Reprinted from the
International Labour Review
Vol. 104, No. 5, November 1971

Special Complaint Procedures concerning Discrimination in Employment

K. GUNTHER [1]

THE PRESENT ARTICLE discusses the effectiveness of the machinery available to enforce legal provisions prohibiting discrimination in matters of employment. Persons who consider themselves to be victims of unlawful discrimination can seek redress through several established procedures. Some of these are available in only a few countries, others are common to many or all. For example, the obvious and traditional method is to press a discrimination complaint by initiating a suit before a court. This may be a civil court or, if discriminatory acts are classified as criminal offences, a criminal court. In several countries cases concerning employment discrimination can be brought before special industrial tribunals or labour courts that enforce industrial rights.

As a rule, however, complainants do not have to go as far as the court, for they can secure redress through administrative mechanisms or the provisions of collective agreements. Even simpler than that, an employee who regards himself as a victim of discrimination can initiate a complaint action in the undertaking where he works, by addressing himself to supervisors, to the various grades of management or, where there is one, to the appeals board, or, still within the undertaking, by following a grievance procedure established by collective agreement.[2]

---

[1] International Labour Office.

[2] One research worker comments in this connection: " Before scrutinising more closely the ... procedures ... for the settlement of rights disputes within the framework of the arbitral system—or, as with direct industrial action, operating squarely in the face of it—it is important to note that there is a missing link. The missing device is that of settlement in the shop where grievances, the most important of all rights disputes, erupt. Of course, a great many industrial grievances no doubt get settled somehow, offhand and informally, at their shop points of origin. But many, probably most, of them go by default. What seems lacking is the provision of more formal arrangements for grievance settlement in the shop." See Paul F. Brissenden: *The settlement of labor disputes on rights in Australia* (Los Angeles, University of California, 1966), pp. 65-66.

An aggrieved person can also choose to initiate action outside the management framework, and outside the employer-union context, and undertake to carry his case direct to a local, provincial, or even national administrative authority. In a number of countries the worker can communicate a complaint to the office of a labour inspector. In others he has to contact a higher central state authority; for example, in the United Kingdom section 16 and Schedule 2 of the Race Relations Act, 1968 [1], provide, when read together, that complaints relating to employment or to employers' or workers' organisations shall be received by the Secretary of State for Employment, the Race Relations Board or a regional conciliation committee of the Board. Under Title I of the Civil Rights Act of 1964 in the United States complaints are generally filed with the Department of Justice; complaints under apprenticeship and training programmes and those involving government contract work go to the Department of Labour. In special situations, notably those connected with the activities of the public administration or related to the civil service, complaints of unfair treatment and employment discrimination can be considered in some countries in the office of an *ombudsman* or parliamentary commissioner. A person who has been denied entry into employment is restricted to informal appeals to the management hierarchy of the establishment that has refused him, but he can enlist the support of a trade union organisation of which he is a member.

These various forms of complaint action and complaint strategy are mentioned only to give a hint of the considerable variety of institutional possibilities that present themselves to a victim of discrimination seeking redress. Not all of them exist side by side in all countries, but they represent the concepts and procedures adhered to in the principal attempts to put effective pressure upon those practising unfair discrimination.

A new method of pursuing complaints outside the undertaking, which is not the result of collective bargaining, has recently been introduced in certain countries.[2] This allows persons with grievances to present charges of discrimination to public authorities created specifically to promote equal employment opportunities and civil rights generally; it has gained great influence and, where established, functions as the foremost system of putting anti-discrimination policies into effect.

The following sections are essentially confined to consideration of this new type of grievance handling institution in the equal rights field. The first part is a description of the institutional arrangements, the

[1] See ILO: *Legislative Series*, 1968—U.K. 1.

[2] Notably Canada, the United Kingdom and the United States. Race and employment in these countries have already been the subject of articles in the *International Labour Review*. See John E. Means: " Fair employment practices legislation and enforcement in the United States ", in Vol. 93, No. 3, Mar. 1966, pp. 211-247; Henry Carnegie and John E. Means: " Equality of opportunity and pluralism in a federal system: the Canadian experiment ", in Vol. 95, No. 5, May 1967, pp. 381-416; Frank Cousins: " Race relations in employment in the United Kingdom ", in Vol. 102, No. 1, July 1970, pp. 1-13.

complaints procedures and the possibilities of settlement. The second part is an attempt to examine the practical and operational aspects of the new fair employment practices bodies and to indicate criteria for the determination of their effectiveness.

