

KEY REPORT EXCERPTS

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Achieving Equality:

A Report on Human Rights Reform

Ontario Human Rights Code Review Task Force,
an independent task force established by the Government of Ontario

Mary Cornish, Task Force Chair
Rick Miles, Member
Ratna Omidvar, Member

Comments on this Report should be addressed to:

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June 26, 1992

June 26, 1992

Honourable Elaine Ziemba
Minister of Citizenship
5th Floor
77 Bloor Street West
Toronto, Ontario
M7A 2R9

Dear Minister,

In accordance with our mandate, the Ontario Human Rights Code Review Task Force is pleased to submit to you today, a new vision for the achievement of equality rights in Ontario.

As you know, the Task Force was appointed to provide an independent review of human rights enforcement procedures in order to make recommendations for a fair and practical system for the enforcement of human rights in Ontario.

During the four and one half months in which the Task Force was active, we received information from the public; equality-seeking groups; the academic, business, labour and legal communities; the Ontario Human Rights Commission; the Board of Inquiry; relevant ministries, agencies and tribunals of the Government of Ontario; as well as other jurisdictions. Additionally, we received valuable information and advice from the Task Force's Advisory Committee.

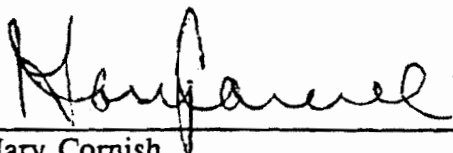
We are, therefore, grateful to those members of the Ontario public who gave generously of their time, provided us with many good ideas, demonstrated a profound commitment to the task at hand and who worked collaboratively to accomplish our mandate.

As your Government is well aware, the issues raised by this report are serious and urgent.

Proper justice is currently being denied to claimants' rights. They are issues which are important not only to Ontarians but to everyone in the country and elsewhere who have looked to Ontario as a leader in human rights enforcement.

Our consultations and research have led us to the conclusion that the current enforcement system for the protection of human rights needs to be radically altered to fulfil its mandate. We believe that the recommendations we are putting forth today create a structure which will give Ontarians the ability to start realizing their equality rights.

We urge you therefore to promptly adopt our report, "Achieving Equality", as the blueprint for a fair and practical system for the enforcement of human rights in Ontario.



Mary Cornish,
Chair



Richard Miles,
Member



Ratna Omidvar,
Member

Task Force

The Ontario Government appointed three people to the Task Force:

Mary Cornish, Chair. She is a respected human rights and labour relations lawyer, who is co-founder of Ontario's Equal Pay Coalition and a member of the Premier's Council on Health, Well-Being and Social Justice.

Rick Miles, Member. He has been a dedicated advocate for the disabled community, specifically in the areas of housing and transportation. He has held senior administrative positions with government and most recently with the Handicapped Action Group Incorporated in Thunder Bay.

Ratna Omidvar, Member. Through her involvement in grass-roots organizations, she helped expand services to Toronto's multi-ethnic community. She is currently Executive Director of Skills for Change, and the newly-elected president of the Ontario Council of Agencies Serving Immigrants.

Advisory Committee

The Ontario Government named 13 members to the Advisory Committee to provide assistance and community input to the Task Force. They are:

Sedef Arat-Koc, of Peterborough, a noted professor, lecturer and writer on citizenship issues and women's rights;

Elizabeth Bateman, a community legal worker who advocates for tenants in the area of human rights and housing;

William Black, Director of the Human Rights Research and Education Centre at the University of Ottawa, who has written and spoken extensively on human rights issues;

Emily Carasco, an associate professor at the University of Windsor's Faculty of Law, who advocates for the legal rights of women and minorities;

Mila Chavez-Wong, a city and regional councillor for Sudbury and District, and Vice President of the Ontario Immigrant Network;

Maureen Farson, a lawyer specializing in disputes arising from work performance matters, pay equity and human rights issues on behalf of employers;

Mary Fortier, a former president of the Hearst Metis and Non-Status Indian Association, who, as a person with a disability, has a strong commitment to equality rights for persons with a disability;

Beverley Johnson, an officer who has been with the Ontario Human Rights Commission for 18 years and is a member of the Ontario Federation of Labour Human Rights Committee.

Arnold Minors, an organisational effectiveness consultant specializing in social justice, especially anti-racism, employment equity and human rights;

Bruce Porter, Coordinator of the Centre for Equality Rights in Accommodation, who is actively involved in defending the rights of poor citizens;

Manuel Prutschi, National Director of Community Relations for the Canadian Jewish Congress, has played an important role before courts and tribunals across Canada, in cases dealing both with discrimination arising out of religious observance and the activities of anti-Semites and other racist extremists;

John Southern, a long-time advocate for the rights of disabled persons and the producer of The Radio Connection, a program which focuses on disability issues.

Thomas Warner, a founding member of the Coalition for Lesbian and Gay Rights in Ontario;

ACKNOWLEDGMENTS

A task of this size and scope naturally requires the contributions of many people for success. We are grateful to the many people involved in ensuring the success of the seven public meetings held across the province and to those involved in the translation, and editing and printing of the report. The Task Force acknowledges the assistance of the Policy Divisions of the Ministry of Labour and the Ministry of the Attorney General, particularly, the assistance of Margot Lettner and David Lepovsky.

You should know that the Task Force team have worked long and hard to assist us in fulfilling our mandate. Roxann Kennedy, Lucy Liegghio and Sandy Nesbitt contributed their excellent secretarial skills; Debbie An and Nadia Jevremovic provided the administrative support necessary for the success of our task. Cathy MacPherson contributed her policy expertise. Howard Mirsky and Pat Takeda provided policy and communications support. April Burey our Senior Legal Counsel provided valuable legal expertise. Sharmini Peries successfully performed the often difficult tasks of administering the Task Force and coordinating the Task Force's consultation process. Boris Uléhla provided us with many invaluable skills, legal research, French language services and assistance in editing of the report. Boris worked tirelessly to ensure our report was produced by our deadline. Lastly, we would like to express a special note of thanks to our Senior Policy Advisor, Kathleen Ruff, for her comprehensive knowledge and experience in human rights enforcement which was central to the development of the report. The work of the Task Force team was crucial to our ability to provide you with a timely and effective report.

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*"prejudice and discrimination have no place in Ontario"*¹

I. SUMMARY: A CALL FOR CHANGE

Reform of the current human rights enforcement system is long overdue. Changes are needed urgently.

Ontario has changed considerably since the sixties, when the present system was conceived. The Ontario Human Rights Code Review Task Force was entrusted with the challenge of proposing a new system that could be implemented immediately, yet would see Ontarians through the 1990s and into the next century.

The system put forward by the Task Force will do just that. It is built around four cornerstones for achieving equality.

- a consumer perspective which presents consumers of the system with options on how best to deal with a human rights claim;
- a community-driven focus which empowers the regions of Ontario and their many communities to play a major role in ensuring a strong and responsive human rights system;
- a proactive approach of building equality into Ontario's institutions to ensure compliance without having to file Tribunal claims;
- an effective but accessible claim resolution process where compliance is not forthcoming.

Overview

The enforcement model proposed by the Task Force flows from a new understanding of how to achieve equality which has developed over the last 20 years or so. The current model was developed when discrimination was understood more as an individual problem. This view is out-dated and wrong.

The major problem faced by equality seekers is the wide-spread often deep-rooted patterns of discrimination affecting many members of a disadvantaged group. The formidable barriers

to equality facing groups protected by the Code have been documented again and again. They are known as systemic discrimination. Such discrimination can be unintentional or overt and intentional.

The Task Force, therefore, looked at the issue of enforcement from this broad, systemic perspective. Effective enforcement means that the persons and groups who are discriminated against are empowered and enabled to achieve their equality rights in the *Code*.

The Task Force is not naive. It realizes that the job of ending discrimination in this province is a massive one and will not happen overnight. Discrimination is entrenched in Ontario society. This fact must be acknowledged so that the society can move forward and take down the barriers.

Ending this blight of inequality will demand involvement, commitment and courage as all Ontarians face up to and acknowledge their part in the system's discriminatory practices.

The devastation caused by these discriminatory practices must be acknowledged so that everyone can move on and find solutions.

The Task Force believes that the success of an enforcement system can ultimately be measured by one test - did the system lead to measurable and real reduction in the discrimination faced by its citizens who are protected by the Code.

The Task Force believes that the current system fails this test. Persons and groups who experience discrimination are denied proper justice in the human rights enforcement system. The Task Force heard the frustration, anger, and impatience of people and groups who experience discrimination.

What then can be done to make the rights under the *Code* real and accessible? The Task Force proposes a system which will meet the test of progressive and substantial reduction of discrimination.

The major thrusts of this system are:

- empowerment and support of those who experience discrimination in order that they may direct the methods used in achieving equality,
- promotion of a compliance culture throughout all institutions of society by the adoption of proactive measures and policies.
- establishment of an accessible, effective, and expert Tribunal to assist in resolution of human rights claims either through mediation or adjudication.

It is with these thrusts in mind that the Task Force proposes a major departure from the current enforcement system.

... major recommendations ...

The human rights system would now have:

- empowerment of the claimant community who now have direct access to a hearing of their claims; can direct their claim presentation and determine the approach of dispute resolution through mediation and/or adjudication;
- a revitalized Commission to be known as "Human Rights Ontario" which would take on a strong role in acting against discrimination and in favour of equality by taking strong proactive systemic initiatives;
- an expert Equality Rights Tribunal encompassing human rights, employment equity and pay equity and offering either mediation and/or adjudication services as equally respected ways of resolving claims disputes;
- a provincial Equality Services Board representing the claimant community in all the regions of the Ontario and providing consumer-oriented and community-driven advocacy services to claimants through
 - establishing Equality Rights Centres around the province staffed primarily by lay advocates to represent claimants;
 - the development of specialized units of expertise in grounds and areas covered by the Code; and
 - strategic partnerships with community groups.
 - establishment of a Significant Case Fund to assist equality seeking groups to bring forward test cases to achieve broad-based systemic change.
- a new independent status for human rights bodies including the naming of an Equality Rights Appointments Committee composed of respected human rights leaders who would recommend to the Premier candidates for the senior appointments in the new system.

... other major recommendations ...

- Human Rights Ontario, unlike its predecessor, will leave behind the burden of investigation, settlement, screening and carriage of all the claims filed and focus on its existing mandate to achieve equality through systemic change.
- establishment of links with those responsible for ensuring equality including employers and accommodation and service providers through a Commissioner for Compliance Services who would provide assistance on techniques and practices for implementing equality;
- where necessary, providing human rights adjudicators with powers to fashion strong proactive remedies and enforce them effectively;
- provisions ensuring non-compliance is met with serious sanctions;
- amendment of the *Code's* preamble to incorporate an understanding of systemic discrimination and the importance of positive measures;
- measures requiring that the Government assume a leadership role in advancing equality rights; and
- provision for Human Rights Ontario to plan and implement strategic education initiatives and training as a key enforcement strategy to ensure, advance and maintain a culture of equality.

Highlights Of New Systems Advantages

The Task Force believes the human rights enforcement system it recommends has many benefits for the equality seekers, for those responsible for ensuring equality and for society in general:

... discrimination will be reduced ...

A system which is accessible, open and effective will lead to greater reduction in discriminatory practices.

... timely access to a hearing ...

Delay works against both claimants and respondents in that evidence suffers, morale declines, and costs rise. Justice delayed is justice denied. Achieving equality demands that claims proceed to hearing quickly and that decisions are rendered promptly.

... an open process ...

Under the present system, the Commission has sole control of cases. Both claimants and respondents have found this extremely frustrating, time-consuming and inefficient.

The system the Task Force recommends is an open one with a range of options for the system's consumers. Claimants from the outset will have control over how the claim is framed and argued and the opportunity to make informed choices as they proceed through the process.

Respondents would also have direct information about the claim and how it will proceed. The respondent is consequently also in a better position to make informed decisions which may lead to earlier settlements and to less cost.

... a clearer process ...

The system the Task Force recommends, provides clear roles and responsibilities for the systems components:

- The Equality Rights Centres provide services for claimants;
- a Compliance Services Unit will offer information to those responsible for ensuring equality,
- the Equality Rights Tribunal provide settlement services to the parties; and adjudicators are responsible for hearings of cases.
- The new Commission is no longer involved in individual claims. Its role is to represent the public interest by promoting and enforcing human rights on the overall, systemic level.

Everyone would know exactly who was doing what.

... a better investigation method ...

The present mandatory investigative process for every claim simply does not work well. The requirement for a discovery and disclosure process at an early stage would, in the Task Force's view, assist both claimants and respondents. Investigation would only be ordered where this process had not led to sufficient disclosure of evidence.

... a voluntary settlement process ...

"Settlements" under the present system are frequently less than voluntary. By offering specialized, trained mediation services, which are voluntarily chosen, the Task Force believes that many cases will be settled with better results without the present negative climate of coercion.

... a fairer, quicker way of dealing with unfounded claims ...

Large amounts of time and money are spent to obtain a final decision by the Commission dismissing the claim, or with the claimant finally abandoning the claim. The Task Force believes that providing advocacy services in the community will provide claimants with the support and advice they need and are likely to trust.

... more consistent standards and procedures ...

A significant advantage to establishment of a permanent Equality Rights Tribunal, instead of the present ad hoc system, will be the development of clear, consistent standards and procedures which will make the system more accessible and less costly. Trained lay advocates could function well in the new clearer system.

... coordination with other bodies dealing with equality rights ...

The Task Force believes that bringing together Pay Equity, Employment Equity and Human Rights adjudication under one body will help prevent confusion and duplication. Resources can be used to maximum benefit by the sharing of space, administration, technology, library resources, etc. It will be simpler for claimants and respondents to go to one body with a case dealing with equality rights.

... better information about human rights decisions ...

The Tribunal will have a Resource and Training section to ensure its staff and adjudicators and everyone working in the system are informed and up-to-date.

... stress on remedial, constructive solutions ...

The Task Force believes that Human Rights Ontario and the Equality Rights Tribunal will be better positioned to craft solutions which will contribute significantly to meeting the test of progressive, measurable and substantial reduction of discrimination. Rather, than be consumed with processing complaints, this tandem will be able to act creatively and with strength on many fronts at once.

The Task Force is confident that the system, as set out in more detail in the remaining sections, places Ontario on a firm footing in its quest to achieve equality.

III. CONSULTATION

The appointment of the Task Force was greeted with much excitement and anticipation. Many individuals and groups in Ontario had called for a review of the *Code*. Now, they expected to be able to participate in this exciting opportunity to effect change. The Task Force strove, at all times, to include as many of these individuals and groups as its timeframe and resources allowed. This section explains how the Task Force did this.

Advisory Committee

The Minister of Citizenship greatly assisted the work of the Task Force by appointing 13 highly energetic and expert Ontarians to the Task Force's Advisory Committee. As a group they were representative of many communities concerned with human rights in Ontario. The Task Force found the Committee to be an invaluable component of its *Code* review. It met for eight full days in the space of four and an half months. It participated in designing the consultation process and in considering the principles and models that Ontarians want for a new enforcement system. With resource materials the Task Force provided to facilitate its participation, the committee members engaged in detailed and invaluable discussions with the Task Force which, in turn, resulted in timely and very thoughtful advice.

The Issues Paper

The Task Force acted quickly after its appointment to reach out to the many individuals and groups eager to participate in the *Code* review. It printed and distributed 10,000 copies of an issues paper: "Getting Human Rights Enforced Effectively." This paper provided a base of information, noted the problems with the current system, posed many questions for consideration, and identified a variety of solutions. For example, it posed the following questions: What body should promote the fair and effective enforcement of human rights and what should that look like? Should there be a separate resolution process for Aboriginal peoples? What procedures best identify, investigate, resolve, and decide human rights issues? To increase the issue paper's accessibility, the Task Force produced a two-page summary and translated it into Chinese, Vietnamese, Punjabi, Urdu, Hindi, Tamil, Portuguese, Italian, Spanish, Polish, and Greek. It was also provided in accessible formats to people with disabilities.

Communications

The communications strategy adopted by the Task Force served to make as many Ontarians aware of the *Code* review as possible. As a first step, advertisements were placed by the government in 14 newspapers across the province announcing its 1992 Consultation Program, including the *Code* review. Second, the Task Force sent a letter to over 5,000 individuals and groups inviting them to participate in the *Code* review. Third, on March 9, 1992, the Task Force held a press conference to release its issues paper and to announce the seven cities in which public meetings would be held in April. Over 1,000 media advisories and news releases were sent to daily and weekly newspapers, television and radio media, Francophone media, ethnic media, disability media, specialty media, and native media. Fourth, efforts to publicize the consultation process to people with visual disabilities were made through reading services and special media affiliated with the Canadian National Institute for the Blind. Finally, the work of the Task Force was communicated through interviews that Task Force members and staff gave to print and broadcast media representatives.

Community Participation Fund

The Task Force was mindful that much valuable input needed to be obtained from groups facing certain barriers to effective participation. To assist community groups in overcoming these barriers, it provided resources in the form of a Community Participation Fund. This fund encouraged participation from both historically and systemically disadvantaged groups and groups facing geographic and physical barriers. It assisted groups to do outreach to find out the concerns of their communities and bring those concerns to the Task Force. It also promoted discussion of the issues paper.

The Public Meetings

Individuals and groups actively participated in the public meetings the Task Force held in April. Accessible public meetings were held in seven cities that the Advisory Committee helped choose - Windsor, London, Ottawa, Toronto, Sudbury, Thunder Bay, and Scarborough. Generally speaking, mornings were devoted to general discussion, afternoons to presentations by groups and individuals, and evenings to an open forum. The Task Force observed that the general discussions allowed participants to focus their ideas and to build consensus among stakeholders; that, in their presentations, groups and individuals eloquently voiced issues of particular concern and made thoughtful recommendations; and that the open forums encouraged less formal dialogue, which brought other important concerns to the fore.

