

ANNUAL REPORT 1991-1992

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ONTARIO HUMAN RIGHTS COMMISSION



Ontario Human Rights
Commission
Annual Report 1991-1992

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Ontario Human Rights Commission
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Letters of transmittal and greeting



OFFICE OF
THE LIEUTENANT GOVERNOR
QUEEN'S PARK
TORONTO, ONTARIO
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TEL (416) 325-7780
FAX (416) 325-7787

July 29, 1992

Dear Ms. Frazee:

As representative of Her Majesty Queen Elizabeth II in the province of Ontario, I wish to extend congratulations to the Ontario Human Rights Commission as you celebrate your 30th anniversary.

Over the past 30 years the Commission has overseen the implementation of the Human Rights Code to ensure equal treatment in all levels of society. You are to be commended for your work to end discrimination based on such factors as race, sex and age.

May the next thirty years witness the elimination of discrimination and installation of justice and freedom for all citizens of this magnificent province.

With best wishes,

Yours sincerely,

Henry N. R. Jackman
Lieutenant Governor

Ms. Catherine Frazee
Chief Commissioner
Ontario Human Rights Commission
400 University Avenue, 12th Floor
Toronto, Ontario
M7A 2R9



The Premier
of Ontario

Le Premier ministre
de l'Ontario

Legislative Building
Queen's Park
Toronto, Ontario
M7A 1A1

Hôtel du gouvernement
Queen's Park
Toronto (Ontario)
M7A 1A1

I am pleased to extend my congratulations to the Ontario Human Rights Commission on the occasion of your 30th anniversary.

Since June 15, 1962, when the various anti-discrimination legislations that existed became consolidated under the umbrella of the Ontario Human Rights Commission, your organization has worked to ensure that the worth and dignity of our citizens be recognized. That task has not been easy, but to its credit the Commission has remained committed to its mandate.

This commitment is even more imperative now as this province prepares to meet the many challenges that will arise in the future. With uncertainty in many areas of the economy, changing demographic patterns and adjustments in labour legislation, the Commission will face many more complex challenges in ensuring that all our citizens are provided with equal rights and opportunities.

I wish to thank the staff of the Commission, past and present, and those who serve or have served as Commissioners, for their hard work in helping to keep Ontario in the vanguard of human rights in North America. As you recognize, the ideal is your obsolescence. However, it will be a small price to pay for a province in which we have a climate of understanding and mutual respect.

Bob Rae





Minister
Ministre

Ministry of
Citizenship

Ministère des
Affaires civiques

5th Floor
77 Bloor Street West
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(416) 965-6202

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Dear Friends,

As the Ontario Minister of Citizenship, it is my pleasure to extend my congratulations to the Ontario Human Rights Commission on the occasion of its 30th anniversary.

In 1962, when the Commission was created to administer the Ontario Human Rights Code, it became a pioneer. It was the first human rights commission of any kind in Canada.

The Commission has grown a great deal over the years, and its responsibilities have become increasingly complex. However, it continues to investigate and to help resolve allegations of discrimination, and to promote harmony in the province of Ontario, which are challenging tasks in a population of ten million people.

I salute the Ontario Human Rights Commission for its 30 years of service to the people of Ontario.

My very best wishes for the future.

Sincerely,

Elaine Ziemba
Minister of Citizenship
With Responsibility for Human Rights,
Disability Issues, Seniors' Issues and
Race Relations



Ontario
Human Rights
Commission

Commission
ontarienne des
droits de la personne

400 University Avenue
Toronto, Ontario
M7A 2R9

400, avenue University
Toronto (Ontario)
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(416) 314-4500

August 31, 1992

The Honourable Elaine Ziemba
Minister of Citizenship with responsibility
for Human Rights, Disability Issues, Seniors
Issues and Race Relations
77 Bloor Street West
5th Floor
Toronto, Ontario
M7A 2R9

Dear Mrs. Ziemba:

Pursuant to Section 31(1) of the **Ontario Human Rights Code, 1981**, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 1991-1992 for submission to the Legislative Assembly of Ontario.

This report reflects the activities of the Commission to March 31, 1992.

Yours sincerely,

Catherine Frazee
Chief Commissioner



Greetings

Chief Commissioner's remarks

It is with pride that I look back at the breathtaking developments in the Commission over the last year and, indeed, over the past 30 years. Ours is an organization that was born in the crucible of the struggle for equity in Ontario, nurtured on the milk of the vision of those who refused to lose sight of the goal and matured through the work of dedicated staff and leaders.



Over the last 30 years, the Ontario Human Rights Commission has distinguished itself through its passion for human dignity, social pluralism and justice. Our work is never easy, but we have emerged from the storms we have faced as a stronger, more mature organization with an even greater empathy for those we serve.

It was a privilege for me to have served for three years as head of this great organization. I share the anticipation and excitement of those at the Commission who are even now preparing to meet the challenges

of the future, a future that will demand no less of us in courage, foresight and unswerving commitment to bringing equity to all.

— *Catherine Frazee*

A word from the Executive Director

As an employer, the Commission is probably a microcosm of society. Our major asset, however, is the above-average concentration of people who are totally committed to bringing about justice in our society.



Our aim is to be an organization where staff at all levels understand their jobs and are given the tools to do them, where good performance is recognized and where management accountability is clearly communicated and fulfilled.

— *Lesley Lewis*

Commissioners' profiles



Catherine Frazee Chief Commissioner

Catherine Frazee was appointed Chief Commissioner of the Ontario Human Rights Commission in September 1989, after serving four years as Commissioner. Prior to her appointment, she served as Co-ordination Officer for Amnesty International, where she planned human rights campaign activities, consulted on political and communications strategies and developed the expertise of volunteers in international human rights advocacy.

Ms. Frazee received her post-secondary education at Carleton University in Ottawa and at Dalhousie Law School in Nova Scotia. She is the recipient of several academic awards and scholarships. She has lectured and written extensively on human rights issues in Canada and abroad.

Fran Endicott Vice Chair

Fran Endicott is an independent consultant who specializes in training and development in issues related to sexual harassment, systemic discrimination and anti-racism. She was a Toronto Board of Education Trustee from 1980 to 1988, during which she chaired the Board's Race Relations and



Affirmative Action Review committees. She was also chair of the Status of Women's Committee and a member of the Standing Committee on Personnel and Organization. She has written a number of reports and other publications. She has a degree in history from the University of the West Indies.

R. Lou Ronson Vice Chair

Lou Ronson is a Vice President of Bnai Brith International in Washington, D.C.

and a former Commissioner of the Anti-Defamation League in the United States. He has served as President of Bnai Brith Canada, as well as Chair of its League for Human Rights. Mr. Ronson is an



Honorary Vice-President of the Toronto Jewish Community Centre, serves on the Ontario Regional Executive Board of the Canadian Jewish Congress and as a Director of Mount Sinai Hospital. He is the founder of the R. Lou Ronson Research Institute on Anti-Semitism, administered by the League for Human Rights of the Bnai Brith Canada. He was appointed to the



Commission in 1985 and served as its Vice-Chair until the end of his term in September 1991.

Reva E. Devins

Reva Devins, a lawyer, was called to the Bar of Ontario in 1985. She has law degrees from Osgoode Hall (LL.B) and Harvard University (LL.M). Prior to her appointment to the Ontario Human Rights Commission in 1987, she worked in private legal practice, with the Canadian Human Rights Commission and as a Law Clerk for the Supreme Court of Canada.

During the past five years, Ms. Devins has been an active participant in several committees and panels of the Ontario Human Rights Commission. She most recently served as the Commission's official liaison with the Ontario Human Rights Code Review Task Force, established by the government to make recommendations on human rights reform.

Pam K. Gill

Pam Gill was appointed to the Commission in May 1989. She draws upon extensive experience in social work with the federal government's New Horizon grant program and as Executive Director of the Rich-

mond Multicultural Concerns Society. She also served as Manager of the Counselling Services Team at the South Asian Social Service Organization. Ms. Gill has social work and science degrees from the University of British Columbia and is fluent in four languages. Her term ended in February 1992.

Elizabeth Kishkon

Elizabeth Kishkon was appointed to the Commission in March 1986. A resident of Windsor, she began her professional career as a political commentator and interview host for the CBC in 1971. She has served as board member of several social service agencies and was Windsor's first female Mayor. She is an active participant in community projects and municipal affairs. She currently works as a freelance broadcaster. Her term as Commissioner ended in February 1992.

Louis Lenkinski

Louis Lenkinski was for several years member and business representative of the Upholsterers' International Union. He has held the positions of Project Director and Executive Secretary to the Labour Council of Metropolitan Toronto. In 1975, he became Executive Assistant to the Ontario Federation of Labour and in 1984 was appointed a part-time member of the Ontario Labour Relations Board. Mr. Lenkinski joined the Commission in July 1987. He is a member of the Canadian Jewish Congress.

Carmen Paquette

Carmen Paquette's expertise includes such areas as women's issues, minority rights, social and economic issues, human resource development and community development. She is currently a partner in a workers' cooperative that specializes in organizational development, research and training.

She worked for several years as a consultant to francophone and anglophone women's groups. She is a member of gay and lesbian organizations involved in lobbying, community organizing and education against homophobia at the local, provincial and national levels.

Gaetane Pharand

Gaetane Pharand was trained in business management and was recently employed as Events Coordinator with L'Association des professeurs des Collèges at Laurentian University and as communications officer at Radio Canada. She has been active in community service since 1988 and has served as vice-president of St. Eugene's Parish Council.

David Philpott

David Philpott, appointed to the Commission in March 1989, brought with him extensive private-sector experience. He studied at the University of Toronto School of Architecture and has worked in contracting, finance and investment, commercial real estate development and consulting. At present, Mr. Philpott operates his own company and holds directorships in other organizations, including the Canadian Opera Company. He has written a popular book, *Dangerous Waters*. His appointment to the Commission ended in February 1992.

Jodey Porter

Jodey Porter served with the Canadian Diabetes Association as Executive Director for eight years and also with the Ontario Council on Diabetes. She was appointed to the Commission in April 1989 and served until her resignation in April 1992. Ms. Porter is now Assistant Deputy Minister of the Ministry of Health's Strategies Group. She is a native of London, Ontario.



St. Clair Wharton

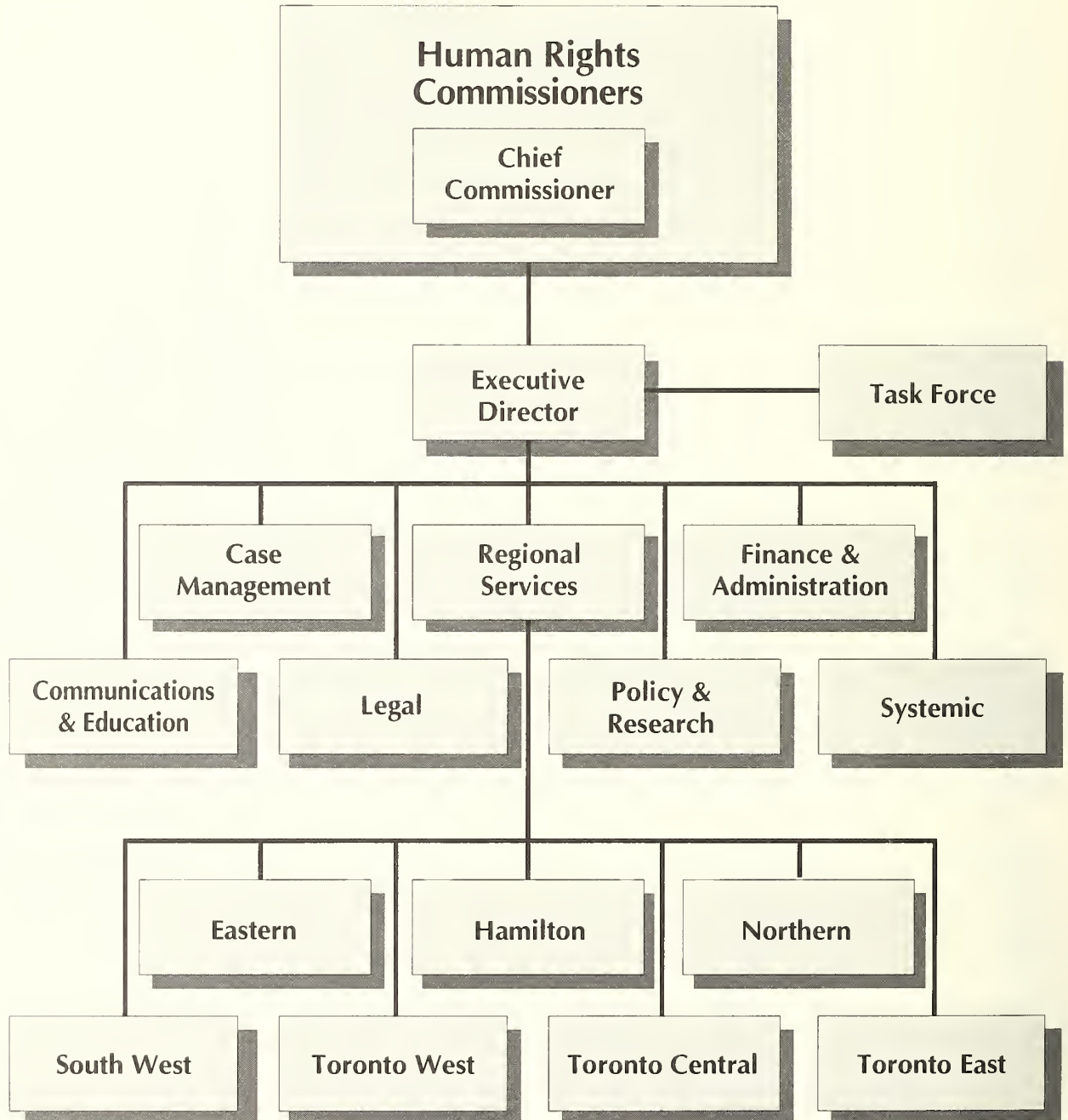
St. Clair Wharton is president of Local 2858 of the United Steelworkers of America, serving as vice-president from 1983-1985. He has served on a variety of human rights committees within the union. He is founding member of the Parkdale Action Committee against Racism.

Jerry M. Woods

Jerry Woods is national representative of the Canadian Paperworkers' Union. He has been an active trade unionist since 1962. He is past president of the Fort Francis Metis and Non-Status Indian Association and has served as panelist at a number of human rights conferences. He was appointed to the Commission in June 1991 and served until his resignation in March 1992. ■



Organizational Chart



The Commission last year



The Commission's seven administrative units work individually and as a group to develop and implement various aspects of the organization's work. For example, a training initiative may involve the Finance and Administration Unit's human resources personnel in the selection of candidates, staff from the Legal and other units as presenters, and members of the Communications & Education Unit in writing material and organizing the event.

Case management

The Commission last year handled 92,000 inquiries from the public and made 25,000 referrals to other agencies. It opened 2,535 cases and closed 3,112. The average number of cases closed per officer was 42, compared with 29 in 1990-1991.

Last year the Case Management Plan entered its second year. The Plan is designed

to reduce the Commission's caseload and to shorten the time it takes to resolve cases. Main elements of the Plan are to:

- Assign each officer only 10 cases at a time, to increase efficiency;
- Give priority to urgent cases, while handling others in order of their original filing;
- Utilize the procedural manual in case handling to improve consistency; and
- Give regional managers authority to review and close certain cases.

Systemic case resolution

The Commission investigates discrimination in two ways: The vast majority of cases are individual complaints. Through its Systemic Investigations Unit, however, the Commission also initiates investigations of the practices and inner systems of organizations.

Significant systemic cases last year included discussions with the Ministry of the Attorney General and the Ministry of Government Services about steps that should be taken to enable persons with disabilities to gain better access to courthouse facilities. Letters of understanding were ex-



Greater computerization of tasks contributed to improved efficiency and productivity during 1991-91. Shown are two Task Force employees, Mary Louise Robertson (left) and Elizabeth Rolfe.



changed between the Commission and the Ministries on a plan of action. Key points of this plan are to:

- Add a central 800 telephone number for information on making alternate arrangements if a courthouse is inaccessible;
- Provide sensitivity training on disability issues to Ministry of the Attorney General staff, the judiciary, Crown Attorneys, defence bar, Legal Aid and law enforcement agencies; and
- Renovate court facilities and construct barrier-free courthouses.

The Commission concluded wide-ranging settlements with two Toronto-based employment agencies, T.E.S. Contract Services and Ian Martin Limited. In 1990 the Commission launched a systemic investigation into the agencies' practices, following allegations that they discriminated against groups protected under the *Code* in selecting candidates for assignments.

The settlements, approved by the Commission last year, called for extensive employment equity programs and dealt with how agencies should handle discriminatory requests from employers.

Finally, the Commission launched a complaint against Trent University to improve physical access to its facilities for students with disabilities.

