

“Life Together”: Public Debates over Human Rights Legislation in Ontario, 1975-1981

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Between 1975 and 1981, government, activist groups and the larger public took part in a review of Ontario’s Human Rights Code, negotiating a new human rights framework for the province. This article addresses three questions: how were human rights understood in 1970s Ontario, to what extent did public debate influence government policy, and did legislative changes represent a genuine shift towards a code that could more effectively address discrimination? While this review period represents an important step in Canada’s so-called rights revolution, it also demonstrates the limits of this revolution.

De 1975 à 1981, le gouvernement, des groupes militants et le grand public ont participé à un examen du Code des droits de la personne de l’Ontario, négociant un nouveau cadre des droits de la personne pour la province. Cet article s’intéresse à trois questions. Quelle interprétation faisait-on des droits de la personne dans l’Ontario des années 1970? Quel effet le débat public a-t-il eu sur la politique gouvernementale? Les modifications législatives ont-elles permis d’opérer un vrai virage vers un code susceptible de mieux combattre la discrimination? Bien que cette période d’examen ait marqué un pas important dans la révolution dite des droits de la personne au Canada, elle témoigne également des limites de cette révolution.

ON MARCH 1, 1975, the Ontario Human Rights Commission announced it was initiating a review of the province’s human rights legislation to examine “the changing human rights needs of Ontario residents” and the adequacy of existing public policy to meet those needs.¹ The *Ontario Human Rights Code*, adopted in 1962, was under attack for failing to address issues of prejudice and inequality within Ontario society. Social and demographic changes throughout the 1960s and

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1 Trent University Archives [hereafter TUA], Thomas Symons Fonds, 82-001, Box 1, Folder 2, Press Release from the Ministry of Labour, March 1, 1975.

early 1970s had transformed the way in which people understood the problems that human rights policies were intended to address and introduced new ideas on the proper role of the state in providing for and protecting the rights of citizens. In this context, the Human Rights Commission launched its review, solicited public participation, and prepared a report entitled *Life Together*, providing the impetus for new legislation in 1981. The period between 1975 and 1981, therefore, offers a window into the evolution of human rights legislation, with the review process exemplifying the key roles that government, activist groups, and the larger public played in the negotiation of a new human rights framework for Ontario.

Prior to the 1940s, very little in the way of federal or provincial legislation explicitly prohibited discriminatory practices or protected Canadians from prejudice. Canada had inherited the British legal system, in which codified rights were considered unnecessary because the rule of law provided inherently for civil liberties that would be upheld by Parliament. This understanding of rights was increasingly challenged in the twentieth century, and the decades following the Second World War saw significant developments in Canadian human rights public policy. Scholars have examined this transformation with an emphasis on campaigns for legislative change and the development of a “rights culture” in Canada.² In the case of Ontario, research focuses on the origins of anti-discrimination legislation and developments that led to the creation of the *Ontario Human Rights Code* in 1962, with an emphasis on the roles of rights activists and minority groups.³ James Walker explores the work of Jewish rights organizations in the early 1950s, arguing that campaigns for human rights legislation involved significant grassroots community organizing.⁴ This bottom-up approach is supported by the work of Carmela Patrias and Ruth Frager, who argue that the involvement of minority groups and their use of public awareness campaigns provided the momentum for Ontario’s human rights movement.⁵ Much of the literature on Ontario human rights history serves, then, as a study of the development of human rights law. Yet historian Dominique Clément argues that scholars must also begin to examine more critically both the limits of the legislative reforms achieved through human rights campaigns and the use of law as an effective tool to promote equality within Canadian society.⁶ Furthermore, while several studies imply that legislative change

2 Christopher MacLennan, *Toward the Charter: Canadians and the Demand for a National Bill of Rights, 1929-1960* (Montreal & Kingston: McGill-Queen’s University Press, 2003); Ross Lambertson, *Repression and Resistance: Canadian Human Rights Activists, 1930-1960* (Toronto: University of Toronto Press, 2005); Michael Ignatieff, *The Rights Revolution* (Toronto: House of Anansi Press, 2000); Dominique Clément, *Canada’s Rights Revolution: Social Movements and Social Change, 1937-1982* (Vancouver: University of British Columbia Press, 2008).

3 R. Brian Howe, “The Evolution of Human Rights Policy in Ontario,” *Canadian Journal of Political Science*, vol. 24 (December 1991), pp. 783-802; Arnold Bruner, “Citizen Power: The Story of Ontario Human Rights Legislation,” *Viewpoints: The Canadian Jewish Quarterly*, vol. 3 (Summer 1981), pp. 4-15.

4 James W. St. G. Walker, “The ‘Jewish Phase’ in the Movement for Racial Equality in Canada,” *Canadian Ethnic Studies*, vol. 34, no. 1 (Spring 2002), pp. 1-29.

5 Carmela Patrias and Ruth A. Frager, “‘This is our Country, These are our Rights’: Minorities and the Origins of Ontario’s Human Rights Campaigns,” *Canadian Historical Review*, vol. 82, no. 1 (2001), pp. 1-35.

6 Dominique Clément, “Rights without the Sword are but Mere Words’: The Limits of Canada’s Rights Revolution” in Janet Miron, ed., *A History of Human Rights in Canada: Essential Issues* (Toronto: Canadian Scholars’ Press, 2009), p. 44. Some scholars have already examined the limits of human rights law. See

required public support, they do not explore in detail the role that the larger public played in advocating or shaping human rights law. More attention must be placed on the way in which non-state actors debated issues of human rights within the public sphere and on the relationship between these debates, public opinion, and the actions taken by the state in creating public policy.

For the purpose of this article, the phrase “the larger public” refers to Ontario residents who were not employed by the state and therefore not directly involved in the development of government policy. Defining the “public sphere” is more complicated. Jürgen Habermas first described his “bourgeois public sphere” as an inclusive space between the state and civil society, where “private people come together as a public” to discuss issues of common importance and engage in reasonable debate over the general rules governing society.⁷ Existing outside the authority of the state, this sphere allowed for the development of a rational yet critical “public opinion” that could inform state policy. Critics accuse Habermas of idealizing notions of the public sphere, arguing it has historically been a space of privilege and exclusion.⁸ The opinions arising out of deliberations within this space have therefore not been “public” at all. Scholars such as Nancy Fraser propose the existence of multiple spheres, or “counterpublics,” that provide alternative points of access into public life for many excluded groups.⁹ In his work on the role of rhetoric within democratic states, Gerard Hauser portrays the public sphere as a web of discursive arenas, which interconnect and overlap.¹⁰ Rather than envisioning one sphere in which issues are debated across an entire population, leading to the exclusion of marginalized groups, Hauser argues exchanges take place in many different, but often parallel, dialogues. “Public opinion” is a constantly evolving representation of the views that emerge out of this web with the widest level of support.¹¹ Hauser’s definition informs my own use of the term “public sphere” as a network of interconnected “spaces,” outside the formal authority of the state, within which Ontario residents engaged in debate over issues of human rights in the 1970s.

Socio-economic, political, and technological developments in the twentieth century created the opportunity for a more diverse and inclusive public sphere in Canada. Yet these developments also provided increased access to the public

Miriam Smith, *Lesbian and Gay Rights in Canada: Social Movements and Equality-Seeking, 1971-1995* (Toronto: University of Toronto Press, 1999); Shirley Tillotson, “Human Rights Law as Prism: Women’s Organizations, Unions, and Ontario’s Female Employees Fair Remuneration Act, 1951,” *Canadian Historical Review*, vol. 72, no. 4 (December 1991), pp. 532-557.

7 Jürgen Habermas, *The Structural Transformation of the Public Sphere* (Cambridge: MIT Press, 1989), p. 27.

8 Geoff Eley, “Nations, Publics, and Political Cultures: Placing Habermas in the Nineteenth Century” in Craig Calhoun, ed., *Habermas and the Public Sphere* (Cambridge: MIT Press, 1992), pp. 289-329; Mary P. Ryan, *Women in Public: Between Banners and Ballots, 1825-1880* (Baltimore: Johns Hopkins University Press, 1990); Nancy Fraser, “Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy,” *Social Text*, no. 25/26 (1990), pp. 56-80.

9 Fraser, “Rethinking the Public Sphere,” p. 67.

10 Gerard Hauser, “Civil Society and the Principle of the Public Sphere,” *Philosophy and Rhetoric*, vol. 31, no. 1 (1998), p. 31, and *Vernacular Voices: The Rhetoric of Publics and Public Spheres* (Columbia: University of South Carolina Press, 1999).

11 Hauser, *Vernacular Voices*, pp. 91-92, and “Civil Society and the Principle of the Public Sphere,” p. 37.

sphere to other powerful non-state actors such as interest groups, corporations, and the media, further complicating ideas of an “open” or “neutral” sphere. For sociologist Craig Calhoun, the most important question relating to notions of a modern public sphere is the extent to which diverse publics are able to compete with these new actors and “contribute to the more general formation of public opinion on a scale sufficient to influence the state and other social institutions.”¹² To examine this question, Éric Montpetit, Francesca Scala, and Isabelle Fortier studied the National Action Committee on the Status of Women and the issue of reproductive technology in Canada. Their goal was to consider how this issue was debated within a contemporary, inclusive public sphere and what influence these deliberations had on subsequent policy. They conclude that, while a public sphere can provide a space for interaction among differing views on a specific issue, deliberation among citizens “makes discourses, not decisions.”¹³ My own study challenges their conclusions by arguing that, while public participation in the review of Ontario’s human rights laws did not dictate the content of the resulting legislation, it did significantly influence the steps the government took to enhance human rights protection for the province.

This study of the Code review period attempts to answer three related questions. First, what does the way in which the public debated issues of human rights have to say about understandings of rights in this period? Second, to what extent did the public debate that took place throughout the review influence final government policy? Finally, in response to Clément’s appeal, did the legislative changes that resulted in Ontario represent a genuine shift towards a human rights public policy that could more effectively address the problems of prejudice and discrimination revealed through the review? I argue that human rights principles remained deeply contested in Ontario in the 1970s. The Code review provided a forum for residents to call for enhanced legislative protection against discrimination, but the voices involved were often competing and at times contradictory. Despite this, the review resulted in the adoption of a new Code that expanded the definition of human rights and, for the first time, recognized the pervasive nature of discrimination and offered a more proactive framework to solve human rights problems in Ontario. The state was ultimately responsible for deciding the final content of the legislation, however, and revisions fell short of expectations. As a result, the Review process and the new Code also demonstrate that there were limits to both Canada’s “rights revolution” and the influence of the public.

