

## **Transcript of Equity Watch webinar 3 February, 2021**

### **Interview with Kathy Laird, former CEO Ontario Human Rights Legal Support Centre**

#### **Larry Haiven**

Welcome to our audience. And welcome to the Equity Watch webinar “What’s Wrong with the Nova Scotia Human Rights Regime: Ideas For Change.” I’m going to introduce you to our facilitator Liane Tessier in a moment, but just want to give you a technical introduction to what we’re going to do. So in a webinar, all of the attendees, the audience are muted. After about a half an hour, or 40 minutes, we will turn it over to you the audience to ask questions. And I’ll repeat this once we get there but you know, there are various ways to put your hand up in the bottom of your screen. It says raise hand and then I’ll try and get to you in order and then I’ll unmute you and or I’ll ask you to unmute yourself, you get to ask your question. And I think a lot of you know the drill. So what I want to do now is introduce you to Liane Tessier, who will be our webinar-runner today. And I think most of you are familiar with Liane, two and a half years ago, Liane was the subject of a very important human rights case, a settlement with Halifax Regional Municipality and the Fire Service, brokered by the health of the Nova Scotia Human Rights Commission. Liane is one of the founders of equity watch, and she’ll introduce the rest.

#### **Liane Tessier**

Yeah, thanks. Thanks, Larry. For those who are not present for Equity Watch’s last month’s webinar, we launched our 50 page critique of the Nova Scotia Human Rights Commission, which is on our website at [www.equitywatch.ca](http://www.equitywatch.ca). And there’s a tab specifically devoted to the critique, including the full document, a summary, media coverage and other items. Before we turn to our guests, Kathy Laird, I think it’s important to go over briefly my intro, which will help give some context to today’s webinar. After that, I will introduce Kathy and have a series of questions for her. And then we’ll give the audience a chance to ask some questions and Larry will explain again.

So I helped form Equity Watch early in 2018, after winning my human rights case. That settlement was the culmination of years of harassment, bullying and discrimination at work, and delay and delays and refusals of the Nova Scotia Human Rights Commission. Equity Watch presented this critique of the Nova Scotia human rights regime as we mark the third anniversary of that settlement.

Equity Watch is an organization that opposes bullying, harassment and discrimination, and supports employment equity. We monitor bodies like the Human Rights Commission, we assist people where possible who have been bullied, harassed or discriminated against at work, and we encourage and help unions to do their part in the fight. My case is symbolic of the many problems of the Nova Scotia human rights regime. It’s a perfect example of what is wrong. It has become clear that the human rights regime is failing Nova Scotians in so many ways. This is why we did the 50 page critique. This report reviews the behavior of the commission as well as several key cases and issues in recent years. It then explores alternatives to the regime, most notably the current system in Ontario. And finally we make recommendations for fundamental change.

In 2007, I filed a complaint against my employer of the Halifax Regional Municipality with the Nova Scotia Human Rights Commission because I was subjected to gender discrimination as a firefighter, a female firefighter. Five years later, in 2012, the Commission dismissed my case on what it called lack of evidence after a shoddy and unfair investigation. A long and unnecessary legal battle followed where the Commission failed to protect my worth as a woman. And out of frustration, I continued my fight by filing for a judicial review and taking the Commission to the Nova Scotia Supreme Court in 2012. Two years later, in 2014, I won and Justice Leblanc in a scathing judgment remitted the matter back to the Commission ordering a new investigation.

Some might argue that my case had an happy ending, but we would argue the exact opposite. Considering the ongoing events: My story is all too common. In December 2017, the commission apologized that I had to go through such a lengthy process. But I wish this was the only problem with the commission. Getting complaints done in a timely manner seems to be a recurring theme throughout the years. Like many others who have spoken out in the past are speaking out today. I too, was disillusioned by the conditions, shoddy work ethic and cold as ice approach. Overall, there has been a complete lack of professionalism, including very little and very poor communication with me throughout the five years. They did not contact the people that would have supported me. There were many gaps of time over a year where nothing was done regarding my file; there was evidence of bias, lazy investigating; the Commission took the employer side automatically at face value; key people were not contacted. The Commission gave the employer extra time and extensions to get paperwork submitted, yet not giving me the same courtesy, and there was an apparent lack of knowledge or insight into systemic gender discrimination.