First Nations and Aboriginal People

The Task Force was asked to conduct a separate consultation with Ontario's First Nations and people of Aboriginal ancestry. In light of the provincial government's recognition of the inherent right of self-government of the First Nations, much time and effort was being directed to constitutional reform. Gordon B. Peters, Regional Chief of the Chiefs of Ontario, nevertheless, requested that the Ontario Native Council on Justice take a leadership role in preparing a response from Ontario's First Nations and people of Aboriginal ancestry. In turn, the Ontario Native Council on Justice coordinated a meeting with the Task Force, council members and other people of Aboriginal ancestry, which took place on May 15, 1992. This meeting was considered, by all attending, to be merely a starting point in formulating a comprehensive response to human rights enforcement in Ontario. The Ontario Native Council on Justice intends to explore the ideas proposed at this meeting more fully at its next annual general meeting. When Ontario's First Nations and peoples of Aboriginal ancestry formulate a position, they will make representations directly to the government.

Further participation by native community organizations took the form of presentations at the public meetings.

Ontario Human Rights Commission

The Ontario Human Rights Commission was part of the chorus of voices calling for a review of human rights enforcement. Throughout its review, the Task Force welcomed the Commission's valuable insights and suggestions for providing Ontarians with a fair, accessible, and practical enforcement system. The Task Force benefitted greatly from both the Commission's extensive and helpful brief and the regular meetings with the Chief Commissioner, the Vice-Chair of the Commission, Commissioner Reva Devins, and other Commission staff who assisted them. In particular, the Task Force acknowledges the able assistance of Reva Devins, who acted as the liaison between the Commission and the Task Force. The Task Force also wrote directly to all Commission staff and welcomed their helpful assistance and advice.

Office of the Boards of Inquiry Panel

In addition to meetings held with the Ontario Human Rights Commission, the Task Force regularly met with the Office of the Boards of Inquiry. Through discussions with Maryka Omatsu, Chair of the Boards of Inquiry and her staff, the Task Force gained a better understanding of the current operation of the Boards of Inquiry and of the Chair's vision for a new adjudication system. The Task Force further benefitted from the Chair's consultation with the adjudicators who make decisions within the constraints of the current system. Such

information assisted the Task Force in devising a new approach to adjudication of human rights claims, which will assure full and equal access to a hearing.

Strategic Consultations

In addition to the public consultations, a number of other meetings were held.

- The Task Force held two round table discussions with deputy ministers of relevant ministries. As Ontario's second largest employer and service provider, the Government could have a major impact, in the view of the Task Force, by taking proactive measures before the to file a claim arises. The Task Force believed that there was a need to address proposed proactive measures that, if adopted by ministries, will deal with discrimination before the need of filing a claim arises.
- The Task Force met with Chairs of other adjudicative and regulatory agencies to canvass solutions to commonly experienced problems.
- The Task Force met with the Employment Equity Commissioner, the Pay Equity Commissioner, and the Chair of the Pay Equity Hearings Tribunal to discuss the possible interrelationship of the three equality areas.
- The Task Force solicited views from the private and business sector, which resulted in submissions to the Task Force from, for example, the Institute for Equality and Employment and the Toronto Board of Trade.
- The Task Force met with representatives from the union community, including the Ontario Federation of Labour, the Canadian Auto Workers, the Canadian Union of Public Employees, the United Steelworkers of America, and the Ontario Public Service Employees Union.
- The Task Force consulted the legal community through the Labour Law subsection of the Canadian Bar Association - Ontario, the Canadian Association of Labour Lawyers, and the Inter-Clinic Committee on Human Rights Reform.
- The Task Force consulted formally and informally with representatives of equality-seeking groups and benefitted greatly both from their perspectives on the current enforcement system and from their passionate arguments in favour of reform. These groups included the Coalition on Human Rights and Disability Issues, the Minority Advocacy Rights Council, the Advocacy Resource Centre for the Handicapped, Persons United for Self-Help, the Centre for Equality Rights in Accommodation, the Canadian Jewish Congress, the Women's Legal Education & Action Fund, the Urban

Alliance on Race Relations, the Ad Hoc Committee for Wei Fu, and the Black Action Defence Committee.

- The Task Force also met with a number of individuals with expertise in the human rights system.

Research Consulted

The Task Force benefitted from research carried out on its behalf by the following groups and individuals with community and/or legal expertise in human rights.

- The Advocacy Resource Centre for the Handicapped analyzed enforcement and regulations as methods of dealing with systemic discrimination.
- The Centre for Equality Rights in Accommodation examined the role of claimants, community groups, and the Human Rights Commission in seeking to achieve equality rights.
- The Inter-Clinic Workgroup looked at what process should be followed in rejecting claims and whether it should be possible to give priority to a case in a particularly urgent situation.
- The Ontario Coalition Against Poverty examined how to make a claim process accessible and accountable to members of disadvantaged groups, particularly people who are poor.
- The Urban Alliance on Race Relations carried out research on what kinds of education strategies would best advance human rights and, in particular, how to inform people of colour of their rights.
- The Harvard Negotiation Project examined the issue of settlement and forms of alternate dispute resolution that could be used to better resolve rights claims.
- Mr. Justice Robert Reid, a recently retired judge of the Ontario Court (General Division) with special expertise in administrative law, examined what hearing process for rights claims would be appropriate and what provision should be made for appeals, reconsideration, and enforcement of decisions.

V. WHAT THE TASK FORCE WAS TOLD

What People said about the Present System

The Task Force received 135 written submissions from individuals and groups. As well, 750 people made oral presentations and participated in discussions at the public meetings held around the province. The Task Force also carried out strategic consultations with particular interest groups, such as employers, unions, deputy ministers, human rights experts, legal experts, and equality seeking groups.

The strongest response the Task Force received, without a doubt, came from the equality seeking community, both in number and in depth of feeling. This is not surprising. Members of groups covered by the *Code* are hurting and hurting badly. They feel strongly that changes to strengthen the *Code's* enforcement process must be made. They wanted the Task Force to know this.

Again and again, people who had made rights claims voiced their frustration, anger, and hurt with the present system. They criticized the excessive delays at every stage and the way they were disempowered so that they never knew the status of their case. They spoke of the barriers they encountered, both physical and attitudinal. They said staff of the Human Rights Commission were sometimes uninformed, insensitive, and biased. People with a disability said they could not always count on Commission staff to recognize or understand the discrimination they experienced. People with low incomes, lesbians, gay men, and people of colour spoke of being treated with disrespect.

The Task Force was told many times that the present system is seen as so ineffective that there is no point in making a claim. Those the *Code* is meant to serve said they have no confidence in the human rights system.

Major criticism was aimed at the exclusion under the *Code* of equality seeking groups and unions from a meaningful role, since they are not allowed to file claims and are rarely included in the development of education initiatives.

The investigation work of the Commission was the focus of much criticism by many, claimants and respondents. It was seen as slow and unproductive. Claimants and respondents were also dissatisfied with the present settlement process. Each side said they felt at times pressured by the Commission to accept settlements that, in their view, were neither fair, nor appropriate, nor voluntary.

Individuals, unions, community groups, and those responsible for ensuring equality described the many different roles played by the Commission as confusing and, at times, conflicting.

Some said that individual human rights officers are sometimes helpful and dedicated, but are put in an impossible position where they can please no one.

Some employers' representatives said that the Commission does not reject trivial and vexatious claims promptly but lets them drag on, wasting people's time.

A frequent criticism was that the Commission is overwhelmed by individual claims that use up the Commission's resources, with the result the Commission has not challenged systemic discrimination in a strategic and proactive way. This was seen as a major defect. Many people said that unless deep-rooted patterns of systemic discrimination are targeted and overcome, the aims of the *Code* will never be achieved. There will continue to be an endless stream of victims filing individual claims while people with a disability, people of colour, women, and other disadvantaged groups will continue to be excluded from full and equal participation in the life of the province.

Many commented on the lack of widespread and effective education about human rights. Groups who are the most vulnerable to discrimination seem to be those who have the least information about their rights. People felt the Commission has not played a leadership role in carrying out human rights education. In fact, a number of people said that it was only on reading the Task Force issues paper that they learned the Commission has an education role. Many people felt the staff of the Commission and the Commissioners themselves should receive more training.

People spoke about the problem of intimidation and retaliation, not only against people who make a rights claim, but also against witnesses. They described cases in which people who have given evidence in favour of a respondent have been rewarded, for example, by a promotion, and they said the *Code* does not effectively protect people from retaliation.

The lack of independence of the Commission was criticized. It was seen as being part of government and lacking in credibility, particularly for a person wishing to file a claim against the Government itself. A number of people, including members of the Commission itself, argued that the Commission is hampered in carrying out its mandate by the fact that it is one of the agencies with the least independence from the Government. This means the Commission does not control its own administration and does not have the power, for example, to make all its offices accessible.

Members of the Commission itself noted that the human rights enforcement system has been undervalued and under-resourced for many years, particularly in light of the fundamental public importance of the *Code's* mandate. Unless more resources are provided, said the Commission, it will not be possible to take on more proactive initiatives, such as systemic cases and educational outreach or to handle the volume of individual claims filed.

Many noted that the Commission is remote from the daily lives of people who experience discrimination. Some Commission offices are located in expensive, intimidating buildings where people who want to file a claim feel unwelcome; most are buried alongside other

government departments and seem part of the bureaucracy and status quo. Some people alleged that the Commission has not dealt strenuously with claims filed against the Government or powerful organizations.

What People Called For

... speed ...

Almost everyone said they want a system in which rights claims are dealt with speedily. Unless a claim can be promptly resolved, the *Code* is of little use.

... empowerment ...

Many individuals and community groups called for a system that will give a stronger and more empowering role to people who make rights claims. Equality means more than just treating people the same on the surface, they said. It means changing deep patterns of exclusion and power imbalances and bringing about more equal relationships in society. The process of making a claim should empower people to bring about such a change.

... accessibility ...

The importance of full accessibility to the human rights system was emphasized many times. Physical and attitudinal barriers to people with physical and mental disabilities must be removed. The system must also be accessible to those who speak languages other than English and who come from cultures other than the dominant one.

... right to a hearing ...

A frequent recommendation from equality seeking groups was that every claimant should have the right to a hearing and that the present power of the Commission to block people from a hearing before a Board of Inquiry should be ended.

... settlements ...

A number of people said the Commission pressures and coerces claimants and respondents to accept a certain settlement by threatening either to send or not to send a case to a Board of Inquiry. Many people felt the Commission should not seek to impose settlements on the

parties to a claim. Any settlement should come about voluntarily through the wishes of the parties themselves. The Human Rights Commission itself made the same recommendations.

... education ...

The importance of human rights education was strongly stressed by a great many people from both the equality seeking and respondent communities. A frequent recommendation was that human rights education should be part of the regular school system from kindergarten on. Another recommendation was that community groups should be used by the Commission in education initiatives to reach people at the grassroots level.

... community-based resources ...

A number of individuals and groups recommended that community-based human rights centres be made available to assist people making a rights claim. These centres would have trained advocates and lawyers to help people put forward their claim and take it either to a hearing or to a conciliation process. Many felt that community centres would be more accessible and receptive to people who experience discrimination. Others felt the greater involvement of community groups might lead to increased tension or conflict.

... more powers for human rights officers ...

Some employers, unions, and community members recommended that human rights officers be given more power to dismiss claims and make orders in claims. Submissions from two offices of the Human Rights Commission supported this idea. The Human Rights Commission recommended that human rights officers be given the power to refuse advocacy services to claims that lack merit, with their decision appealable to the Commissioners.

... speedier dismissal of trivial and vexatious claims ...

Some employers recommended changes to make it easier to dismiss trivial claims at an early stage. They felt that under the existing system all claims get investigated regardless of their merit. A number of human rights officers from two different locations shared this view. Other presenters wanted to see a system that could dismiss cases without merit quickly, but without blocking access to a hearing where appropriate.

... a strong Human Rights Commission ...

A number of representatives of gay and lesbian groups favoured a strong Human Rights Commission that could speak out for marginalized groups. They expressed the concern that members of their community are vulnerable, particularly in small towns, where they may not feel free to identify themselves as gay or lesbian because of fear of backlash and retaliation. They pointed out that the gay and lesbian community is overwhelmed by a number of crises, such as AIDS and homophobia, and needs a strong Commission to play a leadership role in defending their rights.

... choice ...

Whether advocacy services are provided via a community human rights centre or via the Human Rights Commission, the great majority of people felt that the individual should have the right to bypass those services and go directly to a hearing, if she or he so wishes.

The point was strongly made: people want to avoid the present monopoly in which people have no choice at all but must hand over all power to the Commission to decide what to do with a claim. This monopoly has created enormous dissatisfaction, bitterness, and anger. People want it to end.

Choice is particularly important because people's needs vary so much. An immigrant who speaks neither English or French or a person from a culture other than the predominant one, a person with a hearing impairment, a woman experiencing sexual harassment, Aboriginal people wishing a non-adversarial approach all have different needs. There should be flexibility to accommodate and respect those different needs.

In very clear terms, the Task Force was told that a new system must be open, must give people options, and, especially, must give people the right to have their claim heard.

... discovery process ...

Another point of widespread agreement was that each party to a rights claim should be required to provide all relevant information and documents to the other. This process, called a "discovery" process, is required in civil cases. People felt that a similar requirement in human rights cases would help speed the process up and provide more open communication early on. Years sometimes go by under the present human rights system, with human rights officers trying to gather evidence and bring about settlement. People felt that a mandatory discovery requirement would not only help bring forward evidence more quickly and effectively, but also increase the chances of parties settling, since each side would have a better understanding of the other side's case.

... hearing body ...

The Task Force heard many suggestions concerning who should hear claims. Some people said they wanted claims to be heard by courts similar to small claims courts. Most people said the hearing body should be a special tribunal with expertise in human rights. The most frequently stressed point was that claimants should have a hearing before a qualified and respected adjudicator.

... streamlined process ...

People called for a streamlined process that would be simple and clear for those claiming their rights and for those responsible for complying with the *Code*. People should be able to move smoothly through the system and know what to expect at each stage.

... informal process ...

The hearing process should be informal and non-legalistic, said many people. It should focus on finding out whether there has been discrimination and how to overcome it, instead of using an adversarial, legalistic approach.

... criminal sanctions ...

One group recommended making racism a crime and a civil offence. Strong penalties, such as fines and jail terms, would show the seriousness with which racism is treated and provide a deterrent. Others felt criminal sanctions should be used only when a decision of an Equality Rights Tribunal is not obeyed, since the criminal courts do not have the necessary expertise to deal with substantive human rights issues.

... access to courts ...

Some people recommended that rights claimants be allowed to take their case directly to the courts. This would give people another way of pursuing their claim and help prevent backlog. Others thought going to the courts would have a negative effect, since the courts do not have a good understanding of human rights, are slow, and are available only to people with money for a lawyer.

... internal workplace system ...

An employers' organization, the Institute for Equality and Employment, recommended that employers be required to have an internal claim process and that rights claims first be dealt with through this system. A person would file a claim under the *Code* only if this internal process failed.

... labour relations system ...

Some employers, unions, and other groups called for a system similar to the labour relations system. First, a speedy effort should be made by a human rights officer to settle the claim; if that fails, an employment claim should be heard by a three-person board made up of a representative chosen by the claimant, a representative chosen by the employer, and a third person chosen by these two representatives.

... regional tribunals ...

Some groups voiced a strong preference for regional tribunals to hear rights claims. It was important, they said, that the human rights enforcement system be locally accessible and sensitive to regional realities. A Toronto-based tribunal would not, in their view, be appropriate.

... coordination of equality bodies ...

Many representatives of both equality seeking groups and employers and service providers recommended that the human rights hearing system be coordinated with other equity systems. A number of people suggested that a tribunal be set up to handle human rights, employment equity, and pay equity cases. Others expressed concern that this system might bring about more backlog of cases and that the human rights focus might be weakened.

... interim orders ...

A number of groups and individuals spoke of the need to provide for immediate, interim orders in urgent situations while waiting for a full hearing, for example when a person is about to be evicted, when a person has a life-threatening illness, or when extremists are about to hold a racist rally.

... stronger remedies ...

Groups and individuals called for stronger, more effective remedies and for the present \$10,000 limit on awards for mental suffering to be removed. They asked for a system of monitoring to ensure that human rights decisions are implemented promptly and accomplish what was intended.

... third-party claims ...

Many recommended that the *Code* allow community groups and individuals to make third-party claims, particularly when systemic discrimination is involved. Some employers disagreed, saying that community groups should be able to provide support to claimants, but not initiate claims.

... systemic discrimination ...

A frequent recommendation was to focus much more attention on overcoming systemic discrimination. Significant progress toward equality has not been, and will not be, made through taking the same kinds of individual claims over and over again, many equality seeking groups said. They felt that cases challenging widespread patterns of discrimination should be initiated by community groups or the Commission. However, some employers recommended that systemic discrimination be dealt with by education, not by enforcement, since many employers are not aware of systemic discrimination.

... independence of the Commission ...

The Commission should be completely independent, a number of people said. Some suggested that the Commission should report to the legislature rather than only to a particular government ministry. Others were concerned to ensure that such independence does not mean there will be no minister to speak for the Commission in Cabinet. The Commission itself spoke strongly of the need for the Commission to have independent status and be free of any possibility of political interference.

... proactive role of the Commission ...

Members of equality seeking groups recommended that the Commission's role be one of proactive human rights advocacy in the public interest. The Commission should play an energetic strategic role by addressing major issues of systemic discrimination. It should also work in closer partnership with community groups. For example, the Commission should make use of grass-roots community groups in designing and carrying out education initiatives. The initiatives would be not only more effective, but also more cost effective.

... naming of Commissioners ...

The way members of the Human Rights Commission are named should be much more community based, said many individuals and groups. Clear qualifications should be agreed upon, and Commissioners should be chosen from a list put forward by equality seeking groups.

... support for present system ...

While the Task Force heard widespread criticism and dissatisfaction with the present human rights system, some spoke in favour of it. For example, the Ontario Hospital Association and the Toronto Board of Trade both wished the current system to be maintained, but with some improvements. It spoke of the high percentage of cases the Commission settles as evidence in support of the present system and advocated that the role of the Commission to decide whether or not a case gets a hearing be continued.