Anti-discrimination commissions and the structure of complaint mechanisms

The special anti-discrimination supervisory bodies, as they have been set up in certain countries, function under a variety of names [1]; furthermore, to add to the complexity, they operate at the national, state or provincial, and local levels. There are, of course, distinctive institutional elements in each country that reflect national cultural characteristics, but these bodies also have common elements. For example, all are new regulatory agencies which, in the sociological sense, are still in the initial phase of the institutional life cycle.[2] This means that they are still exploring their effective mandate under the new anti-discrimination legislation which has established them; that administrative responsibility within them may still rest fully or partly with volunteers, or only recently have been assumed by full-time career officials; and that value patterns and group interests in the community regarding the regulation of race relations are still somewhat fluid, causing many commissions to refrain from invoking all their legally defined powers of enforcement, to pursue a policy of moderation, conciliation and persuasion, and to settle disagreements which arise as formal complaints in terms of the established order.

To illustrate the institutional arrangements for the working of an anti-discrimination body one may consider the example of the Canadian provincial Human Rights Commissions.[3] These commissions generally accept discrimination complaints if they are filed in writing; in some cases charges can also be presented orally, even by telephone, as in Quebec. Every effort is made to keep formal procedures to a minimum, to place strong reliance upon personal contact and discussion, to start immediate investigations and to seek quick settlement by conciliation. If issues cannot be settled at the informal inquiry level, a formal hearing before the commission or an ad hoc board must be arranged. Until now,

[1] For example, in Canada and the United States one finds Fair Employment Practices Commissions, Commissions on Human Relations, Commissions on Human Rights, Civil Rights Commissions, Commissions against Discrimination, and Equal Employment Opportunity Commissions; in the United Kingdom, Race Relations Boards and Community Relations Commissions.

[2] In this connection see Leon H. Mayhew: *Law and equal opportunity: a study of the Massachusetts Commission against Discrimination* (Cambridge (Massachusetts), Harvard University Press, 1968), pp. 1-32.

[3] In 1971 all provinces except Newfoundland had major anti-discrimination legislation; five of them (British Columbia, Manitoba, New Brunswick, Nova Scotia and Ontario) had established Human Rights Commissions.

however, that contingency has arisen infrequently. The experience of Ontario, where it has been found that only 5 to 10 per cent of the original claims submitted to the Human Rights Commission have to be carried over to a board of inquiry, is similar to that of the other provinces. Commissions have no power to initiate prosecution proceedings, a limitation that also exists in practice in the United States; there, although the federal Equal Employment Opportunity Commission has the formal right to file charges if it has reasonable cause to believe that unlawful discrimination has occurred, it can give little effect to this right because of the great number of individual charges it receives, to which it has to accord priority. The volume of cases handled by the Ontario Human Rights Commission, which is responsible for the most extensive anti-discrimination programme in Canada, is impressive.[1] The work is carried out by a full-time professional staff. However, there is no permanent body to hear cases in which attempts at conciliation have failed. An inquiry board is constituted for each case and its members—usually judges or law professors—are especially appointed by the Lieutenant-Governor. The procedure in Ontario, and indeed the general preference in Canada for ad hoc tribunals for the settlement of labour disputes, differ from the approach in the United States, where hearings are conducted by the Commission itself.

Whereas the procedures of provincial commissions in Canada operate in relative independence, the activities of the large number of anti-discrimination bodies at the municipal, county and state levels in the United States [2] are co-ordinated to a certain extent with those of the federal Equal Employment Opportunity Commission. The EEOC "defers" to the local or state anti-discrimination agency, where one exists in the complaint area, and can act only sixty days after the initiation of state or local proceedings, or when these have ended if they last less than sixty days. If the EEOC is unable to achieve voluntary compliance, it informs the person with a grievance that he may bring private civil action in a federal district court.[3] The direct enforcement power of the EEOC mentioned above, allowing it to initiate court proceedings to compel compliance with a court order issued in a prior private action, is

[1] Since 1962 the Commission has investigated, settled, discussed or referred to another body over 12,000 formal and informal complaints and inquiries.

