

SUBMISSION

TO THE ONTARIO HUMAN RIGHTS COMMISSION

BY WEN-DO WOMEN'S SELF DEFENCE CORPORATION

**Regarding Retroactive Extension of Time Limits for
Reconsideration of the Dismissal of Mr. Celik's Complaint**

February 23, 1994

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SUBMISSIONS BY WEN-DO REGARDING
RETROACTIVE EXTENSION OF TIME LIMITS FOR RECONSIDERATION
OF THE DISMISSAL OF MR. CELIK'S COMPLAINT

I. NO SPECIAL CIRCUMSTANCES FOR LATE FILING

1. Pursuant to s. 36(1) of the Ontario Human Rights Code, requests for reconsideration of decisions made under s. 33(1) to dismiss a complaint must be made within 15 days of the mailing of a s. 33 decision. A longer period may be allowed by the Commission only for "special reasons".

Notice of the Commission's decision to dismiss Mr. Celik's complaint was mailed April 12, 1991. The reconsideration request was, therefore, due on April 27, 1991. Mr. Celik's agent, Mr. Dunwell attempted to secure an extension by phoning Mr. Hoy on April 22, and Mr. Celik notified the Commission of his request for a one month extension on April 25, 1991. However, the only "special reasons" offered by Mr. Celik and Mr. Dunwell for extending the time limits for filing a reconsideration application are not credible based on documents forwarded by the Commission to WEN-DO by letters dated August 30, 1993 and January 21, 1994. These documents are:

- a) Mr. Celik's letter to Ms. Lesley Lewis dated April 25, 1991 stating that Mr. Hoy's letter of April 12, 1991 "was mailed to the wrong address and has not reached me until yesterday 24 April". A thirty day extension was sought because Mr. Celik was then "heavily involved with [his] academic responsibilities".
- b) Mr. Dunwell's letter to Ms. Lewis dated May 23, 1991 stating that Mr. Hoy's letter "was sent to 'In Search of Justice', not myself. Mr Celik is not a member of that organization and this has resulted in a considerable delay before I received it on April 21, 1991."
- c) Mr. Celik's letter to Mr. Schreiter dated November 13, 1993 stating "the delay was caused by the Commission's failure to mail me the information to the address provided for correspondence".

Please note, at this point in time, Mr. Dunwell was representing Mr. Celik in the complaint. Mr. Dunwell, not Mr. Celik, was responsible for meeting the filing deadline after consulting with the complainant. Mr. Celik's academic schedule supplies no "special reasons" for Mr. Dunwell's filing delay. Although Mr. Celik's April 25, 1991 letter states he did not receive the Commission's letter until April 24, Mr. Dunwell states in his May 23 letter that he consulted

with Mr. Celik on April 21, 1991 and decided to appeal.

2. Based on the briefs submitted by or on behalf of the complainant and the documents contained in those briefs, notice of the Commission's March 28, 1991 decision was not mailed to the wrong address, and the delay in filing a timely reconsideration application was not caused by the Commission, but by Mr. Celik's agents in this complaint.

The substance of Ms. Sveгда's letter of August 30, 1993 to Professor McIntyre is that WEN-DO is now in possession of all documents "of any substantial nature" submitted by Mr. Dunwell and/or "In Search of Justice" on behalf of Mr. Celik. Those documents reveal that Mr. Ross Virgin, President of "In Search of Justice" at the time this complaint was filed or Mr. Dunwell were Mr. Celik's agents, spokesmen and representatives throughout the period from September 1987 until the reconsideration request was filed. All documents filed by the complainant were filed by In Search of Justice. Mr. Celik used the ISOJ address on filing his complaint, and once Mr. Dunwell became his authorized agent in communications with the Commission, so did Mr. Dunwell.

In WEN-DO's view, it is not open either to Mr. Celik or to his agent, Mr. Dunwell, to justify late filing on the basis that the forwarding address given to the OHRC by both Mr. Celik and Mr. Dunwell was the wrong address for notification.

In support of this position, WEN-DO relies on the two undated 1988 briefs filed by ISOJ "in support of" Mr. Celik's complaint (Brief #1 Containing Facts and Arguments; Brief #2 addressing WEN-DO's initial response to notice of the complaint) and the third brief filed by Mr. Dunwell on August 31, 1990 (Brief #3). These documents reveal the following: [page references to these sources refer to handwritten pagination at the top right].

