

XI. PROVIDING SUPPORT FOR CLAIMANTS

Claimants need Advocacy Services

Advocacy services must be provided for people with human rights claims for a number of reasons.

First, it has been public policy for many years that human rights claimants should receive publicly funded assistance to bring their claims forward. This was evident in the creation of the Ontario Human Rights Commission with its mandate to investigate and try to settle claims and at times assign lawyers to argue claims before Boards of Inquiry.

The current method for providing assistance to claimants lets the Commission decide which claims should go to a hearing and be represented by a lawyer. This system has not worked well and must be changed. Yet it is important that the good and essential features of the system are not lost in the reform process.

The public commitment to funding representation for human rights claims is crucial and should be continued. It represents an important statement by Ontarians that discrimination is a societal problem requiring publicly funded solutions.

Second, many if not most people who make a human rights claim need assistance and support. Often they feel hurt, angry, confused and afraid. Without assistance, they cannot enforce their rights. Opening up access to a hearing may be a hollow achievement if support and advocacy are not provided.

In the context of human rights claims, the principal job of the advocate is twofold: provide the individual with information about the system, the *Code* and the law in general, so that the individual can make informed choices; and represent the claimant throughout the claim process.¹⁸

The kind of advocacy services needed will depend on the characteristics of the individual, the nature of the claim, and the complexity of the system. More services will be needed where there are, for example, language, cultural, or disability-related barriers to communication, a history of unredressed discrimination, and an overtaxed or complex claims system.¹⁹

A third reason why advocacy services are essential is that, without them, the hearing process for rights claims at the Equality Rights Tribunal will have difficulty functioning efficiently and fairly. While staff of the new Tribunal can and should provide information about how their system works, it would be wrong to suggest that they can fill an advocate role. In order

for claims to proceed efficiently at the Tribunal, claimants must have access to trained, publicly funded advocacy services.

Properly trained advocates will not only help prepare claims to go before a hearing, but will also assist in resolving claims through various means of mediation. They will refer people to other services if the issue they raise does not come under the *Code*.

Lay advocates now currently work throughout the community legal clinic system providing advocacy services before a variety of administrative tribunals. However, the clinic system has not to date developed any substantial expertise in lay advocacy for human rights claimants.

The Equality Rights Centres will be primarily staffed by lay advocates and some lawyers. The Task Force believes that it is necessary for training courses to be established to develop expertise and certification as an equality rights lay advocate. This training and certification could be provided through the community college system which has colleges throughout Ontario.

A precedent exists in the pay equity context for using the community college system to deliver training services. The Pay Equity Commission developed an extensive manual on techniques for developing pay equity plans and provided them free of charge to the Community colleges who then gave courses around the province based on the manual.

The Commissioners for Advocacy Services and Education could cooperate in preparing such training materials and establishing a training and certification system.

Lay advocates who receive certification from such courses could then work in Equality Rights Centres, as well as in the centres of special expertise and the community groups.

Advocacy Services should be Community-Based

The Task Force believes that community-based advocacy centres will provide better, more accessible and more supportive assistance to people with claims of discrimination. Such centres will have a clear, unambiguous role, will be user friendly and accountable to those they serve.

Intake staff, lay advocates and lawyers, who have a strong human rights background and commitment, will provide information and help. The *Code* should be amended to clearly protect the confidentiality of the work carried out by community human rights staff. For example, the *Code* might state:

Any communication between a human rights claimant and a community human rights employee, employed at an agency funded by the Equality Services Board and assisting that person with her or his claim, shall be treated as confidential.

In considering how advocacy services could best be delivered, the Task Force applied the following principles:

... community participation and regional access ...

Many different groups experience discrimination and need advocacy services. Their expertise and involvement are essential.

... independence ...

People using advocacy services need to have confidence that the service is committed to serving them and does not have conflicting interests.

... consumer orientation ...

A consumer controlled service is better able to respond quickly and sensitively to consumer needs and to reflect regional issues and concerns.

... integral part of system ...