Commissioner & staff training

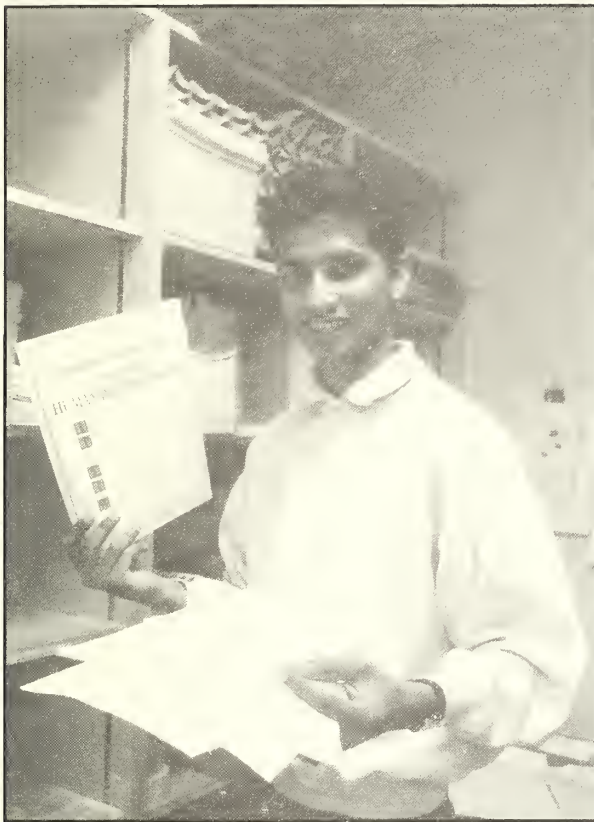
The Commission provided training to Commissioners and staff in a number of areas, including *Code*-related issues, clerical skills, customer service, computer operation, labour relations, financial management, AIDS and AIDS-related illnesses, orientation to the Commission and its activities, investigative skills, and career planning (for designated groups).

External submissions

The Commission submitted proposals to:

- The Ontario Select Committee on Confederation, recommending that social and economic rights be included in the Charter of Rights and Freedoms;
- The Law Reform Commission on the human rights implications of mandatory AIDS/HIV testing;
- The Canadian Association of Statutory Human Rights Agencies (CASHRA), urging a stronger role for the future of CASHRA;
- Government hearings on the creation of employment equity legislation;
- The Royal Commission on National Passenger Transportation.

Work was also initiated or continued on the Commission's submission to the Ontario Human Rights Code Review Task Force, appointed by the provincial government to make recommendations on changes needed in the way human rights are enforced in Ontario.



The demand for Commission publications continued to increase. During 1991-92, the Commission distributed almost 85,000 pieces across Ontario. Shown here is Publications Clerk Intiaz Ahmad.



Public education, community liaison & consultations

The Commission actively participated in International Human Rights Day activities, such as:

- Commissioners addressed Citizenship Courts across the province;
- The Chief Commissioner presented a framed poster to the Honourable Gerry Wiener and the Honourable Elaine Ziemba at the League for Human Rights Media Human Rights Awards dinner; and
- The Commission sent letters to politicians at all levels of government, urging them to recognize Human Rights Day.

Publications:

- *Human Rights in Ontario*, a plain-language brochure, and
- *Policy Statement with Respect to Exclusionary Scholarships*, a technical paper.

Internal administration

Major initiatives included:

- Development of a performance management system with emphasis on managing a diverse workforce;
- Promotion of health and safety through creation of new guidelines, safety and security procedures, installation of safety systems and training;
- Production of a policies and procedures manual on human resources;
- Agreement with the union to implement a flex-time policy; and
- Co-op work programs.

In other public education activities, the Commission hosted a series of briefing sessions with community representatives to inform them of changes in its case management system.

Staff participated in conferences and workshops on such topics as human rights in the workplace, sexual harassment and violence against women. Audiences included the Canadian Bar Association, managers and counsellors at Algonquin College in



Ottawa, Loyalist College, high school students and the Hamilton Psychiatric Hospital.

The Commission further:

- Supported Lesbian and Gay Pride Day and maintained liaison with the Coalition for Lesbian and Gay Rights in Ontario (C.L.G.R.O.);
- Discussed with the Ontario Native Council on Justice ways to make the Commission's services more relevant to the First Nations;
- Participated in an Inter-Ministerial Committee developing strategies for making government policies and programs more sensitive to the religious needs of Sikhs; and
- Organized community outreach meetings between Commissioners and representatives of the Sioux Lookout community. ■

The Units



Office of the Chief Commissioner

Chief Commissioner: Catherine Frazee

The six staff members in the Chief Commissioners Office provide support to the Chief Commissioner, Vice-Chair and Commissioners in all areas, including administration, public engagements, intergovernmental communications, research and policy development. Staff also function as the liaison between the Chief Commissioner, Commissioners and other agency personnel on key issues as they affect the Commission.

Office of the Executive Director

Executive Director: Lesley Lewis

The Office of the Executive Director provides corporate leadership and direction to the Commission and manages daily operations and performance of the Commission as a whole. It implements the Employment Equity Program and plans, designs and develops strategies to improve the workings of the Commission.

Case Management

Director: Anita Dahlin

The Case Management Unit maintains accurate and up-to-date information on the status of cases. It tracks and monitors the processing of cases, provides policy direction on case management and supervises the implementation of the Case Management Plan.

Communications & Education

Director: Alan Shefman

The Communications and Education Unit coordinates *Code*-related training programs; develops and maintains the Commission's public profile through media and other communications devices; develops and publishes the Commission's publications; coordinates special programs and events for the Commission, and conducts public education activities to provide information to the public about the *Code* and the Commission.

Finance & Administration

Director: Albert Ganesh

The Finance and Administration Unit develops financial and administrative policies; provides financial, administrative and human resources support, and is responsible for all aspects of the Commission's computer and other information technology.



Legal Services

Director: Mark Frawley

The Legal Services Unit provides legal support and advice to the Commission in all areas of its work. It prepares legal opinions on complaints, settlements and matters related to judicial reviews and appeals. It represents the Commission before Boards of Inquiry and other judicial bodies as well as responds to enquiries from the legal community and the public.

Policy & Research

Acting Director: Calvin Bernard

The Policy and Research Unit develops policies and guidelines to interpret the provisions of the *Code* and suggest how the *Code* can be applied to the areas over which it has jurisdiction. The documents are used by the public and by Commission staff in dealing with cases. The unit also conducts specialized research for *ad hoc* Commission projects.

Regional Services

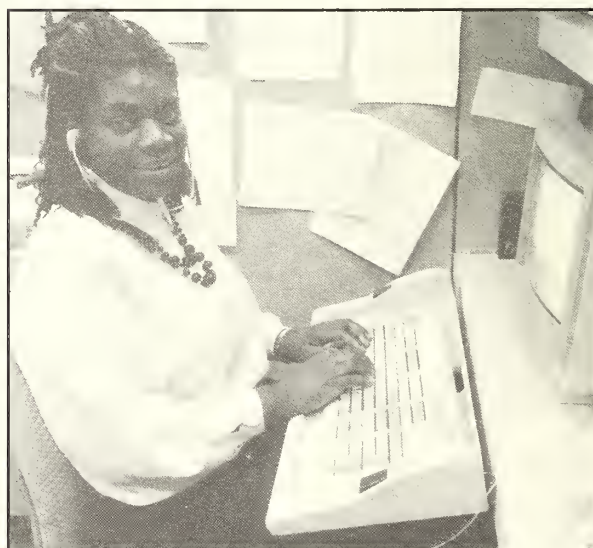
Director: Marty Schreiter

The Regional Services Unit is responsible for the administration of the Commission's 15 regional offices. Staff at the regional level receive and investigate complaints, as well as provide training, public education and advice to their local communities.

Systemic Investigations

Acting Director: Neil Edwards

The Systemic Investigations Unit initiates investigations into discrimination present in the inner workings or systems of organizations; provides expertise to regional offices on aspects of cases that have a systemic discrimination component, and takes leadership in handling requests for the Commission to review and authorize private- and public-sector equity programs. ■



During 1991-92, the number of Boards of Inquiries more than doubled. Shown here, Commission employee Lillian Davis transcribes dictation.

Dealing with the caseload



By the summer of 1990, there was growing concern at the Commission over the dramatic increase in its caseload to more than 2,600 cases. The increase was blamed partly on internal problems and partly on factors such as increased awareness of the Commission's services. Amendments to the *Code* provided more protection to more people and a broader interpretation of the *Code*.

Moreover, there was a growing awareness that the administrative systems for processing cases were out of date and increasingly inefficient as the number of complaints to the Commission continued to soar.

Spurred by intensified pressure from complainants and advocacy groups demanding change, the Commission set to work on new strategies to bring about a more speedy resolution to cases.

A major component of the new strategies was a Case Management Plan. Under the plan, the Commission gave officers more training, set new standards for productivity and restricted case loads to no more

than 10 cases at a time. The Commission formed a 10-person task force to handle 400 of the oldest cases, implemented a new procedural manual to standardize operations across the province and placed greater emphasis on settling cases informally.

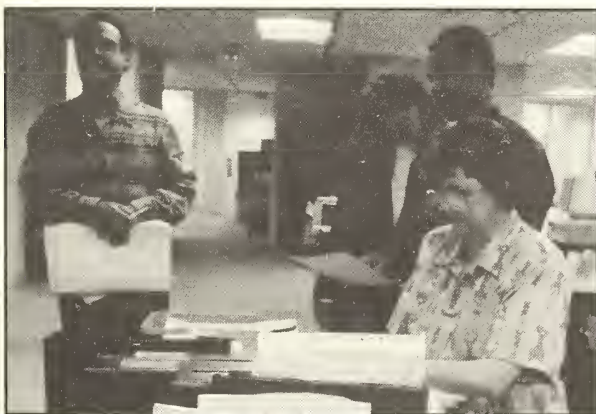
Over the next six months, the caseload dropped by 10 percent. For the first time in 15 years, the Commission closed more cases than it opened.

The Case Management Plan in action

By 1991, its second year in effect, the Case Management Plan had become a critical factor in the Commission's work.

The Plan is based on the premise that staff performance is maximized when adequate training and support as well as clear expectations of accountability are provided. The end result would then be a dramatic reduction in caseload.

This has turned out to be an ambitious expectation, since the more effective the Commission becomes, the more people turn to it for help in fighting discrimination and the more demands are placed on its staff. The publicity following the creation of the task force led to an almost immedi-



A beefed-up Task Force chipped away at the Commission's backlog of cases.



ate increase in the number of complaints to the Commission. (*See statistics in the Appendix.*)

The Code itself requires the Commission to follow certain procedures that take time.

The direct task of handling complaints falls to the staff of the Regional Services Unit. Other Units, however, focused their work on providing substantial support for case reduction. For example, the Legal Unit assigned lawyers with responsibilities for each region, so that officers could have ready access to legal advice in their day-to-day handling of cases. Legal staff also gave presentations at staff training seminars.

The Systemic Investigations Unit advised officers on the possible systemic components of cases they were handling. The Policy and Research Unit played a lead role in developing the framework for the process of preparing cases to hand over to the task force. The Communications and Education Unit organized training for staff and Commissioners.

The Commission boosted staff training through seminars on topics such as the principles of equality, the structure of the *Code* and the significance of precedent-setting decisions. Workshops were held with Commissioners on administrative law and

on their obligations as statutory decision makers.

Between March and December of 1991, the Commission closed 2,151 cases, an 86 percent increase over the same period the previous year. The average number of cases closed by each officer rose from 29 to 42.

As a reflection of the increased number of cases before it, over the course of the year, the Commission doubled its requests to the Minister of Citizenship to appoint Boards of Inquiry.

Under the Case Management Plan, once officers are assigned their allotted 10 cases, a case coordinator monitors all other cases to ensure that they are assigned in order of the date on which the complaint was filed.

By the end of last year, there were only 217 unassigned cases in the Commission, all but eight of which were less than nine months old. (Unassigned cases are screened and assessed for priority handling criteria. A case coordinator maintains them and keeps parties informed about the status of the case.)

These cases were monitored closely to ensure that they were not unduly or unnecessarily delayed. The vast majority of cases (48 percent) were closed as a result of Early Settlement Initiatives (ESIs). This means that they were resolved informally within two months of the complainants' approaching the Commission. The remainder of cases were either settled, withdrawn, denied a hearing by the Commission or re-



ferred to Boards of Inquiry. The Commission closed a total of 3,112 cases.

A new task force

Despite the Commission's performance under the Case Management Plan, however, pressure continued to grow, both within and outside the Commission to reduce the caseload even more quickly.

In September 1991, the Ontario government announced a one-time allocation of \$6 million to the Commission to help dispose of its caseload. With these new funds, the Commission expanded the existing task force from 10 to 52 persons and gave it a one-year mandate: Deal with all cases more than six months old and not currently under investigation — approximately 1,000 of the organization's toughest cases.

Freed from the weight of cases that seemed to grow older and more complex by the minute, human rights officers were now able to concentrate on new cases and cases up to six months old.

In the two months following the announcement of funding, the Commission undertook the massive task of creating the new group and setting it in place to accomplish its mandate within one year.

It was an extraordinary effort. The Commission:

- hired most of the 52-member task force,
- provided extensive training to the new staff,
- acquired office space, and
- began the job of analyzing and resolving the assigned cases by November 1992.

On several fronts, the group faced pressure to accomplish its given task: Government had high expectations because of its financial investment, while the public saw the group's creation as a guarantee that cases would be resolved speedily, within the expected time period.

The message to the public was that the Commission was open for business.

On the other hand, there was the challenge of the group's coming together to form an effective team. Although the core staff were drawn from the Commission, other members of the group were from backgrounds as varied as the Workers' Compensation Board, the Ministry of the Solicitor General and the Office of the Ombudsman.

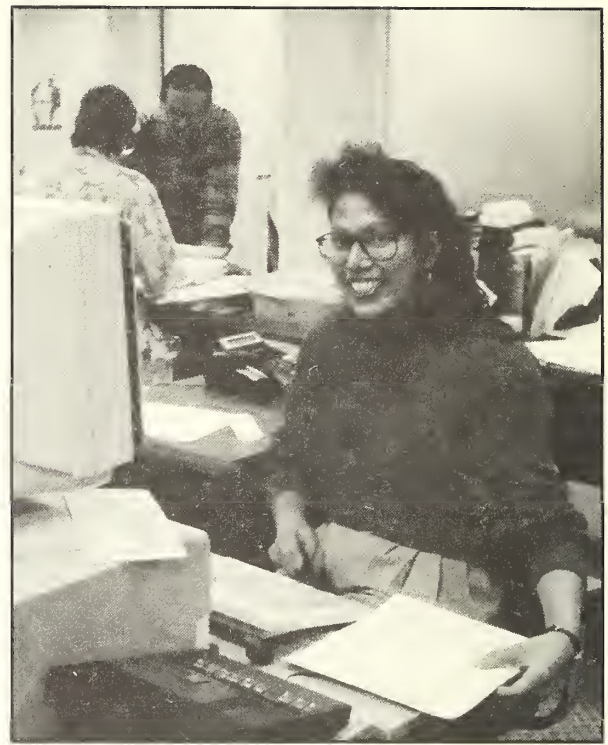
First indications were that the group would prove itself equal to the task set out before it. By the end of March 1992, it had closed 146 cases, its target for the first four months of operation.



The Task Force pioneered new approaches to case management. Shown at right is employee Lila Singh.

The Commission enjoyed other advantages from the work of the Task Force. The group acted as a testing ground for several new approaches to case management. For example, teams of officers conducted interviews in situations where there were large numbers of witnesses or where the complaint had occurred out of town. The office was fully computerized, eliminating much of the time-consuming work that had traditionally slowed down the processing of cases. An organizational health committee provided staff with feedback and support.

At the beginning of the task force's work, all cases were put through a "triage" proc-



ess, conducted by a committee of staff from across the Commission. Cases were screened to highlight issues with particular legal, systemic and policy implications. This information was helpful in streamlining cases and in providing necessary support and advice to investigating officers. ■

Introduction to cases



The cases discussed in this section are among those that the Commission referred to Boards of Inquiry or were settled and publicized because of their educational value. The Commission will only publicize settlements with the permission of the complainants.

Boards of Inquiry are appointed by the Minister of Citizenship. The Commission asks the Minister to appoint a Board when it believes, based on its investigation, that discrimination has taken place but the parties cannot reach a settlement.

Boards of Inquiry are open to the public. A Board of Inquiry is governed by administrative law. (It is not, for example, a criminal proceeding.)

A decision by a Board of Inquiry is legal and binding to the parties. A precedent set by a Board can be used to support evidence at other Board hearings.

A decision by a Board of Inquiry can be appealed through the judicial system from the Ontario Court of Justice to the Supreme Court of Canada. ■

OHRC Terms

A complaint is an allegation that the *Ontario Human Rights Code* has been violated. Details of the allegation are submitted to the Commission in a complaint form that is formally processed by the Commission.

An *early settlement initiative* or *E.S.I.* is an allegation of *Code* violation that is resolved by the parties with Commission assistance or withdrawn by the complainant before a form is filled out or formal processing begins.

