



# **Human rights claims and issues in education**



# The Ontario human rights system

- ❑ Ontario's new human rights system started on June 2008
- ❑ The new system consists of three pillars
  - The Human Rights Tribunal of Ontario
  - The Human Rights Legal Support Centre
  - The Ontario Human Rights Commission



# Roles in new system

- **Ontario Human Rights Commission**
  - aims to promote, protect and advance human rights
  - works to address root causes of discrimination through education, policies, litigation, inquiries and partnerships
- **Human Rights Legal Support Centre**
  - provides legal services to people who believe they have experienced discrimination (can help them file human rights applications)
- **Human Rights Tribunal of Ontario**
  - receives and makes decisions on human rights applications



# Significance of complaints

## ■ Human rights claims represent:

- a mechanism to address human rights violations
- a tool to help identify and resolve human rights issues for institutions, sectors and organizations for systemic change
- can help identify trends and patterns to support organizational and professional development



## Analysis of trends

- The trends in this presentation are based on:
  - statistics in OHRC's annual reports up to 2008 (the OHRC took in about 2500 new complaints each year, until 2008)
  - analysis of cases available at [www.canlii.org](http://www.canlii.org)
- Human Rights Tribunal of Ontario statistics
  - will be in the HRTO's annual report when posted
  - HRTO's website is [www.hrto.ca](http://www.hrto.ca)



## Trends: social areas

- The *Code* covers five social areas:
  - employment, services, accommodation, contracts and vocational associations
- Typically, the OHRC received:
  - employment-related complaints (78% of all complaints filed in 2007)
  - followed by complaints about services (17%)



## Trends: grounds

- *Code* grounds: 16 grounds including race & race-related grounds, disability, sex, sexual orientation, family status and creed.
- Most complaints cited disability as a ground (56%)
- Followed by grounds associated with race (36% of complaints cited race and related grounds in 2007)



## All school board complaints - OHRC

- ❑ Between January 2004 to July 2008, 386 complaints were filed with the Commission against 39 School Boards across the province.
- ❑ 37 of these complaints were withdrawn.



# School board complaints (social area)

- ❑ The breakdown of the complaints against the School Boards across Ontario showed that:
  - ❑ 223 complaints (or 63%) were in services
  - ❑ the rest (126 or 36%) involved employment



## School board complaints (grounds)

- ❑ Approximately 150 (42%) of complaints against school boards were filed on multiple grounds
- ❑ About 227 or 65% of complaints cited disability
- ❑ 113 or (32%) involved race, colour, ethnic origin, place of origin or ancestry
- ❑ 35 complaints or (10%) cited both disability and race; and
- ❑ 44 or (12%) were on sex or sexual orientation



## Applications filed with the Ontario Human Rights Tribunal

- ❑ As of July 2008, 50 applications were filed against 21 School Boards across the Province.
  - ❑ 39% were in services
  - ❑ 62% were in employment
  - ❑ 56% cited disability
  - ❑ 16% cited race, colour, ethnic origin, place of origin or ancestry and
  - ❑ 4% cited race and disability.



## Common human rights issues

- Both employment and services
- Vast variety of grounds and issues
- Disability and race related complaints are majority of complaints



# Sample employment cases

## ■ Place of Origin

- *Abouchar v. Toronto District School Board and CEF CUT now Le Conseil scolaire public du district centre-sud-ouest*: The complainant's place of origin (that he was not part of the historical Franco-Ontarian community) was a factor in the unequal treatment he received as a candidate for a job competition

## ■ Sex

- *Vinodolac v. Dufferin Peel Catholic DSB* (interim decision – 2009): Applicant alleges he was subjected to sexual harassment and solicitation or advances in employment

## ■ Family status & marital status

- *Way v. Toronto Catholic DSB* (decision - 2010): Applicant alleged that her status as a single mother affected her ability to obtain various positions; application dismissed



## Race cases: employment

- *Edwards v. Waterloo Region DSB* (interim decision - 2009): Alleges racism regarding promotions
- *Chintaman v. Toronto DSB* (interim decision - 2009): Indo-Caribbean applicant alleges unfair treatment and systemic barriers because of age, colour, ethnic origin, place and origin and race relating to 30 unsuccessful job competitions; failed to provide particulars
- *Francis Omoruyi-Odin v. Toronto DSB* (multiple decisions -- 2000 to 2004): The complaint alleged individual and systemic discrimination based on race, place of origin and ethnic origin in promotion of teachers to positions of responsibility.



