SUBMISSIONS TO

Ontario Human Rights Commission

RE

Review of Ontario Human Rights Code

FROM

Canadian Civil Liberties Association

per A. Alan Borovoy

General Counsel

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Toronto, Ontario

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Introduction

A few weeks ago, two white men were jailed for assaulting a non-white Tanzanian immigrant in a Toronto subway station. The apparently racist attack was so severe that the victim may never again be able to walk normally. This case followed on the heels of an earlier Toronto case where two white youths were convicted of defacing, with racist slogans, the property of another non-white immigrant.

Within the last two or three years alone, our community has witnessed the growth of some rather disquieting interracial tensions. "White Power" and anti black signs have appeared on many billboards. A black member of the Ontario Human Rights Commission has received no less than two death threats from "white nationalists". "Paki go home" has become an oft repeated slogan.

A recently conducted CTV opinion poll asked the following question of people in Montreal, Vancouver, and Toronto.

> "In the brief period 1967 - 1972 the percent of immigration from Britain and France shrank from 82% to 42% while the percent from Africa, Asia, and Latin America increased from 5% to 30%. Canada's immigration policy is non-discriminatory. In your opinion should the policy be changed?"

Of those who replied to this question, 66% said, "Yes."

Moreover, such interracial tensions are not confined to resentments against immigrants in urban centres. Within the past several months, for example, "Bended Elbow", a book severely hostile to native people, was published and released in the town of Kenora. What is most significant about this book is not the bigotry it expressed but the status it enjoyed. The then Mayor of Kenora, and one of his predecessors publicly voiced approval of the contents and admiration for the author.

The Canadian Civil Liberties Association has been concerned that these incidents may represent merely the tip of an expanding iceberg. When community leaders and their constituents either endorse or decline to oppose racist words and deeds, there is a danger that racial discrimination may be losing its socially disreputable character. Such a climate can erode the considerable progress which this community has achieved in the arena of race relations.

Indeed, the situation was of sufficient concern that the Canadian Civil Liberties Association resolved to accord race relations a higher priority in its current program. To that end, our associated research and educational organization, the Canadian Civil Liberties Education Trust, about one year ago, received from the Atkinson Charitable Foundation a grant designed to subsidize a series of investigations into the race relations performance of various Ontario institutions.

At about the same time, the Ontario Human Rights Commission announced its review of the Human Rights Code. Convinced as we have been that at least in the racial area some new directions are called for, we regard this Commission initiative as an important opportunity.

While the Trust's investigations are continuing, the findings in a few instances appeared to have particular relevancy for a review of the Commission's activities. As additional investigations yield further information, we would hope, of course, to present additional submissions to the Commission as we plan to do with other community policy makers. In the meantime, however, the combination of our general experience and some of the data already acquired impel the Canadian Civil Liberties Association to recommend today the adoption of a number of measures which we believe would improve the human rights legislation and administration in this Province.

The Range of Protections

At the moment, the Ontario Human Rights Code provides protection against certain kinds of discrimination in specific sectors of our community's public life - employment, accomodations and services in public places, housing, membership in self-governing professions and trade unions, etc. In the opinion of the Canadian Civil Liberties Association it is time that these protections were extended to cover the entire range of our community's public life. As it stands, the Code produces a number of artificial distinctions.

Why, for example, should self-governing professions be subject to the remedies of the Code while other licensing authorities are immune to them? What kind of public policy renders the College of Physicians and Surgeons of Ontario amenable to the powers of the Ontario Human Rights Commission and simultaneously exempts the Liquor Licensing Board, the Racing Commission, and the Superintendent of Insurance? Where so crucial an interest as the right to practise one's trade, business, or profession is concerned, why should the Code make any distinctions as to the kinds of licences involved?

Indeed, why should any activities of a government or public agency be immune from the machinery of the Ontario Human Rights Commission? If a complaint of racial discrimination arose with respect to the Ontario Housing Corporation as regards its selection of public housing tenants, the Code would probably apply. But if such a complaint arose with respect to the Family Benefits Branch as regards its selection of welfare recipients, there are circumstances in which the Code would probably not apply. Nor would the powers of the Commission necessarily apply to handle complaints of racial discrimination in the provision of police services, the granting of government contracts, and the admission to community colleges.

