

**XXII. PROACTIVE ROLE FOR EMPLOYERS, ACCOMMODATION AND SERVICE PROVIDERS**

***Proactive Human Rights Policy***

Many individuals and groups appearing before the Task Force called for proactive approaches to overcome discrimination as a better method of enforcing the *Code*.

Over and over again, studies of discrimination have concluded that the only way to make any significant gains toward equality is by requiring positive measures to be undertaken. Dealing with individual cases, one at a time, and obtaining individual remedies, as is the current practice, is costly, time-consuming, and unproductive. It feeds antagonism, causes high legal costs, and provides minimal results. It does not render good service to either those who experience discrimination or those who are running businesses.

One major business organization recommended to the Task Force that systemic discrimination be tackled predominantly by educational rather than enforcement measures because many employers are not aware of what systemic discrimination is.

The Task Force does not agree with this suggestion. An educational, voluntary approach to overcoming systemic discrimination has been followed at the federal and provincial level for many years. In the absence of an effective enforcement process, the results have been very poor, particularly considering the amount of money that has gone into such educational measures.

Furthermore, the Supreme Court of Canada has consistently required employers to take positive, systemic action to overcome systemic discrimination, pointing out that this is the only way to give meaningful effect to human rights laws.

The Task Force believes the time of waiting and hoping for human rights to be implemented is over. In order to update the *Code*, an enforcement regulation should be passed making clear that the "right to equal treatment" in the *Code* means that employers, unions, and service and accommodation providers are required to take positive measures to overcome discrimination and accommodate differences. The extent to which reasonable positive measures have been taken to overcome discrimination will be considered as part of the evidence in any claim.

**RECOMMENDATION (68):**

- **An enforcement regulation should be passed making clear that the "right to equal treatment" in the *Code* means that employers, unions, and service and accommodation providers are required to take positive measures to overcome**

**discrimination. The extent to which reasonable positive measures have been taken to overcome discrimination will be considered as part of the evidence in any claim.**

### *Employer Proactive Measures*

*... measures should cover all groups experiencing discrimination ...*

By means of pay equity laws, the Government has put in place specific practical requirements and a particular enforcement mechanism to achieve equality rights for women workers who face pay discrimination.

Proactive measures will also be required as part of the recently introduced *Employment Equity Act*, which covers people of colour, women, people with disabilities, Aboriginal peoples, and Francophones in the public sector.<sup>83</sup> The Task Force applauds these measures.

It is important to recognize that the *Code* likewise requires positive measures to advance equality rights of all the groups it covers. For example, affirmative action measures have been ordered by an Equality Rights Tribunal as a proactive remedy once a claim of systemic discrimination has been upheld.<sup>84</sup>

The Task Force believes that employers should take strong, effective measures to remove systemic discrimination against all the groups covered by the *Code*, in all the areas covered by the *Code*.

Once employers develop employment equity plans for the groups covered by employment equity, they will also want to consider appropriate proactive measures to achieve equality for all groups protected under the *Code*. It is to the employers' advantage to comply with the *Code* in this way, since employees who are not covered by the *Employment Equity Act* will then be less likely to file a claim under the *Code* that proactive measures are not being taken for their group.

In addition, people belonging to the groups covered by employment equity are also members of other groups covered by the *Code*. For example, a woman covered by an employment equity plan may also be a single mother; a person of colour may also be a gay man. If employers wish their employment equity plan to work well, they should treat a job applicant or employee fairly, as a complete person.

As well as being the right thing to do, proactive human rights policies and practices make excellent business sense. A business is more likely to be efficient and well run if unthinking, traditional barriers are removed. If the workplace is inclusive and benefits from the best skills and abilities of the whole community, it will achieve better results.

For a variety of reasons, then, employers should take measures to overcome discrimination against groups who may not be included under employment equity legislation.

As a basic informational initiative, employers should post in a prominent spot in the workplace a clear, easy-to-understand notice provided by Human Rights Ontario informing employees and employers of their rights and obligations under the *Code*. This information should also be available in other forms so that all employees in the workplace can understand, not just those who are able to read English.