The province of Ontario was a leader within Canada in the development of human rights law from the 1940s to the 1960s. Ontario enacted Canada’s first significant anti-discrimination legislation in 1944 and throughout the 1950s introduced the nation’s first fair practices acts.¹⁴ In 1962, the Ontario government

12 Craig Calhoun, “The Public Sphere in the Field of Power,” *Social Science History*, vol. 34, no. 3 (Fall 2010), p. 328.

13 Éric Montpetit, Francesca Scala, and Isabelle Fortier, “The Paradox of Deliberative Democracy: The National Action Committee on the Status of Women and Canada’s Policy on Reproductive Technology,” *Policy Sciences*, vol. 37, no. 2 (June 2004), p. 138.

14 Ontario’s *Racial Discrimination Act* prohibited the publication or public display of any signs or advertisements that discriminated on the basis of race or creed (*Statutes of Ontario*, 1944, c. 51). Ontario

adopted the *Ontario Human Rights Code* to provide a more comprehensive and focused approach to human rights for the province. The government also created the Ontario Human Rights Commission, an agency of the Ministry of Labour, which was responsible for the administration, promotion, and enforcement of human rights. The new legislation included a clear list of prohibited behaviours to help protect residents from discrimination. The Commission heard complaints from individuals who felt their rights had been denied, then worked to settle these complaints through negotiation rather than prosecution. By requiring citizens to bring forward complaints, the legislation minimized government interference in the private interactions of individuals and businesses, allowing only those who allegedly violated the Code to be affected by public policy. In part, this was a form of containment policy by the government to ensure that human rights cases did not become disruptive to the larger society. This grievance model for dealing with human rights problems was inherited from labour relations and demonstrated an underlying philosophy that discrimination was the result of individual infractions rather than larger societal problems.

Together, Ontario's *Human Rights Code* and the Human Rights Commission constituted the most comprehensive legislative human rights system in Canada in the 1960s.¹⁵ Within a decade, however, other jurisdictions had followed Ontario's lead and in some cases offered broader human rights protection. Saskatchewan, which passed Canada's first bill of rights in 1947, included fundamental freedoms and political rights in its human rights legislation. Quebec included provisions to protect social and economic rights in its 1975 *Charter of Human Rights and Freedoms* and was the first jurisdiction in Canada to include sexual orientation as a prohibited ground for discrimination in 1977.¹⁶ While Ontario's Code had been amended several times between its adoption in 1962 and 1975, the philosophy and language of the legislation remained the same.¹⁷ For this reason, in 1975 the Ontario Human Rights Commission initiated a review of the Code that would fundamentally challenge the existing understanding of the role of human rights public policy in Ontario.

The mid-1970s provided a particularly favourable environment for a review of existing human rights legislation. Social movements had increased their activity in both North America and Europe in the 1960s, beginning with the American civil rights movement and followed by the second-wave women's movement, the student youth movement, gay liberation, and successive waves of protest demanding enhanced rights for marginalized groups. Individuals and

passed the *Fair Employment Practices Act* and the *Female Employees Fair Remuneration Act* in 1951, and the *Fair Accommodations Practices Act* in 1954.

- 15 For a comparative look at the development of provincial human rights legislation, see R. Brian Howe and David Johnson, *Restraining Equality: Human Rights Commissions in Canada* (Toronto: University of Toronto Press, 2000), pp. 6-22.
- 16 Howe and Johnson, *Restraining Equality*, pp. 12-13; Carmela Patrias, "Socialists, Jews, and the 1947 Saskatchewan Bill of Rights," *Canadian Historical Review*, vol. 87, no. 2 (June 2006), pp. 265-292; Carl F. Stychin, "Queer Nations: Nationalism, Sexuality and the Discourse of Rights in Quebec," *Feminist Legal Studies*, vol. 5, no. 1 (February 1997), pp. 3-34.
- 17 *Statutes of Ontario*, 1965, c. 85; 1966, c. 3; 1967, c. 66; 1968-1969, c. 83; 1970, c. 501; 1971, c.50; 1972, c. 19.

organizations within these movements dedicated themselves to addressing issues of discrimination and inequity, and they worked to challenge the traditional divisions between the private and public spheres. Activists attempted to make the private political by bringing sensitive issues such as abortion, sexual assault, racism, and sexual orientation into the public arena.¹⁸ They also protested the exclusion of entire groups of citizens from traditional relations between the state and the public, arguing that these groups were effectively silenced by existing inequities.¹⁹ While many groups were devoted to particular causes, this period also saw the development of organizations that were more generally interested in human rights across issues.²⁰ The evolution of human rights legislation, internationally and in Canada, had established human rights as an important field of research, incorporating a growing knowledge and professionalism.²¹ The adoption of the *Universal Declaration of Human Rights* in 1948 had created a new language of rights that activists used to articulate their claims, and pressures on government to expand human rights protection became increasingly tied to the need for legislative change. Activists argued that strengthening laws would bring about social change, and therefore legal change became a key goal of much of the social activism of the 1970s.²²

The push for legislative change also emerged from the experiences and fears of everyday citizens. The human rights needs of the province were different in 1975 than they had been in 1962, as Ontario was more ethnically, racially, and religiously diverse. Changing immigration policies resulted in an increase of non-European immigrants into Canada, with the majority of these new immigrants moving into Ontario.²³ From 1971 to 1975, Ontario saw a sharp rise in immigration from South Asia, the West Indies and the Caribbean, China, and Hong Kong.²⁴ The largest impact was felt in urban centres, particularly Toronto, where, by 1976, 60 per cent of residents were of non-Anglo Saxon origin.²⁵ This changing ethnic composition also brought a greater representation of various religions and creeds into the province. At the same time, a dramatic increase in the number of working women altered the dynamics of the workplace.²⁶ Together these changes gave rise to a larger and more visible minority population in Ontario that interacted on a

18 Smith, *Lesbian and Gay Rights in Canada*, p. 6.

19 *Ibid.*

20 Clément, *Canada's Rights Revolution*, p. 4.

21 Thomas Symons, interview with author, Peterborough, Ontario, March 16, 2005.

22 Smith, *Lesbian and Gay Rights in Canada*, pp. 18-20.

23 Immigration from countries outside Europe and the United States increased from 12% in 1962 to 50% in 1975. See Statistics Canada, Historical Statistics of Canada, Series A385-416 (Department of Employment and Immigration), *Immigration to Canada by Country of Last Permanent Residence, 1956-1976*; Canada, Manpower and Immigration, Immigration Division, *Immigration Statistics, 1975* (Ottawa: Manpower and Immigration, 1975), p. 2.

24 "Growth of Ontario Ethnic Groups 1972-1975," *Province of Ontario Information Sheet*, Ministry of Culture and Recreation.

25 Ontario Human Rights Commission, *Life Together: A Report on Human Rights in Ontario* (Toronto: Ontario Human Rights Commission, 1977), p. 20.

26 From 1964 to 1975, the number of women participating in the work force grew by 70%. See Statistics Canada, *The Labour Force*, Catalogue 71-001, Series D431-448, "Female civilian labour force participation rates, by age and marital status, annual averages, 1959 to 1975"; Ontario Human Rights Commission, *Life Together*, p. 69.

daily basis with the traditional white male majority in areas such as employment, accommodation, and services. More interaction led to greater possibilities for incidents of discrimination, and victims often sought protection in the *Human Rights Code*. The result was an increase in the number of complaints to the Commission and a near doubling of the informal inquiries it received.²⁷ Minimal increases to the Commission's budget and staffing, however, prevented it from moving quickly through its cases.²⁸ This frustrated individuals who felt their rights were being violated and caused them to believe the existing Code and Commission were insufficient to meet their needs. For other individuals, however, the real concern was the Commission's lack of scope and authority. A growing number of complaints could not be investigated because they fell outside the mandate of the Commission.²⁹ Organizations supporting the rights of gays and lesbians and the disabled pointed out that these groups were not even mentioned in the Code and therefore had no protection from discrimination. The Ontario government's Women's Bureau and several private women's organizations argued the Code did not provide sufficient protection to women because it excluded important forms of sex discrimination such as sexual harassment.³⁰ Many victims of discrimination and members of marginalized groups saw a disparity between the Code and their own human rights.

There was also a growing sensitivity towards issues of discrimination, particularly racial discrimination, among the larger public in Ontario in the mid-1970s. The fear of a "race-crisis" in the province was perpetuated through media coverage of violent race-based assaults and a focus on the subject of racism. This fear was most palpable in Toronto, where newspapers focused heavily in 1975 on reports of "racial troubles" and "race bias" in the city.³¹ Outside Toronto, citizens feared that these "inner-city" problems would spread to the suburbs and beyond.³² Several high-profile cases of discrimination caught the attention of Ontario's newspapers. The publication of a pamphlet derogatory toward the Aboriginal people of the Kenora District and stories about the growth and activities of white supremacist groups such as the Edmund Burke Society and the Western Guard were primary examples.³³ Concerns triggered a flood of highly publicized studies and reports in the mid-to-late 1970s focusing on human rights issues and race

27 Ontario Archives [hereafter OA], RG 7-12, Box 94, File 0-4540.2, Ontario Human Rights Commission, "Ontario Human Rights Commission, Estimates 1976-77," July 1975. The number of complaints increased from 739 in 1972-1973 to 1,185 in 1975-1976. General inquiries increased from 9,785 to 16,657 in this same period.

28 The budget increased from \$880,624 in 1972-1973 to \$937,413 in 1975-1976. The staff size did not change.

29 In 1975-1976, the Commission rejected nearly 500 complaints for this reason.

30 *Life Together*, pp. 68-71.

31 Norman Hartley, "Toronto Teachers Discuss How to Deal with Racial Troubles," *Globe and Mail* [Toronto], February 24, 1975, p. 1; R. Brian Howe, "Human Rights Policy in Ontario: The Tension Between Positive and Negative State Laws" (PhD dissertation, University of Toronto, 1989), particularly pp. 177 and 393.

32 For example, Jeff Sallot, "Inner-city Problems Spread to Suburbs: Metro Schools Facing Sex, Race Bias, Ross Warns," *Globe and Mail* [Toronto], January 15, 1975, p. 1.

