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# Analysis of Case Processing Effectiveness

## CHAPTER 4

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**T**his chapter discusses a number of factors that determine the effectiveness of case processing and the production level that the department has achieved. Specifically, we asked:

- **What factors account for the department's delays in case processing?**
- **What strategies for improving performance should the department and the Legislature consider?**

To address these questions, we interviewed many Minnesota Department of Human Rights managers and staff, and asked about their ideas on how to improve the department's effectiveness. We surveyed department employees and offered staff a chance to tell us, in confidence, their views on issues affecting the department's operation. We also reviewed information on how human rights agencies are organized and operated around the country. In addition, we looked at previous reports prepared by our office and others.

The first part of this chapter explores each of the following factors that might impact the department's effectiveness:

- Enforcement officer caseloads
- Enforcement officer productivity
- Employee morale and satisfaction with the department's physical space, leadership, and training and development practices
- Computer information systems

In the second part of the chapter, we consider various options for improving the department's case processing program.

### **ENFORCEMENT OFFICER CASELOADS**

An important factor affecting the department's productivity is the size of the caseloads carried by the case processing enforcement officers (EOs). To under-

stand the effect of this variable on the department's efficiency and effectiveness, we asked these questions:

- **How large are the caseloads carried by DHR enforcement officers?**
- **How does the present caseload size compare with that in prior years?**
- **How has the size of the caseload affected productivity?**

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**Caseloads carried by DHR enforcement officers have grown in recent years.**

Caseload size measures the number of open cases in investigation that are assigned to a given enforcement officer at a particular point in time. We found that:

- **Historically, enforcement officers in the Department of Human Rights carried about 50 cases at a time.**

The 1987 task force report stated that investigators had ongoing workloads averaging 50 cases per month.<sup>1</sup> Similarly, the department's 1994 annual performance report showed the caseload per investigator for fiscal year 1993 at 48.5 cases.<sup>2</sup> Stephen Cooper, DHR commissioner from 1987 to 1990, estimated that a reasonable open caseload for an investigator should be about 45 cases.

However, as of March 1995, department statistics showed that the average caseload for a full-time investigator had increased to 106 cases. In other words,

- **Caseloads per enforcement officer have more than doubled over the past few years.**

A few EOs had as many as 140 cases at a time. The deputy commissioner attributed the increase in caseload to delays in the implementation of the enforcement officer training unit. In order to accumulate enough positions to begin the unit, the department did not fill EO vacancies beginning in fiscal year 1995. As we described in Chapter 1, the department's negotiations with MAPE, the labor union that represents the EOs, lasted from November 1994 till February 1995. Although the training class officially began in March 1995, the trainees did not begin investigating cases until September. One of the consequences of this plan was a reduction in the number of full-time investigators carrying a caseload, and a corresponding increase in the size of each officer's caseload.

Case processing enforcement officers reacted strongly to the heavy burden imposed by a growing caseload. In our interviews with case processing staff:

- **Both enforcement officers and supervisors cited the large caseload as an obstacle to speedy resolution of cases.**

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<sup>1</sup> Human Rights Advisory Task Force, *Human Rights Advisory Task Force Report* (February 1987), 28.

<sup>2</sup> Minnesota Department of Human Rights, *1994 Annual Performance Report* (St. Paul, September 1994), 9.

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**Large caseloads make it difficult for investigators to keep track of developments in each case.**

Investigators explained that an increase in the caseload translates into proportional increases in the number of phone calls from individuals inquiring about the status of their case. For any given case, an enforcement officer could receive phone calls from up to four people: the charging party, the respondent, and attorneys from both sides might call to ask for information from the investigator. With so much time invested in answering the telephone, enforcement officers complained to us that they had less time to spend in investigative work.

Investigators also told us that the increase in caseload size affected their ability to keep track of the cases in their inventory and to resolve the cases in a timely manner. One EO declared that it was impossible to work on so many cases at once, and that the huge caseloads made it difficult to keep track of when responses or rebuttals were due. Another explained that the increase in caseload made it hard to remember what was happening with a case, meaning that the EO had to spend more time reviewing earlier work to refresh his/her memory on the details of the case and the strategy of the investigation.

We calculated that EOs can only invest an average of 20 to 25 hours per case if they hope to meet the production standard of 75 cases per year.<sup>3</sup> For every complex case that takes much longer than 25 hours to close, the EO must spend a shorter amount of time on several, less complicated cases in order to attain an average of 20 to 25 hours per case. We reviewed the files of a number of cases that DHR dismissed as not warranting further resources (DWR). These are cases that the department deemed to be weak in evidence to prove a claim of illegal discrimination. According to case processing staff we interviewed, most DWR cases should require less time to resolve than more complex, probable cause cases. However, we found that DWR cases on average took about a year to close, despite little evidence of active investigation. In other words, a case processing enforcement officer spread 20 hours' worth of work over a year's length of time. We questioned the enforcement officers responsible for investigating the cases about the causes of lags in processing, and in every case, the EOs attributed the delays to the caseload. They asserted that the magnitude of the caseload prevented them from giving their attention to cases in a timely fashion.

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**Large caseloads also mean that investigators spend time reacquainting themselves with cases they have not worked on recently.**

Weeks and even months can lapse before an investigator has an opportunity to turn to a case for the first time, or give it serious attention. As cases sit idle, awaiting investigation, their quality may deteriorate because witnesses become harder to locate, facts and observations fade from witnesses' memories, respondents go out of business, or charging parties get discouraged and choose to withdraw their cases. One official in Oregon stated it this way: "As cases get older, they don't get any better."<sup>4</sup> Human rights experts are in universal agreement that justice delayed is justice denied. Both charging parties and respondents are affected by longer delays in the investigation process. In the Oregon experience, as the

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<sup>3</sup> We arrive at this estimate of 20 to 25 hours of investigative work per case by dividing the number of working hours in a year (2,080) by 75 cases per year. This quotient is about 28 hours per case, but we expect between 10 to 30 percent of work time to be used for vacation, holidays, sick leave, and other non-investigation work assignments. That leaves 20 to 25 hours available for each case, assuming 75 cases per year.

<sup>4</sup> Interview with Sue Jordan, Oregon Civil Rights Division, Bureau of Labor and Industries, October 19, 1995.

agency found ways to give faster turnaround, even some charging parties whose cases were dismissed expressed satisfaction that at least they found out in two months rather than one year.

In summary, it seems clear that increases in caseload size negatively affected the department's effectiveness and efficiency in case processing. Elapsed time in investigation increased, investigations became more difficult as cases languished, and enforcement officers experienced higher stress and pressure. At least two former EOs referred to the increase in caseloads in their list of reasons for leaving the department.

In order to respond to the troubling growth in caseload size, the commissioner established a caseload standard per investigator. A June 1995 memo to staff stated:

The department will seek to assign cases so that each enforcement officer will have an average of 82 cases. Enforcement officers will be assigned cases so that the total number of cases assigned for investigation will not exceed 104 cases or be less than 60 cases.<sup>5</sup>

We looked at the caseload statistics for the end of fiscal year 1995 and found that:

- **The average caseload for a full-time investigator was 78 cases in June 1995.**

The department lowered the caseload per investigator by 25 percent in three months, from more than 100 cases in March 1995 to 78 cases by June. However, management achieved this reduction in caseload size by setting aside more than 400 cases for a new alternative dispute resolution (ADR) project.<sup>6</sup> The department offered the ADR option in 430 cases, but by September 1995, parties in only 45 to 50 cases had agreed to try mediation, and there were 75 cases of rejection. Answers were still pending in the remaining 300 to 305 cases. Although the case processing personnel whom we interviewed regarded the ADR project as a worthy attempt at innovation, most were skeptical that mediation would resolve a high percentage of cases, and feared that caseloads would increase again as parties rejected the ADR option. Cases in which the charging party and the respondent refused to accept the offer of mediation would revert to the investigator having aged by several months.

