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A BRIEF FOR
THE HUMAN RIGHTS COMMISSION
of the
PROVINCE OF ONTARIO

RECOMMENDED CHANGES IN THE ONTARIO HUMAN RIGHTS CODE

Submitted by

THE ONTARIO COMMITTEE ON THE STATUS OF WOMEN

Submitted May 10, 1976

This brief is presented by the following individuals
on behalf of The Ontario Committee on The Status of Women

Connie Taylor
Joan Laird

INTRODUCTION

In 1975 the Ontario Government issued a statement concerning a review of The Ontario Human Rights Code. In reply to an advertisement appearing in The Globe and Mail on March 2, 1976 calling for briefs and submissions from interested parties the Ontario Committee on the Status of Women submit this brief.

The Ontario Committee on the Status of Women was formed in 1971 to urge the Government of Ontario to implement the relevant sections of the Report of the Royal Commission on the Status of Women in Canada. We are affiliated with the National Action Committee on the Status of Women, a much larger organization which seeks the same goals at the federal level.

We welcome the opportunity not only to make suggestions to the Government, but also to express some of our convictions regarding the Human Rights Code and its administration by the Human Rights Commission. First, we deplore most heartily the low priority given to "sex", "age", and "marital status" as a basis for discrimination in comparison with "race, creed, colour, nationality" etc. throughout The Ontario Human Rights Code and the Literature available from the Human Rights Commission. * Second, we believe that the enforcement function of the Commission must be utilized more frequently

* See Appendix A

than its conciliatory one. Third, we regard as an absolute necessity the enhancement of the Commission's educational function. Only through unceasing efforts in all three of these areas can real advancement in eliminating discrimination, rather than masking it, be made. Now is the time for positive and vigorous action if the statement at the beginning of the Ontario Human Rights Code,

"it is public policy in Ontario that every person is free and equal in dignity and rights without regard to race, creed, colour sex, marital status, nationality, ancestry or place of origin . . ."

is to be more than a pious phrase.

RECOMMENDATIONS

To bring about desired changes we suggest that the following recommendations be implemented:

A. TO STRENGTHEN THE HUMAN RIGHTS CODE:

1. that a Board of Inquiry should consist of more than one person.

We suggest that such a Board have at least three members on it representing the public. A roster of qualified women willing to serve on boards and commissions (THE TALENT BANK) is available at the Ontario Status of Women Council. It should be obvious that a Board of

Inquiry consisting of more than one person is less likely to fall into error or to exhibit personal prejudice than is a Board consisting of a single person. It should be equally obvious that such a Board must be representative of both sexes.

2. that the wording of the Code be consistent and include "sex", "age", and "marital status" in Parts I, 3-(1) (b), and I, 4-(4).

These subsections of the Code refer specifically to employment and accommodation thus allowing unchecked discrimination to continue to exist in these two vital areas.

3. that "sexual orientation" and "parenthood" be encompassed within the Code and that these words be included in all lists banning discrimination on the basis of criteria such as "race", "creed", "colour", "sex", "nationality".

It is our belief that subtle and pervasive discrimination exists in a particularly restrictive fashion in the areas of sexual orientation and parenthood. The inclusion of these words in the Code would make this type of discrimination more visible and thus begin its eventual elimination.

4. that pronouns be impersonalized so that the Ontario Human Rights Code does not contravene its own regulations by referring only to one sex, i.e., male.

5. that all cases investigated by the Commission and found to involve violations of the Code should be made public on completion of the investigation.

The present policy of secrecy does not protect the complainants so much as the violators. Such a policy supports and strengthens the conciliatory function of the Commission and simultaneously weakens its enforcement function.

B. TO IMPROVE THE STRUCTURE AND EFFECTIVENESS OF THE HUMAN RIGHTS COMMISSION:

1. that the fact that equal right of appeal at all stages of procedure by both the complainant and the respondent exists under the present Code should be stated clearly and specifically in the Code.