#### **RECOMMENDATION (69):**

- **Employers should take proactive measures to overcome discrimination against groups who may not be included under employment equity legislation. This includes different ethnic groups and different creeds, and persons discriminated against because of their sexual orientation, their family or marital status, or their a record of offences.**
- **As a basic informational initiative, employers should post in a prominent spot in the workplace a clear, easy-to-understand notice provided by Human Rights Ontario with information along the following lines.**
  - **Under the Ontario *Code*, every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, or disability.**
  - **The employer is bound by the *Code* and has a policy to take positive measures to overcome discrimination.**
  - **It is a serious matter not to obey the *Code*.**
  - **A person who believes discrimination is being practised can get assistance by contacting the appropriate person in the workplace (including a union representative, if appropriate), any person in the workplace responsible for human rights claims (giving information on how to contact that person), or the nearest Equality Rights Centre (giving information on how to contact that office).**

**This information should also be available in other forms so that all employees in the workplace can understand, not just those who are able to read English.**

*... employers should be informed on human rights ...*

The *Occupational Health and Safety Act* requires any employer's supervisor to be "a competent" person, that is, knowledgeable about the *Act's* requirements and about health and safety dangers. A trained employee health and safety representative is required in most workplaces.<sup>85</sup>

The Task Force believes the principle behind this concept is useful in the human rights field as well. Just as it was necessary to take proactive measures to require employers to become informed on workplace hazards, so employers need to be directed to become informed on human rights so that they can protect their employees' rights.

Through its Commissioner for Compliance Services and Commissioner for Education, Human Rights Ontario would be responsible for providing educational kits on human rights requirements in the workplace. This training would be provided at a fee that could be waived where appropriate. See Sections XV and XXII for other ways human rights training and information might be made available.

**RECOMMENDATION (70):**

- **The most senior official of an employer should be required to ensure that management at all levels is informed of its human rights responsibilities.**
- **Human Rights Ontario, through its Commissioner for Compliance Services and Commissioner for Education, would be responsible for providing educational kits on human rights requirements in the workplace. These kits would be provided at a fee that could be waived where appropriate.**

*... workplace human rights committees ...*

Again following the lead of the occupational health and safety laws, the Task Force considered whether workplaces should be required to have human rights committees where the employer and employees or a union could meet regularly to properly identify and resolve human rights concerns. In principle, the Task Force believes that such committees would be a very useful means of dealing with discrimination proactively, without involving parties outside the workplace. Committees that had the backing of, and reported regularly to, the highest official in the company could be quite effective. Their reports, as well as a response by the highest official, could be made available to all employees and any union that existed. With such committees taking responsibility for considering issues of discrimination, it is hoped fewer individuals would be forced to file claims outside the workplace.

In light of the new *Employment Equity Act*, however, and its separate negotiation and consultation requirements, the Task Force does not believe it is appropriate at this time to require employers to set up another process to deal with the human rights concerns not covered by their employment equity obligations. However, the Task Force does believe that employers need to ensure they have some mechanism to deal with all the human rights concerns in the workplace.

#### RECOMMENDATION (71):

- **Workplace Human Rights Committees are an effective tool, but should not be made mandatory at this time. Instead, employers should coordinate their proactive, mandatory obligations under the *Employment Equity Act* with their responsibilities to the other groups covered by the *Code* and not covered by employment equity legislation.**

#### *... internal human rights systems ...*

Some employers have set up internal systems to deal with human rights claims. These internal systems vary a great deal. Some involve little more than employees telling their supervisor of a human rights claim and the supervisor being expected to deal with it. Other internal systems are more substantial, with an investigation and a decision-making process.

The Task Force believes such systems can be a way of dealing with claims speedily and, even better, proactively. To work well, such systems should be developed in partnership with employees. The system should be negotiated with the union where there is one. In a non-unionized workplace, an effective mechanism to allow employee representatives to participate should be found. Members of groups who experience discrimination should be the majority on the Committee and should play a prominent role.