We recommend:

- **The department should reduce caseloads permanently to 40 or 50 cases per enforcement officer.**

Although mediation is a useful option that may provide some relief to the department's case processing operation, it is unlikely to solve the problem of the large

<sup>5</sup> Memo from David Beaulieu, Commissioner of Human Rights, to all staff, June 20, 1995.

<sup>6</sup> In July 1995, the department began to work on a project to offer parties a new option for settling charges. Mediation is a process in which a neutral third party, in this case, a volunteer attorney, meets with the parties face-to-face to try to reach a mutually satisfactory settlement of the charge. The department administers the project but relies on volunteers to act as mediators.

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**The department lowered caseloads to 78 per investigator from over 100 per investigator, but this was a one-time reduction due to the start of a mediation program.**

caseloads currently carried by DHR enforcement officers. We think there are several additional strategies the department could implement that would lighten the EOs' caseloads. Screening cases more closely to avoid accepting weak charges supported by little evidence would lessen the department's workload. Several states hold incoming cases in a separate, actively managed inventory until enforcement officers are ready for new cases. Additional resources in case processing would distribute the department's load over more staff, decreasing individual caseloads. We discuss each of these options further in the second part of this chapter.

## PRODUCTION STANDARDS

The Department of Human Rights established a production standard for its case processing enforcement officers. DHR policy states that:

- **The department expects fully-trained investigators to close at least 75 cases per year.**

The productivity of each enforcement officer clearly affects the department's overall effectiveness. Decreases in individual production amount to a reduction in the department's capacity to close cases, and, conversely, increases in EO productivity mean that the department can handle more cases. Our research in this area focused on the following questions:

- **What is the current production standard, and how was it developed?**
- **How does actual case production compare with the standard?**
- **How does the standard compare with production standards in other states?**

## History and Development

The Department of Human Rights first instituted numerical standards for case production in 1984. The standards, which were established with input from enforcement staff, required closure of eight investigations per month (or about one every 20 hours). According to the Human Rights Advisory Task Force Report issued in February 1987, more than 80 percent of DHR's case processing enforcement officers were meeting that work performance standard, and another 18 percent were completing seven cases per month.<sup>7</sup> However, one former enforcement officer noted in a 1992 memo to the former deputy commissioner that the staff had averaged only six closures per month since 1987.<sup>8</sup> Commissioner Cooper, who headed the department from 1987 to 1990, did not enforce a formal production

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<sup>7</sup> Human Rights Advisory Task Force, *Human Rights Advisory Task Force Report* (February 1987), 20.

<sup>8</sup> Memo from Kathleen Hagen to Deputy Commissioner Tracy Elftmann, 1992.

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**After a careful study, the department established a production standard that investigators must achieve.**

standard, but EOs who worked for the department during his tenure told us that they felt continued pressure to close eight cases a month.

Discussion of a performance standard under the current administration began in earnest in April 1992. In September 1992, the commissioner initiated the Case Processing Production Standards Project to "establish clear production standards for processing charges of discrimination."<sup>9</sup> A human resource director from the Department of Employee Relations served as the project coordinator, and DHR's management analyst provided staff support for the project. Among other tasks, the analyst conducted a survey to learn about production standards in other human rights agencies in the United States, and she gathered statistics to calculate the actual production rates of staff. The project also involved two employee task forces: one comprised of enforcement officers and the other of supervisors. The investigators' work group recommended a standard of 70 to 83 cases per year, while supervisors suggested 83 to 95 cases as an appropriate annual standard.

After completion of the production standards project, the commissioner set a tentative production standard of 80 case closures per year in January 1993. MAPE, the labor union that represents the department's enforcement officers, strongly opposed the new standard and proposed instead a threshold of 72 cases per year. In March the commissioner revised the standard to the current 75 cases-per-year level. The union filed a grievance, complaining that the final standard "constitute[d] an unreasonable and punitive work rule."<sup>10</sup> Despite the protest, the department implemented the performance standard, and it remains in effect today.

## Current Department Standard

The department's current production standard, set in March 1993, is 75 cases per year, or 6.25 cases each month. The range of standards is as follows:

Unacceptable - less than 59 cases per year (4.99/month)

Below standards - between 60 and 74 cases annually (5.00 - 6.24/month)

Meets standards - between 75 and 89 cases/year (6.25 - 7.49/month)

Exceeds standards - between 90 and 104 cases each year (7.50 - 8.74/month)

Greatly exceeds standards - more than 105 cases a year (8.75/month)

Department policy states that investigators who do not meet the minimum threshold of 75 cases per year are ineligible for anniversary salary increases. To receive a bonus award, an investigator must be in the "exceeds standards" range, closing more than 90 cases in a year.

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<sup>9</sup> Catherine R. Johnson, *Case Processing Production Standards* (November 1992), 1.

<sup>10</sup> Minnesota Association of Professional Employees grievance #93-28-2512, (March 24, 1993).

Investigators do not receive credit for closing "companion cases." A companion case is a case filed on or near the same date as another case, that arises from a virtually identical fact situation and involves essentially a single investigation or settlement negotiation. Also, the department does not adjust the standard for employee leave time, for example, medical leave or vacation time, because these types of absences are factored into the standard. On the other hand, department policy does allow for supervisors to make adjustments to an employee's production standard in appropriate circumstances, for example, if an employee is assigned to a special project or if a case is unusually complex. Recently, in an effort to clear an accumulated inventory of older cases, department management decided to give investigators 1.25 credits for closing cases that were at least 700 days old.

The standard applied to nine of the 15 case investigators on staff when we performed this study. Two investigators act as liaison officers to minority communities, and since these enforcement officers spend only 50 percent of their time investigating cases, their closure standard is 37.5 cases a year. For a third investigator, the department has set a minimum standard of 52.5 cases per year because of her language translation responsibilities. Three additional investigators, who joined the department in 1994, were expected to close 63.75 cases per year, or 85 percent of the full production standard.

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**The standard set by DHR is in line with standards set in other states.**

## **Production Standards in Other States**

It is difficult to draw comparisons with production standards in other jurisdictions because of differences in intake procedures, requirements for closure, methods of counting cases, and other variations. For example, in some states enforcement officers handle both intake and investigations, and these states impose lower production requirements than states where investigators have no intake responsibilities. Some state agencies award credit for companion cases while others do not; some production standards are set to take into account leave time, while in other states the standard is pro-rated for vacation or sick leave periods. Despite these differences among states, we think it is still useful to compare the Minnesota Department of Human Rights' production standard with those in other states.

We collected production standard information from 27 states besides Minnesota. In general, we found that:

- **Minnesota's production standard is similar to standards in other states.**

The average production requirement for these states was 7 cases per month, ranging from a low of 4 to 5 closures per month in Alaska, Missouri, New Hampshire, Oklahoma, and South Carolina, to the highest standards of 12 closures in Wisconsin, and 15 per month in Nevada. Fifteen states (56 percent of the 27 who responded) had a standard that equaled or exceeded Minnesota's requirement of 6.25 cases per month, or 75 cases annually.

