

#### ***IV.           HOW THE CODE IS ENFORCED AT PRESENT***

##### ***Overview***

Under the *Code* at present all human rights claims must be handled by the Ontario Human Rights Commission. The *Code* says the Commission must investigate claims, try to settle them and, if this is not possible, either dismiss claims or send them to hearings in front of human rights Boards of Inquiry.

If a claim goes to a Board of Inquiry, the Human Rights Commission has carriage of the claim, which means that its lawyers present the case and argue what remedy should be given. If claimants do not agree with the position the Commission is taking, they can be represented by their own lawyer, if they have the resources for one.

Boards of Inquiry make decisions to uphold or reject claims and can order remedies, such as back pay or compensation for damage to self-respect.

For many years the Commission has had a backlog of claims causing long delays before claims receive attention. In an endeavour to overcome the backlog, the Commission introduced an "early settlement initiative" by which it tries to quickly settle claims without starting an investigation. According to Commission figures, 55 per cent of claims it closes were closed at the early settlement stage.

In 1991 only 2 per cent of cases were referred to Boards of Inquiry. Of the rest, a total of 66 per cent were settled (at the early settlement stage or later); 20 per cent were withdrawn; 10 per cent were dismissed by the Commission; 4 per cent were abandoned. The Commission advises that in 1992 approximately 3 or 4 per cent of cases were referred to Boards of Inquiry.

If a claim is not settled in the "early settlement initiative", it is usually many months, if not a year or more, before an investigation is begun. The chances of a case being referred to a Board of Inquiry are very low.

All decisions as to whether to refer a case to a hearing or dismiss it are made by the Commissioners themselves. It is usually a long, complicated process involving various different levels of staff, before a claim gets put before the Commissioners for a decision. The claimant is not present when the decision is made.

Because of long delays before cases get investigated, and because claimants have no choice over what happens to their claim and little chance of getting a hearing, many claimants say they feel pressured to accept settlements that they consider unsatisfactory and unfair.

Under the *Code* the Commission has the power to initiate claims of its own. It also has a broad mandate to carry out educational initiatives and give community leadership. Because of the backlog, and because the Commission has responsibility to handle all the many individual claims filed around the province, it has not been able to play a strong, effective role in dealing with systemic discrimination. Nor has it been able to carry out strong educational initiatives to advance human rights.

The Commission told the Task Force that, in its view, the present enforcement system is unsatisfactory and must be changed. The Commission said that it should no longer have control over access to hearings and that equality seeking groups should have the ability to take forward cases in the way they wish. The Commission stressed that it should play a strategic, proactive role in overcoming major problems of systemic discrimination in Ontario.

### ***Profile of the Ontario Human Rights Commission***

As of April 30, 1992, the Commission had a total of 241 employees. 77 staff were working at its head office in central Toronto and the rest in the following Commission offices around the province:

Toronto Central, Toronto East, Toronto West, Ottawa, Kingston, Hamilton, St. Catharines, Thunder Bay, Kenora, Timmins, Sault-Ste-Marie, London, Windsor, Kitchener.

The Commission has set up the following units:

- Communications & Education Unit
- Legal Unit
- Regional Services Unit
- Finance & Administration Unit
- Systemic Investigation Unit
- Policy Unit

The Government provided funds to the Commission in the fall of 1991 to hire a special 48 person task force as a special project to help resolve the case backlog by December 1, 1992.

The Commission has its own employment equity plan. Figures this year, provided to the Task Force by the Commission, show that as a percentage of its total workforce, 40.2 per cent of Commission employees are white females; 15.6 percent are white males; 20.7 per cent are visible minority females; 14.8 per cent are visible minority males; 2.5 per cent are females with a disability; 1.3 per cent are males with a disability; 1.3 per cent are Aboriginal females; 0.4 are Aboriginal males; 2.1 per cent are francophone females; and 1.3 per cent are francophone males.

According to the figures, employees covered by the employment equity plan appear to be represented at the different classification levels. For example, employees of colour represent 22.2 per cent of senior management; 30 per cent of lawyers; 32.6 per cent of human rights officers, assistants and case coordinators.

### ***Profile of Boards of Inquiry***

There was recently created an Office of the Boards of Inquiry in order to coordinate the individual Boards of Inquiry which hear human rights claims. The Commission sends cases to the Minister of Citizenship requesting that they be heard by a Board of Inquiry. The Minister then appoints upon the recommendation of the Chair of this Office. The Office arranges for a hearing.

The Office has currently been developing training for new and existing adjudicators. It also is developing practice and procedure guidelines for hearings.

Adjudicators are chosen to hear each human rights claim on a case by case basis from a list of 37 persons. Members are appointed on a part-time basis. At present some 43 cases are being heard by adjudicators.

The Board of Inquiry Office has six positions. They are: Chair, legal counsel, articling student, registrar, administrator and secretary. The positions of Chair and counsel are both currently part-time positions.