

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.