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FROM THE EXECUTIVE DIRECTOR

The Human Rights Commission endeavours to be a professional organization which promotes respect for and observance of the Human Rights Code for Newfoundland and Labrador. The Human Rights Code, which was enacted in 1971 by the legislature proclaiming commitment to the principles within the Universal Declaration of Human Rights, has been amended several times since to secure improved protections for the residents of the province. In passing these amendments, government continues to reaffirm its commitment to the protection of human rights. In recent years, the Code was amended to prohibit discrimination and harassment because of sexual orientation. We are pleased with this progress and expect continued improvements to close outstanding gaps in human rights protection. While family status is a protected area in some provinces of Canada, it is not protected in Newfoundland's human rights legislation. As part of the mandated responsibility of the Commission, the Commission has advised government of these gaps and anticipate improved legislation for the new millennium.

The Commission, in promoting an awareness of human rights, endeavours to meet its mandated obligations by balancing rights with responsibilities. The Commission believes in building a human rights culture that belongs to everyone including employers, employees, teachers, landlords, politicians and community members, etc.

The Commission develops and distributes educational materials in an attempt to prevent human rights violations. On December 10, 1999, the Commission released a publication, "Policies and Procedures For Preventing Sexual Harassment in the Workplace". This publication is a guide to assist small employers in developing internal policies and in investigating complaints internally to avoid costly complaints before the Human Rights Commission.

The Commission staff continues to be available to assist employers and other potential respondents to resolve issues before the issues become human rights complaints.

In 1998, the Commission accepted 98 complaints for investigation. The number of complaints increased in 1999 to 126. I congratulate and commend the staff for their efforts in handling this increased workload.

We look forward to continuing the work of the Commission in the year 2000. We hope to carry out our responsibilities in a manner of which we can be proud and that will receive broad public acceptance for the Human Rights Commission.

