

## 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.