- a) Prior to contacting the OHRC after being denied admission to a WEN-DO course on Sept. 12, 1987, Mr. Celik contacted ISOJ (Brief #1, p. 4 & 9)
- b) ISOJ communicated with the OHRC's Greg Lawrence on several occasions until Feb. 19, 1988 when "the formal complaint was filed with Mr. Lawrence" by Mr. Celik in the company of Mr. Virgin. According to ISOJ, Mr. Lawrence provided ISOJ with brochures, a booklet and thorough responses to ISOJ questions. (Brief #1, p.9-10 & 60).

WEN-DO has no documentation of any complaint filed on Feb. 19, 1988. In the fact-finding meeting of December 2, 1988 with Mr. Williams, WEN-DO's representatives did observe Mr. Williams referring to an OHRC form signed by Mr. Virgin. Our understanding was that this was the complaint intake form. That form, if any, was never circulated to WEN-DO. WEN-DO assumes this is the "complaint" filed on Feb. 19 that is referred to in the ISOJ brief (at p. 9 & 60) and in press coverage of the filing of the complaint dated Feb. 19, 1988 (Brief #1, p. 63 & 64 and WEN-DO Response #1, appendix 27).

- c) On the advice of Mr. Lawrence, Mr. Virgin and Mr. Celik decided not to name the Canadian Auto Workers, Local 112 as co-respondent unless informal efforts failed to settle Mr. Celik's concerns. Mr. Celik phoned Mr. Dias, President of CAW Local 112. Mr. Virgin then followed up with a formal letter to Mr. Dias, communicating the measures necessary to prevent the CAW being joined as second respondent in Mr. Celik's complaint, and requesting a response from Mr. Dias to Mr. Virgin/ISOJ within 15 days. Mr. Dias responded to Mr. Virgin by phone and the CAW was not added as respondent. (Brief #1, p. 60 & 48).
- d) On or about February 18, 1988, ISOJ issued a press release announcing the complaint. Coverage by the Toronto Star and the Toronto Sun makes no reference to Mr. Celik by name nor does it indicate he is the complainant. Rather both papers state that ISOJ was filing the complaint and imply ISOJ would be the complainant. The Sun's article featured a picture of Mr. Virgin. (Brief #1, p. 63 & 64; WEN-DO #1, App. 27)
- e) WEN-DO first learned of the complaint from the Toronto Star following ISOJ's press campaign. The official copy of the complaint mailed to WEN-DO, dated March 4, 1988 and signed by Mr. Celik lists the "Name and Address of Complainant" as Mr. Michael Celik, c/o In Search of Justice, P.O. Box 14, Woodbridge, Ontario, L4L 1A9. WEN-DO's copy of the complaint is different from the undated, unsigned one included in ISOJ Brief #1, p. 62.
- f) To WEN-DO's knowledge, no written submissions were ever submitted to Mr. Williams, the investigator for the Commission, under Mr. Celik's signature. All correspondence in relation to the complainant either came from ISOJ as an organization or from Mr. Dunwell, c/o the ISOJ address and/or in ISOJ's name with copies of correspondence to Mr. Virgin as well as Mr. Celik.
- g) After WEN-DO filed its response to the complaint on May 13, 1988, ISOJ submitted two undated briefs "in support of" Mr. Celik's complaint. The Commission lists July or August 1988 as their approximate date of filing. Those briefs were not sent to WEN-DO in advance of the fact-finding meeting between WEN-DO and Mr. Williams on December 2, 1988 and, in fact, were not received by WEN-DO until September 1993.

Throughout the December 2, 1988 meeting, Mr. Williams referred repeatedly to what we now know were the two 1988 ISOJ briefs, and posed questions we now know were derived from arguments advanced by ISOJ. In other words, WEN-DO's only opportunity to reply to arguments designed to persuade the Commission investigator to uphold this complaint were arguments made by ISOJ. Since WEN-DO's de facto antagonist throughout these proceedings has been ISOJ, it is both artificial and disingenuous for Mr. Celik or Mr. Dunwell to claim a time extension by attempting to divorce ISOJ from Mr. Celik and to blame the Commission for communicating its rejection of ISOJ's submissions to ISOJ.