[2] In 1971 thirty-seven states had fair employment practice laws prohibiting discrimination in employment and almost all of them had created commissions to deal with complaints and handle enforcement procedures. Moreover, there is an even greater number of local human relations commissions. As reported in a study by the Community Relations Service of the United States Conference of Mayors, in 1964 there were already 225 such commissions in the then 589 cities with more than 30,000 inhabitants.

[3] To facilitate this phase in the enforcement scheme, the Civil Rights Act of 1964, Title VII, section 706 *(e)*, specifically provides that, where the court finds indigency or special circumstances, it may decide on the appointment of counsel and waiver of costs. For Title VII (Equal Employment Opportunity) of the Act see *Legislative Series*, 1964—U.S.A. 1.

potentially significant (although so far used in only one test case [1]) as a means of enforcing compliance with the understandings in conciliation agreements. Moreover, under Title VII, section 707 *(a)*, of the Civil Rights Act of 1964, the Attorney-General may bring a suit on behalf of the Government when discrimination occurs in the form of a " pattern or practice of resistance to the full enjoyment of any of the rights secured by this Title ". The Civil Rights Division in the Justice Department has successfully carried a number of such cases through complex litigation, thereby setting important precedents. Proposals to transfer the " pattern or practice " authority from the Justice Department to the EEOC, or to set up a system of co-ordinate jurisdiction between the Attorney-General and EEOC, have been advanced and are still being considered.

While these larger possibilities of government- or Commission-initiated action exist, they are still only a hypothetical supplement to the consideration of individually presented grievances. In the United States private complaint action is above all an attempt to engage in the process of conciliation. State commissions have on the whole achieved a highly favourable conciliation record; the EEOC's equivalent activities have been less successful [2], probably owing to the Commission's lack of enforcement power. Conciliation negotiations are confidential and, if successful, generally culminate in a conciliation agreement in which the employer undertakes, for instance, to retain, transfer, or promote the complainant, depending on the case, to display commission notices about equal employment opportunity rights, and to submit to subsequent investigations.[3] The conciliation process, in general, has several positive features: it avoids the animosities created by coercion, it is less expensive and time-consuming than litigation, and it permits specific solutions to individual cases. The system corresponds in approach to the multiple-level anti-discrimination legislation in society, the federal-state administrative structure, and the weight given to the private decision of the individual complainant.

The United States Federal Government has in addition dealt direct with employment discrimination through the executive order pro-

[1] EEOC *v.* Plumbers Local 189, 8110 (6th Cir. 1971).

[2] Cf. *Harvard Law Review*, Vol. 84, Mar. 1971, p. 1200.

[3] The following interesting comment relates to the confidential nature of the procedure: " The chief difficulty with the conciliation phase of the procedure is the usually statutorily mandated (or occasionally voluntarily assumed) rule of secrecy about the proceedings. The theory behind the secrecy rule is presumably that a guiltless employer will not be subjected to adverse publicity if the charge proves spurious. It is also argued that secrecy makes it possible to wring concessions out of respondents because they do not want to face the obloquy of a public hearing. It may be that some otherwise unachievable success has been gained in conciliation because of secrecy, but it is equally likely that publicity at an earlier stage than the public hearing would focus enough attention on the employer to make him more conscious of his employment practices generally rather than being able to adjust an individual case peacefully while escaping any public notice of the practices that led to the complaint." See Duane Lockard: *Toward equal opportunity : a study of state and local anti-discrimination laws* (New York, Macmillan, 1968), pp. 79-80.

gramme [1], which pertains to establishments under government contract and contractors working on a federally assisted project. It is estimated that almost one-third of the labour force in the United States is employed by government contractors, and that in fact the majority of the largest industrial employers are government contractors. Under the anti-discrimination provisions of the Federal Contract Compliance Programme [2], the complainant can initiate a grievance process but he is not a party to its resolution. Compliance reviews may be triggered by an individual complaint or through the compliance agency's own initiative and take the form of the inspection of employment records, talks with executives in the company under review, and on-the-spot observations. A wide array of sanctions can be applied to non-complying contractors; among them are enforcement proceedings under Title VII of the Civil Rights Act. Private parties are able to bring suit to enjoin the Federal Government from letting a contract to an establishment engaged in discriminatory employment practices. In May 1970, in an effort to improve the co-ordination of complaint-processing mechanisms, the Office of Federal Contract Compliance in the United States Department of Labour and the Equal Employment Opportunity Commission agreed to facilitate the exchange of information and establish a system for the single handling of complaints which fall within the sphere of both agencies.

