

IX. ENSURING THE INDEPENDENCE AND COMPETENCE OF THE NEW ENFORCEMENT SYSTEM

Rebuilding Confidence in the System

The independence of the proposed new system must be ensured so that it can regain public confidence and trust, and be an effective defender of human rights. This system will include three bodies:

- a restructured Human Rights Commission, "Human Rights Ontario,"
- an Equality Services Board operating Equality Rights Centres, and
- a new Equality Rights Tribunal.

In order to increase the independence of these bodies, an Equality Rights Appointments Committee will be set up to recommend names of qualified people to fill the key senior positions. Strong community involvement in the development, monitoring, and evaluation of these bodies will be a key part of ensuring the system's independence and effectiveness.

The Equality Rights Appointments Committee - Ensuring Effective Appointments

The Task Force believes that the appointment of people with a proven track record of commitment to and expertise in human rights and a sense of integrity and independent thinking is probably the most important factor in establishing independence. The Task Force also believes that safeguards should be built in to protect the integrity of the human rights appointment process.

Appointments should be protected from political influence for a number of reasons. Criticism has been expressed at different times that governments across Canada have appointed people to Human Rights Commissions who lacked qualifications. The Government itself is the biggest employer and service provider in the province and the single largest respondent before the Commission. In addition, governments are subject to pressure from powerful groups in society who may prefer a less effective Commission. Governments, therefore, undergo a conflict of interest when they appoint members of a Commission who are then supposed to be watchdogs over the Government.

In recent years, human rights appointments in Ontario have tended to focus on genuine human rights qualifications, and a welcome, more open, democratic process for all

government appointments has been put in place. However, the Task Force believes a more formal, independent, and specialized process should be specified to ensure the integrity and competence of key appointments in the human rights enforcement system.

First, clear qualifications should be set together with a clear description of the responsibilities to be carried out. The International Covenant on Civil and Political Rights specifies that people named to the Human Rights Committee should have "demonstrated expertise in human rights." The *Quebec Charter of Human Rights and Freedoms*⁹ requires people deciding human rights cases to have "notable experience and expertise in, sensitivity to, and interest for matters of human rights and freedoms."¹⁰

Second, a more independent appointment process should be put in place. Precedents exist that were considered by the Task Force.

The recently abolished Court Challenges Program had an appointment process that operated at arm's length from government, which protected its integrity and competence. The federal government gave an independent agency (the Human Rights Centre of the University of Ottawa) the mandate of naming the Equality Rights Panel and the Language Rights Panel. These panels decided which cases should be funded as test cases on equality rights and language rights under the Constitution. The appointment process used for the Court Challenges Program was strongly endorsed by equality seeking and language minority groups as fair and effective.

Another example of an independent appointment process for naming a body dealing with the rights of a disempowered group was the naming of the Commission on Aboriginal Rights. In order that this Commission would have independence and credibility, the Prime Minister asked former Chief Justice Brian Dickson to consult with First Nations groups and recommend to him the names of who should serve on the Commission.

In the case of the Court Challenges Program and the Commission on Aboriginal Rights, the federal government endorsed the appointments submitted.

The appointment processes used for the Equality Rights Panel, the Language Rights Panel, and the Commission on Aboriginal Rights were adopted to ensure independence and integrity for protecting groups whose rights have been consistently violated. They are reflective of true democracy.

For this reason, the Task Force proposes that a new system be established for the appointment of key persons in the new enforcement system - a system similar to that successfully used for several years by the Ontario government to appoint provincial court judges.

For the choice of provincial judges, the Attorney General named the Judicial Appointments Committee to recruit, consider, and recommend to the Attorney General appropriate candidates to be appointed. The Committee is composed of Ontario citizens from a variety of backgrounds and perspectives. Their mandate is to seek out qualified people who will not

only bring expertise, but also reflect the diversity of Ontario's population and geography. To date, the Attorney General's appointments all have been candidates the Committee recommended.

The Task Force believes that the establishment of an Equality Rights Appointments Committee will provide the necessary measure of public accountability, openness, and community involvement in the appointments process so as to ensure confidence and effectiveness in the system.

The Committee will be composed of a Chair and two members named by the Premier who should be reflective of Ontario's regional diversity. Members should have a demonstrated commitment to and expertise in the equality rights field. The term of the appointments will be three years. Committee members will be remunerated in the same manner as are the members of the Judicial Appointments Committee.

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.**

Independent Status for Human Rights Bodies

In the view of the Task Force, independent status must be guaranteed for the new human rights bodies it is proposing.

At present, the Human Rights Commission does not enjoy independent status. It is classed as a Schedule I Agency with an Executive Director who is accountable to the Deputy Minister of Citizenship on various major financial and administrative matters.

During the consultation process, the Human Rights Commission emphasized the necessity of having independent status so as to be free from any possibility of political interference and administrative obstacles. The Commission informed the Task Force of problems caused by its lack of independence. For example, the Commission does not have control over where its offices are located and cannot even ensure that these offices are accessible. In another situation, the Commission was delayed in publishing certain material while waiting for administrative approval through the government system.

This lack of independence is not acceptable. The new Commission should be given a truly independent status without delay. The Equality Rights Tribunal and the Equality Services Board must also have independent status.

The Task Force considered whether the new Commission and the other human rights bodies it has proposed should report directly to the Ontario legislature, as does the Ombudsman, or to the legislature through the Minister of Citizenship.

The Task Force also gave consideration to the idea of a particular Minister being named Minister of Equality Rights, who would have responsibility for the whole area of equality rights. This option is discussed as a future possibility in Section XXI.

Because government has a key role to play in advancing and implementing human rights, the Task Force concluded that the best option was for the Commission to have a fully independent status and to report to the legislature through a designated Minister.

The Ontario government is currently in the process of revising the accountability structure for the agencies it funds. A new Schedule IV is being developed by Management Board of Cabinet for agencies that require, due to the nature of their responsibilities,

- independence from the Government with respect to policy making and administrative support,
- public accountability for their funding and overall operations, and

- protection for their unionized and non-unionized staff by inclusion of these staff in the *Public Service Act*¹¹ and the *Crown Employees Collective Bargaining Act*¹².

The Task Force understands that a further schedule is being developed to ensure the same independence and protection for Tribunals that are currently excluded from collective bargaining rights.

The Task Force was also mindful of the need to ensure that any new structures it recommends do not affect the collective bargaining and employment protections of the current staff of the Commission.

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*.**