Sincerely yours,

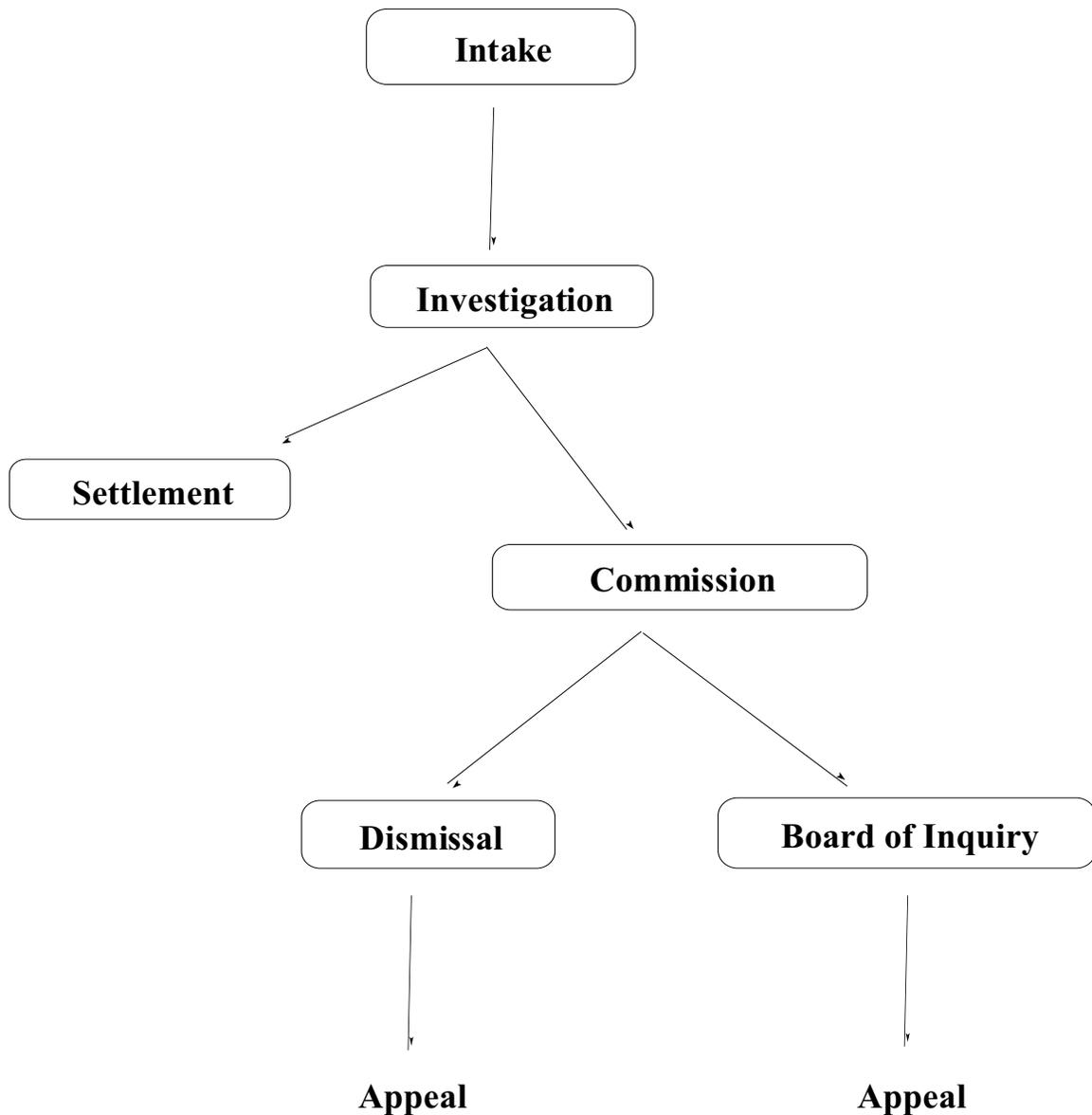
*Gladys Vivian
Executive Director*

FUNCTIONS OF THE COMMISSION

The Commission shall:

- ▶ forward the principle that every person is equal in dignity and rights;
- ▶ promote compliance with the legislation by investigating and resolving complaints of unlawful discrimination and harassment;
- ▶ develop and distribute information and conduct educational programs designed to eliminate discriminatory practices;
- ▶ advise and help government departments and agencies on activities concerning human rights;
- ▶ co-operate and help individuals, organizations or groups with human rights matters;
- ▶ advise government on suggestions and recommendations made by individuals, organizations, or groups concerning human rights.

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

THE COMPLAINT PROCESS

Investigating The Complaint

The Commission will accept for investigation complaints made within six months of the event giving rise to the complaint where it appears there may be a violation of the Human Rights Code. The Commission will notify the respondent of the complaint prior to commencing an investigation. The Commission is mandated to endeavour to effect a settlement and provides for this to occur at any stage in the investigation process. Where a settlement is not reached, the Executive Director will report on the case to the Commissioners who will determine whether or not to refer the matter to a Board of Inquiry. Settlements must also be approved by Commissioners, and, where a settlement is reached, the Commission will notify the parties that no further action will be taken unless the terms of the settlement are not complied with.

Once the Commissioners order a complaint to a Board of Inquiry, the Executive Director will notify the Chief Adjudicator of the Adjudication Panel of this decision. A copy of the file will be sent to the parties. When the Commission dismisses a complaint, the parties may apply to the Supreme Court within 30 days for an order that the Commission refer the complaint to a Board of Inquiry.

Board Of Inquiry

The Human Rights Code provides for the appointment by Lieutenant Governor In Council of an Adjudication Panel which is separate and apart from the Human Rights Commission. The Adjudication Panel is mandated to hear complaints referred by the Commission to a Board of Inquiry and to issue a written decision on the matter.

A Board of Inquiry is a formal public hearing where the complainant and the 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 is subject to appeal to the Trial Division of the Supreme Court.

***FROM OUR FILES ...
CASE SUMMARIES 1998-1999***

From Our Files
Case Summaries 1998-1999

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

A woman who applied for Income Support Benefits in January 1998 was advised that she was not eligible for Income Support because her male roommate was receiving a student loan. In calculating her own income, the complainant was told she would have to include her roommate's income as well, as he was regarded as her common-law partner. The complainant stated that they were not in a common-law relationship. Under the policy of the Department of Human Resources and Employment, if two persons of the same sex are sharing accommodations, they are assessed on an individual basis. Because the complainant was sharing accommodations with a male, they were assessed on a family unit basis. The complainant states that this policy discriminates against her on the basis of sex, marital status and sexual orientation. The Commission accepted the information of the respondent that the couple were living in a common-law relationship.

The complaint was dismissed by the Commission.

- **Section 6: Services**
Grounds: Physical Disability

A woman filed a complaint on behalf of her son, who has a serious disability, after being told in June 1999 that her son's student assistant hours would be reduced from five hours per day to two hours per day when he returned to school in September.