... abolition of present system ...

One oral submission from the Freedom Party of Canada recommended that the present system be abolished and that human rights cases go directly to the courts. In their view, only rights claims against government should go forward.

VI. OVERVIEW OF TASK FORCE PRINCIPLES

In consultation with the Advisory Committee, the Task Force adopted the following principles to guide it during its deliberations and in assessing the strengths and weaknesses of any models considered.

- The system should be geared to promote equality and overcome discrimination for disempowered groups.
- The system should be capable of achieving significant results to overcome the systemic discrimination which has been practised against certain individuals and groups in Ontario because of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status and handicap.
- The system should be timely, accessible, equitable, effective and empowering to persons and groups who experience discrimination.
- The system should incorporate a focus on discrimination faced by groups and a procedure that makes enforcement accessible to them.
- The system should be accountable to people who experience discrimination. Regular monitoring and accountability mechanisms should be built into the system.
- The system should fairly consider the legitimate interests of those responsible for ensuring equality.
- The system should assist equality seeking groups to develop resources, expertise, and confidence to claim their rights.
- Claimants should have control over their cases.
- The system should provide quick access to a hearing.
- The system should have remedies which are monitored and enforced.
- The system should provide options and assist to the claimant to deal effectively with the many different kinds of discrimination (the different grounds of discrimination covered by the *Code*, as well as multiple discrimination; the different settings covered by the code; individual and systemic cases).

- Resources should be provided to assist people in obtaining their rights under the Code.
- The independence, expertise, credibility, representativeness and effectiveness of any agency should be ensured.
- The system should be based on, and should promote, the indivisibility of human rights and solidarity. It should promote unified, strategic planning and leadership by equality seeking groups to monitor and advance human rights in Ontario as a whole.
- The system should be coordinated with other existing or planned equity agencies. However, the system must preserve the guarantees set out in the *Code* that it have primacy over all other legislation.

VIII. OVERVIEW OF PROPOSED NEW HUMAN RIGHTS ENFORCEMENT PROCESS

The new human rights enforcement system proposed by the Task Force has three key components:

- An independent, community-based Equality Services Board which will assist people with human rights claims
- A revitalized Human Rights Commission (now called Human Rights Ontario) which will play a strategic, proactive role to overcome systemic discrimination
- An Equality Rights Tribunal to provide timely access to trained, full-time human rights adjudicators

Independence of New System

An Equality Rights Appointments Committee, composed of three persons, who are highly respected for their commitment to human rights, will be named by the Premier. This Committee will consult with interested individuals and groups and will seek out qualified candidates for the Equality Services Board, Human Rights Ontario and the Equality Rights Tribunal, as well as an Advisory Council to the Commission and a Tribunal Advisory Committee.

Clear descriptions of the responsibilities to be carried out and the qualifications needed for each position will be clearly outlined and made widely known.

The Appointments Committee will recommend to the Premier candidates to be appointed to these different positions.

Role of the Equality Services Board

Twelve members of the equality-seeking community will be appointed to this Board. The Board will establish, prioritize and monitor advocacy services for human rights claimants. In particular, it will establish Equality Rights Centres and allocate funding for development of expertise in the various grounds under the *Code*. The Equality Rights Centres will be located around the province. They will be places where claimants can go or call to obtain information about the *Code* provisions, how to file a claim, the Tribunal process, etc. In

addition, claimants can go to these Centres for the services of an advocate who will assist in framing a claim and/or filing a claim. The Board will also fund existing community advocacy organizations to do intake and/or representation or to bring test cases.

Role of Human Rights Ontario

Human Rights Ontario will not have control over human rights claims. Claimants will be able to obtain community-based assistance at Equality Rights Centres and have their claim resolved or taken to a hearing, according to their wishes. The new role of Human Rights Ontario will be to promote equality on a broad scale by taking forward key systemic cases and by carrying out other proactive initiatives.

The Commission will have the power to adopt regulations in order to better achieve the purpose of the Code.

Human Rights Ontario will have a Chief Commissioner and five full-time Commissioners with specific mandates in the following areas: Policy and Research; Proactive Systemic Initiatives; Compliance Services; Education; and Advocacy Services.

The Commissioners will have staff to carry out research, prepare systemic cases, plan and develop educational initiatives, etc.

... Commissioner for Policy and Research...

This Commissioner will be responsible for developing policy and guidelines and recommending where appropriate regulations for the proactive enforcement of the *Code*.

... Commissioner for Proactive Systemic Initiatives ...

This Commissioner will examine and inquire into systemic issues of discrimination throughout the Province including laws, policies and practices of the Provincial Government. It will make public reports and will make recommendations for change in such practices. Where necessary the Commissioner will initiate systemic claims before the Tribunal.

... Commissioner for Compliance Services ...

This Commissioner will ensure the provision of information to those responsible for ensuring equality concerning methods to ensure compliance with the *Code*. This Commissioner will

have demonstrated a background and expertise in responsible compliance with the *Code*. A Compliance Services Unit will provide these consumers with a place to which they can direct themselves for information on the human rights system.

... Commissioner for Education ...

This Commissioner will be responsible for public education concerning the requirements of the *Code* and the necessary measures required to ensure compliance. It will serve the entire community, developing partnership relationships with both the claimant communities and those responsible for ensuring equality to promote proactive compliance with the *Code*. It will also provide grants to these communities to carry on their own initiatives.

Role of New Equality Rights Tribunal

The Task Force proposes a permanent tribunal to provide access and prompt decisions to those consumers not able to resolve their human rights claims by alternate means.

Individuals, groups and, indeed, Human Rights Ontario regarding systemic matters, will bring claims forward to the Equality Rights Tribunal. This Tribunal will be headed by a Chair responsible for overseeing its functioning and administration. Reporting to the Chair will be a Registrar, a Director, Resource and Training and four Associate Chairs responsible respectively, for Employment Equity, Pay Equity, Human Rights and, the Mediation Section. Lastly, there will be a panel of adjudicators, known as Vice-Chairs, from which the Registrar and Associate Chairs could assign adjudicators to claims.

Claim Resolution Process

... obtaining information on claim process ...

Appendix 3-3 sets out the ways in which potential claimants can obtain information on: how a claim is processed or, the way in which the Tribunal functions or the provisions of the *Code* from

- community groups and equality seeking groups,
- Equality Rights Centre,

- Lawyers and lay advocates, or the
- Office of the Registrar.

... intake - filing claims ...

With the information obtained, the individual or group will decide whether a claim should be filed. Claims are filed in the Office of the Registrar. Claims could be mailed or faxed or otherwise communicated to the Tribunal.

... preliminary screening of claims ...

The Associate Chair will advise claimants when their claims were clearly outside the jurisdiction of the *Code*. If a claimant did not accept this advice, the Registrar will schedule a brief initial hearing before a Vice-Chair to decide this issue.

... assignment of Tribunal Officer ...

Normally, the first step will be the assigning of a Tribunal Officer to the claim by the Registrar. The Tribunal Officer will contact the parties to explain the Tribunal process and ensure that this process was understood. The Tribunal Officer will make the parties aware of the two options open to them: mediation and adjudication. Parties will be asked if they had considered settlement options and whether they are interested in using the services of the Mediation Section. With respect to adjudication, the Tribunal Officer assigned to the claim will proceed to ensure that it was ready for hearing. This may involve ensuring that disclosure requirements have been complied with, advising the Registrar to schedule an initial hearing, or supervising developing an agreed statement of facts where possible.

... mediation ...

Where the parties were agreed to attempt mediation, the Tribunal Officer will refer them to an assigned Mediator in the Mediation Section. Mediation may either prove to be successful or unsuccessful. Where it is successful, the only issue which arises is compliance with the terms of the mediated settlement. Alternatively, a Mediator or one of the parties may conclude that the attempt at mediation should be terminated. If so, the claim is referred back to the original Tribunal Officer.

... initial hearing

A Vice-Chair will preside at the Initial Hearing and could do the following:

- uphold or overturn the Associate Chair's decision to dismiss the claim because it was outside the jurisdiction of the *Code*,
- make interim orders,
- order further disclosure,
- order a Tribunal Officer to investigate the claim, or actually
- render a final decision where appropriate.

The Vice-Chair will be able to use the initial hearing to ensure that the evidence necessary to adjudicate will be available by the time of the full hearing. Vice-Chairs will, moreover, control Tribunal resources by determining when Tribunal Officers investigate and the depth of the investigations.

... full hearing ...

To avoid unnecessary duplication of effort, the same Vice-Chair will preside over the full Hearing of the claim. It will be held at a date set by the Registrar, once the Tribunal Officer ensured that any Vice-Chair orders at the Initial Hearing were complied with (i.e. disclosure, investigation, etc.) The Vice-Chair will be mandated to adjudicate the claim on the real merits and order effective remedies where the claim was upheld.

... enforcement ...

The Tribunal Officer will assist to ensure the Tribunal's order was complied with. The civil courts could also be used to ensure compliance.

... reconsideration ...

Reconsideration of a decision may occur in two ways:

- a party in disagreement with the Vice-Chair's decision may request reconsideration and the Tribunal agrees to the request, or

- the tribunal could seize the initiative to reconsider one or several conflicting decisions.

Given that its decisions are normally final, it must be emphasized that the Tribunal will exercise this option infrequently. Moreover, it will decide what form reconsideration will take (i.e. new hearing or written submissions).

... narrow review by courts and by Ombudsman ...

The decision of the Tribunal is final. A privative clause will ensure that the only alternative to complying with a Vice-Chair's order, after the reconsideration option has been exhausted, is a narrow resort to the Ontario Court (General Division) where a decision is felt to be "patently unreasonable" or a claim to the Ombudsman.

XVII. HOW THE NEW CLAIM SYSTEM WORKS

For Individual Claimants

Individuals wishing to make a rights claim will contact the Equality Rights Centre in their area, or a person or organization of their choice, in order to get help and advice.

The existence of the Equality Rights Centres will be widely publicized. Community groups, community information centres, libraries, legal aid and law offices, government offices, and other public services will be given information on where the Centres are located, what they do, and how to contact them. They will be asked to post flyers about the Centres and to have the information available in alternate media.

Groups who experience discrimination will be targeted and provided with information about the Centres and how to reach them.

The Centres will be clearly listed in the phone books in the area they serve; for example, they might be listed both under Equality Rights Centres and under Human Rights Services.

The Centres will be accessible to people throughout their region by a 1-800 number.

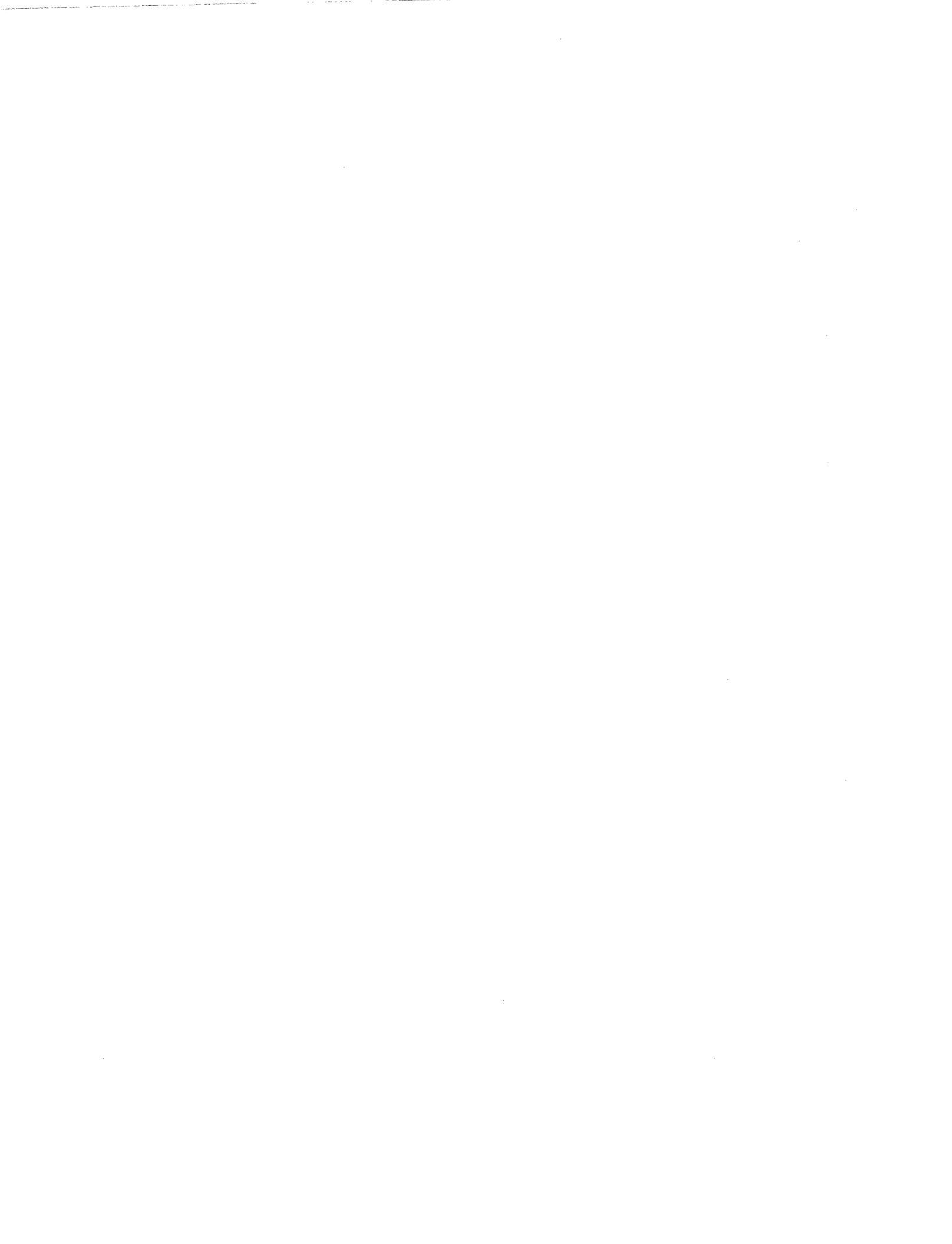
In addition to the Centres, certain community groups (called human rights partners) and community legal clinics may be funded to provide assistance to claimants.

Individuals will also have the option of getting their own lawyer, applying for a legal aid lawyer, or obtaining assistance from a community group.

An advocate with human rights expertise at the Equality Rights Centre, or the group or lawyer contacted by the individual, will provide advice as to whether the claim comes under the *Code*. If so, the advocate discuss with the claimant the nature of the claim, what supporting evidence exists, what the claimant wants as a remedy, and how the claimant wants the claim resolved.

The advocate will discuss the strengths and weaknesses of the claim with the claimant. She or he will provide advice on the different options available and the results that are likely to be achieved.

If the person wants to try to settle the claim without going to a hearing, the advocate may do one of two things: initiate settlement discussions herself with the respondent or through a community mediation service; or contact the Mediation section at the Equality Rights Tribunal in order that informal mediation may be attempted either by sending out a trained



mediator, or by using regional mediation services that have been recognized as meeting proper standards. An alternate approach to dispute resolution can also be used, if the parties so choose.

If settlement is not possible, the advocate will provide assistance for the claimant to take the claim to the Equality Rights Tribunal for a hearing.

All Equality Rights Centres and partner groups will have fax machines and computers with modems in order to have immediate access to the Equality Rights Tribunal both to send and receive documents. They will have claim forms, information leaflets, and a variety of resources to inform and assist people in taking forward human rights claims to the Tribunal. Leaflets will include information on what kind of information is typically required at a hearing; what a hearing is like and how it works; and what kinds of evidence are usually looked for in cases involving, for example, sexual harassment, denial of rental, and discrimination in service provision.

Community legal clinics, legal aid offices, and community groups will also have claim forms and the ability to access the Tribunal.

The nature and extent of the support will differ according to the complexity and seriousness of the particular claim. Most claims will be represented by lay trained advocates (paralegals). Lawyers may handle more complex cases.

In a straightforward case, the advocate will assist the claimant in drawing up and signing the claim, will serve the claim on the respondent, will arrange for discovery and disclosure, and will contact the Tribunal to arrange for a hearing.

In an urgent situation, the advocate will contact the Equality Rights Tribunal for a hearing to be scheduled as quickly as possible and an order made. If necessary, a fuller hearing can be scheduled at a later date.

At the hearing, the advocate will argue the case on behalf of the claimant.

A claim made by an individual can, in fact, raise issues of broad, systemic discrimination. If the claim is complex and needs further investigation, the advocate will arrange for an initial hearing and ask the Tribunal human rights adjudicator to order further, specific investigation to be carried out by an officer of the Tribunal. An appropriate date will be set for the full hearing of the case once the investigation is complete.

If, at any time, the claimant and the respondent wish to settle the claim, the advocate will assist the claimant in achieving a proper settlement.

A claim will be dismissed, in, at most, three ways. First, in the Equality Rights Centres, an advocate and, if necessary, the advocate's supervisor will tell the claimant that the claim is without merit. If the claimant persists, the advocate will assist in filing the claim but will not

represent the claimant. Second, in the Equality Rights Tribunal, if the Registrar cannot informally convince the claimant that the claim is without merit, the Associate Chair responsible for the Adjudication Section will formally advise the claimant. Third, and only if the claimant does not heed the Associate Chair's advice, an initial hearing will be held at which an Associate Chair will render a decision as to whether the claim is without any merit.

For Group Claimants with Systemic Cases

If an equality-seeking group wishes to have a claim of systemic discrimination go forward, it has a number of options for initiating the claim.

If the claim is a major claim of systemic discrimination and the group is already overwhelmed by a variety of critical issues, it can ask Human Rights Ontario to initiate the claim, particularly if it is a major claim of systemic discrimination.

A second option is for the group to ask an organization with special expertise in the particular kind of discrimination involved to initiate the claim. Another option is for the group to take forward the claim itself, in a third-party claim.

