

*"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.