Upon notification of the complaint, a representative of the respondent met with the complainant and assured her that her son would be provided with an assistant for more than two hours per day. Once school commenced, the complainant's son was provided with five hours of student assistance time per day. The complainant was of the opinion her son should have six hours student assistant time per day to ensure that he had someone to watch him during lunch time. After considering all the information presented by both parties, the Commission considered the five hours of student assistant time to be reasonable accommodation.

The complaint was dismissed by the Human Rights Commission.

- **Section 6: Services**

- Grounds: Mental Disability**

A man filed a complaint alleging his forty-seven year old brother, who has a mental disability and operates at the level of a 10-12 year old person, had been discriminated against when he was refused admission into a local club.

The respondent replied by stating that the refusal of admission was because of a concern for the well-being of the handicapped person who attended the club on a regular basis. The respondent said that she would have no problem with complainant's brother attending the club if he was accompanied by someone who was responsible and would watch out for his safety.

During the investigation the parties signed a settlement agreement stating that the brother would attend the club unattended and that the respondent would not be responsible for his safety. The Commission rejected the settlement agreement and dismissed the complaint. In dismissing the complaint, the Commission was of the opinion that the respondent was reasonable in requiring the complainant's brother to be accompanied by a responsible adult when visiting the club.

- **Section 6: Services**

- Grounds: Physical Disability**

The complainant filed a complaint with the Human Rights Commission alleging discrimination in the provision of services on the basis of physical disability. The complainant worked as a taxi driver and held a class 4 licence, which is a licence that permits the holder to operate taxis, ambulances and buses for up to 24 passenger. A class 4 licence also permits the holder to operate a private vehicle, that is, it is inclusive of class 5 licence privileges.

In November 1991, August 1992 and January 1993, the complainant suffered epileptic seizures. As a result of these seizures, the complainant's driving privileges were suspended by the respondent. On January 7, 1994, the complainant's class 5 licence was restored by the respondent. At this time the complainant applied to have his class 4 licence restored; however, his request was denied. The complainant applied again on January 18, 1996, to have his class 4 licence restored. At this time he was issued a class 4 licence; however, in June 1996 the respondent again revoked the complainant's class 4 licence stating it had been issued in error.

The respondent, in the reply to the complaint, stated that the complainant's class 4 licence was revoked because the complainant was not in compliance with the medical standard considered necessary to hold a class 4 driver's licence. The standard dictates that taxi drivers, who have epilepsy, must be seizure free and off medication for five years.

The complaint was dismissed by the Human Rights Commission.

- **Section 6: Services**
Grounds: Race

A complaint to the Commission alleged discrimination on the basis of race. The complainant had been admitted to a health care facility for surgery. An attending nurse pricked herself with a needle used to provide treatment to the complainant. As a result, the complainant was asked to provide a blood sample for testing.

The complaint to the Commission alleged that the nurse at first attempted to take blood from the complainant while she was sleeping. The complainant alleges that she was also pressured by other nurses and staff to provide a sample of her blood. After refusing to provide the blood sample, the complainant alleged that she was ignored by hospital staff and not properly cared for. The complainant alleged that she was treated in this manner because of her race.

The respondents denied any discrimination on the basis of race. The respondents stated that they had followed acceptable procedures as outlined in their policy and procedures manual for dealing with exposure to blood-borne pathogens. They stated that these procedures are followed with everyone regardless of race and that the complainant's version of events are inaccurate. The Commission was of the opinion that the investigation did not support the allegation of racial discrimination.

The Commission dismissed the complaint.

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

A woman filed a complaint with the Human Right Commission alleging discrimination on the basis of marital status when she was denied a student loan. The complainant had been eligible for a student loan as a single person, but when she married she was denied a student loan based on her husband's income.

The respondent's position is that married students are not treated differently than single students. Their costs and contributions are devised in the same manner. All available resources of every student is assessed.

The respondent submitted information verifying that the complainant and her roommate were indeed a couple living in a family unit. The Income Support Policy requires that the income of both individuals of a family unit would be considered in determining eligibility. Family status is not a protected area in the legislation.

The complaint was dismissed by the Commission.

- **Section 6: Services**
Grounds: Disability

In September 1997, the complainant applied for a specific medical plan from an insurance company. Originally she had desired only dental coverage, but because of company policy, she was told she was obligated to apply for medical coverage in order to receive dental benefits. The complainant alleges that shortly after she applied for the medical plan, she was informed by the insurance company that they had rejected her application because she has cerebral palsy. The complainant maintained that she had been discriminated against on the basis of her physical disability.