Advocacy services must be an integral and permanent part of the human rights enforcement system.

... accountability ...

Advocacy services are crucial to the new enforcement system and provision of such services must be publicly accountable.

... maintenance and quality of service must be ensured ...

In order to ensure consistent, high quality delivery of advocacy services, the services must comply with public standards.

... integration with other equity advocacy services ...

Advocacy services for human rights claims should be provided in a way that allows for other equality issues such as employment equity and pay equity, to be included, if considered appropriate.

Need for Integrated Overall Enforcement System

While advocacy services should have strong community input and be independent from government, they would benefit by being integrated into an overall enforcement system as this would strengthen accountability, funding and province-wide standards.

The Task Force considered the following possible ways to provide advocacy services, but found each has certain drawbacks:

Options Rejected

... inclusion within existing clinic system ...

If the Centres were run under Ontario's Clinic Funding System, their independence and their identity as an integral part of the human rights enforcement system would be lost, as the clinic system has to respond to a variety of urgent cases involving different laws. The clinic system has not to date given any priority to representation of human rights claims. The Task Force believes, however, that the experience and expertise of community legal clinics, funded by the Clinic Funding System, could be very helpful. Strategic partnerships could be entered into with these community legal clinics and they could possibly provide assistance to human claimants in remote areas or where there is an overload of work.

... individual centres with community boards ...

The Task Force was attracted by the possibility of individual independent centres with their own community Boards, reflective of their region, and accountable to a central body which sets standards of operation and quality. While such centres would have the advantage of being closely connected with their community, they would not be able to meet overall provincial priorities and would be particularly vulnerable to cut-backs by governments.

... operated directly by the Commission ...

Another option would be to assign direct all responsibility for advocacy services to a specific Human Rights Commissioner who would be advised by a Board representing the different regions of the province. The Commissioner would be required to seek the advice of the Board. This option could once more, however, lead to conflict in the Commission's role. Lay advocates directly employed by the Commission, might take a position for a claimant which conflicted with a position taken by the Commission, acting in the public interest in the same case.

Need for an Equality Services Board

The Task Force therefore recommends the establishment of an independent provincial Equality Services Board, similar to the Ontario Training and Adjustment Board (OTAB).

The Board would have the operational responsibility for planning, coordinating and delivering the advocacy services needed by the claimant community in Ontario.

In order to coordinate its role in the overall enforcement system, the Board would report to the Commissioner for Advocacy Services and be funded by the Commission. The Board would be required effectively to seek the advice of the equality seeking communities within the regions of Ontario. This advice might be provided by setting up an advisory committee for each region or by another appropriate consultation process.

This structure will, in the view of the Task Force, provide the most advantages and the least disadvantages. It will draw the benefits of community involvement and control, in partnership with the Commission; it will establish a mechanism for Commission accountability for the overall provision of advocacy services; it will be strengthened by having a consistent, province-wide base.

Structure

The twelve part-time members and full-time Chair of the Board will reflect the claimant community (the people and groups whose equality rights are protected by the *Code*) and the regions of Ontario. There should be two from each of Ontario's six regions. A possible division for the six regions is the division used by the Ontario Advisory Council on Women's Issues namely Northwestern and Northeastern Ontario and four regions in Central and Southern Ontario. To ensure their independence, they will be appointed by the Equality Rights Appointment Committee. They will be required to have a strong background in human rights, community development and advocacy services.

Roles of the Commissioner and the Board

The Commissioner for Advocacy Services will be responsible to monitor the quality of service provided and, in particular, ensure that services are delivered in a fair, efficient, accessible and coordinated way to all parts of the province and for all grounds and issues covered by the *Code*.

The Commissioner will

- advocate for the necessary resources for the Equality Services Board to provide appropriate services to human rights claimants around the province and special funding for community groups to bring forward significant cases;
- set, monitor and evaluate the overall guidelines and standards for the delivery of equality services, including the Centres;
- work in partnership with the Equality Services Board and sit as an ex officio member on it;
- Have overall responsibility for establishing training services and certification for equality rights lay advocates through the community college system; and
- provide an annual report to the Commission Advisory Council on advocacy services provided to the community.

