

**ACHIEVING EQUALITY**  
A PROPOSAL FOR A  
NEW CANADIAN HUMAN RIGHTS ENFORCEMENT SYSTEM

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## 1. CALL FOR CHANGE

Reform of the human rights enforcement system at the Federal level is long overdue. Changes are needed urgently. The need for these changes has been documented elsewhere. This paper focuses on what those changes should be based on the work of the author as Chair of the Ontario Human Rights Code Review Taskforce and its 1992 Report, *Achieving Equality*, Ministry of Citizenship, Ontario, Queens Printer, 1992<sup>1</sup>. This paper outlines briefly the proposed system. Details of the rationale and proposals can be found in the report, *Achieving Equality*.

Canada and Canadian human rights law has changed considerably since the *Canadian Human Rights Act* ("CHRA") was passed over 20 years ago (see *Canadian Human Rights Act Review Panel Consultation Paper* ("www.chrareview.org"))<sup>2</sup>. A new system must be implemented which can see Canadians well into the next century.

The system proposed in this paper will do just that. It is built around four cornerstones for achieving equality.

- # a consumer perspective which empowerment and support of those who experience discrimination in order that they may direct the methods used in achieving equality,
- # a community-driven focus which empowers the regions of Canada and their many communities to play a major role in ensuring a strong and responsive human rights system;
- # promotion of a compliance culture throughout all federal institutions requiring equality providers to adopt proactive measures and policies to remove the burden on individuals to file complaints;
- # an effective but accessible claim resolution process using mediation or adjudication where compliance is not forthcoming.

It is with these cornerstones in mind that this paper proposes a major departure from the current enforcement system. The enforcement model proposed in this paper flows from the new understanding of how to achieve equality. The current model was developed when discrimination was understood more as an individual problem. This view is out-dated and wrong. The major problem faced by equality seekers is the wide-spread often deep-rooted patterns of discrimination affecting many members of a disadvantaged group. The formidable barriers to equality facing groups protected by the *Canadian Human Rights Act* have been documented again and again. They are known as systemic discrimination. Such discrimination can be unintentional or overt and intentional.<sup>3</sup>

Two leading decisions describing systemic discrimination are *Action Travail des Femmes*<sup>4</sup>, which was upheld in 1987 by the Supreme Court of Canada and the Tribunal's 1997 decision in *National Capital Alliance on Race Relations v. Canada (Health & Welfare)* ("NCARR"). The issue of effective enforcement must be addressed from this broad, systemic perspective. Effective enforcement means that the persons and groups

who are discriminated against are empowered and enabled to achieve their equality rights found in the *CHRA*. The *Action Travail* and *NCARR* decisions show the employment equity or positive measures standards Courts have already set for employers and unions to ensure effective enforcement under existing human rights laws in the federal jurisdiction.

The success of a human rights enforcement system can ultimately be measured by one test - does the system lead to measurable and real reduction in the discrimination faced by citizens protected by the law. The current *CHRA* enforcement system fails this test. Persons and groups who experience discrimination are regularly denied proper justice in the human rights enforcement system. The groups who experience discrimination and their advocates have documented their frustration, anger and impatience with the current procedures.

The proposed system in this paper will work to make the rights under the *CHRA* real and accessible and to meet the test of progressive and substantial reduction of discrimination.

## **2. OVERVIEW OF NEW HUMAN RIGHTS ENFORCEMENT PROCESS**

The new proposed human rights enforcement system has four key components:

- # A revitalized Human Rights Commission (now called Human Rights Canada) 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;
- # An independent, community-based Equality Services Board which will assist people with human rights claims;
- # An Equality Rights Appointments Committee to recommend candidates to the Prime Ministers for key positions in the new system.