33 In 1974, Eleanor Jacobson published the pamphlet "Bended Elbow," which contained suggestive photographs of Kenora's Aboriginal population accompanied by overtly derogatory content. Throughout 1975 and 1976, the Western Guard was linked to violent attacks on African Canadians and the vandalism of numerous synagogues.

relations specifically.³⁴ The topic of race became so prevalent that human rights activist Wilson Head stated that it was obvious to “any reader of the daily press [that] Canadian racial attitudes and practices are increasingly the subject of discussion and debate.”³⁵

Rights activists and minority groups also worked to heighten public awareness of discrimination. For example, Black and South Asian Canadians put pressure on the government to address racism in the police force and within the public school system. These communities mobilized to participate in mass demonstrations such as rallies and marches, and leaders worked with government to study the systemic nature of racism and attempt to reduce tensions.³⁶ Activism did not focus solely on race, however; other groups organized to pressure the government to create equality in the areas of gender, sexuality, and disability. Ontario’s Coalition for Gay Rights, founded in 1975, argued that the Ontario Human Rights Commission was ineffective in its enforcement of minority rights. This coalition organized demonstrations and worked to educate the public on issues of gay liberation.³⁷ The National Action Committee on the Status of Women lobbied for the implementation of the recommendations from the 1970 report of the Royal Commission on the Status of Women in Canada, and feminist activists strove to put issues such as violence against women, child care, maternity leave, and birth control into public debate and onto government agendas. This mobilization of minority group and human rights activism was tied to the social movements of the early 1970s; combined with the media attention and increased public awareness, it brought issues of rights and discrimination into the forefront of public discussion, creating a demand that government strengthen protection for human rights.

At the time of the Code review, the Progressive Conservatives were the governing party in Ontario. The PCs had won the 1971 election under the leadership of William G. (Bill) Davis, marking the ninth consecutive term in office for the party.³⁸ The social unrest of the late 1960s and early 1970s had eroded the party’s popularity, however, and strengthened support for both the Liberals and the New Democrats. In 1975, the PCs won only 51 of the 125 seats in the legislature, and Davis found himself the leader of a minority government; the party would remain in this position until 1981.³⁹ Bill Davis himself was a Red Tory, and he navigated

34 Wilson A. Head and Jeri Lee, *The Black Presence in the Canadian Mosaic: A Study of Perception and the Practice of Discrimination Against Blacks in Metropolitan Toronto* (Toronto: Ontario Human Rights Commission, 1975); Bhausahab Ubale for the Attorney General of Ontario, *Equal Opportunity and Public Policy: A Report of the South Asian Community Regarding Their Place in the Canadian Mosaic* (Toronto: Indian Immigrant Aid Services, 1977); Garnet McDiarmid and David Pratt, *Teaching Prejudice: A Content Analysis of Social Studies Textbooks Authorized for Use in Ontario* (Toronto: Ontario Human Rights Commission, 1971); Walter Pitman, *Now is Not Too Late* (Toronto: Municipality of Metropolitan Toronto, 1977).

35 Head and Lee, *The Black Presence*, p. 1.

36 Daiva K. Stasiulis, “Minority Resistance in the Local State: Toronto in the 1970s and 1980s,” *Ethnic and Racial Studies*, vol. 12, no. 1 (January 1989), pp. 67-68.

37 Smith, *Lesbian and Gay Rights in Canada*, pp. 50-51.

38 The PCs first came to power in 1943 under the leadership of George Drew.

39 The NDP won 38 seats and the Liberals won 36. See Elections Ontario website, “Composition of Legislature Following Ontario Elections,” <http://www.elections.on.ca/en-CA/Tools/PastResults.htm> (accessed November 22, 2012).

leadership of these successive minority governments by following moderate, centrist policies and taking advantage of the competition between the Liberals and the NDP for voter support.⁴⁰

In 1975, Davis appointed Dr. Thomas Symons as chair of the Ontario Human Rights Commission. Symons told the premier that he felt a sufficient period had passed since the creation of the Code that it would be useful and timely to review the state of human rights in Ontario.⁴¹ In addition to Symons, five commissioners participated in the review: Bruce MacLeod, Bromley Armstrong, Lita-Rose Betcherman, Valerie Kasurak, and Rosalie Abella. This group marked the first time the Commission was composed entirely of private individuals. Symons saw this as particularly important, noting that the transition from an “in-house committee of civil servants” to a public body composed of private citizens would strengthen the Commission, make it a more credible body, and allow for a more objective review.⁴² Each of the commissioners brought significant knowledge and practice in the field of human rights, giving the Commission an image of experience and autonomy just as it was to begin a thorough critique of itself and the legislation by which it was governed.⁴³

The Code review was designed to be completed within eighteen months and progressed in three stages: research, public input, and the drafting of a report. The research was intended to help the commissioners understand the current status of human rights within Ontario, to learn about legislation in other jurisdictions, and to clarify legal questions. Information gathered at this stage helped to generate a preliminary list of more than 50 items of interest for the review.⁴⁴ To create a report that genuinely reflected the human rights needs of the people, however, the Commission needed wide-ranging public participation. While the commissioners wanted to hear from organizations and individuals with experience in human rights advocacy, they were most interested in the ideas of everyday residents of Ontario. One of the goals of the review was to provide an environment in which those people within the province who were most marginalized by discrimination could speak openly about their experiences.⁴⁵ To encourage participation, the Review Committee offered Ontario residents several means through which they could

40 For a discussion of the PC government in the 1970s, see John Wilson, “The Ontario Political Culture at the End of the Century” in Sid Noel, ed., *Revolution at Queen’s Park: Essays on Governing Ontario* (Toronto: Lorimer, 1997), pp. 58-65.

41 Interviews with Thomas Symons, March 16, 2005 and July 6, 2005.

42 TUA, Thomas Symons Fonds, 82-001, Box 1, Folder 1, Draft speech for first meeting as chair of Human Rights Commission, March 21, 1975.

43 Symons was a government mediator in the areas of French and English schooling, Native disputes, and labour. Betcherman served as head of the Women’s Bureau and was involved in research on anti-Semitism in Canada. Kasurak was a former representative to the UN Human Rights Commission. Armstrong was a key activist within the Jamaican-Canadian community, a member of the Ontario Advisory Council on Multiculturalism, and a leader in the trade union movement. McLeod was a former moderator for the United Church of Canada. Abella was a practised Jewish-Canadian litigator and a member of the Ontario Public Service Labour Relations Tribunal.

44 TUA, Thomas Symons Fonds, 82-001, Box 12, Folder 1, OHRC briefing note, “Preliminary List of Areas to be Examined in the Review of the Ontario Human Rights Code.”

45 Bruce McLeod, interview with author, Toronto, Ontario, November 9, 2005; Rosemary O’Neill (Review Secretary), interview with author, Toronto, Ontario, September 30, 2005.

voice their concerns about the Commission and the Code. The Committee placed an advertisement in all Ontario dailies, as well as in ethnic, French, and Native presses, encouraging residents to visit the Code Review Office, to write letters and submit briefs to the Commission, and to participate in a series of public hearings. Bruce McLeod stated the Review Committee felt “it was their responsibility to take the Code out into the public arena because that was where it belonged.”⁴⁶

The Commission held seventeen public hearings throughout the summer of 1976, scattered in all regions of the province so that citizens had at least one opportunity to attend a hearing within any given geographic area and to ensure that the voices of residents outside the Toronto area would be heard.⁴⁷ There was no formal agenda; each hearing began with a series of presentations followed by a general discussion facilitated by the commissioners. Those who attended dictated the content of these discussions, allowing for a more organic debate. Attendance levels were high, in some cases overwhelming. In Kitchener, on July 12, 238 community members packed into a room to attend a hearing and, after seventeen presentations, the commissioners had to move to open discussion despite the fact that there were several presenters remaining.⁴⁸ In Toronto, the number of public hearings had to be increased from three to five due to demand.⁴⁹ This enthusiastic participation helped shape the direction of the review and added a human dimension to the process, offering the commissioners the unique opportunity to connect directly with individuals in communities all across the province. At one hearing, members of the Review Committee had to carry an individual in a wheelchair up a flight of stairs because the location, the city’s council chamber, was inaccessible to the physically handicapped.⁵⁰ Incidents such as these very clearly brought home the reality that the needs of the people of Ontario were not being met.

In total, the Commission received hundreds of letters and more than 300 written briefs from individuals and organizations across the province in response to the announcement of the Code review.⁵¹ The format and length of the briefs varied: the shortest was a single paragraph, and the longest contained 67 pages.⁵² Almost half came from individuals who used their personal experiences to call for changes to the current legislation.⁵³ Residents Lynne Wood and Jean Jones described how they had been denied housing because they were unmarried and called for the addition of marital status to the list of prohibited grounds for discrimination.⁵⁴ A group of high school students wrote a brief arguing that schools in the province promoted gender stereotypes, citing the allocation of gym space and the delivery

46 Interview with Bruce McLeod.

47 Hearings were held in Toronto, Ottawa, Sudbury, Sault Ste. Marie, Thunder Bay, Barrie, Windsor, Hamilton, Peterborough, Kingston, Timmins, Kenora, Kitchener, and London (*Life Together*, p. 12).

48 TUA, Thomas Symons Fonds, 82-001, Box 10, Folder 6, Minutes for Kitchener hearing, July 12, 1976.

49 Bromley Armstrong, interview with author, Toronto, July 8, 2005.

50 Interviews with Thomas Symons, Bromley Armstrong, Rosemary O’Neill, and Bruce McLeod.

51 Thirty per cent of the briefs came from within Toronto, and the remainder came from cities and towns across the province (*Life Together*, Appendix, List of Briefs, pp. 130-139).

52 *Life Together*, p. 12.