- h) In the fall of 1989, Mr. Dunwell advised Mr. Williams that Mr. Dunwell would thereafter be Mr. Celik's agent in the complaint. In January of 1990, he spoke with Mr. Williams in that capacity (referred to in letters in Brief #3, p. 48 & 49).
- i) The April 7, 1990 letter from Mr. Dunwell to Mr. Williams concerning Mr. Celik's complaint is addressed "Bill Dunwell, c/o I.S.O.J., Box 14, Woodbridge, Ontario L4L 1A9. It is copied to Mr. Virgin and Mr. Celik (in that order). (Brief #3, p. 49)
- j) The May 23, 1990 letter from Mr. Dunwell to Mrs. McKenzie bears the same address. It is copied to Messers Williams, Virgin and Celik. (Brief #3, p. 48).
- k) The July 2, 1990 letter from Mr. Dunwell to Mrs. McKenzie bears the same address and is also copied to Mr. Virgin as well as Mr. Celik.
- l) The Commission's cover sheet attached to the August 31, 1990 Supplementary Brief filed with the Commission on Mr. Celik's behalf indicates the brief was submitted by Mr. Dunwell who listed his business affiliation as ISOJ. No address was listed.
- m) That brief offers Mr. Virgin as a witness. (Brief #3, p. 110) The address offered for Mr. Virgin is ISOJ, 350 Woodbridge Ave., Unit 13, Woodbridge, L4L 1A9. Although this is not the ISOJ postal box number used on the original OHRC complaint form or on Mr. Dunwell's correspondence with the OHRC, it is the identical postal code. It is not clear whether the street address is Mr. Virgin's private residence. The telephone contact number for Mr. Virgin in Brief #3, p. 110 was 416-851-3496. According to the April 1993 Toronto telephone directory, Mr. Virgin's personal phone listing is 416-851-3496. No street address is listed. The same directory continues to list ISOJ's address as P.O. Box 14, Woodbridge.
- n) Mr. Dunwell's covering letter to the May 23, 1991 request for reconsideration refers at p. 2 to "the complainant's submission" and to "The case law presented to the Commission by the complainant". The letter enumerating the grounds for reconsideration also refers in para 5, p. 1 to Mr. Celik's "second brief". Because the record sent to us contains no submissions under Mr. Celik's signature, we assume Mr. Dunwell is referring to the submissions, caselaw and briefs drafted and tendered to the OHRC by ISOJ. In this context, in other words, even Mr. Dunwell equates ISOJ with the complainant.

All of the above facts confirm that from September 1987 to April 1991, ISOJ has functioned as Mr. Celik's representative in all documents and argumentation advanced in the conduct of this complaint. ISOJ has never been a mere third party intervenor supplementing or complementing Mr. Celik's arguments in the manner of an amicus curiae. Mr. Celik has made no arguments in his own name. The only submissions supporting this complaint at all are those submitted by ISOJ under ISOJ's name in three briefs encompassing 241 pages of legal and political argument and documents intended to support those arguments.

This being so, the "special reasons" offered to excuse Mr. Dunwell's failure to observe statutory time limits are simply not credible. By all evidence, when the Commission's April 12, 1991 letter was mailed to the ISOJ address, that is exactly where it should have been mailed. ISOJ shepherded Mr. Celik's grievance through intake; negotiated informal settlement with his union; adopted his OHRC complaint as a well publicized ISOJ cause; replied in detail to all of the respondent's submissions and provided the mailing address for OHRC communications to Mr. Celik and, later, Mr. Celik's authorized agent, Mr. Dunwell.

No document has been provided by Mr. Celik or Mr. Dunwell to indicate that the OHRC was advised after August 31, 1990 but before April 12, 1991 that ISOJ's address was no longer the forwarding address for communications with Mr. Celik or Mr. Dunwell. Nor has Mr. Dunwell or Mr. Celik explained why it is appropriate for the Commission, at this late point, to dissociate either of them from ISOJ as an excuse for missing statutory time limits.

WEN-DO, therefore, submits there are no "special reasons" justifying extension of statutory time limits for filing the request for reconsideration beyond April 27, 1991.

II. STATED GROUNDS FOR RECONSIDERATION CANNOT SUCCEED AS A MATTER OF LAW

1. Criteria Justifying Reconsideration

Section 36 of the Ontario Human Rights Code allows a complainant to seek reconsideration of a decision of the Commission made under s. 33(1) to dismiss a complaint or under s. 35(2) not to request the Minister to appoint a board of inquiry. Reconsideration is not warranted merely because the complainant is unhappy with the decision. Ontario courts have established that the Commission does not have unlimited discretion under s. 36 to reconsider its decisions on any ground. It may only reconsider decisions on a narrow range of grounds.