Both complaints and early settlement initiatives are known as *cases*.

A *settlement* is an agreement between the parties of a complaint to resolve the complaint under terms to which they all consent. Settlements are considered confidential. ■



List of cases by grounds

Board of Inquiry & Appeals decisions and selected settlements

Because of restrictions under the Freedom of Information Act and the Protection of Privacy Act, the Commission cannot publish settlements. However, with the consent of the complainants, it will issue release to the news media on settlements of particular educational value.

Age

Albert Large v. Corporation of the City of Stratford et al.

Dominion Management et al. v. Mary Velenosi, the Ontario Human Rights Commission and H.A. Hubbard

Creed

Office and Professional Employees International Union, Local 267 v. Domtar Inc. and the Ontario Human Rights Commission

Family status

Duduik v. York Condominium Corp. No. 216 (No. 2)

Peterson v. Anderson et al.

Handicap (disability)

Gary Thornton v. Clarendon Foundation et al. (Settlement)

Rapson v. Stenms Restaurant Ltd.

Jerome v. De Marco

Douglas Bonner v. Her Majesty the Queen in Right of Ontario and the Ministry of Health, Insurance Branch

Gillies v. Avis Rent-A-Car (Settlement)

Charlene Marie Jackson v. The Leeds and Grenville County Board of Education and Ray Little (Settlement)

Marital status

Kelly Parks v. Christian Horizons et al.

Sandra Garrod v. Rhema Christian School et al.

Race, colour, ancestry, place of origin or ethnic origin*

Johnson v. Corporation of the City of Hamilton
Gaba v. Lincoln County Humane Society

Ruth Kidane v. Immigrant Womens Health Centre (Settlement)

The National Dental Examining Board of Canada v. The Ontario Human Rights Commission, Dr. Jennifer Footman et al.

Sex (gender)

James Babcock v. Para-Med Health Services Inc. (Settlement)

Irwin v. Oshawa Public Utilities Commission et al. (Settlement)

Enrick Plastics Division of Windsor Mold Inc. and Kenneth Brownell v. Ontario Human Rights Commission and Mira Heincke

Guthro v. Westinghouse Canada Inc.

Sherry Middleton v. 491465 Ontario Ltd. (carrying on business as Cannonball Restaurant)

Sexual harassment

Adair v. K.B. Home Insulation (Settlement)

Laura Waroway v. Joan and Brians Upholster-

* Cases under these grounds are grouped together, because most complaints in these areas cite some or all of these grounds. Other grounds covered by the Code include sexual orientation, citizenship, record of offenses and receipt of public assistance.

Areas and grounds

covered by the Ontario Human Rights Code



The *Ontario Human Rights Code* prohibits discrimination on the basis of:

- race
- ancestry
- place of origin
- colour
- citizenship
- ethnic origin
- creed
- sex (gender)
- sexual orientation
- handicap
- age
- marital status
- family status
- receipt of public assistance
- record of offences ■

It is against the *Ontario Human Rights Code* to discriminate in the areas of:

- services, goods and facilities
- occupancy of accommodation
- contracts
- employment
- membership in vocational associations and trade unions ■



The cases

Age

The Code provides protection against discrimination on the basis of age. (The only limit to this protection is in the area of employment, where protection from age discrimination is provided only to persons over age 18 and under age 65.)

The issue of mandatory retirement was central to the case of *Albert Large v. the City of Stratford et. al.* A Board of Inquiry rejected a bid by the Stratford Board of Police Commissioners to retire Mr. Large at age 60 in accordance with its agreement with the Police Association.

Mr. Large elected to work to age 65 but was forced into early retirement.

The Board last year ordered the respondents to pay Mr. Large close to \$300,000 in lost income, pension and benefits. The Board held that the employer had failed to establish that its mandatory retirement policy was reasonable, *bona fide* and imposed through concerns about the complainant being able to perform his job adequately. (The Board of Inquiry decision is being appealed in the Ontario Court of Justice).

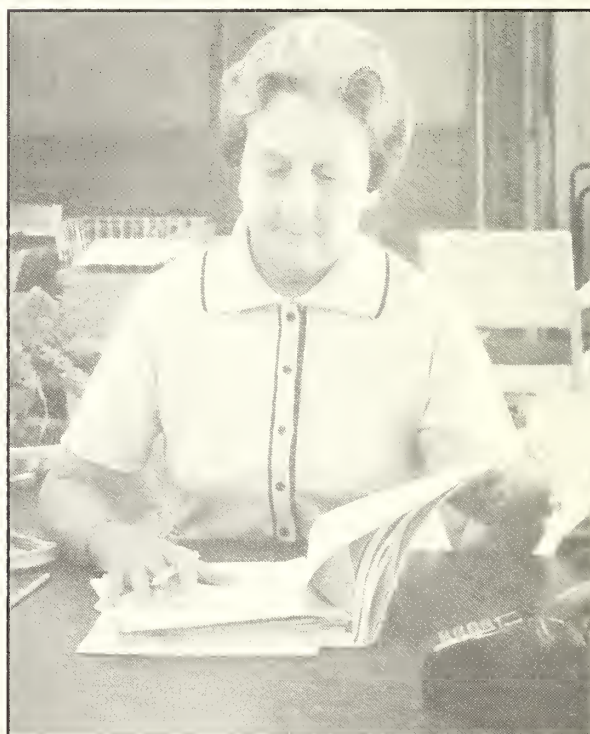
A Board of Inquiry dismissed a complaint by Robert Broadley, who alleged that

Stelco and the United Autoworkers Union discriminated against him by refusing him an extended vacation package given to older workers.

The Board ruled that this program, designed for workers 61 years and older, was established as a "special program" permitted by the *Code* [Section 13(1)] to relieve hardships on older workers as they made the transition into retirement.

Would-be tenant not 'old' enough

The Commission is appealing a decision by the Ontario Court of Justice that gave a Hamilton landlord the right to discriminate by favouring older tenants.



The Code provides protection to workers up to age 65. (Photo courtesy of the Ontario Ministry of Labour)

A Board of Inquiry had ruled that Dominion Management discriminated against Mary Velenosi by refusing to rent an apartment to her.

According to the Court, there was insufficient evidence before the Board of Inquiry for it to conclude that age was a factor in Ms. Velenosi's being refused the apartment. The Court ruled further that the *Code* did not prohibit a landlord from having a preference for older people or from administering applications for apartments in a way "calculated to result in exclusion of persons not being identified as "older people." ■

Creed

Last year, Ontario's religious diversity came into sharp focus with a ruling by the Grievance Board of Ontario, requiring the Ontario government to pay its workers for the days they take off to celebrate non-Christian holidays.

The Government responded by agreeing to give two paid days of religious holidays to members of an approved list of religions. (The Government will consult with religious leaders to develop a list of holidays requiring absence from work.)

The Grievance Board's decision was based on the principles of the *Code*, which require employers to accommodate the needs of groups under the Code short of undue hardship.

Turf war

In a precedent-setting case in 1991, the Ontario Court of Justice affirmed a Board of Inquiry decision that held a union and an employer jointly responsible for providing accommodation. Both were equally liable to the complainant for lost wages, because they had failed to accommodate the employee's religious requirements.



The Board of Inquiry had ordered Local 267 of the Office and Professional Employees International and Domtar Inc. to pay Irene Gohm \$74,000 in damages after Domtar fired Ms. Gohm when she refused to work Saturdays because of her religion. Ms. Gohm is a member of the Seventh Day Adventist church, which regards Saturday as its Sabbath.

Domtar had argued before the Board that even though Ms. Gohm was prepared to work on Sundays at regular pay, this would have violated the company's collective agreement with the union, which required that the overtime pay rate would apply on Sundays.

The Ontario Court of Justice ruled that both the union and the employer were parties to the collective agreement, and therefore both had a responsibility to avoid or remove discriminatory clauses from their contract. Pointing out that the woman had been caught in a "turf war" between the company and the union, the Court ruled that "companies, unions and persons are all in a primary and equal position in a single line of defence against all types of discrimination."

Kirpan decision upheld

In a separate ruling, the Ontario Court of Justice dismissed an appeal by the Peel



The Code requires employers to accommodate the needs of pregnant workers, short of undue hardship to their organization. (Photo courtesy of the Ontario Ministry of Labour)



Board of Education against the Commission. The Court upheld a Board of Inquiry decision that ordered the Peel Board to amend its policies to allow the wearing of kirpans (ceremonial daggers) by Kalsa Sikhs.

The Peel Board had developed a policy forbidding Sikhs to wear the kirpans while on school property. The Court reiterated that the *Code's* prohibition of discrimination on the basis of religion also applied to schools.

The Court supported the Board of Inquiry's ruling that the onus was on the Peel Board to prove that kirpans posed a threat to the safety of others in the school system and that there had been cases of violence involving kirpans in schools.

The Peel Board was unable to provide such evidence. ■

Family status

The Ontario Court of Justice last year upheld a Board of Inquiry decision prohibiting the inclusion of adult-only clauses in condominium policies and by-laws.

In the case of *Cryderman v. York Condominium Corporation No. 216*, the Court

agreed with the Board's decision that adult-only condominiums violate the *Code* by discriminating on the basis of family status.

A Board of Inquiry in 1990 had awarded a combined total of \$36,000 to four Metro Toronto families who had complained to the Commission that they were prevented from occupying units because they had young children.

Frequently, those who discriminate make exceptions

A Board of Inquiry ruled that the owners of a Stratford, Ontario, apartment building had discriminated against Heather Peterson when they evicted her upon discovering that she was pregnant.

According to Ms. Peterson, the building superintendent told her that the owners, Ross and Jean Anderson, wanted to know if she was pregnant. When she told him "yes," he asked her if she planned to have the baby adopted. He told her if she did not do so, she would have to move out because "Mr. Anderson does not want children in the building."

The owners denied the allegations, claiming that they evicted Ms. Peterson because she had too many parties.

The Board accepted Ms. Peterson's account of the events. It ruled that the evidence did not support the landlords' claim that she had numerous parties, and furthermore, that the issue of too many parties had not

been raised at the beginning of the complaint process. That there were some children, mostly teenagers, in the building did not defeat the woman's case. According to Board Chair Constance Backhouse, "Individuals do not always behave entirely consistently. Frequently, those who discriminate make exceptions."

The Board also found that Ross and Jean Anderson evicted Ms. Peterson because of their disapproval of her marital status. (She was unmarried when her child was born).

The Board ordered the Andersons to pay Ms. Peterson's moving expenses, telephone and cable reconnection charges and the difference in rent for her new apartment, from the time she was evicted to the time the Board order was given. The Board also awarded general damages of \$1,000. ■

Handicap

According to 1986 census figures, 1.25 million persons in Ontario had some type of disability. That was the year the Ontario government proclaimed the beginning of the Decade of Disabled Persons.

The government's proclamation signalled a renewed determination to ensure that persons with disabilities are given equal access to opportunities as well as freedom from discrimination because of their handicap. (The *Code* uses the word handicap to describe disabilities).



As one of the grounds on which discrimination is prohibited in the *Code*, handicap has had, since 1986, the largest number of complaints of all grounds.

Last year was no exception. The Commission received 815 disability-related complaints (32 percent of the total), resolved more than 1,000 and negotiated more than \$1 million in settlements on behalf of complainants.

Among the many significant cases dealt with was one involving a woman with a mental disability, who alleged that the Great West Life Assurance Company discriminated against her by providing less disability coverage than it did persons with physical disabilities.

The woman, who suffered from chronic depression, claimed that she was offered only 12 months of disability coverage, while persons with physical disabilities received 24 months of coverage.

The woman received more than \$8,000 in damages and additional coverage. The company also agreed to remove the phrase in its contract with employers that called for benefits to be stopped after 12 months unless an employee is confined to a hospital.

The largest number of complaints to the Commission are those from people who experience discrimination because of their handicap. (Photo courtesy of the Ontario Ministry of Labour)





AIDS/HIV and the Code: 'a significant milepost'

Another area of challenge was in the application of the *Code* to AIDS/HIV related disabilities. AIDS/HIV fall within the *Code's* definition of handicap.

In October 1991, the Commission made submissions to the Ontario Law Reform Commission in which it called for changes to legislation, such as the *Health Protection and Promotion Act*. Under the Act, medical personnel are required to submit personal information with each request for testing a specimen for AIDS/HIV.

The submission called for anonymous testing for AIDS/HIV and stressed that under the *Code*, a person could not be tested unless he or she gave informed, voluntary consent.

The Commission reviewed all AIDS-related complaints to make sure that they had been placed on its fast-track system. Procedures were put in place to allow persons who experienced discrimination because they had AIDS/HIV or were thought to be AIDS/HIV-positive to have their complaints dealt with quickly and confidentially.

The Commission also organized AIDS/HIV training workshops for all of its staff and the Commissioners. The workshops

were run by community advocates from the AIDS Committee of Toronto.

In March, 1992, the Toronto-based Clarendon Foundation agreed to pay one of its former employees, Gary Thornton, \$35,000 as part of a settlement to a complaint by Thornton alleging that he was fired from Clarendon because he was HIV-positive.

A settlement was arrived at while the case was being heard at a Board of Inquiry.

The Foundation also agreed to reinstate Thornton to his job with full benefits, provide its staff with AIDS-awareness training and implement an AIDS/HIV policy.

Chief Commissioner Catherine Frazee called the settlement a significant mile post in the long journey to reinforce the right to equal treatment for persons living with AIDS/HIV.

A Board of Inquiry dismissed a complaint against a Windsor dentist by a man living with AIDS, who alleged that the dentist refused him treatment after learning of his condition.

The Board found that Dr. Paul DeMarco did not deny the man treatment but rather rescheduled him for the last appointment of the day.

Discrimination in employment

In other areas of employment, a Board of Inquiry ordered the Stemms Restaurant Ltd. in Toronto to compensate Martin Rapson, a former employee who was fired after having an epileptic seizure at work. The management of the restaurant claimed that, as a bartender, Mr. Rapson was at risk if he had a seizure while handling glassware.

The Board ruled that medical evidence showed that Mr. Rapson was at low risk of having a seizure and that his epilepsy in no way made him unsuitable for employment

as a bartender. The Board ruled also that he was not obligated to disclose his disability prior to being hired for the job.

Although the *Code* requires employers, landlords and service providers to accommodate the needs of persons with disabilities, an organization can be exempted from this requirement if it experiences undue hardship in making such accommodation.

A Board of Inquiry dismissed a complaint against the Ministry of Health by a former employee who suffered from depression and anxiety. Although the Board ruled that the man's disability was not the reason for his dismissal, it assessed what would have been the requirements for accommodating his disability, which the man claimed the Ministry had failed to do anyway.

The Board agreed that extending the man's probationary period was one way of accommodating him. It decided, however, that to have done so would have caused undue hardship to the Ministry. Rather than assessing the man over a 12-month period, the Ministry would have had to allow him to accumulate 12 months of days on the job, regardless of how long this took, due to absence from work. ■

Marital status

The *Code* offers the same protection to philanthropic, educational, fraternal and social institutions or organizations that serve the interests of persons identified by race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status and handicap.

Section 23(1)(a) of the *Code* permits a religious organization that is serving the interests of its subscribers to preferentially hire staff who subscribe to the those same religious beliefs. This applies *only if* this requirement is reasonable and *bona fide*, given the nature of the job.



Last year, two employees of Christian Horizons Homes, Kelly Parks and Holly McIntyre, filed a complaint against their employer after they were fired for living in common-law relationships.

Christian Horizons describes itself as a transdenominational organization, primarily serving the evangelical Christian interests of its founding and present executive, personnel and residents. The organization provides nursing care and residence to developmentally handicapped persons.

The Board of Inquiry rejected the ground of dismissal, noting that the organization had offered one of the women a part-time job after she was dismissed from her full-time position.

Neither Parks nor McIntyre had been told of the organization's policy before they were hired.

The Board also found that Christian Horizons had failed to prove that one of its primary functions was to create an evangelical Christian environment and that all employees were essential to fostering this environment.

In the case of *Sandra Garrod v. Rhema Christian School*, on the other hand, the Board ruled that the role of a teacher *was* an integral part of creating a Christian environ-



ment in the school. The schools teaching contract also explicitly prohibited conduct that is in flagrant conflict with Christian ethics and morals.

A common-law relationship, the Board said, is accepted in the Christian community as a breach of Christian morals and, as such, the school boards decision to fire Ms. Garrod was not prohibited by the *Code*. ■

Race, colour, ancestry, place of origin or ethnic origin

Complaints of discrimination on the basis of race have increased steadily over the last four years, from 224 (13 per cent) in 1987/88 to 460 (18 percent) in 1991/92.

Discrimination on the grounds of ancestry, citizenship and place of origin accounted for another 101 complaints last year.

Race cases are some of the most challenging to prove at a Board of Inquiry. Rarely is any direct evidence of racial discrimination found for complaints of this type.

In many race cases, Commission investigators must attempt to piece together the underlying racial bias by probing vague and subjective evaluations and by rigorously scrutinizing explanations for inconsistencies.