Looking broadly at the complaint procedure in discrimination cases in the United States, one notes that there are several institutional and conceptual approaches. The controlling powers of the human rights commissions are, as was suggested earlier, still developing and under evaluation. At present there is emphasis on private litigation for the effective redress of the majority of grievances. EEO commissions work essentially as investigatory and conciliation mechanisms. There has been considerable discussion of how to strengthen enforcement either by conferring on these bodies powers to issue " cease and desist " orders or by giving them authority to bring court suits. It is recognised that in some cases the individual complainant may prefer an EEOC administrative order or court suit, which would eliminate the delay and uncertainty of the mandatory conciliation period.

Under the Race Relations Act, 1968, of the United Kingdom the procedure for dealing with complaints of discrimination in respect of employment or employers' or workers' organisations is complicated. As stated above, such complaints are receivable by the Secretary of State for Employment, the Race Relations Board or one of the conciliation

[1] Executive Order 11246, 3 C.F.R. 402 (1970).

[2] Action under the Programme began with Executive Order 8802 (1941) and has been continued under numerous further executive orders, as well as by the establishment of an Office of Federal Contract Compliance and the setting up of fifteen compliance agencies functioning on the basis of industry classifications. The total effort is enormous. In addition to the particular agency responsibilities, elaborate mechanisms for co-ordinating and overseeing the entire federal compliance effort have been established. See also Means, op. cit.

committees of the Board. The members of the regional conciliation committees, ten of which had been established by 1970, are appointed by the Board. Under the standard procedure, if a complaint is received by the Board or a conciliation committee it is referred to the Secretary of State, with the result that in all standard cases the first decision is taken by the Secretary of State. If he is satisfied that there is a suitable body for the examination of the case under the existing machinery in industry he refers the case to this body; if not he refers it—or refers it back—to the Board for examination by itself or one of its conciliation committees.

Whichever body may examine the complaint, it endeavours by informal negotiation, persuasion and conciliation to eliminate any unlawful employment practice it may find and to obtain a satisfactory assurance that discrimination shall not recur. If a body examining a complaint under the existing machinery in industry fails to settle it within four weeks the Secretary of State may request it to continue for a specified period or may refer the complaint to the Race Relations Board.

There are slight differences in the procedure followed when a fresh complaint is submitted after an assurance has been obtained or when the act complained of has been committed by an agent acting without the authorisation of his principal.

The Race Relations Board is empowered to investigate on its own initiative situations where it has reason to suspect the practice of unlawful discrimination. It is also empowered to introduce civil proceedings.

The total number of complaints received so far has remained small, and the great majority of these have been settled before conciliation committees.[1] The reasons are largely the recency of the legislative and administrative anti-discrimination provisions, the fact that the likely victims are predominantly immigrants who are unacquainted with this type of process and hesitate to press complaints, and a preference for the union grievance procedure. The emphasis on conciliation as a technique for dealing with race relations issues is also a feature of the industrial machinery. The Department of Employment has invited all industries to set up joint conciliation committees to investigate complaints under the Act arising in their own sector. By 1970 forty-three industries had responded to this appeal and were able to carry out a first instance investigation in conformity with the requirements of the law. Although the actual inquiry methods differ between industries, in all cases the parties have a right to be accompanied or represented by a person of their choice; they must be notified in writing of the findings, and they always have the right of appeal to the Race Relations Board.

The Act has also created a new statutory body, the Community Relations Commission, which works through a network of voluntary local community relations committees to guide and counsel citizens in the

[1] See Cousins, op. cit., p. 7.

promotion of racial harmony. In general, it seems clear that in Great Britain race relations machinery is still being constructed and smoothed out. The individual is not yet confronted with the same variety of alternatives as in the United States, where the presence for a longer period of time of numerous minorities and the whole political history have produced an accumulation of institutional arrangements to guarantee equality of opportunity. Nevertheless, even in the United Kingdom the possibilities of workshop bargaining, recourse to community relations committees, and several other alternatives place the person with a grievance before a choice of procedures that is not always easy. There may be further variations, depending on the region, the industry, the attitude of the management, the character of the local unions, and the efficiency of the industrial relations machinery. Noticeable differences seem to exist, and the evidence suggests to some observers that in " some situations there is more room for manoeuvre than in others ".[1]