Finally, in 2017 10 years later my case was slated for to a board of inquiry. But my employer wanted to settle and agree to the following:

- An admission that the HRM had engaged in systemic gender discrimination,
- An apology to me and all women affected by gender discrimination.
- All parties would participate in a restorative meeting,
- A monetary settlement and
- Six promises including
  - An education program,
  - A workplace complaint policy,
  - Inclusion of members of designated groups on hiring panels,
  - Training for those panel members
  - A policy review, and
  - Annual updates and collections of data on recruitment and hiring.

Last month, at the January 6 launch of our critique, we mentioned that despite our requests in each of the last three years about an update with the six promises, neither HRM nor the Human Rights Commission had responded. Only when the media contacted them did HRM finally give an update. It's too bad that we had to go to the media in order to get reports on what they were doing. Disclosure should have been a public matter.

Also, since launching a critique, we have contacted both the Human Rights Commission and the Minister of Justice several times to request a meeting to discuss our critique. To date, we have received no response. But we will continue to request a meeting

In our critique of the Nova Scotia human rights regime we recommended that Nova Scotia consider moving to a regime similar to that which has existed in Ontario since 2008. It is a tripartite system and that includes

- First, a Human Rights Commission restricted to policy matters and public education, and bringing forward complex issues like systemic discrimination racial profiling to the tribunal.
- Second, a Tribunal, a direct access agency dealing with complaints and adjudication. While screening, mediating and promoting settlements, it also allows complainants the possibility of their day in court, so to speak, and lastly,
- A Legal Support Centre, offering legal advice and representation to complainants.

So, today's special guest is someone who knows a lot about the Ontario human rights regime. Kathy Laird has extensive experience in the administrative justice sector as an adjudicator and mediator at several Ontario tribunals, including the Human Rights Tribunal, the Pay Equity Hearings Tribunal, and the Child and Family Services Review Board.

She has served as counsel to the chair of the Human Rights Tribunal of Ontario, and as an executive director of the human rights legal support center.

Kathy worked for many years on Ontario legal clinic legal clinic system litigating before administrative tribunals and courts and the courts. In that capacity Kathy played a leading role in several law reform initiatives that led to new social legislation governing Ontario's human rights enforcement process eviction process and rent regulation regime. In 2004, in recognition of her work in Ontario's tribunal system, Kathy received the Medal of Society of Ontario Adjudicators and Regulators for Outstanding Contribution to Administrative Justice in Ontario. In 2016, she received the Law Society of Upper Canada medal for her work in promoting access to justice.

Well, that's great. So now I'm going to put a number of questions to Kathy. I've got six questions here. So number one, Kathy, we've got what roles have you played in the Ontario Human Rights system over the years?

### **Kathy Laird**

Okay, thanks. Well, I think any role that was available as a clinic lawyer. I had two periods of working in the legal clinic system. And in that capacity, I litigated human rights cases, tried to get cases to the Tribunal and out of the arms of the Commission. I was also inside the Commission as a policy analyst for a period and I was counsel with the tribunal chair, as you said, and I was the vice chair and director and finally when the new human rights system was established, I was a I set up the Human Rights Legal Support Centre as the as the first CEO and worked there for eight years. So I've seen it from all angles, I think.

When I was Counsel to the chair, it was both before and after the reform. So in the 90s, when Ontario first set up a permanent Tribunal, going from the ad hoc Board of Inquiry system, and then again, just as the new system has been brought in, in the recruitment of the adjudicators and new rules of practice, so, I've seen it sort of before and after the change is pretty intimately.

**Liane Tessier**

So what was wrong with the Ontario human rights regime that led the government to make the changes it did in 2008?

**Kathy Laird**

Okay, well, Equity Watch has identified the problems and they're very similar to the problems that you are experiencing in Nova Scotia today. Delay is a big one. On average, it took two and a half years to complete the investigation stage for cases that even made it to the investigation stage. Many complaints were dismissed at an early stage, and without giving more than pro forma reasons. So there were no detailed reasons based on the facts of the case. Few complaints got to hearing so every year there were about 2400 complaints filed in Ontario, and over the last 10 years before the change an average of 140 were referred to a hearing at the tribunal. Most of those settled, so there were five to 10 final decisions annually.

The Commission had a bad success rate in front of the tribunal on race cases; only 6% of cases were sent to the tribunal. One problem that we didn't have, and that it seems that you have in Nova Scotia is that we didn't have a problem at least in the last 10 years prior to the reforms with complaints not simply not being accepted into the system and process. So certainly from the 80s on complaints were accepted into the process, always but then they would go there to die, I guess is the best way to put it.