As regards private entrepreneurs, the Code prohibits certain kinds of discrimination in some of their public market activities but not in others. Here again, there appear to be some questionable distinctions. Why should it be illegal for an entrepreneur to avoid hiring people because of race, creed, or sex but it is not illegal for him to avoid trading with people on such grounds? A number of Jewish people have complained, for example, that the world-wide Arab boycott is denying them economic opportunities in this country simply because of their Jewishness. While this is not the place to

assess the validity of these complaints, it is the place to question the failure of the Code to provide for such matters.

Why, moreover, should racial or religious discrimination in services and facilities be governed by the Code only if it arises in " a place to which the public is customarily admitted"? A discriminatory refusal to sell certain products in a store, for example, could give rise to a human rights complaint. But a similar refusal to deliver the same products at a customer's home may very well be immune from human rights redress.

We realize, of course, that the loopholes to which we are pointing here may be attributable less to Governmental intent than to historical chance. The provisions of the Code were enacted over the years on a piecemeal basis as new problems and needs became apparent through experience in the community. Now, however, that the Commission is engaged in an overall review, an effort should be made to transform this statute into a more consistent and comprehensive document.

In response to the foregoing loopholes, we would propose amendments along the following lines. Subject possibly to a provision permitting certain groups to receive special benefits such as those which are designed to redress the cumulative effects of historical discrimination (by analogy to the present section 6a), the anti-discrimination provisions of the Code should apply to all government and public agencies in respect of all their activities and to all private entrepreneurs in respect of all the services and facilities they offer and the transactions they conduct on the public market.

The Commission should consider not only additional areas but also additional constituencies that may be worthy of the Code's protections. Which, if any, groups in our community suffer a level of unfair discrimination comparable to that suffered by those the Code now purports to protect? How far is it appropriate for the law to protect such additional groups?

As earlier indicated, we believe that the strained race relations in this Province will demand an intensified effort. Subject to the availability of greater resources to deal with these disquieting racial problems as well as all the other matters under its jurisdiction, the Commission should investigate the possibilities of providing similar protections to aggrieved constituencies, not now covered by the Human Rights Code.

As regards the appropriateness of the sanctions for Code violations, we have no particular interest in making offenders suffer for the discrimination they have committed. In our view, the hiring or housing of a qualified complainant is much more important than the jailing or fining of a delinquent respondent. For this reason, we approve of the Code's present emphasis on conciliation. And, in the event of a failure in the conciliation effort, we approve also of the power enjoyed by boards of inquiry to order offenders "to do any act or thing that in the opinion of the board constitutes full compliance (with the law) and to rectify any injury...or to make compensation...."

Since board of inquiry orders may now be directly enforced in the same manner as orders of the Ontario Supreme Court, it is difficult to appreciate why the Code continues to provide for prosecutions and convictions in respect of human rights violations. Unlike the boards of inquiry, the criminal courts can do virtually nothing more than impose small monetary fines. But even an increase in their punishment powers could not compete with the substantial rectification powers which are currently reposed in the boards of inquiry. What purpose, then, is served by providing this second proceeding to adjudicate identical issues? Indeed, its very existence might be a distorting factor. To what extent, for example, might respondents be endowed with a "double jeopardy" defence? Might they be able to argue that where a prosecutorial remedy exists, the state is obliged to adopt such a route first? Without necessarily evaluating the merits of such claims, suffice it here to indicate that, apart from incidental matters such as obstructing complaint investigations, the criminal process can safely be eliminated from the adjudication and rectification of allegations concerning unlawful discrimination.

There is one further sanction which we believe should be available for unlawful discrimination. In our view, the Code should provide that a violator may lose temporarily, or even permanently, his licence to operate the business within which the discrimination was committed. In many ways this represents one of the most appropriate and effective sanctions of all. It incorporates in the law a principle which we regard as essential. The right to enjoy the opportunities of the public market should require compliance with the standards of the public market. It is fitting, therefore, that unlawful discrimination could precipitate removal from the public market.