Comparing the development of the machinery created to eliminate the discrimination in employment that has become illegal in the United Kingdom and the United States, one finds important similarities as well as interesting divergences. Both systems have separate commissions to handle questions of racial discrimination and neither treats discrimination like other legal issues, where the central question is whether unlawful conduct has occurred. Instead, the main purpose is to settle the dispute, make conciliation work, and use enforcement only as a last resort. The United Kingdom has also followed the American lead in adding educational tasks to the administrative and investigative functions of the new bodies; but the division of labour is different. In the United Kingdom investigations are made by special volunteer committees, the Race Relations Board is not empowered to hold hearings, and responsibility for positive action is entrusted to other bodies, for example the community relations committees. The courts and the Attorney-General continue to exercise certain responsibilities which in the United States are assigned to commissions. Although the 1968 Act has added to the powers of the Race Relations Board, the implementing machinery has remained relatively unchanged. The Street Report, published in 1967, raises the question whether the structure established by the first Act (1965) " is appropriate for the newly proposed scope of the Act, or whether it should be scrapped altogether and replaced by something along the lines of the American commission, or whether some other method built on but amending the present structure is preferable ".[2] This can be answered only by reference to the aims of the relevant bodies, of which the principal one is still the disposal of individual complaints. The speedy and effective

[1] E. J. B. Rose *et al.*: *Colour and citizenship : a report on British race relations* (London, Oxford University Press, 1969), p. 675.

[2] H. Street *et al.*: *Anti-discrimination legislation* (London, PEP, 1967), p. 92.

disposal of these complaints would probably be facilitated by a less fragmented procedure. As for other priorities—for instance if positive community action programmes are considered very important—new structures may be called for. The effectiveness of complaint processing systems will be considered further in the next section.

The group relations work of the British community relations committees and the corresponding activities of the American commissions are a clear illustration of two facts, namely that acts of discrimination are social patterns of behaviour and that in the same way the new programmes to promote equal opportunities are collective responses to a common need that is socially expressed. The person with a grievance who submits a complaint of discrimination to a race relations commission acts in the knowledge that he is the victim of a rigidly ascribed group status; the exclusion and rejection he has suffered underline his membership of a minority group. At the same time he can count on new broad social support by those who wish to ensure the effectiveness of the legislative and administrative machinery set up to deal with such issues. An individual complaint action therefore often finds strong and organised backing. Many voluntary organisations, including trade unions and associations of ethnic, racial and other minorities, have as one of their purposes the achievement of equal opportunity, especially in employment, for their members. Certain organisations urge their members to refrain from the pursuit of complaints outside the channels they have established, or they may take routine action on behalf of a member with a grievance before an administrative or adjudicative body. Yet, while membership of an organisation may dull or actively discourage the initiative of the individual employee or job seeker, especially in the highly developed industrialised countries, the opportunity to take up the struggle alone remains, whether through the sequence of investigating committees and inquiry boards or through the judicial appeals system. In practice, many complaint actions are a combination of individual and collective representations. During the initial stages the individual will often depend on his own efforts, even after earlier informal complaints have led to nothing. At a certain stage, however, he may be in a position to decide whether to accept failure or to seek the further pursuit of his complaint within the framework of a collective arrangement. The distinction between an individual and a group complaint can be quite significant. In the United States there seems to be a qualitative difference in the sense that individuals bring complaints which reflect specific activities within an established social structure, whereas groups tend to press focused, strategic pioneering grievances in order to come closer to long-range targets and the modification of broad social conditions.[1] The general trend towards the formalisation of social processes in modern societies has added to

[1] See Mayhew, op. cit., Ch. VI.

the importance of collective action, and pressure groups increasingly take up and sift discrimination charges at an early point. There is a role for voluntary groups which goes beyond specific assistance to individual complainants. Some associations specialise in " test " cases and make representations to commissions if they uncover strong typical grounds for complaint. Civil liberties groups and immigrants' organisations in the United States and Canada have been very active participants in a large number of complaint actions. Many community organisations are active in referring cases to commissions; they participate in programmes sponsored by the commissions and have assumed responsibility for counselling and supporting individuals who believe that they are exposed to discrimination. As the Director of the Human Rights Commission in Ontario explains: " Generally, community groups ask and receive reports regarding the disposition of any cases which have been referred by them to the Commission. They may be involved, at the discretion of the investigating officer, in the conciliation process. The respondent is made aware that the complainant is represented by strong community interests, thereby strengthening the effectiveness of the conciliation process." [1]