A number of options are also available for how best to pursue the claim. The group may have legal advocates and resources of its own to pursue the case or it may wish to request the assistance of an Equality Rights Centre or the organization with special expertise in the area.

Another option is to request the Equality Services Board to provide special project funding from the Significant Case Fund to enable the group to take forward the case as an important test case with potential to significantly advance the rights of all members of the disadvantaged group.

Using the resources it has chosen, the group will prepare the case, obtain as much supporting evidence as possible, and arrange for discovery and disclosure to take place.

The group will then contact the Tribunal for a hearing. This can be done either directly, if the group has claim forms, or through an Equality Rights Centre or community partner.

If necessary, the group will ask a Tribunal human rights adjudicator to order that further investigation be carried out by a Tribunal Officer or ask the adjudicator to arrange for further discovery and disclosure to take place.

For Claimants Challenging Equality Initiatives

Claims are sometimes made by individuals and groups, attacking equality efforts to help disadvantaged groups. For example, a man can allege that a self-defence course for women, or a therapy counselling session for women, denies him his equality rights.

The *Code* already clearly states that special programs, designed to "relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity,"⁶⁹ are permissible.

In addition, as the Task Force has recommended in this report, the preamble to the *Code* should be amended to make clear that its purpose is to overcome historic and present widespread disadvantage and discrimination experienced by certain groups. A claim that attacks a genuine measure directed at achieving equality rights would therefore be outside the *Code*.

An Equality Rights Centre that is asked to assist an individual or group wishing to make such a claim will act in the same way as for any other claim that, in its view, falls outside the *Code*. (See the subsection *For Individual Claimants* above).

For the Human Rights Ontario Claimant

Human Rights Ontario will be able to initiate claims of systemic discrimination, using its own staff to research and develop the case and represent it at the hearing. It will also have its own powers to investigate and compel production of documents.

Additional information may be obtained by means of the discovery and disclosure process. In addition, at an initial hearing before the Tribunal, Human Rights Ontario will ask the adjudicator to order that whatever further investigation is needed be carried out by a Tribunal Officer.

At a later full hearing, its lawyer or advocate will argue the case on behalf of the public interest.

For Respondents

When an individual or organization is informed of a claim alleging that they did not respect a person's right to equality under the *Code*, the individual or organization will be able to contact the Compliance Services Unit at Human Rights Ontario.

The Compliance Services Unit will have clear, up-to-date, easy-to-understand information on what the *Code* requires and how the *Code* is enforced. Leaflets and alternate media will provide information in a non-legalistic, non-adversarial manner on what is required in the different areas covered by the *Code* (employment, services, housing, membership in unions and professional associations), as well as on the different kinds of discrimination that occur (racial discrimination, discrimination against people with a disability, and so on.)

The Unit will also have information on the different resources available, how they can be accessed, and how they operate. For example, the person will be able to obtain information on the mediation services offered at the Tribunal, as well as on how the hearing process works.

Before being named respondents, individuals and organizations can deal proactively with a human rights matter that they believe may be raised against them. Two options in the human rights system are available to them. They can contact either the Equality Rights Centre assisting the potential claimant or the Equality Rights Tribunal's Mediation Section. They can ask the Centre assisting the potential claimant if an informal process can be adopted to resolve the matter and eliminate the need to file a claim. Alternatively, they can ask the Mediation Section to provide informal mediation services. This Section will either provide the potential parties with a trained mediator or refer them to approved community-based mediation services. By pursuing either option, potential respondents and, indeed, potential claimants may be able to avoid adjudication altogether or, at a minimum, resolve some issues before they adopt entrenched legal positions.

Once a claim is filed, respondents will receive from the Tribunal Officer assigned to the claim

- information on the Mediation Section if they did not use it prior to the filing of the claim,
- information on the adjudication process, and
- information on the Tribunal's disclosure requirements.

The Tribunal Officer will ensure that respondents and claimants are prepared to proceed quickly at both the initial hearing and the full hearing.

SUMMARY OF RECOMMENDATIONS

VII. FIRST NATIONS AND PEOPLES OF ABORIGINAL ANCESTRY**RECOMMENDATION (1):**

- **First Nations and people of Aboriginal ancestry should be supported by the Ontario government with resources and a respectful time frame to develop solutions that would effectively prevent the intentional and systemic discrimination which is widespread in Ontario society. Aboriginal women and Aboriginal people with disabilities who face different forms of discrimination must be an integral part of the process.**

IX. ENSURING THE INDEPENDENCE AND COMPETENCE OF THE NEW ENFORCEMENT SYSTEM**RECOMMENDATION (2):**

- **An independent, three-person Equality Rights Appointments Committee, composed of persons highly respected for their human rights expertise and independence, will be named by the Premier in consultation with the equality seeking community, those responsible for ensuring equality, and the responsible Minister.**
- **The Appointments Committee will recommend to the Premier the names of persons to fill the key senior positions in the new human rights enforcement system:**
 - **Human Rights Ontario - the Chief Commissioner and the 5 Commissioners,**
 - **Equality Rights Tribunal - the Chair and the 3 Associate Chairs for Human Rights, Employment Equity, and Pay Equity, and**
 - **Equality Services Board - the Chair and the 12 members.**
- **The Committee will seek out qualified persons who will not only bring expertise, but also reflect the diversity of Ontario's population and geography. The Committee will consult with the responsible Minister concerning the appropriate job descriptions for the positions and ensure that broad outreach measures are taken to ensure a diverse candidate pool.**
- **The Committee will recommend to the Premier the appropriate candidates, and, should the Premier decide not to appoint any recommended person, the Premier will be required to notify the Committee of the reasons for that decision.**

RECOMMENDATION (3):

- **The new Commission, "Human Rights Ontario," the Equality Rights Tribunal, and the Equality Services Board will have full independence. Human Rights Ontario and the Equality Rights Tribunal will report to the legislature through a designated Minister. The Equality Services Board will report to Human Rights Ontario through its Commissioner for Advocacy Services.**
- **The Government's new accountability framework for agencies it funds will be flexible enough to permit Human Rights Ontario, the Equality Rights Tribunal, and the Equality Services Board to be included in a Schedule that guarantees**
 - **their full independence from the Government with respect to their policy-making and administrative support,**
 - **their public accountability for their funding and overall operations, and**
 - **protection for their staff (unionized and non-unionized) by inclusion of these staff in the *Public Service Act* and the *Crown Employees Collective Bargaining Act*.**

X. ACHIEVING THE CODE'S PURPOSE**RECOMMENDATION (4):**

The Preamble of the *Code* should be amended as follows to incorporate the almost constitutional importance of the *Code*.

- **Whereas the *Code* is special legislation that has primacy over other laws in Ontario except the Constitution and whereas this special status requires all Ontarians, including the Government and those who enforce and interpret the *Code*, to treat it with special seriousness so as to achieve its near constitutional purpose ...**

RECOMMENDATION (5):

The Preamble to the *Code* should be amended to include the following:

- **Whereas historic systemic discrimination has been practised against members of certain groups in Ontario because of their race, ancestry, place of origin,**

colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, disability or receipt of public assistance;

- Whereas at different times many of these groups have been denied the basic rights of citizens, such as the right to vote, the right to enter professions, the right to pursue an education, the right to purchase property, the right to immigrate, the right to rent accommodation, the right to obtain employment, the right to enter public places;
- Whereas these groups continue to experience discrimination, stereotyping and harassment *and/or* are disadvantaged through not being included or represented in a fair and equal way in the institutions, opportunities and activities of Ontario society;
- Whereas the *Ontario Human Rights Code* is positive remedial legislation enacted to achieve equality rights for members of these groups;
- Whereas right to equal treatment requires that positive measures be undertaken;
- Whereas persons involved in the provision of services, accommodation, employment, contracts, unions and vocational associations have a responsibility to take measures to overcome discrimination in these areas and provide these opportunities in a manner that accommodates differences and is inclusive and respectful to all groups who make up Ontario;
- Whereas the Province of Ontario and the Government of Canada have ratified and are bound by International Human Rights Covenants ...

XI. PROVIDING SUPPORT FOR CLAIMANTS

RECOMMENDATION (6):

- A province-wide system of community based publicly funded advocacy services should be set up to assist human rights claimants.
- An independent Equality Services Board should be established which will have operational responsibility for planning, coordinating and delivering the advocacy services needed by the claimant community in Ontario.
- The advocacy services provided should include Equality Rights Centres around the province, special centres of expertise, partnerships with community and advocacy groups.

- **The Board should establish a Significant Case Fund which will allow groups to initiate test cases to advance the equality rights of groups protected by the *Code*.**
- **The Board should report to the Commissioner for Advocacy Services. The Board should provide the Commission with an annual report to be included in the Commission's annual report to the Legislative Committee on Equality.**
- **The Commissioner for Advocacy Services should be overall accountable for the proper functioning of the claimant advocacy services system. The Commission should ensure that a significant portion of its budget each year is set aside for the necessary funding of claimant advocacy services.**
- **Training courses and a system of certification should be established through the Community College system for Equality Rights Lay Advocates who will be primarily responsible for the delivery of advocacy services to claimants.**
- **Any communication between a human rights claimant and a community human rights employee, employed at an agency funded by the Equality Services Board and assisting that person with her or his claim, shall be treated as confidential.**
- **Specialized expertise should be created or existing expertise funded for major areas of discrimination such as race, gender, disability, lesbian and gay, age, housing, record of offences.**
- **The Equality Services Board should be responsible for certifying and funding this expertise.**

XII. REVITALIZED HUMAN RIGHTS COMMISSION - "HUMAN RIGHTS ONTARIO"

RECOMMENDATION (7):

- **The Task Force recommends that Human Rights Ontario be given the express power to issue legally binding rules and regulations in order to carry out its mandate to advance full and effective achievement of the *Code*'s purposes.**
- **Regulations should be passed only if they have been the subject of full public consultations conducted by Human Rights Ontario. Such public consultations would include equality seeking groups and persons responsible for ensuring equality. The Government should participate in these hearings in its capacity as a major employer, service provider, law and policy maker and body responsible for the public purse. In this way, all of Government's various concerns would be identified in a public way.**

RECOMMENDATION (8):

The new Commission, "Human Rights Ontario", should

- **maintain its strong, public interest mandate to advance human rights in Ontario; to act on the side of equality and against discrimination as the public conscience;**
- **no longer have a mandate to process, investigate, or settle individual human rights complaints;**
- **where necessary, investigate and then initiate key, systemic cases and seek broad remedies to ensure compliance by those responsible for providing equality;**
- **monitor and report on the overall functioning of human rights enforcement in the province;**
- **research, document, hold public inquiries, report on, and take initiatives to overcome major problems of discrimination;**
- **promote, assist, and encourage public agencies, business, and other organizations to engage in practices that proactively advance the cause of equality rights enforcement;**
- **promote the establishment of partnerships between those persons responsible for ensuring the equality of treatment of Ontarians and those Ontario citizens who require the protection of the *Code* in order to facilitate the establishment of practices and programs that proactively advance the cause of equality rights enforcement;**
- **work with the Employment Equity Commission to coordinate responsibilities in the area of employment;**
- **promote the empowerment of equality seeking groups to speak for themselves and represent themselves;**
- **maintain close liaison with community advocacy and specialized bodies working for the advancement of human rights and recognize their expertise;**
- **provide funding to the Equality Services Board to provide appropriate services to human rights claimants around the province and special funding for**

community groups to bring forward significant cases that will have a major impact on advancing equality rights for disadvantaged groups;

- **have the power, in consultation with the affected group and in coordination with other community initiatives, to investigate, file and pursue systemic discrimination complaints before the Tribunal and intervene as appropriate in the public interest;**
- **have the power to consult broadly and draw up policies, guidelines, and regulations to more effectively overcome problems of discrimination;**
- **monitor and report on the laws, policies, and practices of the provincial and municipal governments and their compliance with Canada's international treaty obligations in the field of human rights;**
- **plan and develop educational material and educational initiatives in partnership with equality seeking groups and those responsible for ensuring equality;**
- **with respect to services, provide assistance and information for the community responsible for ensuring equality through the Compliance Services Unit reporting to the Commissioner of the same name; and**
- **appear before a legislative Committee on Equality Rights each year, as well as on an immediate urgent basis if required, to report on**
 - **the state of human rights in the province,**
 - **its own and others activities in reducing the amount of discrimination in the province,**
 - **its recommendations for necessary changes to increase the rate at which discrimination is being reduced in the province, and**
 - **any necessary funding requirements for the proper functioning of the overall human rights enforcement system.**

RECOMMENDATION (9):

Six Commissioners should be named, each with specific areas of responsibility:

- **the Chief Commissioner with overall leadership and coordination responsibilities;**

- **Commissioner Responsible for Proactive Systemic Initiatives;**
- **Commissioner Responsible for Education;**
- **Commissioner Responsible for Policy and Research;**
- **Commissioner Responsible for Compliance Services; and**
- **Commissioner Responsible for Advocacy Services.**

RECOMMENDATION (10):

- **The new Commission, with its more focused role, must still ensure that its service will involve and be informed by the concerns of all Ontario's regions.**
- **The new Commission must ensure that barriers to its services are eliminated. Its regional offices must be physically accessible. Its services must be available in formats which are understandable by all its consumers and not just those who read English.**

RECOMMENDATION (11):

- **The Chief Commissioner and Commissioners should have a demonstrated commitment and proactive expertise in the field of human rights and the empowerment of members of equality seeking groups. They should have public leadership and communication skills, and familiarity with equality issues and the operations of business, government, and community organizations.**
- **The Commissioner for Compliance Services should have a background of demonstrated and effective proactive human rights implementation in the field of employment accommodation or services.**
- **The Chief Commissioner and Commissioners should be appointed through the independent process of the Equality Rights Appointments Committee after consultation with equality seeking groups and those responsible for ensuring equality.**
- **The representativeness of groups protected by the *Code* and the different regions of the Province should be considered in the appointment of the Chief Commissioner and Commissioners.**

- The Chief Commissioner and Commissioners should have a term of five years with an option to renew for a further 5 and their terms should be staggered as much as possible to ensure continuity.
- The Chief Commissioner should be consulted by the Equality Rights Appointments Committee when the Committee is considering reappointment of a Commissioner.

XIII. FILING A HUMAN RIGHTS CLAIM

RECOMMENDATION (12):

The *Code* should be amended as follows:

- Where a person believes that her right to equality under the *Code* has been infringed, the person may file a claim.
- A group of individuals may file a joint claim where their claims are against the same respondent or have questions of fact or law in common.
- An individual or group or the Commission may file a claim where they believe the *Code* has been infringed.

RECOMMENDATION (13):

- If the Tribunal Registrar considers a claim to be outside the jurisdiction of the *Code*, or without any merit, the Registrar should so advise the claimant promptly and no later than five days after filing the claim. If the claimant does not accept this view, the Registrar should submit the claim to the Associate Chair responsible for the Adjudication Section for a decision as to whether the claim should be accepted or not. If the Associate Chair decides that the claim is outside the jurisdiction of the *Code*, the claimant should be advised within 15 days of filing the claim and have the right to appeal this decision at a hearing before a human rights adjudicator. The decision of this adjudicator is final.

RECOMMENDATION (14):

- The wording "the subject-matter of the claim is trivial, frivolous, vexatious, or

made in bad faith" should be removed from the *Code*.

RECOMMENDATION (15):

- The six-month time limit for filing claims under the *Code* should be changed to the two-year limit to be consistent with the proposals for a new *Limitations Act*, with discretion for the Tribunal to accept claims beyond two years, if the Tribunal is satisfied that the delay was in good faith and no substantial prejudice will result to any person affected by the delay.

RECOMMENDATION (16):

- Where a person alleges that they have suffered any negative action contrary to the anti-reprisals section of the *Code*, the burden of proof that any respondent did not act contrary to the *Code* should be upon the respondent.

XIV. OTHER CLAIM ROUTES - CIVIL AND CRIMINAL

RECOMMENDATION (17):

- Human rights claims should continue to be decided by tribunals with expertise in human rights. The *Code* should not be changed to allow claims to go to the courts as civil actions.
- If the system the Task Force is recommending is not put in place or does not have sufficient resources to operate satisfactorily, so that claimants do not, in fact, have real access to a hearing, the option of allowing human rights cases to go directly to the courts as civil actions should be reconsidered.

RECOMMENDATION (18):

- The Task Force recommends that the Ontario government negotiate with the federal government to:
 - make a *Criminal Code* offence malicious acts of discrimination against persons the *Human Rights Code* is designed to protect and

- make a more serious category for a criminal to commit a *Criminal Code* offence like assault or theft where it is committed with wilful intention to discriminate.

XV. OTHER CLAIMS ROUTES - LABOUR ARBITRATION

RECOMMENDATION (19):

- The *Labour Relations Act* should be amended to provide that the protections in the *Human Rights Code*'s against discrimination in employment are deemed to be included in all collective agreements and enforceable through the grievance and arbitration procedure.
- Union and management representatives involved in the grievance and arbitration procedure and union and management members of arbitration boards should receive human rights training.

RECOMMENDATION (20):

- The Government should undertake an immediate review of all specialized collective bargaining statutes and ensure that amendments, similar to those proposed to the *Labour Relations Act*, which extend the right to enforce the *Human Rights Code* prohibits through the respective grievance and arbitration process are enacted.
- All Task Force recommendations with respect to the certification, training, powers and procedures of arbitrators under the *Labour Relations Act* should be implemented to apply equally to arbitrations under any of the province's specialized collective bargaining statutes.

RECOMMENDATION (21):

- Only arbitrators who have been certified as having human rights expertise by the Equality Rights Tribunal through its Resource and Training Section may arbitrate a matter under a collective agreement which raises a *Code* discrimination issue. Initial and ongoing training and certification should be provided by this Section at a fee.

