

COMMISSION REPORT

HUMAN RIGHTS COMMISSION

NEWFOUNDLAND & LABRADOR

1996-1997

TABLE OF CONTENTS

1. Message from the Chair of the Commission	3
2. Message from the Executive Director	4
3. Commission Members	5
4. Overview of the Provincial Human Rights Code	8
5. How the Commission Works	10
6. Case Summaries	13
7. Cases Referred to a Board of Inquiry	20
8. In Focus: Sexual Harassment	24
9. Case Statistics	28
10. Frequently Asked Questions	31
11. Looking Ahead	34

FROM THE CHAIRPERSON FOR THE COMMISSION

1997 was an exciting and productive year for the Human Rights Commission. On International Human Rights Day, December 10, 1997, the Commission was extremely pleased to present to government its report containing 15 recommendations for amendments to the province's Human Rights Code. This presentation was the culmination of a lengthy review of the Code, which included extensive research, in-house discussions, and public consultation with groups, organizations and individuals who are dedicated to the protection of human rights within Newfoundland and Labrador and in other provinces. Local consultation included two days of public hearing which resulted in the Commission receiving a number of written and oral presentations containing thought-provoking and innovative suggestions and comments.

On behalf of the Commissioners, I would like to thank the Commission's Executive Director, Gladys Vivian, its legal counsel, Barry Fleming, and its other hard working staff members for the time and effort they committed to this project, and for their continued dedication to high quality service to the Commission and to the general public.

The Commissioners' goal for 1998 is to continue discussions with Government to ensure our recommendations for changes to the Code are implemented in time for the 50th anniversary celebrations of the Universal Declaration of Human Rights by the United Nations on December 10.

On a personal note, it has been a pleasure for me to serve as Chair of the Commission during the past year and I look forward to the challenges the next year brings. The Commission's dedicated staff and talented and discerning Commissioners have made Commission meetings stimulating, thought-provoking and enjoyable. For this I extend my sincere thanks to them all.

Sincerely,

E. Jane House

FROM THE EXECUTIVE DIRECTOR

It is with great pleasure I submit the 1996-97 report for the Human Rights Commission. The report gives an overview of the activities at the Commission for the past two years. You will note there has been a significant increase in the number of complaints. The Commission received 71 complaints in 1997 in comparison to 54 in 1996. The increased case load is occurring at a time when budgets are being reduced and staff numbers are not increasing. Therefore, I commend the staff for their commitment to produce quality and timely work in spite of the increased workload and demands.

One of the main projects for the Commission in 1997 was a review of the Human Rights Code. This review was concluded and released to the public on December 10, 1997, recommending several amendments to the legislation. I thank the individuals and agencies who participated in this exercise by submitting written briefs and by making oral presentations to the Commission. The Commission was also pleased to see government amend the Human Rights Code to prohibit discrimination on the basis of sexual orientation.

December 10, 1998 will mark the 50th anniversary of the signing of the Universal Declaration of Human Rights and the Commission urges government, community agencies, businesses and individuals to renew their commitment to human rights and plan activities to mark the anniversary.

Responsibility for the Human Rights Commission was transferred to the Department of Justice in November 1997. The Commission has been attached to the Department of Environment and Labour for the past 7 years. I would like to take this opportunity to thank the Ministers and Executives of the Department of Environment and Labour for their support and commitment to human rights during the period the Commission was attached to that department. We look forward to a productive 1998.

Sincerely,

THE COMMISSIONERS

The Human Rights Commission is composed of five members appointed by the Lieutenant-Governor in Council. The following is a brief introduction to the Commissioners.

Bert Riggs

A native of Grand Bank, Bert Riggs is a graduate of Memorial University with a Bachelor of Arts (Honours) and a Bachelor of Education degree. He holds a diploma as a Certified Archivist from the Academy of Certified Archivists, Chicago. He has been employed as an Archivist with the Centre of Newfoundland Studies, Memorial University Library since 1989. He spent ten years (1980-1990) on the board of the Newfoundland-Labrador Human Rights Association, a volunteer-based education and advocacy organization, serving as president for five years. He has also served in executive capacities with the Working Group on Child Sexual Abuse, the St. John's Folk Arts Council and the Association of Newfoundland and Labrador Archivists. He writes a regular column in the MUN Gazette and a weekly column in The Evening Telegram, both of which document some aspect of Newfoundland's history, people, and culture. He was re-appointed as a Commissioner for a five-year term effective July 1997.