With the advice of equality seeking groups, the Board will:

- develop operational guidelines for the provision of advocacy services;
- set up advocacy services around the province in ways that best meet the needs of human rights claimants and best advance the equality rights of disadvantaged groups;
- determine priorities for advocacy services and assign monies to the six regions;
- set up and administer a Significant Case Fund to allow equality seeking groups to take forward important cases;
- assist equality seeking groups to meet on a regular basis so as to evaluate progress in human rights enforcement in the province and develop strategies and priorities;
- request and allocate funding for the advocacy services and other kinds of support provided to equality seeking groups;

- ensure proper training for equality rights lay advocates and persons who wish to become such advocates;
- provide a report each year to the Commissioner for Advocacy Services which will be included in the Commission's annual report to the Legislative Committee on Equality.

Services to be Provided by the Equality Services Board

... Equality Rights Centres ...

Equality Rights Centres across the province will play a major role in providing advice, assistance and advocacy to human rights claimants. They will have well-trained intake staff, lay advocates and lawyers who will be employed by the Board. They will assist claimants to resolve their claims in a way satisfactory to them. This might mean helping to bring about a settlement of the claim or preparing it for a hearing before a human rights adjudicator. Staff at the Centre will file claims with the Tribunal, gather evidence, interview witnesses, take statements, serve claims on respondents. They will represent claimants at hearings.

The Centres will endeavour to serve everyone with a claim under the *Code*, but will be able to prioritize their caseload depending on resources and the importance and complexity of the case. They will also assist people to find other services and resources. They will report regularly to the Board on their activities and, in particular, any difficulties they experience in fulfilling their mandate.

... development of specialized expertise ...

Some equality seeking groups have already developed centres of special expertise on equality rights. Examples are the Advocacy Resource Centre for the Handicapped, the Centre for Equality Rights in Accommodation, the Urban Alliance on Race Relations, the Women's Legal Education and Action Fund. These centres have an impressive track record in providing effective advocacy, research, resources, expertise, and training to advance the equality rights of the group they represent. They have provided a key function in the enforcement system for many years with minimum recognition or funding to recognize that role.

The Task Force believes it would be a strategic and productive use of resources to support existing, or develop new, centres of specialized expertise for each major area of discrimination covered by the *Code*. For example, there could be special centres of expertise on the following issues:

disability; gender; race; lesbian and gay; age (discrimination against both youth and seniors); housing; record of offences.

Creativity and innovation should be used in developing and making use of this expertise. For example, computer technology would be a means of rapidly and efficiently communicating and disseminating information. Equality centres around the province could then readily access the special expertise, when needed.

A specialized centre might be free-standing or it might be a unit at one of the generic Equality Rights Centres or at a legal clinic or in an existing community organization.

The Task Force believes that specialized centres of expertise will help advance equality rights in a carefully planned, strategic manner. They will also help ensure that the different grounds covered by the *Code* are given attention and assistance.

For example, very few cases have gone forward in Ontario, or anywhere else in Canada, on the issue of discrimination against people with a record of offences. This kind of discrimination is prevalent and serious, but has been neglected because those affected have few resources to challenge it. Directing some resources to develop special expertise on this issue would assist well informed advocacy to implement this right.

The development of specialized expertise in different areas will:

- support effective advocacy to advance the rights of the particular groups by initiating important cases;
- develop expertise by carrying out research, collecting resource material, developing networks of experts, gathering statistics and data;
- promote awareness and understanding by informing members of the groups of their rights;
- promote compliance by preparing and disseminating (sometimes for a fee) high quality, up-to-date information to the general public and decision-makers (employers, service providers, governments, unions, etc.)
- carry out training programs and prepare and disseminate training materials; and
- act as a resource to the Equality Rights Centres, legal clinics, and community groups and assist them in preparing and arguing cases.