The investigating officer was successful in negotiating a settlement of the dispute in which the complainant received dental coverage and an apology from the insurance company.

- **Section 6: Services**
Grounds: Physical Disability

The complainant, who suffers from congenital cerebral palsy, has attended university since 1987. In 1992, she received a Bachelor of Arts degree from the respondent university. In completing her B.A., the complainant normally studied three courses per semester because the complainant's disability results in her requiring twice as long as other students to do the same quantity of work.

The complainant was admitted to the School of Social Work at the respondent university in September 1998; however, she stated she was required to do five courses for her full placement which caused her to fail and she was subsequently expelled.

The complainant alleged that the university failed to provide reasonable accommodation for her disability by not allowing her sufficient time to complete her courses or by reducing her workload to three from five courses and by refusing her assistance such as a note taker or personal care assistant.

The respondent denied any allegations of discrimination on its part that led to the complainant's failure in the field placement. The respondent reported that the complainant was allowed to take her field placement over a longer period than other students, which was analogous to taking fewer courses per semester.

The respondent maintained that the complainant failed the placement courses because of performance and competence issues. The respondent outlined the problems of the complainant during the field placement, most of which could not reasonably be improved with further accommodation.

The complaint was dismissed by the Human Rights Commission.

- **Section 6: Services**
Grounds: Sex

A man filed a complaint with the Human Rights Commission saying he had been discriminated against in obtaining legal representation because he is male. The complainant said his ex-spouse had no problem in obtaining legal representation and had been represented by four different solicitors. The investigation by the Commission staff did not support the complainant's allegations. The investigation showed that when the complainant was denied a lawyer, he did not meet pre-existing objective standards for legal aid. The complaint was dismissed by the Commission.

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

A woman filed a complaint with the Commission alleging discrimination on the basis of marital status after her request for vehicle renewal registration had been rejected. The woman alleged that the reason her registration was being withheld was because her husband had outstanding debts with another government department. During the investigation, the arrears were deleted from the complainant's record and the license was issued. The complainant withdrew the complaint.

- **Section 6: Services**
Grounds: Mental Disability

A woman filed a complaint on behalf of her daughter, who has a pervasive development disorder, alleging discrimination on the basis of a mental disability. The daughter had a full-time student assistant in kindergarten. When she was promoted to grade one, the complainant was told her daughter would not have a full-time assistant because of cutbacks. During the investigation of the complaint, a full-time student assistant was assigned with the complainant's daughter and the complaint was withdrawn.

- **Section 7: *Rental of Accommodation***
Grounds: *Physical Disability*

In August 1998, the complainant filed a complaint with the Human Rights Commission alleging discrimination on the basis of physical disability when she was denied the opportunity to rent an apartment. The complainant is blind and uses a working dog.

The respondent, the owner of the apartment, did not want children or pets in his apartments. The complainant explained that she is blind and used a working dog and that it was against the law to refuse to rent the apartment because of the dog. The respondent continued to be concerned, and he wanted to know who would clean up after the dog. After the complainant explained that she had been taught how to do that, the respondent still had reservations and refused to rent to her. The woman then filed a complaint with the Human Rights Commission.

The matter was resolved when the respondent, upon being notified of the complaint, permitted the complainant and her dog to reside at the apartment.

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

The complainant is a nurse and had been working for the respondent for eight years. In February 1997, she stopped working because of a health problem which persisted for ten months. During the time she was absent from work, the complainant continued to collect her full seniority because of a clause in her collective agreement which allowed a one year absence without affecting seniority. At the end of the ten months, the complainant returned to work on a part-time basis on the advice of her physician. At that time, she was informed by her employer that she would receive seniority for the part-time hours only. The complainant alleges she has been discriminated against on the basis of disability.

The complaint was settled when the respondents agreed to permit the complainant to accumulate full seniority from January 1998 until such time as her employment status is clarified.

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

In July 1998, the complainant, a fishplant worker, requested a move to another area of the plant. The move would result in a less senior employee being bumped. Work in that particular area involved the unloading of boats and the loading of transport trucks. The complainant alleged she was denied the right to move because she was a woman, and the employer had never had a woman work in that area before.