The various forms of appeal procedure available at different stages of the processing of a complaint should be itemized. For example, the right of a complainant to request direct access to the Commissioners in order to state his or her case personally should be written into the Code. The fact that an individual may request that a Board of Inquiry be appointed should also be stated.

Finally, mention should be made of the right of appeal to the Minister of Labour and/or the Ombudsman of the Province of Ontario. Only if such rights are fully stated and equally guaranteed to both the complainant and the respondent can the Code begin to fulfill its ideal of justice.

2. that investigatory officers be appointed to specific cases on the basis of experience and expertise rather than by geographical convenience or availability as is now the customary practice.
3. that periodic reviews of business, educational and governmental institutions be held in order that the Commission may utilize its initiatory powers to institute complaints as set forth in Part III, 13 -(3) of the Code.

We urge the Minister of Labour to direct the Commission to interpret this section more broadly than previously has been done. Complaints should not necessarily have to be laid in order for the initiatory power of the Commission to be activated.

4. that a system of monitoring cases in progress be implemented to ensure a steady passage through

the various screens or steps involved in any complaint brought before the Commission.

We urge that the status of cases be examined by supervisory personnel at least three times a year and that investigatory officers be specifically directed to speed the process or redirect their efforts if such efforts are not producing satisfactory results. This procedure is necessary in order to prevent stagnation and the passage of a lengthy period of time allowing conditions leading to the original complaint to be altered.

5. that ambiguities in the interpretation of the Code be resolved particularly with reference to the Commission's twin function of conciliation and enforcement. This ambiguity

is referred to in a striking fashion by John Sopinka in the Author's Note to an article appearing in Human Relations, Vol. 12, No. 20, February, 1972.

Author's Note: In keeping with the title of this article, Proving Discrimination In Boards of Inquiry Under Ontario Human Rights Code, the emphasis is placed on proving discrimination rather than on conciliating the complaint between the complainant and the respondent, which is perhaps the Commission's more vital function. Some of the recommendations herein with respect to the conduct of the Human Rights Officer may not be appropriate where conciliation is the primary goal. In such a case, in order to

encourage a frank disclosure to further the effort to achieve a settlement, it is often desirable to conduct interviews in as informal a manner as possible. Indeed, there is a serious question whether the results of the interview should be admissible at all at a later stage, if settlement was the prime purpose. This dual function of the Commission's investigation creates a dilemma. The fruits of the investigation, which from one point of view should perhaps be privileged, are, from the other point of view, essential evidence where settlement is not achieved. --J.S.*

*"John Sopinka is a Toronto lawyer who has acted as Commission Counsel in cases which have gone before a Board of Inquiry."¹

6. that the Commission place greater emphasis on enforcement rather than on conciliation as is the present practice.

In order for this to take place we are convinced that it is time to examine the consolidation of the two functions of investigation and conciliation. The Commission's attempts to enforce the regulations of the Code appear to be hampered by this consolidation.

The informal relaxed procedures which characterized the Commission's early operations are forever past. The Commission must take positive steps to

¹ John Sopinka, "Proving Discrimination in Boards of Inquiry Under Ontario Human Rights Code", Human Relations, Vol. 12, No. 20, Feb. 1972, p. 12.

to safeguard its inherently sensitive positions against even the appearance of partiality or unfairness.²

To answer the increasing need for human rights in Ontario priority must be given to enforcement rather than to conciliation. At the present time enforcement procedures are seen as a 'last resort' undertaken "where it appears to the Commission that a complaint will not be settled".³

C. TO ENCOURAGE RESPONSIVE, EFFECTIVE COMMUNITY AND EDUCATIONAL PROGRAMS IN THE FIELD OF HUMAN RIGHTS:

1. that a permanent full-time research officer be appointed to facilitate the functioning of the Commission.

The ready availability of precise statistical data would enable more emphasis to be placed by the Commission and by public groups on certain areas which constitute the majority of the complaints received by the Commission. Such data would not

² Ian A. Hunter, "The Development of The Ontario Human Rights Code: A Decade in Retrospect", University of Toronto Law Journal, 1972, 22,p.245.

