; presumably, solicitor-client privilege would be claimed.

In attempting to make the pre-enactment scrutiny of legislation and regulations a more public process, the goal is prevention by harnessing the weight of public opinion. As with the "organization of shame" process that has grown out of the *Universal Declaration,*[28] if the scrutiny process were public and publicized, those individuals or groups of individuals most likely to be affected negatively would have a better chance to make their concerns count in the legislative process by educating the public through a public forum. In the federal context, a particular forum, perhaps a parliamentary human rights committee, might also be specified. Such a step would have the additional benefit of raising and restoring the profile of human rights issues in the current Parliament.

It seems clear that, to enable a body such as the Commission to fully and effectively address poverty issues as human rights issues, significant amendments to the CHRA would be entailed, with corresponding alterations to the rules governing the federal legislative, regulatory and policy-making process. Although, over the years, the Commission has made use of its Annual Reports as a forum to address problems of disadvantaged groups in Canadian society and to discuss such issues as Aboriginal self-government, AIDS-related health care problems and racially-motivated violence, the federal government has never been legally compelled to respond to those reports or to demonstrate that such concerns have entered into the legislative or regulatory process.

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[28]J. P. Humphrey, "Promise of a New Order" in *The Right to Be Different, Human Rights in Canada: An Assessment* (Ottawa: Canadian Human Rights Commission, 1988) at 5.

In the course of this article, the path I have suggested for the Commission is firmly rooted in its inspiration, the *Universal Declaration*, and in the comments and expressions of concern which accompanied the Commissioners' first official steps on Canada's federal human rights stage. The Commission's Annual Reports have long evoked human rights issues and problems that link together and extend beyond the CHRA's section 2 prohibited grounds. In the 20 years since enactment, those grounds have increased significantly by way of legislative enactment and our understanding of them has been enhanced by way of judicial interpretation. Much of our energy has been directed toward those discriminatory practices which compromise economic opportunity and tend to direct their victims toward poverty. Naturally, we will have to continue to hold the line vigorously against discrimination in all of its forms, including systemic discrimination. Where the latter is concerned, truly preventive measures may require the enactment of more explicit Commission powers to initiate investigations and order innovative remedies similar to those in the new *Employment Equity Act*. However, at the threshold of the next 20 years, it is also time to explicitly address economic disadvantage – poverty – as a distinct human rights issue.

While I have suggested amendments to the CHRA which would place poverty clearly within the Commission's mandate and amendments which would expand the Commission's mandate and obligation to discover and deal with instances of systemic discrimination, a better path beckons. In recent years, several provinces have undertaken a wholesale review of their human rights legislation and institutions. It seems to me that it is time to put a wholesale review of federal human rights law, including the role of the Commission in fully promoting the values expressed in the *Universal Declaration*, at the top of our "wish list" and to leave behind the incremental but beneficial tinkering which has characterized the last 20 years.