The employer acknowledged that the denial of a right to bump was inappropriate and a settlement was reached between the parties. The complainant received compensation for lost wages, and the employer agreed to develop a human rights policy. The employer also agreed to change its existing policies and to consider all employees for available positions regardless of gender.

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

The complainant had been employed with the respondent for 17 years, the last six of which were as the office administrator.

In 1996 the respondent began to restructure the office due to cutbacks in funding, which resulted in loss of positions at the respondent's operation. The complainant stated that the upheaval at work and the illness of a family member, led to her suffering from stress and depression. While the employee was off work because of stress and depression, her employment was terminated by her employer. The complainant thinks she lost her position because of her illness and therefore was discriminated against on the basis of a mental disability.

The respondent denied any allegation that the complainant had been discriminated against on the basis of a mental disability. The respondent decided that the position of office administrator was no longer required because the staffing levels at the respondent's office had been decreased by two people, from five to three. Therefore, the office administrator position was declared redundant and replaced by the position of secretary/bookkeeper. The respondent maintained that the complainant lost her position due to office restructuring and not because of a mental disability.

The complaint was referred to a Board of Inquiry. Prior to the Board convening, the matter was resolved.

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

The complainant, a social worker, stated in his complaint that around September 1997, he began to suffer from stress due to a combination of work and personal circumstances. As a result of this stress, the complainant stated he was absent from work from October 6, 1997, to October 8, 1997, and again from November 24, 1997, up to the time of dismissal, January 2, 1998. The complainant alleges his dismissal was because of his mental disability.

The respondent stated that the complainant was dismissed for cause because of poor work performance, disciplinary misconduct and for working at his own company while being absent from the respondent's place of business on sick leave. The matter was settled between the parties during the investigation of the complaint.

- **Section 9: *Employment***
Grounds: *Religion*

A woman filed a complaint against her employer alleging discrimination on the basis of religion after receiving a lay-off notice. The complainant initially commenced employment with the respondent in October 1996 and was laid-off on December 23, 1996.

The complainant was rehired by the respondents in March 1997 and remained working there until December 22, 1998. In August 1997, the complainant advised her employer that she could no longer work from sunset on Friday until sunset on Saturday as it was against her religious beliefs.

The complainant alleged that on December 15, 1998, she noticed that she was scheduled to work on Saturday, December 19, 1998, and when she spoke to the assistant manager about it, he told her it was in her best interest to report to work. The complainant stated her employment was terminated on December 22, 1998, which she believes was because of her religious beliefs and her employers unwillingness to accommodate them.

The respondent maintains that the complainant was laid-off because of seasonal adjustments to the workforce along with 70 or 80 other employees. The respondent stated that the complainant was advised of her lay-off on December 11, 1998, giving her two weeks notice. The respondent maintains that the complainant was not discriminated against on religious or any other grounds, but her lay-off was due to absences from work and scheduling conflicts with her other job.

The complaint was dismissed by the Commission.

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

The complainant was employed by the respondent from 1992 until February 26, 1998. While in the employ of the respondent, the complainant suffered a workplace injury to her back in October 1996 and was off work for several months. The complainant re-injured her back in September 1997 and was off on Workers' Compensation until February 26, 1998. After completing her Ease Back Program and receiving her medical clearance to return to work, the complainant worked three shifts and then her employment was terminated by the respondent.

The complainant alleges she was told by her employer that her employment was being terminated because it was felt she could not perform her duties because of her back. The complainant is of the opinion she was discriminated against because of her disability.

The respondent's position was that the complainant was not capable of performing the necessary duties required for her position, and, since no other position was available that the complainant was qualified for, her employment was terminated. The respondent stated that based on the complainant's need to take pain killers for her back, having to visit her chiropractor daily and her physiotherapist advising her to take a fifteen-minute break every hour, the complainant was not ready to return to work.

The complaint was dismissed by Commission.

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

The complainant was a full-time dispatcher with the respondent commencing January 1, 1994. Some time in September of 1997, the complainant says he started to gamble - playing video machines. In finance his gambling, he says he was advanced money (charges) which was deducted from his pay cheque. The most he says he owed the respondent was \$1,400.00, all of which he paid in full. The gambling caused the complainant stress, both in his personal life and at work. He says that his employer dismissed him after the debt had been repaid citing that he was no longer trusted as the reason for the dismissal. The complainant says that when he realized his gambling was out of control he sought help and stopped.. He believes his dismissal constitutes discrimination on the basis of mental disability.