A number of companies have set up such systems and are satisfied that they bring benefits to the employer as well as the employee by resolving problems at an early stage and improving in-company communication. Some, like the one at General Motors are administered jointly with the union and the Canadian Autoworker. Yet the Task Force was also told by those who experience discrimination that these systems often do not lead to any real change, since the employers mostly design and control them.

Some employers recommended that employees be required to exhaust the internal system before they can file a claim under the *Code* or that the Equality Rights Tribunal should not hear a claim that has already been dealt with by an internal claim process, unless the individual can show that the internal claim process was inadequate.

In the view of the Task Force, employees will make use of an internal claim system if it is seen to be effective and fair. No person should be forced to use an internal employer-controlled system that has been set up by an employer. The power imbalance within a non-unionized workplace is just too great, and there are not sufficient statutory guarantees for the fairness of the process. It must be a matter of choice.

#### **RECOMMENDATION (72):**

- **Effective internal human rights systems developed in partnership with employees and involving active participation of employees may be a useful way to resolve human rights claims in the workplace.**
- **Employees should not be required to exhaust an internal workplace human rights system before they can file a claim under the *Code*. An employee's use of such an internal process should not bar their filing a claim with the Tribunal.**

#### ***Proactive Measures for Accommodation Providers***

While the *Employment Equity Act* requires employers to take positive measures to overcome discrimination and to report on their results<sup>86</sup>, no such specific requirements apply to service and accommodation providers, apart from their general proactive *Code* obligations.

The Task Force believes that positive measures are equally necessary and important in these crucial areas.

In the area of rental accommodation, for example, the Task Force was told that serious problems of discrimination are encountered by people of colour, single mothers on welfare, people with disabilities, Aboriginal people, and other disadvantaged groups.

In a recent survey of affordable apartments in Metropolitan Toronto, owners or managers of 27 860 units (56 per cent of the affordable units covered in the survey) stated that they do not rent to people on welfare. 70 per cent of owners reported that they use income qualifications which disqualify welfare recipients.<sup>87</sup> A study conducted by the Centre for Equality Rights in Accommodation found that these and other forms of systemic discrimination have a devastating effect on members of visible minorities, particularly women with children who need housing. Visible minorities also face widespread racial discrimination and harassment in housing. 34 per cent of visible minorities contacting the Centre for Equality Rights in Accommodation last year to report discrimination in housing called to report an incident of overt racial discrimination or harassment.

The Task Force was told denying people access to proper accommodation can endanger their safety and their physical and mental health by making them homeless, forcing them to live in unsafe and unsanitary lodging or causing families to split up.

Dealing with such complaints as single cases one at a time places a heavy burden on the shoulders of people who already have too many unfair hurdles to overcome. When a single mother needs a home for herself and her children, or an Aboriginal woman escaping a situation of violence tries to rent an apartment, the last thing she has time or energy for is to file a human rights claim.

Instead of waiting for claims to be filed, people involved in the housing and rental industry should take positive measures to overcome broad patterns of discrimination in access to accommodation. For example, the industry should consider adopting standards to ensure that all new construction or renovation of housing makes the accommodation accessible to people with disabilities.

In conjunction with groups such as CERA, the housing and rental industry should analyze rules covering what information it is appropriate to ask potential tenants. Questions and policies that have a discriminatory impact should be removed.

Ensuring that landlords are informed about their human rights responsibilities is important as well. Human Rights Ontario could provide information kits to landlords to help them become informed. A fee would be charged that could be waived where appropriate.

As a basic informational initiative, a notice about the *Code* provided by Human Rights Ontario, similar to that recommended for employers, should be posted in a prominent place and available in a form understandable to tenants. This notice could be posted in the elevator along with the elevator permit sign. For a landlord with less than two units and no common area, the notice should be given directly to the tenants.