E. Jane House

Jane House has a Bachelor of Arts (Psychology), a Master of Education in Educational Psychology, Guidance and Counselling from Memorial University of Newfoundland and a Master of Education (Deaf Education) from the University of Moncton. Ms. House is currently employed as a teacher at the Newfoundland School for the Deaf. Previously she was a guidance counsellor and social science instructor at the St. John's General Hospital School of Nursing. Ms. House is involved in various professional and voluntary organizations including the Newfoundland and Labrador Teachers' Association, the Newfoundland and Labrador Council of Educators for the Hearing

Impaired in which she has served a term as Regional Director from Newfoundland and co-chaired the National Biennial Conference of the Association of Canadian Educators of the Hearing Impaired held in St. John's, 1989. Ms. House is a founding member and served on the Executive of the Newfoundland and Labrador Physically Handicapped Association and the Newfoundland Wheelchair Sports Association. She is also a founding member, past president, and chairperson of the Canadian Paraplegic Association, Newfoundland and Labrador, Inc. Presently, Ms. House serves as teacher-advisor of her school's Student Council and is on various committees with her church. Ms. House was appointed Chair of the Commission for a five-year term effective September 1994.

Calvin Patey

Calvin Patey is currently employed as the Director of Education of the Labrador School Board. He holds a Masters of Education degree from Memorial University and has pursued graduate studies at OISE-University of Toronto. He is a former member of the Newfoundland and Labrador Teachers' Association, and received the Association's Barnes Award for Professional Development in 1988. He is part-time member and chairperson of the Melville Public Library Board and of the Happy Valley - Goose Bay Arts Council. Mr. Patey has been a coordinator of the Labrador Creative Arts Festival, and has been involved in the Provincial High School Theatre Festival at both regional and provincial levels. He is presently a member of the Board of the Health Labrador Corporation. Mr. Patey was re-appointed to a five-year term in July 1997.

Elizabeth Calloway

Elizabeth Calloway is the owner of Pinedale Farms. This farm has been in operation for forty-five years and primarily produces forage, vegetables, and sods. Pinedale is also involved in landscaping services. Previous to operating the farm, Ms. Calloway was a teacher with training in primary methods and T.M.R. classes. Ms. Calloway has extensive experience in the community having served as director of the Newfoundland Egg Marketing Board and the Canadian Egg Producers' Council.

She has also been a member of the Local School Committee, Terra Nova National Park Liaison Committee, Terra Nova Community Council, and the Salmonoid Enhancement of Terra Nova River Steering Committee. Currently, Ms. Calloway is a municipal councillor for the Terra Nova Community Council, the Newfoundland Co-ordinator for the Canadian Farm Women's Educational Council, a member of the Farm Debt Review Board, a member of Newfoundland Farm Business Management Co-ordinating Committee, and a member of the Newfoundland Farm Women's Network. Ms. Calloway was appointed as a Commissioner for a five-year term effective December 1994.

Carol McDonald

Carol McDonald is retired from the business community having been self-employed for many years. Some of her business experience were Manager of the Airport Inn, Manager of Avalon Raceway and Manager/Financial Administrator of family owned businesses such as: the Big "R" Restaurant, McDonald's Transport and Entertainment Enterprises. She has a Business Administration Course from the former College of Trades and Technology. Carol has also been involved in many community/volunteer sectors. She is the former Mayor of Portugal Cove and a former member of the Consumer Advisory Board of CIBC. At present she is a member of the Autism Society of Newfoundland and Labrador, Vice-President of the Association for New Canadians, Commissioner with Pippy Park, and a Director of the St. John's Ports Corporation. Ms. McDonald was appointed as a Commissioner for a five-year term effective December 13, 1994.

THE HUMAN RIGHTS CODE (AN OVERVIEW)

...there is no greater inequality than the equal treatment of unequals.

Mr. Justice Frankfurter
in *Dennis v. US*,
162(1950)

PROHIBITED GROUNDS

The Code lists the following grounds on which discrimination is prohibited:

- Race
- Religion
- Religious Creed
- Political Opinion
- Colour or Ethnic Origin
- National or Social Origin
- Sex
- Marital Status
- Physical Disability or Mental Disability
- Age 19-65 (Employment)
- Sexual Orientation

AREAS

The Code prohibits discrimination in the areas of :

- Accommodation, services, or facilities (except for good faith limitations for persons with physical or mental disabilities)
- Occupancy of commercial or self-contained dwelling units
- Employment (between ages of 19-65 except for good faith occupational qualification)
- Publications

“...only an employer can remedy undesirable effects; only an employer can provide the most important remedy - a healthy work environment.”

Robichaud v. The Queen
(1987) 2 S. C. R. 84-per
LaForest, J, at 94.

HARASSMENT IS PROHIBITED:

- Persons who are occupants of commercial or self-contained dwelling units
- Persons in the workplace

OTHER PROVISIONS/PROTECTION IN THE CODE:

- Equal pay for same or similar work
- Protection against sexual solicitation
- Protection against retaliation for having filed a complaint
- Special Programs

HOW THE COMMISSION WORKS

The underlying philosophy of human rights legislation is that an individual has a right to be dealt with on his/her own merits.

