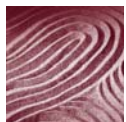
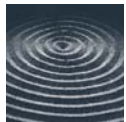




MILLER THOMSON LLP

Barristers & Solicitors
Patent & Trade-Mark Agents



The New Human Rights System – what you need to know...

This Presentation is provided as an information service to our clients and is a summary of current legal issues. The Presentation is not meant as legal opinions and readers are cautioned not to act on information provided in this document without seeking specific legal advice with respect to their unique circumstances.

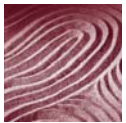
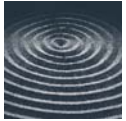
Jennifer L. Hunter

416.595.8551

jhunter@millerthomson.com



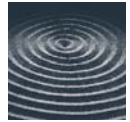
Human Rights Code Amendment Act... a new “direct access” model



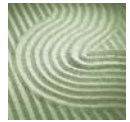
- The two-tiered approach
 - Investigation and referral
- The “direct access” model
 - Complaints made directly to the Tribunal



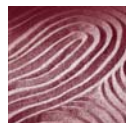
The Commission as a gatekeeper



- Investigate complaints



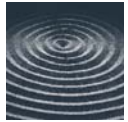
- Effect settlement



- Complaints proceeded to adjudication if referred by the Commission, “*where it appears to the Commission that the procedure is appropriate and the evidence warrants an inquiry.*”



The new role for the Commission



- Public Education



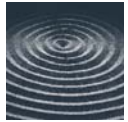
- Policymaking



- Investigation
- Intervener status
- File an application, s. 35



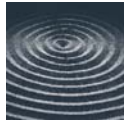
The Human Rights Legal Support Centre



- Governed by a Board of Directors
- Funded by the Attorney General
- Provides advice and assistance regarding the infringement of rights, legal services for making applications at the Tribunal, proceedings before the Tribunal, and related matters
- Services are to be available throughout the province



The Tribunal before June 30, 2008



- Limited number of complaints referred, previously fully investigated



- Various steps in the process

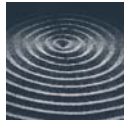


- Pleadings
- Pre-hearing disclosure
- Mediation
- Pre-hearing conferences
- Pre-hearing motions

- 4-5 years from complaint to adjudication



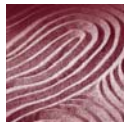
The new role for the Tribunal

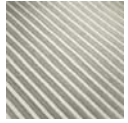


- A more streamlined and focused approach

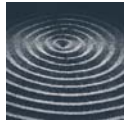


- Define and narrow issues
- Determine the order of proceedings
- Examine witnesses
- Require statements or evidence
- Appoint a person to conduct an inquiry

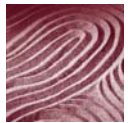




Direct Access = “your day in court”



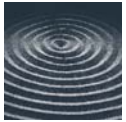
- Previously: s. 34 allowed Commission to decide not to deal with a complaint for a number of reasons



- New system: An application may not be dismissed without a hearing and written reasons unless it is outside of the Tribunal’s jurisdiction



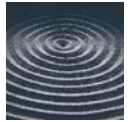
Overlapping jurisdiction with administrative bodies



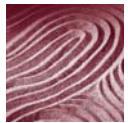
- Example: Could or should more appropriately be dealt with under another act, i.e.: unionized employees or privileged physicians
- Tribunal will maintain jurisdiction but may defer dealing with it and then determine whether the other administrative tribunal has appropriately dealt with the substance of the human rights claim



Overlapping jurisdiction with civil courts



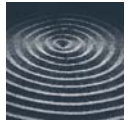
- S. 46.1 – a court may make a monetary award in compensation for an infringement of s. 1 of the Human Rights Code



- An application is barred where there is a concurrent civil claim that had not been finally determined
- Not yet clear whether Tribunal can make an award if court has not



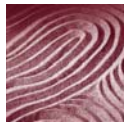
Transition provisions



- Complaints to Commission pre June 30, 2008



- Continue to be dealt with by Commission unless abandoned by complainant within six months

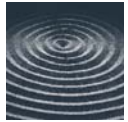


- If not dealt with and not withdrawn, further six months to make an application to the Tribunal

- No application may be made regarding the same subject-matter after the additional six months, i.e.: June 30, 2009



Changes to remember:



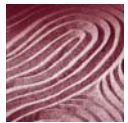
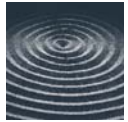
- Responses to applications required within 35 days



- Limitation period extended from 6 months to 1 year
- Investigation and human rights policy relevant to Tribunal's determination



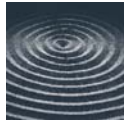
Issues for the Healthcare Industry



- The right of every Ontario resident to receive equal treatment with respect to (health) services without discrimination based on race, *age*, colour, *sex*, *sexual orientation* and *disability*.
- This right has not changed – the way in which it is enforced has changed



Human Rights and Healthcare



- Have a policy, be prepared
 - Dealing with discrimination and harassment in the workplace
 - Education regarding human rights and patients, i.e.: OHRC Age Discrimination & Healthcare

- Continue to provide good quality care
 - For example, informed consent