## Enforcement Officer and Department Production Levels

We studied department data on individual enforcement officer production levels in fiscal year 1995 and found that:

- **Only 9 of 15 enforcement officers were expected to produce at a rate of 75 cases per year in fiscal year 1995, and only 8 of the 9 met that standard.**<sup>11</sup>

**Not all enforcement officers meet the production standard, but even if all did, the department would not be able to close as many cases as have been filed in recent years.**

Of the 15 enforcement officers who investigated cases for at least eight months in fiscal year 1995, eleven of them, or 73 percent, fully met their case production standard. Eight of the 9 enforcement officers closed an average of at least 6.25 cases per month; one of the three investigators on provisional status met the requirement of 5.31 cases per month; and two of the three investigators with other adjusted production standards fulfilled their requirements. Among the full-time EOs, the lowest production rate was about 4.8 cases per month, and the highest producer closed 9.7 cases a month. Overall, in FY 1995, the department's EOs closed a monthly average of 6.29 cases, slightly more than the production standard of 6.25 cases.

We can use the quantitative standard of 75 cases a year to calculate the department's total case production capacity. If all 15 enforcement officers met their individual standards, then the department would be able to close at least 994 cases in a year.<sup>12</sup> Or, applying the monthly average of 6.29 cases from FY 1995 to all staff, the department's capacity should be 1,132 cases per year.<sup>13</sup> Under either scenario, it is clear that the department has a problem. These statistics show that:

- **Without an increase in staff and/or enforcement officer productivity, the department will not be able to close enough cases to handle the 1,200 to 1,400 charges filed each year.**

As we discussed in Chapter 1, the department is training four new investigators who will join the permanent staff, on probationary status, in March 1996. The addition of four more EOs will increase the department's capacity by about 300 cases per year, enabling the department to close 1,300 to 1,400 cases annually. This rate of production will be adequate to clear the cases filed annually, if case filings remain at their present levels, but it will provide little excess capacity for the department to address the backlog of cases that accumulated while the new officers were in training.

<sup>11</sup> The department provided us with copies of the monthly production reports submitted by each case processing unit supervisor. We used these data to calculate the production statistics presented here. The department claims that, when evaluated on an anniversary year basis, all investigators are meeting their respective standards, but our data show otherwise.

<sup>12</sup> We calculate this figure based on nine enforcement officers producing 75 cases a year, three EOs producing 63.75 cases a year (85 percent of the full standard), two investigators working half-time to close 37.5 cases per year, and one officer closing 70 percent of the full standard, or 52.5 cases a year.

<sup>13</sup> Calculated as 15 officers times 6.29 cases per month times 12 months per year.

## Impact of the Production Standard

The use of a quantitative production standard for enforcement officers carries some risks. A numerical standard provides some incentive for investigators to choose cases that they can close quickly or easily. For example, in order to meet the monthly production standard, an investigator might select several simple cases rather than concentrating effort on one complex case. This practice of "creaming" cases could be particularly harmful if probable cause cases are left to languish and deteriorate while other cases, such as dismissals or no probable cause cases, are investigated. Another possible unintended consequence of the production standard could be an adverse effect on the quality of case investigation.

DHR has addressed both of these problems by holding case processing unit supervisors responsible for monitoring the quality of investigators' work and also for ensuring that older, complex cases are not ignored in favor of newer, straightforward cases. Some other states have tried to develop performance measures for investigation quality, for example, the percentage of cases that are returned to an investigator for additional work or revisions. It is still too early to tell whether these measures will prove useful for assessing investigator performance and counterbalancing the weight placed on numerical production standards.

Finally, some critics object to a production standard approach because they claim it acts as a ceiling on production, rather than a floor. One former investigator explained it this way:

in order to make sure you had enough closures for the next month, you would 'bank' closures beyond your [quota], even though you might have been able to finish them that month, just to make sure you met next month's goal. I think actually, on occasion, this resulted in fewer cases coming in per month.

The department tried to motivate enforcement officers to exceed the production standard by offering the possibility of financial rewards; however, due to budget constraints, the department has not been able to offer bonus pay to employees. Nevertheless, it is clear that not all enforcement officers view the standard as a ceiling on production since there are several DHR investigators who regularly exceeded the required 6.25 cases per month. In addition, the department evaluates performance on an annual, rather than a monthly, basis, which reduces the incentive for employees to hold completed cases from one month to another.

Although we recognize the limitations of a production standard, we think that, on balance, a standard is beneficial as a guideline for good performance. It can focus investigators' attention on one of the department's primary goals--closing cases in a timely manner--and provide important incentives for enforcement officers to work as efficiently as possible. Appropriate employee training and proper oversight on the part of supervisors and managers can help to prevent the creaming of easy cases or an undue emphasis on speed to the neglect of quality.

In summary, the department's current production standard of 75 cases per year seems appropriate, when compared with other state standards, and when viewed in

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**We think a performance standard is a necessary management tool; however, it carries some risks.**

light of actual case production. However, some DHR investigators are able to produce at a higher rate than 75 cases per year, and a number of states impose a higher standard than Minnesota. The department's present production level (about 1,200 cases per year) is too low to manage the department's incoming caseload, let alone address its mounting backlog. For this reason, we think the department needs to look for ways to increase production, by improving the productivity of individual employees, shifting resources to case processing, or both. In addition, we recommend:

- **The department should ensure that case processing enforcement officers meet the production standard. Additional training or closer supervision should be provided for employees who fail to meet the standard, and appropriate disciplinary action should be taken if performance continues to be below expectations.**

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**In recent years DHR has suffered from low employee morale.**

## **EMPLOYEE MORALE AND JOB SATISFACTION**

The work environment and the level of employee satisfaction can certainly affect productivity. In the past few years, the Department of Human Rights has suffered from low employee morale and conflicts between management and the union that represents the department's professional employees. One consultant to the department described the environment as "toxic," a characterization that appears to resonate since staff we interviewed repeatedly referred to the term.<sup>14</sup>

We conducted a survey of non-managerial employees of the department and asked survey respondents to rate their level of satisfaction with various aspects of employment at the department. We received responses from 33 of the 49 employees surveyed, a response rate of 67 percent. A copy of the survey appears in Appendix A. We also solicited their suggestions for improving the department's effectiveness. Table 4.1 summarizes the results of our satisfaction survey.<sup>15</sup> In general, we found that:

- **More department employees are dissatisfied with aspects of their work than are satisfied.**

More than 60 percent of the employees who responded to our survey were dissatisfied with the physical office space in which they work, the quality of managerial and administrative leadership at the department, and the general work environment. Between 50 and 60 percent of respondents were dissatisfied with the quality of professional and technical leadership, the types of staff training and development opportunities, and the department's computer systems and data processing support. In the following sections, we address each of these areas individu-

<sup>14</sup> Suzanne Sisson, "Organizational Scan of the Minnesota Department of Human Rights" (Minneapolis, March 1992).

<sup>15</sup> Appendix A presents additional details about the survey. About two-thirds of employees who received the survey responded.

**Table 4.1: Job Satisfaction**

	Very Satisfied	Moderately Satisfied	Moderately Dissatisfied	Very Dissatisfied	Total	
					Percent	Number
Computer systems and data processing support available to you.	6.7%	40.0%	26.7%	26.7%	100%	30
Clerical assistance or support.	20.0	56.7	16.7	6.7	100	30
Amount of staff training and development	12.9	38.7	22.6	25.8	100	31
Type of staff training and development	18.8	25.0	28.1	28.1	100	32
Quality of professional/technical leadership (including civil rights legal issues, investigation methods, and other technical or professional aspects of your work).	12.9	29.0	38.7	19.4	100	31
Quality of managerial and administrative leadership.	12.9	19.4	25.8	41.9	100	31
Physical space in which you work	6.3	9.4	21.9	62.5	100	32
General work environment.	6.3	25.0	37.5	31.3	100	32
Your job overall.	15.6	53.1	18.8	12.5	100	32

Note: The question asked was: "How satisfied or dissatisfied are you with each area?"