53 There were 334 briefs in total, of which 184 were submitted by organizations.

54 *Life Together*, p. 71.

of curriculum as examples.⁵⁵ Other briefs came from rights-based groups that outlined the day-to-day discrimination experienced by Ontario residents. South Asians for Equality described how children were assaulted at school, places of worship vandalized, and “modes of dress, saris, turbans, which ought to be individual preference, [were] frowned upon.”⁵⁶ Some of the briefs were very formal, such as those from the Ontario Federation for the Physically Handicapped, the Ontario Status of Women’s Council, and the Urban Alliance on Race Relations. They contained significant research and enumerated recommendations for both the Commission and the Code.⁵⁷ Organizations identifying themselves broadly as civil liberties, human rights, or multicultural associations, such as the Canadian Civil Liberties Association, the Ontario Advisory Council on Multiculturalism, or the Kitchener-Waterloo Human Rights Caucus, addressed a wide range of human rights issues in their briefs, but these were the exception.⁵⁸ For the most part, individual briefs focused on one particular area of discrimination or a specific marginalized group, illustrating that many individuals and rights organizations continued to advocate enhanced rights from within their own perspectives. For example, the John Howard Society expressed concern over employment rights for individuals with a criminal record, while the Afro Students Association spoke to issues of discrimination against foreign students. Women’s organizations emphasized women’s issues while groups representing the disabled focused on issues of access and accommodation. There was little recognition of the way in which any of these issues were connected. Some common areas of concern, such as the structure and effectiveness of the Commission itself, emerged, but very little coordinated effort was made by rights activists to work together to support a broader understanding of human rights or to form coalitions to intensify pressure on the government to expand human rights protection.

The areas of concern brought forward by the public varied tremendously and included discrimination against the handicapped, homosexuals, prisoners, women, children, and Native peoples, as well as issues such as religious practice in schools, mandatory retirement, and employment application forms. These issues were not represented equally, however, as some communities had stronger voices than others. Commissioner Bromley Armstrong was present at all seventeen public hearings and recalled that organizations representing the rights of the disabled and of gays and lesbians were particularly outspoken.⁵⁹ Individuals and advocates concerned about racism and women’s rights were equally vocal. These four issues were the subjects of more than half of the briefs and letters written to the Committee and became a central focus of the public hearings.⁶⁰ The participation

55 *Ibid.*, p. 44.

56 *Ibid.*, p. 57.

57 TUA, Thomas Symons Fonds, 82-001, Box 10, Folder 6, Briefs.

58 Ten briefs were from groups that identified themselves as civil liberties, human rights, or multicultural organizations.

59 Interview with Bromley Armstrong.

60 Of the 184 briefs submitted from organizations, 90 identified with one of these four areas, and 23 came from groups that mentioned these issues heavily (TUA, Thomas Symons Fonds, 82-001, Box 10, Folder 6, Briefs).

of other groups was more limited. Very few briefs or letters came from Aboriginal communities; while Aboriginal issues were an important topic of discussion at the hearings in Thunder Bay, Timmins, and Kenora, this discussion was not sustained in other areas of the province.⁶¹ Similarly, a greater focus on the problem of racial discrimination was evident in regions with high urban populations such as Toronto. Many ethnic, cultural, and religious minorities remained on the periphery of the review process or were absent altogether.⁶² Particularly vulnerable groups such as migrant workers, the mentally ill, or new immigrants were mentioned in several briefs, but had little representation of their own. Those who were less articulate as a result of education, class, or language were much less likely to participate in a public review. The Commission worked hard to create an environment that was open and inclusive, but the very nature of the process attracted a greater number of individuals and organizations with a tendency to activism. The letters, briefs, and minutes of the hearings show, however, that many ordinary residents of Ontario did take the time to participate in the review and to share personal experiences with prejudice and inequality.

A close reading of these letters, briefs, and minutes also reveals that, while the atmosphere of the Code review was strongly supportive of the expansion of human rights protection in the province, there was no consensus over how best to define these rights. Sexual orientation was the most contentious human rights issue throughout the review. Support came largely through the gay and lesbian community, although some individuals within the province urged the Review Committee to consider other forms of sexual preference as well.⁶³ Support also came from outside the gay and lesbian community, including from the Canadian Labour Congress, the Canadian Association of University Teachers, the Ontario Federation of Students, and the United Church of Canada.⁶⁴ Opponents to the inclusion of sexual orientation argued it was a moral issue and a matter of choice, not a rights issue, and so should not be included in human rights legislation. Many participants remained silent on the topic of sexual orientation, preferring to focus instead on their own human rights needs. Few of the briefs presented on behalf of women's organizations even mentioned, never mind openly supported, the inclusion of sexual orientation in the Code.⁶⁵ In this way, lesbians were effectively excluded from larger debates on the needs of women within Ontario society. Similarly, advocates for women's rights often neglected the particular needs of immigrant or Aboriginal women. The briefs from women and women's organizations tended to be most representative of the perspective of middle-class liberal feminists, focusing most commonly on employment. Groups such

61 Two briefs came from Aboriginal groups: the Native Concerns Council in Thunder Bay and Grand Council Treaty Number Nine. Aboriginal issues were mentioned in only a handful of other briefs.

62 Since the 1950s, in campaigns for the expansion of Ontario's human rights laws, activism and religion have been closely linked. This continued as groups such as the United Church of Canada, the Canadian Jewish Congress, and B'nai Brith all submitted briefs that touched on a range of human rights issues. There was very little representation, however, from religious organizations outside the mainstream faiths in Canada.

63 In Hamilton, for example, Professor Earl Reidy urged the Code review to consider transsexualism.

64 *Life Together*, p. 82.

65 There were a few exceptions, such as the Ottawa-Carleton Women's Centre, which advocated the inclusion of sexual orientation, and the Catholic Women's League, which opposed its inclusion.

as the Committee on the Status of Women Academics, London's Womanpower Employment Centre, and the Women's Crown Employees Office argued that, while women constituted a growing percentage of the labour force, they were over-represented in lower-paid occupations and were vulnerable to forms of sexual harassment.⁶⁶ The Ottawa-Carleton Women's Centre and several Planned Parenthood Associations advocated a woman's right to make her own choices in family planning, including access to birth control and therapeutic abortions. These recommendations came into conflict with the arguments of religiously based women's organizations such as the Catholic Women's League and many Right to Life groups.⁶⁷ Clearly, there were competing understandings of the human rights needs of women within the province.

Even in the area of disability, the most widely supported prohibited ground for discrimination during the review, advocates could not agree on how far the government should go in protecting the rights of citizens with special physical or mental needs. The majority of those involved in the review supported the inclusion of "physical" disability, defined as a medical condition resulting from disease, injury, or a condition of birth.⁶⁸ Yet groups such as the Ontario Association for Children with Learning Disabilities and the Canadian Mental Health Association argued the term "disability" should be expanded to include debilitating illnesses, mental disabilities, and mental illness. Advocate Trevor Thomas of Waterloo feared that, if the Code focused only on the physically disabled, individuals with cognitive or mental health issues would continue to be inadequately protected.⁶⁹ Debates such as these revealed that the public remained divided not only on the details of which rights should be included in a revised *Human Rights Code*, but also on the understanding of the term "human rights" itself.

At the end of its review, the Commission created a report, *Life Together: A Report on Human Rights in Ontario*, which it released to the public on July 21, 1977. In total, the report contained 97 recommendations, amounting to more than 100 suggested revisions to the Code and representing a major shift in the direction and purpose of human rights public policy for the province. The commissioners relied heavily on public input in drafting *Life Together*, broadening their recommendations far beyond the 50 items identified through their research. The written briefs, letters, and statements given at the hearings were heavily quoted throughout the report, lending authority to the argument that the commissioners were voicing the concerns of the public.

In *Life Together*, the commissioners portrayed Ontario not as a province in which discrimination and intolerance could occur, but one in which it had always occurred. They argued that, to make human rights policy more effective in combatting this discrimination and intolerance, the Code needed greater

66 *Life Together*, p. 67.

67 These debates carried over to the public hearings. For example, in Kitchener-Waterloo, Planned Parenthood of Ontario, K-W Planned Parenthood, and the Catholic Women's League all presented briefs discussing birth control and abortion. In total, 14 written briefs were submitted by Right to Life or Planned Parenthood associations.

68 This is the definition the Review Committee adopted (*Life Together*, p. 107).

69 TUA, Thomas Symons Fonds, 82-001, Box 10, Folder 6, Minutes for Kitchener hearing, July 12, 1976.

authority and the public needed to see the Commission as a fair and useful body. To accomplish this, the commissioners recommended the Code have primacy over all other provincial statutes and regulations and that the Crown be bound to it.⁷⁰ The commissioners also recommended the Commission be given greater discretionary power and moved out of the Ministry of Labour, reporting instead to the premier and legislature.⁷¹ *Life Together* recognized the Code could only be strongly and consistently enforced if the Commission had sufficient resources and power. Pointing to the growing workload, the dissatisfaction expressed by the public with the length of the process, and the increasingly complex nature of human rights issues, the report recommended an increase in professional staff, a doubling of the number of commissioners, and a tripling of the existing budget.⁷² Without this increase in funding, the Commission maintained, it would be unable to meet its existing mandate, never mind the expanded mandate of the proposed Draft Code.

Using the input gathered from the public to support its recommendations, the *Life Together* report focused primarily on how human rights public policy should be expanded within the province. One significant way in which the report recommended protecting groups from prejudice was to limit the dissemination of discriminatory materials, prohibiting public representations that were “likely to expose a person or persons to hatred or contempt.”⁷³ The commissioners argued, however, that conscious, overt forms of discrimination such as these represented only one aspect of discrimination. Experience with the administration of the Code revealed “the most pervasive discrimination today often results from unconscious and seemingly neutral practices which may, none the less, be as detrimental to human rights as the more overt and intentional kind.”⁷⁴ The commissioners argued that systemic forms of discrimination such as a lack of access to educational opportunity perpetuated the effects of past discrimination, even when overt acts had ceased.⁷⁵ Therefore, it was necessary to do more than simply create a list of prohibited behaviours. *Life Together* recommended that the Commission be given the mandate to investigate the institutional and historic patterns of discrimination that existed in Ontario and approve special affirmative action programmes to counter these patterns.⁷⁶ The commissioners were clear that affirmative action programmes should not involve quotas, which they believed “betray[ed] the basic principle of equality of opportunity,” but instead work to improve the qualifications of traditionally disadvantaged groups.⁷⁷

Life Together also placed an emphasis on the increasing role that the Commission was playing in community relations. One of the problems revealed by the experience of the Commission, and supported by the briefs received from the

70 *Life Together*, Recommendation 5, p. 93.

71 *Ibid.*, pp. 27, 30-31, and Recommendations 8, 9 through 19, pp. 93-95.

72 *Life Together*, pp. 86-91, and Recommendations 91 through 97, pp. 108-109.