The Commission stopped being trusted by many equity seeking groups. And in Ontario, there was an ongoing advocacy campaign for direct access tribunal. The NDP government in the 90s, established a task force under a labour lawyer by the name of Mary Cornish, her name might be familiar to some of you. And she recommended a tripartite system with an independent tribunal and legal support center. The NDP didn't act on that. They did, however, set up a full time tribunal in the 90s. With full time adjudicators.

During the Mike Harris years, the Conservative government there were no reforms. But when the Liberal government came in, in I guess, 2005, they announced an intention to reform the Ontario system. And I'll just mention before we go on to the next question, that the advocacy seeking community and the equality rights community did, split about whether the reforms were a good idea. We had disability rights activists like David Lepofsky, expressing fears that the new system would be a privatization of the human rights system because of the change in the Commission's role. I can explain that a little later.

And then other disability rights advocates like Catherine Frazee, who I know has been an expert witness in Nova Scotia. I think on the Mackay case, she supported the changes. So we had this very unpleasant fight that played out in the media and in front of a legislative committee. But the result of

that conflict was that we actually got better legislation because the government wanted to be seen to be progressive. This was their progressive initiative. And so they kind of bent over backwards to appease everyone in the process. And I think we ended up getting a better system that way, but there was a little bit of unpleasant history behind it.

### **Liane Tessier**

So what exactly were the changes that Ontario implemented in 2008?

### **Kathy Laird**

The fear was that the government would get rid of the Commission as they had in BC. But that didn't happen. The Commission was given a refocused mandate on public education and policy development, but no longer had any role in receiving and investigating complaints. So the Commission lost its gatekeeping function in terms of access to the Tribunal. The Tribunal did however get the right to intervene in Tribunal applications and to bring its own public interest applications to the Tribunal. So the Commission still has a role before the Tribunal, but not representing individuals.

The Tribunal itself was expanded. It went from about four adjudicators to 22 adjudicators, so it became quite big, and complaints were filed directly at the tribunal.

And then the government established within the statute, a Legal Support Centre to provide legal assistance across the province, only to people who believe they had experienced discrimination. There was no free legal system for respondents, just for complainants who were now called applicants. I'll probably use the word "claimant" to for ease of reference.

There were also some new statutory provisions, which I think you might be interested in. The first one was that the time period for filing a complaint was extended, but only to one year. It had been six months in Ontario. So that was really very short. And it's still short.

An application cannot be disposed of by the Tribunal without the parties having the opportunity to make oral submissions. So, you know, that is by videoconference in lockdown Ontario, but you always get to make oral submissions. The Tribunal is required to hold public consultations before amending its rules. So this is something that will be useful to ask because now the tribunal is talking about moving to all electronic hearings forever, never going back to in person hearings. But we're hoping that they won't do that without public consultation.

The Tribunal is given the authority to draw an adverse inference from the failure of a party to comply with an order. This is one of the things that was introduced, in part to reassure people that the Tribunal had tools to get to the real truth and justice of a case without the investigation. That was one of the concerns of people that were progressive but opposed the reforms is, you know, what are we going to do without an investigation?

Also, the tribunal was given the authority to appoint a person to conduct an inquiry to obtain evidence. And given that inquiry, the person conducting inquiry could require production, and the tribunal itself

could retain experts. So those are pretty unusual powers for statutory tribunals in Ontario, at least. And I think across the country,

There's also a very broad order-making power that was included in the statute to address the public interest. So the tribunal has the power to direct a party to do anything that in the opinion of the Tribunal, the party ought to do to promote compliance with the act, including directing a person to do anything in respect of future practices. I didn't I didn't look at whether there's anything similar in the Nova Scotia legislation.

The Ontario statute also now provides that a public interest remedy can be awarded by the Tribunal even if the order was not requested by the applicant. So again, that was partly to address the fact that if some applicants are unrepresented, they may not know what they might be able to request. So the Tribunal has this power to address the public interest. The Commission was also given the power to conduct a public inquiry. So that's how the three part body and some new statutory powers to the Tribunal and the Commission to replace the investigation power and make sure that the Tribunal is able to get the evidence upon which you can make a decision.

### **Liane Tessier**

Then there is the Legal Support Centre. Describe in more detail, the work of the Legal Support Centre and in your role in it.

