

XVII. HOW THE NEW CLAIM SYSTEM WORKS

For Individual Claimants

Individuals wishing to make a rights claim will contact the Equality Rights Centre in their area, or a person or organization of their choice, in order to get help and advice.

The existence of the Equality Rights Centres will be widely publicized. Community groups, community information centres, libraries, legal aid and law offices, government offices, and other public services will be given information on where the Centres are located, what they do, and how to contact them. They will be asked to post flyers about the Centres and to have the information available in alternate media.

Groups who experience discrimination will be targeted and provided with information about the Centres and how to reach them.

The Centres will be clearly listed in the phone books in the area they serve; for example, they might be listed both under Equality Rights Centres and under Human Rights Services.

The Centres will be accessible to people throughout their region by a 1-800 number.

In addition to the Centres, certain community groups (called human rights partners) and community legal clinics may be funded to provide assistance to claimants.

Individuals will also have the option of getting their own lawyer, applying for a legal aid lawyer, or obtaining assistance from a community group.

An advocate with human rights expertise at the Equality Rights Centre, or the group or lawyer contacted by the individual, will provide advice as to whether the claim comes under the *Code*. If so, the advocate discuss with the claimant the nature of the claim, what supporting evidence exists, what the claimant wants as a remedy, and how the claimant wants the claim resolved.

The advocate will discuss the strengths and weaknesses of the claim with the claimant. She or he will provide advice on the different options available and the results that are likely to be achieved.

If the person wants to try to settle the claim without going to a hearing, the advocate may do one of two things: initiate settlement discussions herself with the respondent or through a community mediation service; or contact the Mediation section at the Equality Rights Tribunal in order that informal mediation may be attempted either by sending out a trained

mediator, or by using regional mediation services that have been recognized as meeting proper standards. An alternate approach to dispute resolution can also be used, if the parties so choose.

If settlement is not possible, the advocate will provide assistance for the claimant to take the claim to the Equality Rights Tribunal for a hearing.

All Equality Rights Centres and partner groups will have fax machines and computers with modems in order to have immediate access to the Equality Rights Tribunal both to send and receive documents. They will have claim forms, information leaflets, and a variety of resources to inform and assist people in taking forward human rights claims to the Tribunal. Leaflets will include information on what kind of information is typically required at a hearing; what a hearing is like and how it works; and what kinds of evidence are usually looked for in cases involving, for example, sexual harassment, denial of rental, and discrimination in service provision.

Community legal clinics, legal aid offices, and community groups will also have claim forms and the ability to access the Tribunal.

The nature and extent of the support will differ according to the complexity and seriousness of the particular claim. Most claims will be represented by lay trained advocates (paralegals). Lawyers may handle more complex cases.

In a straightforward case, the advocate will assist the claimant in drawing up and signing the claim, will serve the claim on the respondent, will arrange for discovery and disclosure, and will contact the Tribunal to arrange for a hearing.

In an urgent situation, the advocate will contact the Equality Rights Tribunal for a hearing to be scheduled as quickly as possible and an order made. If necessary, a fuller hearing can be scheduled at a later date.

At the hearing, the advocate will argue the case on behalf of the claimant.

A claim made by an individual can, in fact, raise issues of broad, systemic discrimination. If the claim is complex and needs further investigation, the advocate will arrange for an initial hearing and ask the Tribunal human rights adjudicator to order further, specific investigation to be carried out by an officer of the Tribunal. An appropriate date will be set for the full hearing of the case once the investigation is complete.

If, at any time, the claimant and the respondent wish to settle the claim, the advocate will assist the claimant in achieving a proper settlement.

A claim will be dismissed, in, at most, three ways. First, in the Equality Rights Centres, an advocate and, if necessary, the advocate's supervisor will tell the claimant that the claim is without merit. If the claimant persists, the advocate will assist in filing the claim but will not

represent the claimant. Second, in the Equality Rights Tribunal, if the Registrar cannot informally convince the claimant that the claim is without merit, the Associate Chair responsible for the Adjudication Section will formally advise the claimant. Third, and only if the claimant does not heed the Associate Chair's advice, an initial hearing be held at which an Associate Chair will render a decision as to whether the claim is without any merit.

For Group Claimants with Systemic Cases

If an equality-seeking group wishes to have a claim of systemic discrimination go forward, it has a number of options for initiating the claim.