RECOMMENDATION (22):

- **The union and the employee should be able to file a claim either as a grievance or with the Tribunal.**

RECOMMENDATION (23):

- **If a human rights claim under the *Code* has already been fully dealt with under the Labour Relations process by a certified arbitrator and in accordance with the equality guarantees and remedial relief provided under the *Code*, a Vice-Chair of the Equality Rights Tribunal may dismiss the claim.**
- **All collective agreements include a provision which would give an arbitrator under a collective agreement the power to dismiss a grievance which was brought by or on behalf of a person or the union when the person or the union had the same matter as raised in the grievance dealt with fully and properly by the Equality Rights Tribunal and there were no rights or remedies available under the collective agreement but unavailable under the *Code*.**

RECOMMENDATION (24):

- **Human Rights Ontario should only be entitled to seek to represent the public interest if a claim comes before the Tribunal and issues of public interest are raised by the claim.**

RECOMMENDATION (25):

- **The *Labour Relations Act* should be amended to provide that arbitrators acting under the deemed *Human Rights Code* prohibitions in collective agreements will have the same remedial powers as those proposed for the Tribunal under the *Code*.**

RECOMMENDATION (26):

- **In non-unionized workplaces, Human Rights Ontario should encourage employers to set up fair and effective internal procedures for the resolution of**

workplace human rights claims which are developed in partnership with their employees or negotiated with their unions; and

- Employees should have the option of using either internal workplace human rights procedures or filing a claim with the Tribunal.

XVI. EQUALITY RIGHTS TRIBUNAL

RECOMMENDATION (27):

- All claimants should have direct access to a hearing to assert their claim for equality rights.

RECOMMENDATION (28):

- The new enforcement system requires a permanent expert Tribunal.

RECOMMENDATION (29):

- The Task Force recommends that a permanent, full-time Equality Rights Tribunal be established to deal with human rights, pay equity and employment equity cases.
- An independent Tribunal Advisory Committee, representative of all the parties and interests who are served by the Equality Rights Tribunal, should monitor the effective operation and accessibility of the Tribunal and provide advice to the Chair (but not concerning specific cases). Care should be taken to ensure equality seeking groups, dealing with human rights grounds and areas not covered by employment and pay equity are represented on the Advisory Committee.
- The Chair of the Equality Rights Tribunal should be responsible for the overall functioning of the Tribunal and three Associate Chairs should be responsible respectively for adjudication human rights, employment equity and pay equity cases.
- A Panel of Vice-Chairs (Adjudicators) should be certified to hear cases in one or more of the three areas on the basis of their particular expertise for one or more areas. They should be appointed by the Tribunal Chair, in consultation with the relevant Associate Chair and the Tribunal Advisory Committee.

- **Training should be provided where necessary to encourage the recruitment of candidates from diverse background.**

RECOMMENDATION (30):

- **The *Code* should require adjudicators to take all reasonable steps to ensure that claims are dealt with expeditiously and fairly and that inquiry and decision-making into a claim is conducted in an understandable, straightforward and not unduly legal or technical way.**

RECOMMENDATION (31):

- **An Associate Chair, Mediation, heading a separate Mediation Section of the new Tribunal should be responsible for providing mediation services to bring about fair and effective settlements of human rights claims.**
- **Use of mediation services should be facilitated, but should be voluntary.**
- **Persons providing mediation services should:**
 - **be knowledgeable about and supportive of the principles and purpose of the *Code*,**
 - **guide the parties to reach a settlement which complies with the *Code*,**
 - **be aware of and sensitive to power imbalance between the parties in a case,**
 - **be respectful towards persons who experience discrimination.**
- **Settlements in human rights cases do not need to be approved by the Tribunal but could be challenged if they were obtained by undue coercion or other unconscionable means.**
- **Persons involved in mediating claims should not be required to give information during a hearing.**
- **Information on settlements should be public, but with discretion allowing confidentiality to be protected when requested and when considered appropriate by the mediator, such as in a sexual harassment or AIDS case.**

- **Various options, such as using community mediation services, should be permitted, provided they meet the necessary standards.**
- **A time limit of 45 days should be set for completing settlement, with an extension possible if requested by both parties and the mediator believes further mediation services would be appropriate.**
- **Settlements should be registered with the Tribunal so that if the terms of the settlement are not respected, they can be enforced by the Tribunal as if they were a breach of the Act. If a person claims that the settlement was reached under duress, the Tribunal could decline to enforce the settlement.**
- **If settlement efforts are unsuccessful, the parties should have a right to a hearing before an adjudicator.**

RECOMMENDATION (32):

- **The position of Registrar should be established with responsibility to administer the fair, accessible and effective functioning of the Tribunal.**
- **Deputy registrar positions for human rights, employment equity and pay equity should be established and trained intake officers and other staff provided.**
- **The functions of the Registrar should include:**
 - **administering the Tribunal;**
 - **administering the filing and handling of claims throughout the Tribunal process;**
 - **assigning intake staff to assist people in filing claims who would make sure the rules for the filing of responses and disclosure are followed;**
 - **responsibility for establishing case management procedures to ensure cases are moved through the system fairly and expeditiously;**
 - **general administrative responsibility for ensuring the adjudicative and settlement process is accessible to the public and particularly to unrepresented claimants and respondents and to those who are disadvantaged because of disability, literacy problems, social and economic disadvantage, cultural differences;**

- ensuring claims are prioritized where there are more claims to hear than adjudicators available or where there is a need to have it heard quickly, e.g. an AIDS case;
- ensuring that any necessary accommodation needs are identified and met, such as the use of tapes or interpreters;
- ensuring claims are served and appropriate notices, if any, are posted;
- reviewing claims as they are initially filed to determine if they are within jurisdiction or on their face disclose a violation of the *Code*. If they did not, the Registrar would refer the claim to an Associate Chair for a decision to dismiss. This decision could be appealed to a hearing presided over by a Vice-Chair; and
- ensuring claimants are advised of the various community advocacy services that exist to provide support.

RECOMMENDATION (33):

- A Resource and Training Section should be established in the Tribunal under a Director.
- The resources and training provided by this Section should include :
 - providing access to all the decisions, information and research needed to mediate and decide equality rights disputes, not only to the Tribunal staff and adjudicators, but to everyone in the community who requires the information, such as claimants and respondents, lawyers and advocates, Equality Rights Centres, Human Rights Ontario, equality seeking groups, unions and other community groups;
 - providing initial and ongoing training and education for the Chair, Associate Chairs, Mediator, Registrar, Tribunal Counsel Office, Mediators, Intake Officers and Tribunal Officers;
 - publishing regular reports of Tribunal decisions and bulletins with easily understood summaries of the decisions;
 - keeping on public file copies of all claims filed with the Tribunal as a public record of discrimination issues being raised at the Tribunal, and

copies of settlements which are authorized to be made public by the Mediator. If necessary, the Protection of Privacy Act should be amended to allow the complaints and responses filed with the Tribunal to be made public, subject to the claimant's consent;

- maintaining statistics and other information concerning the number, nature and results of claims filed;
- providing information on equality rights cases; providing initial and ongoing training for the Vice-Chairs, Mediators, Intake Officers and Tribunal Officers; and
- training and certifying arbitrators under the *Labour Relations Act*.

RECOMMENDATION (34):

- A Tribunal Counsel Office should be established to provide legal advice to the Tribunal and to provide particular legal assistance to any non-legally trained Vice-Chairs.
- Section 38(2) of the *Code* which restricts the ability of the adjudicator to talk to counsel and seek legal advice should be deleted.

RECOMMENDATION (35):

- *The Tribunal should take all reasonable measures to make itself accessible throughout the regions of Ontario, such as having cases heard around the province and choosing adjudicators, mediators and officers, some of whom live in the regions.*
- *The Tribunal should make use, where appropriate, of modern technology including computers, video-conferencing and teleconferencing in order to maximize accessibility and minimize cost.*

RECOMMENDATION (36):

- *Staffing of the Tribunal should take into account employment equity considerations including all groups covered by the Code and not just those in the Employment Equity Act.*

- *Current Commission staff should be provided with training, where appropriate, to allow them to qualify for positions in the Tribunal.*
- *The new Tribunal should be covered by the Ontario Public Service Employees Union public service collective agreement.*

RECOMMENDATION (37):

- *Tribunal procedures should be developed to make hearings understandable and less formal in order to meet the needs of the persons who will come before the Tribunal, some of whom may be unrepresented.*
- *The Tribunal must have the power to make rules and procedures required to fairly, expeditiously, and effectively decide human rights cases.*

RECOMMENDATION (38):

- *The Tribunal should be required to base its decision upon the real merits and justice of the case. It will not be bound to follow strict legal precedent but shall give a full opportunity for a hearing.¹*
- *The Tribunal Officer or other authorized person should have the power:*
 - *enter any place at any reasonable time and post any notice at such place;*
 - *request the production for inspection of documents or things that may be relevant to the carrying out of the duties;*
 - *upon giving a receipt therefore, remove from a place documents or things produced so long as they are promptly returned; and*
 - *question a person on matters that are or may be relevant to the carrying out of the duties subject to the person's right to have counsel or some other representative present during the examination and.*
- *Failure to comply with this requirement should have consequences. Officers would assist parties to ensure disclosure happens in timely fashion.*

- *The Tribunal adjudicator shall have the power to order a Tribunal Officer to conduct any necessary investigation in order to ensure that the case is heard on its real merits or in order to delegate to the Officer the hearing of any evidence. A warrant should not be required.*
- *The Tribunal Officer would then provide a report on the investigation results to the adjudicator with copies to the parties.*
- *The Tribunal adjudicator should have the power to compel evidence through a summons to appear or bring documents.*

RECOMMENDATION (39):

- *The Tribunal shall have the power to hold an emergency or expedited hearing on short notice, where necessary, to ensure the proper protection of a claimant's human rights.*

RECOMMENDATION (40):

- *The Tribunal should be able to assign one or more adjudicators to the hearing of a case depending on their skills and background.*
- *The Code should be amended to provide that the Chair not the Minister could decide to assign one or more Vice-Chairs to sit on a case depending on the type of case and its importance.*

RECOMMENDATION (41):

- *Parties to a claim will have an initial hearing before the adjudicator assigned to their case within 45 days from the date of the filing of the claim in order to decide all the preliminary matters which are necessary to prepare for the full hearing of the case. Such matters would include requests for a preliminary dismissal for lack of merit; for further disclosure or investigation; or for an interim order.*

RECOMMENDATION (42):

- **The *Code* must be rewritten in a way that introduces effective time limits for the hearings process and gives to those, in whose favour they run, the means to enforce them.**
- **Claims should receive an initial hearing within 45 days after the claim is filed and the decision should be released within 30 days after the end of the hearing.**
- **The Adjudicator should have the power, where appropriate, to direct the hearing process so as to conclude a hearing in a fair and expeditious fashion.**
- **The Associate Chair shall have the power to order an adjudicator to comply with the time limits for making a decision, but may extend those time limits if appropriate.**

RECOMMENDATION (43):

The *Code* should provide that the necessary parties to a claim are:

- **the claimant or the person or organization representing them;**
 - **any person the claimant alleges has infringed a right under the *Code*;**
 - **any person who appears to the Tribunal to have potentially infringed the right;**
 - **any person, who in the Tribunal's opinion, had the authority or legal obligation to penalize or prevent the conduct complained of; and**
 - **where the collective agreement is at issue, the trade union ...**
 - **any other person directly necessary for the proper adjudication of the claim, including any person who should be bound by the outcome of the adjudication.**
- **A party may be added by the Tribunal at any stage of the proceeding upon such terms as the Tribunal considers proper.**

RECOMMENDATION (44):

- ***Human Rights Ontario should have the right to intervene with full participation***

rights to represent the public interest in any case involving the public interest, unless the Tribunal decides it is established that allowing the Commission to have standing would unduly hinder or delay the fair hearing of the case.

- *Appropriate intervenors or friends of the Tribunal, such as equality seeking groups, should be granted intervenor status in the process if they have a sufficient interest in the claim; are able to provide helpful assistance to the Tribunal in reaching its decision, and their presence would not unduly lengthen the hearing.*

RECOMMENDATION (45):

- *The Tribunal should have the exclusive jurisdiction to exercise its power to determine all questions of fact or law that arise in any matter before it.²*

RECOMMENDATION (46):

- *The Tribunal should be able to accept any evidence which it believes is reliable and relevant whether it is allowed as evidence in a court or not.*

RECOMMENDATION (47):

- *The Tribunal shall have the power to make any interim order where appropriate.*

RECOMMENDATION (48):

- *The Code should ensure that, where a business is sold, the Tribunal have the discretion to add successor businesses as necessary parties and to make any necessary order against them.*

RECOMMENDATION (49):

- **The Tribunal should be able to order Respondents to communicate information which is necessary to bring to the attention of such persons in connection with a case. Such communication should be done by posting a copy of the document in prominent places in each workplace or otherwise communicating it in a**

manner which may be understood by all of the employees in the workplace.³

RECOMMENDATION (50):

- The Tribunal should be given explicit power to bring together a variety of claims to be heard jointly if that is considered strategic, fair and necessary to avoid undue duplication of evidence.
- The Tribunal should also have the power to amend claims so that the case is heard on its merits.

RECOMMENDATION (51):

- The Tribunal should have the power to seek legal advice, consult its own experts as appropriate without restrictions contained in s.38(2).

RECOMMENDATION (52):

- In light of informality of the process, and the elimination of a full appeal right, there should be no requirement to record evidence.⁹³

RECOMMENDATION (53):

- When dealing with a case or otherwise, the Tribunal should be able to refer an issue to the Commission to study and report on.

XVIII. REMEDIES AND MONITORING

RECOMMENDATION (54):

- The *Code* should be amended to clarify that a Tribunal has a broad and powerful remedial power to strike at the heart of the problem to overcome discrimination. This includes the power to fully compensate an individual claimant as well as to order specific proactive measures to overcome discrimination faced by groups.

RECOMMENDATION (55):

- **Compensation for mental anguish should be provided to victims of discrimination. The restriction that allows such compensation to be paid only in cases where the infringement has been engaged in wilfully or recklessly should be removed.**
- **The \$10,000 limit for an award for mental anguish should be removed, allowing the amount of the award to depend on the facts of the case.**

RECOMMENDATION (56):

The *Code* should

- **require the Tribunal to determine whether the respondent took positive measures to implement the right to equal treatment and whether, in particular, the claimant received the positive right to equal treatment;**
- **state that remedies under the *Code*, in addition to individual redress, should include positive measures to achieve equality rights;**
- **specify that among the remedies that may be ordered are accommodation equity and service equity plans, audit plans, and employment equity plans for those groups not covered by the *Employment Equity Act*;**
- **state that an independent monitoring mechanism should be built into any remedy requiring monitoring to ensure that it is properly and effectively carried out; and**
- **allow the Tribunal to order a respondent to pay for the costs associated with carrying out the remedial order and any necessary costs of the Tribunal in monitoring the order.**

RECOMMENDATION (57):

- **The *Code* should be amended to clarify that the Tribunal has the power to act quickly and effectively to order a party to stop discriminatory practices or actions.**

XIX. RECONSIDERATION AND ENFORCEMENT OF TRIBUNAL DECISIONS

RECOMMENDATION (58):

- The Tribunal should have the power to reconsider any decision and to vary, revoke, or substitute a new decision.
- Apart from the power to reconsider, the Tribunal's decision should be final and protected from review by the courts except where the decision is patently unreasonable.

RECOMMENDATION (59):

- The Tribunal should take a proactive approach to enforcement by ensuring that the Tribunal Officer assists both the claimant and the respondent in the enforcement of an order.
- The *Code* should provide that orders of the Tribunal, when filed with the Ontario Court of Justice (General Division), have the same force and effect as an order of that Court and therefore can result in fines and/or a jail term for non-compliance.

RECOMMENDATION (60):

- The *Code* should be amended to increase the fines for obstruction of the Tribunal process or failure to comply with a Tribunal order to a level that is consistent with environmental protection legislation, that is, a minimum fine of \$2,000 and a maximum fine of \$200,000.
- The money collected by the Treasurer of Ontario from the fines imposed under this section should be paid into an Enforcement Fund that could be called upon when extra funds are needed for the new human rights enforcement system.

RECOMMENDATION (61):

- The Tribunal should not have the power to order any party to pay legal costs to another party.

XX. TRAINING THOSE WHO WORK IN THE NEW NEW SYSTEM

RECOMMENDATION (62):

- **The Resource and Training Section of the Equality Rights Tribunal should provide specialized human rights training for adjudicators and staff of the Tribunal.**
- **A coordinated approach, particularly with other equality agencies, should be used to provide training for persons appointed to, or hired by, the Equality Rights Tribunal.**

XXI. ROLE OF GOVERNMENT AND MAJOR PUBLIC BODIES**RECOMMENDATION (63):**

- **The Government of Ontario and major public bodies should play a leadership role in advancing equality rights in the province.**
- **The Government of Ontario and major public bodies should require positive action to be taken in all areas under its control in order to overcome present patterns of systemic discrimination and ensure that members of discriminated against groups benefit equally and fairly from government job opportunities and services at all levels.**
- **The Premier mandate the Cabinet Office in consultation with the community to establish a mechanism to develop a coordinated strategy to advance equality rights, to ensure the integration of that strategy throughout the Government's decision-making (including the development of policies, practices and laws, the provision of services and/or employment practices), and to monitor the Government's performance in advancing equality rights.**
- **On behalf of the Cabinet Office, the Minister would receive and monitor equality reports from every ministry and from the specialized equality agencies, such as the Anti-Racism Secretariat, the Office for Disability Issues, the Women's Directorate and the Office of Seniors Issues.**
- **The Government, through the Cabinet Office and the responsible Minister, should submit an annual Equality Rights Report to the Legislature. The Report together with the Commission's Annual Report should be widely distributed and be submitted to the United Nations as part of Ontario's reporting requirements under international human rights covenants.**
- **An all-party Legislative Committee on Equality Rights should be established to provide a forum and to monitor and advance equality rights in Ontario.**

- **The Legislative Committee should invite members of the community, including equality seeking groups, to appear before it to give their assessment of the Equality Report and the Government's performance in equality rights, as well as their recommendations for improvements.**
- **Each year the Legislature should have a day of debate on equality rights, which could take place at the time the Equality Report was tabled in the legislature.**

RECOMMENDATION (64):

- **The work of the various equality agencies should be coordinated, both in enforcing rights and in education, research, community development, and proactive initiatives.
A regular mechanism should be put in place for ongoing coordination and cooperation.**
- **The Chief Commissioners for Pay Equity, Employment Equity, and Human Rights should meet regularly and establish a mechanism for their respective staff to coordinate any overlapping law enforcement and education functions.**
- **The Cabinet Office should establish a coordination mechanism that would allow for regular meetings of all provincial government agencies that have the specific mandate to advance equality rights for particular groups protected by the *Code*, such as the Ontario Women's Directorate, the Office of Disability Issues, the Anti-Racism Secretariat, and the Office for Seniors' Issues.**

RECOMMENDATION (65):

- **Each government ministry and major public body should be required to adopt and implement a clearly stated equity plan for services provided or overseen by the ministry or agency.**
- **The Deputy and Agency Head should be accountable for ensuring that the employees in their organizations are informed on human rights issues.**
- **Deputy Ministers should receive training in the principles of effectively implementing equality and should be accountable for the resolution of the particular equality issues raised by their ministry's mandate in all the areas covered by the *Code*.**
- **Every ministry and major public body should provide equality rights training**

to their staff to ensure that an equality perspective is integrated within all levels of decision-making in the ministry.