Source: Program Evaluation Division analysis of data from Human Rights Department employee survey, December 1995.

ally, presenting information gathered from the survey, staff interviews, and our own observations.

Our survey and interviews also showed that there are many employees who are committed to the work and the purposes the department was established to serve. Table 4.1 shows that more than half of employees responding were either very satisfied or moderately satisfied when asked to rate "their job overall." A third or more of employees were at least moderately satisfied with most aspects of the department listed in the table.

## Physical Office Space

More than 80 percent of the employees who responded to our survey expressed dissatisfaction with the physical condition of the office. Almost two-thirds of respondents were very dissatisfied with the physical space in which they worked, and another 22 percent were moderately dissatisfied. In their written comments, employees criticized the ventilation, noise level, drab environment, temperature

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**In our survey, the single biggest source of employee complaints was the physical space in which DHR is located.**

fluctuations, and plumbing problems. Twenty-five of 32 survey respondents expressed views such as:

"I'm convinced many of us are made physically ill by the air (mold, bacteria, etc.) that's circulated and recirculated in this building. It affects productivity."

"The physical environment is drab and does nothing to lift the morale. There are constant problems with bathroom fixtures and temperature variations. It is also a very dirty environment."

"We need to move--the air quality and cleanliness are unhealthy, leading to low morale and an increase in sick leave usage. The furniture is in poor shape."

The department is located in Bremer Tower, in downtown Saint Paul, where parking can be expensive. By our observation, the physical layout of the department is not very friendly to visitors. All staff, with the exception of a receptionist, are housed behind a closed and locked door. While we accept the need for security and understand that the department conducts most of its business over the telephone, a more open and inviting design might be appropriate for a department that provides direct services.

Given the strong employee sentiments about the physical environment, if problems with the current space cannot be remedied, we recommend:

- **The department should find more suitable office space in a building that is affordable but accessible to the public.**

The department needs to choose a location where rent is affordable, space is sufficient, conditions are better, parking is ample and inexpensive, and public transit is accessible. Although we do not think that the physical environment is the primary cause of the department's productivity problems, we agree that improvements to the office space will boost employee morale and heighten their effectiveness.

## **Managerial and Administrative Leadership**

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**Many employees were dissatisfied with managerial and administrative leadership.**

Forty-two percent of the employees who responded to our survey question about the quality of managerial and administrative leadership said they were very dissatisfied, and an additional 26 percent were moderately dissatisfied. Survey comments reflected a high level of frustration with the lack of communication between management and staff. For example:

"More communication, feedback, more meetings or memos with updates, news, etc. [are needed]."

"The previous commissioners used to have all staff meetings and gave updates on case closures, staffing, etc. It was like a family. Now, nobody talks to anyone in top management."

"Administration needs to meet with staff, either formally or informally."

"Changes are made without the input and the understanding of people it will involve."

In September 1995, after we completed our survey, we learned that the department plans to begin holding quarterly staff meetings. We think this is a positive step to improve communications between the commissioner's staff and department employees.

Supervisors told us that they are not fully informed about the actions of top management. Case processing supervisors were unable to tell us how many charges the department received or closed in the last few years. In addition, supervisors did not learn in advance about intradepartmental personnel changes, which shifted employees among units.

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**Staff complained that they are poorly informed about important managerial decisions.**

Staff also complained about the lack of a comprehensive strategy for the department. We learned that the department held several strategic planning meetings last year but that no documents or plans were distributed to staff. Outside observers of the department criticized the management for being reactionary and lacking vision. One survey respondent expressed desire for department management to "lay out offensive strategies." Another complained, "Management has many projects going at the same time," and suggested, "Need to better prioritize each project (high, moderate, or low priority) so time constraints can be used." A third wanted management to "invest some (admittedly scarce) staff time in strategizing and agency development." From our observations, we agree that management needs to think through its plans more carefully before making changes. For example, the new training unit, designed to improve training for new enforcement officers, had the unintended effect of hampering department productivity during the planning and implementation phases of the project. Similarly, management efforts to control insurgency among employees discouraged the sharing of important work-related information.

At least two other indicators confirm our analysis of the troubled atmosphere at the department. The fact that five DHR employees have filed discrimination charges with the federal Equal Employment Opportunity Commission against the department raises questions about the relationship between staff and management. Likewise, a recent study of the Department of Human Rights by the Minnesota Department of Administration found a high degree of general dissatisfaction with the work environment, delays in attending to problems or issues in the department, and inadequate communication channels.

Summarizing what we learned from the survey and personal interviews, we think that:

- **Management should foster a more cooperative and collegial atmosphere within the department.**

Staff whom we interviewed seemed interested in collaborating on projects of common interest and concern. However, they did express fear of retaliation for criticizing current department policies and apprehension that management would be

unwilling to listen to their ideas. There are a variety of ways that management could involve staff in improving the department. For example, the Legislature recently appropriated funds to the department to develop a new case tracking system. Since enforcement officers, supervisors, and other staff will be the chief users of the new system, it would be beneficial to include them in the development process. We discuss this proposal in greater detail in a later section of this chapter.

The ultimate measure of management is the efficiency and effectiveness of the organization. Open communications, high morale, or good office space are only means to an end rather than the ends themselves. We criticize management primarily for its inability to steer the department on a course that would prevent delays in case processing and an increasing inventory of open cases. We observe, however, that the department has recently begun to take a course of action that is responsive to these key problems. Management has developed a number of initiatives to address the problems. Although it is too soon to tell whether particular projects will succeed, we give the department credit for recognizing its deficiencies and refocusing attention on some of them.

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**Over half of the employees responding to our survey expressed dissatisfaction with professional and technical leadership in the department.**

## Professional and Technical Leadership

We asked employees to rate their satisfaction with the quality of professional and technical leadership in the department, meaning leadership in the areas of civil rights legal issues, investigation methods, and other technical aspects of the work. Thirty-nine percent of responding employees were moderately dissatisfied with this dimension of the department, and 19 percent were very dissatisfied.

Both outside observers of the department as well as current employees cited the need for greater legal or law enforcement experience in upper management. Many people we interviewed remarked that neither the current commissioner, deputy commissioner, nor the enforcement division director (who left the department in October) are attorneys or had substantial civil rights law enforcement experience prior to joining the department.

One of the department's fundamental challenges, recognized by current management, is the need to standardize case investigation and establish a common approach to case processing throughout the department. A number of experienced enforcement officers told us that their jobs varied considerably depending on the case processing unit supervisor for whom they worked. To assure uniform standards across case processing units, the department needs someone outside the units to be familiar enough with the complex, legal issues surrounding case investigation to handle policy issues and promote new case law developments as they arise.

This need has been addressed to some degree by the addition of a lawyer as Policy and Legal Affairs Director, and the creation of a working group consisting of the deputy commissioner, policy director, and unit supervisors. Under this arrangement the policy director has essentially assumed responsibility for technical leadership in the department. In addition, the policy director has begun to meet regularly with the Attorney General's staff who provide legal support to the depart-

ment. It is too early to tell whether the current organizational arrangement will provide the needed oversight; however, the policy director has begun to study random samples of cases in order to assess the quality of the investigative work and identify ways to improve the process. We think this is a step in the right direction.