Functioning and effectiveness of anti-discrimination commissions

Since the first special administrative bodies were established to implement the new legislation in the field of race relations and civil rights, there has been a great increase in their institutional complexity. The same sense of urgency that pushed the enactment of the laws may have led the administrators to establish and amplify all kinds of procedures in the hope that they would meet a broad range of conditions. One writer, referring to conditions in the United States, describes the trend in this way: " There is now, literally, a whole industry of race relations in the United States, and those dealing with the legal aspects of the subject form a distinct branch of my profession, much like tax lawyers or labour lawyers." [2] The machinery created has been set in motion essentially to make decisions on individual complaints and to concentrate on grievances reported by the victim himself. This has led to heavy work-loads and has put strains on the organisational resources of the anti-discrimination agencies. Once the decision was made to deal with complaints as the first order of business, the small budgets were easily used up, leaving little for the broader programmes of positive action now called for. Another aspect of the way the new commissions work is that their activities are parallel to those of other redress mechanisms

[1] Daniel G. Hill: " The role of a human rights commission: the Ontario experience ", in *University of Toronto Law Journal* (1969), 19, p. 398.

[2] Norman Dorsen: " The American law on racial discrimination ", in *Public Law* (London), winter 1968, p. 304.

and that the balance of relative influence has been shifting.[1] Individuals welcome, to be sure, the possibility of an alternative to lengthy and costly court proceedings; but minority organisations and civil rights groups, which have a great deal to do with the raising of legal challenges to discrimination in employment, often prefer the general precedent-creating enforcement methods of the courts. On the other hand commissions do not face the difficulty of having to prove formally, without a "reasonable doubt", that employment opportunities have been unfairly denied. The view has been advanced that administrative procedures such as those laid down under Title VII of the Civil Rights Act in the United States, if combined with vigorous enforcement practices and imaginative attempts at social development and training, could come to have as much effect as judicial decisions. The individual who has been a victim of employment discrimination and who has pressed his case, whether through collective proceedings or alone, whether before a commission or before an inquiry board, will most likely feel that only the hard result can matter to him—that is, whether he has obtained a decision that will durably extend to him the previously denied employment opportunity. The question thus becomes the following: what are, on balance, the chances that remedial orders and judgments will be issued that have this effect?

It is difficult to give a fair answer because the range of possibilities is vague. Certainly, the most direct evidence of the effectiveness of the work of the commissions is provided by cases in which a complaint has been made and satisfactorily settled. Such cases have occurred, but their number is small compared to the over-all pattern of inequality and the large number of minority workers whose needs cannot be met by this mechanism. Many observers in the United States acknowledge that important changes and improvements have taken place; a few research workers have even assembled statistical data to show that commissions with adequate enforcement programmes *can* lessen the effect of market exclusion practices.[2] But progress in the elimination of discrimination is the result of many factors, and it is difficult to isolate the role of commission actions in the over-all changes. When legislation was passed and the new mechanisms created, discrimination practices were already deeply entrenched. The critics who argue that the commissions should do more than they appear to have done say, in fact, that their powers must be increased to make them an adequate tool for dealing with racial discrimination itself. This is generally recognised now, and the new

[1] It has been noted, for instance, that in some respects the negotiated labour-management agreements have suffered "downgrading". See Felix A. Nigro: *Management-employee relations in the public service* (Chicago, Public Personnel Association, 1969), p. 272.