### **Kathy Laird**

Okay. So, the Centre had a budget of about 5 million. It was able to hire a staff of about 60, including about 25 lawyers. So that's, it's it was a it is a big operation, although it's recently lost and funding. It is based in Toronto, but it had at least six lawyers based in other communities and the lawyers all traveled to other communities for hearings and mediations. The Centre adopted an unbundled model for its legal services. So what this means is that instead of becoming retained when an application is filed, the Centre only becomes your change stage by stage, I'll just start by describing the telephone service. And I think that'll that'll help. The centre operates a telephone advice line and a multitude of languages about 140 languages across the province. And the role of the phone line is to help people identify if they have a discrimination problem, like what's happening to you, and is that discrimination, help them understand what the Human Rights process involves. Some people think that, you know, the centres like the Better Business Bureau, you make a complaint, and then they just run with it. They don't appreciate that it's their litigation. The Centre helps people decide if they want to pursue a claim, assists them and taking early resolution steps, sometimes just picking up the phone and talking to the landlord and saying, No, you can't refuse this person because they're on social assistance. And then giving advice on how to complete the application form if the person decides to go to the Tribunal. It's quite a lengthy application form, but it's designed to allow people to set up their own their story in their own words. So the Centre wouldn't become retained to that point. The Centre doesn't do an investigation. It doesn't question what the person says. I mean, the Centre might point out weaknesses or inconsistencies and what's being told, but that the approach at that point is, let's assume everything you're telling us is exactly what happened. If that looks like discrimination, then here's how you fill out the application. And the advisors on the phone line, they'll take repeat calls from people and walk them

through the process until their application gets filed. And then tell them when you get your notice of mediation, call us back.

So the Centre gets about 23,000 inquiries a year. So those are separate phone calls from about 15,000 people. Last year got the last three years got approximately 4400 applications. So you can see that 15,000 individuals were inquiring about it. And it resulted in just over 4000 applications. So that's up from I don't know if you remember me saying that there used to be 2400 complaints under the old system. And now there are 4400 applications or claims under the new system.

Okay, so if someone calls back at the mediation stage then in general the Centre will represent them at mediation as long as there's something to be said for the case. Sometimes the Centre will go on record, even if there's not a very strong human rights argument, but there's a strong employment law case, because, you know, in that mediation, you can settle the whole package together.

So about 2700, people would get that in depth service. Because so many cases go to mediation and settle, the Centre summarizes the settlements on its website. I know this is something that Equity Watch has been concerned about how settlements are private, that there can be gag clauses. The Centre has a couple of things that it does to try to get around that, in terms of summarizing the settlements: they're anonymous, and we don't include the amount of money and then we'll change a couple of facts to protect, we've never had a problem with it. Let's what would be an example. I guess, if there was a problem in a city rink, we might change it to a basketball court. I just making that up off the top of my head, but we would make certain changes but capture the essence of the case so that people can see what kind of cases go forward.

The Centre also uses the media a lot and in appropriate cases will go to the media when the application is filed, or before mediation. The applicant has to agree to that. Because if the case is already out there, that takes away one motive to settle for respondents because there's so many other incentives to settle. The legal costs of a hearing, the fact that the media is already covering the case and will be there at the hearing. So that's one of the ways we got around it so people would know what kinds of cases were going forward. And then we found the media was very, very interesting. It was it was really easy to get media

### **Liane Tessier**

How well have the 2008 changes worked out in general then?

### **Kathy Laird**

I think they did work out very well. For almost 10 years, it worked pretty well. They, as I've said, the number of applications that were filed went up. I think this is partly because the new system gained credibility with the public, and particularly with designated group communities. They could see that the media really helped; they could see that people were winning cases. Black Lives Matter, Idle No More, the #MeToo movements, all of these things brought discrimination into the public discussion to a greater extent. And we saw our numbers go up and up at the Centre. Most mediations happened within six months. And the hearing usually began within six months of an unsuccessful mediation. It could have

been faster, it could have been better, but it's certainly much better than the old system, where a referral to the tribunal didn't need to happen for over two years.

So cases did move through. About 1500 cases went to mediation every year, and about 60% of those settled.

The Commission found its feet and took to its new role, and has taken on some reviews or inquiries into issues like anti-Black racism and policing, trans rights, discriminatory zoning against group homes. The Commission was not happy with the changes, and it lost a lot of staff because the whole investigation unit was gone. The Commission didn't have a phone line and was hard to reach for a while, but it gradually, you know, sort of found its feet and became a good partner in the system.

One of the problems that I identified and tried to resolve without success when I was there was the fact that there was inadequate data to assess some aspects of the system. Like the tribunal never released data on how many claims were withdrawn. How many were settled at stages other than mediation? There's very little data in the annual reports. And it's definitely gotten worse under the Ford government. And that makes it hard to know where every single case went, what happened to them, given that there were 4400 that went into the system. And every year, the tribunal would have about 100 decisions on the merits. So that's 10 times more than previously. Under the previous system, you know that there were a lot of settlements along the way. And many of those settlements were very excellent. But the data to break it down isn't available. The Centre would take every case at mediation hearing, we'd send a lawyer if it had merit. I defend that because I don't think you can be providing free, publicly funded lawyers to argue cases without merit. If you do that there will be a significant backlash against the system.