73 *Ibid.*, p. 114; Draft Code, s.9(1)(2).

74 *Life Together*, p. 33.

75 *Ibid.*, pp. 33-34.

76 *Ibid.*, pp. 33-36, and Recommendations 20 and 22, pp. 95-96.

77 *Life Together*, pp. 35-36.

public, was the lack of a “strong legislative mandate [for the Commission] to move preventatively into areas of inter-group tension before crises develop and without waiting to be called.”⁷⁸ This could be solved through the use of the affirmative action programmes and through more effective public education. The report also proposed that the Commission review the Ontario school system to ensure its curriculum and policies reflected the principles of the Code. In total, almost one-third of the 97 recommendations in the *Life Together* report dealt explicitly with preventative measures. These measures, as well as the focus on the institutional and systemic nature of discrimination, underscored a new understanding of the role of human rights public policy.

Finally, *Life Together* recognized individuals within Ontario who were not currently protected by legislation. When the prohibited ground of “age” was added to the Code in 1972, it was applied to those between the ages of 40 and 65. In response to a growing number of complaints from individuals outside this range, the report recommended widening the definition to include all persons 18 years or older.⁷⁹ The list of prohibited grounds of discrimination was also expanded to include marital status, family relationship, physical disability, criminal record, and sexual orientation.⁸⁰ A review of the briefs submitted to the Code Review Committee and the minutes of the hearings reveal these areas had the greatest support.

Once *Life Together* was released to the public, the response was immediate. Newspapers printed articles and editorials summarizing and commenting on the recommendations, and individuals and organizations sent letters to the press, the Human Rights Commission, and the Ministry of Labour to provide their own views.⁸¹ All of the articles and letters recognized the importance of Ontario’s human rights legislation; even those critical of *Life Together* took time first to acknowledge the need to strengthen the Code. Beyond this, the reaction varied widely. No discernible regional trends were evident in this initial media response, as dailies from rural and urban areas both supported and opposed aspects of the report.⁸² Journalists, as well as individuals and organizations writing to the press or the government, focused most commonly on six of the report’s recommendations: the inclusion of the new prohibited grounds of “sexual orientation,” “physical disability,” and “criminal record,” the redefinition of “age,” recommendations to limit the dissemination of discriminatory materials, and the Commission’s proposed budgetary increases. Code Review Committee Chair Bruce McLeod stated that, while the public response was prolific, it was not as comprehensive as the Commission had hoped it would be.⁸³ The narrow focus of the public response

78 *Ibid.*, pp. 9, 33-36, and Recommendations 20 and 22, pp. 95-96.

79 *Ibid.*, pp. 66-67, and Recommendation 73 and 104.

80 *Ibid.*, pp. 71-82, and Recommendations 77 through 90, pp. 106-108.

81 The commentary on the reaction to *Life Together* is based on letters collected by the Ministry of Labour and the Human Rights Commission, as well as more than 125 articles written from July to September 1977 in English-language daily newspapers across the province. See OA, RG 7-1, Accession 20569, Box 2, Code Review, Press Reports: *Life Together* 1977; TUA, Thomas Symons Fonds, 82-001, Box 11, Folders 1 and 2, Response to Code Review.

82 Many newspapers also printed supporting and opposing letters and articles.

83 OA, RG 7-1, Accession 20569, Box 2, Code Review, Press Reports: *Life Together* 1977, Memo from Bruce

and the debate that took place over these particular recommendations do illustrate, however, the competing goals and understandings of human rights that existed within the province.

In the *Life Together* report, the comments on sexual orientation spanned only two pages. As sexual preference was considered to be a part of the private lives of citizens, the Commission recommended its inclusion as a prohibited ground.⁸⁴ The response was enormous and emotional. In a survey of over 125 newspaper articles written on the subject of the *Life Together* report, more than 20 referred to sexual orientation explicitly in the title, and more than one-third emphasized this recommendation within the content.⁸⁵ Supporting arguments stressed that the inclusion of sexual orientation would “provide homosexuals with the security of knowing they have legal rights, including the right to appeal unfair treatment in housing and employment.”⁸⁶ The opposition was more intense. Headlines such as “Rights Code Favours Gays” expressed a sense that enhanced rights for gays and lesbians came at the expense of the so-called rights of the majority to live free from what was often considered “sexual deviance.”⁸⁷ Even many individuals who largely supported *Life Together* could not accept the inclusion of sexual orientation. Mrs. Ann Cain wrote to the Human Rights Commission in August to express her support for *Life Together* and her delight at the proposal to add physical disability as a prohibited ground. While she found the report commendable, her one exception was the inclusion of sexual orientation, which she believed condoned “abnormal sexuality.”⁸⁸ Arguments against inclusion were often moral or religious and based upon the premise that sexual orientation was a choice and so not comparable to such characteristics as gender, race, or disability. One article stated, “The question, then, is how far society can go in guaranteeing their [homosexuals’] civil rights without actually encouraging homosexuality and promoting it to equal status.”⁸⁹ In surveying the overall reaction to *Life Together*, Ben Kayfetz of the Canadian Jewish Congress expressed his regret that the press had focused so heavily on this debate over gay rights while other areas went largely unnoticed.⁹⁰

In contrast, the recommendation to include physical disability as a prohibited ground received considerable popular support. Almost all of the newspaper articles printed in July and August 1977 on the subject of the report used the absence of protections for the physically handicapped as a sign that at least some revisions were, in fact, required. Many advocate groups for the physically disabled were active in the press response by participating in interviews and submitting letters

McLeod, to William G. Davis, Stephen Lewis, Stuart Smith, and Bette Stephenson, September 1977.

84 *Life Together*, pp. 81-82, and Recommendation 90, p. 108.

85 For examples of supporting articles, see Sandra Precop, “In Search of Social Solutions,” *Windsor Star*, July 23, 1977; “Overdue Change,” *Thunder Bay Times News*, July 29, 1977. For opposition, see Philip Leigh Abbass, “It’s a Moral Issue,” *Kitchener-Waterloo Record*, August 9, 1977.

86 A. Hanen, “Homosexual Rights,” *Globe and Mail* [Toronto], August 3, 1977.

87 Eric Dowd, “Rights Code Favours Gays,” *Ottawa Journal*, July 22, 1977.

88 TUA, Thomas Symons Fonds, 82-001, Box 10, Folder 5, Letter from Mrs. Ann Cain to the Ontario Human Rights Commission, August 30, 1977.

89 “Homosexual Rights Should be Limited,” *Toronto Star*, July 22, 1977.

90 TUA, Thomas Symons Fonds, 82-001, Box 10, Folder 5, Letter from Ben Kayfetz, Canadian Jewish Congress, to the Ontario Human Rights Commission, July 29, 1977.

to the editor.⁹¹ There was continued debate, however, over whether or not the concept of disability should be expanded to include mental disability or mental illness.⁹² In addition, letters written to the Ministry of Labour in the months after the release of *Life Together* reveal a growing concern from business groups as to what impact the report's recommendations to protect the physically disabled would have on employers. The Ontario Chamber of Commerce argued that the right of the physically handicapped must be balanced with employers' rights.⁹³ According to Marion Lane, a policy advisor with the Ministry of Labour, business interests within the province were also concerned with the cost implications of implementing recommendations on the right of access for the physically handicapped.⁹⁴

The Commission's proposal to enhance rights protection for individuals with a criminal record and for employees over the age of 65, as well as the recommendation to prohibit the spread of hate literature, led to further public debate over what priority should be given to competing rights within a revised Code. An article in the *Guelph Mercury* argued that individuals with a criminal record did not deserve special status because committing a criminal act was a "free choice" for which "one of the social penalties paid is the resulting suspicion with which society views you."⁹⁵ Several articles and letters, including one from the Toronto Metro Separate School Board, opposed recommendations to deny employers the right to consider criminal record and sexual orientation in the hiring process for jobs dealing with children, arguing for the right of a child to a safe environment.⁹⁶ Robert Chamberlain argued that *Life Together* would place "criminals" and "homosexuals" in "the same privileged minority position as women and Native groups," reflecting a common public understanding that there was a hierarchy of rights in which certain groups were deemed less deserving.⁹⁷ Not only individuals were challenged by this line of thinking, but activist groups as well. The right of senior citizens to be employed beyond the age of 65 was another topic for debate. Several newspaper articles and letters to the editor argued that compulsory retirement was both unfair and wasteful, while organizations such as the Ontario Chamber of Commerce opposed the idea of flexible retirement, arguing the Human Rights Commission was infringing on the rights of employers.⁹⁸ The report's recommendations to limit the spread of hate

91 John Rae of the Blind Organization of Ontario with Self-help Tactics (BOOST) was the most vocal.

92 TUA, Thomas Symons Fonds, 82-001, Box 10, Folder 5, Letter from Barbara Brown, October 31, 1977.

93 OA, RG 7-1, Accession 20569, Box 2, Human Rights Code Review, General Correspondence, 1977, Letter from the Ontario Chamber of Commerce to the Ministry of Labour, October 19, 1977.

94 OA, RG 7-1, Accession 20569, Box 2, Human Rights Code Review, Cabinet Submissions (1978), Memo from Marion Lane to Bette Stephenson, June 14, 1978.

95 Derek Nelson, "Report on Human Rights Has Curious Half Truths," *Guelph Mercury*, August 3, 1977.

96 OA, RG 7-1, Accession 20569, Box 2, Human Rights Code Review, General Correspondence, 1977, Letter from the Metro Separate School Board to the Ministry of Labour, October 5, 1977; "Rights Code Favours Minorities," *Farm and Country*, August 16, 1977.

97 Robert Chamberlain, "Realistic Approach to Human Rights," *Windsor Star*, July 22, 1977.

98 For example, see "Case for Senior Power," *Leamington Post*, July 6, 1977; "Working After 65," *Brantford Expositor*, July 23, 1977; "Let People Choose When to Retire," *Toronto Star*, July 25, 1977; OA, RG 7-1, Accession 20569, Box 2, Human Rights Code Review, General Correspondence, 1977, Letter from the Ontario Chamber of Commerce to the Ministry of Labour, October 19, 1977.

literature also came under attack. The Commission stated these recommendations were designed to “achieve a more reasonable balance between freedom of speech and the right of individuals and groups to freedom from discrimination and racist abuse,” but within the media the report was criticized as threatening healthy public debate.⁹⁹ The problem, as was observed by one Ontario resident, was that human rights questions “always involve a clash of ideologies and rights,” and the public response to the Commission’s proposed Draft Code illustrated this clearly.