Mr. Justice Lawton in
Battlefords and District
Co-operative Limited v.
Gibbs and
Saskatchewan Human
Rights Commission,
Saskatchewan Court of
the Queen's Bench,
February 9, 1993,
page 7.

COMPLAINT PROCEDURE

If you believe that you have been discriminated against, contact the Commission **within six months**. The Commission will take a complaint for investigation if there appears to be a violation of the Code. The Commission will inform the respondent prior to the commencement of an investigation, investigate the complaint and endeavour to effect a settlement. Where a settlement is not reached, the Executive Director of the Commission will report on the case to the Commission. The Commission will determine whether or not to refer the matter to the Board of Inquiry. Where a settlement is reached, the Commission will notify the parties that no further action will be taken unless the terms are not complied with. The Commission is empowered to enter buildings, factories, workshops, or other premises to inspect records, documents, accounting books, work material, or equipment and to question persons or to obtain a warrant authorizing such entry and search.

There is a shared responsibility for the gender bias that occurs across the country. The magnitude of the challenge is no excuse for failing to act.

“Touchstone for Change: Equality, Diversity, and Accountability,” Report of the Canadian Bar Association Task Force on Gender Equality in the Legal Profession, 1993.

BOARD OF INQUIRY

A Board of Inquiry is a formal public hearing where the complainant and respondent present their arguments before an Adjudicator. The Human Rights Commission shall have carriage of the complaint, but either party may be represented by legal counsel. The Adjudicator, after hearing all the evidence from the parties and witnesses, will determine if there has been a contravention of the *Human Rights Code*. If there is a finding of contravention, the Adjudicator will order the respondent to cease the contravention, make available denied opportunities or privileges and may, when appropriate, order compensation. The Adjudicator’s decision is legally binding on the parties, but it is subject to appeal to the Trial Division of the Supreme Court.

APPEALS

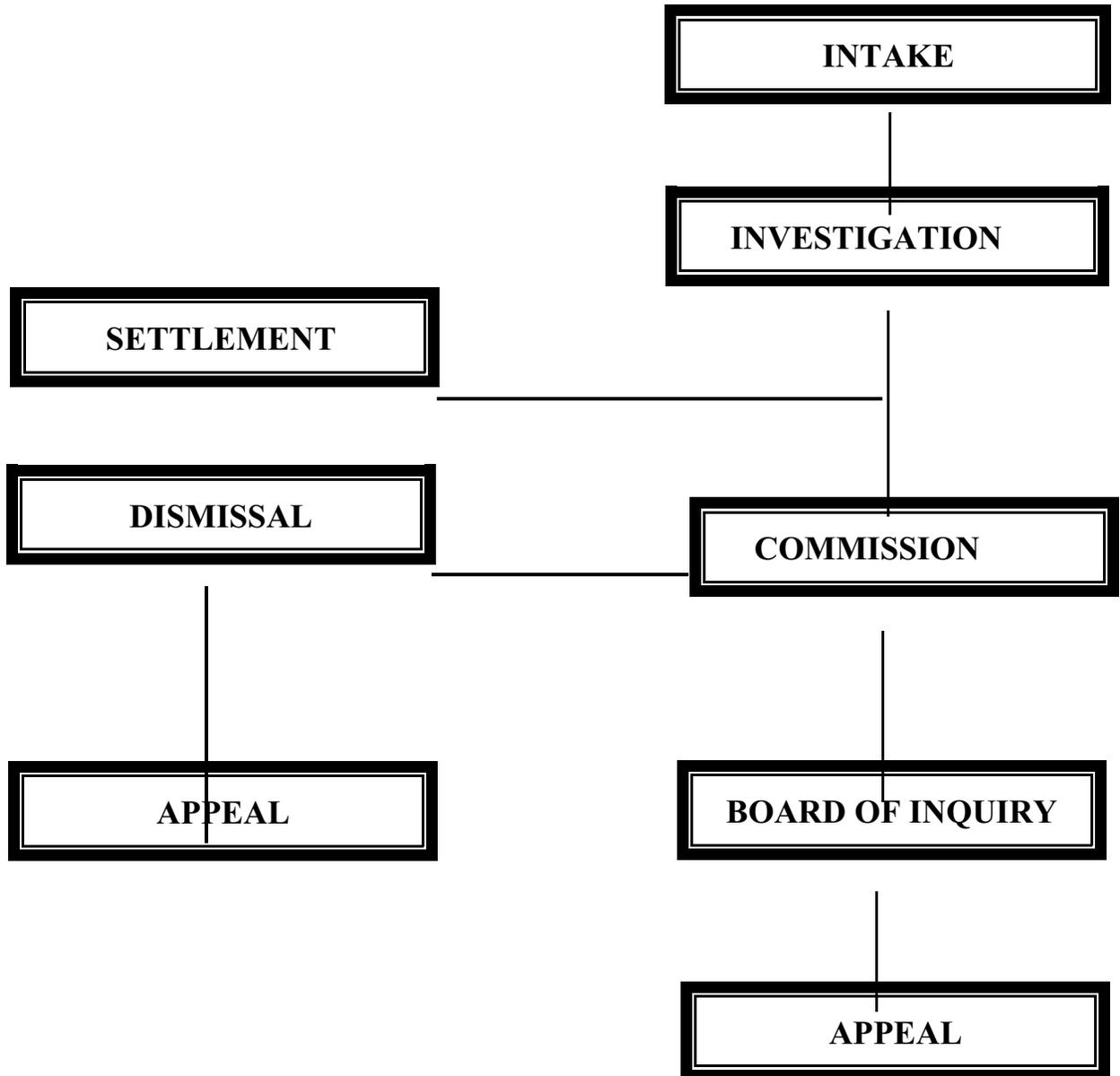
Either party may appeal to the Trial Division within 30 days of the receipt of the decision of the Board of Inquiry. The Court may confirm, reverse or vary the order of the Board.

