

PROPOSED AMENDMENTS TO BILL 7Section 16(1)(a) Ontario Human
Rights Code

November 5, 1985

Background: Full participation is the clear goal of disabled people. The most tangible and effective barriers to full participation involve denial of access and amenities.

Legislation: Ontario is the only province in Canada which expressly declares that the denial of "access or amenities" to disabled people is not a violation of the Human Rights Code. Thus no matter how flagrant the denial of equality, section 16(1)(a) provides an absolute defence.

Charter of Rights: Section 16(1)(a) provides an absolute defence to a complaint and is therefore a clear violation of section 15(1) of the Charter of Rights and Freedoms. Reasonable limits pursuant to section 1 would involve issues such as "undue" hardship which is discussed below.

History: Section 16(1)(a) was added by the majority Conservative government after second reading, and public hearings in Committee. It was inserted over the objections of the Liberal and New Democratic parties and the Coalition on Human Rights for the Handicapped which represented virtually the entire disabled community.

Comparison: The Supreme Court of Canada recently upheld a Saskatchewan Court of Appeal decision Huck v. Canadian Odeon Theatres. The decision held that access and amenities are covered under that province's human rights legislation. The Saskatchewan Code is comparable to that in most other provinces. If the old Ontario Code had not been amended, the Huck case would have been a precedent in this province.

Remedy: Section 40(2) was necessary because a denial of access or amenities is not actionable under section 16(1)(a). This remedy section allows a Tribunal to order the provision of access or amenities, where discrimination is proven on other grounds. These remedies are not available if they would impose an undue financial hardship on the respondent.

Compromise: While it is difficult to accept that equality rights should be compromised, it is recognized that circumstances exist where a respondent might experience an undue financial hardship due to its particular circumstances. Thus a limit on a Tribunal's remedy granting authority in such circumstances may be appropriate. The following recommendations would restore the Huck precedent in Ontario. It would also allow a board of inquiry to take a broader view of undue hardship.

Recommendations:

1. Section 16(1)(a) repealed.
2. Section 40(2a) added.

A board of inquiry when assessing whether the costs occasioned by an order, pursuant to subsection (2) would cause undue hardship, shall consider the availability of funds from other sources and the feasibility of phasing in the provision for access or amenities over a period of time.

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