[2] See Malcolm H. Liggett: "The efficacy of state fair employment practices commissions", in *Industrial and Labor Relations Review* (Ithaca, New York), Vol. 22, No. 4, July 1969, pp. 559-567.

affirmative action procedures, notably independent investigations, public education, research, referral and training, are means of action in which the commissions and citizens concerned put their faith. Despite the sobering realisation that the complaints procedure can give only limited results, its value ought not be underestimated. A British expert writes: " It identifies an area of discrimination. It opens up an area for investigation. . . . This is the ' ripple effect ', whereby one successful case, based on an individual complaint, can have widespread consequences. In this sense it is a most useful weapon, though admittedly not enough in itself to win the battle. Finally in any decent society an individual who has suffered a wrong as indefensible and inescapable as discrimination should have a means of redress. This the complaints procedure provides." [1] The means of redress are in theory, as was noted, based on elements of both civil and criminal liability. But the main purpose of the practical enforcement procedures is to induce violators of anti-discrimination codes to recognise the validity of a complaint and to make amends by a change of conduct, using penalties only as a last resort. Until recently the payment of compensation or damages was rarely demanded by a commission.[2]

Reports issued by anti-discrimination bodies frequently offer data on the number of complaints received and forwarded to other decision-making bodies, on the reduction in the time taken to deal with cases, on the number of settlements achieved through conciliation or mediation, and on various other quantitative factors. Speedy and efficient disposal of complaints submitted is in itself, of course, an indication that the procedure operates smoothly; but there often remains a doubt about the more general implications. One may ask whether it is a large volume of complaints or the absence thereof that indicates progress in the reduction of discrimination. One Canadian report contains the following statement: " In some jurisdictions the absence of complaints is pointed to as evidence that discrimination is not a problem. In some cases this may be true, but where the lack of complaints is coupled with a lack of any significant educational programme, the possibility must be considered that the real cause of the lack of complaints may be that minority groups are not aware of their rights." [3]

It seems clear that an evaluation of the effectiveness of the complaints procedures cannot be restricted to an assessment of the workload. Numerous other factors, including a general awareness of and confidence in the practical efficacy of the administrative procedures and the unavailability of informal settlement possibilities, play a significant

[1] Mark Bonham Carter: " Measures against discrimination: the North American scene ", in *Race* (London), Vol. IX, No. 1, July 1967, pp. 10-11.

[2] For a recent case in which very heavy compensation was paid to six victims of discrimination see T. C. Hartley: " Race relations law in Ontario ", in *Public Law*, op. cit., summer 1970, p. 190.

[3] Robert William Kerr: *Legislation against discrimination in Canada* (New Brunswick Human Rights Commission, 1969), p. 76.

part. It is important to bear in mind that often those who are most likely to be discriminated against are least likely to complain. Mark Bonham Carter observes cogently: " They are likely to be inarticulate and in all probability have deep reservations about government and the law in general, not to speak of the officials who serve it. Nor does anyone who has suffered the humiliation of being discriminated against particularly want to remember the experience, still less to report it in detail to a stranger." [1]

In general, the creation of a specialised administrative system to deal with complaints of discrimination facilitates better co-ordination of the measures of redress. In this sense one may regard the procedures that have been established as effective, because they replace personal, informal, private modes of settlement. Formally structured and broadly supervised systems under public auspices must always submit to certain standards and be accountable, while private grievance systems are subject to personal understandings. Public complaint systems are connected with other administrative machinery and there is, at least potentially, a link with police power and judicial enforcement in the courts. Some agencies [2] have actively advertised their services to the minority community and urged that all public officials who serve these segments of the population be authorised to accept and channel discrimination complaints.

The tug and pull between a centralised system or a few centralised systems on one side and many small, only casually institutionalised, arrangements on the other side is a general aspect of social change and social organisation. As far as the management of group relations and opportunities for members of minority groups is concerned, there is not enough evidence to indicate precisely in which cases the best and most durable arrangements have been made for channelling grievances into the proper mechanism for settlement. Clearly, complaint machinery ought to accomplish more than to organise the " intake " and disposal of grievance cases. It ought, at its best and in its most advanced form of operation, to be concerned with the stages preceding overt and outright discrimination and concentrate on mediation and correction services that would make recourse to the formal settlement machinery unnecessary. Such preventive services can be of many sorts; they can include, for instance, ad hoc or continuous consultation within the establishment, the systematic exploration of potential grievance conditions, and the encouragement of various vocational training and social development activities. Some research workers have suggested that agencies should place greater emphasis on programmes based on surveys of community, regional and industrial characteristics.[3] Most agencies still lack systematic

[1] Bonham Carter, op. cit., p. 10.

[2] See Lockard, op. cit., p. 146.