While all of the foregoing measures would certainly extend the range of the Code's protections, they cannot ensure to the Code the legal status which we believe it should enjoy. At the moment, the Ontario Human Rights Code ranks equally with the other statutes enacted by the Ontario Legislature. Thus, if another statute dealing with some specific matter were to come into conflict with any of the general principles the Code purports to espouse, such general principles would suffer commensurate abrogation.

Recently, for example, the Canadian Civil Liberties Association pressed a claim for welfare assistance on behalf of a single father. The welfare administrator refused the claim even though, under identical circumstances, a single mother could obtain the assistance. Despite the egalitarian principles espoused by the Human Rights Code, the Welfare Regulations make a number of such distinctions between the entitlements of men and women. In view of the centrality of the Code's principles to the public policy of this Province, we believe that there should be an enactment on the provincial level similar to the Canadian Bill of Rights on the federal level. In our opinion, the Human Rights Code should provide that, unless expressly stated otherwise, no law of Ontario should be construed or applied so as to derogate from the egalitarian principles which appear in the Code's preamble. Thus, the courts would be empowered to grant relief if a statute or regulation purported to authorize discrimination on the basis of race, creed, colour, sex, etc. While exceptions could still be made, they would have to be inserted in express terms into the relevant statutes. Such a procedure would require a public legislative debate on a case by case basis. In our view, the egalitarian principles of the Human Rights Code require nothing less than this kind of across-the-board statutory elevation.

The Problem of Discrimination by Intermediaries

In the increasingly complex Ontario market place, much business is transacted through intermediaries. Employment agencies recruit labour on behalf of employers; real estate agencies sell and rent housing on behalf of vendors and landlords. A contemporary strategy for fighting racism cannot avoid, therefore, an examination of the policies and practices of the intermediaries. To what extent are they willing to screen out unwanted racial minorities?

The Commission will recall our survey of several months ago when we found 11 of 15 randomly selected Toronto employment agencies prepared to accept discriminatory job orders. During the spring of 1976, our associated research organization, the Canadian Civil Liberties Education Trust, performed a follow-up survey on employment agencies in other Ontario municipalities.

In all the Trust tested 15 agencies - 5 from Hamilton, 5 from Ottawa, and 5 from London. With the exception of one agency which had offices in more than one city, those surveyed were selected on the basis of drawing lots.

In each case, the tester portrayed himself as a representative from an out-of-town firm which planned soon to open operations in the city where the agency was located. The firm's Personnel Director was supposed to be coming to that city during the fall of 1976 in order to select a sales force. The tester asked each agency first, whether it could recruit people with sales experience and second, would it be prepared to screen out non-whites?

In at least 11 cases, the agency indicated its willingness to fulfil the discriminatory request. While many of the agencies were matter-of-fact in their responses, a number of them expressed rather disquieting attitudes. Here are some examples.

> "I lived in North Carolina for a year. I know what you're talking about. What you just said is getting to be dynamite. You must be careful to whom you mention this."
>
> "Yes...this is just over the telephone. Nothing will be written down."
>
> "Anyone we refer will not be a coloured person; 99% of the other employers feel the same."

> "I don't feel obligated to send anyone to you just because he's qualified. You want white Anglo Saxons....Officially we can't discriminate but I'll tell you where they're from."

During the fall of 1976, the Trust conducted a similar survey of real estate agencies - 10 in Toronto, 5 in Hamilton, 5 in London, 5 in Windsor, and 5 in Ottawa. In all cases, the tester told the agency that he was telephoning on behalf of a family who wished to sell their home, but because of their good relations with their neighbours, they wanted to avoid selling to non-whites.

Of the 30 so tested, only 3 agencies (2 in Toronto and 1 in Ottawa) expressed an unwillingness to comply with such a discriminatory request. Although a number of them said they could not refuse a specific request to see a particular property, they did agree that, such situations apart, they would not refer non-whites. Moreover, by not posting signs on the property and by resort to a policy of exclusive listing, they agreed that they could probably avoid such difficulties in the first place.