We recommend that:

- **One or more of the top positions in the department should be filled by someone with a substantial background in civil rights law enforcement.**

It may be that the department has met this test with recent managerial changes. According to the people with whom we spoke, the department has functioned better when either the commissioner, deputy commissioner, or enforcement director was a respected source of expertise in civil rights legal issues and law enforcement. If top management can exercise credible professional and technical leadership, it will gain greater respect in the eyes of the enforcement staff, who will then be more likely to respond to management initiatives. Greater familiarity with the civil rights enforcement field would also help management make important changes to improve the case investigation process.

## Training and Development

Investigation of discrimination charges is a difficult job that requires motivation, organization, and strong analytical, writing, and interpersonal skills. According to the department and other experts, it takes a year or longer for new enforcement officers to become fully productive. In addition, the arena of civil rights law changes continually as legislatures modify the statutes and courts develop new interpretations of those laws. All of these facts point to a need for employee training and development, for both new and experienced enforcement officers. We wondered if a lack of training might be one of the factors impeding department effectiveness. We found that:

- **Training opportunities are inadequate for many existing employees, although a thorough training program is in place for a group of recently hired trainees.**

Our survey asked how many hours of training (paid for or provided by the department) employees completed in fiscal year 1995. The 30 employees who responded indicated that they received an average of about 12 hours of training in this period. About 37 percent said they received no training in FY 1995. These figures are lower than the averages for other state employees. According to a 1994 study of employee training in 21 state departments, 86 percent of surveyed employees reported that they participated in some amount of training during fiscal year 1994, and they received an average of 33 hours of training during the year.<sup>16</sup>

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<sup>16</sup> Office of the Legislative Auditor, *State Employee Training: A Best Practices Review* (St. Paul, April 1995), 7-8.

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**DHR employees criticized the amount and type of training available to them.**

We also inquired about the amounts and types of training received by current DHR employees and asked what types of additional training would be useful. As Table 4.1 shows, more than half of the survey respondents were satisfied with the *amount* of training they received, while just under half were satisfied with the *types* of training they had. More than 50 percent of survey respondents offered written suggestions for what types of training would be most helpful in improving the department's effectiveness. Many wanted more training relating to legal issues, or case law developments. Some emphasized the need for ongoing training rather than training exclusively for new employees. Here are a few representative comments:

"Need to be kept abreast of new case law on state and federal level."

"More technical training/updating on legal issues would be helpful."

Some employees were critical of the training provided by the department.

"The only thing we got in the past few years is indoctrination on political correctness and diversity. How about investigation training?"

"The department relies too heavily on in-house, arbitrarily selected, 'specialists' for professional training."

"New training unit seems to be getting appropriate training. What about EOs who are learning on the job?"

We think that:

- **The department should institute a comprehensive training and development program, especially for enforcement officers. The program should focus on keeping officers abreast of changes in relevant case law and developing their investigative skills.**

In our view, improved training could have multiple benefits. It could provide the technical information that investigators need, and it could improve employee morale, foster a team spirit, and create a better work environment. The department could collaborate with staff at the Attorney General's office who could provide case law updates. In addition, there are a number of enforcement officers and supervisors with legal training and/or considerable expertise in the field who might be able to lead training sessions.

## **Trainee Unit**

In the past, new enforcement officers spent a few weeks in orientation sessions but soon joined a case processing unit and commenced casework. The current administration established a different system. Management concerns about both the lack of orderly training and what they perceived as a negative organizational culture into which new employees were socialized one by one prompted the changes in training. The department developed plans for a training unit in 1994, accumulated

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**A training program for new employees is underway.**

vacancies in enforcement officer positions, and hired five trainees in March 1995 to undergo a year-long program of training and apprenticeship. The training program was designed to provide extensive training in civil rights law, investigative techniques, analytical methods, communication skills, and other aspects of the job of enforcement officer. MAPE initially resisted the plan, objecting that it delayed full staffing of vacant positions and downgraded compensation for the work performed by enforcement officers, but eventually agreed to accept it.

We interviewed the director of the training program and reviewed the training schedule but did not evaluate the program in detail since it is still underway. It is clear that the program was thoroughly planned, with explicit training modules, speakers, opportunities for feedback, and supervised work. But, as we discuss elsewhere, the program required the department to take staff positions away from case investigations for a longer period than previous practice required. As of late 1995, the department has two investigator position vacancies.<sup>17</sup> It is not clear how the training program concept will be applied to these vacancies or others that become available one at a time.

Nevertheless, the training program demonstrates that the department appreciates the need for training. Some enforcement officers expressed the view that the trainees were using all the department's training resources, and the needs of existing employees were being ignored. Somehow, the competing needs of new and existing employees have to be reconciled in an environment where new discrimination charges are filed every day and only a limited amount of time away from work can be justified.

## COMPUTER INFORMATION SYSTEMS

The effectiveness of the Department of Human Rights has been impaired because its information systems do not adequately support its operations. Every year the Department of Human Rights handles thousands of cases, each of which passes through a complex process involving several units of the department. In addition, both statute and administrative rule impose restrictions on the amount of time the department can take at various stages of the process. Enforcement officers, who handle about 75 cases at a time, need a way to keep track of the progress of each case. When a charging party or respondent calls the department for information about a case, staff must be readily able to identify the case's location and answer questions about its status. Perhaps most important, managers need reliable statistics about the department's inventory of cases and its productivity in order to detect problems and make necessary changes.

In our review of the department's management information system, we asked these questions:

- **How well has the department's information system worked?**

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<sup>17</sup> One of the original trainees left the training program, and one enforcement officer resigned from the department.

- **Does the department have a reasonable systems development plan that responds to known case tracking deficiencies and will meet future needs?**

To answer these questions we examined department records and reports on the information system and its development, including copies of external consultants' evaluations of the system. We looked at statistical reports generated by the department's computer, and interviewed department personnel familiar with the system and involved with planning for future changes. We spoke with staff from the Information Policy Office, who have consulted with the department on its systems development plan. Finally, through the process of extracting data from the system for our evaluation study, we learned more about the system's capabilities and limitations.

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**DHR has had information system problems for years.**

## Current System

During the 1980s the department's case tracking system operated on a computer platform at the University of Minnesota. In the late 1980s the University's computer center informed the department that it was the sole user of what had become an obsolete database management system, and that the University planned to discontinue supporting it. In 1989 the department requested funding for a new, in-house information system. The Legislature responded by appropriating \$140,000 for system development and implementation. The new system became operational in July 1992, and it is still in use at the department in early 1996.

Although the current system is only three-and-a-half years old, we found that:

- **The information system has numerous problems, including poor documentation, insufficient checks on data entry, and badly designed output.**

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**DHR does not have documentation for its current information system.**

We asked the department to provide us with documentation for the system, and were told that no documentation was available. The department did produce a list of the database tables that comprise the system and the information fields that make up each table, but it could not locate further descriptions of the fields' contents or schema of the system design. This lack of documentation hinders the department from understanding the system's internal operations.

In our review of the statistical data we extracted from the system, we detected many examples of data entry errors, including duplicate listings of case numbers, ineligible codes, and implausible dates. For example, the system would allow an operator to enter "1929" instead of "1992," an error that would affect the calculation of time elapsed in processing the case. For information fields such as "charging party's race," the system did not restrict entries to the list of eligible codes, so there were meaningless entries in some of the records.

We looked at a number of the statistical reports produced by the system and found them poorly designed and hard to understand. For example, a report titled "Cur-

rent Status Summary" lists the number of cases in more than fifty overlapping categories but fails to tell the reader the time period covered. The report has a final line called "Total" but it is unclear which categories are summed to arrive at the total.