The respondent states that the complainant was dismissed for cause. For example, he was ordered not to use the charge system and he continued to do so, incurring considerable debt. He was ordered not to seek funds from the drivers and he continued to do so. The complainant was late for shifts on a regular basis, and he was also sarcastic and derogatory toward the drivers while on the radio. Once the respondent became aware of the complainant's gambling problems, his employment was continued but rules were put in place that he was to strictly abide by. After three months with no improvement, the complainant was dismissed.

The complaint was dismissed by the Human Rights Commission.

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

The complainant applied for the position of relief firefighter with the respondent in March of 1998. The complainant wrote an exam for this position on April 16, 1998; however, she was later informed that she would not receive a call regarding further evaluation for the position. Three other females besides the complainant had also applied for the position; however, none of them were selected. Complainant was of the opinion that this denial of employment constituted discrimination on the basis of gender.

The respondent acknowledges that the complainant and other females applied for the relief firefighter position and wrote the required exam. The respondent state that the reason none of the female candidates were contacted for further evaluation for the position was because they scored below the required mark on their exam.

The complaint was dismissed by the Human Rights Commission.

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

A man who had been employed for seven years was dismissed by his employer 6 weeks after returning from a 14-month absence because of illness. The complaint to the Human Rights Commission said the complainant and two other employees who had missed time from work because of illness were dismissed from their jobs.

The respondent stated that the company had initiated a complete review of the operations to determine which branches were profitable and to assess and review how they did business. Staffing changes were the result of this review with some departments experiencing downsizing while other departments experienced growth. The respondent reported that the shop where the complainant worked experienced continual and prolonged decline in sales resulting in the lay-off of the complainant. The respondent reported than when a lay-off occurs, the employee is subject to recall if the work situation improves. The reply to the complaint said the complainant was recalled to work in February 1999 but did not respond and later voluntarily removed himself from the call back list and requested termination of employment.

The complaint was dismissed by the Commission.

- **Section 9: *Employment***
Grounds: *Sex (Pregnancy)*

The complainant commenced work with the respondents on March 3, 1998. Shortly thereafter she missed time from work because of a pregnancy related illness. Upon returning to work, the complainant advised her employer she did not have medical clearance. The complainant then filed a complaint with the Commission.

The respondent maintains that they were concerned about the complainant's health, and, since she was having trouble with her pregnancy, they requested she visit her doctor on June 2, 1998. They wanted to ensure she was medically fit to perform the duties of her position. The complainant was unable to provide this clearance; therefore, the employer refused to allow her to return to work. The respondent denied any allegation of discrimination on the basis of sex and pregnancy.

The complaint was dismissed by the Human Rights Commission.

- **Section 9: *Employment***
Grounds: *Sexual Orientation*

A man who was employed as a cleaner in a retail establishment alleged in a complaint filed with the Commission that he had been discriminated against by his boss and co-workers because of his sexual orientation. The complainant alleged that his co-workers verbally harassed him, and his supervisor refuse to deal with their behaviour. He said in his complaint that his supervisor ignored him and treated him differently upon learning of his sexual orientation. He said he was not considered for other positions for which he was qualified, and the positions were given to other employees who had less qualifications.

The complainant abandoned the complaint during the Commission's investigation. After several unsuccessful attempts by the officer to contact the complainant, the Commission dismissed the complaint.

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

On February 5, 1998, the complainant filed a complaint with the Commission in which he alleged he was discriminated against by his employer on the basis of a physical disability. The complainant had worked for his employer for about twenty years when, in June 1997, his doctor instructed him to stay off work due to tendonitis in his elbow. The complainant followed his doctor's advice and remained off work for about five months on Workers' Compensation. When the complainant returned to work, he alleges he was informed by his employer that he was not

entitled to 20 days paid vacation, which was normal after twenty years service. He was informed that he was entitled to 11.5 days because he had been off work on Workers' Compensation. The complainant stated that other workers who had been off work due to illness and were paid by the company's sick leave insurance did not lose paid vacation time when they returned to work.

The respondent denied any allegations of discrimination. The employer responded that the company policy has always been that if an employee is absent from work due to lay-off, Workers' Compensation, or is on weekly indemnity or long-term disability as provided by their health plan, the employee does not accumulate vacation benefits.

The complaint was dismissed by the Human Rights Commission.

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

The complainant was employed with the same employer for 10 years. In January of 1999, she commenced parental leave after adopting two children. After notifying her employer that she was ready to resume her duties, the complainant was informed that other arrangements had been made and there was no available job for her. The complaint to the Human Rights Commission alleged discrimination on the basis of sex.