Like the employment agencies, many of the real estate agencies expressed matter-of-fact responses. Again, however, there were particularly disconcerting remarks. Here are some examples.

> "We do get these requests from time to time. We don't make judgments, we just look after our clients' requests. We can't publicize it or put it in writing of course but I can take the particular agent into my confidence and instruct him not to show the property to anyone who isn't acceptable to (the vendor)."

> "I'll just quote them an impossible price." (This agent said that if the property were worth $70,000 and non-whites expressed an interest he would quote them $95,000 and tell them that the vendors were not flexible.)

> "It certainly can be handled because I've done it before."

> "That's discrimination but, of course, it's only between you and I."

> "That's a touchy one but we know how to handle it. Some of the coloured people are pretty pushy."

> "You mean keep it away from the ethnic groups. I handle all kinds of stuff like that."

What is especially disconcerting about these remarks is that they were communicated by telephone to total strangers. Such a lack of caution indicates a disregard for the Human Rights Code which borders on contempt. To compound the contempt, these surveys make it appear that, in these industries, the processing of discriminatory requests is far from an isolated practice.

While surveys of this kind are not appropriate for purposes of the formal complaint procedure, they are highly instructive for the insights they provide. In the context of the Human Rights Code review, such surveys help both to demonstrate the nature of current racial problems and to evaluate how well the Code's machinery can deal with such problems. Apart from supplying the Commission with additional survey details, it is not our present plan, therefore, to file or otherwise to support formal complaints against these agencies in particular. The CCLA interest in this matter is not personal in respect of these impugned agencies; it is structural in respect of these entire industries. Our chief concern here is the development of legislative and administrative strategies which are suited to the special character of placement services.

Whatever successes the traditional methods of the Human Rights Code may have enjoyed throughout the years, it is clear that complaint enforcement is not adequate to deal with the phenomenon of discrimination by intermediaries. The job applicant who registers with an employment agency or the prospective purchaser who goes to a real estate agency does not necessarily know the identity of all the agency's clients. Thus, he may never know or even suspect when he has been by-passed or screened out. In such circumstances, discrimination can be committed with virtual impunity.

In our view, what is required in these situations are industry-wide monitoring programs. Without waiting for complaints that will rarely if ever come, the Commission should undertake periodic reviews of the practices of these intermediaries. Who are the agency's employer or vendor clients? Who are the employment applicants or prospective purchasers? Is the agency bringing together those who appear suitable for one another? If not, why not? Obviously, such an approach would increase the probabilities that discrimination would be detected. Detection, of course, would increase the opportunities for discrimination to be corrected.

As an accompaniment to such industry-wide monitoring, the relevant legislation should be amended. The law should require henceforth that it will be a condition of the licence to conduct their respective businesses in the Province that such intermediaries be required to provide the Human Rights Commission with the information necessary for this monitoring effort.

Similar measures have been in effect for some time in other fields. Restauranteurs, for example, are required to provide Government food inspectors with access to their kitchens; solicitors are required to provide Law Society auditors with access to their financial records. The precedents are well entrenched. In exchange for the right to sell their services on the public market, our community requires of many entrepreneurs, reasonable and periodic demonstrations of their compliance with the standards of the public market. Significantly, only a minority of restauranteurs have been suspected of selling contaminated food and only a minority of solicitors have been suspected of misappropriating trust funds. Yet those activities were deemed appropriate for monitoring. It follows that, in view of the apparently greater propensity to violate certain laws applicable to <u>their</u> activities, employment and real estate agencies are at least as appropriate for such monitoring.

But there is also another reason. Because of the intense competition in their respective fields, these intermediaries are especially vulnerable to discriminatory pressures. A refusal to comply could mean the loss of a client. The employment agency and the real estate agency face the perpetual hazard that, if they refuse such a request, any number of their competitors might be prepared to fulfill it. They also know perfectly well that traditional complaint enforcement is very unlikely to discover such racial improprieties. But industry-wide monitoring could finally provide the law-abiding intermediaries with the feeling of security they need. The knowledge that discriminatory practices are likely to be uncovered will remove, once and for all, the competitive disadvantage of obeying the law. An agency will be able to refuse a discriminatory request in the conviction that the competitor who accepts it will do so truly at his peril.

