

XXI. PROACTIVE ROLE OF GOVERNMENT AND MAJOR PUBLIC BODIES

Strong, Positive Leadership on Equality Rights

Many of the submissions the Task Force received from both claimant and respondent groups stressed the need for the Government itself to be a human rights leader in its policies and practices. The government should, in partnership with the affected groups, take strong, positive measures to achieve equality rights in every area under its control.

The Task Force agrees that the Government of Ontario and major public bodies should set a clear example of leadership to advance equality rights. Both as the representative of the people of Ontario, and as the largest employer and provider of services to the public, the Government has a special obligation to implement a comprehensive, positive plan of action to overcome discrimination. It is currently the most frequent respondent under the *Code*. The government must be the Government of *all* the people of Ontario, including those who lack social, economic, and political power.

The government has, in fact, recognized its special leadership obligation and has undertaken a number of important equality initiatives. The Task Force applauds these positive initiatives and encourages the Government to pursue them vigorously.

At the same time, there are still very serious and systemic inequalities arising out of the Government's employment, services, policy, law-making, and funding functions.

To assist the Government in correcting these discriminatory practices and policies, The Task Force recommends that the Government adopt a comprehensive, coordinated plan to advance equality rights.

The government should require positive action to be taken in all areas under its control in order to overcome present patterns of entrenched discrimination and to ensure that members of discriminated against groups benefit equally and fairly from government job opportunities, services, and policies at all levels.

As part of this plan for action, the Task Force believes there should be a structure in place to ensure that the Cabinet Office is able to effectively direct and coordinate the Government's overall strategy throughout the Government's decision-making, whether it be in the development of policies, practices and laws, in the provision of services, or as an employer.

One way of facilitating this direction is by setting up an Equality Committee of Cabinet, which could include the Premier, the responsible Minister, and other key ministers such as Minister of Health, Minister of Community and Social Services, the Chair of Management

Board, and the Treasurer. This option would be particularly useful if there was also a Minister of Equality to whom all the equality agencies would report or report through.

Another way is for the Premier to give all the existing committees of Cabinet, including the Justice Policy Committee or the Social Policy Committee, a specific and structured mandate to consider and coordinate all equality issues in their development and discussions of policy in their subject areas.

In looking at the options in this area, it is important to respect the struggle of the black and visible minority community to gain improvements in their ability to influence the Government on anti-racism policies. This effort led to the recent recommendation by Stephen Lewis, Advisor on Race Relations to Premier Bob Rae, to re-establish the previous Cabinet Committee on Race Relations. Such a specific focus on race relations is badly needed at the highest levels of government. At the same time, there are many other groups covered by the *Code*, the disabled community particularly, who have also asked for and need such high level access.

The Task Force believes that the Government should consult with the community to determine what would be the most appropriate mechanism to ensure ongoing cabinet accountability.

Whatever mechanism is used, the senior Minister designated with responsibility under the *Code* should be accountable for the work of the Cabinet Office in this area. On behalf of the Cabinet office, the Minister would receive and monitor equality reports from every ministry and from specialized equality agencies, such as the Anti-Racism Secretariat, the Office for Disability Issues, the Women's Directorate, and the Office for Seniors' Issues.

The responsible Minister would submit an annual Equality Rights Report to the Legislature. This report should be distributed to the community and to an all-party Committee of the Legislature on Equality Rights.

The Legislative Committee should invite members of equality seeking including groups to appear before it to give their assessment of the Equality Report and the Government's performance in equality rights, as well as their recommendations for improvements.

Each year, the Legislature should have a day of debate on equality rights, which could take place at the time the Equality Report is tabled in the legislature.

The Equality Report should be submitted to the United Nations as part of Ontario's reporting obligations under international human rights covenants.

It should be noted that an all-party Standing Committee on Human Rights and the Status of Disabled Persons exists at the federal level. This Committee holds hearings into important human rights topics, invites members of equality seeking groups and other experts to appear before it, and tables reports with its recommendations in the House of Commons. At times, the Committee travels across the country holding hearings. The Committee has played an

important role in focusing attention on particular human rights issues and monitoring government performance. It has helped give human rights a higher profile in general and has had a positive influence in bringing about law reform.