[3] See Frances Reissman Cousens: *Public civil rights agencies and fair employment: promise vs. performance* (New York, Praeger, 1969).

and reliable data about the qualitative aspects of the problems they deal with. Such information is essential for the planning and evaluation of the follow-up which is indispensable. Data should also be collected to give administrators an idea of the image formed of the agency by the members of the minority group who constitute its potential clientele.

In judging the achievements of a formal, government-controlled system for settling complaints of discrimination against minorities, it is important not to disregard the cohesion of the minority community. The self-conception of a person who seeks redress through institutions forming part of the majority culture may be threatened by the insistence of the minority on his membership thereof. A British expert refers to the distinctiveness of minority communities in the following terms: " Reliance by members of ethnic minorities on what members of the majority group perceive as ' outside ' institutions tends to weaken this solidarity and autonomy and this, in turn, is seen by the majority as a threat to the common advancement of them all. The consequent resentment and hostility between ethnic groups, and the emphasis on their own distinctiveness by members of the minority, retards the process of absorption." [1] He goes on to suggest that voluntary controls can avoid this kind of " backlash ". In any case institutions dealing with problems raised by discrimination should not belong exclusively to the majority culture. An American scholar, considering the implications of " black power ", states that minorities suffering discrimination want more than a simple perfecting of the machinery that exists; they want above all to participate in the planning and operating of bodies for the settlement of complaints.[2]

The complaint process, as it works through the new specialised public authorities, is obviously an unfinished experiment. It functions through a kind of regulatory agency with uncertain enforcement powers; it often functions under the burden of public hopes and demands that cannot possibly be met. And yet, the imagination and dedication of many of these administrative bodies give promise of creating a climate of understanding and respect between groups. It may be that the new institutions will help to bring about a kind of race relations law related to collective bargaining. " It may be that the most pioneering change will come as the two polarised groups bargain for their share of the national wealth. In some contexts law will merely enforce the compromise. At the same time, traditional legal agencies will continue to contribute to social integration by establishing a minimum standard of equal treatment and by continuing to support organised attempts to make equal opportunity a reality." [3]

---

[1] Bob Hepple: *Race, jobs, and the law in Britain* (London, Allen Lane, The Penguin Press, 1968), p. 198.

[2] William B. Gould: " Black power in the unions: the impact upon collective bargaining relationships ", in *Yale Law Journal*, Vol. 79, No. 1, Nov. 1969, pp. 46-84.

[3] Mayhew, op. cit., p. 294.

Conclusions

The foregoing discussion has frequently centred on the lack of enforcement powers of the special race relations commissions. Their procedures place strong emphasis on conciliation. It is necessary, as so many critics have stated, for the commissions to have powers of initiation, follow-up, and prosecution, with the imposition of more than token penalties, and authority to plan and carry out full programmes of affirmative action. This is known, and most observers recognise that compulsion is an essential component in implementing legislation against discrimination. Yet, " a law that compels but does not conciliate is doomed to failure. Voluntary, even if grudging, acceptance is an indispensable part of any anti-discrimination programme: our energies are not adequate to force everyone into compliance, nor would we much like the society that resulted if we tried. To a large extent, then, we must rely on the conciliation process, a proved way of obtaining voluntary, albeit not wholly uncoerced, acceptance." [1] In that sense, the efforts made under the comprehensive race relations legislation that has been enacted only recently in the United States, the United Kingdom and Canada mark a significant social development. In the legislative procedures regarding complaints, the United Kingdom has relied on the American experience, adopting important features of the American commission plan but avoiding that requiring the victim to assume responsibility in most cases for pursuing his legal remedies before a court when conciliation has failed.

The civil rights agencies, through their complaint-processing mechanisms, in fact deal with the deficiencies of many social institutions. It is clear that they cannot overcome all these deficiencies alone, but their settlement of individual complaints of discrimination can serve as a catalyst for broad community action. In helping to train minority youth, in opening up vocational and professional development opportunities, in encouraging minority members to venture into new occupations—in all these ways the agencies should provide leadership. " By doing these things, they would do more than eliminate discrimination; they would bring jobs and people together, thereby serving both the employers and the minority groups and ultimately the total community and society." [2] There are already many indications that they will move in this direction in the future.

---

[1] Michael I. Sovern: *Legal restraints on racial discrimination in employment* (New York, The Twentieth Century Fund, 1966), pp. 80-81.

[2] Cousens, op. cit., p. 117.