In the light of the foregoing, the Canadian Civil Liberties Association asks the Ontario Human Rights Commission to undertake industry-wide monitoring of these intermediaries and to recommend that the Ontario Government introduce legislation to make cooperation with such monitoring a condition of retaining licence privileges in this Province.

The Problem of Structural Inequality

Several months ago, the Canadian Civil Liberties Association uncovered a significant phenomenon. In a survey of the Toronto Fire Department, we found only two non-whites. This amounted to less than 1/5 of 1% of the City's total fire fighting personnel. Despite the substantial increase in the City's non-white population, a key sector of the public service was almost barren of non-white employees.

What makes this revelation especially significant is that the scarcity of non-white firefighters appeared less attributable to any deliberate discrimination than to an outmoded system of personnel recruitment. Jobs in the Fire Department were never publicly posted. Instead, prospective recruits would simply send their applications to the Personnel Department and, when new vacancies occurred, the applicants on file for the longest time would be invited for interviews. Because of the small turn-over in the Department and the lengthy list of applications, this system resulted in a de facto lock-out of recent immigrants.

Again this situation demonstrates the inadequacy of traditional complaint enforcement to cope with some of the contemporary racial problems. If a recent immigrant from the West Indies or Pakistan had filed a complaint because of his inability to be considered for a Toronto firefighting job, the Commission probably would have felt obliged to dismiss it. The argument would have been that the complainant's predicament was not a function of his race or place of origin but rather a function of the date of his application. Nothing in the Ontario Human Rights Code made or makes it unlawful to accord a job selection preference on this basis. On the strength of complaint enforcement alone, therefore, it would have been impossible to overcome this structural inequality which resulted from the impugned personnel practice.

While we are grateful for the efforts of both the City administration and the Ontario Human Rights Commission in developing a new recruitment program for the Toronto Fire Department, we remain concerned about the existence of similar phenomena elsewhere in our community. To what extent are racial minorities reaping the full benefits of our communal life? To what extent is there similar evidence of deprivation without concomitant evidence of discrimination? What, then, accounts for such deprivations and how are they to be overcome?

One of the more recurring grievances of minority group members concerns the treatment they claim to receive at the hands of those responsible for law enforcement. Because of the centrality of law enforcement to good race relations, the Canadian Civil Liberties Education Trust, during the fall of 1976, examined also the racial composition of certain Ontario police departments.

While it is much more difficult to elicit this kind of information from police departments than from fire departments, some patterns began to emerge. Despite a growing non-white population, in the form of increased migration from Indian reserves and increased immigration from non-white regions like the Caribbean and the Indian sub continent, the number of non-white police officers[1] appeared very small outside of Metro Toronto. In London, the Trust was able to find only one non-white police officer. In Hamilton and Kitchener-Waterloo,[2] the Trust could not find any.

Like the situation with the Toronto Fire Department, we have no evidence of deliberate discrimination involving these police departments. But, whatever the realities, when the number of non-whites in a constituency is so small, there develops an appearance of discrimination. Traditionally, in those situations where such appearances have prevailed, non-whites would not even seek employment. Few people will consciously risk rejection. What we fear, is that, even in the absence of a malevolent intent, the underemployment of non-whites in such a vital area could be self-perpetuating.

The underemployment of native people is, by now, a well known national scandal. It is unnecessary, here, to recite the statistics. To quote a brief presented a few years ago by an Indian organization to a federal cabinet minister,

> "a once proud and industrious people (the Indians) have suffered a degree of poverty, unemployment, disease, (and) mortality...out of all proportion to its number".