Despite criticism targeted at specific recommendations, media reports and the letters written to the government were largely supportive of *Life Together*.¹⁰⁰ Much of the report was characterized as reasonable, and there was support for an overhaul of the *Code of Human Rights*. Yet the media coverage and public feedback contained a general sense that the review and its recommendations would fail to provoke any real government action.¹⁰¹ This concern seemed validated ten months later when, after reviewing *Life Together*, Minister of Labour Bette Stephenson still refused to make any commitments on behalf of the government.¹⁰²

There was tremendous pressure on the provincial Progressive Conservatives to respond to *Life Together* with a revised Code. The premier reacted by instructing the Ministry of Labour to conduct an internal review of the report, considering the recommendations and their implications for government.¹⁰³ Opponents of *Life Together* within the Ministry argued it was a “Commission document” that represented the views of the commissioners rather than the “true feelings” of the public.¹⁰⁴ Bureaucrat Marion Lane argued that the commissioners had a “naïve” understanding of the constraints placed on the government.¹⁰⁵ It took two years from the release of *Life Together* for the Davis government to begin to draft new human rights legislation in response to the report. Newspapers questioned the government’s hesitation, and headlines such as “Davis a Dud on Human Rights” demonstrated a growing frustration.¹⁰⁶ Residents and organizations continued to write letters to the government and the Commission providing input and demanding a revised Code be tabled. Recognizing that the government was hesitating, some activist groups worked together to apply more pressure for change. The Coalition for Life Together, founded in Toronto in 1979, was comprised largely of gays, lesbians, and individuals with disabilities who organized public rallies,

99 *Life Together*, p. 47; “Don’t Restrict Free Speech,” *Toronto Star*, July 29, 1977.

100 More than 50 per cent of the letters and articles were strongly supportive of *Life Together*. The majority of negative articles criticized specific recommendations but supported the goals of the report.

101 OA, RG 7-1, Accession 20569, Box 2, Human Rights Code Review, General Correspondence, 1977; Code Review, Press Reports: *Life Together* 1977; and Human Rights Code Review, General Correspondence 1977-1979.

102 Ontario, *Legislative Assembly Debates*, 2nd Session, 31st Legislature, May 4, 1979, pp. 2251-2273.

103 OA, RG 7-1, Accession 20569, Box 2, “Ministry of Labour Response to the Ontario Human Rights Commission Report,” January 31, 1978, prepared by Bette Stephenson, Human Rights Code Review – MOL Response: *Life Together* (1978); and Box 17, Human Rights, Ontario Human Rights Code, Staff Notes/Briefing Papers 1979-1980.

104 OA, RG 7-1, Accession 20569, Box 3, Memo from Marion Lane to Bette Stephenson, October 12, 1977.

105 *Ibid.*

106 “Davis a Dud on Human Rights,” *Toronto Star*, March 12, 1979.

demonstrated in front of the legislature, and called on the Davis government to take action.¹⁰⁷

In the legislature, opposition members asked exactly when a revised code would be presented and expressed exasperation at the delay.¹⁰⁸ Part of the problem for Davis's government was the composition of the legislature itself. The PCs had failed to secure a majority government in the 1977 election, and so both the Liberal and the New Democratic Parties had a significant presence in the legislature.¹⁰⁹ While the majority of members had responded positively to the spirit of *Life Together* and there was support among all parties for amendments to the existing Code, there was little consensus on the particulars.¹¹⁰ What was more problematic for the PC party was the division within its own ranks over human rights issues. In its report to the cabinet, the Ministry of Labour criticized many of the report's budgetary and administrative recommendations, citing existing "economic constraints."¹¹¹ Economic conditions in the late 1970s had inspired the growth of a political discourse in Canada and abroad that focused on fiscal restraint, less public expenditure for social services, and a reduced government role in the daily welfare of its citizens. This discourse conflicted with *Life Together's* recommendations for an expanded role for the state in protecting the rights of its citizens. Disagreements over what should and should not be included in public policy and serious concerns over the cost of expanding human rights protection meant that the cabinet could not ensure that its own party would unanimously support any human rights legislation it introduced.¹¹² The fact that Premier Davis himself was personally committed to amending the Code, however, allowed the legislation to be pushed forward.¹¹³ Other high-profile Progressive Conservatives such as Robert Elgie, who became Minister of Labour in 1978, and Attorney General R. Roy McMurtry also helped to gather support for legislation. According to McMurtry, the Red Tories within the party argued the government should bring forward new human rights legislation that took into account the recommendations of *Life Together* because doing so would "put the Government in a better position to control the contents of the Act that emerges."¹¹⁴

107 Tom Warner, *Never Going Back: A History of Queer Activism in Canada* (Toronto: University of Toronto Press, 2002), p. 151.

108 Ontario, *Debates of Resources Development Committee*, 1st Session, 31st Legislature, October 7, 1977, R-539-540; *Debates of Resources Development Committee*, 2nd Session, 31st Legislature, December 6, 1978, R-1436.

109 The PCs won 58 of the 125 seats while the Liberals won 34 and the NDP won 33. See Elections Ontario website, "Composition of Legislature Following Ontario Elections," <http://www.elections.on.ca/en-CA/Tools/PastResults.htm> (accessed November 22, 2012).

110 For example, Ontario, *Legislative Assembly Debates*, 2nd Session, 31st Legislature, May 4, 1978, pp. 2251-2272.

111 OA, RG 7-1, Accession 20569, Box 2, "Ministry of Labour Response to the Ontario Human Rights Commission Report," January 31, 1978, prepared by Bette Stephenson, Human Rights Code Review – MOL Response: Life Together (1978)

112 Dr. Robert Elgie, telephone interview with author, Toronto, November 9, 2005.

113 *Ibid.*

114 OA, RG 7-1, Accession 20569, Box 2, Human Rights Code Review – Attorney-General / MOL Discussions, Letter from Roy R. McMurtry to Honourable Robert Elgie, March 19, 1979.

In its first attempt at such legislation, Bill 188, *An Act to Protect the Rights of Handicapped Persons*, the government attempted to deal only with the most popular reform, rights for the disabled, but Bill 188 was widely criticized for avoiding the contentious issues and was withdrawn.¹¹⁵ Finally, in November 1980, more than three years after the release of *Life Together*, the government introduced a comprehensive human rights bill. An election call in February killed the legislation, but, once re-elected into a majority position, Davis re-introduced it in April 1981 as Bill 7, *An Act to revise and extend Protection of Human Rights in Ontario*.

Bill 7 was greatly influenced by the *Life Together* report. It included many of the structural or administrative provisions of the Commission's Draft Code, gave the Code primacy over all other provincial legislation, expanded the functions of the Commission to include the development of public education and research programmes, and provided a mandate to work proactively to ease community tensions. Bill 7 recognized the concept of "historical discrimination" as outlined in *Life Together* and gave the Commission the authority to recommend special programmes to encourage the employment of members of a group suffering from chronic disadvantage.¹¹⁶ Based on recommendations from the report, Bill 7 also expanded the Code's list of prohibited grounds to include handicap, family status, marital status, and age.

The new legislation also took into account the public, media, and governmental response to *Life Together*. In some cases this led to changes in terminology or definition; for example, negative reaction caused the proposed prohibited ground of "criminal record" to be changed to "record of offences," redefined to apply only to provincial offences for which a pardon had been granted. While age was included as a prohibited ground, the upper limit of 65 was not removed in the area of employment to respond to concerns over how this would affect retirement age. Provisions against the dissemination of discriminatory materials, or "hate literature," were weakened in response to both government and media concerns over violations of free speech. Growing public support persuaded the government to include "mental disability" as a prohibited ground, yet mental illness was excluded. Recommendations that had received strong opposition, most notably the addition of sexual orientation, which had been so widely discussed during the review and in the media afterwards, were omitted altogether. Structural changes that had been opposed in the governmental review, such as the removal of the Commission from under the authority of the Ministry of Labour, were also absent.

Bill 7 was not merely a stripped-down version of the Draft Code, however; the four years of review and the continued public input allowed for new provisions and new concepts to be added to the legislation. Most significant was the use of legal language to articulate more clearly the new understanding of human rights

115 Jon Ferry, "New Bill for Disabled Called Discriminatory," *Globe and Mail* [Toronto], November 24, 1979, p. 4; Stan Oziewicz, "Bill on Discrimination Against the Disabled Avoids Issue of Gays," *Globe and Mail*, November 23, 1979, p. 4; Ontario, *Debates of the Resources Development Committee*, 3rd Session, 31st Legislature, December 6, 1979, R-1020.

116 Ontario, Legislative Assembly, *An Act to revise and extend Protection of Human Rights in Ontario*, Bill 7, 32nd Legislature, 1st Session, 1981, s14(1).

that had emerged from the review, what some scholars have termed a shift from negative to positive rights.¹¹⁷ Simply stated, this involved a shift away from the philosophy that human rights legislation should limit government interference into the lives of citizens towards a policy in which there was an obligation on government to create an environment free from discrimination. In *Life Together*, the Commission argued that the rights of the community to live in “a climate of understanding and mutual respect” needed to be represented in public policy.¹¹⁸ Yet this was not explicitly reflected in the language of the Draft Code, as the policy continued to be worded in terms of what a person “shall not” do. In drafting Bill 7, the government moved away from expressly listing behaviours that were prohibited towards listing a set of positive rights that every citizen possessed. The use of the wording “Every person has a right to...” in place of “No person shall...” represented a new recognition of citizens as rights holders. When discussing the possible format of Bill 7, Attorney General Roy McMurtry argued that, as a “public charter of rights,” it needed language that was accessible to the public.¹¹⁹ The shift in language reflected a growing tendency to focus on victims’ rights and the role of government in protecting these rights and was consistent with developments in Canadian federal criminal law, international human rights, and human rights legislation in other Canadian provinces.¹²⁰ Minister of Labour Robert Elgie admitted the Ministry was influenced by the hearings and an overall philosophy of the time toward this positive view of rights.¹²¹ Human rights activists such as Alan Borovoy, Bora Laskin, Walter Tarnopolsky, and Harish Jain, as well as organizations such as the Jewish Labour Committee, the Urban Alliance on Race Relations, and the National Action Committee on the Status of Women, advocated egalitarian rights throughout this period, pushing for a greater government role in protecting rights as well as the inclusion of more economic, social, and cultural rights into legislation.¹²² These egalitarian rights movements participated in the review and lobbied government; while not all their demands were included in Bill 7, they were effective in influencing the language of the proposed legislation.