In Re Commercial Union Assurance et al. and Ontario Human Rights Commission et al. (1987), 59 O.R.(2d) 481, the Ontario Divisional Court heard an application for judicial review by an employer seeking to quash the Commission's re-consideration of a decision pursuant to s. 35(2) not to appoint a board of inquiry. The Court held that the Commission's power to re-consider such decisions was not unlimited. This power, it held, could be exercised in three circumstances: (1) where there is an issue as to the integrity of the tribunal's process; (2) where factual circumstances have changed from the time of the original decision; or (3) where new facts have arisen which were not previously available and are subsequently brought forward.

This decision was affirmed by the Ontario Court of Appeal: (1988), 63 O.R. (2d) 112.

It is WEN-DO's submission that none of the nineteen grounds for reconsideration offered by the complainant satisfy the above criteria for reconsideration.

2. Application of Criteria to the Complainant's Reconsideration Submissions

a) Change in Factual Circumstances and New Facts or Evidence

Plainly, no grounds consistent with the second and third criteria have been raised. There is no assertion that Mr. Celik's circumstances or, for instance, discrimination laws have changed. Absolutely no new facts are advanced in the reconsideration request. Indeed, little in this document bears much relation to fact or to the reasons expressed by the Commission for dismissing this complaint. Rather, the complainant advances suppositions about presumed motives, a "hidden agenda" and "unstated allegations" to discredit and seek reconsideration of the decision: see ground 1, page 1; ground 6 and 8, page 2; ground 4, page 3 and ground 7, page 4. Requesting that the Commission or WEN-DO respond to suppositions ungrounded in the plain language of the Commission's written reasons or the documentary record of these proceedings is not the purpose of the reconsideration process.

b) Procedural Defects

The complainant does, however, allege defects in the process which prejudice him and which culminated in the dismissal of his complaint. If meritorious, they might justify reconsideration. However, in WEN-DO's submission, they cannot survive reasoned scrutiny.

During the lengthy period between when Mr. Celik filed his complaint and when the Commission dismissed it, both parties made extensive written submissions to Mr. Williams containing empirical data, policy arguments and references to human rights and constitutional caselaw. Although the respondent never saw any of the complainant's written submissions during the investigative stage, the complainant received and replied point by point to both written submissions made by the respondent. In particular, the complainant replied directly and at length to the respondent's arguments in favour of dismissing the complaint pursuant to s. 33(1)(b). If there was any procedural unfairness in the conduct of the investigation, it is WEN-DO which might legitimately protest the lack of a meaningful opportunity to reply to the case advanced by the complainant.

Despite the complainant's lengthy response to every single submission made by WEN-DO, and despite delays which made possible the filing of ISOJ's third and most lengthy submission in August of 1990, Mr. Dunwell appears to be claiming that Mr. Celik did not have a full and fair hearing while WEN-DO was heard too much and too late. In particular, the complainant now argues that:

- i) the Commission should have met with Mr. Celik personally (point 3, page 1);
- ii) Commission delays allowed the respondent to file a response to the fact-finding meeting of December 2, 1988 which should have been time-barred and which

- converted the respondent into a complainant (point 2, p.1 and point 9, p. 2);
- iii) a Board of Inquiry should determine the s. 33(1)(b) issue and/or Mr. Celik's bona fides (point 3, p.1 and point 7, p.2);
 - iv) the complainant failed to seek OHRC assistance in drafting its response to WEN-DO's s. 33(1)(b) arguments (point 5, p. 1); and
 - v) that the Commission failed to consider the complainant's "cross-application" for dismissal of the respondent's s. 33(1)(b) submissions (point 9, page 2).

Dealing with claim (iii) first, the Code does not contemplate that all complaints will proceed to a Board of Inquiry or even to the investigation stage. The process provided for by the legislation provides that an investigator report its findings to the Commission and the Commission, in its discretion, determines whether the complaint should be dismissed pursuant to s. 33. The Commission has no statutory power to recommend that the Minister appoint a Board of Inquiry unless and until attempts to settle a complaint have failed (s. 35). And it has no power to authorize attempts to settle a complaint if that complaint is dismissed pursuant to s. 33. What the complainant seeks, therefore, is impermissible under the Code.

Nor can Mr. Celik look to the Code to find an entitlement to an audience with the Commission (per claim (i) above), before the Commission decides on the basis of an investigator's report to exercise its discretion to dismiss a complaint. The Code contemplates dismissal prior to any investigation at all (see s. 32(1)). The Commission also has the statutory authority to dismiss a complaint whether or not a respondent so requests.

Finally, with regard to claims (ii), (iv) and (v), WEN-DO was officially notified of the complaint by the Commission by letter dated April 13, 1988. In its initial response to the complaint filed on May 13, 1988, WEN-DO stated clearly that it considered any pursuit of this complaint to be a form of harassment and an abuse of the Human Rights Commission.