#### **RECOMMENDATION (73):**

- **The housing and rental industry should take broad, practical, proactive measures to overcome patterns of discrimination in access to accommodation.**
- **Landlords should be required to be informed about their human rights responsibilities relating to providing accommodation. There would be consultation with all concerned on how best to implement this. Human Rights Ontario would assist in providing information kits for which a fee would be charged. This fee would be waived when appropriate.**
- **If the housing and rental industry does not take effective measures, Human Rights Ontario, in partnership with the affected groups, should consider**

**adopting strategic measure, such as regulations, in order to overcome discrimination in access to accommodation.**

- **A notice about the *Code* provided by Human Rights Ontario, similar to that recommended for employers, should be posted in a prominent place and available in a form understandable to tenants. This notice could be posted in the elevator along with the elevator permit sign. For a landlord with two units and no common area, the notice should be directly given to the tenant.**

### ***Proactive Measures for Service Providers***

In the area of services available to the public, a positive approach to overcoming discrimination should likewise be undertaken. Like employers under employment equity legislation, service providers should be required to develop and implement positive policies and practices to overcome discrimination.

Like employers and landlords, service providers should also be required to be informed of their human rights responsibilities. Since there is no precedent for having "informed persons" in services, as there is in employment, there should be consultation with the service community on how to best implement this recommendation.

Many important services - such as health services, education, transport, recreation, libraries, and social services - are provided by government or publicly funded agencies. As part of their proactive approach toward discrimination, major publicly funded service providers should develop, with the participation of the affected groups, a service equity plan with specific objectives. This plan should include an implementation and monitoring mechanism. Service providers could monitor and report each year on the results achieved by their service equity plan and whether their services fairly and effectively meet the needs of groups protected by the *Code*.

The service equity plan might also include a mechanism for members of the targeted groups to respond to the report and make recommendations for improvement. A copy of the service equity plan and report, as well as the response of the affected groups, should be sent to Human Rights Ontario each year.

The service equity plan should use a variety of approaches, depending on the nature of the service. In the area of education, for example, school boards could have a positive duty to ensure that students from racial and ethnic groups other than the dominant one benefit equally from the opportunities provided and graduate from all courses, at all levels, in a proportion consistent with their number. School boards could be required to ensure that female students have equal access to non-traditional courses and to sports opportunities and budgets, consistent with their proportion of the student body. School boards could have a

positive duty to make sure their services were accessible and welcoming to students with disabilities.

Human Rights Ontario could carry out testing and do spot audits when it believes that a service provider is not fulfilling its positive duty to overcome discrimination.

If major publicly funded service providers do not adopt and implement effective service equity plans, Human Rights Ontario, in partnership with the affected groups, should consult broadly and consider developing service equity regulations requiring service providers to take positive measures to overcome serious patterns of discrimination in the provision of services.

As a basic informational initiative, information about the *Code* provided by Human Rights Ontario similar to that recommended for employers should be made available to the consumers of a service provider in a form understandable to them. The details of how this recommendation would be implemented for the various kinds and sizes of service providers should be discussed with the involved communities. For some, it could be posted beside the vendors permit.

#### **RECOMMENDATIONS (74):**

- **Service providers should be required to be informed on human rights responsibilities relating to the provision of their service. There would be consultation with all concerned on how best to implement this. Human Rights Ontario would assist in providing information kits for which a fee would be charged. This fee would be waived where appropriate.**
- **Major publicly funded agencies providing services to the public should implement service equity plans that include broad, practical, proactive measures to overcome patterns of discrimination in service provision.**
- **If such agencies providing services to the public do not take such measures, Human Rights Ontario, in partnership with the affected groups, should consider developing regulations to require service providers to take specific proactive measures.**
- **As a basic informational initiative, information about the *Code* provided by Human Rights Ontario similar to that recommended for employers should be made available to the consumers of a service provider in a form understandable to them. The details of how this recommendation would be implemented for the various kinds and sizes of service providers should be discussed with the involved communities.**