This process has been compared to constructing a large, complex jigsaw puzzle without all of the pieces: The challenge is to fit together enough of the pieces so that the Board of Inquiry gets the picture.

One of the most devastating forms of racial discrimination is when a person falls victim to practices and policies that on the surface may appear harmless but can have the effect of creating barriers to equality.

In a case involving the Metro Toronto Housing Authority (MTHA), the Commission negotiated a settlement of \$5,300 following a complaint by a black employee, who claimed that MTHA had denied him several promotions over a 13-year period.

The Ghanaian-born man had received satisfactory performance reviews, studied general sciences at the University of Toronto, been on 14 professional development courses, received accreditation as a building technologist and earned a diploma in architectural technology.

He claimed that MTHA denied him work experience that would have qualified him as an architectural technologist.



Racial or sexual slurs, harassment and jokes poison the work environment and are a form of discrimination. (Photo courtesy of the Ontario Ministry of Labour)

What's in a joke?

In another case, a Filipino-born employee of the Lincoln County Humane Society complained that he was denied a promotion because of his race and small stature, which he said is a product of his ancestry.

A Board of Inquiry ruled that there was no direct link between the work-place behaviour and the man's failure to obtain the promotion. It ruled that the promotion was awarded to another employee because the Filipino man lacked on-the-road experience.

The Board of Inquiry however found that negative attitudes, in the form of racist jokes and slurs, had been tolerated at the Humane Society. The Board recommended that the Society form a committee to educate employees on the inappropriateness of racial jokes and slurs.

The Commission's *Policy on Racial Slurs and Harassment and Racial Jokes* views racial jokes and slurs as a form of discrimination that prevents affected employees from enjoying their right to freedom from harassment in the workplace. Jokes and slurs also contribute to what has become known as a "poisoned work environment."

The policy states that since the *Code* provides for equal treatment in the workplace, an employee who works in a poisoned environment is subject to terms of employment that are quite different from those experienced by individuals who are not subjected to the same type of comments or treatment.

The employees' right to equal treatment with respect to employment may thus be violated in such an environment.

Not Italian enough?

Direct discrimination takes many forms as well. In Toronto, a black Italian woman complained that she was denied a job as an Italian Counsellor with the Immigrant



Womens Centre after questions were raised in the organization concerning her colour and place of origin. Born in Eritrea (Ethiopia), a former Italian colony, the woman had spent several years living and studying in Italy. She spoke fluent Italian.

In a negotiated settlement, the woman was given another job with the organization and compensated \$5,000 in general damages.

* * *

In Windsor, a settlement was negotiated between the Exchange Restaurant and a black woman who had applied for a job as a waitress. The woman claimed that when she requested a job application form from the restaurant's owner, she was told that the positions were filled. A short while later, the woman's friend, who is white, obtained a form from the bartender. Several positions were subsequently filled.

The Commission referred the case to a Board of Inquiry, but settlement was reached after the first day of the hearing.

The restaurant agreed to revise its application forms to comply with the Commission's guidelines, provide application forms to everyone who requested them, and post notices declaring its commitment to em-



ployment equity and the principles of the Ontario *Human Rights Code*.

The Commission may also conduct audits over a three-year period to ensure that the restaurant is carrying out the terms of the agreement.

* * *

A complainant has the right to appeal a decision of the Commission or a Board of Inquiry through all stages of the judicial process. The Ontario Court of Justice last year conducted a judicial review of a complaint by a Hamilton vendor, who alleged that she had experienced severe racial discrimination at her place of business in a farmers' market.

The respondent, the Corporation of the City of Hamilton, offered a settlement that, in the Commission's view, was full and adequate, given the nature of the complaint and the public interest that the Commission represented. The Commission told the woman that it may not be willing to request a Board of Inquiry to hear her case, because it was satisfied with the settlement offer.

The woman agreed to the terms of the settlement but asked the courts to review the Commission's refusal to request a Board of

Inquiry. She claimed the Commission had coerced her into accepting the settlement.

The Court dismissed her request for review on the ground that, even though the Commission had encouraged her to accept the settlement offer, it had not stated that it would not request a Board hearing if she did not accept the offer.

Professional associations, boards fall under the *Code*

The Supreme Court of Canada handed down a decision on an appeal by the National Dental Examining Board of Canada as to whether the Board came under the jurisdiction of the *Ontario Human Rights Code*.

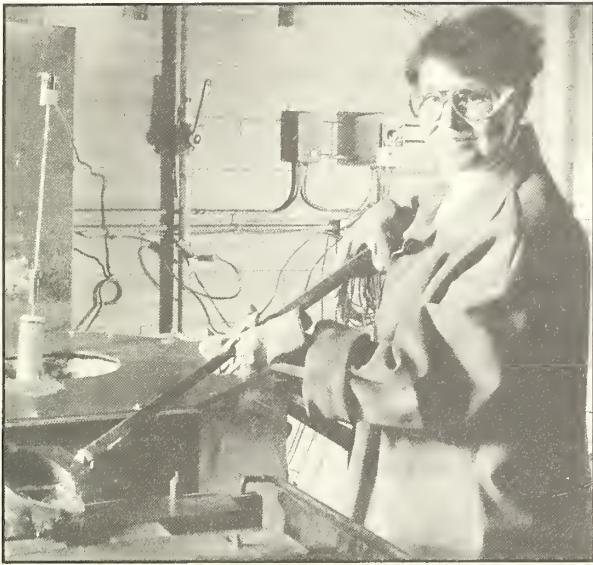
The Board appealed to the federal court after two Ontario dentists complained to the Commission that they had failed their dental licensing exams because the Board discriminated against them on the basis of their ancestry, place of origin, ethnic origin and gender. Both had been trained abroad in dentistry.

The Court's ruling confirmed the province's exclusive authority to regulate professions. It also established that when provincial licensing bodies create organizations to develop national standards for certification, these bodies fall within the jurisdiction of certain provincial legislation, such as the *Code*. Therefore the Commission had jurisdiction over the dentists' complaints. ■

Sex (gender)

The Ontario Human Rights Code provides for protection from discrimination on the basis of sex (gender) or pregnancy. Most such incidents of discrimination occur in the workplace.

A Board of Inquiry ordered the Cannonball Restaurant in Brampton to pay a former waitress more than \$13,000 after she was



As more women enter nontraditional fields, employers must ensure that the workplace is free from systemic and overt discrimination. (Photo courtesy of the Ontario Ministry of Labour)



fired by a manager, whom other waitresses said preferred “nice, young-looking girls.” The woman was pregnant when she was fired.

The Board found the manager and the owners liable, even though the owners had recently purchased the restaurant and did not own it at the time the incident took place.

The Board rejected the restaurant’s claim that it fired the pregnant waitress because it feared she would get hurt if a fight broke out. It accepted instead the argument that a pregnant waitress was not considered part of the restaurant’s image.

According to Board Chair Constance Backhouse, a long line of human rights decisions has enunciated the clear principle that customer preference cannot be used to justify a discriminatory act.

In another case involving a pregnant employee, the Ontario Divisional Court upheld a Board of Inquiry decision that the woman’s employer was wrong in refusing to reassign her to an area of the plant that posed less of a threat to her unborn child. The employer had also insisted that she take an unpaid leave of absence for the remainder of her pregnancy.

The Court ruled that Emrick Plastics’ policy of assigning spray painters to per-

form painting duties only, excluded painters who, due to pregnancy, might not be able to perform these duties.

According to the Court, the company was unreasonable in rejecting an opinion by the woman’s doctor stating that paint fumes could be harmful to the fetus. The doctor recommended that the woman be given other duties. The Court described the company’s behaviour as “demanding, paternalistic and legalistic,” especially in light of its failure to provide evidence to counteract the doctors opinion.

Stating that there was ample evidence to support the Board of Inquiry’s findings, the Court dismissed the company’s appeal.

* * *

The Code permits the Commission to use its discretion in deciding whether a respondent’s offer of settlement provides proper compensation for a complainant and fully meets the public’s interest.

In the case of *Guthro v. Westinghouse Canada Inc.*, the Commission exercised its discretion to not present evidence at a Board of Inquiry hearing, because it felt that the respondent’s offer of settlement, made after the Board had been appointed, was a full and accurate remedy to the complaint.



The hearing proceeded after the complainant's lawyer decided to call evidence in support of the private interest of the complainant under the *Code*.

The complainant, Linda Guthro, alleged that the company discriminated against her because of her sex when it refused to transfer her to other departments when it was downsizing.

The Board found Westinghouse liable for its refusal to reassign her to a department that was all male. Moreover, the Board said, the company had not provided it with an acceptable reason for maintaining an all-male department and for hiring less-qualified men than Ms. Guthro.

The Board ordered Westinghouse to pay Ms. Guthro close to \$6,000, plus interest, for lost wages. ■

Sexual harassment

The year 1991 will undoubtedly remain etched in the public's mind as the year that sexual harassment and date rape were catapulted to the forefront as serious problems to be reckoned with in our society. The issue reached a climax during the Anita Hill-

Clarence Thomas controversy. Thomas' confirmation hearings in the United States led to a dramatic increase in enquiries from the Canadian public about the definition of sexual harassment under the *Ontario Human Rights Code*, the way to handle sexual harassment, particularly in the workplace, and how to develop sexual harassment policies.

The Commission last year negotiated close to half a million dollars in settlements in complaints alleging sexual harassment. Other terms of settlement included letters of apology, offers of jobs or reinstatement, and agreements to host sexual harassment workshops. Of the 256 complaints received, 244 occurred in the workplace.

The Ontario *Human Rights Code* [Section 9(1:f)] defines sexual harassment as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome."

During the week following the Clarence Thomas hearings, the Commission issued a media release on an extraordinary settlement to a complaint made by a former secretary of a Kingston insulation firm, K.B. Home Insulation. The decision attracted international attention, prompting calls from ABC News and Reuters News Agency.

The woman alleged in her complaint that the company's president and sales manager discriminated against her on the grounds of sex, sexual harassment and reprisal.

In addition to a \$20,000 cash settlement, the company agreed to report to the Commission whenever a female employee terminated her employment, to organize a seminar on sexual harassment for all employees and to implement a sexual harassment policy.

The manager against whom the allegations were made also agreed not to remain alone in the office with any female employee. The Commission can conduct spot checks

to ensure that the company and the manager are adhering to the agreement.

In another settlement, the president and chief executive officer of a major Ontario corporation paid his former secretary \$16,500 in damages after she alleged she was sexually harassed in the workplace.

The woman claimed that in the two months she worked for the company, the man made repeated sexual advances to her. He also asked her during a business trip to spend the night with him in his hotel room, which she refused to do.

As part of the settlement, the man agreed to provide her with a handwritten letter of apology; to post notices explaining the *Ontario Human Rights Code* in all company offices and to establish a policy on sexual harassment.

In one of the relatively few complaints of sexual harassment to be resolved at a Board of Inquiry, the Board ordered a Hamilton employer to compensate a former employee more than \$6,000 after the woman complained she was sexually harassed, solicited and then fired after she refused her employer's advances.

The Board found that her employer, a director and co-owner of Joan and Brian's Upholstering & Decorating, gave testimony that was "often emotional and frequently appeared to be concocted."

The woman alleged that her employer's behaviour ranged from dirty jokes to inviting her to his apartment, located in the same building as the business, where he attempted to show her a pornographic movie and made sexual advances to her. She said she refused his advances.

On her second day with the company, the woman allegedly refused his advances again; and on the third day, she was fired. The employer claimed he fired her for poor job performance. The Board, however, found that the woman had not done any-

thing in her work that was unusual to the company's procedures.

The Board concluded instead that "since at least one of the reasons for the woman's dismissal was (the employer's) view of... the unsatisfactory nature of his relationship (with her), ...he had contravened Section 7(3)(b) of the *Code*, which prohibits reprisal by a person in authority upon rejection of sexual solicitation." ■

Systemic initiative — employment agencies

In October 1991, the Commission approved comprehensive, wide-ranging settlement packages that had been negotiated with two Toronto-based employment agencies. Ian Martin Limited and TES Contract Services agreed to settlements calling for the development of detailed three-year employment equity programs.

The settlements followed from complaints initiated by the Commission in January 1991.





The investigation was the first formal one to be conducted by the Commission's Systemic Investigations Unit.

In what was described as the most innovative systemic discrimination settlement in Canada, the two employment agencies also agreed to:

- survey all employees and persons referred to corporate clients to determine the number of designated group members: women, racial minorities, native persons and persons with disabilities;
- implement an extensive employment equity program to ensure that their own workplaces will be representative of the population;
- encourage their clients to hire designated group members;
- review the policies and practices in their workplaces that could act as barriers to the advancement of designated group members;
- provide all present and future staff with training in employment equity, human rights, race and ethnic relations;
- retain computer and written records of referrals;

- report discriminatory job requests to the Chief Executive Officer of the agency, and
- provide regular reports to the Commission on the progress of all aspects of these settlements.

The terms of these settlements are prescriptions for changing the way employment agencies work, Chief Commissioner Catherine Frazee commented on the settlement.

The message has certainly gone out to those agencies that actively discriminate or whose business practices do so inadvertently, that it is no longer acceptable, that a complaint can be launched against them and that they can be held accountable in very significant and tangible ways.

The two agencies, which have offices in a number of Ontario locations, including London, Ottawa and Hamilton, agreed to a rigorous monitoring program by the Commission to make sure that they are complying with the terms of the settlements.

The Commission retained the right to conduct spot audits of their employment records.

Approval of the settlements was the final phase of an intensive formal investigation, the impact of which was felt across the employment agency industry. At least two major agencies began voluntary employment equity programs.

Also, members of the Association of Professional Placement Agencies and Consultants and the Federation of Temporary Help Services have met with the Commission to discuss ways to ensure that industry practices do not discriminate.

The Chief Commissioner expressed hope that the Ministry of Labour, which is responsible for legislation regulating employment agencies, would soon move to strengthen those regulations. ■



On June 15, 1962, the Government of Ontario took a historic step. It created the *Ontario Human Rights Code*.

The Code pulled together under one piece of legislation the various laws barring discrimination against certain groups in society. The Ontario Human Rights Commission (formerly the Anti-Discrimination Commission) was created to administer the *Code*.

This is the story of the Ontario Human Rights Commission. The initial grounds of the *Code* — race, colour, creed, place of origin, nationality and ancestry — were gradually expanded to include disability, sex (gender) and age. The *Code* came to prohibit discrimination against persons who had received pardon for criminal offences, persons who were receiving welfare or other forms of public assistance and lesbians and gay men on the basis of their sexual orientation.

The story of the Commission is the story of people — people who fought for its creation, who hovered over it and nursed it through its infancy, whose vision and commitment to equity sustained it through years of criticism and reproach, and who sometimes experienced disappointment in their bid to improve it.

The story of the Commission is best told through the voices of those who lived it. It is a story that begins with the...

Dawn of a new era

The 1950s and 1960s were periods of profound change in attitudes toward discrimination in Ontario, mainly against Blacks and Jews.

The demand for change came from all sides, from those who called for human rights legislation and from those who personally fought discrimination wherever they encountered it. Kalmen Kaplansky, first Director of the Jewish Labour Committee; Sid Blum, a labour leader who campaigned hard for human rights legislation; Harry Gairey, who fought blatant discrimination against Black railroad porters; Bromley Armstrong and Don Moore, who were successful in their fight to allow Caribbean women to enter Canada as domestic workers.

One of the most outspoken voices of that period was that of a young lawyer, Alan Borovoy, then Director of the Toronto District Labour Committee. Borovoy was an active participant in the final campaign that led to the creation of the *Code* and the Commission.



Although the *Racial Discrimination Act* (passed in 1944, four years before the United Nations Universal Declaration of Human Rights) and the *Fair Accommodation Practices Act* were in place, it was clear that they were not enough to stop rampant discrimination against Blacks and Jews.

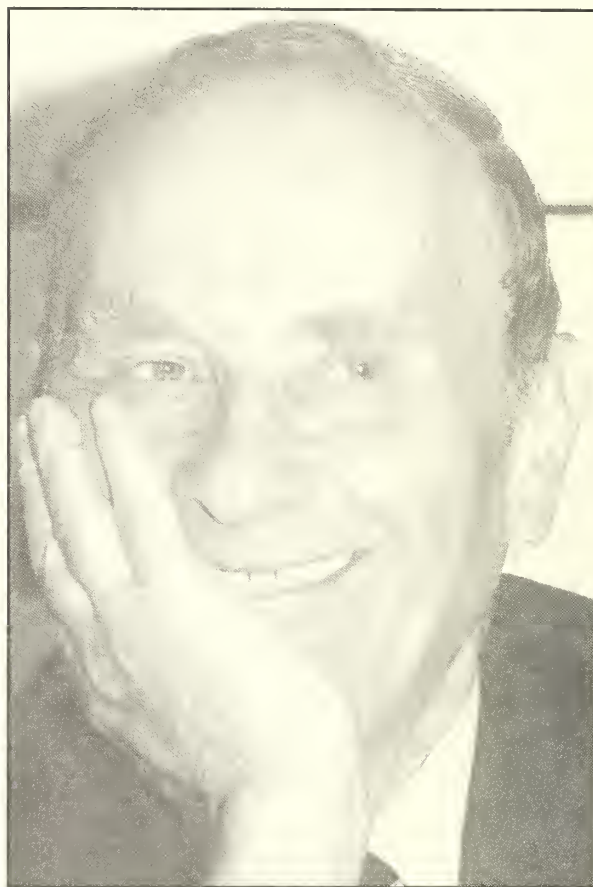
The *Fair Accommodation Practices Act* had jurisdiction over services such as hotels and resorts. Yet in 1961 a Black American couple and their two children, assured of Ontario's equity laws, took their vacation in Ontario, only to be refused service in several hotels.