³ The Ontario Human Rights Code, III, 14a.--(1)

only aid enquiries, but also would enable members of the public to be more informed about the business of the Commission.

2. that some system of labelling cases according to all of the various kinds of discrimination involved in each individual case be instituted to ensure the ready availability of accurate categorical statistics.

At the present time complaints laid with the Commission are labelled according to the main form of discrimination experienced as determined by the complainant and the investigatory officer. This practice involves an arbitrary judgment and thereby permits a great deal of disagreement to exist with reference to the basis of discrimination involved. This results in ambiguity of interpretation of statistical information, thus making the actual basis of discrimination less visible.

3. that a serious and immediate attempt be made by the Commission to fulfill its responsibilities under Part II. 9. (a), (b) and (c) of the Ontario Human Rights Code.

If, as Mr. Eberlee, then Deputy Minister of Labour states, the Code is "human relations legislation, not penal legislation"⁴ then the educational function of the Commission should have greater priority than it does at the present time to enable the Commission to "develop and conduct research and educational programs designed to eliminate discriminatory practices related to race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin" as stated in Part II, 9 - (c) of the Code.

4. that sufficient funding be made available to the Commission to enable it to function effectively.

We feel that the administration of the Code by the Commission is often hampered by insufficient funds. A larger, better trained and more experienced staff will be required as new regional offices are opened, and hence the number of cases investigated increases.

At present:

The Commission consists of a Chairman and five members. The permanent administrative staff is headed by a Executive Secretary with a staff of human rights officers. There are 30 professional staff and twelve clerical staff, plus four

⁴ T. Eberlee, "The Role of the Ontario Human Rights Commission", Human Relations, 1970, p. 3.

casual professional staff and one casual clerical for a total of 47. Beside the Toronto office and the storefront office in downtown Toronto, there are 10 district offices in Hamilton, Kitchener, Windsor, London, Ottawa, Thunder Bay, Sudbury, Kenora, Sault Ste Marie, Peterborough. 5

We consider this staff allocation totally inadequate for the elimination of social injustice with regard to discrimination in Ontario. Keeping in mind that conciliation, enforcement, public education, community, race and ethnic relations and research are all functions of the Commission it is obvious that increased funding is necessary.

5. that a sincere effort be made by the Commission to provide publications and films that deal adequately with discrimination based on "sex" and/or "marital status".

The present film list available from the Human Rights Commission does not contain even one film directly dealing with the problem of discrimination based on "sex" and/or "marital status". Also we deplore the lack of Canadian films on the list. We suggest that the Ontario Human Rights Commission might well engage in creating some films set in Ontario that

5 Annual Report, Fiscal Year 1974-1975, Ontario Human Rights Commission, Extract from Annual Report of Ontario Ministry of Labour, p. 1.

examine discrimination based on "sex" and/or "marital status". The absence of publications dealing specifically with discrimination based on "sex" and/or "marital status" on the list of publications available from the Ontario Human Rights Commission is also deplored.

CONCLUSION

In summary, we wish to make reference to statistical information released by the Ontario Human Rights Commission which indicates an urgent need for significant changes in the Code and its administration.

First, the total number of closed cases handled per year has increased from less than 500 cases in 1971/72 to 1,165 cases in 1973/74 and 1,423 cases in 1974/75.* The number of closed cases handled per year has increased steadily each year since 1972. Thus, there is reason to believe that the number of closed cases handled per year will continue to increase in the near future. This data further supports the necessity for implementing the recommendations under Parts B and C.