IF YOU THINK YOU MAY HAVE A COMPLAINT

Please contact:

**Newfoundland Human Rights Commission
Department of Justice
P. O. BOX 8700
St. John’s, Newfoundland
A1B 4J6
(709) 729-2709
1-800-563-5808
Fax: 729-0790**

THE COMPLAINT PROCEDURE



* Throughout the complaint process the Commission tries to effect settlement between the parties. If settlement is not achieved the complaint follows the outlined process and may be referred to a Board of Inquiry. Decisions of the Board and dismissal by the Commission may be appealed to the Courts.

***FROM OUR FILES...
CASE SUMMARIES 1996-1997***

FROM OUR FILES...
CASE SUMMARIES 1996-1997

- **Section 9, 12 & 13:** *Employment*
- **Grounds:** *Sexual Harassment*

In the fall of 1997 two women filed complaints with the Human Rights Commission alleging sexual harassment at their workplace. The women maintained that during their employment they had been subjected to numerous instances of sexual harassment. These included crude sexual comments, physical groping, offers of payment for sexual favours, and threats that their positions would be terminated if they did not concede to sex with the employer. The complaint was investigated by the Human Rights Commission and a settlement was effected between the women and the company.

The company had agreed to pay approximately \$35, 000 for general damages resulting from the sexual harassment the women had endured on the work site.

- **Section 9 &12:** *Employment*
- **Grounds:** *Sexual Harassment*

A woman filed a complaint with the Human Rights Commission alleging she had been sexually harassed by her supervisor. She maintained that on one occasion her supervisor had touched her breast and made comments about her breast size. The woman also stated that the respondent made numerous comments of a sexual nature to her and other female staff. When the complainant was dismissed from her position, by her supervisor, she contacted the owner of the business regarding sexual harassment. The owner agreed to investigate and that investigation confirmed sexual harassment. However, the woman rejected the employer's first offer of settlement because she felt it did not adequately compensate her for the discrimination and humiliation she suffered. The company states that they did investigate the complaint of sexual harassment and offered what they

felt was a fair settlement for her complaint, a letter of apology and a monetary amount. In reference to the woman's dismissal, they stated that she was dismissed for cause. The company maintained that the complainant had been advised on two occasions that there were problems with her work and that she must improve. They say no improvement was noticeable and hence her dismissal. They stated that the dismissal was in no way associated with the woman's allegations of sexual harassment. The complaint was dismissed by the Commission when the woman refused to accept the latest offer of settlement from the company. The Commission was of the opinion that the settlement offered was appropriate and that the complainant had an obligation to accept a reasonable settlement offer.

- **Section 9:** *Employment*
- **Grounds:** *Sex/Pregnancy*

A complaint was filed with the Human Rights Commission by a woman who alleged she was discriminated against on the basis of sex/pregnancy. This woman stated she had major employment responsibilities removed from her and given to less experienced male workers while she was on maternity leave. She also stated that she was challenged about her pregnancy by her supervisor and put on the defensive by another supervisor when he questioned her about whether her family responsibilities interfered with her work-related travel. The respondent denied that the woman was discriminated against on the basis of her pregnancy. They stated that the complainant did not have any of her job duties removed from her because of her pregnancy but rather that these specific job tasks had been completed while she was on maternity leave and did not exist after her return. The respondent also stated that the woman was not confronted by her supervisor because of her pregnancy but rather asked about her maternity leave dates from a planning and organizing perspective in reference to accommodating her specific job task. This complaint was dismissed by the Commission.