The Task Force believes an all-party Legislative Committee on Equality Rights could act as a watchdog and be a positive force to advance equality rights in Ontario. It should review and hold hearings on the performance of Human Rights Ontario, the Equality Services Board, and the Equality Rights Tribunal. It could also review the performance of Pay Equity Commission and the Employment Equity Commission.

RECOMMENDATION (63):

- **The Government of Ontario and major public bodies should play a leadership role in advancing equality rights in the province.**
- **The Government of Ontario and major public bodies should require positive action to be taken in all areas under its control in order to overcome present patterns of systemic discrimination and ensure that members of discriminated against groups benefit equally and fairly from government job opportunities and services at all levels.**
- **The Premier mandate the Cabinet Office in consultation with the community to establish a mechanism to develop a coordinated strategy to advance equality rights, to ensure the integration of that strategy throughout the Government's decision-making (including the development of policies, practices and laws, the provision of services and/or employment practices), and to monitor the Government's performance in advancing equality rights.**
- **On behalf of the Cabinet Office, the Minister would receive and monitor equality reports from every ministry and from the specialized equality agencies, such as the Anti-Racism Secretariat, the Office for Disability Issues, the Women's Directorate and the Office of Seniors Issues.**
- **The Government, through the Cabinet Office and the responsible Minister, should submit an annual Equality Rights Report to the Legislature. The Report together with the Commission's Annual Report should be widely distributed and be submitted to the United Nations as part of Ontario's reporting requirements under international human rights covenants.**
- **An all-party Legislative Committee on Equality Rights should be established to provide a forum and to monitor and advance equality rights in Ontario.**

- **The Legislative Committee should invite members of the community, including equality seeking groups, to appear before it to give their assessment of the Equality Report and the Government's performance in equality rights, as well as their recommendations for improvements.**
- **Each year the Legislature should have a day of debate on equality rights, which could take place at the time the Equality Report was tabled in the legislature.**

Coordination of Equality Enforcement

A number of different laws, policies, and programs dealing with equality rights have been put in place by the provincial government at different times over recent years, and there is significant overlap in their functions. For example, the *Human Rights Code* is not the only law in Ontario dealing with equality rights in employment. The *Pay Equity Act* and the anticipated *Employment Equity Act* also protect certain groups from discrimination in the workplace.

In addition, a number of provincial government agencies have been created with the specific mandate to advance equality rights for a particular group, for example, the Ontario Women's Directorate, the Office of Disability Issues, the Anti-Racism Secretariat, and the Office for Seniors' Issues.

Some of these separate agencies were originally set up not only to provide a distinct focus but also partly because of lack of confidence in the Human Rights Commission's ability to provide the necessary focus, expertise, and attention. The Pay Equity Commission and Pay Equity Tribunal were set up so that the new pay equity process would not be bogged down in the Commission backlog. The Anti-Racism Secretariat seems to have taken the place of the original Race Relations division of the Human Rights Commission, which still exists in the *Code*. The Employment Equity Commission is being set up as a separate agency outside the Ontario Human Rights Commission.

The Task Force believes the work of these different agencies should be coordinated so as to achieve the maximum benefit and help underline a unified, principled approach to equality rights.

For example, the hearing process for cases under the three equality rights laws (*Human Rights Code*; *Employment Equity Act*; *Pay Equity Act*) should be coordinated under one Equality Rights Tribunal. This recommendation is treated in greater depth in Section XVI.

In the areas of education, research, community development, and proactive initiatives, the work of the different equality agencies should also be coordinated.

The Chief Commissioners for Pay Equity, Employment Equity and Human Rights should meet regularly and establish a mechanism for their respective staff to coordinate any overlapping law enforcement and education functions.

The Task Force believes that three Commissioners should also meet regularly with the head of the Anti-Racism Secretariat, the Women's Directorate, the Office of Disability Issues, and the Office for Seniors' Issues to coordinate responsibilities with these government education and policy development bodies.