* See Appendix B

Second, during 1974/5 when 1,423 closed cases were handled by the Commission, approximately one fifth (288 of these cases) involved complaints of discrimination based upon either "sex" or "marital status".* This category of complaint ranks third across Ontario behind race and colour and national ancestry as a basis for complaint according to your letter dated December 17, 1975. However, we have reason to believe that cases of discrimination based upon "sex" and/or "marital status" comprise approximately fifty per cent of the caseload of the Ontario Human Rights Commission in the Toronto area. Our belief in this regard is based on verbal information released to our Committee by Mr. R.W. McPhee, recent Executive Secretary of the Ontario Human Rights Commission, during our meeting of February 10, 1976 at the Commission office. We deplore the fact that it is impossible to verify this information from the data released to us by Ms. Kathleen Fraser, the Commission's Education and Research Specialist, on April 14, 1976 because a breakdown for each region with reference to the number or percentage of cases and their basis for complaint is not provided. *

Since cases in the Toronto region accounted for approximately three fifths of all closed cases in Ontario during the 1974/75 fiscal year,* we are led

* See Appendix B

to believe that discrimination based on "sex" and "marital status" makes up a far greater percentage of all cases brought before the Human Rights Commission in Ontario than might be assumed on first reading. Approximately 75% of the 288 complaints based on discrimination with regard to "sex" or "marital status" in the fiscal year 1974/75 were lodged by females. Therefore, it would appear that females report that they suffer more discrimination on the basis of "sex" and "marital status" than do males on Ontario.

If the realities of the cases are such as have been deduced by us from the rather ambiguous statistics provided, then these priorities should be reflected in the Commission's administration and programming. The Ontario Committee on The Status of Women urges immediate action on the matters brought to your attention in this brief.

ADDENDUM TO

RECOMMENDED CHANGES IN THE ONTARIO HUMAN RIGHTS CODE

Submitted by

THE ONTARIO COMMITTEE ON THE STATUS OF WOMEN

Further to our original brief, the Ontario Committee on the Status of Women recommends that the filing of an Affirmative Action program by the respondent be required in every case handled by the Ontario Human Rights Commission, whether that case is handled by conciliation or through a Board of Enquiry. All such Affirmative Action programs would be tied to a timetable which would bring about a change in the employment practices of a respondent within a stated period of time and which would ensure a measure of progress for all present and future employees of that respondent.

APPENDIX A

On the last page of the pamphlet "Serving The Public" the following statement is made, "In advertising and in descriptive brochures, include a statement to the effect that the establishment is being operated in accord with the Ontario Human Rights Commission and that all persons are welcome, regardless of race, colour, religion or nationality." The publication date of this brochure is 1974. Despite the amendment to the Code in June, 1972 by the insertion of "sex", "marital status", and "age", no reference is made to the fact that regardless of sex all persons would be welcome. The omission of "sex" as a critical issue in school textbooks in the booklet Teaching Prejudice, a study prepared by The Ontario Institute for Studies in Education for the Ontario Human Rights Commission in 1971, third printing 1973, is another illustration of this practice.

APPENDIX B



Ontario

Ministry of
Labour

Ontario Human
Rights Commission

Human Rights
Branch

December 17, 1975

Ms. Connie Taylor
158 Carolbreen Square
Scarborough, Ontario
MLV 1H5

Dear Ms. Taylor:

In reply to your letter of November 5, I enclose a copy of the Commission's annual report for the 1974-1975 fiscal year.

As for the breakdown of complaints by grounds of discrimination, the leading ones are:

race and colour	36%
national ancestry	21%
sex and marital status	20%
age	5%
creed	1.5%

Rank's 3rd

Here are replies to your other questions.

1. No. But the Women's Bureau has prepared anonymous case studies, based on our files, which should be published shortly. I suggest you contact Miss Judith Stoffman.
2. By custom the Board of Inquiry has consisted of one man, a professor of law. There is a roster of such individuals, and they are called upon in rotation and also with a view to the city in which they live and the locus of the Board.
3. Our research and educational programs are described in the annual report enclosed.

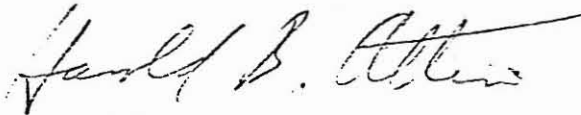
Ms. Taylor
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4. The details of settlements in all complaints, like the details of the complaints themselves, remain confidential. "Fines" are only levied after prosecution, which itself follows upon non-compliance with the orders of a Board of Inquiry Chairman's Report.

