DEFINING RIGHTS AND WRONGS: BUREAUCRACY, HUMAN RIGHTS, AND PUBLIC ACCOUNTABILITY, ROSANNA L. LANGER (VANCOUVER: UNIVERSITY OF BRITISH COLUMBIA PRESS, 2007)

The public's understanding of human rights in the twenty-first century is embedded in human rights instruments such as the *Universal Declaration of Human Rights*,[1] the *Canadian Charter of Rights and Freedoms*,[2] and an emerging promotion of the concept by the media, educators, governments, and advocacy groups. With that understanding, individuals who believe they have been discriminated against often file complaints with human rights commissions expecting justice.

In *Defining Rights and Wrongs: Bureaucracy, Human Rights, and Public Accountability*,[3] Rosanna Langer explores the gap between official and social understandings of "discrimination," "harassment," and "rights," and how expectations and assumptions about human rights enforcement collide with the realities of human rights administration. She juxtaposes the public's expansive understanding of human rights with official definitions of rights provided in legislation,[4] effected through administrative human rights processes, and asks whether the current machinery of government can provide a vehicle for the real expansion of equity.

Langer provides a brief but interesting historical context for the emergence of human rights legislation and commissions in Canada and then specifically examines the Ontario Human Rights Commission processes. She has reviewed copious studies, reports, inquiries, and reviews of human rights commissions, primarily in Ontario, and has most interestingly interviewed individual complainants and what she calls human rights intermediaries: human rights intake and caseworkers and lawyers, to examine how human rights in Canada are actualized. Participant narratives are woven into her analysis to provide a phenomenological and critical theoretical perspective and the work is thorough. The footnotes alone (32 pages in a 138-page book) provide detailed, well-researched perspectives, and ample opportunity for further reflection on the many issues she raises.

Langer begins with the lived experience of complainants who believe they have been discriminated against and critiques the manner in which a monopolistic complaints processing machinery handles them. In some cases, complaints are rejected because they do not fit the perceptions or ideological positions of intake workers or lawyers or alternatively do not fit within a prescribed legislative or policy framework.[5] Complainants' understanding of their rights often extend beyond what the law grants them. Their perceptions of their "rights," their own power, their membership or non-membership in a group, and their identification with that group's characteristics will all influence their willingness and/or ability to see harm as discriminatory. As they are often the most marginalized members of

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1 GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71.

2 Part I of the *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11.

3 Rosannna L. Langer, *Defining Rights and Wrongs: Bureaucracy, Human Rights, and Public Accountability* (Vancouver: University of British Columbia Press, 2007).

4 See e.g. *Human Rights Code*, R.S.O 1990, c. H.19.

5 *Supra* note 3 at c. 2. See e.g. 46-47.

society, complainants can be more likely to conform to authority: to those who may unwittingly shape their views of legitimacy in the context of their claims.

Langer describes the transformation of public complaints into cases as a complex process that involves negotiating normativity, validity, and actionability.[6] For example, in bridging the gap between the public's expectations and their actionable rights, lawyers and front line staff ascribe different meanings to complainants' expressions of rights violations depending on their own perceptions and understandings of policy, law, and legal frameworks as well as their lived experiences, aspirations, and perceptions.[7] Thus bridging the gap often involves educating, filtering, interpreting, reshaping, and ultimately transforming complaint experiences and their narratives.[8]

Langer examines the context and ground structure of what motivates intermediaries within the human rights system. For example, some lawyers are described as frustrated because the exclusivity of the commission process thwarts their professional goals and can create the feeling that they are being co-opted by a system for which they have little respect. They want the right to take cases to a hearing not only to meet the needs of clients but also to create a body of decisions that reflects the values embedded in human rights codes.[9] They perceive the commission as framing complaints without proper analysis and adequate investigation with the result that many cases are not deemed meritorious. Going to court to overturn these decisions is costly and difficult. The task of explaining the process and its implications to clients can be disheartening. Complainants feel that they have suffered harm and have expectations of the human rights system; they do not appreciate being told their case does not have merit without the benefit of a court or tribunal hearing. Langer describes the "uneasy balancing act"[10] that lawyers must play in order to represent client interests in a closed administrative system within which they have little control. They find themselves using a range of skills and tactics — from railing against investigators whose work they find wanting to, albeit rarely, calling individuals they know at the commission who can make a difference — all in the interests of pressing the commission to adhere to higher standards of fairness in individual cases, and in some cases, of pursuing reform of the system.

A trend among some complainant, union, and management counsel is to avoid the commission machinery altogether, and to deal with each other directly because the they do not want the unwelcome, complicated, and time-consuming human rights commission process.

Langer's thesis is that the public's need for an accessible, transparent, and fair human rights system is not met through formalistic administrative processes. She stresses the need for greater congruence of administrative and public values.