What is clear is that even if racial discrimination were to disappear overnight, very little of this misery would be relieved. Even the unemployment would not significantly abate. Disparities between Indians and non-Indians in education, training, and acculturation would impose upon Indians severe disadvantages in their attempt to obtain employment on the open market. Because of yeaterdays discrimination, there is,

moreover, a wide-spread reluctance in Indian communities aggressively to seek employment. This would also operate to their disadvantage. With the exception of traditional occupations like hunting, fishing, guiding, and trapping, it would take much more, therefore, than the enforcement of discrimination complaints to redress the under-employment of native people in Ontario society.

As the number of non-whites appears, however, to increase in those sectors of the community where, a few years ago, they were hardly evident, it becomes important to probe a little deeper. To what extent are non-whites involved in positions which carry decision-making responsibility? Are they playing as great a role as they should in the supervision of important communal activities?

In this regard, the Trust recently conducted a survey of non-whites among the upper echelons of the Ontario Government. How many non-whites were occupying positions as Deputy Ministers, Assisstant-Deputy-Ministers, Chairmen of Boards or Commissioners, and Executive Directors?

Apart from the Ontario Human Rights Commission which since its inception has had non-whites at the helm, of the 235 such senior positions in the Ontario Government,[3] the Trust found only three non-whites, one black and two of Japanese extraction. In none of these top posts was the Trust able to find a single native Indian or anyone of East Indian or Pakistani origin. In the case of native people, there was apparently even less participation in these senior management positions. No native persons appeared to have climbed the public service ladder even as far as Assistant Director.[4]

Again, we have no evidence of deliberate discrimination in the promotions policies of the Ontario Government. We believe, however, that race relations would be improved by the accelerated promotion of qualified minority group members to positions of decision-making responsibility. Such up-grading would add a vital perspective to Government policy and administration. Moreover, it would serve to relieve whatever anxiety some ethnic minorities may feel about their upward mobility and, thereby, reduce a source of potential inter-group tension. Finally, the appearance of more non-whites in key Government positions would provide a valuable example for emulation by the private sector.

It is clear from all of the above that the rectification of the structural inequities will require in many sectors a transition from the negative orientation of combatting discrimination to the positive orientation of promoting equality. All we can do here is suggest a few of the many techniques that will be required.

Obviously, as a first step, a substantial amount of research is called for. The Commission should undertake continuous surveys of employment patterns throughout the public and private sectors of the Province. In addition to the areas here identified where else are there such structural inequalities? What minority groups are affected in what sectors of the community?

Where such inequities are uncovered, the Commission should launch into a program of action. Among other things, the Commission should encourage non-whites to apply for jobs in those areas where they are currently under-employed. Such an approach would include urging employers to advertise in the non-white press and to insert racially egalitarian statements in their general advertisements. It would also include requesting non-white leaders to recruit suitable candidates for available positions.

In some cases, the Commission might conduct penetrating reviews of recruitment and promotions policies. Are there any impediments to recruitment among certain minority groups such as those we found in the Fire Department? Are there any impediments to normal advancement among such groups once they are recruited? In some cases, the Commission might sit down with personnel officials and examine with them impending opportunities and incumbent employees. This might assist in paving the way for promotions that otherwise might not be made.

The Commission should encourage also minority group penetration of key community elites. On the basis of the service they provide and the skills they possess, certain elites play an important role in community leadership. In this connection, a number of Canadian law schools, for example, have instituted recently certain special programs programs to assist members of disadvantaged groups like native people to qualify for law school admission. The Commission should investigate whether this approach is stimulating significant minority group recruitment. It should examine also the minority

involvement in other important professions and elites, e.g. medicine, manufacturing, insurance, accountancy, etc. Can similar "head start" programs be undertaken elsewhere? Are there other approaches which might be adopted to accelerate the process?

The Commission might also recommend to Government the development of more appropriate subsidies for those private sector employers who are willing to provide on-the-job training, to compensate for deficiencies in educational background. The key even here, however, is Commission initiative. Even the best of subsidy programs will lie dormant unless someone actively promotes their use. With its particular sensitivity to racial inequities, the Commission must be the catalyst.