WEN-DO filed its second brief in response to the questions posed by Mr. Williams during the fact-finding meeting in December of 1988. Throughout that meeting Mr. Williams referred to what we now know were ISOJ's first two briefs and adopted positions we now know were advanced by ISOJ. Mr. Williams also revealed a faulty grasp of then present equality law. Until that moment, WEN-DO had no information on which to base its response to the complaint other than the statement of complaint filed on the March 4, 1988 and the questions posed by the OHRC's standard Respondent Questionnaire form.

The right to adequate notice of the case against you and adequate right of reply are requirements of procedural fairness in administrative law. WEN-DO's second brief in reply to unseen submissions by the complainant relayed indirectly through the questions of Mr. Williams was anything but improper or time barred. Nor does exercising one's fair right of reply convert a respondent into a complainant or constitute "an unfair advantage", least of all if that right of

reply contributes to a finding that a complaint is unmeritorious.

The filing of WEN-DO's response to ISOJ's submissions was delayed by the release in February and May of 1989 of three landmark equality decisions from the Supreme Court of Canada. Those decisions affirmed that the formalist approach to equality advanced by ISOJ and adopted by Mr. Williams during our December meeting, had been categorically rejected as a matter of constitutional and human rights law.

The complainant has no grounds to complain of WEN-DO's filing of a brief responding to ISOJ submissions on his behalf. WEN-DO took ten months to file that 10 1/2 page brief; ISOJ took ten months to file its 153 page response. WEN-DO had no access to the ISOJ briefs; the complainant and ISOJ received both of WEN-DO's responses and replied to their content point by point. The complainant had ample notice of the substance of WEN-DO's s. 33(1)(b) argument and ISOJ made every effort to counter those arguments. It was open during the ten months it took ISOJ to file its final brief "to obtain a further interpretation from the Commission" of s. 33(1)(b). That it did not do so is not a ground for reconsideration.

In WEN-DO's submission, the ISOJ briefs substantiated, rather than refuted, WEN-DO's arguments concerning s. 33(1)(b). Mr. Celik allowed ISOJ to make all submissions on his behalf. According to the Commission, those submissions contributed to the dismissal of the complaint (see March 28, 1991 reasons 2, 6 and 7). So did contemporary equality law (reasons 4 and 5) and simple findings of fact (reasons 1, 2 and 3). In other words, the basis for the Commission's ruling was not, as surmised in Mr. Dunwell's first ground of complaint, "the complainant's alleged association with In Search of Justice". However, arguments advanced by ISOJ on Mr. Celik's behalf undercut the credibility and bona fides of his complaint.

In the same way that it is far too late for Mr. Celik to attempt to dissociate from ISOJ in order to justify an extension of the time limits for filing the reconsideration, it is too late to protest the dismissal of his complaint on the basis of the dismissal of submissions he allowed to be made by ISOJ (and R.E.A.L. Women) on his behalf.

None of the alleged procedural defects invoked by the complainant as grounds for reconsideration give rise to legitimate or credible concerns about the integrity of the investigation process or the Commission's decision.

c) Inadmissible Grounds for Reconsideration

In addition to complaints and suppositions about how the Commission reached its decision, Mr. Dunwell also advances two legal arguments (points 3 and 5, p. 3): that the BFOQ defence is not available to justify WEN-DO's all-woman structure, and that WEN-DO cannot resort to s. 13 of the Code to justify its all woman structure as an affirmative action programme. Leaving aside that both of these arguments were advanced at length in ISOJ's three written submissions, these are not admissible grounds for reconsideration for two reasons. First, the Commission did not refer to either the BFOQ defence or to

s. 13 of the Code in its reasons. Secondly, WEN-DO never advanced a BFOQ defence and advanced s. 13 only in the alternative to its primary argument that the conduct complained of does not constitute discrimination within the meaning of s. 1 and 4 of the Code. Insofar as WEN-DO was successful in its primary argument, s. 13 has no relevance to the reconsideration request.

d) No Error of Law in the Commission's Decision

Reconsideration might be warranted if the Commission's decision were at least arguably wrong in law. In WEN-DO's submission, the Commission's decision was correct, demonstrably borne out by the material submitted by both parties and clearly supported by law.

i) There was No Discrimination

The Commission's finding that Mr. Celik's complaint did not constitute "discrimination" within the meaning of the Human Rights Code is perfectly consistent with Canadian law. Accordingly, the Commission was correct in dismissing the complaint pursuant to s. 33(1)(b).