The proposed new human rights will have:

- # empowerment of the claimant community who now have direct access to a hearing of their claims; can direct their claim presentation and determine the approach of dispute resolution through mediation and/or adjudication;
- # a revitalized Canadian Human Rights Commission to be known as "Human Rights Canada" which would take on a strong role in acting against discrimination and in favour of equality by taking strong proactive systemic initiatives;
- # an expert Tribunal, known as the Equality Rights Tribunal, encompassing human rights (including pay equity and employment equity) and offering either mediation and/or adjudication services as equally respected ways of resolving claims disputes;

- # an Equality Services Board representing the claimant community in all the regions of Canada's federal jurisdiction and providing consumer-oriented and community-driven advocacy services to claimants through
  - establishing Equality Rights Centre(s) in each province staffed primarily by lay advocates to represent claimants in the federal sector;
  - the development of specialized units of expertise in grounds and areas covered by the *CHRA*; and
  - strategic partnerships with equality seeking groups.
  - establishment of a Significant Case Fund to assist equality seeking groups to bring forward test cases to achieve broad-based systemic change.
- # a new independent status for human rights bodies including the naming of an Equality Rights Appointments Committee composed of respected human rights leaders who would recommend to the Prime Minister candidates for the senior appointments in the new system.
- # Human Rights Canada, unlike its predecessor, will leave behind the burden of investigation, settlement, screening and carriage of all the claims filed and focus on its existing mandate to achieve equality through systemic change.
- # establishment of links with those responsible for ensuring equality including employers and accommodation and service providers through a Commissioner for Compliance Services who would provide assistance on techniques and practices for implementing equality;
- # where necessary, providing human rights adjudicators with powers to fashion strong proactive remedies and enforce them effectively;
- # provisions ensuring non-compliance is met with serious sanctions;
- # amendment of the *CHRA*'s purpose clause to incorporate an understanding of systemic discrimination and the importance of positive measures;
- # measures requiring that the Government assume a leadership role in advancing equality rights; and
- # provision for Human Rights Canada to plan and implement strategic education initiatives and training as a key enforcement strategy to ensure, advance and maintain a culture of equality.

### **3. PROPOSED GUIDING PRINCIPLES**

The proposed enforcement system is guided by the following principles which have been used to assess the strengths and weaknesses of different models of enforcement;

- # The system should be geared to promote equality and overcome discrimination for disempowered groups.
- # The system should be capable of achieving significant results to overcome the systemic discrimination which has been practised against certain individuals and groups in Canada because of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status and handicap.
- # The system should be timely, accessible, equitable, effective and empowering to persons and groups who experience discrimination.
- # The system should incorporate a focus on discrimination faced by groups and a procedure that makes enforcement accessible to them.
- # The system should be accountable to people who experience discrimination. Regular monitoring and accountability mechanisms should be built into the system.
- # The system should fairly consider the legitimate interests of those responsible for ensuring equality.
- # The system should assist equality seeking groups to develop resources, expertise, and confidence to claim their rights.
- # Claimants should have control over their cases.
- # The system should provide quick access to a hearing.
- # The system should have remedies which are monitored and enforced.
- # The system should provide options and assist to the claimant to deal effectively with the many different kinds of discrimination (the different grounds of discrimination covered by the *CHRA*, as well as multiple discrimination; the different settings covered by the *CHRA*; individual and systemic cases).
- # Resources should be provided to assist people in obtaining their rights under the *CHRA*.
- # The independence, expertise, credibility, representativeness and effectiveness of any agency should be ensured.
- # The system should be based on, and should promote, the indivisibility of human rights and solidarity. It should promote unified, strategic planning and leadership by equality seeking groups to monitor and advance human rights in Canada as a whole.

#### **4. THE EQUALITY RIGHTS APPOINTMENTS COMMITTEE**

The independence and competence of the proposed new system must be ensured so that it can regain public confidence and trust, and be an effective defender of human rights.

An Equality Rights Appointments Committee, composed of three persons, who are highly respected for their commitment to human rights, should be named by the Prime Minister. This Committee will consult with interested individuals and groups and will seek out qualified candidates for the Equality Services Board, Human Rights Canada and the Equality Rights Tribunal, as well as an Advisory Council to Human Rights Canada and a Tribunal Advisory Committee. The Appointments Committee will recommend to the Prime Minister candidates to be appointed to these different positions.

The Appointments Committee will be composed of a Chair and two members named by the Prime Minister who should be reflective of Canada's regional diversity. Members should have a demonstrated commitment to and expertise in the equality rights field. The term of the appointments will be three years. Committee members will be remunerated in the same manner as are the members of the Judicial Appointments Committee.

Strong community involvement in the development, monitoring, and evaluation of these bodies will be a key part of ensuring the system's independence and effectiveness.

Appointment of people with a proven track record of commitment to and expertise in human rights and a sense of integrity and independent thinking is probably the most important factor in establishing independence. Safeguards should be built in to protect the integrity of the human rights appointment process.