- **Operational responsibility for implementing these service equity audits and plans should be with the Deputy Minister or head of the major public body. Success in effectively carrying out these reviews and implementing strategies for change would be a specific, significant factor in performance appraisal of the Deputy Minister or top official.**
- **The Deputy or Agency Head and the responsible Minister should be required to meet with the Commission every six months to assess the effectiveness of the organization's initiatives and their plan for the next six months.**
- **Each ministry and agency should post a notice about the *Code's* requirements, as well as an outline of their service equity plans, in a prominent location. The information should be available in a manner that can be understood by all employees. (See Section XXII for further details.)**

RECOMMENDATION (66):

- **The Government and all major public bodies should conduct an immediate review of all rights claims made against them, seek a positive resolution wherever possible, and ensure that persons responsible for deciding to defend such claims and their lawyers are properly trained and informed on the *Code's* proactive obligations and committed to a positive, constructive approach.**

RECOMMENDATION (67):

- Public bodies should take a constructive approach to human rights claims made against them by focusing on the real, underlying issue of whether they have made sufficient positive efforts to achieve equality rights and whether improvement could be made.
- The Government should review and monitor its instructions to inside and outside legal counsel on matters relating to human rights claims made against it to ensure these instructions are consistent with a positive proactive approach to compliance.
- A public body against whom a human rights claim has been filed should be required to make public how much money it is spending on the case. The body must report to Human Rights Ontario every six months the amount of money that it is spending on the defence of rights claims, any settlements that have been reached, and copies of any decisions on those claims. The Commission could then make this information public and include it in its annual report to the Legislative Committee.

XXII. PROACTIVE ROLE FOR EMPLOYERS, ACCOMMODATION AND SERVICE PROVIDERS**RECOMMENDATION (68):**

- An enforcement regulation should be passed making clear that the "right to equal treatment" in the *Code* means that employers, unions, and service and accommodation providers are required to take positive measures to overcome discrimination. The extent to which reasonable positive measures have been taken to overcome discrimination will be considered as part of the evidence in any claim.

RECOMMENDATION (69):

- Employers should take proactive measures to overcome discrimination against groups who may not be included under employment equity legislation. This includes different ethnic groups and different creeds, and persons discriminated against because of their sexual orientation, their family or marital status, or their a record of offences.
- As a basic informational initiative, employers should post in a prominent spot

in the workplace a clear, easy-to-understand notice provided by Human Rights Ontario with information along the following lines.

- Under the Ontario *Code*, every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, or disability.
- The employer is bound by the *Code* and has a policy to take positive measures to overcome discrimination.
- It is a serious matter not to obey the *Code*.
- A person who believes discrimination is being practised can get assistance by contacting the appropriate person in the workplace (including a union representative, if appropriate), any person in the workplace responsible for human rights claims (giving information on how to contact that person), or the nearest Equality Rights Centre (giving information on how to contact that office).

RECOMMENDATION (70):

- The most senior official of an employer should be required to ensure that management at all levels is informed of its human rights responsibilities.
- Human Rights Ontario, through its Commissioner for Compliance Services and Commissioner for Education, would be responsible for providing educational kits on human rights requirements in the workplace. These kits would be provided at a fee that could be waived where appropriate.

RECOMMENDATION (71):

- Workplace Human Rights Committees are an effective tool, but should not be made mandatory at this time. Instead, employers should coordinate their proactive, mandatory obligations under the *Employment Equity Act* with their responsibilities to the other groups covered by the *Code* and not covered by employment equity legislation.

RECOMMENDATION (72):

- **Effective internal human rights systems developed in partnership with employees and involving active participation of employees may be a useful way to resolve human rights claims in the workplace.**
- **Employees should not be required to exhaust an internal workplace human rights system before they can file a claim under the *Code*. An employee's use of such an internal process should not bar their filing a claim with the Tribunal.**

RECOMMENDATION (73):

- **The housing and rental industry should take broad, practical, proactive measures to overcome patterns of discrimination in access to accommodation.**
- **Landlords should be required to be informed about their human rights responsibilities relating to providing accommodation. There would be consultation with all concerned on how best to implement this. Human Rights Ontario would assist in providing information kits for which a fee would be charged. This fee would be waived when appropriate.**
- **If the housing and rental industry does not take effective measures, Human Rights Ontario, in partnership with the affected groups, should consider adopting strategic measure, such as regulations, in order to overcome discrimination in access to accommodation.**
- **A notice about the *Code* provided by Human Rights Ontario, similar to that recommended for employers, should be posted in a prominent place and available in a form understandable to tenants. This notice could be posted in the elevator along with the elevator permit sign. For a landlord with two units and no common area, the notice should be directly given to the tenant.**

RECOMMENDATIONS (74):

- **Service providers should be required to be informed on human rights responsibilities relating to the provision of their service. There would be consultation with all concerned on how best to implement this. Human Rights Ontario would assist in providing information kits for which a fee would be charged. This fee would be waived where appropriate.**

- Major publicly funded agencies providing services to the public should implement service equity plans that include broad, practical, proactive measures to overcome patterns of discrimination in service provision.
- If such agencies providing services to the public do not take such measures, Human Rights Ontario, in partnership with the affected groups, should consider developing regulations to require service providers to take specific proactive measures.
- As a basic informational initiative, information about the *Code* provided by Human Rights Ontario similar to that recommended for employers should be made available to the consumers of a service provider in a form understandable to them. The details of how this recommendation would be implemented for the various kinds and sizes of service providers should be discussed with the involved communities.

XXIII. EDUCATION AS A PROACTIVE STRATEGIC MEASURE

RECOMMENDATION (75):

- Strategic proactive education is a key human rights enforcement strategy to ensure, advance and maintain a culture of equality.
- Human Rights Ontario has a unique and important role to play in the area of education to oversee and initiate education activities which will advance its overall strategic plan for the enforcement of Ontarians' human rights.
- To be effective, education must be innovative, reach all Ontarians and enter into strategic partnerships in doing so.
- Human Rights Ontario should focus on educational initiatives which are most likely to concretely contribute to the reduction of systemic discrimination in the strategic areas it has identified.

RECOMMENDATION (76):

- Under the Human Rights Ontario budget, priority must be given to providing education aimed at making human rights enforcement accessible and effective.
- The education work of the various equality agencies inside government, such as the Anti-Racism Secretariat, the Ontario Women's Directorate and the Office for Disability Issues, should be coordinated with the work of the Human Rights Commission through a clearly identified, regular process of liaison.

RECOMMENDATION (77):

- **Effective human rights material should be developed and included in the regular school curriculum at every level from the earliest years.**
- **The Ontario Ministry of Education should review the human rights curriculum material that already exists, improve and supplement it as needed and require it to be taught throughout the Ontario school system.**

RECOMMENDATION (78):

- **The Government should require Faculties of Education to take positive measures to open up training opportunities to disadvantaged groups.**
- **Under the contract compliance provisions of the *Code*, the Government should examine the employment equity and service equity progress of universities and colleges as a factor in judging the quality of their operations and the funds they should receive.**

RECOMMENDATION (79):

- **Teacher training courses should include training in human rights as a requirement for certification as a teacher.**

RECOMMENDATION (80):

- **School Boards, colleges and universities should be required to implement a clear, effective plan to overcome discriminatory employment practices so that teachers and administrators at all levels reflect the full community.**

RECOMMENDATION (81):

- **The Ministry of Education should require School Boards, in partnership with the community, to develop and implement service equity plans to ensure that all**

students receive equitable educational services.

XXIV. CONCLUSION: MOVING FORWARD

RECOMMENDATION (82):

- **The Government should name a senior person in the Cabinet Office to be overall responsible for coordinating and directing the implementation of the reform process and ensuring that it proceeds quickly and with the cooperation of all the relevant Ministries and other bodies.**
- **The Government should play a role in bringing together a group of representatives from the business community who are leaders in the field of implementing equality in employment, accommodation and services. These representatives could meet together and with the Government in order to participate effectively in the reform process.**

RECOMMENDATION (83):

- **The government should fund a Human Rights Follow-Up Project to allow equality seeking groups to work together and play a meaningful role in the implementation of human rights reform.**
- **The Project should allow for a meeting of equality seeking groups from across the province in September, 1992 and every six months thereafter to review progress to date.**

RECOMMENDATION (84):

- **Employers and service and accommodation providers should begin discussions within their sector and with government on how to participate in a new, revitalized human rights system. These persons should meet with the Government and other to effectively participate in the reform process.**

RECOMMENDATION (85):

- **The Ontario Human Rights Commission should study and consider this report**

in order to promptly implement where appropriate the recommendations for reform which do not require legislative amendments.

- The Commission should also work with the Human Rights Follow Up Project and the representatives of the respondent community to discuss implementation issues as they affect the Commission.
- The Commission should adopt a more open, cooperative relationship with community groups and individuals with human rights expertise and allow them to prepare and develop their own claims, and participate in direction of the investigation, settlement and appointment of the Board of Inquiry.
- The Commission should interpret section 36 of the Code broadly. It should consider that a hearing is the normal "appropriate procedure" for the resolution of a human rights claim and the requirement for there to be "evidence" which "warrants an inquiry" should be whether the claim discloses reasonable grounds of a violation of the Code which should be responded to in a public hearing.
- The Commission should also work with the Commission employees' bargaining agent OPSEU in order to plan for the labour relations concerns which arise from the Report and this Plan.

RECOMMENDATION (86):

- The Government should name a senior person in the Cabinet Office to be overall responsible for coordinating and directing the implementation of the reform process and ensuring that it proceeds quickly and with the cooperation of all the relevant Ministries, equality agencies and other bodies. This coordinator will work closely with all interested groups, including those identified in this Plan. This coordinator would work closely with the Deputy Minister of Citizenship.

RECOMMENDATION (87):

- The Task Force calls on the Ontario Liberal Party and the Progressive Conservative Party of Ontario to take all necessary steps with the governing New Democratic Party to ensure the speedy passage of the necessary legislation.

RECOMMENDATION (88):

In the view of the Task Force, the following actions could and should be taken by:

August 1, 1992

- **The follow up project should be funded to allow equality seeking groups to participate in the reform process.**

September 1, 1992.

- **The Premier on behalf of the Government should make a firm commitment to the expeditious implementation of this report in partnership with the two opposition parties.**
- **The government should start discussions with the Pay Equity Tribunal and the Employment Equity Commissioner to set up a joint Tribunal.**
- **The lead Minister and person designated in the Cabinet Office to oversee the reform should act on the recommendations set out in the report which apply to Government itself (Section of Proactive Role for the Government) and direct all government ministries and agencies to review the pending human rights cases against them. Direction should be given to take a proactive equality rights approach in any future action on pending cases.**

September 30, 1992

- **The Premier of Ontario should consult widely with appropriate people and name the three persons with outstanding human rights records as the Equality Rights Appointment Committee.**

By November 30, 1992,

- **The Government should establish the Equality Services Board which could be working on establishing the standards and training for the law advocates and other matters. These advocates could be retained to act under the old system.**

In the Fall Session, 1992

- **The Government should bring in the necessary legislation which is needed to implement the report.**

No later than the Spring Session, 1993

- **The Government should work with the Leaders of the Opposition to ensure that the bill is passed.**

By September 30, 1993

- **The new enforcement system should be reasonably operational.**

Appendix 1

TASK FORCE ON THE PROCEDURAL REVIEW OF THE HUMAN RIGHTS CODE, 1981

The Government of Ontario, having identified the need for an independent review of the procedures for the enforcement of human rights in Ontario, requires a Task Force to:

- review the current procedures for the enforcement of human rights set out in the *Human Rights Code, 1981*; and
- make recommendations for a fair and practical system for the enforcement of human rights in Ontario.

The Task Force is to seek information from a variety of sources including relevant ministries, agencies and tribunals of the Government of Ontario, the Ontario Human Rights Commission, equity-seeking groups, the academic, business, labour and legal communities, the public and other jurisdictions. Information will be obtained through research, receipt of written submissions and public meetings.

The Task Force will be assisted by an advisory group with diverse representation, which will provide information and advice to the Task Force.

The Task Force will submit a report of its findings, analyses and recommendations for amendments to the *Human Rights Code, 1981*, to the Minister of Citizenship by June 30, 1992. The report will be released to the public.

Review Components

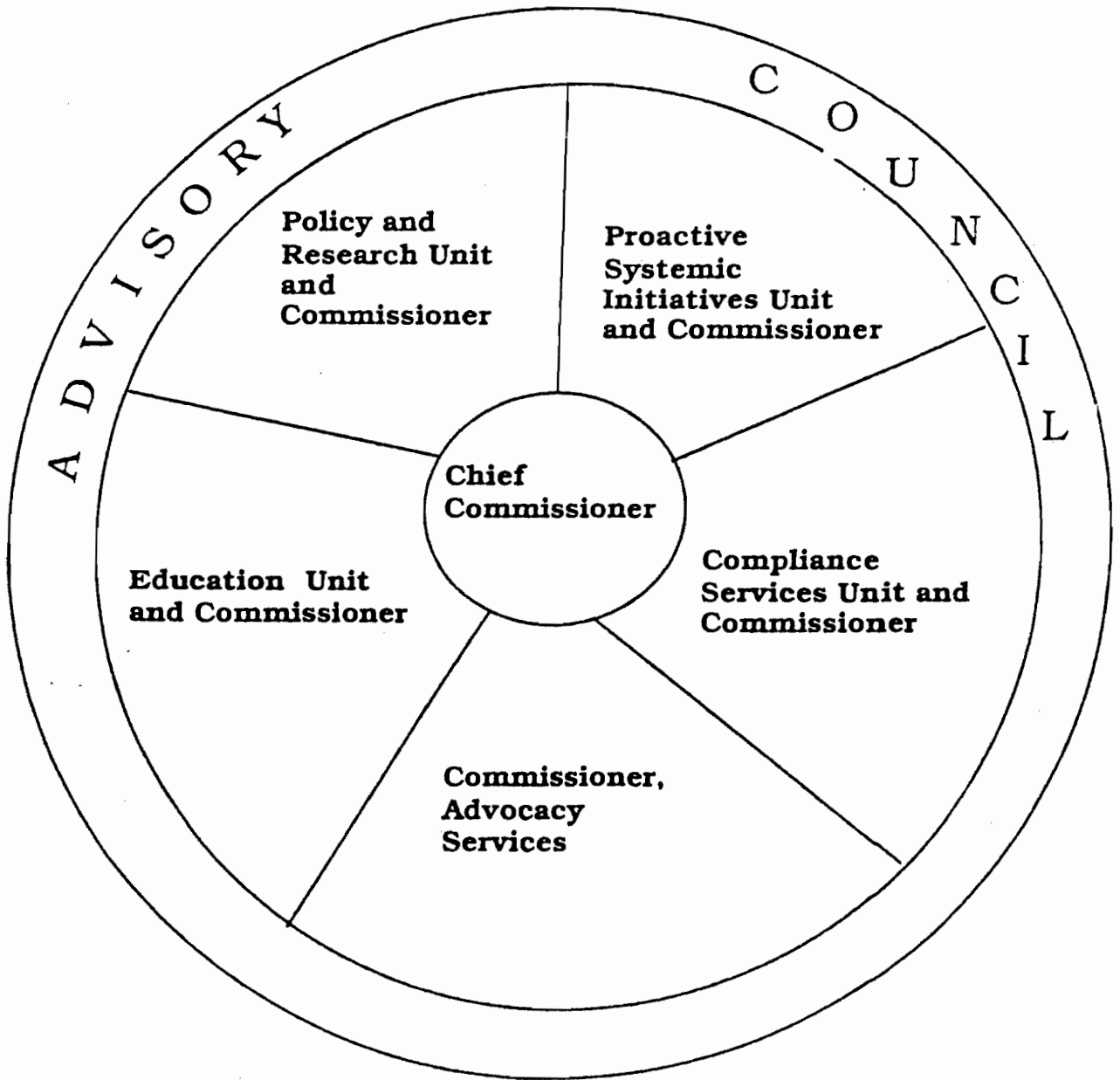
The Task Force will review the process for the enforcement of human rights set out in Part IV of the *Human Rights Code, 1981*, and consider alternative enforcement processes for the purpose of recommending a fair and practice system for the enforcement of human rights in Ontario.