- **Section 9:** *Employment*
- **Grounds:** *Race*

In early 1995 the Human Rights Commission received a complaint from a man who alleged he had been discriminated against because of his race. The man claimed that he was terminated from his position of employment because of his race. He stated that his job was made redundant despite the fact that other staff in the agency who had less seniority were not terminated nor were their positions made redundant. He believed that his termination was because of his race and not because his position was redundant. The respondent stated that the man was provided with written notification that his position was declared redundant and that the employer had made efforts to locate other suitable employment for the complainant but was unsuccessful. They stated that race was not an issue when they decided to declare the position redundant. The complaint was dismissed by the Commission. However, the respondent appealed the case to the Court of Appeal and the matter is pending.

- **Section 9:** *Employment*
- **Grounds:** *Physical Disability*

In the summer of 1996, the Human Rights Commission received a complaint from a woman who alleged she was being discriminated against by her employer because of a physical disability. The woman stated that she had missed two weeks of work because of a back injury and then four months later missed another two weeks because of the same injury. During her second sick leave period the complainant maintained that she received notice of her dismissal. The woman felt that she had lost her job because of her physical disability. The employer denied the woman's allegation of discrimination on the basis of physical disability and stated that the woman was terminated for just cause. The complaint was dismissed by the Commission.

- **Section 9:** *Employment*
- **Grounds:** *Physical Disability*

A complaint was filed with the Human Rights Commission by two women alleging discrimination on the basis of physical disability. The women stated they had been on strike when they became ill. Because of their illness they were not permitted (by their doctors) to do picket duty. The complainants stated that the union representatives informed them that if they did not return to picket duty their strike pay would be terminated. The women stated they tried to discuss the situation with the union but to no avail. Because they were refused strike pay, the complainants feel that the union representatives discriminated against them on the basis of physical disability. The complaints were referred to a Board of Inquiry.

- **Section 6:** *Service*
- **Grounds:** *Sex and Marital Status*

In the summer of 1997, the Human Rights Commission received a complaint from a woman who alleged she had been discriminated against on the basis of sex and marital status. The woman stated she was a working female whose husband was unemployed. She cited that as such, she was required to pay both property tax and poll tax to her town council. The complainant maintained that if her husband was working and she was unemployed, they would be required to pay the property tax only. As such, the woman felt the town was treating males and females differently and in doing so was discriminating against working women. The town council insisted that it had a list of designated tax payers for property with joint ownership. This complaint was settled to the satisfaction of both parties.

- **Section 6:** *Service*
- **Grounds:** *Marital Status*

A woman filed a complaint with the Human Rights Commission alleging that she was discriminated against by a blood collection agency on the basis of marital status. The woman stated that she was denied the opportunity to donate blood because her ex-husband has AIDS. She said that she has had no contact with her husband since their divorce and to be denied the opportunity to give blood, when her colleagues were allowed to do so, was humiliating to her. The respondent stated that they were not in violation of the Code but rather were acting on a moral and legal responsibility to screen all donors and where necessary to defer donors. Further, they stated that the complainant was deferred from donating blood in compliance with the National Screening Standards. The complaint was dismissed by the Commission

- **Section 6:** *Service*
- **Grounds:** *Religion*

The Human Rights Commission received a complaint of discrimination on the basis of religion in 1996. The complainant maintained that he had rented a space in a local strip mall in order to hold general church services during Sundays. Two months following his acquisition of the rental property the complainant stated he was advised by mall management that he was prohibited from using the space for church services. He also claimed he was threatened with legal action if he did not cease using the space for church services. The complainant believed that the mall management could accommodate this use of the premises but refused to do so. He was of the opinion he was being discriminated against on the basis of his religion. The respondent stated that the prohibition of the complainant's use of the rental space was based on the enforcement of the Town's Zoning Regulations and not on religious discrimination. This complaint was dismissed by the Commission.

- **Section 7:** *Occupy a Dwelling Unit*
- **Grounds:** *Marital Status*

In the Spring of 1996, the Human Rights Commission received a complaint from a man who alleged he had been discriminated against because of his marital status. The man stated that he and his partner had occupied a public housing unit. After she terminated the relationship and moved out, the man was issued notice to vacate the premise. He requested that he be entitled to stay in the house until the decision of custody of the children was decided. The man claimed that if he received custody then he would not be required to vacate the premises. The matter was settled between the two parties and the man was permitted to stay in the house until the issue of custody had been decided.