The department blames the problems with the information system on the lack of competence of its former systems staff. Although we agree that some responsibility for these system deficiencies rests with the programmers who designed the system, we think that:

- **The current administration bears some responsibility for allowing problems with the information system to develop and continue for several years.**

The present commissioner began his tenure in mid-1991. System implementation took place a year later, in July 1992. However, the department did not focus on its system problems and develop a plan to fix them until the end of June 1994. Instead, the department readily admitted that its information system contained erroneous data and cited the problems when it received external requests for information about the department's productivity. DHR's 1993 performance report presented no statistical data at all, and in response to our office's critique of the report, the commissioner wrote:

For years the Department of Human Rights has struggled with an obsolete, unreliable computer information system that does not support the agency's work. As a result, the Department does not have accurate, reliable data to include in the performance report.<sup>18</sup>

Similar language appeared in the department's 1994 annual performance report.<sup>19</sup>

However, with the help of an outside consultant, we found it possible to extract data from the system, run a series of logical checks on the data to detect errors, and review case files to correct those errors, all within a few months. We found that:

- **Although the information system needs improvement, it contains the basic data needed to assess the performance of the department's case processing program.**

In Chapter 3 we presented a statistical profile of the department's case processing system. Our analysis revealed a growing backlog of cases in investigation, a large percentage of cases that are not processed within the statutory deadline, a problem with the length of time cases spend in supervisory review, and delays in the appeals process. The department could have conducted similar analyses on its own

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<sup>18</sup> Annual performance reports were required of 21 state agencies under *Minn. Laws* (1993), Ch. 192, Sec. 39-41. Letter from Commissioner David Beaulieu to James Nobles, Legislative Auditor, June 17, 1994.

<sup>19</sup> Minnesota Department of Human Rights, *Annual Performance Report* (St. Paul, September 1994), 2.

if it had been aware of the types of data available in the current system and had some grasp of the magnitude of errors.

In our view, the commissioner's mistaken opinion that the current system could not be used for these purposes reflects a more significant problem within the department. We found that:

- **The department lacks the expertise it needs to take full advantage of its current information system.**

The department has no permanent staff who understand the inner workings of its computer system. The department needs someone on staff who can design new statistical reports, modify the program code as errors are detected, or reprogram the system to handle new capabilities. We submitted to the department a request for basic case processing data, similar to the data we requested in 1981 and 1983, in mid-May 1995. At the end of June 1995, we received word that the department had been working on our request but was unable to fulfill it, and therefore, we would need to hire a programmer for our project. The vendor with whom we contracted took less than two weeks of working time to complete the assignment.

In summary, we agree with the department that its current system is not ideal. However, we think the department could make better use of the data in its information system. Its failure to do so stemmed in part from a lack of expertise within the department. Without permanent staff who had the appropriate expertise and training to manage the system, the department was unable to meet requests for information from the Legislature and the public, or to use such information for its own management purposes.

## Future Systems Development

The department received a special appropriation from the Legislature totaling \$702,000 for fiscal years 1995-97 to redesign its information systems, including the case tracking system. The department chose to focus its attention first on the contract compliance unit, which had previously been relying exclusively on manual recordkeeping. A consultant was hired to design that system, and unit staff worked closely with the consultant to describe their needs and identify ways the system could increase their productivity. It became operational in November 1994, and, with the exception of a few remaining problems, the unit supervisor and staff are satisfied with the system and think that it has enabled contract compliance to improve its service to the public.

Although the department successfully developed the contract compliance system, it did not prepare a specific statement of the scope of work it expected the contractor to complete, or a list of the deliverables due at the completion of the contract. When the contract ended, the department was in disagreement with the vendor over whether the job was finished. In the end, the department decided to write a new contract with a different vendor to complete the work. The department showed a lack of business office expertise in executing the contract and account-

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**The department needs a new case-tracking system, but it could make better use of its current system.**

ing for expenses. For example, expenditures for the contract were consistently assigned the wrong object code in the statewide accounting system.

Despite the department's success in developing a contract compliance information system, we are concerned about its efforts to redesign the case tracking system used by the case processing units. We cannot measure the department's performance in this area very well since the new system will not be completed until the end of fiscal year 1996 and will not be fully refined until the end of 1997. However, we have looked at the department's planning process to this point (October 1995), and the steps taken to develop a new system. Based on our review, we think that:

- **The department has made little progress, so far, in designing and implementing a new case tracking system.**

The Information Policy Office in the Department of Administration gave DHR a rating of "satisfactory" for its information system enhancement plans and recommended full funding of the proposal. However, IPO noted that "both the project plan and a cost, benefit, and risk analysis are incomplete. There is no plan to refine, monitor, and manage costs."<sup>20</sup> In addition, IPO told us that it lacks sufficient staff resources to provide proper oversight to systems development projects as small as DHR's.

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**While the schedule calls for case-tracking system development to take place this year, we found little indication that progress is being made.**

If a case tracking system is to be successfully developed, there will have to be active participation by the unit supervisors and enforcement officers in intake and case processing units, who will be users of the system, and who presumably know what information might be useful and how a system could improve the work process. Unfortunately, as of October 1995, we found that few people in the department had been involved in planning for the system. There had been several meetings, but, as far as we know, there was no formal strategy to gather feedback and ideas from all case processing staff. When we interviewed the systems development administrator in October, we learned that the development steering committee had not met for several months. There is no document defining user needs that could serve as a starting point for development, and we could find no written budget more recent than a preliminary cost worksheet dated January 1994.

The department employs one person, originally hired as the network administrator, who is now responsible for overseeing the development of the new case tracking system. However, it has taken some time for this person to familiarize herself with the department's work and its current information system. Also, this individual's salary is funded by the special, three-year appropriation for systems development. We are concerned that the department, as of yet, has no permanent positions set aside for systems administration and maintenance.

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<sup>20</sup> Information Policy Office, *1996-97 Information Resource Funding Recommendations* (St. Paul, February 1995), 50.

## STRATEGIES FOR IMPROVING PERFORMANCE

There is little debate among the people we talked to on one point: delays in case processing hinder achievement of the department's mission, lead to an unproductive use of time in handling phone calls from parties to the case, and require the expenditure of time to become reacquainted with cases that have lain idle. Most charging parties assume that something will happen promptly when they file a charge. They become upset and disillusioned when they do not see anything happening. Respondents also have a right to expect that their case will be pursued promptly. The respondent's position usually prevails, but three-quarters of respondents use lawyers, and cases can be expensive and disruptive.

There is also general agreement that "justice delayed is justice denied." If cases take too long, witnesses or parties to the case cannot be located, evidence disappears, and witnesses' memories become unreliable. In addition, cases can become harder to settle with the passage of time since the stakes in the settlement, such as back pay, increase over time.

We have discussed a set of factors that we see affecting the productivity and effectiveness of the Department of Human Rights. We have discussed management, professional leadership, training, and other factors identified in our survey and interviews. These are factors that are within department administrative control although improved performance in any of these areas probably requires on-going efforts rather than a quick fix.

There are several alternatives that the Legislature will need to consider in setting policy for the Department of Human Rights:

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**The Legislature should consider several strategies for improving performance.**

- **Legislators need to consider whether the department's performance problems are solvable by an increase in the department's budget;**
- **They need to decide whether and how the department should set priorities in the face of limited resources; and**
- **They need to consider whether to move the department to a different organizational setting or modify its structure.**

As we discuss below, we think the department should be able to handle the present level of case filings within its current budget through internal reallocation of resources and some of the improvements discussed earlier in management, supervision, training, and information systems. We think there is good reason for the Legislature to consider a different organizational structure for the department because of the instability and vulnerability of the department over many years. Finally, we think it is absolutely vital that the department commit itself to screen cases, establish priorities and take other steps to bring the number of cases closed each year into balance with the number filed, no matter what the resource constraints it faces in the future.