One of the most interesting aspects of Langer's book is her in-depth analysis of the public interest responsibility of human rights commissions. Administrative law principles set the

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6 *Ibid.* at 66.
7 *Ibid.* at 72-75.
8 *Ibid.* at 76-93.
9 *Ibid.* at 55.
10 *Ibid.* at 59.

stage for human rights commissions to operationalize public interest by fusing administrative values with the substantive aims of human rights. However, she argues that stage is compromised by political pressures that focus on success rates and fiscal responsibility.[11] There is a fine balance between the corporate agenda (clear expectations, transparent reporting, and measurable results in customer service) and the special quasi-constitutional status of the rights enshrined in a human rights statute. She asks whether the public interest can be translated into measurable organizational objectives and suggests that it can only be respected through a process that includes interest group lobby and reform efforts, judicial commentary, legislative and policy statements, and consultations.[12] Her analysis of the need for inclusion of "counterpublics," subordinated social groups, in this discourse is noteworthy.[13] Narratives from these counterpublics might have added even more richness to Langer's text.

Public accountability of human rights commissions is also explored in this context. Accountability can refer to the commission's exposure to liability as well as to its moral obligation to protect and to promote human rights. On the latter point, special interest groups and the public give the commission a failing grade because it is not perceived as a catalyst for change. Enforcement in individual cases appears to be the sole component of the commission's public interest mandate. A sentiment expressed among professional intermediaries is that the human rights commission has "a significant interest in maintaining a smooth veneer of institutional legitimacy at the expense of a responsiveness to the special interest human rights community."[14] There is a concern that the commission neglects its public interest mandate to bow "to its political masters"[15] and uses scarce resources as a rationale for administrative decision-making.

In a move that appears counter to prevailing wisdom on access to justice, Langer critiques the use of settlement, whereby complainants and respondents are encouraged to settle cases without going to a hearing in the interest of financial expediency.[16] She points out that a settlement may not address the larger public interest aspects of a human rights case. In fact, the very existence of the settlement process implies that rights violations are negotiable. Furthermore, settlements may not be in the best interests of complainants or respondents. An employer who does not believe a complaint is legitimate, for example, may settle because it is more financially expedient than hiring a lawyer. The complainant may mistakenly come away thinking the employer has admitted to discrimination.

As the Ontario Human Rights Commission begins to pilot major changes to its function and structure,[17] Langer disparages the changes to the system that will see the "privatization

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11 *Ibid.* at 7-9.
12 *Ibid.* at 11-12, 27-28.
13 *Ibid.* at 98-129.
14 *Ibid.* at 110.
15 *Ibid.*
16 *Ibid.* at 118-20.
17 The *Human Rights Code Amendment Act, 2006*, S.O. 2006, c. 30, came into effect on 30 June 2008. Under the new *Act*, the role of the Ontario Human Rights Commission in preventing discrimination and promoting and advancing human rights in Ontario will be strengthened but it will no longer process human rights complaints. That will be the mandate of the Human Rights Tribunal of Ontario. A new body, the Human Rights Legal Support Centre, will offer independent human rights related legal and

of complaint carriage, an enhanced role for specialty legal clinics, the offloading of a public mandate onto the not-for-profit sector, and a distinct move towards formalization of human rights complaints."[18] However, and somewhat surprisingly, despite the limitations of the present commission system, she prefers the assurance of a neutral body, which opens up the possibility of contextual problem solving to a direct access model that would see the "premature legalization of individual and social harms."[19] A human rights agency, she argues, has "greater capacity for the social complexities and interplay of public problems" than do the legislators or the courts.[20] Such a body is uniquely situated to promote socially shared meanings, values, and norms and she argues that this can only be achieved through participation of advocacy groups along with individual claimants. The commission must be open and responsive to diverse points of view.

To address some critiques of the commission, Langer suggests it is unrealistic to expect one agency to carry the entire responsibility for the anti-discrimination social agenda in the province. What is needed is a network of practices throughout the private and public sectors as the best assurance for human rights protection and promotion.[21] Unfortunately, what appears to be lacking in her observation is a suggestion about ensuring that a network exists.

Despite the plethora of reports and studies on the Ontario Human Rights Commission and other commissions across the country, Langer's book is a refreshing approach to analyzing the actualizing of human rights law in Ontario. Human rights lawyers, advocates, and administrators will find themselves agreeing with much of what is observed and thinking about the larger public interest questions she raises. As governments across the country begin rethinking the roles, structures, and effectiveness of human rights commissions, they would do well to consider the insights and critiques raised by Langer in this book.

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support services to individuals, ranging from advice and support to legal representation.

18 *Supra* note 3 at 137.

19 *Ibid.*

20 *Ibid.* at 124.

21 *Ibid.* at 124-25.