REFERRED TO BOARDS OF INQUIRY

- **Section 9:** *Employment*
- **Grounds:** *Mental Disability*

In 1996 the Human Rights Commission received, investigated, and attempted to settle the complaint of Michelle Jones against her employers, a volunteer committee and the Department of Human Resources and Employment. Mrs. Jones worked as a live-in supervisor for a developmentally delayed adult. She alleged that she was terminated because of a mental disability. The Commission forwarded her complaint to a Board of Inquiry which agreed that Mrs. Jones' termination was the result of discrimination. The Board refused to accept the employer's assertion that Mrs. Jones was terminated because she failed to report for work. Mrs. Jones was awarded eight months lost wages. The employers have appealed the Board's determination that Mrs. Jones suffered discrimination which precipitated the Commission's appeal for an award of general damages for Mrs. Jones.

- **Section 9**
- **Grounds:** *Marital Status*

On October 25, 1995 Olive Oldford filed a complaint with the Human Rights Commission alleging she had been discriminated against on the basis of her marital status. Ms. Oldford and her husband were both employed with Labrador West Integrated School Board. She alleged that because she was married she was denied the full Northern Married Allowance. Ms. Oldford stated that she received only half of this Allowance. She maintained that her employer advised her that she was only entitled to half of the married allowance because it was policy to pay only one spouse or share it between them. Ms. Oldford states, however, that other co-workers whose spouses are employees of a neighbouring company received the full allowance despite their marital status. The Labrador West Integrated School Board maintained that the policy for the allotment of the Northern

Allowance is not based on marital status but the job of the complainant's spouse; therefore, there is no discrimination on the basis of marital status. The complaint was referred to a Board of Inquiry but was dismissed at this level.

- **Section 9**
- **Grounds:** *Physical Disability*

In February 1996 the Human Rights Commission received a complaint from Glen Dawe who alleged he had been discriminated against because of a physical disability. Mr. Dawe stated he had applied for a position with the Newfoundland Liquor Corporation in 1994. Mr. Dawe was interviewed for the position and his references were checked by the Newfoundland Liquor Corporation. Mr. Dawe had provided references he wished the Corporation to contact, however, the selection board requested that he provide them with the names of his most recent supervisors. Mr. Dawe complied with the request; however he stated he was not comfortable with his most recent supervisor being contacted as a reference. This supervisor was contacted by members of the selection committee. As a result of this contact some questions arose as to Mr. Dawe's health. The Liquor Corporation asked that Mr. Dawe undergo a medical prior to receiving a job offer. Mr. Dawe claimed no one else was requested to undergo a medical and therefore believed he was discriminated against on the basis of this physical or perceived physical disability. The Liquor Corporation maintained that they did not offer him a position because of his conduct during a meeting. The case was sent to a Board of Inquiry. The Board found that while discrimination had occurred toward Mr. Dawe the complaint fell outside of the six-month limitation period and was ineligible for consideration under the Code. The Commission has appealed the decision to the Court.

- **Section 9**
- **Grounds:** *Physical Disability*

During 1996, an adjudicator ruled that a temporary injury such as a broken foot does constitute a disability under the Human Rights Code. This statement arose from a preliminary motion brought by an employer in a case where the Complainant alleged she had been discriminated against on the basis of a physical disability when her employer refused to allow her to return to work with a cast on her foot. The woman had broken her foot and was given a medical certificate for one week's absence from work. However, her employer refused to allow her to return to work at the end of the week citing that her cast maybe regarded in a negative light by customers. The employer argued that the Board lacked jurisdiction because a broken foot is a temporary injury and not a disability as defined in the Human Rights Code. In rendering a decision, the adjudicator stated that determining whether a particular illness was temporary was not relevant in considering what constitutes a disability. The Board cited that the definition of "physical disability" as in the Newfoundland legislation refers to "any degree of infirmity, malformation or disfigurement..." Having regarded the Complainant's broken foot as a disability, the Board dismissed the employer's preliminary motion. The parties subsequently settled the matter to their mutual satisfaction.

- **Section 11:** *Equal Pay for Equal Work*

The complainants, Catherine Parrell, Elizabeth Power, Ruby Murphy and Stella Williams, filed complaints against their employer, the Department of Justice, Adult Corrections Division and their union, the Newfoundland Association of Public Employees, on the basis of sex discrimination in employment and on the basis of equal pay for same or similar work. These women are jailers at the

St. John's Lock-up. They allege that they perform same or similar duties as compared to male correctional officers who also work at the Lock-up; yet there is a significant difference in the salaries of the two groups. While the employer initially disagreed with the complainants, it eventually recognized the discrimination and agreed to pay the women general damages in the amount of approximately \$120, 000. The union objected to the employer's willingness to increase the complainants' wage rate to that of the correctional officers. The Board of Inquiry dismissed the union's objections. The complaint against the union is yet to be heard.