The respondent challenged the jurisdiction of the Commission to proceed with this complaint noting that a "person's parental status is not one of the grounds under which an individual may claim discrimination by an employer." The Commission dismissed the complaint noting that the complaint would more appropriately fit under family status, and family status is not a protected ground in the legislation.

- **Section 9: *Employment***
Grounds: *Sexual Orientation*

A complaint was filed with the Human Rights Commission alleging discrimination on the basis of sexual orientation when the complainant's employment was terminated. The complainant had been a supervisor in a fast-food restaurant and said, to the best of his knowledge, he had been a good employee.

In June of 1998, the complainant and his partner held a commitment ceremony. The owner and general manager of the restaurant were invited to attend the ceremony. In August 1998, the complainant met with the same two people to discuss problems and concerns with his work performance. The complainant stated in his complaint to the Commission that the discussions about work performance were an excuse to terminate his employment because of his sexual orientation.

The respondent replied to the complaint by stating that the complainant was dismissed for cause. The reply noted that the complainant acknowledged the problem by signing two written warnings, and when the next complaint was registered with the respondent, the complainant was dismissed for cause. The respondent said he and the staff had known about complainant's sexual orientation since his initial hire. He reported that the complainant had been rehired in January 1998 after a period of absence from work, regardless of his sexual orientation. The respondent noted that the complainant was dismissed solely because of his poor work habits and for no other reason.

The complaint was dismissed by the Human Rights Commission.

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

The complainant, who filed a complain against her employer alleging discrimination on the basis of mental disability, had been employed as a Licenced Practical Nurse on a call-in basis since 1995.

On June 24, 1999, the complainant's doctor recommended that she remain off work until July 13, 1999, because of stress. This leave was extended to August 4, 1999. The complainant said she faxed the doctor's note for the period June 24, 1999, to July 13, 1999, to her employer; however, the employer stated they did not receive the fax. As a result of this, the employer refused to pay the complainant's sick leave and refused to credit her with seniority for the period the complainant was absent. The investigation revealed that the complainant moved to a new residence while she was off on sick leave and failed to provide her employer a telephone number when she could be contacted. The respondent denied discrimination and said the complainant's lost benefits because she failed to follow proper procedures.

The complainant had also filed a grievance with her union against the employer. As a result of the grievance, the employer offered a settlement which included compensation for sick leave benefits, adjustment in seniority, and compensation for hours lost as a result of the lost seniority. The Commission was of the opinion that the settlement offered through the grievance procedure was reasonable.

The Human Rights Commission dismissed the complaint.

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

A man who suffers from depression filed a complaint against his employer alleging discrimination on the basis of mental disability. The complainant said he missed time from work

because of the depression, and on July, 17, 1998, his employer demoted him from the position of used car sales manager to full-time salesperson.

The respondent replied to the complaint by stating that it is essential to have a used car sales manager present in the workplace for the successful operation of the business. The respondent said because he did not know when the complainant would be returning to work, he had no choice but to replace him as a used car sales manager. The respondent said that he accommodated the complainant by offering him alternate employment as a commission salesperson with a possibility of movement to another position, involving a base salary, commission structure and a compensation package. The respondent had suggested to the complainant that they discuss these options when he was ready to return to work. The complainant was of the opinion he had been demoted and filed a human rights complaint.

The complaint was dismissed by the Human Rights Commission.

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

A man who incurred an injury on the job was off work and in receipt of Workers' Compensation from January to March 1999. When he returned to work on March 22, 1999, his employment was terminated. The reason given for the termination was shortage of work. In his complaint to the Human Rights Commission, the complainant alleged there was no shortage of work because the 20 year old man hired to replace him was kept on. The complainant said he was discriminated against because of his age and his physical disability.

The employer denied the allegations of discrimination and said the complainant was terminated because of his constant socializing on the job and because they did not have employment for him in the future.

The parties agreed to settle the matter on a "without prejudice" basis for \$3,000.

- **Section 9: *Employment***
Grounds: *Religion*

A complaint was filed by a woman against her former employer on November 6, 1998, alleging she had been discriminated against on the basis of her religion. The complainant had been hired as a cashier at a retail outlet in Central Newfoundland on October 8, 1998. She said everything went well until October 14, 1998, at which time she was asked what her religion was by the other cashiers. She advised them that she is of the Salvation Army faith. She said the other cashiers, including the chief cashier, are of the Pentecostal faith. The complainant reported that her employment was terminated later that day by the chief cashier who told her she was too

slow. The complainant was of the opinion she had been doing a good job and filed a complaint with the Commission alleging discrimination on the basis of her religion.

