

DP SUBMISSION ON HUMAN RIGHTS COMMISSION
TO SUBTHEME COMMITTEE 6.3
19 April 1995

1. Constitutionalisation

The DP believes a HRC should be constitutionalised for the same reason an Ombudsman or Public Protector should be constitutionally required: no future government should be able to succumb to the temptation to avoid appointing watchdogs or guardians.

The Ombudsman protects the public against maladministration and corruption, dishonesty and discourteousness in government and the public service. A HRC is the guardian of the human rights enshrined in the chapter or charter of rights.

2. Mode of Constitutionalisation

Implicit in 1. above is the assumption that the HRC has a vertical role to play vis A vis the government of the day in both its executive and legislative functions.

For example: the way in which laws or action implement or interpret the rights to freedom of expression, information, culture are all bound to encounter controversy from time to time.

However, the HRC may need to perform a horizontal role at times; or roles that have yet to arise.

Clearly it would be undesirable to limit the scope of a HRC by being overspecific. Broad provision, leaving copious legislative leeway without sacrificing the essential role of guardian would appear to be the sensible course.

3. "Horizontal' role

If the thrust of the argument is that the HRC should be a forum for discrimination complaints as per the Canadian model, with its tribunals, then our answer is that such an institution is certainly necessary.

However, an Equal Opportunity Commission functioning specifically in the fields of employment, education and the like may be a more appropriate forum. We do not think (see 2 above) that so specific a function should be constitutionalised.

It would be advisable however to add to the present constitutional provision reference to, although not a peremptory requirement for, an enforcement function. A HRC which keeps an eye on rights practice in our society, and which occasionally launches full scale investigations, will frequently refer any offences discovered to other authorities, or assist complainants to get relief from the courts.

To use an example of a possible area of investigation suggested by Prof Dirk van Zyl Smit: problems associated with witchcraft. These will seldom be capable of resolution by a HRC. Rather, the HRC would be perfectly placed to consider the phenomenon in all its aspects cultural, etc - and make recommendations to government. Nevertheless, we would support a broad enabling reference to tribunals or an enforcement/conciliation/adjudication role.

4. Composition and structures

We suggest the maximum leeway should be left. While a small HRC has obvious appeal, it must be pointed out that representivity by language, religion, provinces, race and sex in addition to the obvious requirement of impartiality are all desirable in our society - and this cannot be achieved by 3 people.

Provincial offices offer only a partial answer.

A phrasing like 'not fewer than 3 and not more than 11" may be appropriate, or this matter may be left to legislation. In the same vein, we would caution against stipulation of structures. It is enough to refer to the broad functions:

- Education/promotion of observance
- Law reform and recommendation of progressive measures
- A possible enforcement role

On the fourth suggested function: public enquiries into socioeconomic functions, we suggest the present provision for studies could be expanded to "and enquiries".

If socioeconomic rights are included in the final chapter 3, it goes without saying that they fall within the scope of the HRC's work. Much depends of course on how they are included. Again, we would caution against casting in stone too detailed a role.

A final note: we believe the role and importance of the HRC in establishing a rights culture; and its role in relaying to government the researched views of the public on matters ranging from censorship to culture the core rights in relation to the limitations clause can be enormous.