- **Section 12 & 13**
- **Grounds:** *Sexual Harassment*

On August 17, 1994 Lisa Burge filed a complaint with the Human Rights Commission alleging that she was sexually harassed by her employer, Lemuel Lawrence. Ms. Burge cited that she had an enjoyable working relationship with Mr. Lawrence until he made several comments of a sexual nature to her. She felt that the working relationship would never be the same so she resigned. The respondent denied that he made comments of a sexual nature to Ms. Burge. The complaint was forwarded to a Board of Inquiry. The Board found in favour of the complainant and ordered Mr. Lawrence to pay her for lost wages and additional compensation for the pain and humiliation she experienced because of the incidents of sexual harassment.

***IN FOCUS:
SEXUAL HARASSMENT
IN THE WORKPLACE***

IN FOCUS: SEXUAL HARASSMENT IN THE WORKPLACE

Definition: Sexual harassment is defined as any unwanted sexual advances, unwanted requests for sexual favours, and other unwanted verbal or physical conduct of a sexual nature. The Human Rights Code defines the term “harass” as “means to engage in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.”

►Sexual Harassment May Include:

- ☞ Verbal Harassment (sexual comments, jokes, gestures, noises, propositions)
- ☞ Visual Harassment (leering, ogling, display of sexual pictures)
- ☞ Physical Harassment (any physical unwanted touches)¹

Sexual Harassment in the workplace falls into two categories: *quid-pro-quo* and *hostile environment*. Quid-pro-quo refers to the demand for sexual favours in exchange for certain advantages such as a job promotion, better salary, or even continued employment. In contrast, hostile environment refers to situations where an employee is subjected to a work environment that contains offensive sexual conduct or comments and which intimidates or offends the employee.²

►Costs of Sexual Harassment:

Sexual harassment has many costs for the victim, harasser, and for the employer. Sexual harassment is a violation of the Human Rights Code. Costs to the victim in sexual harassment cases include:

- *Mixed feelings of helplessness and guilt*
 - *Increased leave*
 - *Physical problems*
 - *Family problems*
 - *Poor recommendations*
- *Denial of promotions, raises, transfers*
 - *Deteriorating work habits*

¹Sexual Harassment Under the Law

²Sexual Harassment Under the Law

► **Costs to the harasser may include:**

- ⇒ Disciplinary action
- ⇒ Public embarrassment
- ⇒ Reduced opportunities for employment elsewhere
 - ⇒ Cash award to victim
 - ⇒ Family problems
- ⇒ Decreased promotional opportunities

► **Costs to the employer may include:**

- ↳ Decreased productivity of employee
 - ↳ Morale problems
 - ↳ Higher staff turnover
 - ↳ Complaints
- ↳ Tarnished corporate image - adverse publicity
 - ↳ Time lost due to complaint
 - ↳ Compensation to victim

► **Employee Rights:**

If you believe you are a victim of sexual harassment you may contact the office of the Human Rights Commission and explain that you wish to lay a complaint of sexual harassment under the **Human Rights Code**. The Human Rights Commission will examine your complaint and if accepted it will follow the complaint process outlined earlier in this report.

What You Should Do:

If you feel you are being sexually harassed some things you might want to do include:

1. Make it clear to the harasser that the conduct is unwelcome and unacceptable.
2. Document each case of sexual harassment, i.e., time, place, date, person involved, description of the type of harassment, and witnesses. If there are witnesses, have them sign your documentation.

3. Check with co-workers to see if they have experienced similar harassment and document these cases.

4. Report all cases of sexual harassment to a person in a position of authority.

5. Use the legal protection available. Before you decide to leave your job because of sexual harassment, report the case to the Human Rights Commission and obtain advice on the proper action to take.

6. Remember, you do not have to tolerate sexual harassment. Say "no" firmly and indicate you will not be intimidated and that you will take whatever action is necessary to protect your rights.

***Don't feel guilty: In sexual harassment cases,
it is the harasser who is wrong - not the victim.***

► **Employer Responsibilities:**

As an employer, you may be held accountable for any violations of the Human Rights Code by your employees. If one of your employees is found to have committed sexual harassment against a person under his/her supervision, you can be made party to that complaint. The Supreme Court has stated that employers must provide a harassment free work environment for employees.

What can you do:

To protect yourself and your company some things you can do as an employer to prevent sexual harassment in the workplace are:

1. Ensure that all staff are aware of what sexual harassment is and your policy on sexual harassment.
2. Discuss sexual harassment in management and supervisory training sessions. Also, inform supervisors of the repercussions of sexual harassment and what it means to the work environment.
3. During orientation sessions for new staff, deal with the issue of sexual harassment and make it known that you will treat any complaints seriously.
4. Ensure that parties to complaints of sexual harassment are protected from reprisals from each other, or other workers, during the investigative process.