On their return home, they wrote a letter to the Commission:

Can you imagine how I feel as I sit reading one of your many pamphlets on "How to make your Ontario vacation a memorable one," when having just returned from Ontario ...I find myself wishing I would forget the memory of Ontario?

We are at home now... but the disappointment and embarrassment lingers on. I will always hear my husband's voice saying, "I travelled 1,000 miles to be refused room in the inn."

The Act did not cover the rental of homes and apartments.



Borovoy and his group set up test cases.

We'd go looking for trouble. We would set up surveys where we would have Blacks, followed by Whites, try to get housing. We did it in Toronto, we did it in Windsor, in Hamilton, in St. Catharines. And every time we encountered discrimination, we would blow it up in the newspapers, so that we were developing a consciousness in the community for the kind of legislation we were seeking.

There was the famous case in St. Catharines. A Black family had been evicted under the landlord's excuse that the neighbours did not want a Black family:

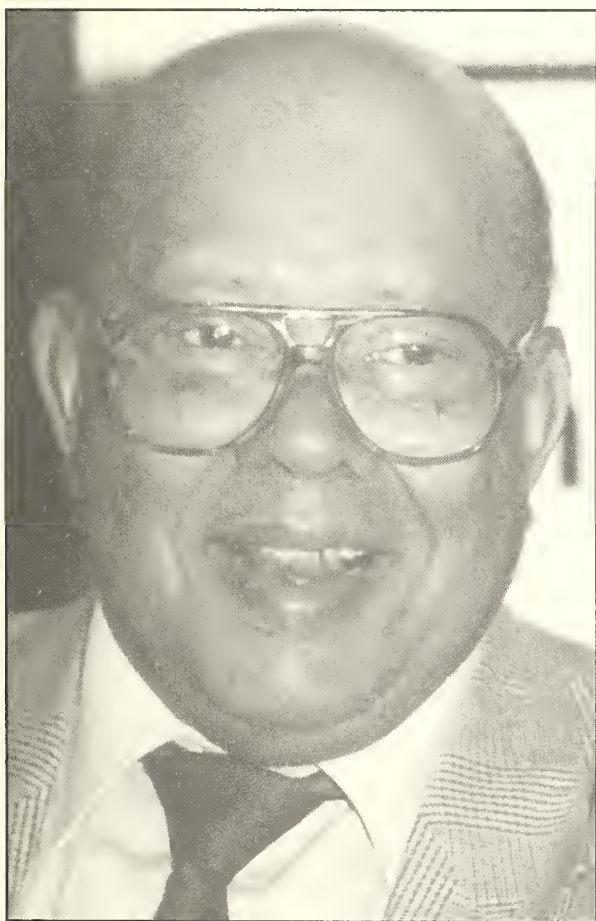
We drew up a petition on the spot — We used to do this kind of rough and ready work! — that said the neighbours did not object to having Black families live in the area. The overwhelming majority of people signed the petition. It was an old beaten-up area. This one guy refused to sign the petition. I asked him why, and he looked across the slum and said "because they will ruin the neighbourhood!"

The landlord rescinded the eviction.

*We prepared and drafted a brief (calling for the inclusion of housing in the **Fair Accommodation Practices Act**) and sent it out to organizations all over Ontario. And we lobbied! I remember going to welfare, labour, ethnic and racial minority organizations, churches, municipal councils. We squeezed them, we cajoled them, we pleaded, we bargained, we bluffed, we did every thing we could think of to get them to support our brief! And one by one by one, they agreed (to come to Queen's Park for the face off with Premier Leslie Frost and Minister of Labour Charles Daley.)*

The brief was developed in 1959. By early 1961, Borovoy and his group felt ready.

Ever mindful of the need to make an impact, Borovoy asked for a small room for the meeting (to gain the full impact of a crowd). The Minister of Labour was from St. Catharines, so he made sure there was a particularly large delegation from St. Catharines.



The important thing was not the brief, but those who supported the brief, who felt the issue was important enough to show up. At the beginning, I introduced every single person in that room. And I didn't care how long it took!

As the names from St. Catharines were read out, the Minister leaned over and said, "Didn't anybody stay home today?"

When the group finished its presentation, the Premier looked at us and said "I think this province is ready for this legislation!" It was a very exciting time.

The legislation was changed to include houses and apartments. ■

Opposition

Those lobbying for human rights legislation faced a peculiar brand of opposition. There was not, according to Borovoy, "an organized opposition to what we were trying to do." Few, if any of their opponents advocated a return to the old days. However, as Marvin Schiff and Dan Hill describe in their book *Human Rights In Canada*, the attitude among even people of good will was, You can't legislate brotherly love. "Consequently, victims of discrimination who publicized their grievances... of-





Gaining ground

Six months after taking office, Hill hired as a clerk a “shy, quiet young woman,” Helen Miller (now Hurley). The staff soon consisted of Hurley, a human rights officer, an education officer, a secretary and Hill himself.

Today Hurley works as administrative assistant to the Director of Regional Services. She recalls the first heady days of the Commission:

(After successful cash settlements,) the complainants all wanted to buy Dr. Hill something. They were so thankful for the money they had coming to them.

Not everyone shared this gratitude. Hurley remembers the day the Commission received a bomb threat from an irate respondent:

The idea of a Commission was very new to everyone, and people were sort of feeling their way around, trying to find out, I guess,

ten had to face humiliation and the resentment of a society that did not suffer ‘trouble makers’ gladly.”

The news media were the chief organs for the expression for these opinions.

But there was another more subtle enemy. Government agreed with the need to establish the *Code* and the Commission, but human rights issues became, according to Borovoy, “a question of priority.”

If we could generate enough pressure for what we wanted, we’d get it. But of course there were lots of constituents and interests competing for the same resources.

Borovoy and the Toronto District Labour Committee lobbied hard for government to put more resources into the fight against discrimination. They believed strongly in public education and proactive investigations. This would demand full-time staff, rather than Ministry of Labour staff, who were administering the acts through the Anti-Discrimination Commission.

Government responded by creating the *Code* and revamping the Commission, appointing as its first director Dr. Daniel G. Hill.



“Respondents tested the Commission.”
— Helen Hurley (at right)



Sita Ramanujam



exactly what the Commission was capable of doing.

I got the feeling that they (respondents) were testing the Commission. Some of the complaints we got were downright discriminatory, and the respondents just said, "Yes, that's what happened." They agreed with everything the complainant had said. But they were not willing to change their mind.

Another long-time member of staff, Sita Ramanujam, also remembers the early days, as the Commission began to establish itself as a force to be reckoned with.

Armed with two graduate degrees from her native India and a family tradition of involvement in equity issues (Her family actively participated in the freedom movement led by Mahatma Gandhi in India and South Africa.) Ramanujam joined the Commission as a specialist officer in 1969. She is now Senior Compliance Coordinator, having served as manager of the Commission's Ottawa region, as well as its eastern and central Toronto offices. She was also manager of the Unit for the Handicapped while it was operational (1982-1989). The Unit was responsible for research, policy, guide-

lines, public education and investigation of disability cases.

In those days, we really felt we were building the foundation of what is now known as the equity movement, focusing on issues such as pay equity, employment equity, women's rights, disability rights and so on. There was a strong emphasis on public education.

Although the Commission was technically in a neutral position between complainants and respondents, Ramanujam feels it had a special significance to groups protected by the Code and they had much faith in it.

There was a great sense of excitement at that time. The Commission was more important to people then, compared to 20 years later, when everyone is so blasé because they know about it. I think they saw us as champions for the rights of the people. We were seen as a small, effective force to be reckoned with, that both educated the public and enforced the anti-discrimination legislation.

Our budget and resources have more than doubled, but we are now seen as a large bureaucracy, where individuals and sometimes groups are lost in a morass of process, procedures and legalities.

By the time Hill ended his term in 1973, the Commission had made great strides in establishing itself as defender of the rights of



groups protected by the Code. Hill recalls:

I think we broadened and made more open the whole area of housing. We didn't cure racism and discrimination, but I was able to challenge a number of realtors. We had numerous Boards of Inquiry. Real estate people began to realize that if they did not comply with the Code, there was going to be trouble because I was going to take them to Court. We had a top-notch lawyer, Charles Dubin (now Chief Justice of Ontario), and we won just about all of our Boards of Inquiry.

Hill was a strong believer in research and education.

You cannot run a Commission, in my view, without developing three major areas: Enforcement is the first and most important. But education is also important. You can't enforce people's rights if they don't know their rights. The third is to establish the parameters of where and what racism is. You do that by solid research.

Using the Code's mandate to educate the public on the Code, Hill persuaded the Commission to authorize a study, which resulted in the publication of the book *Teaching Prejudice*, by David Pratt and Garnet McDermaid. Pratt and McDermaid reviewed several hundred books and discovered prevalent racism and sexism.

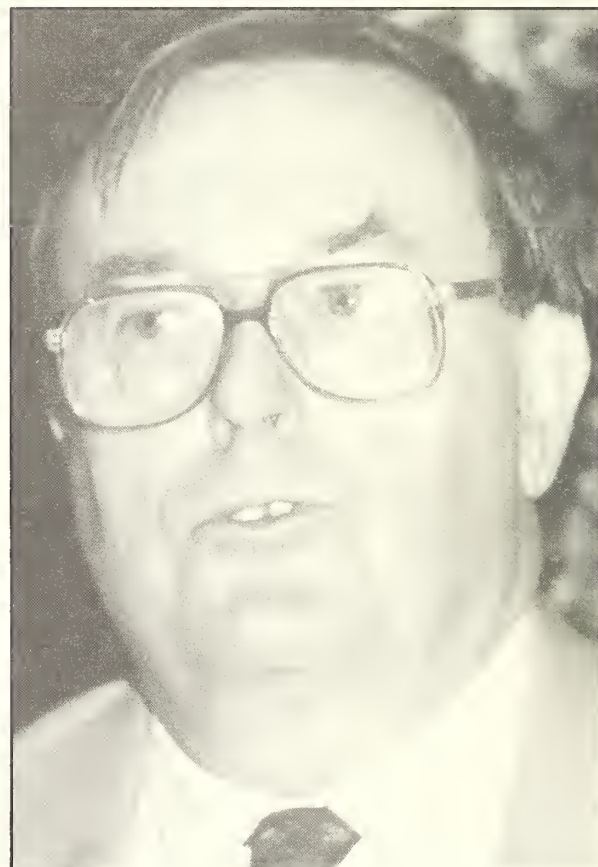
That book was instrumental in pushing the Ministry of Education into revising its textbook policy. In fact, we pushed them so far that they did their own textbook study. Other provinces also followed suit.

The Commission funded studies in discrimination by the University of Windsor, McMaster University and York University, on issues such as the lack of racial minorities in the news media and advertising and on the need for the Commission to set up a storefront office, which it later did.

The Code was gradually expanded to include additional grounds and areas. (Close to 16 amendments were made during the first 11 years of the Commission).

But this did not happen without a fight. The voices inside and outside of government that opposed the Commission were still strong, although somewhat muted by the time the Commission was established.

They (always) felt that there was no need for human rights legislation... that those de-



Tom Eberle (at right) "twisted arms ankles and legs" to get human rights legislation passed.

manding reform were just a bunch of Communist agitators. Once the Commission was formed, those voices were still in the background, making a noise here and there.

Hill and other human rights proponents of that era cite the courage and support of Tom Eberlee, then Deputy Minister of Labour, in pushing the legislation forward. Hill noted:

Tom twisted arms, he twisted ankles, he twisted heads — and he said “Do the right thing.” He kept working on (Leslie) Frost, and he convinced him that the legislation was needed. He kept the Cabinet informed. He kept his allies informed. And he fought with cabinet to push human rights amendments.

Hill summarises his term at the Commission:

(Implementing the Code) didn’t intimidate me. I had the support of my Commission; I had the support of the Premier, the Minister and the Deputy. They were always ready to pull out their big guns. They never tried to clamp down on me or shut me up. They thought I was a little nutty, but they respected me. ■

The maturing years

By the mid 1970s, discrimination had begun to take a new turn in Ontario, and once again the Commission was faced with the challenge of change. Changes in the immigration laws led to a dramatic increase in the number of people who came to Ontario from developing countries. The immigrants were for the most part skilled, ambitious and eager to “make it” in their new country.

But many viewed them as a threat, and there were acts of overt racism and physical violence, particularly against Blacks

and persons of South Asian ancestry. The Western Guard Party installed a hot-line with a recorded message that declared that “race is the predominant issue of our time.” The message urged an end to immigration and called for the racial minorities to be expelled to “countries or areas where their own races are in the majority.”

In Toronto, the Black Self-Defence Force urged Blacks to defend themselves against racist attacks. An American television network described Toronto as a racial powder keg.

In April 1976, Buddy Evans, a young black Nova Scotian, was shot to death by a Metro police officer. Bromley Armstrong was a Commissioner at the time, having joined the Commission in that same year. Armstrong, now an arbitrator with the Ontario Labour Relations Board, was a strong critic of discrimination and an active member of the Black community. As a Commissioner, he was no less so:

After the Buddy Evans shooting, we came the closest we have ever been to a race riot in Canada. Many people did not know this, but after the shooting, more than 300 Blacks met at the Four Brothers Club on Spadina; and they were ready to go to the streets — to damage cars, attack people, to proceed to City Hall and to even burn it, if it was necessary.





Armstrong was invited to the meeting. He recalls:

I listened for an hour to the anger and the venom of the people, that they couldn't take any more of this.

Armstrong introduced himself as a human rights commissioner and persuaded the group to channel its anger into a peaceful march on City Hall the next day. In the middle of the march, Armstrong was summoned by the Commission. He refused to leave and continued not only the march but also his vocal support of the Evans family.

The Commission was very disturbed about my actions. I was summoned to a special Commission meeting; and for the first time since I was on the Commission, the Attorney General was also invited to the Commission meeting. I got a distinct impression from the meeting that they wanted one of two things — either keep my mouth shut and back off from the demonstrations or resign from the Commission. They were concerned about the perception people would have of the Commission.

Armstrong offered his resignation, which was rejected.

After that, major discussions took place at the Commission and even at a meeting

with the federal Commission. Should Commissioners be allowed to speak out on these kinds of issues? The Commission remained divided on the issue.

In 1976, the Commission formally became a public body, with Commissioners being appointed entirely from outside of the Civil Service. Three years later, a Race Relations Division was created to deal exclusively with rising community tensions. Three Commissioners were assigned to the Division. One of these was Bev Salmon, now a Metro Councillor:

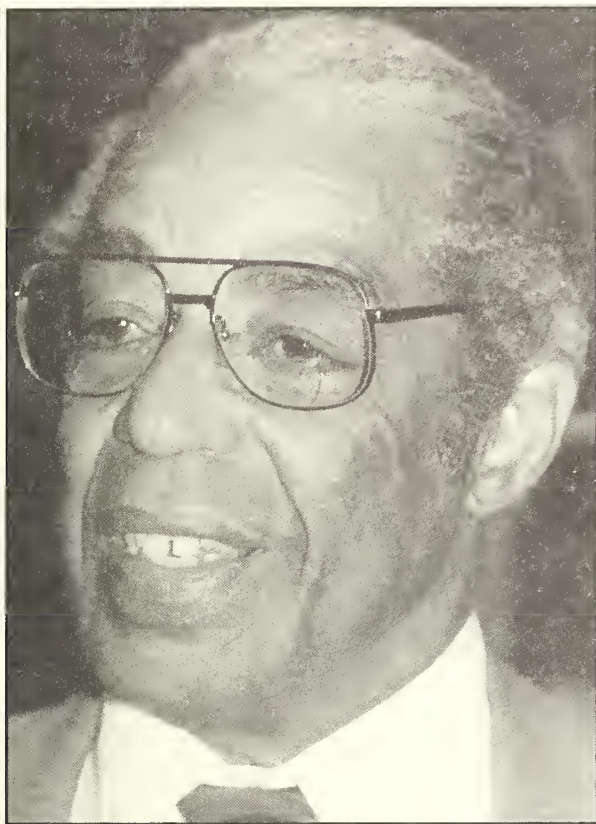
Up to the mid 1970s, if you talked about racism, it was like treason. You could talk about multiculturalism, but there was no way you could talk about racism. Therefore, people sort of pussyfooted around it; and that opened our eyes as to how much of it there was.