For that purpose, the Task Force will:

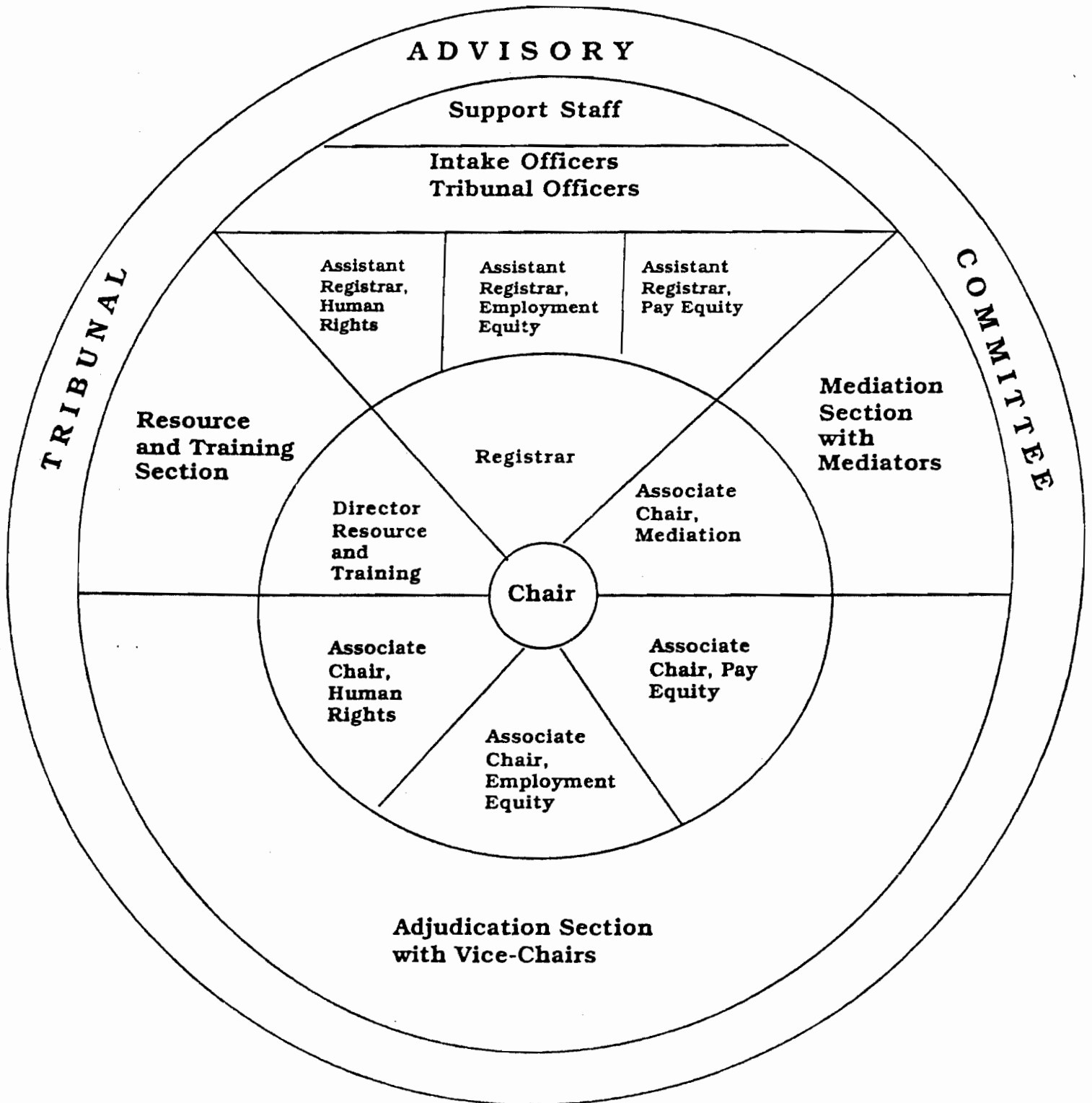
1. Examine the features of the current procedures which may limit fair and timely results, including the requirements:
 - that the Ontario Human Rights Commission have carriage of all complaints;
 - that all complaints be investigated by the Commission;
 - that settlement be attempted in all cases;
 - that all adjudicative decisions (such as dismissal and early dismissal of a complaint and approval of settlement) be made by the Commissioners;
 - that the Commissioners be satisfied as to the sufficiency of the evidence in each case before requiring a Board of Inquiry;
 - that only the Commission may request the appointment of a Board of Inquiry.
2. Examine the role of the Ontario Human Rights Commission in the enforcement process, in the context of its legislated functions, to determine whether the role of the Commission should be changed.
3. Examine the division of adjudicative decision-making responsibility between the Ontario Human Rights Commission and Boards of Inquiry, to determine whether the roles and division of responsibility should be changed.
4. Consider the use of alternative dispute resolution mechanisms, including the potential use of other tribunals, in resolving human rights complaints.
5. Make recommendations for legislative changes to give effect to the recommendations and conclusions of the Task Force.

Appendix 2

HUMAN RIGHTS ONTARIO



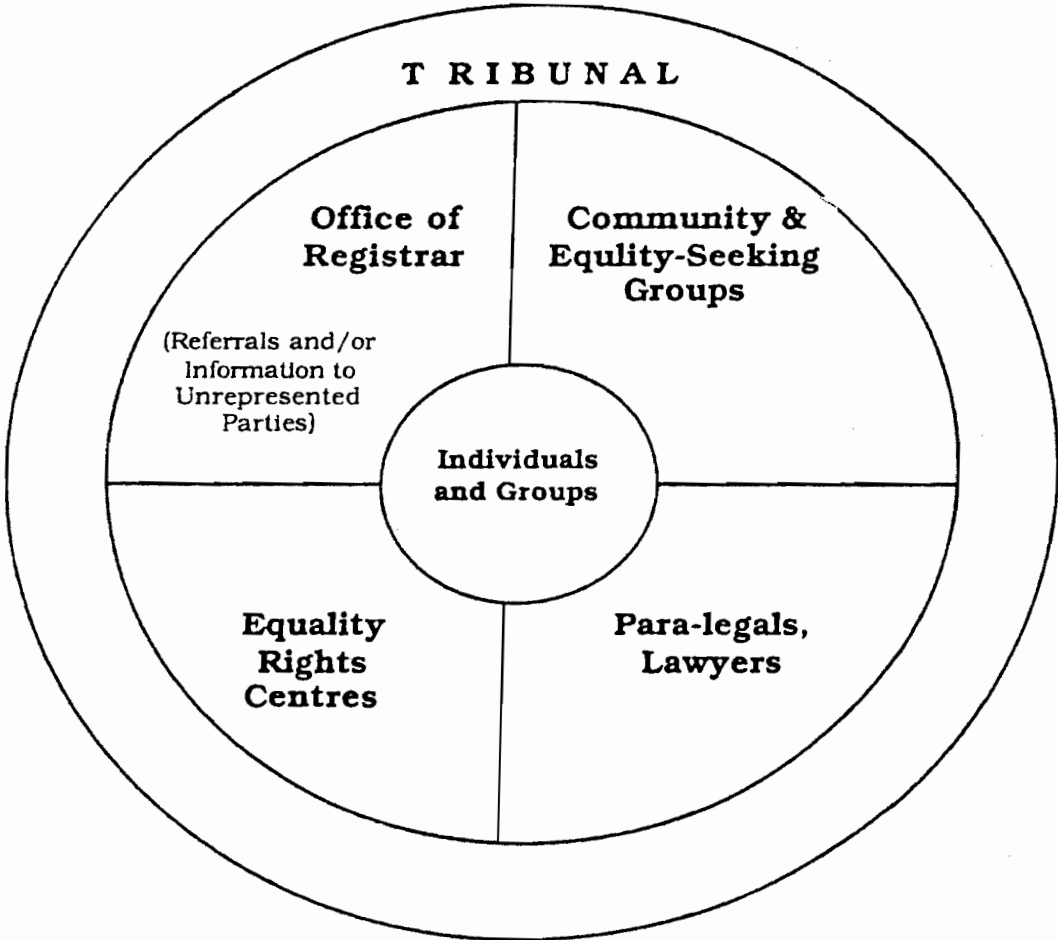
EQUALITY RIGHTS TRIBUNAL



HUMAN RIGHTS TRIBUNAL

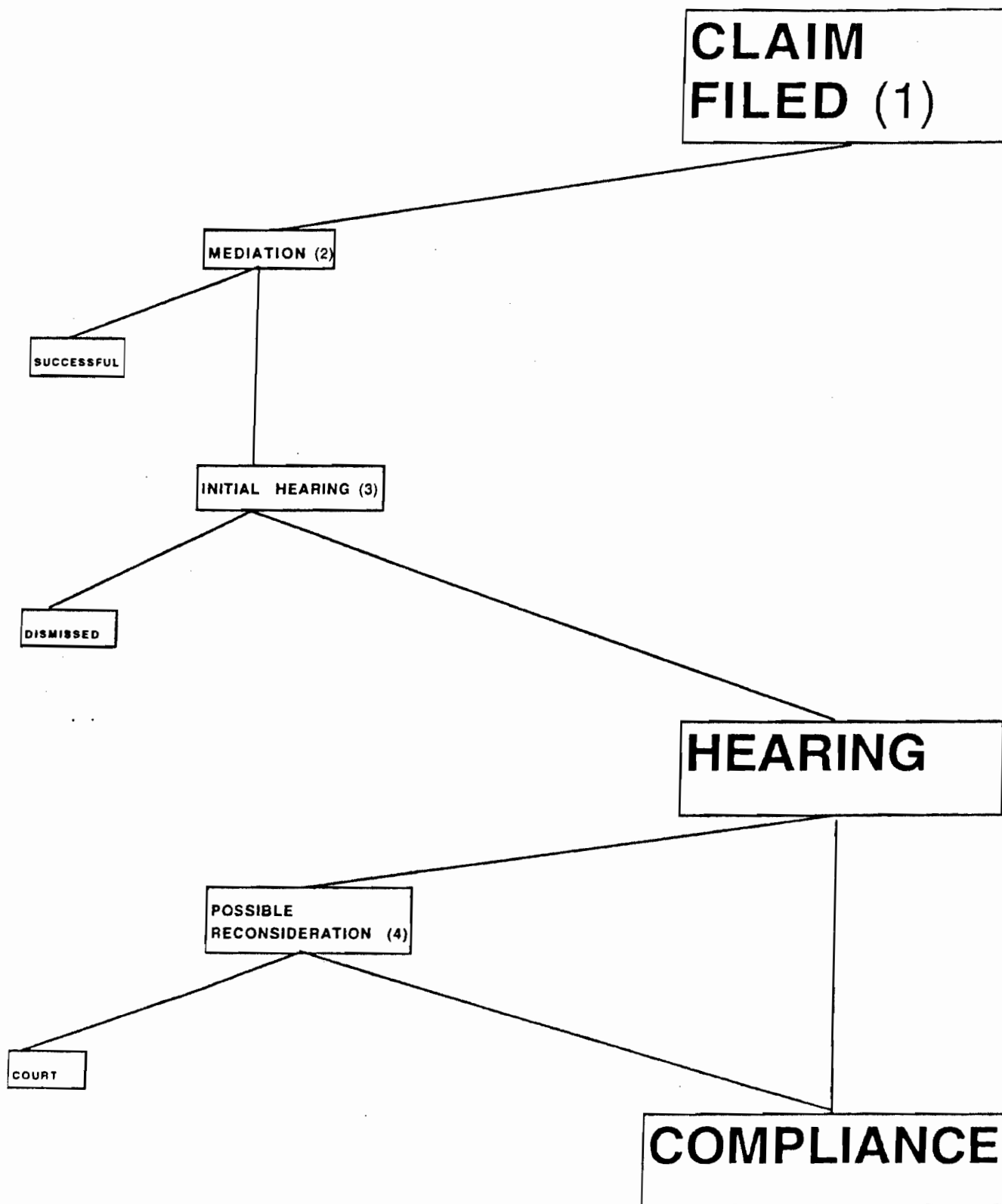


GETTING TO THE TRIBUNAL



Appendix 3-4

FLOWCHART OF TRIBUNAL PROCESS



NOTES TO FLOWCHART OF TRIBUNAL PROCESS

1. Claims are filed in the Office of the Registrar. Normally, the first step is that the Registrar assigns a Tribunal Officer to the claim. The Tribunal Officer would contact the parties to explain the Tribunal process and ensure that this process was understood. The Tribunal Officer would make the parties aware of the two options open to them: mediation and adjudication. Parties would be asked if they had considered settlement options and whether they are interested in using the services of the Mediation Section. With the event the parties proceed to adjudication, the Tribunal Officer assigned to the claim would proceed to ensure that it was ready for hearing. This may involve ensuring that disclosure requirements have been complied with, advising the Registrar to schedule an initial hearing, or supervising developing an agreed statement of facts where possible.
2. Where the parties were agreed to attempt mediation, the Tribunal Officer would refer them to an assigned Mediator in the Mediation Section. Mediation may be successful or unsuccessful. Where it is successful, the only issue which arises is compliance with the terms of the mediated settlement. Alternatively, a Mediator or one of the parties may conclude that the attempt at mediation should be terminated. If so, the claim is referred back to the original Tribunal Officer.
3. A Vice-Chair would preside at the Initial Hearing and could do the following:
 - uphold or overturn the Associate Chair's decision to dismiss the claim because it was outside the jurisdiction of the Code,
 - make interim orders,
 - order further disclosure,
 - order a Tribunal Officer to investigate the claim, or actually
 - render a final decision where appropriate.

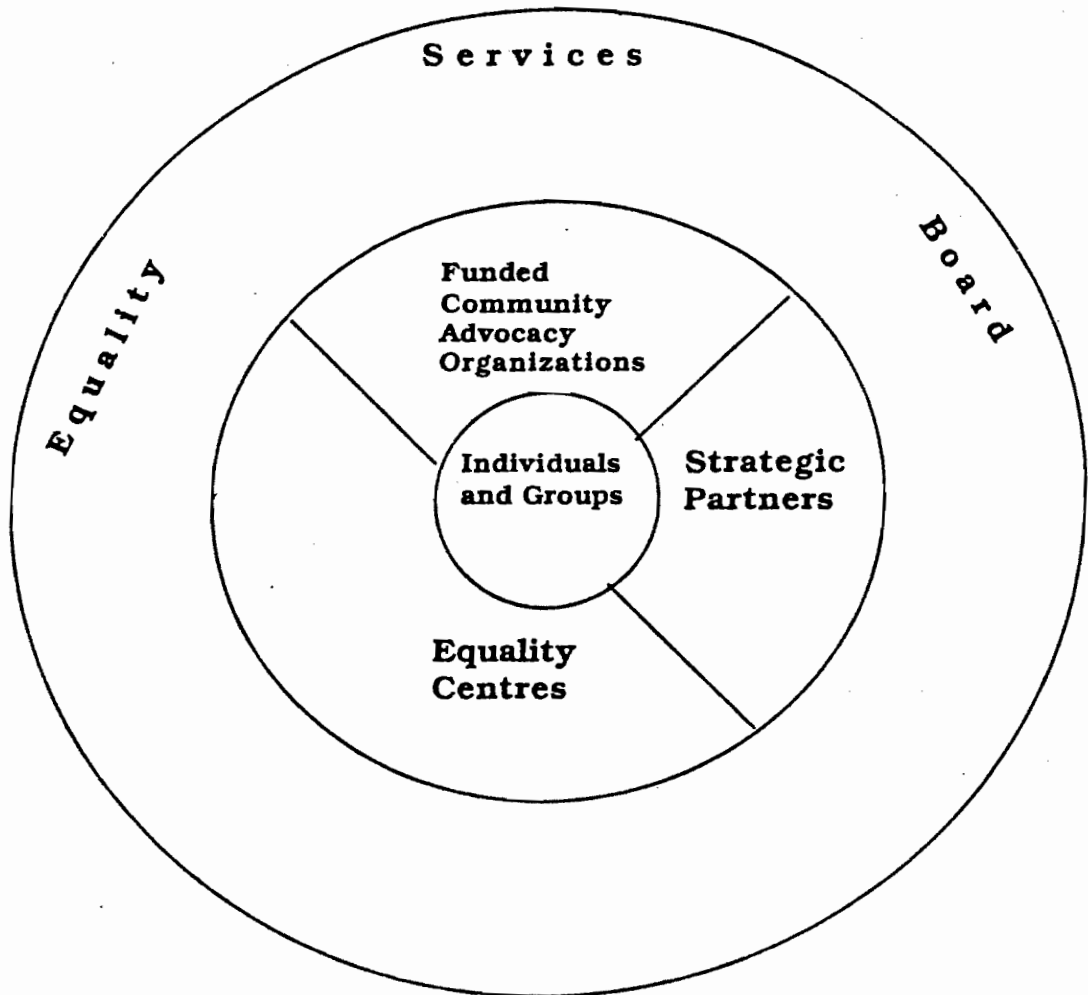
The Vice-Chair would be able to use the initial hearing to ensure that the evidence necessary to adjudicate would be available by the time of the full hearing. Vice-Chairs would, moreover, control Tribunal resources by determining when Tribunal Officers investigate and the depth of the investigations.

4. Reconsideration of a decision may occur in two ways:
 - a party in disagreement with the Vice-Chair's decision may request reconsideration and the Tribunal agrees to the request, or
 - the tribunal could seize the initiative to reconsider one or several conflicting decisions.

Given that its decisions are final, it must be emphasized that the Tribunal would exercise this option infrequently. Moreover, it would decide what form reconsideration would take (i.e. new hearing or written submissions).

Appendix 4-1

REGIONAL EQUALITY SERVICES



Appendix 5

ACHIEVING EQUALITY - GLOSSARY

Adjudicator

An individual or panel which hears both sides of a case, and makes a decision based on the evidence that has been presented.

Adversarial

This describes an approach that is confrontational and legalistic, such as the approach used in the court system, where two parties oppose one another in a very formal setting with rigid rules. Many people feel this is not an appropriate approach for equality cases, which need a more open, inquiring approach.

Civil action

This refers to a legal proceeding in the civil court system. For example, a small claims action is a civil action. The laws governing civil actions are provincial.

Claimant

A person or group who feel their equality rights have not been respected and file a human rights claim under the Code are called a claimant.

Constitution

The Constitution, which includes the Charter of Rights, is the supreme law of Canada. It governs the actions of all levels of government. All provincial legislation, including the Human Rights Code, must follow the Constitution.

