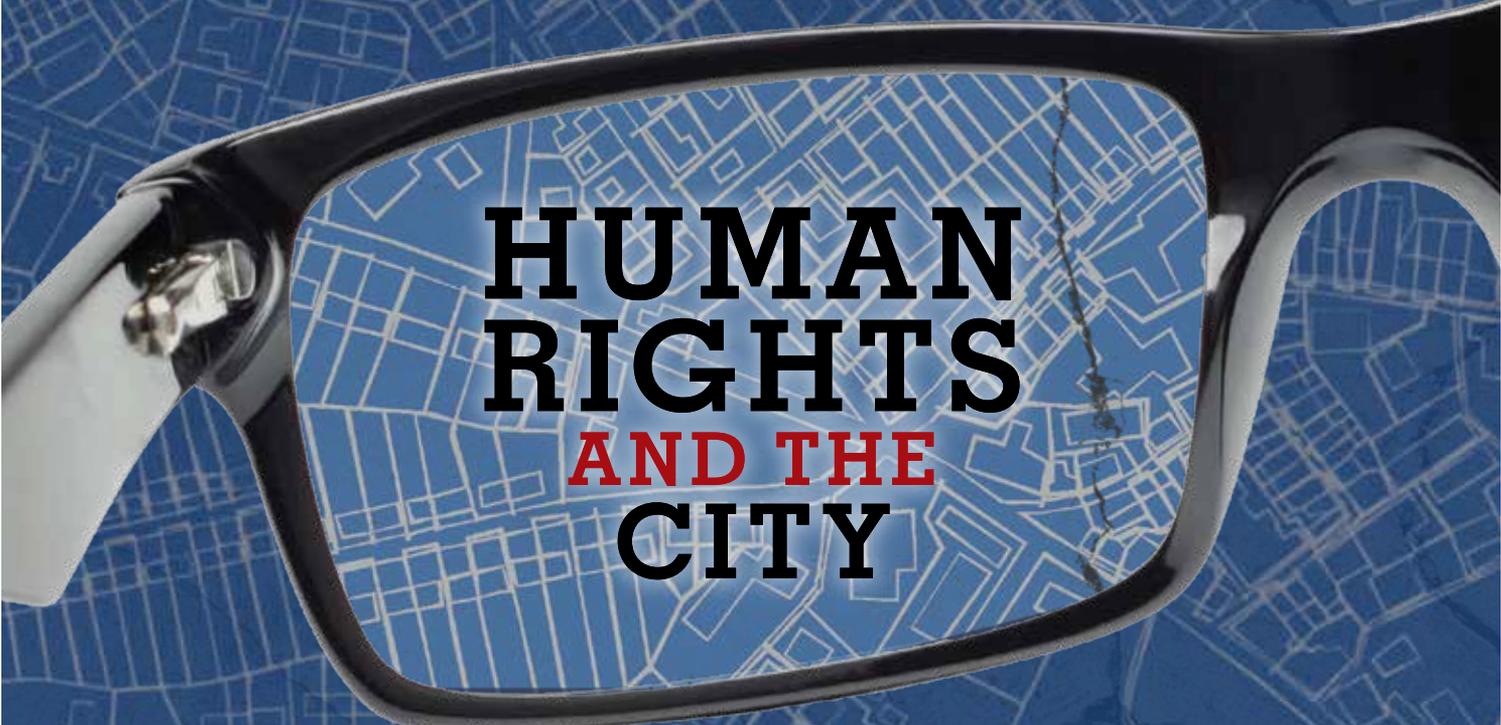


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HUMAN RIGHTS AND THE CITY



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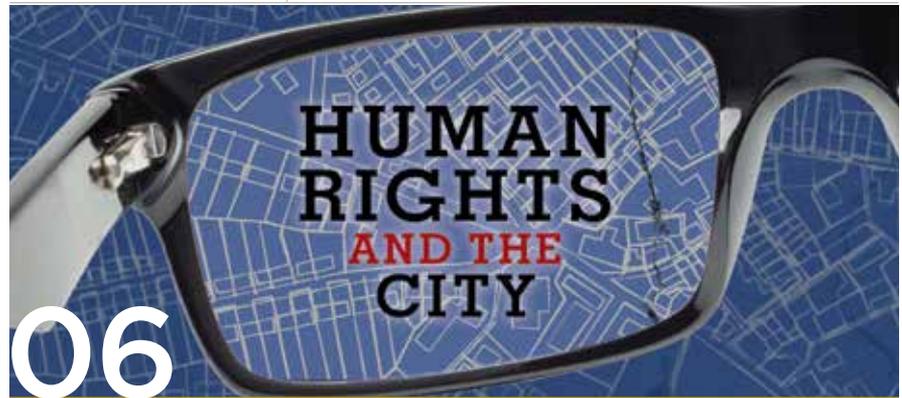
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Legally speaking: Human rights law and the city

Summary

Human rights law was one of the great legal innovations of the twentieth century. Cities, however, are today facing a remarkable diversity in human rights claims that would never have been envisioned a generation ago. How municipalities respond to these challenges will have profound consequences for social and economic policy planning.