The centres of special expertise will be part of the overall delivery system of human rights services. The Equality Services Board will work with the particular affected group to develop them. Organizations that already play this role can apply to the Board for recognition and funding as a centre of expertise.

... funding community groups ...

The Task Force was told many community organizations already perform a lay advocate function for claimants.

Community advocacy groups who wish to provide advocacy services to human rights claimants will be able to apply to the Equality Services Board for funding to do so. The Board will consider such requests in the light of the needs of the overall system; the volume of claims in an area; special skills brought by a group; and cultural, geographic and disability-related barriers the group can help overcome.

By funding a community group - such as a group that works with homeless people or with refugees - the Board will be better able to reach out and provide service to groups who are particularly fearful or unaccustomed to approaching usual services. Funding a community group, when appropriate, will give the human rights system flexibility and variety in providing advocacy services. It will also mean the Board's resources will be used to maximum advantage. For example, where the volume of work does not justify setting up an Equality Rights Centre, an existing community group could receive funding to include human rights advocacy in the services it already provides. People in the area would then have direct access to a more locally-based service.

... other ways of providing advocacy services ...

Using its knowledge and imagination, the Board will use a variety of means to provide advocacy services in particular situations. It may, for example, enter into an agreement with a community legal clinic in an area where the small number of human rights claims and the limits on its resources make it inadvisable to open up its own centre. It may choose to provide advocacy services by having an advocate on duty at the Tribunal itself.

... Significant Case Fund ...

Another resource the Equality Services Board will provide is a Significant Case Fund. This Fund will allow equality seeking groups to initiate important test cases to advance the equality rights of groups protected by the *Code*. The Board will publicize, manage and distribute these funds. The purpose of the Fund will be to ensure that advocacy resources are used productively by targeting significant cases and by utilizing community expertise.

... funding meetings of equality seeking groups ...

Another important part of the Board's mandate will be to organize each year a meeting of equality seeking groups to review human rights progress to date and set the course for

advocacy in the upcoming year. People from around the province, representing the various equality seeking groups covered by the *Code*, will meet and work together to decide strategies and priorities to advance human rights. In assessing what has been achieved in the previous year, the participants will review the work of the Human Rights Commission, the Equality Services Board and the Equality Rights Tribunal.

The meeting will be substantive, probably lasting two or three days. The Human Rights Commissioners will participate for part of it in order to share in discussions and benefit from broad-based community input.

The Equality Services Board will widely distribute throughout the province the report and recommendations of this meeting.

The Board will also organize and fund special meetings of equality seeking groups to share ideas and develop strategies on particular issues of concern to their mandate.

Board must be Responsive to Regional Concerns

The Board's structure of having two members from each of six regions in the province will be a key vehicle for building in regional access.

The Board will also be required to take measures to ensure it is responsive to regional concerns in its provision of advocacy services. The Board may wish to establish Regional Community Advisory Committees for this purpose, but the method for ensuring its accountability to regional issues should be left to the Board itself.

Standards

The Commissioner for Advocacy Services will set general overall public standards for advocacy services with specific standards for the centres, such as the following:

... general standards ...

- The purpose of the services is to help claimants express and act on their own wishes and become informed and exercise their equality rights.
- Local communities and community organizations should be enabled to provide their own advocacy services whenever possible.

- Aboriginal communities should be enabled to provide their own advocacy services whenever possible.
- Strategic partnerships should be entered into with other service providers which have related roles - for example community legal clinics, Legal Aid, community advocacy groups, advocates under the *Advocacy Act*.

... specific standards for centres ...