As a matter of the equality law which applied at the time the complaint was dismissed and which still prevails in Canada, Mr. Celik's complaint raises no basis for a finding that WEN-DO discriminated against him personally or against men generally in violation of the Code. His complaint is rooted in the erroneous beliefs that legal equality guarantees require men to be treated identically to women in all contexts, that different treatment of the sexes is, in and of itself, discriminatory and that sex-segregated services are per se unlawful. As established by the legal authorities set out in WEN-DO's 1989 brief, these beliefs lack legal merit.

The definitive pronouncement on the meaning of "discrimination" in the equality guarantees of the Canadian Charter of Rights and Freedoms remains the Supreme Court of Canada's decision in The Law Society of British Columbia v. Andrews (1989), 56 D.L.R. (4th) 1. All legislation in Canada, including human rights legislation, must be interpreted consistently with the constitution. And subsequent to the Andrews decision, the Supreme Court applied its substantive approach to Charter equality guarantees to provincial human rights legislation: See, e.g., Brooks et al v. Canada Safeway, [1989] 1 S.C.R. 1219.

Applying this substantive approach to equality, Canadian courts have repeatedly held that discrimination is not made out merely because a law or practice does not treat men and women identically. Courts have acknowledged sameness of treatment may exacerbate inequality in violation of equality guarantees, and that different treatment may be required to promote or secure the equality of the sexes.

More particularly, Canadian courts have held that while the exclusion of women from all-male facilities or services may violate equality law, exclusion of men from all-female facilities may be consistent with equality guarantees: see, e.g. Re Blainey and Ontario Hockey Association et al (1986), 54 O.R. (2d) 513.

More recently, the Supreme Court of Canada had occasion to decide a discrimination complaint which is the mirror image of this case. In Conway v. The Queen (1993), 105 D.L.R.(4th) 210, the male litigant was not seeking access to what was, in effect, an all-woman institutional structure. Rather, he used the existence of the all-woman institutional structure to argue that he was being discriminated against by being required to exist within a mixed-sex institutional structure.

Mr. Conway was a federal inmate who objected to being frisked or being viewed in his cell at random intervals by female prison guards. He claimed that such searches violated his constitutional rights to security of the person and to equality. He claimed that because female inmates in federal penitentiaries were not subjected to physical or visual searches by male prison guards, he was being discriminated against on the basis of sex. In other words he argued that the dissimilar treatment of male and female inmates with respect to cross-gender touching and visual observation violated his constitutional right to equal treatment before and under the law.

The Supreme Court held that such dissimilar treatment did not constitute unlawful discrimination. It stated:

The jurisprudence of this court is clear: equality does not necessarily connote identical treatment and, in fact different treatment may be called for in certain cases to promote equality. Given the historical, biological and social differences between men and women, equality does not demand that practices which are forbidden where male officers guard female inmates must also be banned where female officers guard male inmates.
(p. 213)

Its reasoning in holding that the differential treatment of male and female offenders did not discriminate against Mr. Conway in particular or male inmates in general is particularly apt in assessing the merits of Mr. Celik's reconsideration request. The Court held:

The reality of the relationship between the sexes is such that the historical trend of violence perpetuated by men against women is not matched by a comparable trend pursuant to which men are the victims and women the aggressors... Moreover, women generally occupy a disadvantaged position in society in relation to men. Viewed in this light, it becomes clear that the effect of cross-gender searching is different and more threatening for women than for men. The different treatment to which the appellant

objects thus may not be discrimination at all. (p. 213)

As the Commission's decision to dismiss recognized, Mr. Celik's complaint not only seeks to deny the "realities" recognized by the Supreme Court -- i.e., that women and men are not equally subject to cross-gender violence, and that women constitute a disadvantaged group in relation to men -- but the legal consequences which the Commission properly determined follow from the reality of women's inequality to men.

Equality law does not require identical treatment of the sexes in contexts where the sexes are not equal in fact. In particular, it does not require that men have access to women's services merely because women have need of such services to alleviate disadvantages experienced by women.

Pervasive male violence against women does not burden men or contribute to men's social inequality. Male violence against women reflects and reinforces women's inequality to men. Although men are also victimized by male violence (and to a far lesser extent, female violence), WEN-DO is not designed to develop men's skills in defending themselves against men (or women). Nor, as a matter of law, as Conway makes clear, need it be redesigned to that end.