Résumé

La législation en matière des droits de la personne est l'une des plus importantes innovations juridiques du XXe siècle. Toutefois, les villes sont actuellement confrontées à une diversité remarquable dans les revendications liées aux droits de la personne, ce qu'on n'aurait jamais pu imaginer il y a une génération. La façon dont les municipalités affronteront ces défis aura de profondes répercussions dans le cadre de planification des politiques économiques et sociales.

Canada has one of the most robust human rights legal regimes in the world. Ironically, this has created problems for cities. People are increasingly turning to human rights tribunals to address a broad range of social and economic issues. Municipal governments and private business often find themselves on the defensive, particularly around issues of accommodation and discrimination.

Unlike the *Charter of Rights and Freedoms*, federal and provincial human rights statutes apply to both the private and public sector. They are primarily anti-discrimination statutes. When the first human rights statutes were introduced in the 1960s, they banned discrimination on the basis of race, religion, and ethnicity. Such discrimination remains rampant in Canada's cities. A 2011 report titled "Why do some employers prefer to interview Matthew, but not Samir?" involved sending 7000 fake resumes to employers in Vancouver, Montreal, and Toronto. The authors found that employers in Canada's most diverse cities were 40 per cent more likely to interview applicants with English-sounding names. Poverty and unemployment rates remain higher among visible minorities, who are also increasingly segregated in cities. Statistics Canada has reported a proliferation of visible minority neighbourhoods (30 per cent or more) in the country's largest cities from three in 1981 to 254 in 2001. By 2011, more than 40 per cent of the population living in low-income neighbourhoods belonged to a visible minority.

The scope of human rights laws, however, has expanded dramatically since

the 1960s. Their mandate is no longer restricted to racial, religious, or ethnic discrimination. Human rights statutes currently ban more than a dozen forms of discrimination, from gender identity to disability. This has profound implications for cities. Schools boards and municipal governments, for instance, must now consider that failing to provide gender-neutral washrooms in public facilities violates human rights legislation. Some of the more contentious claims in recent years include:

- Vancouver's Downtown Ambassador's program was found guilty of discrimination in 2016 by the British Columbia Human Rights Tribunal for harassing homeless people, notably Indigenous and those with disabilities.
- The BC-Yukon Association of Drug Warrior Survivors filed a complaint against the City of Abbotsford for a bylaw blocking access to sterile needle exchange facilities and supervised injection sites.
- Several homeowners with disabilities in Iroquois Falls, Ontario filed a complaint to force the municipality to clear snow on their driveways.
- Ontario's Human Rights Commission argued in 2015 before the Tribunal that the Toronto Police Service's refusal to recognize on the memorial wall those officers who died while on duty as a result of suicide linked to mental illness was employment-based discrimination.
- In 2017, the City of Montreal was ordered by the Quebec Human Rights Tribunal to pay \$40,000 to a victim of racial profiling by the municipal police.



- The Yukon Human Rights Commission and British Columbia's PIVOT Legal Society are seeking recognition of a human right to housing.
- In a recent book on the Olympic movement, the authors insist that there is a "right to the city." Security zones, such as those that were created for the Vancouver 2010 Olympics, violate the right to access streets, shopping malls, or riverfronts.

Cities are facing a remarkable diversity in human rights claims that would never have been envisioned a generation ago. In the past, most people did not consider housing or accessibility to be human rights issues. Today, they have greater resonance, in part because Canadians are more likely to consider grievances such as poverty or environmental degradation as human rights violations. Moreover, human rights laws and tribunals provide an institutional mechanism for people to seek legitimacy and recognition of new claims. As a result, human rights

"Human rights are the highest possible moral claim in our society. This makes it far more difficult for businesses or governments to dismiss such claims. However, it also encourages advocates to seek out legal solutions to systemic social problems."

tribunals are becoming the battleground over social and economic policy.

Non-governmental organizations as diverse as PIVOT, Greenpeace, B'Nai Brith, the Canadian Labour Congress, and the Canadian Conference of Catholic Bishops have embraced the position that medical treatment, housing, homelessness, police misconduct, exploitation of sex workers, clean water, access to the internet, child care, collective bargaining, labour mobility, and human trafficking are human rights issues. Similarly, PIVOT and others insist that addicts have a human right

to supervised injections sites. Framing these issues as human rights violations is a strategic choice. Human rights are the highest possible moral claim in our society. This makes it far more difficult for businesses or governments to dismiss such claims. However, it also encourages advocates to seek out legal solutions to systemic social problems.

This is perhaps the most serious implication of framing social and economic issues as human rights violations. To be sure, it is an effective way of gaining legitimacy for many of these grievances.



