



Submissions

Draft Administrative Guidelines on Promotion of Racial Equality

General Comments

The Law Society notes the Draft Administrative Guidelines on Promotion of Racial Equality (“draft”) provide “general guidance to concerned Bureaux and Departments and other relevant public authorities to promote racial equality.....”. The tone adopted throughout the draft merely “*encourages*” Government Bureaux and Departments to adopt good practice. We note that in other comparable jurisdictions with similar legislation, the administrative guidelines adopt mandatory language such as “shall” and “must” unlike the draft which contains no element of compulsion. The Law Society considers that if Hong Kong’s Administrative Guidelines are to be meaningful the draft must be more robustly worded otherwise in its current form it appears the Administration is sending a message to the public that it is not seriously engaged in educating the public on the importance of promoting racial equality in Hong Kong.

Specific Comments

1. Transparency and Monitoring

Paragraph 4.12 on “Record and publicity” states:

“Relevant Bureaux, Departments and public authorities are encouraged to keep proper records of the assessments and improvements made as a result (of the policies). This would be useful for the purpose of monitoring and future reviews. They are also encouraged to take steps to facilitate the public to understand their action taken to promote racial equality.”

As drafted it will be impossible to ascertain the development and success of the Government’s policies to promote racial equality if the guidelines are couched in such terms i.e. “encouraged”.

We note the UK Code of Practice provides comprehensive guidelines on the Duty to promote Race Equality:

Section 4.31 states: “*Public authorities **must** set out in the race quality scheme their arrangements for publishing the results of any assessments, consultations and*

monitoring they carry out to see whether their policies have and adverse impact on race quality.” (emphasis added)

Section 4.32 states: *“Publishing these results will increase an authority’s openness and allow it to show that it is committed to promoting race equality. In time, this should increase public confidence in the authority – across all racial groups.”*

Section 4.36 states: *“public authorities **must** set out in the race equality scheme their arrangements for making sure that the public have access to information and services they provide”.* (emphasis added)

As stated in Section 4.32 above, if the Hong Kong Government published its results such increased transparency would improve the public confidence that the Government is committed to promoting race equality.

The Constitutional and Mainland Affairs Bureau (“Bureau”) should consider amending the draft to provide for the following activities: regular publication of the duties of a designated officer in each department, annual reports on the review of effectiveness of the implementation of the Guidelines, an impact assessment review of the new policies and measures adopted by the departments.

2. Staff Training

The section concerning staff training is too general and does not effectively serve the goal of enhancing racial equality. We note the Ontario Human Rights Commission has published a set of Guidelines on Developing Human Rights Policies and Procedures; section VIII therein provides detailed guidance on this particular area.

We recommend the Bureau should review part C(3) of the Ontario Guidelines which provides more detailed guidance as follows:

“Persons who will be responsible for implementing human rights policies and procedures will require more extensive training and information on (Codes), this includes managers and supervisors, as well as staff who may be receiving, investigation, mediating or deciding on complaints or accommodation requests.”

3. Lack of incentives for the Bureaux and Departments to follow the guidelines

As stated, the guidelines merely *encourage* Bureaux and Departments to adopt policies to promote racial equality. Use of such words as ‘may’, ‘encourage’ etc, give a clear impression that adoption of the guidelines will be a voluntary decision by individual bureaux and departments; there are no penalties should any bureau or department fail to follow the guidelines. The Guidelines as drafted appear to be paying lip-service to the promotion of racial equality.

The Administration has not provided any additional manpower or resources to enable the Bureaux or Departments to implement these guidelines.

Recommendation

The draft dated June 2009 is wholly inadequate. The Law Society recommends that the current draft be completely re-written and that the Bureau consider adapting relevant provisions in the Ontario Guidelines or the UK Code of Practice or Guidelines from other comparable jurisdictions. The Bureau should note that the Central Government has emphasized society should strive to improve racial harmony therefore it should recognize that effective policies to promote racial equality is a major policy initiative to achieve this goal.

Appendix A: Ontario Guidelines Developing Human Rights Policies and Procedures (Extracts)

Appendix B: The UK Code of Practice on the Duty to Promote Race Equality (Extracts)

The Law Society of Hong Kong

18 August 2009

127483

Ontario Guidelines Developing Human Rights Policies and Procedures (Extracts)

VIII. EDUCATION AND TRAINING PROGRAMMES

A. Description and Rationale

Education and training are core elements of any organization's human rights strategy. They are central to any effort to build a "human rights culture" within an organization. Education and training can deepen understanding and awareness of human rights issues, and build support for the organization's human rights initiatives. As well, every member of the organization should have a solid understanding of their rights and responsibilities under the *Code*, and of the organization's policies, programs and procedures for preventing and addressing human rights issues.

However, it is important to remember that education is not a panacea for all human rights issues. For example, education will not, on its own, remove systemic barriers. Education works best along with a strong proactive strategy to prevent and remove barriers to equal participation, and effective policies and procedures for addressing human rights issues that do arise.