One of the funny things that used to happen to us and sometimes we'd be interviewing someone for a representation of mediation, and they'd want to, they'd want to know \$10 million. And we'd say, well, we just can't go in and ask for that because, we know you can't get that. And so if you want \$10 million, then here's the law. And you know, here's what you need, you can go and ask for it. And people would do that. And frankly, some times they wouldn't get 10 million, but sometimes, because they were so stubborn, and you know, sometimes they would get more than we would expect.

The Centre got very good reviews, including from people who decided, for whatever reason to go on their own. We had no income criteria. Once had a member of federal parliament come to us for free legal service. Sometimes we had people who were quite privileged, sometimes come for service. There are criteria on the website, and one of them is, what other resources does the person have. In general, we make try to make sure that our services were provided to the people who could least either afford or have the skills to represent themselves.

**Liane Tessier**

What has the Doug Ford government done to the Ontario human rights system now?

**Kathy Laird**

I think people were worried that there might be legislation introduced to either abolish the Commission or the Legal Support Centre. There was talk, apparently, within Tory circles of reverting to the courts as the forum for human rights complaints. But none of that has happened. And it doesn't look like it will happen and certainly not in the government's current term. They're a little busy with other things.

However, we are seeing on a number of fronts, that things are happening, sort of under cover of the pandemic and the Human Rights system is no exception. So the Centre has lost significant funding. Over a million over \$5 million budget, something in that range. There's a hiring freeze at all three agencies, which doesn't sound you know, so terrible, except that what happens in a government agency when there's a hiring freeze is that, like the tribunal is not operating effectively.

Their staff is discouraged. The Tribunal is not working very effectively now. There, are really, really significant delays. Sometimes it takes months for an application to even be delivered to the respondent. Sometimes there are lawyers waiting over a year for an interim decision, a procedural decision, There are final decisions on the merits that are over a year waiting to be released. All the experienced adjudicators that were at the tribunal when the Ford government came in, have been let go. They had been on two, three and five year terms. And when their term came up, they weren't renewed. There's only two adjudicators left now of that initial group.

And I have to say that the adjudicators had been excellent. Like we would feel good sending someone, let's say, a school teacher who was articulate and had a straightforward case, if the Centre didn't have the resources to represent him or her, we would feel fine with sending them off [self-represented] to them, you know, and we would monitor it. I used to look at every decision that the tribunals released, and compare it to our case management system to see.

And so I used to do that analysis. And, you know, I found that people were self representing and winning; they were getting good decisions, people who we told no, this isn't a human rights case, they would go on and they would lose. And, you know, I mean, that that's just the way it is in a direct access system. You have to appreciate that cases without merit will go forward. But the advantage is that they get detailed reasons for why their cases not successful, whereas in the old Commission system and the system you have in Nova Scotia, the case won't be accepted. If it is turned away at the front door, or will be dismissed at an early stage or after investigation. But I assume it's like Ontario as we were. And there's really no substantive decisions that allow a person to feel heard.

It's easier to accept losing when you've actually got to tell your story.

And so, there's a lot of delay at the Tribunal. Financial cutbacks at the Legal Support Centre, which are impeding their ability to represent as many people. By getting rid of experienced adjudicators, the government is also sending a message that it wants its own people in place. I think that after Ontario had a case challenging a new sex education curriculum that was, you know, more helpful to children in terms of understanding sexual harassment and sexual diversity. And there was a strong conservative fight against that legislation that the liberals had introduced and then the Tories revoked, and that was challenged at the Human Rights Tribunal. I think when the Doug Ford government realized that, Oh, my God, this Human Rights Tribunal could actually decide that we can't get rid of the sex education

curriculum that we promised we would get rid of in the election. I think that that brought the tribunal to the attention of the government. And I think that's one of the reasons why they've tried to rope it in.

So it's not happy days. There used to be 22 adjudicators and right, as of this moment, there's only 10. But the number of claims is now at 4400. So that's behind. So it's a sad problem that we're having right now. Well, so far what we've seen is the appointments they're making are pretty mediocre appointments compared to the people who have been let go, and some of them have absolutely no qualifications. If you have an expert who is a Tory bagman, that might be okay, if they're an expert, but if they neither have the expertise, it doesn't look good.