The goal of equality in employment would be substantially enhanced by the adoption of the concept of contract compliance. Every year, the Ontario Government awards thousands of contracts which produce millions of public dollars for the private sector. In order to create additional leverage for its affirmative recruitment efforts, the Commission might recommend the introduction of legislation to provide that, as a condition of obtaining Government contracts, private sector employers must comply with certain standards of recruitment and promotion.

In view of the controversies elsewhere, it would be prudent to note that our recommendations here need not entail any suggestion of reverse discrimination, preferential treatment, or benign quotas. We are not necessarily asking that qualified whites be rejected in favour of unqualified non-whites. What we are asking is that more non-whites be encouraged and assisted to qualify and to compete.

As indicated, the foregoing represents a few of the many techniques which can serve the kind of Commission program we urge. No doubt, an expanding involvement by the Commission in such efforts will evoke from the Commissioners, the staff, and the community a wide range of creative ideas and approaches. What is paramount at this stage is the Commission's acceptance of the affirmative orientation as an emerging priority in its work. In the redress of sexual inequalities, the Ontario Government has already acknowledged the value of such affirmative action. The redress of racial inequalities should receive nothing less.

The Improvement of the Code's Administration

At the moment, the Crown and its emanations are bound by the provisions of the Human Rights Code. If some of the foregoing recommendations are adopted, even more Government activity will fall within the purview of the Commission's scrutiny.

In our view, the Commission's structure is not now suited to this expanding jurisdiction over the operations of the Government. The members of the Commission's staff, from the Executive Director down, are subject to the control of the civil service hierarchy within the Ministry of Labour. How, then, are these same staff members supposed to investigate discrimination complaints or initiate affirmative action programs involving their superiors in the Ontario civil service and, indeed, in the Ministry of Labour, itself? This arrangement creates a great risk that the Commission's staff will neither feel nor appear sufficiently free to use their available powers and pressures against their employment superiors.

No doubt, the Government of Ontario appreciated the possibilities of such a predicament when it terminated the practice of recruiting the human rights commissioners from the civil service. While the non-civil service character of the present Commission membership represents an important development, we regret that it does not yet address sufficiently these potential predicaments.

Indeed, under the circumstances, the non-civil service Commission simply cannot have sufficient control over its civil service staff. Who is empowered to determine the techniques, restraints, and priorities which the staff must observe? Their civil service superiors in the Ministry of Labour or their non-civil service superiors in the Human Rights Commission? What happens in the event of a conflict between the two?

On the basis of all these considerations, we believe that the entire operation, Commissioners and staff, should be removed from any and all civil service direction and control. If it is deemed desirable for the Commission to continue reporting to the Legislature through a Cabinet Minister, this could be done on the basis of a direct relationship between the Commission and the appropriate Minister, without any civil service intermediaries.

It is clear that the proposals advanced throughout this brief will require a host of Commission initiatives. Since these initiatives must serve as an addition to and not as a replacement for traditional complaint enforcement, it is obvious that the Commission will need a larger staff and budget than it currently enjoys. Indeed, there is reason to believe that the present level of resources is not sufficient to handle the increased demands occasioned by the growing number of complaints being filed. Despite the risk of appearing institutionally self-serving, we ask the Commission to recommend for itself a share of the public revenue sufficient to undertake so comprehensive a program. We believe that there are many constituencies and organizations in the community which would enthusiastically support such an enlargement of the Commission's resources. It is the Commission, however, which must give the leadership.

Summary of Recommendations

The Canadian Civil Liberties Association calls on the Ontario Human Rights Commission to adopt the following measures.

1. Recommend to the Ontario Government a legislative amendment providing that, unless expressly stated otherwise, no Ontario statute or regulation shall be construed or applied so as to derogate from the egalitarian principles which appear in the Code's preamble.

2. Recommend to the Ontario Government a legislative amendment providing that, subject possibly to an arrangement permitting special benefits in special cases such as the affirmative action contemplated by the present section 6a, the anti-discrimination sections of the Code shall apply to all Government and public agencies in respect of all their activities and to all private entrepreneurs in respect of all the services and facilities they offer and the transactions they conduct on the public market.