## Adequacy of the Department's Budget

Our report concludes that EOs are assigned too many cases to permit them to keep up with developments in each case. At the present rates of production, the department's inventory of open cases is growing. Even if every enforcement officer assigned to case processing were meeting the department's production standard, there are not enough fully trained, full-time investigators to handle the workload. In addition, annual filings have been higher in the past, and they could be higher in the future. Therefore, a case could be made for increasing the department's budget.

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**While a case can be made for increasing DHR's budget, we think this step will not yield the desired results without other reforms.**

However, we do not recommend that the department's budget be significantly increased without some other organizational changes. In the past the department has been given increased resources to clear the backlog of cases, but this proved to be a temporary solution. The number of open cases was reduced to manageable proportions, sometimes through extraordinary efforts, but when close attention to the problem was diverted, the problem redeveloped.

With its present budget and plans, the department could assign around 17 or 18 full-time equivalent enforcement officers to case processing, and if each closed 75 cases, the department would close about 1,300 to 1,400 cases per year. This is roughly equal to the number of cases filed in each of the last three years. Under this scenario, the department would be able to handle the workload of incoming cases, but would be hard pressed to clear the current inventory of open cases.

The best argument for favorable consideration in the next budget session of the Legislature would be the department's successful implementation of needed organizational changes that do not require additional funds. Above all, the department needs a plan that anticipates a level of case filings beyond what it can handle in a routine, first-come-first-served fashion. We take up this issue in the next section.

## Case Processing Priorities

Regardless of its budget and other activities, we recommend:

- **The department should strive to close at least as many cases as are opened each year.**

If the number of cases filed is low, and the department has the capacity to give each case full treatment, then prioritization is not necessary.<sup>21</sup> But based on a review of the number of charges filed between 1978 and 1995 (see Table 3.1) it is unrealistic to expect that the department will always be able to provide a timely investigation for all cases. Therefore, we think it is necessary for the department to set priorities for its case processing program.

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<sup>21</sup> Even in the case of this unlikely event, there are community outreach and education activities, now performed on a minimal level, that could be expanded. Increased effort in those activities could result in more or better charges being filed.

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**We think the Legislature made it clear that the department should concentrate on high-potential cases.**

The statutes governing the Department of Human Rights permit and encourage the department to prioritize cases. They mandate prioritization of cases where there is evidence of irreparable harm if immediate action is not taken, evidence of a reprisal, potential for broadly promoting the policies of the Human Rights Act, strong evidence supporting the allegation, and certain other grounds.<sup>22</sup> The statute also states:

The commissioner may adopt policies to determine *which charges are processed* and the *order in which charges are processed* based on their particular social or legal significance, administrative convenience, difficulty of resolution, or other standard consistent with the provisions of this chapter.<sup>23</sup>

The Legislature added this language in 1983 after our earlier report recommended stronger and clearer authorization of prioritization. The need to set priorities is now well-recognized at the EEOC and in state agencies around the country. Staff at the Minnesota Department of Human Rights have acknowledged this need as well. To some extent, the department's early dismissal standards, incorporated in 1994, rest on the concept that the department needs to select the cases on which it will focus its primary attention. Early dismissal standards outline the circumstances under which case processing enforcement officers can dismiss cases without completing a full investigation. However, as we saw in Chapter 3, the department continues to use a first in, first out framework to handle most of its cases.

We recommend:

- **The department should heed the message of statutory language that has long been in place. It should identify high-potential cases and dismiss or otherwise dispose of low-potential cases, if resources do not allow full treatment of all cases.**

There is some debate over where, exactly, in the process, prioritization decisions should be made. Some argue that the department is obliged to *accept* all charges meeting minimal criteria, but then can decide which charges are processed and in what order. Others suggest that cases can be screened out before they are formally filed and docketed.

As we discussed in the last chapter, a charging party makes initial contact with an intake officer who drafts the charge and passes the case to another enforcement officer. We discussed the issue of screening or prioritizing cases with many DHR staff, and with officials at EEOC and other state and local human rights agencies. Some DHR enforcement officers complained that intake workers accept marginal cases, in part because their responsibility for a case ends once the charge is docketed; intake officers do not have to deal later with weak cases or poorly drafted charges. EOs suggested that it is easy for intake personnel to err in favor of the charging party, especially when that party is angry or distraught. It is more difficult to tell a potential charging party that he or she does not have a *prima facie*

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<sup>22</sup> *Minn. Stat.* §363.06 Subd. 4 (1).

<sup>23</sup> *Minn. Stat.* §363.06 Subd. 4 (7). (Emphasis added.)

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**Several organizational arrangements for case processing have been tried over the years.**

case than to accept a dubious case and have another person deliver the bad news later in the process. Clearer department policies and closer supervision of intake staff are needed to counteract this tendency.

The Department of Human Rights has experimented with the organization of case processing over the years. At times in the past, enforcement officers handled both intake and investigative responsibilities, and there was no separate intake unit. At another time, DHR operated with three specialized tiers of case processing: intake, a second tier, which handled quick settlements and dismissals, and a third tier aimed at more complex investigations.

Although many of the case processing staff we interviewed thought the advantages of the three-tier arrangement outweighed its disadvantages, the department ultimately abolished the structure. Enforcement officers in the third tier complained that they were left with all of the hardest cases but were expected to close cases at the same rate as the second tier. We also heard that some staff thought it a waste of time to have staff in the second tier work on a case, only to have it passed along to third tier, where a second enforcement officer would have to become familiar with the facts of the case.

Overall, the department needs to assess the relative merits of the various organizational alternatives, weighing the benefits of specialized units against the improved accountability inherent in units with broader responsibilities. The Minneapolis Civil Rights Department, for example, is a strong advocate of conducting the complete process within a single unit accountable for the results. In fact, most of the time, the same investigator handles intake and subsequent investigative work on a case. According to the Minneapolis agency, if a charge is badly drafted, the problem cannot be shifted to someone else. If a case appears to be weak, there is no opportunity to have someone else deliver the bad news to the charging party. Credit or blame for excellent or poor investigative work is easier to assign and accept.

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**We recommend that potential charging parties be provided realistic information about the process.**

Minneapolis representatives also stressed the importance of careful, probing examination of cases at intake so that cases will be rejected if their assertions cannot be supported by evidence. If the state DHR wants to cut down on the number of cases that are in the process for a year or more, but end up as dismissals, it should consider implementing some of the techniques used in Minneapolis and elsewhere. We recommend:

- **The department should provide potential charging parties with a realistic estimate of how long the process usually takes, and**
- **The department should tell potential charging parties what evidence will be necessary to prove their case and give them an honest assessment if their case appears weak.**

Intake workers should also identify cases that meet the priority criteria established in law and also mark cases that meet criteria established by the department. Although there is always the chance that a new and unexpected development will

arise in a case, experts in other states and staff in DHR told us that, in most cases, an experienced investigator can assess the potential of a case with basic information from the charging party and the respondent. We think the department should rely on this principle to restructure its work. First, it should quickly close cases in which investigation shows little promise of supporting the charging party's original allegation. Second, it should give priority treatment to cases that appear to have high potential to become probable cause determinations, especially those case that are likely to deteriorate without prompt action.

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**DHR is organized differently than most state human rights agencies.**

## Organization of the Department

During the 1995 session, legislators who had heard criticism of the department considered a reorganization of DHR to improve its performance. One proposal recommended placing the department in the Office of the Attorney General. In this section of our report, we compare the organization of DHR with human rights agencies in other states. We also discuss the potential trade-offs among different organizational structures.