- A *Code of Ethics* will ensure that staff are respectful and welcoming to members of all the groups protected by the *Code*.
- A *Code of Ethics* will ensure strict standards of confidentiality are respected.
- The service will reflect a consumer oriented philosophy. People using the service will be asked to give their evaluation of the service. They will be invited to give comments and suggestions for improvement.
- Staff will be specially trained in the field of equality rights advocacy and the issues and concerns of the persons and groups protected by the *Code*; they will have sensitivity to racism and ethnic discrimination, sexism, homophobia, disability discrimination, classism, ageism, and other forms of prejudice.
- Particular attention will be paid to ensure claims from people who experience multiple discrimination are treated in an effective and holistic manner, for example, a claim from a woman of colour who has experienced discrimination as a woman and as a person of colour.
- Priority will be given to including among the staff, persons from the groups protected by the *Code* and persons who have themselves experienced discrimination.
- Advocacy services will be provided so as to be accessible to persons with disabilities, person who speak languages other than English or who have literacy barriers, persons who are poor, persons who are particularly afraid or vulnerable, such as refugees.
- Public information programs and strategies for community development will be integrated into the provision of advocacy services.
- Community-based mediation or alternative dispute resolution measures, based on clear human rights standards, will be used when claimants so wish.

Options Should be Provided

The system recommended by the Task Force will provide claimants with a variety of ways to obtain assistance. For example, claimants could choose to:

- retain their own lay advocate or lawyer to represent them either with their own funds or through Legal Aid;
- seek assistance from a publicly funded Equality Rights Centre in their region;
- seek assistance from a community advocacy organization with which they are familiar, such as the Chinese Canadian National Council, the Canadian Jewish Congress;
- seek assistance from an existing community Legal Clinic; and
- represent themselves.

This need for options was strongly identified by the research prepared for the Task Force by the Inter-clinic Committee on Human Rights Law Reform.²⁰

The variety of advocacy services will help overcome different cultural and geographic barriers and better meet claimants' needs. Imaginative and flexible approaches, as well as the use of modern communications technology, will help make advocacy services available in every part of the province. Clear mechanisms for setting standards and monitoring will help ensure the quality of the services provided.

Advantages of the New System to Provide Advocacy Services

- Accessibility of the claims procedure.
- Competent and creative legal advice will enable important equality issues to come forward and will discourage unfounded and inappropriate claims.
- Better prioritization of issues because of involvement of equality seeking groups in planning and monitoring the system.
- A more supportive environment for claimants, making the process more affirming and empowering.
- An important role for equality seeking groups to take forward significant cases which will have broad impact.

- Better ability to eliminate the backlog by the removal of unnecessary steps in the present process.
- More effective mediation by removing intermediaries and confusing roles.
- Development of special expertise in particular areas of discrimination, and the sharing of this expertise with everyone in the system.
- Built-in quality control mechanisms and accountability to users.
- Earlier identification of systemic issues by informed advocates.
- A fair and prompt hearing of all sides of claims.
- More appropriate and effective remedies.
- A more cost-effective and predictable environment for respondents.²¹

RECOMMENDATION (6):

- **A province-wide system of community based publicly funded advocacy services should be set up to assist human rights claimants.**
- **An independent Equality Services Board should be established which will have operational responsibility for planning, coordinating and delivering the advocacy services needed by the claimant community in Ontario.**
- **The advocacy services provided should include Equality Rights Centres around the province, special centres of expertise, partnerships with community and advocacy groups.**
- **The Board should establish a Significant Case Fund which will allow groups to initiate test cases to advance the equality rights of groups protected by the *Code*.**
- **The Board should report to the Commissioner for Advocacy Services. The Board should provide the Commission with an annual report to be included in the Commission's annual report to the Legislative Committee on Equality.**
- **The Commissioner for Advocacy Services should be overall accountable for the proper functioning of the claimant advocacy services system. The Commission should ensure that a significant portion of its budget each year is set aside for the necessary funding of claimant advocacy services.**

- **Training courses and a system of certification should be established through the Community College system for Equality Rights Lay Advocates who will be primarily responsible for the delivery of advocacy services to claimants.**
- **Any communication between a human rights claimant and a community human rights employee, employed at an agency funded by the Equality Services Board and assisting that person with her or his claim, shall be treated as confidential.**
- **Specialized expertise should be created or existing expertise funded for major areas of discrimination such as race, gender, disability, lesbian and gay, age, housing, record of offences.**
- **The Equality Services Board should be responsible for certifying and funding this expertise.**