Criminal action

As opposed to a "civil" action, a criminal action involves prosecuting someone in criminal court, for a crime they are alleged to have committed. Criminal proceedings are governed by the Criminal Code, which is federal legislation.

Discovery

Many of those consulted spoke of the need for a pre-hearing opportunity to identify and exchange relevant documents. In the court system, this process of disclosure is referred to as "discovery".

Empowerment

This refers to people gaining more control over their lives; for example, claimants having a stronger and more active role in the way their claim is handled.

Interim Order

This is when an order is made pending the final outcome of the complaint. An example of an interim order in a human rights complaint is a respondent employer ordered not to fill an advertised job vacancy until a complaint of discrimination in the hiring process has been resolved.

Mediation

In contrast to an adversarial approach, mediation involves resolving complaints in a non-confrontational environment. In order to succeed, mediation requires trained "mediators" to assist the parties resolve their dispute.

Precedent

A previous decision of a court or tribunal is referred to as a precedent. It is very helpful for those thinking of getting involved in cases similar to those ones where rulings have been handed down to have access to "precedents" on their issue.

Proactive

A proactive approach to human rights enforcement means taking active steps to prevent or overcome discrimination, rather than waiting and reacting after claims are filed.

Procedure

A procedure means the way or process by which something is done. For example, court procedures mean the rules about the way the hearing will be conducted.

Respondent

The person or body against whom a claim could be made, who is responsible under the Code for ensuring equality. They must "respond" to the claim that they did not respect the claimant's equality rights.

Reconsideration

This refers to when decision makers reconsider a decision they made earlier. They take another look at the decision and decide whether it should be changed.

Regulations

Regulations assist people to interpret and define a piece of legislation, such as the Code. For example, a Code regulation might help to specify exactly what is required to make services accessible to people with disabilities. Presently, there are no regulations under the Code, and the Commission has no power to create them.

Retaliation

This is a reference to a respondent, or anyone else, taking action against a complainant, or someone assisting a complainant, because of their involvement in the human rights enforcement process. The Code prohibits such acts of "reprisal."

Systemic discrimination

Systemic discrimination refers to widespread, often deep-rooted patterns of discrimination affecting many members of a disadvantaged group. Systemic discrimination can be overt and intentional, such as widespread discrimination and harassment in rental of housing against persons of colour; or it can be unintentional, such as having steps in buildings, which result in a denial of access to jobs, services and housing for persons using a wheelchair.

Third Party Claim

The ability for an individual or group, who is neither claimant nor respondent, to initiate a claim on behalf or instead of a claimant.

APPENDIX 6

WHO WE CONSULTED

<u>Organizations</u>	
Access Action Council	Canadians with Origins in Islamic Nations
ACCESS - Aids Committee of Sudbury	Casey House
Advocacy Resource Centre for the Handicapped	Catholic Immigration Centre
Advocates for Community-Based Training & Education for Women	Centre for Equality Rights in Accomodation
African Community Organization	Chiefs of Ontario
African Resource Centre	Children & Parents Guard Association
Aids Committee of Guelph & Wellington County	Chinese Canadian Association of Scarborough
Aids Committee of London	Chinese Canadian National Council-Toronto Chapter
Aids Committee of Toronto	Chinese Information & Community Services
Aids Action Now	Chippewas of Nawash First Nation
Algoma University College	Chippewas of Saugeen First Nation
Alliance for Employment Equity	City of Gloucester
Alliance for South Asian Aids Prevention	City of Toronto - Management Services Department
A.P.A.N.O.	City of Toronto - Management Services Department, Equal Opportunity
A.P.H.	City of Toronto - Personnel Committee Division
Arab Palestine Organization	CNT
Association of Gays & Lesbians of Ottawa	Coalition of Immigrant & Visible Minority Women
Association of Iroquois and Allied Indians	Coalition for Lesbian & Gay Rights in Ontario
Association of Municipalities of Ontario	Coalition on Human Rights & Disability Issues
Atikokan Injured Workers' Support Group	Committee for Racial Harmony in the Schools
B'Nai Brith League For Human Rights	Communities for Cultural Equality
Beendigen Inc.	Community for Black Youth
Black Action Defence Committee	Concerned Citizens for Access and Equality
Black Business & Professional Association	Confederation College
Black Community for Youth	Conflict Management Group
Black Inmates and Friends Assembly	Conflict Resolution Service - St. Stephen's
Blind of Ontario Organized with Self Help Tactics	Community House
Board of Trade of Metro Toronto	Congress of Black Women of Canada - Toronto Chapter
Brantford Ethnic & Race Relations Committee	Cornish Roland
Buddhist Communities of Greater Toronto	Council of Canadian Administrative Tribunals
Cambodian Association	Council on Aging for Renfrew County
Canadian Accountability Project	Court Challenges Program
Canadian Alliance for Visible Minorities	COUSA
Canadian Association of Elizabeth Fry Societies	CRCS
Canadian Autoworkers - Local 444	Crisis Housing Liaison
Canadian Civil Liberties Association	Cross Cultural Communication Centre
Canadian Council for Racial Harmony	Disabled Women's Network
Canadian Ethnocultural Council	Disabled Workers' Network 100%
Canadian Hard of Hearing Association	District 12 Hospitals
Canadian Hearing Society	Dow Chemical Canada Inc.
Canadian Hispanic Congress	Downtown Care/Ring Home Support Services of Toronto
Canadian Institute for International Order	East London United Church Outreach
Canadian Jewish Congress - Ontario region	Epilepsy Association - Metro Toronto
Canadian Manufacturers' Association	Epilepsy Ontario
Canadian Union of Public Employees	Epileptic (Advocacy) Liberation Front
Canadian Union of Public Employees - Ontario Division	

Equality for Gays and Lesbians Everywhere
 Essex County Board of Education
 European Court of Human Rights
 First Nations Students' Society
 Flemingdon Community Legal Services
 Forgotten Scouts
 Freedom Party of Ontario
 FWTAO
 G.P.
 G.S.S.
 Gay Fathers of Toronto
 General Motors of Canada Limited
 Greyhound Bus Lines
 Guyana Canadian Association
 Hamilton Against Poverty
 Hamilton Wentworth Head Injury Association
 Family Support Group
 Handicapped Action Group - Thunder Bay Chapter
 HEAR/HERE
 Hindu Solidarity Group
 Hispanic Private Congress
 Holiday Inn
 Homelink
 Homophile Association of London
 Human Resources Personnel Association
 Independent First Nations Association, Sioux
 Lookout
 Information Sudbury
 Injured Workers' Support Group
 Institute of Equality & Employment
 Inter-Agency Coalition for the Disabled
 Inter-Clinic Work Group on Human Rights
 International Coalition for Assistance to Refugees
 Jessie's Centre for Teenagers
 John Howard Society of Metro Toronto
 John Howard Society of Ontario
 Kapuskasing Action Centre
 Kush - South Asian Gay Men's Association
 Latvian Seniors' Club
 Learning Disabilities Association of London-
 Middlesex
 Learning Disabilities Association of North Peel
 Learning Disabilities Association of Ontario
 Legal Assistance of Windsor
 London Urban Alliance
 Mathews, Dinsdale & Clark
 McKellar Hospital
 McQuesten Legal & Community Services
 Metro Action Committee on Public Violence
 Against Women
 Metro Toronto Chinese & Southeast Asian Legal
 Clinic
 Metro Toronto Housing Authority
 Minority Advocacy & Rights Council
 Multicultural Association of Northwestern Ontario
 Multicultural Council of Professional Women
 Municipality of Metropolitan Toronto - Chief
 Administrative Officer's Department
 Myalgic Encephalomyelitis Self Help Ottawa
 N'Swakamok Native Friendship Centre/Better
 Beginnings Better Futures
 NAACL
 National Action Committee on Status of Women
 National Association of Canadians of Origins in India
 -- NACOI - Metro Toronto Chapter
 National Association of Friendship Centres
 National Automobile, Aerospace and Agricultural
 Implement Workers Union of Canada (CAW
 Canada)
 National Capital Alliance on Race Relations
 National Congress of Italian Canadians
 National Council of Canadian Filipino Associations
 National Educational Association of Disabled Students
 National Grocers/Loblaws
 National Organization of Immigrant & Visible
 Minority Women
 Native Alliance Against Racism in the Workplace
 Native Law Students' Association
 NDAC
 Network of Filipino Canadian Women
 New Experiences for Refugee Women
 Niagara North Community Legal Assistance/Housing
 Help Centre
 Nishnawbe-Aski Nation
 OCBTU
 Office of the MPP for London Centre
 Office of the MPP for London North
 Ojibways of Walpole Island First nation
 Older Women's Network
 Ontario Advisory Council for Disability Issues
 Ontario Advisory Council on Women's Issues
 Ontario Association for Community Living
 Ontario Coalition of Visible Minority Women
 Ontario Council of Agencies Serving Immigrants
 Ontario Council of Regents for Colleges of Arts and
 Technology
 Ontario Council of Sikhs
 Ontario Federation of Indian Friendship Centres
 Ontario Federation of Labour
 Ontario Friends of Schizophrenics - Thunder Bay
 Chapter
 Ontario Head Injury Association
 Ontario Hospital Association
 Ontario Hydro: Employment Equity Department
 Ontario Immigrant & Visible Minority Women's
 Organization
 Ontario Metis and Aboriginal Association
 Ontario Native Council on Justice
 Ontario Native Women's Association
 Ontario Psychiatric Survivors' Alliance
 Ontario Public Service Advisory Group on
 Employment Equity for Persons with Disabilities
 Ontario Public Health Association

Ontario Public Service Employees Union
Ontario Sports Centre
OPSA - Ottawa-Carleton
OPSEU - Human Rights Committee
OPSEU: "Human Rights in Ontario: Let's Get Real"
OPSEU - local 526
OPSEU - local 544
OPSEU - Region 4 - Human Resources Steering
Committee
ORC Canada Inc.
ORCSSB
Organisation of South Asian Canadians
Ottawa Advocates for Psychiatrized People
Ottawa-Carleton Immigrant Services
Ottawa Women's Club
OXFAM
P.H.A.R.A.
Pakistan Canada Association
Pakistan Canadian Association of Toronto
Parkdale Community Legal Services
Participation House
Patients Rights Association
People First of Ontario
Persons United for Self Help - Central Region
Persons United for Self Help - Northeastern Region
Persons United for Self Help - Northwestern Region
Persons United for Self Help - Ontario
Persons United for Self Help - Southwestern Region
Physically Challenged Action Network
Political Action
Precedent Resource Group
Public Service Alliance of Canada
Race Relations Committee - National Association of
Canadians of Origins in India
SMFAA
Society of Ontario Adjudicators and Regulators
South Asian Advisory Council
South Asian Centre of Windsor
South Etobicoke Community Legal Services
St. Marys and District Association for Community
Living
Sudbury Memorial Hospital
Sudbury Multicultural/Folk Arts Association
Sudbury Race Relations Committee
Support Committee for Arthur Chen
Support Committee for John Persaud
Tamil Eelam Society of Canada
The T.O! Newspaper
Thomas & Associates
Thorncliffe Neighbourhood Office
Thunder Bay & District Injured Workers Support
Group

Thunder Bay Employment Services
Thunder Bay Youth Employment
Total Employment Services
Toronto Hydro
Toronto Star
Transgender Rights in Ontario
Trent University
Union of Injured Workers
Union of Ontario Indians
University of Guelph Staff Association
University of Ottawa
University of Toronto, Department of Criminology
University of Windsor
University of Windsor First Nations
University Settlement Recreation Area
Urban Alliance on Race Relations
USH
Vedic Cultural Association (South Asian Advisory
Council)
Vietnamese Assistance Association of London
Wei Fu Ad Hoc Committee
Wequedong Lodge of Thunder Bay
Windsor Board of Education
Windsor & District Labour Council
Windsor District Labour Council - Local 195
Windsor Essex Bilingual St. Clair College
Windsor-Essex County Equity Network
Windsor Star
WMI
Women's Action Against Racist Policing
YMCA

Government

Alberta Human Rights Commission
Cabinet Office
Canadian Human Rights Commission
Clinic Resource Office - Ontario Legal Aid Plan
Corporation of the City of Sault Ste. Marie
Employment Equity Commissioner
Environmental Assessment Board
Liquor Control Board of Ontario, Human Rights
Division
Management Board of Cabinet
Management Board Secretariat
Manitoba Human Rights Commission
Ministry of the Attorney General
Ministry of Citizenship
Ministry of Colleges and Universities
Ministry of Community and Social Services
Ministry of Correctional Services

Ministry of Education
Ministry of Health, Women's Health Bureau
Ministry of Government Services
Ministry of Housing
Ministry of Labour
Newfoundland and Labrador Human Rights
Commission
Office of the Board of Inquiry Panel
Office of the Clerk, Committees Branch
Office for Disability Issues
Ombudsman Ontario
Ontario Anti-Racism Secretariat
Ontario Human Rights Commission - Hamilton-
Niagara Regional Staff
Ontario Human Rights Commission
Ontario Insurance Commission
Ontario Labour Relations Board
Ontario Municipal Board
Ontario Native Affairs Secretariat
Ontario Public Service Advisory Group on
Employment Equity for Persons with Disabilities
Ontario Securities Commission
Ontario Women's Directorate
Pay Equity Commission
Pay Equity Hearings Tribunal
Premier's Office
Premier's Council on Health, Well-being and Social
Justice
Prince Edward Island Human Rights Commission
Public Appointments Secretariat
Quebec Human Rights Commission
Rent Review Hearings Board
Saskatchewan Human Rights Commission
Social Assistance Review Board
Special Advisor to the Premier on Race Relations
Workers' Compensation Appeals Tribunal
Workers' Compensation Board
Workplace Health and Safety Agency

Individuals

Abassi, Hakim
Abdulkadin, Sadiq
Abshez, Murray
Acemah, Harold
Ag, Egya
Ali, Shaheen
Anand, Raj
Applebaum, Seymore
Bain, Beverley
Ballantyne, Bill

Bass, Leo
Batliwalla, Bapai
Beck, Jenny
Bernard, Joseph
Beveridge, Brad
Bhoopaul, Ormila
Bhoopaul, Jane
Bled, Yves
Bogacz, Linda
Borwein, David
Brathwaite, Cheryl
Bregman, Patti
Brotsky, Gwen
Brotten-Laberge, Laurel
Buchan, Shannon
Bulger, Kim
Burr, Caterine
Buyers, Joan
Byers, John
Bynoe, Pam
Cadman, Lois
Campbell, Charles
Carley, Delia
Caskey, Jane
Charles, Leona
Chong, L.
Chulka, Arthur
Clark, Kyle
Cline, Steve
Codd, Paul
Conway, Sheelagh
Critton, Dorothy
D'Arcy, Sharon
Dandurand, Christine Mary
Day, Shelagh
De Peza, Joan
Deagle, Betty
Demartini, Cristina
Demartini, Guillermo
DeMers, Gary
Endicott, Orville
Feldthusen, Bruce
Foreman, Dave
Fortin, Elsa
Francis-Gagne, Caroline
Fraser, Sue
Fraser, Kathleen
Gahan, William
Georges, Mervyn
Gharmarajah, A.
Gill, Penny
Ginsburg, Marilyn

Glen, David
Goldstein, Dian
Grant, Yola
Guthro, Linda
Hanson, J.C.
Harrington, W.F.
Harrisson, Louise
Harwood, John
Hennessy, Pat
Henry, Lana
Herr, Stan
Holliday, Catherine
House of David - the 7th Angel
Hughes, Don
Hyndman, Brian
Jain, Harish
Jeeves, Alan
Jefferson, James
Joe, Barry
Jordan, Kathleen
Karwacki, Peter
Kerr, Michael
Khodadeen, Abid
Kneller, Terry
Kroeker, John
Lang, S.
Larogue, Martin
Lepofsky, David
Lettner, Margo
Lipinski, Ted
Lowe, Lyla
Ma, Lilian
MacKay, David
MacLeod, Gayleanne
Makkar, Man
Makkar, Man
Makotoko, Josie
Markwick, Michael
Martinez, Jose Luis
Masters, Laura
Mathews, Julie
McDonald, Denise
Mercer, R.
Miles, Mrs. James
Miles, James
Milner, Ian
Montagnes, Carol
Morin, Michael
Mosher, Janet
Mouradian, Ted
Munsch, Wilma
Nalayini, S.

Nedelsky, Jennifer
Nieznanski, Leszek
Norman, Ken
Okonkwo, Clem
Orten, Helena
Parish, Lori-Anne
Parkinson, Wes
Pastran, Rosa
Pierson, Beth
Pike, Phillip
Poulantzas, N. M.
Profijt, Irene
Purhar, H.S.
Rae, Kyle
Rahn, Andrew
Ramcharitar, Boysie
Rawson, Martin
Reid, Robert F.
Rios, Oscar
Roach, Kent
Roberts, Edwin
Rockhill, Nathalie
Roundpoint, Lyn
Rowe, Reginald
Rowe, Pam
Rowe, Reg
Roy, C.
Russell, Worrick
Sampson, Fiona
Sayle, Sammy
Schleiffer, Gary
Scott, Craig
Seevaratnam, Sashika
Shannon, Leslie
Shawimbar, Sookho
Shecter, C.
Sherman, Helen
Siguencia, Nadir
Simins, B.
Singh, Uday
Singh, T.L.
Sivarajah, Renu
Soberman, Dan
Soremekun, Samuel
St. Lewis, Joanne
Stark, Chris
Stark, Mary
Stevens, Craig
Stratton, Jim
Subbarao, A.V.
Suriya, Senaka
Suriyakala, A.

Swinton, Katherine
Thomas, Melba
Thompson, Joseph
Thorup, Peter
Tobin, Jack
Tripp, Doreen
Turgeon, J.P.
Urgen, Tony
Varma, Joginder
Washington, H.
Wells, Tom
West, John
Weston, Robert
Williams, Maria
Williams, Jasmine
Williams-Shreve, Tracy
Wilmot, Annette
Wiscicki, Jacek
Xavier, Pat
Yorgason, Vern
Zanette, Mr.
Zangrilli, Diana
Zimmerman, Jean