**Tackling Systemic Discrimination**

Individuals who bring forward human rights claims usually hope that, by taking legal action, they can achieve changes that will prevent the same kind of discrimination from happening to someone else. This might mean, for example, a change in the way a company does business, a new anti-discrimination policy in the workplace or new rules that improve access to a government program.

When discrimination happens because of a business practice, a workplace policy or a government program, this is called “systemic discrimination” because the discrimination is not limited to a single incident or occurrence. Systemic discrimination can affect a large number of people.

When the Centre litigates a systemic discrimination case, it works with the individual applicant and with related community organizations to seek a result or remedy that will promote equality rights for a larger group. This type of remedy is often called a “public interest remedy”. A public interest remedy can be achieved through settlement negotiations or by Order of the Tribunal after a hearing.

Below are some examples of public interest remedies that the Centre was able to negotiate in 2011/12.

**Police Service improves access for deaf and hard of hearing Ontarians**

A man who uses ASL and ASL-English interpreters was arrested after a dispute with his neighbours. On the way to the station and at the station, the man repeatedly requested an ASL Interpreter. None was provided while he was held at the station for over 3 hours. He was brought into an interrogation room and again requested an interpreter, but was instead given documents to sign. He was not told when an interpreter would be available, or if they were making efforts to locate one. His parents had also arrived at the station and were offering to help communicate, but the officer refused to allow this. He signed the papers and was released.

The police service agreed to implement a monitoring system in which all occurrences involving deaf persons are reviewed. Regular and updated training will now be provided to police officers and staff in order to better serve the needs of the deaf community.

**Right to use mobility aids affirmed**

The Human Rights Legal Support Centre assisted an applicant in reaching an agreement with the Ministry of Community Safety and Correctional Services in relation to its policy on inmates using assistive devices within correctional institutions. The Inmates with Disabilities (Assistive Devices) Policy affirms the Ministry’s obligations under the Human Rights Code, including its duty to accommodate inmates with disabilities.

Inmates with assistive devices such as crutches, wheelchairs and prosthetic devices are permitted to retain the devices unless there are compelling medical, health, safety or security reasons otherwise. The correctional institution at issue adopted a new process for the consideration of the accommodation needs of inmates using assistive devices. Senior staff must be consulted and the reasons for the decision, are to be recorded. Inmates will have access to a complaint procedure.

The Superintendent distributed a directive to all staff at the correctional institution, recognizing that accommodation needs are unique to each inmate and that each inmate is to be “accommodated in a manner that most respects their dignity while ensuring a safe and secure environment for staff and other inmates.”

**Employees of franchise across Ontario will benefit from training on human rights**

A black man went to a convenience store in the early morning. Although he was a frequent customer, on this occasion, there was a new employee on duty. He was watched and followed as he walked around the store. When he went to the cashier with the items that he wanted to purchase, he was accused of stealing. He turned out his pockets in front of the store camera to show he did not take anything. The employee called him the n-word.

At mediation, the Centre negotiated an agreement requiring the store to:

* Train all staff to observe and uphold the Human Rights Code in the treatment of customers, particularly recognizing the dignity and worth of every person;
* Require all new employees in any store in Ontario to sign a new undertaking to respect and uphold the Code in all dealings with the public;
* Require all new employees to receive training/orientation on Code compliance before signing the undertaking.

**One brave student's human rights claim paves way for all transgender students**

A student who was living as a male at school had a range of difficulties with school staff about his relationships, his use of washroom facilities his participation in school trips, etc. The experiences created a great deal of stress and difficulty for him throughout high school.

The Centre negotiated a settlement between the student and the Toronto District School Board. The school board created a comprehensive range of policies for the accommodation of transgendered youth, including detailed policies about: need-to-know, student records, field trips and washroom facilities. The Board also agreed to provide extensive staff training to identify and confront transphobia (fear of transgender people) in each school.

Guidelines for accommodating trans and gender non-conforming students include:

* Right to privacy: disclosure is on a strict “need-to-know” basis; students are to be asked how s/he should be referred to when the school is communicating with their parents or guardian;
* Right to use chosen name/gender in classrooms, attendance lists and activities;
* Right to change a student’s Ontario Student Record (OSR) upon receipt of legal documentation of gender change;
* Right to participate in school activities and trips in chosen gender (may require accommodation in terms of private change area, for example).

## A Harassment Complaint Brought Against a Supervisor

#### The Conflict:

**Two employees filed a harassment complaint against their common supervisor.** This was the result of a decision the supervisor made to split them up at work, which they believed was based on unfounded gossip by their peers.