Appointments should be protected from political influence. Criticism has been expressed at different times that governments across Canada have appointed people to Human Rights Commissions who lacked qualifications. The Government itself is the biggest employer and service provider in the federal jurisdiction and likely the single largest respondent before the Commission currently. In addition, governments are subject to pressure from powerful groups in society who may prefer a less effective Commission. Governments, therefore, undergo a conflict of interest when they appoint members of Human Rights Canada who are then supposed to be watchdogs over the Government.

Clear qualifications should be set together with a clear description of the responsibilities to be carried out. The International Covenant on Civil and Political Rights specifies that people named to the Human Rights Committee should have "demonstrated expertise in human rights." The *Quebec Charter of Human Rights and Freedoms*<sup>5</sup> requires people deciding human rights cases to have "notable experience and expertise in, sensitivity to, and interest for matters of human rights and freedoms."<sup>6</sup>

## **5. INDEPENDENT STATUS FOR HUMAN RIGHTS BODIES**

Independent status must be guaranteed for the new human rights bodies being proposed.

At present, Human Rights Canada does not enjoy sufficient independent status and reports to the Minister of Justice on a number of matters, including financial matters which is troubling. It is important to have independent status so as to be free from any possibility of political interference and administrative obstacles.

This lack of independence is not acceptable. The new Human Rights Canada should be given a truly independent status without delay. The Equality Rights Tribunal and the Equality Services Board must also have independent status.

After considering whether the new Human Rights Canada and the other human rights bodies it has proposed should report directly to the Federal House of Commons, this paper proposes that Human Rights Canada have a fully independent status and to report to the legislature through a designated Minister.

The structure would ensure that bodies in the new enforcement system have:

- # independence from the Government with respect to policy making and administrative support,
- # public accountability for their funding and overall operations, and
- # protection for their unionized and non-unionized staff by inclusion of these staff in the appropriate public sector labour legislation.

## 6. HUMAN RIGHTS CANADA

Human Rights Canada, formerly the Canadian Human Rights Commission, 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 Canada will be to promote equality on a broad scale by taking forward key systemic cases and by carrying out other proactive initiatives.

Human Rights Canada will have the power to adopt regulations in order to better achieve the purpose of the *CHRA*.

Human Rights Canada will have a Chief Commissioner and five full-time Commissioners with specific mandates in the following areas: Policy and Research; Proactive Systemic Initiatives; Employment Equity; 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 *CHRA*.

### **... Commissioner for Proactive Systemic Initiatives and Employment Equity...**

This Commissioner will examine and inquire into systemic issues of discrimination throughout the federal sector including laws, policies and practices of the Federal Government. S(he) will make public reports and will make recommendations for change in such practices. Where necessary the Commissioner will initiate systemic claims before the Tribunal. The Commissioner will also be responsible for implementation of the *Employment Equity Act*.

### **... 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 *CHRA*. This Commissioner will have demonstrated a background and expertise in responsible compliance with the *CHRA*. 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 *CHRA* 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 *CHRA*. It will also provide grants to these communities to carry on their own initiatives.

## **7. EQUALITY RIGHTS TRIBUNAL**

The current permanent tribunal will be retained and renamed the Equality Rights 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 Canada 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.

## **8. CLAIM RESOLUTION PROCESS**

**... 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 *CHRA*. 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 *CHRA*,
- # 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 Federal Court where a decision is felt to be "patently unreasonable" or a claim to the Ombudsman.

**9. NEW PURPOSE CLAUSE REQUIRED**

People of colour, people with disabilities, people on public assistance, women, and other minority groups lack social, legal, political, and economic power. It is precisely because of this imbalance of power that the *CHRA* was passed with the specific purpose of breaking down discriminatory barriers and bringing about the full and equal participation of these groups in all aspects of society.

It is contradictory that, while the *CHRA* exists, *because* of recognized, widespread discrimination against particular groups, it is worded as if the normal operations of society were fair and non-discriminatory. This is particularly true of the Purpose clause, section 2. An approach based on the assumption that normal, typical practices are fair will not achieve the purpose of the *CHRA*. The *CHRA* devotes significant resources into proving whether or not a particular individual was discriminated against, and feeds into an adversarial climate where a respondent feels defensive and obliged to spend time and money to defeat an allegation of wrongdoing. This approach is unproductive.