If you mean monetary compensation offered as a result of a Board of Inquiry Report, I enclose a copy of the Reports in the Zeller's Ltd. case and the London Driv-Ur-Self case. A third, involving a London interior decorating firm, Mar-Su Company, is pending.

Please contact me if you have any further questions.

Yours sincerely,



Harold B. Attin
Information Officer

HBA/rk

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Encls.



Ontario

Ontario Human
Rights
Commission

416/955-6845

400 University Avenue
Toronto Ontario

April 14, 1976

Ms. Connie Taylor
The Ontario Committee on the
Status of Women
158 Carolbreen Square
Scarborough, Ontario M1V 1H5

Dear Ms. Taylor:

I am responding to your letter of March 20, 1976 as Mr. McPhee has resigned as Executive Secretary of the Commission to assume a new position in another provincial Ministry.

I have obtained the available information from Ms. Kathleen Fraser, the Commission's Education and Research Specialist. We have attempted to provide you with all the available data which we presently possess. When examining this data, it should be remembered that sex, marital status and age were not introduced into the Human Rights Code until June, 1972.

- 1) The Commission has handled 6,730 closed cases between the Commission's inception and March 31, 1975. We can only supply a yearly breakdown upon the following basis:

1962/70	-	2,496	closed	cases
1970/71		578	"	"
1971/72		469	"	"

Bell-Mackay case, in which the Supreme Court ruled against the Commission, resulted in the 71/72 decline.

1972/73	-	599	closed	cases
1973/74		1,165	"	"
1974/75		1,423	"	"

- | | | |
|-------------------------|---|--------------|
| 2) Total Cases (closed) | - | 6,730 |
| Male | | 3,329 |
| Female | | <u>2,489</u> |
| Group* | | 912 |

This includes groups of two or more people, organizations and institutions which can not be classified by sex.

Ms. Connie Taylor

April 14, 1976

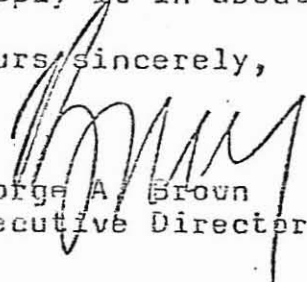
- 3) 1974/75 closed Cases - 1,423
- | | |
|--------|-----|
| Male | 670 |
| Female | 689 |
| Group | 64 |
- 4) (a) During 1974/75, the Commission closed 288 cases involving complaints of discrimination based upon either sex or marital status.
- (b) Approximately 75% of these cases were lodged by females. As you can see, we have received a significant number of complaints from males on the grounds of sex or marital status.
- (c) It is impossible to supply you with this data unless we examine each file to determine the conditions of settlement. This is not feasible at this time.
- 5) It is important to remember that the Toronto storefront office initiated these payments for a wide range of concerns. The major areas in which clients received monies were: Employment Standards, Workmen's Compensation and Unemployment Insurance.
- (a) Services for Working People handled 5,600 cases in the 74/75 fiscal year.
- (b) Approximately 33% of the clients were female.
- (c) The Storefront office never did a statistical analysis upon this basis and the data is therefore not available.
- 6) 1974/75 fiscal year
- (a) Total complaints - 1,423 (closed)
- (b) Grounds of Discrimination
- | | | | |
|-------------|-------------|--------------------|-----------|
| Race/Colour | - 513 (36%) | Sex/Marital Status | 288 (21%) |
| Ancestry | 304 (22%) | Age | 72 (5%) |
| Religion | 21 (1%) | Other | 225 (16%) |
- (c) Regional Breakdown
- | | |
|--------------|-------|
| Toronto | - 870 |
| Southwestern | 266 |
| Northern | 204 |
| Eastern | 83 |

Ms. Connie Taylor

April 14, 1976

The Commission is in the process of updating and revising the format of its statistical data. We are expecting a new computer printout which will provide more precise information on our past activities. Should you require more specific data, we should be able to supply it in about one or two months time.

Yours sincerely,



George A. Brown
Executive Director

GAB:jam