MESSAGE FROM BARBARA HALL, CHIEF COMMISSIONER, ONTARIO HUMAN RIGHTS COMMISSION

CONTINUING THE DIALOGUE ON BALANCING COMPETING RIGHTS

A person who is blind and uses a service dog wants to take a taxi, but the taxi driver's religious beliefs lead him to not allow dogs in his car. A marriage commissioner refuses to perform a marriage ceremony for a same-sex couple, because it would be contrary to her religious beliefs.

What do we do in cases like these, when rights related to one *Code* ground seem to conflict with those of another ground? The OHRC is working to find answers.

In March 2010, we held a Policy Dialogue on Competing Human Rights Claims in partnership with the York University Centre for Public Policy and the Law. This was the first step in our work to develop an OHRC policy on balancing competing rights.

Community and advocacy groups joined academics, lawyers and policy makers to discuss what competing human rights claims look like and how they may be handled to maximize the human rights of all involved. The Dialogue papers included in this issue reflect the discussion we enjoyed with these diverse partners.

Our task over the two days of the Dialogue was to start to build a structure and a process that we could all use to deal with competing human rights claims. We talked about balancing and compromise, about analytical frameworks and approaches, about individual rights and group rights and even relational rights.

As we work to develop a process, we must make sure we always think about the people affected. We need to be thinking about people like Gurbaj Singh Multani, the young man whose faith required him to wear his kirpan – even though his school said the kirpan might be dangerous for other students. In his case, the Supreme Court said:

> By disregarding the right to freedom of religion, and by invoking the safety of the school community **without considering the possibility of a solution** that posed little or no risk, the school board made an unreasonable decision.

As we work to find a workable balance between competing rights, we must always "consider the possibility of a solution." That is the first big step to resolving our differences and building a society that recognizes the human rights of all.

Solutions will not always come easily. Consider the case of N.S., still before the courts. In this case, a woman was ordered to remove her niqab when testifying at a preliminary hearing in a sexual assault case. Does her right to wear the niqab outweigh the defendants' right to full answer and defence of the charges against them?

We have seen or been involved in a number of recent cases where religious rights clashed with sexual orientation rights, and we expect to see this again.

For people with disabilities, encountering barriers is too often a daily experience. Sometimes a way to get over a barrier – like a service dog – turns into another conflict. How do we balance one child's allergies with another child's service animal?

In Ontario, with 15 grounds under the *Code*, in five service areas, conflict is inevitable. Our challenge is to make fair resolution inevitable, too.

Beverley McLachlin, the Chief Justice of the Supreme Court has long experience with human rights – and her approach is clear. She says:

> We **need** human rights. Whether we like it or not, religious, ethnic and cultural diversity is part of our modern world – and increasingly, part of our national and community reality. Human rights and the respect for every individual upon which they rest, offer the best hope for reconciling the conflicts this diversity is bound to generate. If we are to live together in peace and harmony – within our nations and as nations in the wider world – we must find ways to accommodate each other.

We started that task with the Policy Dialogue last March. We will continue to work on this until we find the best ways to help real people find real solutions.