A purpose clause guides the way the *CHRA* is to be interpreted and enforced. It must be up to date and properly reflect developments in human rights understanding and enforcement. Section 2 fails to do this. It does not reflect rulings by the Supreme Court on the near constitutional nature of the *CHRA*<sup>7</sup> or rulings on the positive action that must be taken to overcome the historic and present systemic discrimination experienced by particular groups.

Under the Federal *Employment Equity Act*, systemic discrimination is explicitly recognized and employers are required to take positive measures and accommodation to redress the discrimination. The federal *Employment Equity Act* states that:

The purpose of this *Act* is to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences: *Act*, s.2.

This type of recognition should apply to all the other types of discrimination, including services etc. Indifference or "business as usual" approaches can be perpetuation of traditional discrimination. If an equality provider does, in fact, have no discriminatory policies, then he or she will not need to take any positive action.

It would be more consistent and equitable if the positive requirement to overcome discrimination clearly applied to all groups and all areas covered by the *CHRA*.

Section 2 of the *CHRA* should be amended to add the following:

- # Whereas the *CHRA* is special legislation that has primacy over other laws in Canada except the Constitution and whereas this special status requires all Canadians, including the Government and those who enforce and interpret the *CHRA*, to treat it with special seriousness so as to achieve its near constitutional purpose ...
- # Whereas historic systemic discrimination has been practiced against members of certain groups in Canada because of their race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.
- # Whereas at different times many of these groups have been denied the basic rights of citizens, such as the right to vote, the right to enter professions, the right to pursue an education, the right to purchase property, the right to immigrate, the right to rent accommodation, the right to obtain employment, the right to enter public places;
- # Whereas these groups continue to experience discrimination, stereotyping and harassment *and/or* are disadvantaged through not being included or represented in a fair and equal way in the institutions, opportunities and activities of Ontario society;
- # Whereas the *Canadian Human Rights Act* is positive remedial legislation enacted to achieve equality rights for members of these groups;
- # Whereas right to equal treatment requires that positive measures be undertaken;
- # Whereas persons involved in the provision of services, accommodation, employment, contracts, unions and vocational associations have a responsibility to take measures to overcome discrimination in these areas and provide these opportunities in a manner that accommodates differences and is inclusive and respectful to all groups who make up Canada;
- # Whereas Government of Canada have ratified and are bound by International Human Rights Covenants ...

## **10. CLAIMANTS NEED ADVOCACY SUPPORT 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 Canadian Human Rights Commission with its mandate to investigate and try to settle claims and assign lawyers to argue claims before the Tribunal.

The current method for providing assistance to claimants lets Human Rights Canada 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 Canadians 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 *CHRA* and the law in general, so that the individual can make informed choices; and represent the claimant throughout the claim process.<sup>8</sup>

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.<sup>9</sup>

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 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.

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.

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.

## **11. EQUALITY SERVICES BOARD**

An independent Equality Services Board is proposed. The Board would have the operational responsibility for planning, coordinating and delivering the advocacy services needed by the claimant community in the federal sector across Canada.

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 *CHRA*. A minimum of one Equality Rights Centre will be located in each Canadian province/territory. They will be places where claimants can go or call to obtain information about the *CHRA* 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 advocacy organizations to do intake and/or representation or to bring test cases.

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 Human Rights Canada. The Board would be required effectively to seek the advice of the equality seeking communities within the regions of Canada. This advice might be provided by setting up an advisory committee for each region or by another appropriate consultation process.

This structure will 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 Human Rights Canada accountability for the overall provision of advocacy services; it will be strengthened by having a consistent, province-wide base.

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 *CHRA*) and the regions of Canada. 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.

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 *CHRA*;
- # 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.

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

- # develop operational guidelines for the provision of advocacy services;
- # set up advocacy services or Equality Rights Centres in each province/territory in ways that best meet the needs of human rights claimants and best advance the equality rights of disadvantaged groups;

- # set up and administer a Significant Case Fund to allow equality seeking groups to take forward important cases;
- # 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.

## 12. EQUALITY RIGHTS CENTRES

Equality Rights Centres across the country 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 *CHRA*, 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.

## 13. CENTRES OF SPECIAL 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.

It is 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 *CHRA*. 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. 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 *CHRA* are given attention and assistance.