3. Recommend to the Ontario Government a legislative amendment removing the criminal process from the adjudication of discrimination complaints.

4. Recommend to the Ontario Government a legislative amendment providing that anyone who violates the Human Rights Code may lose temporarily, or even permanently, his licence to operate the business within which the discrimination was committed.

5. Undertake an industry-wide monitoring program of market intermediaries like employment agencies and real estate agencies. In order to assist such a program, recommend to the Ontario Government a legislative amendment which would make cooperation by the agencies a condition of their licences to carry on business in the Province.

6. Undertake a program of affirmative recruitment and promotion designed to further the employment of racial minorities in areas where they are now under-employed. In order to assist such a program, adopt the following additional measures:

   a) conduct continuous research in order to uncover areas of such structural inequality

   b) urge public and private sector employers to advertise in the non-white press and insert racially egalitarian statements in their general advertisements

c) request non-white leaders to recruit suitable candidates for available positions

d) conduct penetrating reviews with personnel officials of recruitment and promotions policies and opportunities

e) promote strategic penetration by minority groups of key community elites - law, medicine, insurance, manufacturing, etc.

f) recommend to Government appropriate subsidies for on-the-job training in order to compensate for deficiencies of education and training

g) recommend to Government the introduction of legislation providing that, as a condition of obtaining Government contracts, private sector employers be required to comply with certain standards of affirmative recruitment and promotion.

7. Recommend to the Ontario Government the removal of the entire human rights administration, Commissioners and staff, from any and all civil service direction and control.

8. Recommend to the Ontario Government a budget and staff for the Commission adequate to undertake all of the foregoing initiatives in addition to the current responsibilities of complaint enforcement.

Footnotes

1. By non-whites, Trust researchers specified blacks, Asians, (East Indians, Pakistanis, Japanese, Chinese, etc,), and native peoples (Indians, Inuits, Metis).

2. The Trust was advised that some time ago there was a non-white officer on the Kitchener-Waterloo police force.

3. The Trust survey of upper echelon Government positions included Deputy Ministers, Assistant Deputy Ministers, Chairmen, Executive Directors, and anyone else who, according to Ministry officials, enjoyed at least equal status. The following is a list of these additional positions, Ministry by Ministry.

Secretariats
- -Deputy Provincial Secretaries
- -Executive Secretary
- -Manager

Attorney General
- -Official Guardian
- -Public Trustee
- -Senior Legislative Counsel
- -Senior Crown Counsel
- -Director of Crown Attorneys
- -General Manager

Community & Social Services
- -Acting Director-Policy Analysis Secretariat
- -2 Executive Coordinators of area offices

Consumer & Commercial Relations
- -Superintendent of Insurance & Registrar of Loan & Trust Corporations
- -Registrar General

L.C.B.O.
- -Chief Commissioner
- -General Manager

Health
- -2 General Managers

Housing
- -Administrative Policy Advisor - Ministry Secretariat
- -2 Executive Coordinators - Ontario Housing Action Program & Policy & Program Development Secretariat
- -4 Assistant General Managers
- -Project Director
- -General Manager
- -Vice-President & General Manager

Management Board of Cabinet
- -Secretary of the Management Board

Provincial Auditor
- -Provincial Auditor
- -Assistant Provincial Auditor

Solicitor General
- -Ontario Provincial Police Commissioner
- -2 Ontario Provincial Police Deputy Commissioners

Transportation & Communications
- -5 Regional Directors

4. In one case, the Trust was advised a native person held a position slightly below that of assistant director.

Housing
- -Administrative Policy Advisor - Ministry Secretariat
- -2 Executive Coordinators - Ontario Housing Action Program & Policy & Program Development Secretariat
- -4 Assistant General Managers
- -Project Director
- -General Manager
- -Vice-President & General Manager

Management Board of Cabinet
- -Secretary of the Management Board

Provincial Auditor
- -Provincial Auditor
- -Assistant Provincial Auditor

Solicitor General
- -Ontario Provincial Police Commissioner
- -2 Ontario Provincial Police Deputy Commissioners

Transportation & Communications
- -5 Regional Directors

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