For example, if the Anti-Racism Secretariat is carrying out extensive consultations around the province on ways to combat racism, it might include human rights as part of the discussions. This could provide valuable feedback to the new Commission and prevent wasteful duplication of effort, as well as unnecessary demands on the communities being consulted.

The Chief Commissioner should be responsible for coordinating projects with other equality agencies so activities are planned strategically.

RECOMMENDATION (64):

- **The work of the various equality agencies should be coordinated, both in enforcing rights and in education, research, community development, and proactive initiatives.
A regular mechanism should be put in place for ongoing coordination and cooperation.**
- **The Chief Commissioners for Pay Equity, Employment Equity, and Human Rights should meet regularly and establish a mechanism for their respective staff to coordinate any overlapping law enforcement and education functions.**
- **The Cabinet Office should establish a coordination mechanism that would allow for regular meetings of all provincial government agencies that have the specific mandate to advance equality rights for particular groups protected by the *Code*, such as the Ontario Women's Directorate, the Office of Disability Issues, the Anti-Racism Secretariat, and the Office for Seniors' Issues.**

Proactive Responsibilities of Each Ministry and Major Public Body

... equality audits ...

The Ontario government has already recognized the importance of requiring each ministry and agency to adopt and implement clearly stated employment system reviews or audits to identify and rectify systemic employment barriers.

The Task Force believes this approach should be strengthened and extended to require ministries and agencies to adopt and implement clearly stated system reviews or audits for the other areas of obligation they have under the *Code*. This would include a service equity plan for services provided or overseen by the Ministry or major public body. (See Section XXII, Proactive Measures for Employers, Accommodation and Service Providers.)

Such a service equity plan should establish specific measures to review whether services are provided equitably in accordance with the *Code*. It should include both implementation strategies and monitoring so that the inequities in service provision experienced by those protected by the *Code* are substantially reduced. Members of equality seeking groups in the community should be involved in developing, monitoring, and evaluating the plan.

... human rights training ...

Deputy Ministers should receive ongoing training in the principles of effectively implementing equality under the *Code* and in the particular equality issues raised by their ministry's mandate.

The Deputy and Agency Head should be accountable for ensuring that the employees in their organizations are informed on human rights issues.

Every ministry and agency should provide equality rights training to their staff to ensure that equality perspective is integrated within all levels of decision-making in the ministry. For the Government, this would reduce pressure on the various Offices or Directorates to catch discriminatory policies or practices later down the line before they are submitted to cabinet.

If an equality perspective were integrated into each ministry and agency, those who put forward an equality perspective would be seen as providing a helpful opportunity for positive change.

Each ministry and agency should post a notice about the *Code's* requirements, as well as an outline of their service equity plans in a prominent location. The information should be available in a manner that can be understood by everyone. See Section XXII for more details on this requirement.

The Deputy or Agency Head and the responsible Minister should be required to meet with the Commission every six months to assess the effectiveness of the organization's initiatives and its plan for the next six months.

RECOMMENDATION (65):

- **Each government ministry and major public body should be required to adopt and implement a clearly stated equity plan for services provided or overseen by the ministry or agency.**

- **The Deputy and Agency Head should be accountable for ensuring that the employees in their organizations are informed on human rights issues.**
- **Deputy Ministers should receive training in the principles of effectively implementing equality and should be accountable for the resolution of the particular equality issues raised by their ministry's mandate in all the areas covered by the *Code*.**
- **Every ministry and major public body should provide equality rights training to their staff to ensure that an equality perspective is integrated within all levels of decision-making in the ministry.**
- **Operational responsibility for implementing these service equity audits and plans should be with the Deputy Minister or head of the major public body. Success in effectively carrying out these reviews and implementing strategies for change would be a specific, significant factor in performance appraisal of the Deputy Minister or top official.**
- **The Deputy or Agency Head and the responsible Minister should be required to meet with the Commission every six months to assess the effectiveness of the organization's initiatives and their plan for the next six months.**
- **Each ministry and agency should post a notice about the *Code's* requirements, as well as an outline of their service equity plans, in a prominent location. The information should be available in a manner that can be understood by all employees. (See Section XXII for further details.)**

Immediate Review of Existing Rights Claims

The government and other major public bodies should take immediate steps to review all rights claims filed against them. In particular, they should

- identify what discrimination cases they are currently arguing before the Commission, Board of Inquiry, the Grievance Settlement Board, or any adjudicative bodies;
- analyze the position they are taking from the viewpoint of attempting to take positive steps to promote equality and determine whether a case can be appropriately resolved without requiring the claimant to pursue a formal claim; and

- ensure that the people who are making judgments about whether to defend such claims, or the lawyers representing them, understand and are committed to the advancement of equality through a positive, constructive approach.