In the 1970s, we tried to make groups, such as school boards and the police, aware of (the realities of) racism, including discrimination against racial minority women, which the women's movement was not addressing.

Salmon organized a conference dealing with discrimination facing racial minority women.

As a Commissioner, I worked with Black and East Indian nurses who felt that they had been really victimized by the system and were unable to progress professionally. It affected some of them in a very drastic way. Their mental health suffered, they lost their jobs, and it was quite detrimental to them. It was hard to prove that kind of systemic racism. I worked on a one-to-one level with them, providing support as their cases were being handled.

It was hard to get the support of the Commission on some of the race cases (we were presented with). Usually the Commissioners with human rights or race relations backgrounds would support the decision on behalf of the complainant. Others did not. There was a certain reluctance to believe that



Bromley Armstrong (at left) led the march on Toronto City Hall to protest the Buddy Evans shooting.



some of these situations could have happened.

At the same time, the Race Relations Division did an excellent job of community education and giving support to groups to improve the racial climate.

There were always critics saying the Commission did not do enough in the area of advocacy. But if they were to divert the Commission's resources into advocacy, then its backlog would grow — and I don't agree with the argument that they should abandon the individual complaints process.

The Commission's profile continued to increase, partly the result of strong public education campaigns. This was viewed as a mixed blessing. More publicity meant more complaints than current staff could handle. Furthermore, it was clear that there were still other groups that needed protection under the *Code*. (In 1973, the Commission received some 500 complaints on grounds over which it had no jurisdiction).

In 1976, the Commission recognized the need to conduct a thorough review of all

aspects of the *Code*. Consultation meetings, chaired by Commissioners, were organized across the province. The Commissioners received numerous briefs and presentations on the effectiveness of the *Code* in dealing with discrimination in Ontario.

Life Together, one of the seminal documents in the history of human rights in Canada, was written as a result of these hearings. The report became the basis for the new *Code* in 1981. *Life Together* became a definitive resource, used by human rights commissions across Canada as a model for change.

In his recommendations in the report, Commission Chair Tom Symons called for changes, such as giving the *Code* precedence over all other provincial legislation; prohibiting landlords from discriminating against prospective tenants on the basis of marital status; and providing protection to those with disabilities, those with Ontario criminal records and those who were gay or lesbian.

Bromley Armstrong was one of the Commissioners who conducted the hearings:

They thought Symons' recommendations were way out. They thought he was crazy. Yet when I went to speak to a convention in



Barrie (on behalf of then Minister of Social Services), there were all these (persons with disabilities) who could not even get in through the front door because there were no ramps. One man came in a bed, and they brought him up in the freight elevator in the back.

I was so mad. I said to them, "Human rights in Ontario was defeated by Hockey Night in Canada."

(According to Armstrong, the night the Symons' recommendations were tabled in the Legislature there were only a handful of Ministers present, "and they were running back and forth to look at the game.")

Many of Symons' recommendations — though not all — were eventually included in the Code in 1981.

During that period, the Commission initiated discussions with the North York Mayor, leading to one of the first Mayor's Race Relations Committees in Canada. (These Committees develop and implement strategies for dealing with racial problems in cities.) The ambassador in this instance was former Commissioner and Vice-Chair, Rabbi Gunther Plaut.

Plaut is today a senior scholar at Toronto's Holy Blossom Temple and also chairs

Boards of Enquiries under the Code. Like many others who supported the Commission and its work, Plaut had his own vision of steps that could be taken to make it more effective:

I wanted to see the Commission become completely independent and directly accountable to the legislature. I felt that the influence of the establishment — both bureaucratic and political — was too strong and that the Commission remained a creature of the ruling (political) party.

There was (during the late 1970s and early 1970s), the push and pull of reformist and conservative forces in human rights. But then again, this is the way law comes into being, so the Commission was not unique in that respect. The Commission is there to uphold legal objectives and social ideals, not to reflect current social swings of opinion....

The Commission has grown (as a direct reflection of) the traditional Canadian, orderly, slow, legal process and ethics, accepted as they went along. People know what works and are worried about new things they think will disadvantage them, (such as the amendment of the Code in 1981).

During my era, the Commission came out of the shadows of irrelevancy and began to be a voice that people started to listen to. We had some very activist members on the Commission, who were themselves very visible in the community. Most complaints about the Commission from business-type groups concerned the type of (what they saw as) intrusion by human rights officers, asking staff all kinds of questions. Word gets around and they didn't like it. ■

A time of change

In 1985, with the change of government in Ontario, the Commission initiated a series of reviews of its processes and structures. The following year, significant amendments to the Code were passed by



the Legislature. These included the addition of sexual orientation as a prohibited ground of discrimination and the standard of “undue hardship” being established as the level of accommodation required for persons with disabilities.

In 1987, the responsibility for the Commission was transferred from the Ministry of Labour to the Ministry of Citizenship. This change formed part of a larger government strategy of bringing together a number of equity-type programs under one Ministry.

But storm clouds were brewing. In the years following the 1981 revision of the *Code*, the number of complaints to the Commission doubled, then tripled. The Commission brought to the attention of government the lack of staff and resources to keep abreast of the large number of cases it was now dealing with.

The 1987 Throne Speech acknowledged the need to renew and revitalize the Commission and to create a “strong and independent (body) capable of dealing with matters of discrimination.” In August of that year, an outside consulting firm conducted a review of the Commission’s effectiveness.

The review recommended fundamental changes in the structure and operations of the Commission. It found that individual case processing was the top priority, almost to the exclusion of the Commission’s other legislated responsibilities.

It recommended that the Commission take a preventive approach to discrimination, even as it dealt with the ever-increasing number of individual complaints. This could be achieved through means such as the creation of a systemic investigation unit, a strong public education function and a specialized unit for policy development and research.

The review also recommended that the Commission become more independent of government.

The man chosen to take the Commission through this period of restructuring was Raj Anand, a Toronto labour lawyer who in 1988 was appointed as Chair of the Commission. (He later changed this title to Chief Commissioner.)

The following 17 months were some of the most controversial the Commission had ever experienced. In many ways, this period was a turning point for the organization, as Anand set about to restructure the Commission into a form that he believed would make it more responsive to the needs of the present time.

There was little choice. Equity-seeking community groups were demanding a stronger, more effective Commission, as the organization was seen as weak and ineffectual. Anand lobbied for more resources and was promised a budget increase from approximately \$8 million to \$12 million.

He negotiated with the government to increase the Commission’s independence. The Commission established its own administrative structure, instead of depending on staff in the Ministry for its everyday needs.

But most dramatic of all the changes was the way the Commission began to deal with discrimination.



(Individual) complaints investigation was a necessary but woefully inadequate way of getting at systemic discrimination and even direct discrimination. These lengthy, labour-intensive, costly, morale-destructive investigations, which had occupied almost 85 per cent of the staff, were necessary but were not doing the job (of eliminating discrimination in Ontario).

(Individual complaints) usually do not target the worst cases of discrimination, because complaints (about) the worst places usually do not surface.

A systemic investigation unit was created. It was to be staffed with 30 officers.

My view was that we needed to attack discrimination from a broader perspective through a unit that would devote itself to systemic issues and acquire expertise of a completely different nature than that which was involved in individual complaints' investigation.

Through this unit, the Commission was to initiate its own complaints against organizations or sectors of society with what the Commission considered to be deep-rooted, built-in patterns or "systems" of discrimination.

During this period, the Commission approved a request from Ryerson

Polytechnical Institute to issue an order protecting its employment equity program from discrimination complaints. This was the first time the Commission had issued such an order.

The Commission received a similar request from the Ontario College of Art and began the development of a formalized process for dealing with requests for orders. The unit also began work on guidelines interpreting the section of the *Code* that addresses special programs.

Secondly, (I wanted to create) a (specialized) policy and research capacity, instead of engaging in policy formation on an ad hoc basis whenever a complaint came up that the Commission did not know the answer to. (Policy development) needed to be done in a proactive way, so as to disseminate the Commission's work and to get its policies adopted by the institutions in society without the necessity of complaints.

It seemed much more efficient to develop, for example, a policy on racial harassment — which we did — and disseminate it broadly, sell its merits and, hopefully, get it adopted, without the necessity of complaints.

The Commission began work on what would eventually become major policy documents used by labour arbitrators, the legal community and human rights practitioners inside and outside of the Commission. Policies were developed for reasons such as demonstrated need (e.g., "Guidelines for Assessing Accommodation Requirements for Persons with Disabilities"), to provide leading-edge interpretations of equity (e.g., the "Policy Statement on Racial Slurs and Harassment and Racial Jokes"), and to respond to community pressure and changing conditions (e.g., the "Policy Statement on HIV / AIDS-Related Discrimination").

The policy on racial slurs and harassment forwarded the notion that a work environment in which racial slurs and signs are tolerated is in itself discriminatory, whether

or not individual acts of racism are present. The accommodation guidelines interpreted the *Code's* requirement that the needs of persons with disabilities be provided for, short of "undue hardship" to the organization. The Worker's Compensation Board has since adopted these guidelines as its own standard for accommodation.

To fill the need for staff, the Policy and Research Unit negotiated for staff from other units with expertise or interest in policy work to work on policies on a project basis. This further increased the overall expertise of the Commission and provided added skills in dealing with human rights cases.

Under Anand's leadership, the Commission created its own legal unit, forming part of Anand's vision of creating a body of expertise on human rights matters in the Commission. Previously, the Commission had to rely on legal services provided by the Minister of the Attorney General. Now with its own legal staff, the Commission had greater access to legal advice and expertise, not only in litigation but also in the process of its day-to-day operations.

Even with the interest in refocusing the Commission's emphasis to the handling of systemic discrimination cases, however, the Commission could not ignore the increasing number of individual cases. Anand's idea of a quick hearing tribunal process had not come to fruition. The Commission therefore had to channel additional resources into an expanded compliance unit, instead of creating a large unit for systemic investigations.

It was during this time that the Commission's Communications and Education Unit was formed. One of the activities of the unit was to publicize Board of Inquiry decisions and settlements felt to be of educational or deterrent value.

The unit also began to develop programs for providing *Code*-related training to Commission staff, Commissioners and staff from other parts of the Ontario public serv-

ice. A public education function was developed to strengthen links with the community and client groups, to inform them on issues related to the *Code* and the Commission.

The policies developed by the Policy and Research Unit were published in a variety of accessible formats for wide distribution in Ontario.

Anand resigned from the Commission in June 1989, following allegations and criticisms in the news media about his hiring practices. He describes the allegations as "a series of wild fabrications,... which once they were (in the news media) were impregnable":

I think (the circumstances around my resignation) resulted in a setback for the Commission and for the plan that I had, regardless of who was going to implement it. That process has been lengthened by (several) years. I think (also that) the morale of the staff suffered greatly and a lot of good people left. Clearly, the Commission was ridiculed in those press stories and no amount of denial could change the impact.

The changes that began during Anand's term as Chief Commissioner continued after he left. So did the upheaval. The caseload mushroomed to close to 3,000.





We recognize that we are a means to the end of social justice and equality. As such, we are committed to facilitating access for those on all sides of an issue who need us, emphasizing outreach, minimizing bureaucracy and speaking plain language.

— Catherine Frazee
Chief Commissioner

Criticisms continued to mount in the media and the community. Staff morale declined.

Anand disagrees that this was solely the result of the circumstances around his departure.

My impression of the Commission before I went there was that there was criticism over the backlog and a general lack of competence. This was part of what I was trying to turn around. I don't know to what extent (the increased criticism of the Commission) was a consequence of the higher profile (it now had).

In any event, by the end of Anand's term, the Commission stood on the brink of what was to be the next stage in its evolution, an era ushered in with the appointment of Catherine Frazee as Chief Commissioner.

Catherine Frazee was to many just what was needed to bring healing and stability to the troubled Commission. Fresh from her role as Coordinating Officer for Amnesty International and with an eclectic background ranging from law to community activism, she brought to the Commission an eloquent, perceptive approach to

equity and justice. A consensus builder, Frazee had something else besides: a genuine compassion for people and a quiet forcefulness that demanded and received respect.

Frazee's task: to complete Anand's blueprint for a revitalized Commission and to prepare the Commission for its new and quite possibly unprecedented role in the 21st century.

It would not be an easy task. The Commission she inherited was best described by Anand in his resignation speech.

The complex community of human rights activists and the public at large are confused. The goals (set out for the Commission) have been obscured. The process is beginning to falter. The Commission... which Ontario needs cannot be built in this environment.

It was an organization in need of internal healing and external credibility, an organization caught awkwardly en route between the 1960s and the 21st century, one whose operational structures, set up to deal with individual complaints, were seemingly ineffective for dealing with the more systemic nature of present-day discrimination.

A budget had been allocated by government to bring necessary changes into effect, but only a fraction of the designated staff had been hired. Specialized units had been created, but their tasks had not yet been

fully defined — nor were they in most cases even staffed. The Commission had begun on a path recommended by the Supreme Court of Canada, that of providing “systemic remedies” for “systemic discrimination.” Yet the Commission’s systemic unit was barely operational.

Frazer rose to the challenge.

Today we understand the need for broad solutions — measures that will transform the ways we educate children, police our communities, advertise products, hire workers, do business, practice medicine and administer justice — to better promote equality, better reflect our social diversity and more truly serve all Canadians.

We have to work not so much on improving our reputation, which is an indirect kind of activity, but on promoting the cause of human rights, which by default improves our reputation and our credibility....

We (will do) everything we can to ensure that employment equity does become a standard in this province. We need to be much more visible to the business community in forms that are less adversarial than the standard human rights complaint. We need to be out and about at conferences, symposia, workshops, so people can learn and ask questions in a no-fault situation.

The “obvious elements” of her term, she said, would be to strengthen the Commission’s educational function and improve its outreach into a wide cross-section of communities, to build its capacity for undertaking systemic investigations and promoting internal healing in the organization.

The vision which we share as partners and allies, is the vision of equality.... That is, equal opportunity, equal participation, equal dignity and respect.... But while its implications may be radical, it is not a radical — and therefore fringe — vision. Rather it is a mainstream vision — it is the vision of the government and the people of Ontario.”



Under Frazer, the Commission expanded its publications program. New publications, such as “Guidelines for Accommodating the Needs of Persons with Disabilities” and “Human Rights in Ontario,” were published. Others, like “Employment Application Forms in Interviews,” were revised and reprinted. Materials were made available in alternative formats, such as audio tape, large print and computer disk. In 1990 alone, more than a quarter million pieces of material were distributed.

The Commission coordinated and in some cases hosted International Human Rights Day activities involving some 7,000 schools, municipalities and elected officials. Its outreach program took Commissioners to several communities across the province to discuss the Commission’s work and vision and to learn first-hand the issues of importance to those communities.

Staff advised and assisted employers in developing policies and procedures to deal with human rights concerns in the workplace and participated in forums ranging from the Canadian Bar Association to the Urban Alliance on Race Relations.

In 1990, the Commission launched the most comprehensive systemic investigation in its 28-year history, resulting in an unprecedented settlement involving two Toronto employment agencies. Later that



year, in another historic move, it approved a request by the Ontario College of Art to issue an order protecting the college from charges of reverse discrimination as it implemented its employment equity program for women.

The Commission initiated a complaint against Trent University, alleging the university's failure to accommodate the needs of students with disabilities. It also worked with government to improve access for persons with disabilities to courthouses across the province.

The Commission also hired an employment equity coordinator, who was charged with the responsibility of developing policies and programs to increase equity in its own workplace. It now, at most levels of its workforce, exceeds the targets set by government. The Commission made a submission to government hearings, calling for mandatory employment equity legislation in Ontario.

At right, Catherine Frazee (seated) with the Hon. Elaine Ziemba, Minister of Citizenship.

Under Frazee, the Commission was challenged to become a model employer and an agent of change:

It is our intention to continue to advance the frontiers of equality and challenge the status quo — to root ourselves as the civilizing centre and uncompromising defender of human rights and of the principles of equal treatment and dignity.

We will continue to be a catalyst for social change... We will continue to press forward with rigour, courage and some risk to support and assist (the disadvantaged members of our society).

With the adoption of a new Case Management Plan in September, 1990, the Commission redoubled its efforts to meet the needs of individuals and groups faced with discrimination. Under the plan, 400 of the Commission's oldest cases were assigned to a special 10-officer task force, a maximum of only 10 cases were to be assigned to human rights officers at any given time (compared to the almost unlimited caseload they had before), and a new case handling system was implemented, which gave priority to urgent cases (such as those involving people living with AIDS), while processing other complaints on a first-come, first-served basis.





The Commission improved screening of incoming cases, set numerical case closing targets for staff, assigned one of its directors exclusive responsibility for case management, gave regional managers increased authority to review and close cases, and boosted legal support for regional activities. A special subcommittee of the Commission was established to review all case management issues.