As found by the Commission, WEN-DO's all-woman program is "specifically designed to teach women how to defend themselves against sexual violence by men". Excluding men from WEN-DO classes, whether as students, observers or instructors, is part of what makes WEN-DO an effective equality-promoting vehicle for women. What Mr. Celik seeks is to dismantle WEN-DO's woman-centred design so that he may benefit from a gender-specific program of which, by virtue of his sex, he has no need. And so the Commission found. To accede to his insistence on male access to women's services would contradict the very purpose of the Code. Being denied a service designed for women does not disadvantage men. This, too, the Commission's decision affirmed.

The Commission was, therefore, perfectly correct in law when it determined that the alleged unequal treatment of which Mr. Celik complains, "when viewed in the historical and social context of gender discrimination, does not constitute discrimination under the Ontario Human Rights Code."

ii) The Complaint is Vexatious and Made in Bad Faith

In WEN-DO's submission, the Commission was also correct in finding that "The briefs filed on behalf of the complainant indicate that the motivation in making this complaint is in part to disprove that women have greater or special need of protection as victims of violence" and that "The complaint does not appear to be brought in order to obtain the practical remedy sought, namely the opportunity to acquire or teach personal self-defence techniques".

The extensive materials filed by ISOJ (and R.E.A.L. Women) on behalf of this complaint provide ample evidence to support both findings as well as the broader determination that this complaint is vexatious and made in bad faith. These materials argue, for instance, that:

"it cannot be argued that women are a special or disadvantaged group with respect to violence" and that "men have a greater need for self defence than women" (Brief #1, p. 27); "women's groups promote the need for women's programs and government funding through relating accounts of sexual assault" (ibid., p. 30);

"One of the hazards of creating an exclusively female course is that of generating a negative attitude toward men" and a "pervasive atmosphere which may evolve into anti-male tones" (ibid. p.49);

"the overall tone" of WEN-DO's submissions suggest that "men are the enemy" (Brief #2, p.4);

"the mandate of women's groups is to convey the image that females are typically victims" because "If they can't document this position their funding will dry up" (ibid., at 20);

"without even the chance to prove women's self defence is a non gender issue [Mr. Celik] has been condemned along with all men" by WEN-DO (Brief #3, p. 13);

"women's self defence specifically as practised by Wen-do fails to promote women's equality fully. It promotes men as aggressors" (ibid., p. 15); and

the exclusion of men from the WEN-DO program is based on the "ulterior" purpose of attempting "to widen support for and to encourage and promote feminist theories and policies that attach blame to all men". (ibid., p. 130)

In addition, the ISOJ briefs offer a range of inconsistent reasons for Mr. Celik's desire to study and/or teach WEN-DO. Few are consistent with respecting what WEN-DO specifically offers. The postures range from curiosity, to a desire to deliver more realistic simulated training than can be offered by female assailants, to offsetting the presumed anti-maleness of WEN-DO's instruction and methods, to improving and altering WEN-DO's skills offerings, to ensuring that those features of the program which are unique to women be altered to better accommodate men.

Although his essential discrimination claim turns on arguing that men should be able to benefit from WEN-DO's offerings to women, the three ISOJ briefs, taken as a whole reveal a paternalism, anti-feminism, insistence on male access to women and a denial of

the reality of the gender dimensions of violence against women which run utterly counter to WEN-DO's spirit, aims and design.

Finally, the complainant has chosen In Search of Justice as his agent and spokesperson throughout the six year history of this complaint. That group is on record as publicly trivializing and attempting to disprove the serious, widespread and systematic pattern of violence against women in a gender unequal society. Much of the material filed by ISOJ as Mr. Celik's agent serves the same purpose.

This is precisely the kind of complaint s. 33(1)(b) was designed to address. This section expresses the legislature's intent that the Commission and its processes and resources should not be misused as a vehicle of harassment through unmeritorious complaints brought to accomplish purposes contrary to advancing the equality of those for whom human rights protections are most urgently needed.

III. PREJUDICE TO THE RESPONDENT

Six years have elapsed since this complaint began, an inordinate delay by any standards, and the complaint remains unresolved.

The serious prejudice to WEN-DO as an organization, as well as the prejudice to its instructors, volunteers and the women it serves, was identified in the first brief filed by WEN-DO in response to this complaint in May of 1988 (see pp. 17-18). Those effects, which include a reduction in WEN-DO's much needed services to aboriginal women, disabled women and sole support mothers, continue.