### **Larry Haiven**

Thank you. Thank you both, Liane and Kathy, that was a wonderful summary of the Ontario system.

There are a couple of things that we called for in our Critique of the Nova Scotia human rights regime. that I just want to briefly mention, because we'll be coming back to them in future months. One of the most important is non-disclosure agreements. You know that that many of the cases at the Human Rights Commission are settled. And there's nothing wrong with settlement. But the problem is, most of the time, the respondent, that is the alleged perpetrator, their lawyers demand, sometimes before they'll even talk to the complainant, they'll demand a non-disclosure agreement, which not only covers the, let's say, the amount of money they get, but everything, they can't even talk about it.

And next month, we're hoping to have a webinar with a specialist on non-disclosure agreements. So we're going to be talking about that. Another topic is self-represented litigants. In Ontario, they have a Legal Support Centre, which does provide legal help. We don't have that in Nova Scotia. The other thing we don't have in Nova Scotia, which they used to have in Ontario before they changed the system was a system of clinics. And Kathy used to work at some of those clinics, we don't have any of those in in Nova Scotia, and legal aid doesn't cover it. So people need help in self-representation. And there's a wonderful site called the National Self-Represented Litigants project. And we have a link to that at one of our tabs on the Equity Watch web page. So we'll be having a webinar on how to self-represent. Or I guess another one thing is to how to get the most out of the legal advice you can find.

### **Kathy Laird**

Okay. I should say that the Human Rights Legal Support Centre has pretty extensive materials on its website about how to self-represented mediation, how to self represented here, and recognizing that some people are going to be going by themselves. And most of that would be useful, I would think, in in Nova Scotia, I think most of it would be applicable. And it's written from the point of view of the applicant. The Tribunal also has some materials, but they're written for both parties. So that that might be a resource that you can use. I know we're very lucky in Ontario to have the legal clinic system, and many of the lawyers that I was able to hire the center where former clinic lawyers, so they had that experience in working with disadvantaged communities. And so that that was a great help..

### **First question from audience**

[The questioner wanted to know if we could have a system where we didn't need representation by lawyers.].

**Kathy Laird**

I think the vision of the Commission initially, you know, back when Commissions were established in Canada was that the Commission could help both sides. It could investigate the respondent side and the complainant side, and, you know, figure out the the justice of the case. But the problem is it all happens behind closed doors. I agree with you that a process that doesn't need lawyers can work. And in fact, I would argue that the Ontario Tribunal because it has certain tools almost like an investigatory tribunal inquisitorial tribunal that has the right to call its own witnesses and request evidence. You know, just as the Commission might ask for all the employer employers hiring records, the tribunal also can ask for all the hiring records. The problem, I guess, is that respondents are generally represented. So once one side has a lawyer, it's hard, but not impossible for a neutral tribunal to ensure a fair process for the unrepresented or the self-represented person in this case, a complaint on the other side. So that tension is is going to be there.

But yes, I I understand your point about the system being too reliant on lawyers.

**Second question from the audience**

My question is this. When we put this to people at the Human Rights Commission here, the idea of this kind of tripartite system, their first reaction is how much this is going to cost and the second response is we have to offer a free legal service to the respondents as well. Can you address this or try and explain it to me?

**Kathy Laird**

Yeah, well, okay. So the first thing is that when Ontario set up that system, it it, there was no money, but it wasn't a lot of new money. And that was because they got rid of the investigation arm of the Commission, which was the bulk of the of the staff. And, you know, the commission lawyers, they got rid of some of their lawyers, they didn't need as many lawyers, their lawyers were paid, you know, 180,000 a year. And I'm just going to be blunt. And then the lawyers at the Human Rights legal support center, were paid, I don't know, 70,000 a year. So there was a huge difference, like because they were paid at the same level as community legal clinic lawyers. Maybe a little bit ahead. So I mean, that's, and that's how we were able to hire. I mean, I say without, it was definitely a female job ghetto definitely. So that's that, I mean, I'm being a bit humorous, but because the Center was established outside government as a social and nonprofit agency, with a board of directors appointed by the government, but the staff was hired at salary levels that you would expect in a community service organization. So they only really put in another time when I think the Commission's budget was 13 million. And I think the new system went up to like 15 16 million, I may be a bit because the center started off with about 3 million and most of it came from the Commission's budget, the Tribunal did have to expand, but overall, it wasn't as expensive as you might think. And your other question was, they were saying that they had to represent the employers. Well, that was an issue. Okay. So one of the odd things was that there was no opposition to the reforms from the respondent community, from employers, the manufacturing sector there, the whole fight was in the equity community about whether or not this was a good idea. So that was a little bit strange. But I think one of the reasons for that is that respondent side lawyers, they were into it, because guess what, it was more money for them, because cases were going to be going to hearing and, you know, they, they didn't like the old Commission

system, either, you know, okay, because their clients would be stuck, you know, waiting for three years with something hanging over their head. So there was no opposition from the bar, and there was really no opposition from respondents. However, we all know that there are small landlords and small employers, and, you know, not all human rights claims are valid, sometimes bad things happen. Or they're not related to a ground of discrimination. And sometimes it's hard to tell that. So that was an issue.