**The two employees alleged that they were treated differently than other employees in that they were not permitted to work with each other.** Further, they alleged that no explanation was given to them for this decision. In general, employees in this organization have some choice and are permitted to swap shifts and posts. The staff involved all had essentially the same responsibilities. In addition, these employees were concerned that their reputation with management might have been damaged by gossip without their being given an opportunity to defend themselves.

#### The Mediation Process:

**The supervisor was not willing to meet with both employees simultaneously.** He wanted a level playing field, and the two employees were initially suspicious of his motives for this. They were also very angry that they were not permitted to work together any more, and reluctant to give any ground.

**The mediation began with separate meetings with the supervisor alone, and then the two employees together.**Separate mediation meetings were then held with the supervisor and each of the two employees. During the mediation sessions, the employees told very similar versions of events. This raised concerns for the supervisor about the reliability of the information he had been given that he had based his decision to separate them on.

#### Outcome of the Mediation:

After hearing the versions of the employees, the supervisor agreed to allow them to work together and to look into some of their allegations about the staff that had originally talked to the supervisor about them.

**It had been alleged that these two employees caused interpersonal problems in the workplace when they worked together.** However, their counter argument was that what they actually caused was more work for those around them than those others wanted to do. They believed that the complaint against them had been an attempt by other staff to avoid having to do the work that was expected of them when they worked with this pair of employees. That is, when these two worked together, other staff’s work habits looked bad by comparison.

## Employees Complain of a Toxic Work Environment

#### The Conflict:

**A group of staff had expressed concerns about morale issues in the unit during an in house operational review exercise**. They cited a toxic work environment, low morale and productivity, and a long history of conflict in the office including high turnover, favoritism, and concerns about a lack of faith or trust by the supervisor in unit staff.

**It was alleged that there was conflict (a power struggle) between the supervisor and his boss.** The two had very different supervisory styles and expectations for staff. Staff said that they openly criticized each other in front of other employees, creating divided allegiances amongst staff. These problems persisted after the supervisor's boss left, and a new boss took her place.

**In addition, it was alleged that the supervisor was frequently absent from the workplace.**Thisresulted in reduced support and guidance, and reduced opportunity to deal with ongoing office issues.

**High staff turnover was alleged to have contributed to bad morale**. It was alleged that experienced staff were replaced with inexperienced staff, contributing to increased workload for those who remained. The newer staff complained that they had little opportunity for training or mentoring. Staff who did attempt to mentor new hires complained that they were criticized for neglecting their own work.

**Workload distribution in general was also a concern.** One staff member had left on extended sick leave and this was attributed to stress due to the high workload. Remaining staff reported having to work overtime or take work home just to keep up, and were unable to use annual leave that they were entitled to. Competing priorities and a lack of role clarity were also raised as concerns.

**Staff complained that the supervisor favored one new hire over another.** Further, they cited that he did not acknowledge their work accomplishments, and that differences in philosophy regarding their work contributed to tension between him and staff. They reported a lack of trust in the supervisor, and said that they did not believe he had carried their concerns to higher management, and had not followed through on commitments he made to staff.

**The supervisor complained that he was not supported by higher management.**Instead, he was left to deal with these problems on his own.

#### The Mediation Process:

**I first met with the supervisor to inform him of contents of the report describing the employees concerns.** I also described the intended mediation process for the whole group, and addressed his considerable anxiety about the process.

**I listened to the supervisor’s concerns, clarifying his feelings and needs, and describing the group mediation process and my intentions.** In the end, the supervisor agreed to participate in the mediation process with the employees.

**The supervisor was also enrolled in ongoing coaching support.** This was intended to help deal with any issues that might emerge after the meeting with employees as it was anticipated that he would receive some candid feedback from his staff.

**A group mediation session was then held with the staff and the supervisor** to discuss the report and the issues identified. The discussion centered on workload issues and performance measurement and higher management requirements.

#### The Outcome:

**There was an open, candid conversation about many of the issues raised in the report leading to a resolution of some of the issues.** Some of the concerns had already been dealt with to the employees’ satisfaction between the date of the report, and the mediation session.

**The staff had additional concerns that they wanted me to raise in my report to higher management.** First, they were concerned regarding the transfer of responsibility for service delivery in their area from one part of the organization to another. They were anxious about this because they had received no assurances that there would be new staff and resources allocated to address this increase in workload. Second, they wanted me to raise their concern about the extent to which the organization was concerned with performance measurement, the amount of work this entailed for them, and the impact it had on their workload.

I agreed to relay the staff’s remaining unresolved concerns to higher management in my report, which was subsequently prepared.