## Disability cases: employment

- *Breakey v. Ottawa-Carleton DSB* (2009 - interim decision): Alleges board failed to accommodate by not providing appropriate chair for applicant's work; R unsuccessful in having case dismissed as not showing *prima facie* case
- *Imrie-Howlett v. Peel DSB* (2009 – two decisions): Applicant had clinical depression & used up sick leave bank; raised issue re: retirement allowance in collective agreement; application dismissed
- *Smith v. Kawartha Pine Ridge DSB* (2009 – interim decision): Teacher removed from classroom on basis he was incapable of teaching; seeking reinstatement; request for expedited processing dismissed



## Age cases: employment

- *Leckie v. Hamilton Wentworth DSB* (2009 – 5 decisions): A head custodian was injured on the job & alleged that he was harassed due to his age and disability (dismissed; no evidence of discrimination or harassment)
- *Young v. Toronto DSB* (2009 – interim decision): Alleges that the system used to dispatch occasional teachers favours retired teachers; union's request to intervene granted
- *Kopylov v. Toronto Catholic DSB* (2009 – interim decision): Alleges board failed to hire him for permanent teaching position though he was as qualified as younger candidates hired; request to defer proceeding granted



## Race cases: services

- *Abdallah v. Thames Valley DSB* (2008 – decision): alleged discrimination & disparaging remarks against ESL student; alleged failure to properly investigate and respond; board ordered to change procedures, pay compensation & distribute decision
- *Persaud v. Toronto DSB* (10 decisions – 2008 to 2010): Racialized student “demonized” and viewed as “other;” disproportionate disciplinary reaction (suspended and then transferred); finding of discrimination & board ordered to incorporate concepts of “othering” and “demonization” into existing staff training programs
- *S.T. v. Toronto DSB* (2009 – two decisions): Alleged racial name calling, and attempts to force applicant out of school because she is Black (incl. contacting Children’s Aid Society); application dismissed
- *Ebrahimi v. Durham DSB* (2009 – interim decision): Grade 12 student alleges discrimination re: 20 day suspension, lack of alternate education & delayed return to school all of which caused lower marks; request to expedite proceeding denied



## Disability cases: services

- *Davidson v. Lambton Kent DSB* (2008 – interim decision): Student with attention deficit hyperactivity disorder alleges discriminatory treatment, including being denied access to accommodations through IPRC process; request to add Ministry granted
- *Burrows v. Toronto DSB* (2008 – interim decision): Alleges board failed to provide accommodation for student with autism to attend school in Board's school district; request to dismiss unsuccessful
- *Prieur v. Ottawa Catholic DSB* (2009 – four decisions): Alleged that services did not adequately meet the student's needs; request to add Min. of Ed. Denied; application dismissed



# Age cases: services

## ■ Age

- *C.M. v. York Region DSB* (2009 – interim decision): Student challenged head lice procedures as being discriminatory based on age; parties were asked to make submissions re: constitutionality of s. 10(1) of the *Code* which defines age as 18 years and over
- *Arzem v. Ontario*: See interim decision that section 10(1) of the *Code* is unconstitutional and of no force or effect for the named complaints (ie. the court did not make a general declaration that section 10(1) re: age was invalid).



## Complaints about Safe Schools section of the *Education Act*

- ❑ Commission initiated complaints against the Ministry of Education and the Toronto District School Board
  - The impact of suspensions and exclusion on racialized students and students with disabilities
  - Settlement obtained in 2005 with the TDSB and in 2007 with the Ministry.
  
- ❑ Dufferin Peel Catholic District School Board
  - Four individuals filed complaints alleging discriminatory impact of application of school discipline policies on students from racialized communities and students with disabilities.
  - Settlement was obtained in 2005



# Remedial orders

- HRTO has broad power to order remedies including:
  - General damages for infringement of rights
  - Special damages (lost wages *etc.*)
  - Policy development
  - Training or revision to existing training programs
  - “anything that, in the opinion of the Tribunal, the party ought to do to promote compliance” with the *Code*



## Concerns: lack of human rights infrastructure

- Boards lack infrastructure to deal with human rights issues internally leading to needless formal human rights applications to the Tribunal
- Board policies not well developed relating to human rights issues
- Few board's have specialists to address human rights and equity matters
- Board staff not representative of full diversity of community
  - Particularly concerning regarding teaching staff



## Concerns: litigious response to human rights issues

- Once formal human rights applications emerge boards often take an adversarial and litigious legal approach
  - most boards retain lawyers
  - mediation often not used to resolve matters
  - delay tactics often employed
    - motions to remove respondents or add grounds
    - requests to defer cases pending outcome of grievance
    - opposing requests to expedite cases
    - production delayed and denied
- Time consuming, stressful, and costly approach hurts all sides



# Concern: accommodation

- Accommodation process are often flawed
  - accommodation often not timely
    - especially concerning in school environment
- Accommodation intersections often ignored
  - Eg. between disability and race
- Accommodation often linked to harassment and reprisal allegations



## Link to Equity Strategy

- Equity and Inclusive Education Strategy is an opportunity to establish a solid human rights infrastructure
- The pattern of complaints should inform the work school boards are doing to implement the Equity Strategy
- Effective implementation of the Equity Strategy can help boards prevent and address issues under the *Code*, as well as meet Ministry of Education requirements



# OHRC advice

- Develop a comprehensive human rights policy that:
  - describes discrimination and harassment
  - sets out a process for issues to be raised and resolved early
  - Provides for training of staff to uphold policy
  - is understandable and easy to follow for staff, students and parents
- See OHRC's *Guidelines on Developing Human Rights Policies and Procedures*



# OHRC Resources

- Available at [www.ohrc.on.ca](http://www.ohrc.on.ca)
- E-learning module
- *Human Rights at Work, 3<sup>rd</sup>. Ed*
- *Count Me In! Collecting human rights-based data*
- *Guidelines on Developing Human Rights Policies and Procedures*
- *Policy and Guidelines on Racism and Racial Discrimination and other OHRC policies*