

NIELSEN TASK FORCE

## CANADIAN HUMAN RIGHTS COMMISSION

### OBJECTIVES

To promote social change leading to equal opportunity for all by reducing discrimination. This is achieved by handling and processing complaints impartially, advocating the principles of human rights, and encouraging compliance with and understanding of the Canadian Human Rights Act.

### AUTHORITY

The Canadian Human Rights Act, S.C. 1976-77, c.33 amended by S.C. 1977-78, c.22 and S.C. 1980-81-82-83, c.111, 143.

### DESCRIPTION

The Canadian Human Rights Commission (CHRC) administers the legislation which applies to areas of federal jurisdiction, including federal departments and agencies, Crown corporations, interprovincial and international transportation, telecommunications undertakings, banks, companies dealing with radioactive materials, and interboundary pipelines. It maintains close liaison with similar provincial agencies which administer provincial human rights legislation.

The Canadian Human Rights Act prohibits discrimination on 10 grounds: race, nationality or ethnic origin, colour, religion, age, sex, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

The CHRC has a diverse, broad mix of powers and roles: it adjudicates, issues guidelines, provides policy advice to the government (e.g. regarding amendments to the Act), investigates, monitors and promotes the human rights issues under its purview through public education initiatives.

There are various options involved in the CHRC's operations once a complaint has been determined to fall within its jurisdictions. An investigation is conducted initially. The findings are submitted to the commission which can make the following decisions: not to take further action on the complaint; to dismiss the complaint; to appoint a conciliator to bring about a settlement; or to

approve settlements where agreement has been reached by the parties; or, appoint a tribunal. Part of the current omnibus legislative package before Parliament (Bill C-27), proposes that a panel independent of the commission establish a tribunal when the commission is satisfied an inquiry by such a tribunal is warranted.

The CHRC is composed of the Chief Commissioner and a Deputy Chief Commissioner who are full-time members and three to six other members who may be full- or part-time. Other than headquarters of the commission, there are seven regional offices (Halifax, Montreal, National Capital Region, Toronto, Winnipeg, Edmonton and Vancouver). The main organizational components are: complaints and compliance, public programs and research and policy.

**BENEFICIARIES**

In employment matters, the beneficiaries are those employees employed in federal bodies. Employers also benefit through the possibility of having their employment practices approved by the commission.

As to provision of services, all Canadians obtaining services from federal bodies subject to the Act are beneficiaries.

**EXPENDITURES (\$000)**

	82/83	83/84	84/85	85/86	86/87	87/88
Operating Ex.						
Salaries	4,411	4,823	6,484	6,687	6,687	6,687
O&M	1,576	2,153	2,691	2,643	2,643	2,643
Other Exp.						
Revenue						
Subsidies				14	14	14
Capital	105	390	32			
PYs	127	138	156	159	159	159

**OBSERVATIONS**

This is the third study of the CHRC this year. The regulatory review study team examined the commission and prepared a report for the Task Force. Also, the Auditor General tabled his report on the commission on October 24, 1985.

The justice study team received similar comments from employers and service providers as did the regulatory review study team:

- a. the economic cost of implementing CHRC recommendations as to special programs, plans and arrangements to reduce disadvantages suffered by some individuals;
- b. the excessive amount of time it takes the CHRC to resolve a complaint, due to personnel changes and lack of resources to deal with complaints; the investigation and conciliation stages might be incorporated into one;
- c. certain investigators play a missionary role for human rights rather than investigate objectively; there is the feeling that the investigator is in fact preparing the CHRC's case for the tribunal;
- d. the employer has the financial burden of disproving allegations through statistics and studies when a complaint is made to the CHRC; //
- e. the commission requests employers' comments on commission initiatives, for instance, as they relate to equal pay for work of equal value, but the final document hardly incorporates any of the comments;
- f. the CHRC's authority to appoint tribunals may result, according to certain employers, in loaded tribunals in favour of complainants when the commission has sided with the complainant; Bill C-27 will correct this situation; and
- g. settlements of complaints should not be publicized by the CHRC as the employer is seen by the public as having been guilty. The employer often sees a settlement in the interest of both parties without accepting guilt. Publicity surrounding a settlement entices an employer to attend before a tribunal and "take his chances" rather than be found guilty without a hearing. ?

Contrary to the regulatory review team's comments, in one case, a major employer and service provider had no difficulty with the commission attending as a party before

tribunals to represent the public interest, as often the CHRC ensures that an unrepresented complainant has some representation.

Beneficiary concerns:

- a. delays in the investigation of complaints sometimes make it more efficient for an individual to start an action in court under the Charter where possible, rather than complain to the CHRC;
- b. an efficient CHRC with tribunals would be preferable to applications directly to courts because courts are perceived as more formal, more costly and generally more conservative;
- c. if the CHRC used its authority more effectively to establish guidelines under subsection 22(2), matters could be more quickly resolved; and
- d. there might be a privative clause in the CHR Act preventing review by the courts of tribunal decisions.