CASE STATISTICS

1996-1997

CASE STATISTICS 1996- 1997

Total Files	
1996	1997
54	71

TOTAL ALLEGATIONS FOR 1996				
	Brought Forward	New Cases	Total Files in Section	Percentage of Total Complaints
Section 6 (Services)	12	10	22	12.79%
Section 7 (Accommodations)	0	3	3	1.74%
Section 9 (Employment)	65	46	111	64.53%
Section 11 (Wages)	0	4	4	2.33%
Section 12 (Harassment)	11	8	19	11.05%
Section 13 (Sexual Solicitation)	3	4	7	4.07%
Section 14 (Publications)	4	0	4	2.33%
Section 15 (Retaliation)	1	1	2	1.16%
TOTALS	96	76	172	100%

TOTAL ALLEGATIONS FOR 1997

	Brought Forward	New Cases	Total Files in Section	Percentage of Total Complaints
Section 6 (Services)	5	18	23	14.02%
Section 7 (Accommodations)	2	2	4	2.44%
Section 9 (Employment)	43	57	100	60.98%
Section 11 (Wages)	4	0	4	2.44%
Section 12 (Harassment)	8	10	18	10.98%
Section 13 (Sexual Solicitation)	4	7	11	6.71%
Section 14 (Publications)	2	1	3	1.83%
Section 15 (Retaliation)	1	0	1	.61%
TOTALS	69	95	164	100%

Note: A file can contain several allegations

***FREQUENTLY
ASKED QUESTIONS***

FREQUENTLY ASKED QUESTIONS

*Injustice
anywhere is a
threat to justice
everywhere.*

Martin Luther King

1. *May I file a complaint with the Human Rights Commission because I have been wrongfully dismissed?*

The Human Rights Commission does not handle wrongful dismissal complaints. However, if you have been dismissed on the basis of one of the protected grounds under the Human Rights Code, i.e. race, sexual orientation, disability, etc, you may have grounds for a complaint.

2. *If I file a human rights complaint may I file a civil action regarding wrongful dismissal?*

If you have been dismissed from your employment for grounds other than in the Human Rights Code you should consult a lawyer as to whether you have grounds for civil action. If the situation is one that fits under the Human Rights Code there is no law that prohibits you from having a civil action ongoing at the same time.

3. *May I file a personal harassment complaint with the Human Rights Commission?*

No. The Human Rights Commission can only accept complaints if they are filed under the appropriate grounds and areas outlined in the Human Rights Code. For example if two employees could not get along because they did not like each other they would be unable to file a complaint with the Human Rights Commission.

It is never too late to give up your prejudices.

Henry David Thoreau

4. *Are employers allowed to insist employees take random drug tests?*

Yes, if the employer can establish the drug tests as a good faith occupational requirement or for post-incident assessment. For example, trucking companies may argue that random drug testing for drivers may be a good faith job requirement. However, it would be difficult for a restaurant operator to insist that it is a good faith occupational requirement for waiters to be tested for drugs.

5. *May employers use video cameras to observe the employees' day-to-day activities?*

This question, while important, is not considered a human rights issue. Surveillance of employees' privacy is not covered under the Human Rights Code. However, this issue may be covered in another piece of legislation.

6. *Do I have any rights?*

As important as they may be, not all rights are protected under the Human Rights Code. The Human Rights Commission has jurisdiction only in the specific grounds and areas outlined in the Human Rights Code.

7. *How much medical information is an employer entitled to know?*

An employer is only entitled to medical information that is job related. Requests for medical information from an employee are limited to data which indicates the employee's capabilities in relation to specific job duties.

LOOKING FORWARD

LOOKING FORWARD

...the human rights protected by the Code have intrinsic value independent of any pecuniary losses suffered by the complainant. The loss of such rights are by themselves independent injuries which a complainant suffers.

E.P. Mendes, Ontario
Board of Inquiry,
Parks v. Christian
Horizons (1992) 92
CLLC, 17, 041

December 10, 1998 marks the fiftieth anniversary of the United Nations proclamation of the Universal Declaration of Human Rights. The Declaration sets out a standard for all countries to strive towards in their provision and protection of human rights. Outlined in the document are 30 basic rights, including such things as freedom from discrimination, freedom of opinion and expression, the right to employment, the right to equal pay for work of equal value, as well as the right to an adequate standard of living.

To celebrate the fiftieth anniversary, the Human Rights Commission will be promoting awareness of the Declaration through public awareness campaigns, contests, and information sessions. You can get involved in the celebration of the fiftieth anniversary by organizing activities in your workplace, school, or organization. Be on the lookout for events that you can attend during the celebration.