“Many social problems require far more systemic solutions than the legal system can provide. In no country have the courts been capable of redistributing resources to alleviate disparities in wealth, even in India and South Africa where there are constitutional guarantees for social and economic rights.”

For social movements, in particular, human rights are a useful strategy for mobilizing people: it lends legitimacy to grievances and provides a common language to unify a diverse constituency. Human rights laws

and commissions are an attractive option for people and groups because they provide an established institutional framework to pursue grievances.

On the other hand, advocates should be

wary of presuming a legal solution to social problems. Many social problems require far more systemic solutions than the legal system can provide. In no country have the courts been capable of redistributing resources to alleviate disparities in wealth, even in India and South Africa where there are constitutional guarantees for social and economic rights. While the law can be a powerful tool for social change, there is a legitimate concern around whether or not courts or tribunals are the best forums for addressing systemic social problems. For example, litigation in Brazil to enforce a right to health has resulted in demands for expensive medicines, which the government has refused to provide because of a lack of funds. One of the most prominent recent human rights cases in Canada involved the federal government’s underfunding of education and health services for children on Aboriginal reserves. The Canadian Human Rights Tribunal ruled that such underfunding violated the *Human Rights Act* because it constituted racial discrimination. Two years later, the federal government has done little to address the issue of child poverty and health on reserves.

It is not difficult to imagine municipal governments facing similar legal challenges in the near future. But human rights tribunals are poorly equipped to address these types of social problems. The best way that municipal governments can avoid wasting time and resources on human rights complaints is

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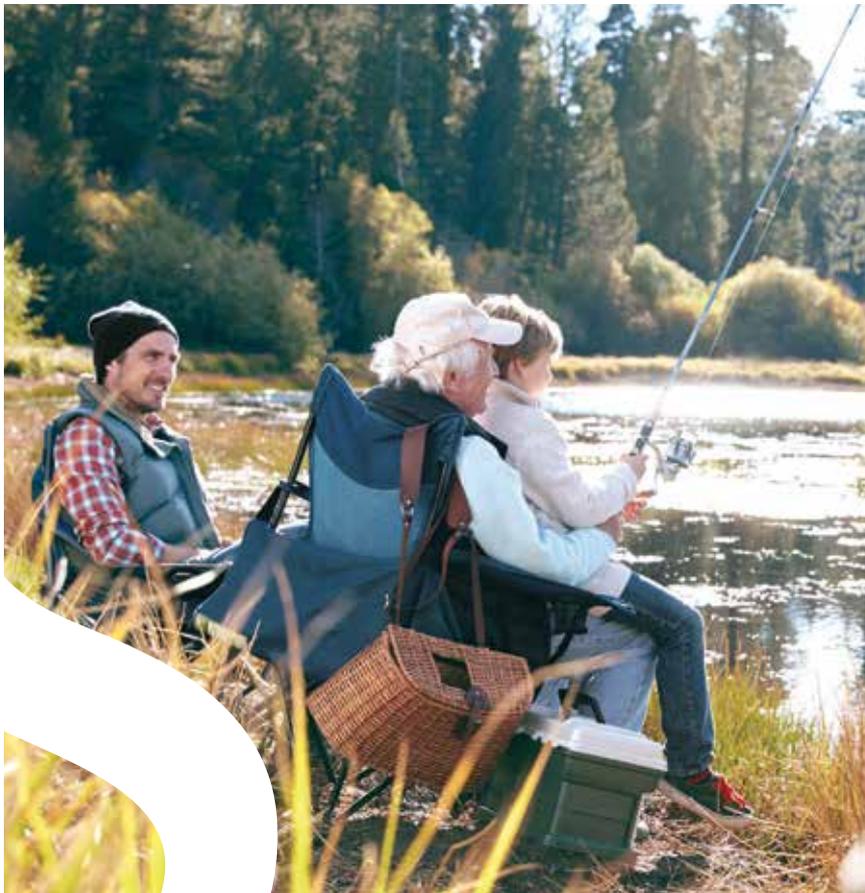


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to engage with community organizations. Large cities already provide some funding to organizations. In 2015, the City of Vancouver provided almost \$6 million to over 150 community groups. Funding NGOs promotes engagement with government and encourages dialogue rather than legal challenge. There is no doubt that Canadians will continue to push the boundaries of the law by seeking restitution on social and economic issues through human rights tribunals. But cities are far better off promoting alternative ways of addressing issues such as poverty and racism than litigation before human rights tribunals.

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Dominique Clément is an Associate Professor in the Department of Sociology at the University of Alberta. He is the author of the award-winning books *Canada's Rights Revolution*, *Equality Deferred* and *Human Rights in Canada*. He has consulted for the Canadian Human Rights Commission, and has served on the board of numerous community organizations. His website, *HistoryOfRights.ca*, serves as a research and teaching portal on human rights history in Canada. ■



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