Bill 7 was introduced to the legislature in April 1981 and referred to the Standing Committee on Resources Development. The government encouraged public input once again, holding 26 more public hearings in June, September, and October. One hundred and ninety exhibits were presented to the Committee, including formal briefs and summarized versions of letters.¹²³ In contrast to the hearings held by the Human Rights Commission five years earlier, the hearings

117 For a discussion of negative versus positive rights in the context of Ontario, see James W. St. G. Walker, “Human Rights, Racial Equality, Social Justice: Can We Get There From Here?” (unpublished paper, Canadian Race Relations Foundation, 1999), pp. 34-35.

118 *Life Together*, p. 19.

119 OA, RG 7-1, Accession 20569, Box 2, Human Rights Code Review – Attorney-General / MOL Discussions, Internal Memo, May 1, 1979.

120 R. Roy McMurtry, telephone interview with author, Toronto, October 26, 2005.

121 Interview with Dr. Robert Elgie.

122 Clément, *Canada’s Rights Revolution*, pp. 7-9; Howe, “The Evolution of Human Rights Policy in Ontario,” pp. 194-196 and 202-204.

123 OA, RG 7-22-0-609, “Exhibit List,” Records of Standing Committee on Resources Development (May-December, 1981).

for Bill 7 were all held in Toronto in front of the Standing Committee, creating an environment that excluded much of the province. Whereas individuals had been a significant component of the public participation in the Commission's review, the hearings for Bill 7 were dominated by organizations.¹²⁴ Many of the human rights groups active in the 1976 review participated again, but they now competed with a number of business groups, agricultural associations, law enforcement associations, boards of education, and organizations representing media, religious interests, and labour.¹²⁵ Certain groups such as the Aboriginal communities that had had a limited involvement in the Code review ceased to participate, and many of Ontario's most marginalized peoples continued to be absent. The hearings for Bill 7 were therefore less inclusive than earlier debates and reflective of the challenges facing a modern public sphere invaded by powerful non-state actors. Increasingly, the larger public's appeal for broader human rights protection was under attack.

The majority of the presentations and briefs submitted to the Standing Committee were, however, supportive of Bill 7; more than two-thirds were in favour of the reforms or wanted the legislation to go further.¹²⁶ In a departure from the format of the briefs in the *Life Together* review, most of the presentations and briefs for Bill 7 no longer focused on a single issue or interest. Groups such as the Ontario Advisory Council on the Status of Women, Religious Leaders Concerned about Racism and Human Rights, the Ontario Federation of Labour, the Urban Alliance for Race Relations, the Canadian Union of Public Employees, the First Unitarian Church, and the Hamilton Conference of the United Church of Canada all promoted the expansion of the Code into areas well outside their own interests, including protection of the physically and mentally disabled and the inclusion of sexual orientation as a protected ground.¹²⁷ In waiting for the government to react to *Life Together*, these groups had learned their voices would be more effectively heard if they advocated rights more broadly.

The briefs that were fundamentally opposed to Bill 7 objected to more general aspects of the legislation, including the shift toward positive rights and the expanded powers of the Commission. The Ontario Chamber of Commerce claimed Bill 7 would give the Human Rights Commission unprecedented power to interfere in the operations of Ontario businesses and place impractical and unnecessary restrictions on employers, thereby obstructing a company's ability to make profits and hurting the Ontario economy.¹²⁸ Business groups such as the Retail Council of Canada and the Canadian Organization of Small Business argued that, in a time of economic uncertainty, there should be an emphasis on smaller government outside the areas that promoted private sector economic growth. The neo-liberal rhetoric in these briefs was used to challenge the human rights discourse of the review

124 *Ibid.* Only 20% (29 of 144) briefs came from individuals, as opposed to 45% for the earlier Code review.

125 OA, RG 7-22-0-609, "Exhibit List," Records of Standing Committee on Resources Development (May-December, 1981).

126 *Ibid.*; Howe, "The Evolution of Human Rights Policy in Ontario," pp. 319 and 415.

127 OA, RG 7-22-0-616, "Ontario Human Rights Code, Submissions and Briefs, 1981," Records of the Standing Committee on Resources Development (May-December, 1981).

128 *Ibid.*

and was part of a larger challenge to the social and political order of the postwar welfare state. The opposition was also consistent with an increasing backlash felt more broadly in the late 1970s and early 1980s by social movements such as the women's and gay liberation movements.¹²⁹

Other criticisms came from governmental organizations such as the Association of Municipalities of Ontario, the Association of Large School Boards, and the Ontario Association of Chiefs of Polices. These groups were opposed to the new levels of power given to the Commission and questioned the impact that the primacy of human rights legislation would have on their ability to operate effectively. Several briefs opposed the investigative powers of human rights officers, specifically the search and seizure procedures. Organizations expressed concern over constraints on hiring practices, in some cases calling for exemptions to recommendations they felt would interfere with their ability to deliver services.¹³⁰

Media groups were also involved in the review of Bill 7, focusing on the restrictions to freedom of speech in the provisions on hate literature. Early press reports of the hearings were positive, with newspapers providing space for human rights activists to praise the proposed legislation. In January, the *Globe and Mail* printed an article written by prominent Toronto Rabbi Gunter Plaut that outlined "Ontario's giant steps to protect human rights."¹³¹ By the summer, however, the press response turned negative as the media focused increasingly on how Bill 7 would deprive Canadians of their liberties and threaten democracy. This was most obvious in the coverage of Toronto dailies, particularly the right-wing *Toronto Sun* and the *Globe and Mail*. Rural newspaper were also more heavily opposed to Bill 7; Ontario's agricultural community took exception to legislation that it argued favoured minority rights.¹³² *Farm and Country* referred to Bill 7 as a "straight jacket" in July, and Claire Hoy of the *Toronto Sun* claimed it had a "Gestapo feel."¹³³ In September the negative press intensified as the Canadian Daily Publishers Association argued Bill 7 threatened freedom of speech, a concern given coverage by the Canadian Press wire service.¹³⁴ Criticisms of the legislation culminated in mid-September with the publication of an editorial in the *Globe and Mail* that stated, "The original Human Rights Code, which emphasized inquiry and negotiated settlements, has evolved into a code of commandments and arbitrary penalties."¹³⁵ Press reports became so critical that Robert Elgie

129 See, for example, Smith, *Lesbian and Gay Rights in Canada*; Sylvia Bashevkin, *Women on the Defensive: Living Through Conservative Times* (Toronto: University of Toronto Press, 1998).

130 For example, police and fire services called for exemptions in the areas of age, citizenship, criminal record, association, and handicap (Exhibits #50 and #51).

131 W. Gunther Plaut, "Ontario's Giant Steps to Protect Human Rights," *Globe and Mail* [Toronto], January 27, 1981.

132 This analysis is based upon a survey of media coverage done by the Information Services of the Ministry of Labour. See OA, RG 7-22, Box 6, HR Code Review – Bill 7 Briefing Notes (1981), Media Clippings on Bill 7.

133 "Farm Bill Like a Strait-jacket," *Farm and Country*, July 29, 1981; Claire Hoy, "Gestapo Feel to Rights Bill," *Toronto Sun*, June 4, 1981.

134 OA, RG 7-22, Box 6, HR Code Review – Bill 7 Briefing Notes (1981), Media Clippings on Bill 7.

135 "Rights and Wrongs (2)," *Globe and Mail* [Toronto], September 18, 1981, p. 6.

was concerned Bill 7 would be defeated. To prevent this, the Ministry of Labour worked with the Standing Committee to modify the legislation. New restrictions were placed on a Board of Inquiry's powers and the hate literature provisions were narrowed further to require that intent to promote hatred or discrimination be demonstrated.¹³⁶ In some cases, provisions that were too controversial were deleted, as was the case with the power given to human rights officers to call on police to assist in an investigation. The government altered Bill 7 in response to the hearings and press reaction, hoping to assure its passage in the Conservative-dominated legislature.

In December 1981, Bill 7 passed third reading, becoming the *Ontario Human Rights Code, 1981*. Important aspects of the original legislation remained in place; the relationship between the Code, the Commission, and the legislature carried over, and the Commission retained the use of the grievance model inherited from labour relations. Yet the new Code also built substantially on its predecessor. The list of prohibited grounds was expanded from nine to fifteen, including the new grounds of citizenship, marital status, family status, physical or mental handicap, receipt of public assistance, and record of offences. The Code gained primacy over other provincial legislation, applying human rights policies to all services, facilities, employment, and accommodation that did not have explicit exceptions.¹³⁷ The Commission was also enlarged to include seven commissioners and a new Race Relations division.

These changes were important, but the ideological and conceptual differences made the new Code most significant. The legal language reflected the shift towards a positive, community-based policy that recognized citizens as rights holders. Human rights were no longer tied only to individuals; there was new recognition of the importance of ensuring groups within society could live free from discrimination. The definition of "discrimination" was expanded to include both overt and intentional acts and more subtle and unintentional acts that could be the result of unfair historic trends. The mandate of the Commission was extended to include more public education and the ability to investigate and act upon community tensions. This allowed the Commission to become involved in private and community interactions, effectively shifting its purpose away from simply responding to individual human rights problems toward attacking the sources of these problems.

Despite the ways in which the new Code expanded human rights protection, many saw it as an imperfect solution. Complaints arose over both what was missing and the limitations of specific provisions. The legislation did not include protection based on sexual orientation, based on political belief, or for individuals over the age of 65 in the area of employment.¹³⁸ Nor did it move the Commission out from under the authority of the Ministry of Labour. Many of the discretionary

136 OA, RG 7-22, Box 16, 7-22-0-599, "Ontario Human Rights Code, Bill 7, Amendments and Redrafts, 81/82"; Interview with Robert Elgie.