There were a couple of things that helped, which I don't think you have available to you. One was that there was a legal aid clinic for small landlords. Landlords who had human rights claims against them could get some advice. That's not representation, but they could get advice. The other thing is that there was, well, the Commission had materials on their website that were meant for small landlords, employers, so employers knew what their rights and responsibilities were. Those were not so much how to represent yourself at the tribunal, but they were helpful. And then there was another government phone line, which has been expanded. I've just noticed this, but I haven't looked into it. Because I don't have to anymore now that I'm retired, but there is now an additional phone line, have available support for respondents. And I think it may be part of, I don't know, I think it might be part of Employment Standards, but there are some resources available.

We worried about this. The chair of our board always worried that the system would be discredited because it didn't have the same resources for respondents. It never became much of a political issue in Ontario.

I have to say that the Commission itself, I don't know if I've mentioned this, the Commission in Ontario was very opposed to the reforms. I guess, was the loss of jobs. They lobbied very hard against it. And there was even quite inappropriate things where they were breaking the public service rules to lobby, they were writing letters to the editor in their own names, not truthfully, And I, Michael Gottheil, who was the first chair of the Tribunal and I, we went to Quebec, at the invitation of the Tribunal there shortly after the reforms, to speak about the changes. And the I know, the Commission there was just so angry at the idea of this kind of reform. And I can also tell you that I used to attend what's it called, you know, the the national organization of human rights agencies CASHRA. I attended a couple of times they didn't welcome the Human Rights Legal Support Center and didn't want us there, and was quite dismissive of the Ontario model. So this would be the representatives of Commissions across the country.

Catherine Frazee when she was the chief Commissioner in Ontario. That's when I worked at the Commission. So I work closely with Catherine. The Commission under Katherine supported the reforms and made a submission to Mary Cornish, asking, you know, making the case for a reformed human rights system with direct access. She considered the system as patronizing to claimants who didn't have control over their own cases.

### **Third question from audience**

Once an individual files a complaint, what kind of support is available for him or her while waiting for the process to move forward? In Ontario, as well as Nova Scotia, this could be a very stressful period of time for an individual who is still working in an unhealthy, toxic environment. One of the biggest

complaints from claimants in Nova Scotia is that they're left in the dark, that they're shuffled from investigator to investigator that it can be months before anyone gets back to them (Liane can testify to this.) And they just don't know what's happening and, and the mental stress that they have to go through not knowing whether there's no validation of their concerns. It just adds to the stress. What mechanisms are there in the Ontario system to keep claimants informed and, you know, still within the system?

### **Kathy Laird**

It plays out a little differently in Ontario. In Ontario, when you're in that gap between when you filed. And when you go to mediation, there could be an interim motion. But let's just take the straightforward case. No one is considering your file in that period, like everything that happens to your file happens in front of you, you're there at mediation, and you hear what the respondent says, and you talk to the mediator. And then between mediation and the hearing, again, no one's dealing. So it's kind of a different phenomenon. You see what I'm saying? And I understand how awful it is. Because I had cases at the Commission and you know that somebody is they're working on it, but what are they doing? And what is your opportunity for input? So there, it does play out a little bit differently. Any litigation process is, of course, really stressful. And people would call, you know, after they got initial advice, they, they would call our helpline, you know, for reassurance about their case, and once they, when they got the mediation, notice, no lawyers representing them, then there would be an interview set up, and they would be in the process of providing information. So, I guess it plays out a little differently in those two ways. But there's no getting away from the fact that it will take time, and it's stressful.

### **Fourth question from the audience**

Two questions. One was, what was the breakdown generally between respondents in our private sector versus public sector. And in terms of who you expect the actors to be to one to curb the effectiveness of the, of whatever structure there is under the Tories for it, or ideological who may want to make complaints, whether you see that the action all in private sector or their public sector, municipalities and so forth, that haven't liked what it has has happened in the last 10 years and would like to have one less armed group to deal with?