Such action would promote a more positive climate and reduce the backlog of cases under the *Code*. It would help ensure that available resources are used as productively as possible.

RECOMMENDATION (66):

- **The Government and all major public bodies should conduct an immediate review of all rights claims made against them, seek a positive resolution wherever possible, and ensure that persons responsible for deciding to defend such claims and their lawyers are properly trained and informed on the *Code's* proactive obligations and committed to a positive, constructive approach.**

... reporting misuse of public funds on defence of rights claims ...

The Task Force believes that government bodies have a special responsibility to approach human rights in a positive and constructive spirit. As stated earlier, they should not respond to human rights claims in a legalistic and adversarial manner. Instead, they should look at claims in the context of their overall human rights record and assess whether they have, in fact, made sufficient positive efforts to respect the equality rights of the claimant and the group the claimant belongs to.

Instead of putting effort and money into fighting human rights claims, publicly funded bodies should view them as constructive opportunities to examine whether there are weaknesses in their human rights performance and, if so, find ways to improve them.

Too often in the past, at both the provincial and federal level, government agencies have poured large sums of money on lawyers' fees to fight human rights claims in a narrow, legalistic, spirit that could have been avoided or settled if proper measures were put in place. Because such bodies have access to public funds, they can easily outspend the claimant, who often is dependent on donations and fund-raising to pursue his or her human rights claim.

The federal government spent hundreds of thousands of dollars of taxpayers' money in the courts trying to defeat Bonnie Robichaud's claim of sexual harassment, rather than using its resources to try to deal with the real problem of sexual harassment in the workplace. Women saw their tax money being used to pay federal government lawyers to argue, right up to the Supreme Court of Canada, that under human rights legislation employers have no responsibility for sexual harassment in the workplace.

The Ontario government also approaches the defence of human rights claims with a defensive approach. In a recent case, the Government instructed legal counsel to argue against the right of several Ontario government employees to be able to use special leave time provisions in the collective agreement for Jewish holy days. The arbitration board decided that the Government had violated the equality rights of these employees.⁸²

The Task Force considers it a misuse of public funds for the Government and major public bodies to use large amounts of public funds to defend claims in an unduly legalistic and adversarial manner.

It is particularly upsetting for this to happen when funds for protecting human rights are not adequate to deal properly with the *Code's* mandate. Human rights claimants do not usually have the resources to pay for lawyers. Limited resources are available to them. These should not be used up in unnecessary and unconstructive ways.

To discourage public bodies from spending money in this way, the Task Force recommends that the Government or major public bodies who are defending equality claims under the *Code* must report to Human Rights Ontario every six months the amount of money that they are spending on the defence of these claims, any settlements that have been reached, and copies of any decisions on those claims. The Commission could then make this information public and include it in its annual report to the Legislative Committee.

RECOMMENDATION (67):

- **Public bodies should take a constructive approach to human rights claims made against them by focusing on the real, underlying issue of whether they have made sufficient positive efforts to achieve equality rights and whether improvement could be made.**
- **The Government should review and monitor its instructions to inside and outside legal counsel on matters relating to human rights claims made against it to ensure these instructions are consistent with a positive proactive approach to compliance.**
- **A public body against whom a human rights claim has been filed should be required to make public how much money it is spending on the case. The body must report to Human Rights Ontario every six months the amount of money that it is spending on the defence of rights claims, any settlements that have been reached, and copies of any decisions on those claims. The Commission could then make this information public and include it in its annual report to the Legislative Committee.**