We collected information on the organization of human rights agencies in other states and found that:

- **DHR has a different organizational structure than the civil rights enforcement agencies in most other states.**

Forty-seven of the 50 states have a unit within state government that investigates claims of illegal discrimination.<sup>24</sup> In at least 35 of those 47 states, civil rights enforcement is governed by a human rights commission or board. Boards vary in size, ranging from as few as three commissioners (Massachusetts) to as many as 20 (North Carolina). Commission members are typically appointed by the governor and confirmed by the senate and serve staggered terms of anywhere between three and six years. In some states statutes mandate the geographic, political, or community group composition of the commission.

Most commissions meet periodically as a full body (usually monthly, bimonthly, or quarterly). Commission members are generally paid a per diem allowance for the time they devote to commission affairs, rather than receiving an annual salary. Typically, a full-time executive director appointed by the commission supervises staff and administers the day-to-day affairs of the commission, such as the investigation of charges of illegal discrimination.

In a number of states, the human rights commission bears the responsibility of making final determinations of reasonable or probable cause. Commission staff investigate cases filed by charging parties and present their findings and recommendations to either the full commission or a subcommittee. The commission then serves as a quasi-judicial panel that renders a determination in the case.

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<sup>24</sup> Alabama and Mississippi do not have comprehensive state equal employment opportunity laws their citizens rely on the federal government for protection from employment discrimination. Arkansas has a state fair employment practice law, but discrimination claims are filed through the judicial system rather than an administrative agency.

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**There are some advantages to a governing board or commission, although this is no guarantee of good performance.**

In other states, commission staff issue determinations without the review of the commission. In cases where the staff find probable cause but are unable to forge a conciliation agreement between the two parties, the commission members will hold a hearing to decide the case and award damages if applicable. Staff decisions other than probable cause can also be appealed by either charging party or respondent to the commission.

We asked representatives of state agencies to discuss the relative strengths and weaknesses of the commission structure. Staff appreciated the political insulation that a commission can provide. A supportive commission committed to upholding civil rights law and representative of diverse interests can shield the staff and executive director from changing political winds or pressure from influential respondents. Staff also mentioned that charging parties and respondents feel more satisfied with decisions rendered by a commission because they have the opportunity to appear before a live hearing panel.

Some states offered criticism of the commission structure. Drawbacks included: (1) a lack of civil rights expertise among commissioners, who need to be able to understand and apply complex legal issues; (2) the difficulty of organizing commission meetings around members' busy schedules, and the corresponding backlog in cases and hearings; and (3) staff inability to handle daily affairs without commissioners' interference.

In December 1995, the Minnesota Department of Human Rights established an advisory task force, composed of representatives from various minority communities, attorneys, state agencies, and foundations. It is still too early to tell what role the task force will play, but it may serve to strengthen the department's public image and help DHR forge better relations with specific citizen groups.

We also studied the role of state attorneys general in enforcing civil rights statutes and found that:

- **Only two states rely on their attorney general to investigate discrimination claims.**

In Vermont the attorney general's office has historically shouldered responsibility for investigating claims of discrimination. However, in 1988 the Vermont Legislature established a human rights commission to address discrimination claims in public employment, housing, and public accommodations. In organizing the commission, the Vermont Legislature attempted to resolve the inherent conflict that arose whenever someone filed a claim against a state agency. In these cases, the attorney general's office would have to provide legal representation to the state agency, but also act as enforcer of the law for the charging party.

Vermont's parallel process for managing the investigation of discrimination claims is not ideal, by the assessment of key staff in the two offices. The human rights commission and the attorney general's office differ in their jurisdictions, intake processes, determinations proceedings, and hearings. The division of responsibility creates complications for citizens wishing to file claims and staff trying to as-

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**Only two states carry out investigation of discrimination claims in the state Attorney General's office.**

sure uniform interpretation and enforcement of the law. The director of the commission thinks that it would be better to combine functions so that all statutory discrimination investigations would occur in one place.

The civil rights section of the Arizona Attorney General's office enforces three state laws: the Civil Rights Act, the Fair Housing Act, and the Disabilities Act. The section employs about 18 investigators and 9 attorneys, who together investigate charges of discrimination in employment, housing, and public accommodations; render determinations on the merits of such charges; and attempt to conciliate charges where reasonable cause is found. If no settlement can be reached, the office issues a right-to-sue letter to the charging party because the attorney general has no power to act as a hearing officer.

The office has a 12- to 18-month backlog of pending cases, much like many other civil rights enforcement agencies. According to civil rights section staff, the primary benefit of merging civil rights with the attorney general's office is the expertise of the lawyers and the emphasis on law enforcement. However, the system's weakness is its susceptibility to a changing political environment, since the attorney general is an elected position.

Finally, our research showed that:

- **In at least 20 states, the civil rights enforcement agency is affiliated with a larger agency, sometimes for administrative purposes only.**

Figure 4.1 lists the 20 states in which civil rights enforcement is housed within a larger state agency. In eight states the human rights investigation arm of government is associated with a department handling labor-related affairs such as occupational safety and workers' compensation. Four states house civil rights enforcement in the Governor's Office.

In a number of cases, statute specifically states that the human rights agency will be located within another department *for administrative purposes only*. For example, the Georgia Commission on Equal Opportunity (CEO) is organizationally under the Office of Planning and Budget in the Governor's Office. The OPB handles budgets, accounting, and payroll for the commission but does not interfere with the policy decisions of the CEO. Similarly, in Montana, the Human Rights Commission is attached to the Department of Labor and Industry, which provides centralized services support to the HRC in areas such as computer support, payroll, purchasing, and human resources, but has no line authority over commission staff, personnel decisions, or expenditures.

We think that:

- **The Minnesota Department of Human Rights could benefit from affiliation with a larger state agency, which could provide DHR with administrative assistance in areas like computer systems, budgeting, and human resources.**

**Figure 4.1: Civil Rights Agencies Affiliated with Larger Government Entities**

<u>State</u>	<u>Office with Which Civil Rights Agency is Affiliated</u>
Alaska	Office of the Governor
California	State and Consumer Service Agency
Colorado	Dept. of Regulatory Affairs
Connecticut	Dept. of Administrative Services
Delaware	Dept. of Labor
Georgia	Office of the Governor
Louisiana	Office of the Governor
Missouri	Dept. of Labor and Industrial Relations
Montana	Dept. of Labor and Industry
New Jersey	Dept. of Law and Public Safety
New Mexico	Dept. of Labor
New York	Executive Dept.
North Carolina	Dept. of Administration
North Dakota	Dept. of Labor
Oregon	Bureau of Labor and Industry
Pennsylvania	Governor's Office
South Carolina	Executive Department
South Dakota	Dept. of Commerce
Utah	Industrial Commission
Wisconsin	Dept. of Industry, Labor, and Human Resources

Source: BNA Labor Relations Report, 1994.

As we discussed earlier in this chapter, the department has struggled to develop a useful, effective information system. Likewise, it has experienced trouble with personnel management and financial management in the past. For example, the department had trouble negotiating with MAPE over plans to start an enforcement officer training program, and, as noted earlier in this chapter, faced setbacks in its computer systems development project because of problems with contract administration. DHR might benefit from the expertise of agencies such as the Department of Employee Relations, the Information Policy Office, and the Department of Finance. Beyond that, there may be more extensive ways to restructure the department to improve its ability to handle routine operations while not diminishing the department's prestige or autonomy.