If the claim is a major claim of systemic discrimination and the group is already overwhelmed by a variety of critical issues, it can ask Human Rights Ontario to initiate the claim, particularly if it is a major claim of systemic discrimination.

A second option is for the group to ask an organization with special expertise in the particular kind of discrimination involved to initiate the claim. Another option is for the group to take forward the claim itself, in a third-party claim.

A number of options are also available for how best to pursue the claim. The group may have legal advocates and resources of its own to pursue the case or it may wish to request the assistance of an Equality Rights Centre or the organization with special expertise in the area.

Another option is to request the Equality Services Board to provide special project funding from the Significant Case Fund to enable the group to take forward the case as an important test case with potential to significantly advance the rights of all members of the disadvantaged group.

Using the resources it has chosen, the group will prepare the case, obtain as much supporting evidence as possible, and arrange for discovery and disclosure to take place.

The group will then contact the Tribunal for a hearing. This can be done either directly, if the group has claim forms, or through an Equality Rights Centre or community partner.

If necessary, the group will ask a Tribunal human rights adjudicator to order that further investigation be carried out by a Tribunal Officer or ask the adjudicator to arrange for further discovery and disclosure to take place.

For Claimants Challenging Equality Initiatives

Claims are sometimes made by individuals and groups, attacking equality efforts to help disadvantaged groups. For example, a man can allege that a self-defence course for women, or a therapy counselling session for women, denies him his equality rights.

The *Code* already clearly states that special programs, designed to "relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity,"⁶⁹ are permissible.

In addition, as the Task Force has recommended in this report, the preamble to the *Code* should be amended to make clear that its purpose is to overcome historic and present widespread disadvantage and discrimination experienced by certain groups. A claim that attacks a genuine measure directed at achieving equality rights would therefore be outside the *Code*.

An Equality Rights Centre that is asked to assist an individual or group wishing to make such a claim will act in the same way as for any other claim that, in its view, falls outside the *Code*. (See the subsection *For Individual Claimants* above).

For the Human Rights Ontario Claimant

Human Rights Ontario will be able to initiate claims of systemic discrimination, using its own staff to research and develop the case and represent it at the hearing. It will also have its own powers to investigate and compel production of documents.

Additional information may be obtained by means of the discovery and disclosure process. In addition, at an initial hearing before the Tribunal, Human Rights Ontario will ask the adjudicator to order that whatever further investigation is needed be carried out by a Tribunal Officer.

At a later full hearing, its lawyer or advocate will argue the case on behalf of the public interest.

For Respondents

When an individual or organization is informed of a claim alleging that they did not respect a person's right to equality under the *Code*, the individual or organization will be able to contact the Compliance Services Unit at Human Rights Ontario.

The Compliance Services Unit will have clear, up-to-date, easy-to-understand information on what the *Code* requires and how the *Code* is enforced. Leaflets and alternate media will provide information in a non-legalistic, non-adversarial manner on what is required in the different areas covered by the *Code* (employment, services, housing, membership in unions and professional associations), as well as on the different kinds of discrimination that occur (racial discrimination, discrimination against people with a disability, and so on.)

The Unit will also have information on the different resources available, how they can be accessed, and how they operate. For example, the person will be able to obtain information on the mediation services offered at the Tribunal, as well as on how the hearing process works.

Before being named respondents, individuals and organizations can deal proactively with a human rights matter that they believe may be raised against them. Two options in the human rights system are available to them. They can contact either the Equality Rights Centre assisting the potential claimant or the Equality Rights Tribunal's Mediation Section. They can ask the Centre assisting the potential claimant if an informal process can be adopted to resolve the matter and eliminate the need to file a claim. Alternatively, they can ask the Mediation Section to provide informal mediation services. This Section will either provide the potential parties with a trained mediator or refer them to approved community-based mediation services. By pursuing either option, potential respondents and, indeed, potential claimants may be able to avoid adjudication altogether or, at a minimum, resolve some issues before they adopt entrenched legal positions.

Once a claim is filed, respondents will receive from the Tribunal Officer assigned to the claim

- information on the Mediation Section if they did not use it prior to the filing of the claim,
- information on the adjudication process, and
- information on the Tribunal's disclosure requirements.

The Tribunal Officer will ensure that respondents and claimants are prepared to proceed quickly at both the initial hearing and the full hearing.