The results spoke for themselves. Between April 1991 and the end of March 1992, more than 3,000 cases were closed, the highest total ever and 80 percent more than the previous year. Staff handled some 92,000 inquiries from the public, a 63 percent increase over the previous year. Fifty-three percent of cases were closed in less than six months after investigation began. Some 48 percent of these were handled under the Early Settlement Initiative, which meant that they were dealt with within six weeks. The Commission closed more cases than it opened for the first time in 15 years.

But despite its obvious improvement in case management, the Commission continued to be dogged by criticisms from the public and the news media that it was still too slow, too inefficient and too out of touch with the needs of its clients.

In May, 1991, the Ombudsman of Ontario delivered a scathing report to the government, charging that because of the time it was taking to process cases and the

number of cases still unresolved, the Commission was failing in its mandate to provide adequate protection from discrimination to the people of Ontario. (The number of complaints had continued to outpace closures.)

The Ombudsman further noted:

I remain of the view that while the case management procedures contained in the Case Management Plan may be sound, the Commission has not been and will not be in a position to fully implement them while also eliminating (its) backlog in a timely fashion without a larger task force.

Four months later, under the glare of intense publicity and after extensive consultations with the Commission, the Ontario government decided to act. ■

The Commission's role in the '90s is to be on the leading edge — to shape the interpretation of rights so as to empower those who most need and deserve an equal place in our society.

— Anita Fox
Regional Case Co-ordinator, Toronto West



This government is committed to achieving equity and justice. As part of that commitment, it is our responsibility to ensure that the systems and the institutions established for this purpose work.... To this end, I am pleased to announce a comprehensive plan of action to address the difficulties that have plagued the Ontario Human Rights Commission.... (The plan) will require a one-time funding of \$ 6.4 million over three years.

— Elaine Ziemba, Minister of Citizenship,
re: funding initiative, September 24, 1991

Human rights in transition

Decisive words. Words that signalled the end of one era in human rights... and the beginning of another.

To some, these words were the long-awaited admission that the Commission had failed in its responsibility towards groups protected by the *Code*. After all, they argued, "justice delayed is justice denied." And if delay was equal to denial, then there were close to 3,000 people in Ontario who were perceived to have been denied justice. This was the total size of the Commission's caseload, described in the press as its "backlog." In fact, as of June 1991, the Commission had 1,683 cases that were more than six months old.

To others, government had just made one more attempt to save a sinking ship. The *Code* isn't working for Ontario, they said. And as the argument went, if the *Code* wasn't working, neither would the Commission, regardless of how many dollars were budgeted for it.

Catherine Frazee and the Commission saw things differently. The funding announcement was a recognition that their limited resources could no longer cope with the dramatic increase in the number of persons seeking remedy for discrimination under the *Code*. It was a recognition that the effects of internal difficulties, chronic underfunding and repeated amendments to the *Code* had to be dealt with once and for all.

With an eye to the wealth of expertise and commitment to human rights present among its staff and a renewed vision of a future that included not only a manageable caseload but a strong, proactive organization, the Commission set to work to do what it does best — forge new inroads in



case settlements, create legal precedents and establish the kind of public policy positions that have kept it on the leading edge of human rights in Canada since its establishment in 1962.

The bulk of the new funds was used to create an expanded task force, which was assigned approximately 1,000 of the Commission's oldest cases. Thus relieved, the Commission was able to focus its efforts on dealing with current cases in a more timely and efficient manner, to expand and strengthen its Case Management Plan.

The Commission was also in a better position to prepare itself for the future.

The key to a successful future, it was felt, lay in the calibre of the Commission's staff and the extent to which the organization could be an example of the human rights principles it so fervently espoused.

The Commission expanded its training program to include technical skills for officers and support staff and provided training in areas such as labour relations, financial management and leadership skills for

managers. In an effort to increase staff's sensitivity to the needs of its client groups, the Commission arranged seminars on issues such as AIDS, featuring community experts on the topic. Staff also met with a wide cross section of community groups to explain to them its new operational processes.

The Commission tackled the challenge of providing technical skills to work and manage, then turned its attention to fulfilling its third goal: to create an environment that would foster healthy relationships among staff.

The Commission entered into the '90s as an organization struggling to deal with an almost constant state of change. The difficulties of the late 1980s — three new Chief Commissioners and four Executive Directors within a three-year period, constant criticism, government-commissioned inquiries, high staff turnover and demands for change from community advocacy

Shown at left are members of the Commission's Anti-Racism Advisory Committee. At far left is Barbara Thomas, hired as coordinator of the Committee's projects.





groups — proved to be extraordinary challenges to an organization that prided itself on being a beacon of justice and a vanguard against discrimination.

Ironically, these experiences may have uniquely prepared it for the long road ahead in rebuilding internally and restoring its ability to perform its major tasks.

Strategies were introduced to promote organizational healing — an Organizational Health and Effectiveness Committee charged with identifying areas in need of change and the means of doing so, an Anti-Racism Committee with a mandate to develop a strategy for transforming the Commission into an anti-racist workplace and a joint management-union Employee Relations Committee to deal with organizational concerns.

The Commission hopes these provisions will equip its staff with the grit and sensitivity that will be demanded in its continued struggle against discrimination. ■

Beyond the 20th century

In December 1991, three months after the funding announcement, govern-

ment appointed a special task force to review the enforcement procedures contained in the *Code*. The group would be chaired by Toronto lawyer Mary Cornish. In its discussion paper, the task force stated that dissatisfaction with the enforcement of human rights in Ontario continued and pointed a finger at the *Code* itself.

The paper noted:

The Commission itself has publicly called for a review based on its own frustration with the Code's inadequate procedures. It has reached a point where the current enforcement system has become part of the problem rather than the solution.

For several weeks, the task force conducted hearings across Ontario, soliciting responses to and opinions on issues such as whether the complaints process should be decentralized, allowing equity seeking groups to become involved in resolving complaints; whether complainants should have direct access to a tribunal, bypassing the Commission, and whether the Commission's role should be limited to education, advocacy or developing preventive measures for dealing with discrimination.

In the Commission's submission to the task force, Chief Commissioner Catherine Frazee outlined what she saw as the fundamental principles that should govern human rights enforcement for the 21st century:

The Commission believes that an effective comprehensive human rights strategy must employ a wide range of pro-active initiatives, including human rights education, policy development and Commission-initiated systemic investigations. Moreover, these initiatives must be developed through consultation and reflect the priorities of the equality-seeking community....

The Commission is committed to a vision of shared responsibility for human rights, with one cautionary note. A separate mechanism for the resolution of human rights com-



plaints must continue to exist.... There must continue to be a forum where the predominant focus is on issues of equality... accessible to persons without the resources to proceed independently to a tribunal or court. To fail to recognize this is to put in jeopardy the valuable components of the human rights enforcement system that have been built up over the last 30 years.

Exactly how human rights will be enforced in the 21st century is difficult to tell at this juncture. The Cornish report will be reviewed by the Minister of Citizenship, who will decide on exactly how it should be implemented.

In the meanwhile, the Commission has its own beacon of inspiration that guides it into the uncharted waters of the future. Catherine Frazee sums it up:

The "persistent reaffirmation" of human rights is a task of magnitude, complexity and outright difficulty that is, I think, widely underestimated. It is a task that compels us to oppose the insidious power of the untested notion, to challenge error in the form of subtly disguised assumptions and to resist complacency where we feel most secure about our very own postures, positions and "norms."

Martin Luther King once said that the real enemy is not the ignorant, those who walk in darkness and who hurl the stones and insults; the real enemy is the good people, those who walk in light; those who know better and still remain silent.

Looking at the present and beyond into the next decade, achieving human rights for everyone will challenge some of our long-held beliefs — like the privilege of some to dominate the political and economic arena, shaping it in their own image; like the idea that we are a Christian state; like the belief that there is only one normal sexual orientation; like the attitude that people with physical or mental disabilities are unfortunate or inferior....

To quote Helen Keller: "This is not a time of gentleness, of timid beginnings that steal into life with soft apologies and dainty grace. It is a time for loud-voiced open speech and fearless thinking. Our worst foes are ignorance, poverty and the unconscious cruelty of commercial society. These are the cause of much blindness.... These are the enemies which destroy the sight." The challenge for us in the 1990s, as those who walk in the light, will be to achieve new volumes of loud-voiced open speech and to test to its limits the true power of fearless thinking.

In September, 1992, Catherine Frazee completed her term in office. She was succeeded by Fran Endicott. ■

On the frontlines of legal precedent

Ontario has a proud record of protecting human rights. In 1962, this province became a pioneer in human rights by consolidating all anti-discrimination legislation passed by the Ontario Legislature since 1944 and creating out of them Canada's first *Human Rights Code*.

Thirty years have passed, and during that time, the Ontario Human Rights Commission has strived to forward interpretations



Two Commission lawyers, Geri Sanson (left) and Kaye Joachim, at Osgoode Hall after a hearing.

of the *Code* that are broad, progressive and in keeping with the principles espoused in the preamble of the *Code*, which states:

...Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province...

The impact of the Commission's work is especially evident in cases of discrimination in employment. There is no doubt that the Commission and Ontario Boards of Inquiry have made a substantial penetration into the workplace to eradicate various forms of discrimination.

This article serves to highlight a few of the many significant landmark cases. These are cases that have led the way in advancing human rights jurisprudence in the area of discrimination with respect to employment, both in Ontario and in the rest of Canada.

It is now widely accepted in human rights law that certain employees have special needs that require special accommodation,



whether because of religious beliefs, gender, pregnancy, disability or family status. This duty to accommodate, however, was not fully scrutinized until the Ontario Human Rights Commission took the case of *O'Malley v. Simpsons Sears* to the Supreme Court of Canada.

The O'Malley case involved the examination of the employers requirement that an employee, Theresa O'Malley, work a scheduled shift on Friday nights and Saturdays. A member of the Seventh Day Adventist Church, Ms. O'Malley requested this time off work for her Sabbath, which runs from sundown Friday to sundown Saturday. The employer refused to accommodate her request for different treatment from other full-time employees, so she complained to the Ontario Human Rights Commission that she had been discriminated against because of her creed.

The issue of accommodation was argued before a Board of Inquiry. The Board questioned whether the employer had acted reasonably in attempting to accommodate the employee in all circumstances of the case and, concluding that the employer had done so, dismissed the complaint.

The Commission appealed the case to the Divisional Court. The majority of the Court held that the Commission was obliged to prove intention to discriminate by the employer. The Court held that the *Code* imposed no obligation on the employer to accommodate, reasonably or otherwise. This decision was unanimously affirmed by the Court of Appeal.

The Supreme Court of Canada, in a long-awaited decision, held that, in spite of the *Code*'s failure, at the time, to explicitly require employers to accommodate the special needs of its employees in cases of adverse discrimination, such a requirement was implicit in the wording and purpose of the *Code*. Mr. Justice McIntyre of the Supreme Court said in rendering his decision:

In my view for this case, the answer lies in the Ontario Human Rights Code, its purpose, and its general provisions. The Code accords the right to be free from discrimination in employment. While no right can be regarded as absolute, a natural corollary to the recognition of a right must be the social acceptance of a general duty to respect it and to act within reason to protect it. In any society, the rights of one will inevitably come into conflict with the rights of others. It is obvious then that all rights must be limited in the interest of preserving a social structure in which each right may receive protection without undue interference with others. This will be especially important where special relationships exist in the case at bar, the relationship of employer and employee. In this case, consistent with the provisions and intent of the Ontario Human Rights Code, the employees right requires reasonable steps towards an accommodation by the employer.

As a result of the *O'Malley* case, the Ontario *Code* was amended to specifically require accommodation. The duty to accommodate is now contained in three sections of the *Code*: Section 11 (constructive discrimination), Section 17 (handicap) and Section 24 (special employment).

Unions held liable

A recent Ontario Board of Inquiry decision has advanced the law relating to the duty to accommodate individuals in the area of employment. In *Gohm v. Domtar*, the Board of Inquiry found that Ms. Gohm was discriminated against by her employer and her union on the basis of her creed. Ms. Gohm was hired by Domtar as a lab technician, a position that required her to work Monday to Friday in addition to rotating half days on Saturdays.

As in the *O'Malley* case, Ms. Gohm was a member of the Seventh Day Adventist Church, which required that she refrain from working on the Sabbath.

The evidence before the Board was that, after commencing employment, Ms. Gohm informed her supervisor that her religion required that she did not work on Saturday and asked for assistance in making arrangements to accommodate her beliefs.

Ms. Gohm also sought assistance from the union regarding this accommodation. At the time, the collective bargaining agreement provided that the work schedule be maintained to serve Saturday shift requirements and that any work done on Sundays be paid at the overtime rate. Although Ms. Gohm requested to work her Saturday shift on Sunday at regular pay, the union took





Naomi Overend, a Commission lawyer, in the Osgoode Hall law library. The Commission has for 30 years been on the forefront of human rights legislation.



the position that unless the collective agreement could be modified to accomplish this, they were bound to uphold the pay provision in her case.

Eventually, the union and the company reached an impasse on this issue and the company terminated Ms. Gohm's employment. The Board of Inquiry held that the termination of Ms. Gohm's employment was an infringement of the *Code* and that the Saturday shift requirement discriminated against Ms. Gohm with regards to her terms and conditions of employment, contrary to the *Code*. The Board held the union liable for maintaining, if not creating, the rule of the Saturday work schedule. It pointed out that the union had not attempted to exempt Ms. Gohm from the clause dealing with overtime pay, nor did it take steps to modify the clause.

The importance of the *Gohm* decision is that it places a shared responsibility on unions and employers for eradicating where possible, discriminatory rules or policies in the workplace. This reasoning is consistent with the broad purposes that the *Code* seeks to promote.

Prior to the 1981 amendments to the *Code*, sexual harassment on the job was not specifically prohibited by any human

rights statute in Canada. Arguing that sexual harassment amounted to sex discrimination, even though the previous *Code* did not specifically state this, the Commission was successful in establishing important precedents before Boards of Inquiry.

Jurisprudence on sexual harassment in Canada began in Ontario in 1980 with the *Bell & Korczak v. Ladas & The Flaming Steer Steak House* case. In this case, the two female employees alleged that they had been sexually harassed by their employer, who was the owner of the restaurant. They claimed they were fired because they refused his advances.

The Board of Inquiry concluded that the purpose of human rights legislation was to establish uniform working conditions for employees and to remove matters such as race, creed, colour, age, sex, marital status, nationality or place of origin as relevant considerations in the workplace.

The Board, in what was to become a widely accepted statement of the scope and rationale for the rule against sexual harassment, stated:

The forms of prohibited conduct that, in my view, are discriminatory run the gamut from overt gender-based activity, such as coerced intercourse, to unsolicited physical contact to persistent propositions to more subtle conduct, such as gender-based insults and taunting, which may be reasonably perceived to create a negative psychological and emotional work environment. There is no reason why the law, which reaches into the work-

place so as to protect the work environment from physical or chemical pollution or extremes of temperature, ought not to protect employees as well from negative, psychological and mental effects, where adverse and gender-directed conduct emanating from a management hierarchy may reasonably be construed to be a condition of employment.

The Board in *Bell* unequivocally stated that sexual harassment came within the general prohibition against sex discrimination in relation to the terms or conditions of employment. Human rights tribunals in other Canadian jurisdictions instantly followed the philosophy and reasoning of *Bell* and held that sexual harassment amounts to discrimination on the basis of sex and was prohibited under their respective human rights statutes.

Ontario cases since *Bell* have clearly demonstrated that the prohibition in human rights statutes against sex discrimination in the form of sexual harassment, is a far-reaching one. Ontario was the first to amend its *Human Rights Code* to specifically ban sexual harassment. The Ontario legislature, by the 1981 amendments to the *Code*, had finally accepted the condemnation of sexual harassment in the contemporary work environment. These statutory provisions provided the much needed support for human rights agencies to combat sexual harassment in the workplace.

The predecessor to the current *Code* provisions prohibited discrimination in employment on the basis of race. However, it was initially unclear as to whether these provisions protected employees from racial harassment by fellow employees in the workplace. In the *Simms v. Ford Canada* case, it was first held that they did.

Simms was the first Board case in which it was argued and decided that the *Code* protected employees from racial harassment by other employees. In the *Simms* case, the complainant had been called a "nigger" during an argument with a supervisor. The Board commented on the subject of

whether calling a black man a "nigger" in an employment situation is prohibited by the *Code*:

In my view, the answer is that, in some circumstances, it may. For example, an employer who, knowing that he may not, without violating the Code, refuse to employ a qualified applicant for employment because of his colour or race, employs a person and then stands by idly in the knowledge that his supervisory personnel or, indeed, any employees are making him feel uncomfortable in the plant by using insulting terms with references to his colour or race. In those circumstances, it may be said that the employer is discriminating against that person with regard to a condition of employment because of his race or colour.

Simms established the important precedent that the use of racial slurs and racially derogatory language constituted discrimination, even in the absence of legislative provision at the time. Cases since *Simms* have made it clear that the atmosphere in which an employee must work is a condition of his or her employment. Should that atmosphere be oppressive or poisoned against a minority group because of demeaning comments or actions, then those persons could be said to be discriminated against.