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.

#### **14. FUNDING COMMUNITY GROUPS - SIGNIFICANT CASE FUND**

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.

##### **... 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 *CHRA*, 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.

##### **...standards...**

The Commissioner for Advocacy Services will set general overall public standards for advocacy services with specific standards for the centres. The purpose of the services is to help claimants express and act on their own wishes and become informed and exercise their equality rights.

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.

## **15. ADVANTAGES OF PROPOSED ENFORCEMENT SYSTEMS**

The proposed human rights enforcement system has many benefits for the equality seekers, for those responsible for ensuring equality and for society in general:

### **... discrimination will be reduced ...**

A system which is accessible, open and effective will lead to greater reduction in discriminatory practices.

### **... timely access to a hearing ...**

Delay works against both claimants and respondents in that evidence suffers, morale declines, and costs rise. Justice delayed is justice denied. Achieving equality demands that claims proceed to hearing quickly and that decisions are rendered promptly.

### **... an open process ...**

Under the present system, Human Rights Canada has sole control of cases. Both claimants and respondents have found this extremely frustrating, time-consuming and inefficient.

The proposed system is an open one with a range of options for the system's consumers. Claimants from the outset will have control over how the claim is framed and argued and the opportunity to make informed choices as they proceed through the process.

Respondents would also have direct information about the claim and how it will proceed. The respondent is consequently also in a better position to make informed decisions which may lead to earlier settlements and to less cost.

### **... a clearer process ...**

The system provides clear roles and responsibilities for the systems components:

- # The Equality Rights Centres provide services for claimants;
- # a Compliance Services Unit will offer information to those responsible for ensuring equality,
- # the Equality Rights Tribunal provide settlement services to the parties; and adjudicators are responsible for hearings of cases.

- # The new Human Rights Canada is no longer involved in individual claims. Its role is to represent the public interest by promoting and enforcing human rights on the overall, systemic level.

Everyone would know exactly who was doing what.

**...options for claimants should be provided...**

The proposed system provides 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; or
- # represent themselves.

**... a better investigation method ...**

The present mandatory investigative process for every claim simply does not work well. The requirement for a discovery and disclosure process at an early stage would assist both claimants and respondents. Investigation would only be ordered where this process had not led to sufficient disclosure of evidence.

**... a fairer, quicker way of dealing with unfounded claims ...**

Large amounts of time and money are spent to obtain a final decision by the Human Rights Canada dismissing the claim, or with the claimant finally abandoning the claim. Providing advocacy services in the community will provide claimants with the support and advice they need and are likely to trust.

**... more consistent standards and procedures ...**

A significant advantage to merging the federal Employment Equity and Human Rights enforcement process will be the development of clear, consistent standards and procedures which will make the system more accessible and less costly. Trained lay advocates could function well in the new clearer system.

**... better information about human rights decisions ...**

The Tribunal will have a Resource and Training section to ensure its staff and adjudicators and everyone working in the system are informed and up-to-date.

**... stress on remedial, constructive solutions ...**

Human Rights Canada and the Equality Rights Tribunal will be better positioned to craft solutions which will contribute significantly to meeting the test of progressive, measurable and substantial reduction of discrimination. Rather, than be consumed with processing complaints, this tandem will be able to act creatively and with strength on many fronts at once.

**16. CONCLUSION**

The system proposed in this paper places Canada on a firm footing in its quest to achieve equality and should lead to reasonable progress in achieving a reduction in discrimination and the promotion of an equality culture.

1. *Achieving Equality*, Ministry of Citizenship, Ontario, Queens Printer, 1992.
2. Canadian Human Rights Act Review Panel Consultation Paper (see “www.chrareview.org”).
3. 1998 Canadian Human Rights Commission Annual Report.
4. *Canadian National Railway v. Action Travail des Femmes* (1987) 8 C.H.R.R. D/4210 and *National Capital Alliance on Race Relations v. Canada (Health & Welfare)* (1997) 28 C.H.R.R. D/179
5. R.S.Q. 1977, c. C-12
6. *Ibid.*; s. 101.
7. *Heerspink*, 3 C.H.H.R. D/1163 at D1166 (Lamer J.).
8. Research by the Inter-clinic Committee on Human Rights Law Reform, Submission No. 2, May 1992.
9. *ibid*, p. 3