First, WEN-DO has experienced the effects that any charitable organization might be expected to experience as the subject of a complaint of discrimination. Their reputation and public image has suffered. Their volunteers are required to divert countless hours of time and energy away from their main mandate to respond to this complaint, and to put their plans on hold with each procedural delay.

Second, WEN-DO has suffered special damage due to the impact of the complaint on its services and clientele. Delays in resolving the complaint have meant a reduction in self-defence courses for women through the cancellation of programs and the express reluctance of some groups to hire WEN-DO so long as this complaint is outstanding. The organization regularly faces objections and challenges to its women-only status, and will continue to do so as long as this complaint remains unresolved. Such objections must be met by time-consuming explanations and justifications of its right to exist as a women's self defence program.

In addition, the six years of delay have seriously undermined WEN-DO's ability to thrive and grow as an organization. It's entire raison d'etre is to offer women a safe, women-only environment in which to teach and learn self-defence. Therefore, it is not unreasonable to assume that an adverse outcome for WEN-DO would spell its likely demise as an organization

since the unique element of its service which attracts so many of its instructors, students and volunteers, would be gone. As such, WEN-DO views the process of fighting this complaint as a struggle to preserve its very right to exist.

Therefore, faced with the uncertainty of its future, WEN-DO has for six years been unable to engage in long range planning, make long term commitments or move ahead proactively with new initiatives it would otherwise undertake. Whereas a short course can be offered to a group of, for example, seniors, WEN-DO has been restrained in developing a systematic and specialized approach to meeting their needs through long term programming as would otherwise likely occur. WEN-DO has been understandably reluctant to seek large grants, increase or expand its services, and make any major financial commitments in this period of uncertainty. Therefore, new programs are largely on hold, and whole communities of women are denied the benefit of services that could be available to learn self-defence, and thereby enhance their constitutional right to security of the person.

One illustration will suffice to show the impact of this on the communities of women WEN-DO seeks to serve. Not long ago, WEN-DO entered into discussions with a group representing deaf and hard of hearing women to offer self-defence training in a way that would meet their particular needs. An occasional course does not adequately and systematically address the serious needs of women with different disabilities, such as hearing impediments, to learn effective techniques of self-protection. Disabled women have been demonstrably proven to be considerably more vulnerable to violence and abuse than their non-disabled sisters. Their need for self-defence training is therefore greater, and WEN-DO is uniquely qualified to meet this need by providing specialized training.

However, working with women with disabilities requires a willingness and ability to accommodate special needs over the long haul. Such commitment spans a period of years due to the time involved in building a long term relationship of trust, designing and creating appropriate learning environments, and implementing instruction programs that will serve the long term needs of the community, for example, the training of women with disabilities to teach WEN-DO classes. WEN-DO is perfectly capable of expanding in this direction, and could likely obtain the funding to do so, but cannot responsibly undertake such long term commitments given the threat to its continued existence looming as a direct result of this complaint.

As a consequence of the uncertainty about its future brought about by this complaint, WEN-DO was not able to make long term commitments to this group. Therefore the community of deaf and hard of hearing women, and communities of disabled women generally, do not have adequate access to the special expertise WEN-DO could offer, and will be denied this access as long as the complaint clouds the continuation of WEN-DO itself.

As well, the excessive delays involved in this process have sapped the energy and spirit of many women who teach for WEN-DO and who volunteer their administrative services. It is not reasonable to devote massive amounts of one's time and resources, or channel one's career path, to a unique organization that may not exist should this complaint be resolved against WEN-DO.

Life choices and career choices for existing and potential WEN-DO instructors are thus more limited, to their own detriment and the ultimate detriment of the women WEN-DO serves.

Finally, the passage of time per se is detrimental to WEN-DO's ability to properly defend itself against this complaint. If an extension were granted now, more time would be required for WEN-DO to respond to the 241 pages of allegations made on behalf of the complainant, and R.E.A.L. Women, which were only brought to WEN-DO's attention years after its own documentation was filed.

It would likely be months or years before a reconsideration were made. A re-consideration leaves open the risk of a lengthy hearing before a Board of Inquiry, quite possibly several years down the road if one can gauge from delays in this case to date. It is not reasonable that key witnesses may be required to testify at a hearing held almost a decade after an incident. In this case, as one example, the key witness Theresa Greene who was the instructor of the class in question, and a former President of WEN-DO, has now moved out of the country.

For all the reasons set out above, any further extension of time to the complainant with its inevitable delays is entirely unwarranted, and perpetuates the prejudice to Wen-Do intolerably. We therefore implore the Commission to deny the complainant's request for an extension of time.