The justice team agrees with the regulatory review study team that the title Canadian Human Rights Commission is potentially misleading as the commission deals mainly with 10 grounds of discrimination in federally regulated bodies. The title may be misleading to individuals with human rights issues not falling within the scope of the CHRC's activities.

It was observed, and people consulted generally agreed, that the CHRC fulfills an essential function in carrying out its mandate. As noted by the regulatory review team, repeal of the Canadian Human Rights Act would leave a gap whereby federally regulated bodies would not be subject to provincial human rights legislation. The commission generally fulfills its functions fairly well with its limited resource allocation, the study team believes.

There appear to be some inconsistencies between federal bodies as to the rules with which employers must comply. For instance, the Canadian Transport Commission or the Department of Labour might make regulations on security or other matters with which employers must comply, but the employer might be found by the CHRC to be discriminating against certain individuals by complying.

The commission received 31,000 requests for information in 1984 of which 414 became complaints. This compares with 13,502 requests from September 1984 to October 1985 by the British Columbia Council, of which 302 became cases. It also compares with 22,001 requests to the Quebec Commission of which 412 became cases. In 1983/84, the Ontario Commission received 51,779 requests for information of which 1,599 new cases were opened. Ontario has 39 investigators to handle approximately 1,600 cases, whereas the CHRC has approximately 35 to handle 400 to 500 complaints received. Quebec has approximately 19 investigators to investigate approximately 300 new cases a year.

As noted above and in agreement with the Auditor General's report tabled October 24, 1985 and the Regulatory Review study team, there is considerable delay in investigating complaints. As of December 31, 1984, the CHRC had a backlog of 682 cases. The Auditor General's report looks at this problem in detail.

Delay might also be caused by the separation of the investigation and conciliation stages. Ontario combines both stages. It was noted that separation of the two stages might cause duplication as the coordinator has to learn what the investigating officer already knows. It is more time-consuming and may cause morale problems among personnel as the investigating officer may feel he or she should continue to be involved in the settlement process and the conciliation officer may be critical of the investigation.

As well as delay at the investigation and conciliation stages, there may very well be too many potential levels at which a human rights issue could be considered. When a complaint is received the potential levels of review are as follows:

- a. investigation;
- b. conciliation;
- c. tribunal of one or two;
- d. appeal to tribunal of three; and
- e. application for review before the Federal Court of Appeal.

The commission may at any time establish a tribunal of one to three persons. If a tribunal of three is established, there is no further appeal before a tribunal.

Some observations were made that human rights hearings should be before the courts rather than a tribunal or that there should be a full appeal to a superior court rather than the limited right of appeal which exists under section 28 of the Federal Court Act.

There may be some overlap with provincial commissions in human rights education and research.

Some confusion exists in the public concerning which organization, among the CHRC and its provincial counterparts, should deal with complaints. However, it was observed that all human rights bodies are clear on their respective jurisdictions and cooperate in referring complainants to the proper body.

In the view of the study team, even with Bill C-27, there could still be a perception that a tribunal is not objective, as, pursuant to subsection 22(2) of the Act, the CHRC may issue guidelines expressing its opinion setting forth the extent and the manner in which a provision of the Act applies in a case or class of cases. Strangely, the tribunal is bound by the commission's opinion contained in the guideline.

There is some concern that Bill C-62, the new employment equity bill, may create the need for more personnel at the CHRC if it is required to oversee compliance by employers.

It should be noted that, overall, comments obtained were generally favourable to the CHRC and its activities. It was often mentioned that people at the commission are devoted to the cause of human rights and the commission does fairly good work with limited resources.

#### OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. To reduce delays in processing complaints:
  - a. the CHRC could make greater use of guidelines under 22(2), but not bind tribunals;
  - b. set regulatory or administrative time limits for investigations;

- c. review rapid case resolution processes in existence in certain provinces;
- d. look at the possibility of combining the investigation and conciliation stages; and
- e. establish tribunals as soon as possible and, as a rule, with a panel of three.

2. To ensure independence of tribunals:

- a. Bill C-27; and
- b. tribunals should not be bound by CHRC guidelines on interpretation of the Act and the Act should be amended accordingly.

The CHRC could perhaps play a coordinating role with its provincial counterparts respecting education and research in human rights whereby all bodies could benefit from the efforts of other bodies. Overlap could also be avoided. Human rights commissions do currently meet on an annual basis.

3. Consider amending the title Canadian Human Rights Act.

The CHRC should give more consideration to the cost of compliance by employers with CHRC initiatives.

Further study should be undertaken to compare the relative merits of having human rights cases heard by the courts rather than tribunals, as is the case in certain jurisdictions. ||