### **Kathy Laird**

Well, we don't feel that much opposition from you know, big employers, school boards, hospitals, you know, some of the worst respondents are dentists are terrible. But they're not organized. And they're not lobbying the government. Frankly, the government is the single largest respondent that isn't to say, in the majority of cases, but if there was, they are the respondent with the most cases against them.

I think opposition is coming from inside the government, inside the Tory party. And I think it is more ideological. What kind of government we're dealing with is someone who would change the number of riding seats in the Toronto City Council mid election. So that's, you know, a pretty unilateral move. And so if you have a human rights strike me, and I'd like to tell the government that its policies are contrary to the code and make an order against the government, you know, that that was not going to sit well with that that kind of government.

### **Fifth question from the audience**

One of the areas of difficulty with our Human Rights Commission is whenever they have to deal with other government agencies. I know that for instance, Gus, who spoke earlier to us, was part of a case where six wheelchair users who went to the Human Rights Commission, to try and get Nova Scotia government to enforce its own laws with regard to accessibility of washrooms in restaurants. And they got turned away twice before they could even get through the door, and had to go to judicial review, which issued a scathing judgment ordering the Human Rights Commission to take the case.

### **Kathy Laird**

I read that your materials on that on that case. Um, you know, I think it's, it's not insignificant that Commission staff are government employees. They go to all the government conferences and training and they're connected. We always knew that we had to do what was best for our clients. And we could care less if it embarrassed a government department, because but you know, if you're a government employee, and you're going to take on another government agency, it kind of weighs on you. And I just think that, yeah, it makes it tough to go after another government agency, they want to know that it's open and shut case and that everyone would agree. I think it's an it's endemic to the model, it's inherent in the model. And you can't really get away from it. And that's why I feel like a direct access system is best. Just that you throw that off, the shoulders of the Commission. It's neutral at some stages, you know, in receiving the complaint and mediating the complaint and trying to settle and investigate. But then when it makes the decision to refer and become an advocate against the government, that is, it's not something that a commission does lightly.

### **Sixth question from the audience**

The discrimination experienced by diverse workers in Nova Scotia is traumatic, there is no work. There are no workplace standards for diversity and inclusion yet, and there's no accountability for psychological harm. And we know this because this is one of the campaigns of Equity Watch. Under Occupational Health and Safety. We're the only jurisdiction in Canada that neither has nor is contemplating adding psychological harm to OH&S. Question. What do we target first to mitigate human rights violations in the workplace? psychological health and safety are workplace standards, sorry, psychological health and safety, or workplace standards for diversity and inclusion? If you can answer that,

### **Kathy Laird**

I don't know if I can answer that. And I mean, always your I mean, as you all know, you're always looking for the point at which you might make some headway. Where there's an opportunity, frankly, we were surprised that the Ontario Liberal government made the changes they did at that moment. I think we just got lucky. We thought that I don't know if this is all helpful. We thought that what they would do is give a system where someone could opt out of the Commission process, kind of like what the EEOC has had in the States, I guess. You can opt out and go to a tribunal, you can opt out of the Commission process. So we thought we'd get that kind of model and instead for whatever reason that then Attorney General. So you know, as a community advocate, you're always looking for that, like occupational health and safety. I would think that that is a place where you should be able to get a reform because you are the only jurisdiction. So that seems to be begging for. But you know, better than I were your or you can find the little soft places to make progress.

I see that Lucy had a question about this customer satisfaction and the Centre did do that a lot. They surveyed every client, we needed to do that. We were always afraid that we were going to lose our funding. And I've encouraged tribunals to do the same. I know it's tricky, but because you know, you're not necessarily happy when you lose a case. But I think that those kinds of outgoing customer satisfaction surveys are really valuable. Well, what can I say? I mean, I know that you have advocates out there that have been looking for reform for a long time, I want to stay that way back in the I think the early 2000s. When I was at a legal clinic, I went to Geneva to make the case before the UN Human Rights Committee that the Ontario system didn't have access to a human rights to human rights, justice to human rights remedies. Every time I was only involved the ones in a negative report about Canada. And I will say this, that when the Ontario government tabled the new legislation, they quoted the UN Human Rights committees condemnation of the Canadian and Ontario process for not allowing access to human rights remedies. So I know that you have been working on it for a long time, I think we kind of got lucky in Ontario. And I hope you are able to, to make some changes. You know, BC now has a decent model. I don't know exactly how it's working on the ground. Alberta has something different again. It would be great if Nova Scotia could make some headway.