* * *





Cameron v. Nel-Gor Nursing Home was the first case under Ontario human rights legislation to deal with handicap as a prohibited ground of discrimination after the passage of the 1982 legislative amendments to the *Code*. The complainant, Cindy Cameron, was born with a disabled left hand. Three fingers on the left hand had been fused at birth, leaving the three middle fingers considerably shorter than those on her right hand.

Cameron sought a full-time position as a nurses aide at the nursing home. During a medical evaluation, the administrator of the nursing home decided that Cameron could not cope with the gripping or clasp- ing required for lifting patients because of her disability. At no time was the com- plainant asked to demonstrate her grasp in a simulated lifting situation, which could have been done easily under the circum- stances.

The Board of Inquiry found the nursing home in breach of the *Code*. The Board's decision was later affirmed by the Divi- sional Court. The Board noted that the *Code's* handicap provisions were enacted primarily to prohibit widespread employ- ment practices and policies that discrimi- nated against persons with disabilities.

These are often evident in workplaces, where, out of fear, ignorance, stereotypical

assumptions or misguided paternalism, employers refuse to make employment de- cisions based on a person's true ability. The Board found that while the Commission had made out a *prima facie* case of discrimi- nation, it fell upon the respondents to prove otherwise. The respondent could do this, under section 17(1) of the *Code*, by es- tablishing that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of the handicap.

The Board stated in its judgment that a re- spondent must establish by a preponder- ance of objective evidence that the handi- cap of the complainant renders her incapa- ble of performing or fulfilling the essential duties or requirements of the job.

This case is important too in that it outlines the objectives of the *Code's* handicap provi- sions, the first being to secure for the disa- bled person equal opportunity in employ- ment.

As can be seen, human rights decisions in Ontario have adopted and continue to adopt the *Code* according to a broad and progressive interpretive approach. The un- derlying rationale is to give effect to the principles set out in the *Code* and impose responsibility for eradicating discrimina- tion on all who are in a position to do so. ■

Table 1: Complaints by region of registration & ground, 1991/92



	Race or colour	Ethnic origin ¹	Creed	Sex & pregnancy	Sexual harassment	Sexual orientation	Age	Marital status	Family status	Handicap	Public assistance ²	Record of offences ³	Reprisal	No grounds	Breach of settlement	Total	Percentage (%)
Eastern	40	12	12	60	39	2	24	10	19	116	13	1	1	3	1	353	14
Hamilton-Niagara	20	2	4	39	21	5	22	7	11	70	4	0	3	3	1	212	8
Northern	37	8	6	38	30	1	19	5	13	75	8	0	3	0	0	243	10
Southwestern	48	17	4	49	52	4	23	9	7	153	8	1	2	1	0	378	15
Toronto Central	92	22	12	48	33	17	18	8	18	71	5	2	3	0	0	349	14
Toronto East	97	24	13	76	38	4	24	8	27	185	6	3	4	0	0	509	20
Toronto West	126	16	14	65	43	3	44	5	17	145	8	0	4	0	1	491	19
Total	460	101	65	375	256	36	174	52	112	815	52	7	20	7	3	2,535	100
Percentage (%)	18	4	3	15	10	1	7	2	4	32	2	—	1	—	—		

1. Citizenship, ancestry, place of origin

2. Only in accommodation

3. Only in employment



**Table 2: Complaints received
by ground & provision,
1991/92**

	Race or colour	Ethnic origin ¹	Creed	Sex & pregnancy	Sexual harassment	Sexual orientation	Age	Marital status	Family status	Handicap	Public assistance ²	Record of offences ³	Reprisal	No grounds	Breach of settlement	Total	Percentage (%)
Services	80	18	13	18	0	10	14	10	12	103	1	0	0	3	0	282	11
Housing	48	12	1	9	12	1	19	11	73	45	51	0	0	2	0	272	11
Contracts	1	1	0	2	0	0	0	0	2	3	0	0	0	0	0	9	--
Employment	330	70	45	341	244	25	141	31	25	660	0	7	0	2	1	1,922	76
Vocational association	1	0	6	4	0	0	0	0	0	4	0	0	0	0	0	15	1
Reprisal	0	0	0	1	0	0	0	0	0	0	0	0	20	0	0	21	1
Breach of settlement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	2	--
Total	460	101	65	375	256	36	174	52	112	815	52	7	20	7	3	2,535	100
Percentage (%)	18	4	3	15	10	1	7	2	4	32	2	--	1	--	--		

1. Citizenship, ancestry, place of origin

2. Only in accommodation

3. Only in employment

Table 3: Settlements effected by ground, 1991/92



	Specific & general damages	Complainants receiving damages	Offer of job or facility	Offer of, or consideration for, next job or facility	Affirmative action implemented	Seminars with respondent staff	Review of policies or documents	Issuance or correction of references	Letter of apology to complainant	Written declaration of management policies
Race/colour	\$191,024	62	39	10	3	22	59	34	54	119
Ethnic origin ¹	\$9,842	3	10	1	0	9	9	1	10	18
Creed	\$12,525	8	7	0	1	3	15	2	15	16
Sex & pregnancy	\$248,244	89	52	7	0	15	48	28	29	95
Sexual harassment	\$475,428	82	21	0	2	24	46	20	49	96
Sexual orientation	\$1,700	2	3	1	1	4	3	1	4	7
Age	\$209,758	23	19	6	0	9	22	2	19	41
Marital status	\$44,357	12	9	1	0	0	11	1	7	17
Family status	\$37,312	20	14	5	0	6	19	2	19	30
Handicap	\$1,001,721	208	149	7	0	43	98	72	61	175
Receipt of public assistance ²	\$343	3	8	1	0	1	4	0	2	9
Others	\$11,750	2	1	0	0	0	2	3	3	6
Total	\$2,244,004	514	332	39	7	136	336	166	272	629

1. Citizenship, ancestry, place of origin

2. Only in accommodation



Table 4: Complaints closed by disposition, 1991/92

	Race or colour	Ethnic origin ¹	Creed	Sex & pregnancy	Sexual harassment	Sexual orientation	Age	Marital status	Family status	Handicap	Public assistance	Record of offences ²	RBOSNG ³	Total	Percentage (%)
Employment															
Board appointed	8	1	8	20	17	1	7	6	2	25	0	0	0	95	4
Settled	198	37	37	248	170	10	98	28	28	525	0	5	1	1,385	58
Dismissed or not pursued	48	21	9	26	14	1	54	3	3	202	0	0	1	382	16
Withdrawn	93	19	12	99	44	5	24	7	9	212	0	2	0	526	22
Total	347	78	66	393	245	17	183	44	42	964	0	7	2	2,388	100
Accommodation															
Board appointed	0	2	0	1	0	0	0	0	7	3	0	0	0	13	4
Settled	26	9	0	4	5	0	15	13	56	38	43	0	0	209	69
Dismissed or not pursued	2	1	0	2	0	0	1	2	5	3	3	0	0	19	6
Withdrawn	11	5	2	3	3	2	4	1	13	11	9	0	0	64	21
Total	39	17	2	10	8	2	20	16	81	55	55	0	0	305	100
Services															
Board appointed	3	0	1	2	0	0	4	1	0	20	0	0	0	31	8
Settled	59	11	9	12	0	5	12	9	4	95	1	0	0	217	57
Dismissed or not pursued	11	10	5	10	0	0	2	4	2	8	0	0	3	55	14
Withdrawn	14	7	5	5	0	6	3	6	5	29	0	0	0	80	21
Total	87	28	20	29	0	11	21	20	11	152	1	0	3	383	100
Contracts, vocational associations, reprisals, breach of settlement															
Board appointed	3	1	0	4	0	0	1	0	1	1	0	0	3	14	11
Settled	4	0	10	5	3	0	1	0	3	9	0	0	9	44	35
Dismissed or not pursued	3	1	3	2	1	0	1	0	2	15	0	0	15	43	35
Withdrawn	0	1	1	1	1	1	1	0	0	6	0	0	11	23	19
Total	10	3	14	12	5	1	4	0	6	31	0	0	38	124	100

1. Citizenship, ancestry, place of origin

2. Only in employment

3. RBOSNG - Reprisal, Breach of Settlement, No Grounds

Table 5: Employment complaints closed by disposition & ground, 1991/92



	Race or colour	Ethnic origin ¹	Creed	Sex & pregnancy	Sexual orientation	Age	Marital status	Family status	Handicap	Record of offences ²	RBSONG ³	Total ⁴	Percentage (%)
Recruitment and hiring													
Board Appointed	4	1	0	4	0	1	1	0	5	0	0	16	5
Settled	32	7	5	42	1	36	10	10	61	1	0	205	63
Dismissed or not pursued	8	10	2	5	0	8	0	1	11	0	1	46	14
Withdrawn	14	3	3	13	2	4	0	2	16	1	0	58	18
Subtotal	58	21	10	64	3	49	11	13	93	2	1	325	100
Percentage	18	6	3	20	1	15	3	4	29	1	--		
Termination													
Board Appointed	0	0	5	7	1	3	3	2	18	0	0	39	3
Settled	85	12	15	150	4	44	11	11	359	2	1	694	54
Dismissed or not pursued	17	7	4	12	1	37	0	2	163	0	0	243	19
Withdrawn	42	9	5	62	2	16	6	3	166	0	0	311	24
Subtotal	144	28	29	231	8	100	20	18	706	2	1	1,287	100
Percentage	11	2	2	18	1	8	2	1	55	--	--		
During employment													
Board Appointed	4	0	3	9	0	3	2	0	2	0	0	23	4
Settled	81	18	17	56	5	18	7	7	105	2	0	316	60
Dismissed or not pursued	23	4	3	9	0	9	3	0	28	0	0	79	15
Withdrawn	37	7	4	24	1	4	1	4	30	1	0	113	21
Subtotal	145	29	27	98	6	34	13	11	165	3	0	531	100
Percentage	27	5	5	18	1	6	2	2	31	1	--		
Total	347	78	66	393	17	183	44	42	964	7	2	2,143	

1. Citizenship, ancestry, place of origin
2. Only in employment
3. RBOSNG - Reprisal, breach of settlement, no grounds
4. Total does not include 245 sexual harassment complaints.



Table 6: Employment complaints closed by type of work, 1991/92

	Race or colour	Ethnic origin ¹	Creed	Sex & pregnancy	Sexual harassment	Sexual orientation	Age	Marital status	Family status	Handicap	Record of offences ²	RBOSNG ³	Total	Percentage (%)
Professional, managerial, technical	106	18	21	100	45	5	87	12	8	151	2	0	545	23
Sales	18	6	7	43	33	4	17	3	5	69	0	0	205	9
Clerical	48	13	8	103	58	1	18	9	14	138	0	0	410	17
Craft and forepersons	35	5	3	27	8	1	13	2	3	88	0	1	186	8
Operatives	32	9	9	9	10	1	9	2	1	106	1	0	189	8
Services	40	9	5	64	54	2	21	8	5	82	3	1	294	12
Labour, general	68	18	13	47	37	3	28	8	6	330	1	0	559	23
Total	347	78	66	393	245	17	183	44	42	964	7	2	2,388	100

1. Citizenship, ancestry, place of origin
2. Only in employment
3. RBOSNG — Reprisal, breach of settlement, no grounds

Table 7: Cases closed by type of industry, 1991/92



	Race or colour	Ethnic origin ¹	Creed	Sex & pregnancy	Sexual harassment	Sexual orientation	Age	Marital status	Family status	Handicap	Public Assistance ²	Record of offences ³	RBOSNG ⁴	Total ⁵	Percentage (%)
Natural resources	2	1	0	3	2	0	0	0	2	29	0	0	1	40	1
Manufacturing															
Metals, parts, machinery	24	7	6	19	7	0	18	1	1	66	0	0	4	153	
Food, tobacco	10	2	2	11	4	1	2	1	0	38	0	0	3	74	
Wood, furniture, paper ⁸	1	1	10	5	0	3	1	2	42	0	1	0			
Automotive, aircraft	17	4	5	10	6	0	9	2	1	76	0	1	6	137	
Electrical	11	1	0	7	6	0	4	0	1	27	0	0	1	58	
Others	27	6	8	42	15	4	10	2	4	115	0	0	1	234	
Subtotal	97	21	22	99	43	5	46	7	9	364	0	2	15	730	23
Construction	2	2	1	3	3	0	5	2	0	22	0	0	0	40	1
Transportation, utilities & communication	15	4	1	11	7	0	2	1	2	48	0	0	1	92	3
Trade & retail	57	7	16	64	51	2	24	6	10	148	0	0	4	389	12
Finance, insurance & real estate	64	21	7	29	19	6	29	31	88	93	54	0	3	444	14
Community, business & personal services															
Schools, colleges, univ. ²⁷	9	5	20	9	1	39	4	0	37	0	0	1			
Medical	32	8	7	24	10	2	12	4	6	109	0	0	3	217	
Employ. agencies	5	3	0	4	0	0	4	1	1	4	0	0	0	22	
Hotels, restaurants	37	5	3	40	42	3	14	2	5	56	0	0	1	208	
Others	79	20	25	108	47	7	33	14	7	192	2	2	9	545	
Subtotal	180	45	40	196	108	13	102	25	19	398	2	2	14	1,144	36
Public administration	65	25	10	40	23	5	18	8	10	92	0	2	5	303	9
Unspecified	1	0	2	2	2	0	2	0	0	8	0	1	0	18	1
Total	483	126	102	444	258	31	228	80	140	1202	56	7	43	3,200	100

1. Citizenship, ancestry, place of origin

2. Record of Employment

3. Reprisal, breach of settlement, no grounds

4. Only in Employment

5. Total includes 88 Boards of Inquiry brought forward from 1990-1991.



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TDD: (519) 256-4410

Toronto East Region

Scarborough

2500 Lawrence Avenue East, 2nd Floor
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1 (800) 268-6585
TDD: (416) 750-3302

Toronto Central Region

Toronto

595 Bay Street, 4th Floor
M5G 2C2
Tel.: (416) 326-9511
TDD: (416) 326-9669

Toronto West Region

Mississauga

1290 Central Parkway, 3rd Floor
L5C 4R3
Tel.: (416) 273-7811
1 (800) 268-2808
TDD: (416) 273-6648

A plain language guide to making a human rights complaint



The Informal Settlement

- Step 1** Try to write a complete description of how you have been discriminated against or harassed. Include who was involved and when the discrimination happened.
- Step 2** Call or write to the Human Rights Commission and give us the details of your discrimination.
- Step 3** We will contact the person or company you are complaining about and discuss the information that you have given to us. (The person or company you are complaining about is called the *respondent*.)
- Step 4** Talking with the person you are complaining about often settles the problem. If it does not, you can file a formal complaint.

The Formal Complaint

- Step 5** You sit down with a human rights officer and fill out a form describing your complaint.
- Step 6** We study your complaint. You and the person you are complaining about may come to a meeting with us and try to solve the problem.
- Step 7** If a meeting solves the problem, the settlement is put in writing and you and the person you are complaining about sign it. If a settlement is not reached, we will investigate your complaint.
- Step 8** We investigate your complaint fully by looking at any documents that apply to your case and talking with people who know about your situation. We have a meeting with you and the person you are complaining about, give the results of the investigation and try to reach a settlement.
- Step 9** If you reach a settlement, the Commissioners may approve it. If you do not reach a settlement, the Commissioners make the final decision on your case. They might set up a Board of Inquiry to look into your complaint.
- Step 10** If you are unhappy with the decision of the Commissioners you can ask them to look at your case again. If you are unhappy with the decision of the Board of Inquiry, you can appeal it in court.



List of publications

Human Rights Code, 1981 (available from the Government of Ontario Bookstore)
Employment Application Forms & Interviews
Human Rights in Employment
Guidelines for Assessing Accommodation Requirements for Persons with Disabilities (brochure)
Accommodation of Persons with Disabilities (pamphlet)
Human Rights and Sexual Harassment
OHRC Policy Statement on HIV/AIDS Related Discrimination
Exception to the Equality Rights Provision of HR Code in the Workplace
Policy on Racial Slurs & Harassment & Racial Jokes (brochure)
Racial Slurs & Harassment & Racial Jokes (pamphlet)
OHRC Policy Statement on Height and Weight Requirements
Annual Report
Policy on Drug and Alcohol Testing
Policy on Driver's Licence as a Condition of Employment
Policy on Employment Related Medical Information
Declaration of Management Policy (poster)
Guidelines on Special Programs
If You Have a Human Rights Complaint
Know Your Rights Series:

- *Sexual Orientation and the HR Code*
- *AIDS & AIDS-Related Illness and the HR Code*

Human Rights in Ontario
Discrimination Because of Handicap

Guidelines for Internal Human Rights Complaint Resolution Procedures
Policy Statement with Respect to Exclusionary Scholarships

All publications are available in:

- French and English (all formats),
- IBM-compatible computer diskettes,
- audio tape,
- large print,
- spiral-bound versions and
- other languages upon request.

For orders, please contact:

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