B. Considerations

An effective human rights education program will include training on:

- organizational policies and procedures related to human rights;
- the principles and specific provisions of the *Code*; and
- general human rights issues such as racism,¹⁶ ableism, sexism, homophobia, ageism, etc.

Training must be tailored to specific needs of the various members of the organization. All members of the organization will need to be aware of their rights. As well, specific education is required for:

- Those responsible for complying with policies (everyone);
- Those responsible for implementing policies (manager, supervisors);
- Those responsible for providing expert advice, ensuring compliance (e.g, HR);
- and
- Those responsible for overall human rights strategy (e.g., the CEO).

Organizations should engage in ongoing monitoring of human rights issues that affect them, and provide their members with human rights education that is timely and appropriate.

Organizations should ensure that those who carry out human rights training have expertise in the specific subject area.

Training should emphasize that human rights policies and programs are in harmony with the organization's objectives, and have the full support of senior management.

Human rights education should not be a one-time event. Ongoing training should be provided to address developing issues, and regular refreshers provided to all staff. The effectiveness of training should be monitored, and any identified gaps should be promptly addressed.

C. Elements

1. General Human Rights Training

Human rights education is essential to developing a "human rights culture" within the organization, one that supports the values and principles that underlie the *Code*. Without an understanding of human rights issues, and support for a human rights culture, human rights policies and procedures are unlikely to be successful.

Beyond knowledge of the legal rights and responsibilities set out in the *Code*, it is important to understand discrimination and harassment related to the various *Code* grounds, and how they manifest themselves. For example, it will be very difficult for an organization to address and prevent systemic racial discrimination without educating its members about what racism is, how it operates, common manifestations of racism and racial discrimination, and the legacy of racism in Canada.

2. Training on the Ontario Human Rights Code

All members of the organization should know the principles of the *Code*, and their legal rights and responsibilities related to human rights. Persons responsible for developing organizational strategy on human rights issues, and for developing and implementing policies and procedures will require more in-depth training on human rights laws, and regular updates on new issues, policies, and legal developments.

3. Training on Organizational Policies and Procedures

Organizations should ensure that all members are aware of internal human rights policies and procedures. Everyone should know what the standards are, what their rights and responsibilities are under the policies and procedures, and how they can obtain advice or assistance with respect to human rights issues. Policies and procedures should be provided to everyone, together with training, at the time that they are introduced, and shared with newcomers when they join the organization. As well, regular reminders and refreshers should be provided to all.

Persons who will be responsible for implementing human rights policies and procedures will require more extensive training and information on these documents. This includes managers and supervisors, as well as staff who may be receiving, investigating, mediating or deciding on complaints or accommodation requests.

The UK Code of Practice on the Duty to Promote Race Equality (Extracts)

Arrangements for publishing assessment, consultation and monitoring reports

- 4.31 Public authorities must set out in their race equality scheme their arrangements for publishing the results of any assessments, consultations and monitoring they carry out to see whether their policies have an adverse impact on race equality (see 4.6).
- 4.32 Publishing these results will increase an authority's openness and allow it to show that it is committed to promoting race equality. In time, this should increase public confidence in the authority – across all racial groups.
- 4.33 An authority's publishing arrangements should be in proportion to its size and the importance of the subject.
- 4.34 The authority should arrange to include the following points in publishing the results of consultations:
- a. why the consultation took place;
 - b. how it was carried out;
 - c. a summary of the responses or views it produced;
 - d. an assessment of the policy options; and
 - e. what the public authority is proposing to do.
- 4.35 The authority should set out in its race equality scheme how often, and in what form, the results of its assessments, consultations and monitoring will be published. The authority's publishing arrangements might also take account of how these fit in with its other statutory requirements or demands for published information.

Arrangements for making sure the public have access to information and services

- 4.36 Public authorities must set out in their race equality scheme their arrangements for making sure that the public have access to information and services they provide (see 4.6).
- 4.37 To meet this specific duty, public authorities should arrange to make their information and services accessible to everyone. Authorities might consider the following.
- a. Consider access to information and services when they assess their functions. For example, is there enough information available to the public? Is the information user-friendly?

- b. Consider whether a service is not being fully used because people do not have enough information about it, or because they are not confident that the service can meet their particular needs sympathetically or fairly.
- c. Ask whether information is available at the right time and in the right place.
- d. Take steps to improve the information available.
- e. Monitor how effectively information is given to the public, and make improvements, where necessary.
- f. Make sure that staff have the skills, information and understanding needed to deal fairly and equally with all clients.

4.38 Public authorities might also consider how they can improve public access to their services. Possible ways include:

- a. asking local communities what services they need and how they want them provided;
- b. providing 'outreach' services to particular groups in an environment and style they are familiar with;
- c. strengthening cooperation with particular groups;
- d. arranging for interpreters;
- e. taking positive action (see the glossary); and
- f. developing access to computers and internet services.