137 The Code permitted exceptions in special circumstances, such as *bona fide* job requirements.

138 Sexual orientation was added to the list of prohibited grounds in 1987 by means of a NDP private member's bill under a Liberal government.

powers for the Commission recommended in *Life Together* were also excluded. Notwithstanding such omissions, there was recognition that the legislation did represent a step forward. Articulating the attitude of many members of the legislature, Sheila Copps justified Liberal support of Bill 7 by stating, “in some respects half a loaf is better than none.”¹³⁹ Certainly the legislation failed to meet the demands of many of the individuals and organizations participating in the review process. The most significant criticism of the *Human Rights Code, 1981* was that it contained no provisions to increase the budget of the Commission. New Democrat Melvin Swart stated, “the act will only be as effective as the Government wants it to be” and argued that the failure of the new Code to address budgetary concerns was a signal of a lack of real commitment by the Progressive Conservative government.¹⁴⁰ Disappointed, former Human Rights Commissioner Bromley Armstrong argued, “threats from reactionary forces influenced the Ontario Government to adopt a watered-down version of the act.”¹⁴¹

Of course, some elements within Ontario society criticized the legislation for taking rights too far.¹⁴² In truth, there was never a consensus over human rights within the province. The deliberations that took place throughout the review revealed a general support for the idea of human rights and agreement that Ontario was in need of amended legislation, but disagreement over the particulars of what a revised Code should contain. Some recommendations enjoyed wide support, but others revealed significant differences over which rights should be protected and which should not. After the adoption of Bill 7, division over the merits of the legislation continued.

Looking back more than three decades after the adoption of the 1981 Code, it is tempting to analyse its importance based upon how successfully it “solved” the problem of discrimination. Dominique Clément has pointed to a “significant gap between the rhetoric of human rights and the implementation of human rights policies,” urging us to consider how well the ideas translated into the achievement of a more equal and tolerant society.¹⁴³ Certainly a comparison of the rhetoric of the Code review and the *Human Rights Code, 1981* demonstrates that the government was only willing to go so far to recognize and enforce human rights.

Yet Ontario’s new human rights legislation did have a measurable impact on victims of discrimination within the province. Individuals who had very limited human rights protection prior to 1981 could and did use the Code to seek redress for prejudicial treatment. In the first year the new legislation took effect, there was a 20 per cent increase in the number of human rights complaints.¹⁴⁴ This growth was

139 Ontario, *Ontario Legislative Assembly Debates*, 2nd Session, 32nd Legislature, December 7, 1981, p. 4310.

140 Fred Blazer and Sylvia Stead, “Revised Rights Code Becomes Law Today Amid Mixed Reviews,” *Globe and Mail* [Toronto], June 15, 1982, p. 4.

141 Walter Kroboth, “Rights Lost to Might, Seminar Told,” *Globe and Mail* [Toronto], April 26, 1982, p. 4; Interview with Bromley Armstrong.

142 See, for example, Claire Hoy, “Working a Political Shell Game,” *Toronto Sun*, October 29, 1981, p. 9; “It’s a Bill They Can’t Refuse...,” *Toronto Sun*, October 22, 1981, p. 28.

143 Clément, “‘Rights without the Sword are but Mere Words,’” pp. 44 and 56.

144 The number of complaints increased from 695 to 831. The number of informal inquiries increased by 400% in this same period. See Government of Ontario, *Annual Report of the Ontario Human Rights Commission*,

almost totally accounted for by the new grounds of protection as Ontario residents began to bring a wider variety of cases before the Commission.¹⁴⁵ Within only three years, discrimination against the handicapped and sex discrimination, which included the new provisions for sexual harassment, had surpassed race and colour as the most common categories of complaint.¹⁴⁶ The number of complaints to the Commission doubled in this same period, and the new Race Relations division was involved in hundreds of mediations and public consultations.¹⁴⁷ The most pressing problem for the Commission, however, was its inability to keep pace with this new caseload. The Commission had grown to include eight commissioners and 92 full-time staff members, but the increase in the number of complaints, more onerous rules of due process, and a continued shortage of resources prevented the staff from completing its work.¹⁴⁸ Only four years after the revised Code took effect, the Commission was carrying over more than 1,500 cases per year.¹⁴⁹ This growing backlog and constraints on the Commission's power caused rights activists to criticize its effectiveness. In 1984, prominent feminists Doris Anderson and June Callwood called the Commission "dangerously weak" and a "sluggish organization which avoids conflict."¹⁵⁰ While citizens were taking advantage of the broader application and coverage of the new Code, the 1980s presented continued challenges for the effective implementation of Ontario's human rights policies. The failure to provide adequate resources for the Commission to fulfil its new mandate brought into question the extent to which government was committed to the changes and seemed to indicate that the neo-liberal emphasis on restraint had trumped the human rights discourse.

Furthermore, the Code review illustrates divisions that existed in understandings of human rights issues in the province between 1975 and 1981. As citizens, activists, interest groups, politicians, and the media debated the specifics of how best to protect individuals from discrimination and which rights should be articulated in law, the limits of Canada's rights revolution became apparent. Calls for an expanded definition of human rights challenged public understandings of

1982-1983.

145 Government of Ontario, *Annual Report of the Ontario Human Rights Commission, 1982-1983*. Every new ground of protection saw complaints: marital status (39); family status (11); handicap (124); receipt of public assistance (7); record of offences (4); expanded definition of age (17); sexual harassment (99).

146 In 1981, race and colour accounted for 42% of complaints. By 1984, handicap accounted for 27%, sex and sexual harassment for 24%, race and colour for 21% (*Annual Reports of the Ontario Human Rights Commission*).

147 The number of complaints increased from 695 in 1981-1982 to 1,599 by 1984-1985 and 2,535 by 1991-1992. The number of inquiries increased from 22,746 to 92,000 in this same period; by 1985-1986, the Race Relations division was involved in 130 mediations, 136 projects, and 933 consultations. See *Annual Reports of the Ontario Human Rights Commission*.

148 In 1975-1976 the Commission had six commissioners and 30 staff members. There was no increase in budget for the Commission until 1984-1985 (10%), and it was not until 1986-1987 that the budget matched the Commission's workload (increase of 27%). See Howe, "The Evolution of Human Rights Policy in Ontario," pp. 800-801.

149 Number of complaints carried over: 1983-1984 (980); 1984-1985 (1,507); 1985-1986 (1,734); 1986-1987 (1,814). See *Annual Reports of the Ontario Human Rights Commission*.

150 Doris Anderson, "Human Rights Takes a Beating Across Canada," *Toronto Star*, July 28, 1984; June Callwood, "Human Rights Legislation Still Plagued by Wrongs," *Globe and Mail* [Toronto], August 1, 1985.

discrimination and equality and revealed the competing interests driving the review process; even rights activists themselves often could not see the link between their own human rights goals and the needs of other marginalized peoples.

Given these divisions, to what extent did either *Life Together* or the revised Code truly reflect “public” understandings of human rights? Throughout 1976, the Commission offered an open and inclusive space for individuals and organizations to engage in dialogue with one another to discuss the nature of rights, as well as the purpose of both the Commission and human rights public policy. Not all voices were equal, but the public participation was wide-ranging, and individuals from regions all across the province shared their personal experiences. Rights often competed with one other, but the review process highlighted the pervasive nature of discrimination in Ontario and the need for greater government involvement. As the review progressed into the late 1970s, however, rights advocates came into conflict with a neo-liberal discourse intent on limiting government spending on and involvement in private interactions and community relations. As the government took control of the review process, it ignored the recommendations in *Life Together* it did not support, such as the removal of the Commission from the Ministry of Labour. When recommendations challenged accepted norms, as was the case with sexual orientation, the government allowed the beliefs of the majority, including those from more “established” groups of rights advocates, to override the needs of marginalized groups. In other cases, such as in the clash between freedom of speech and provisions to prevent hate literature, pressure from powerful interest groups caused the government to weaken the legislation. Seen in this light, the public deliberations seem to have carried little weight at all.

Yet to view the evolution of human rights policy in Ontario from 1975 to 1981 only in terms of these limits misses an important point. It fails to acknowledge the significance of the shift in public consciousness of human rights policy that did take place at this time. The move towards a more positive concept of rights and the transformation of citizens to rights holders who could expect government to create an environment free from discrimination influenced the way individuals understood Ontario society and their place within it. The fact that the Crown was bound to the *Human Rights Code* and that the legislation was given primacy signalled the expectation that all components of society should be accountable to human rights policies. This was not incremental change; it was a fundamental transformation in how Ontarians understood human rights and the role of rights legislation. For six years the people of Ontario openly debated issues of human rights, and, according to Commissioner Bruce McLeod, this process “gave a jolt to the awareness of human rights in Ontario.”¹⁵¹ The review added the voice of the larger public to calls from activists and rights organizations for legislative change. The public hearings provided clear examples of how the human rights needs of individuals throughout the province were not being met, and many of the issues raised made their way into the final substance of the revised Code. While the government could, and did, delay, it could not ignore the demand for

151 Interview with Bruce McLeod.

action. Most importantly, by 1981, it was more difficult for individuals to talk about discrimination as if it were the product of isolated, individual antisocial acts that “could occur” within society. The assumption that Ontario did not have a systemic or historic “problem” with discrimination was publicly challenged. The public hearings acted not only as instruments to gather public input, but also as a public education tool to spread information about the Commission, the Code, and the everyday experiences of Ontario residents with prejudice and discrimination. After implementation of the revised Code, a growing number of victims of discrimination sought remedy with the Commission, and they did so based on an expanding range of categories. Despite the backlog of complaints, the Commission continued to close an increasing number of cases each year and was involved in more race and public relations activities than ever before in its history.¹⁵²

It is true that public input did not dictate all of the decisions taken by the government to amend the Code. It is also true that other, more powerful non-state actors such as media, business, and special interest groups sometimes invaded the public arenas for debate. Nevertheless, the review that took place in Ontario from 1975 to 1981 brought issues of discrimination, race, and rights into the forefront of public discussion. The shift in public policy that occurred recognized that government intervention was required to ensure that all citizens received fair and equal treatment. While the *Human Rights Code, 1981* was an imperfect solution to the problems of inequality, prejudice, and discrimination, it did articulate into law a new importance for human rights within Ontario society and a new relationship between citizens and the government in safeguarding these rights. For this reason, the Code review period represents an important step in Canada’s rights revolution, even as it also demonstrates that this revolution was far from complete.

152 In the first few years of the new Code, the Commission closed an average of 1,000 cases per year. By 1986-1987, that number had jumped to 1,647. In 1991-1992, the Commission closed more than 3,000 cases. See *Annual Reports of the Ontario Human Rights Commission (1981-1991)*.