The respondent replied that the complainant, a new employee, was subject to a 30-day probationary period. During the complainant's time with the respondent, the supervisor noted problems with her basic skills. Customer's names were misspelled and there were errors in handling money and writing cheques. These problems were brought to the complainant's attention. She was told that if she did not show improvement within a few days, she would be terminated. The complainant did not return to work for her next shift and eventually filed the complaint alleging discrimination on the basis of religion. The respondent stated that religion was never an issue because staff of all religious denominations are employed at the store. The respondent stated that there was no religious discrimination as the complainant just never returned to work when she was advised that the company wanted to see some improvement in her work.

The complaint was dismissed by the Human Rights Commission.

- **Section 11: *Discrimination in Pay***

The complainant commenced employment with the respondent on November 29, 1994. She says when she was initially hired she worked 37.5 hours per week while her male co-workers worked 40 hours per week. On January 7, 1997, she was promoted, and, shortly thereafter, a male was promoted to the same department and paid more money than the complainant. She filed a complaint against the employer and the union.

The respondent's position is that the complainant is the only person in her classification, and her rate of pay was negotiated in the current Collective Agreement. The male referred to in the complaint is in a different technical classification with different responsibilities. Some of the differences between the two positions are the size and weight of the equipment being serviced and the differences in tools employed for their repair and maintenance. An examination of the training required for certification reveals substantial differences in the two classifications. The respondent believes that the dissimilarities between the two positions objectively justify the wage difference.

The Union's position is that neither the Union nor its officers discriminated against the complainant. The Union states that the complainant and the male she referred to do not have the same job title and are not in the same department. The Union further submits that the duties of the two are not similar or so nearly similar as to warrant a similarity in wages. The male is a technician, qualified and certified to service life rafts. The complainant is a technician qualified to service only suits.

On October 13, 1998, the complainant notified the Commission that she wished to withdraw her complaint against the Union but proceed against her employer. Both the complaint against the employer and the complaint against the Union were dismissed by the Human Rights Commission.

- **Section 12: *Harassment in an Establishment***
Grounds: *Sex*

The complainant commenced employment with the respondent in mid-August 1997. In a complaint to the Human Rights Commission, she alleged that a customer, who frequented her place of employment, had sexually harassed her. She said the customer made comments to her about her physical appearance saying she had a good shape and that he would take hold of her hand. On one occasion, the customer touched her breast as she was cleaning a table. She reported this to supervisory personnel and was told, "S...s like that, get use to it." The complainant co-workers told her that this same customer made inappropriate comments to them such as, "you have a nice butt," and, "come home with me".

The complainant stated that she had reported the customer's behaviour to her manager on several occasions, but he did nothing. She said she refused to serve this customer and was eventually fired. Her complaint to the Human Rights Commission stated that she had been dismissed because she complained about sexual harassment.

The respondent stated that the allegations made by the complainant could not be substantiated. The respondent said there had been other instances where the complainant complained of improper behaviour from customers. The respondent stated that they are of the opinion the complainant was fabricating the story and that she also attempted to coerce other staff into supporting her story. The respondent said the complainant was dismissed from her job because of her poor attitude towards customers and supervisors and because of her inability to perform her duties.

The complaint was ordered to a Board of Inquiry by the Human Rights Commission. The complainant, however, withdrew the complaint prior to the commencement of the hearing.

STATISTICS
1998-1999

***Human Rights Complaints Filed In 1998
By Primary Section and Grounds***

	Services	Rental of Accommodation	Employment	Harassment	Pay Discrimination	Total
<i>Race</i>		1	2			3
<i>Religion</i>			1			1
<i>Sex</i>	3		33	2		38
<i>Marital Status</i>	2		2			4
<i>Physical Disability</i>	7	1	17			25
<i>Mental Disability</i>	5		13			18
<i>Political Opinion</i>			1			1
<i>Age</i>			3			3
<i>Sexual Orientation</i>			1			1
<i>Pay Discrimination</i>					4	4
Totals	17	2	73	2	4	98

***Human Rights Complaints filed in 1999
by Primary Section and Grounds***

	Services	Rental of Accommodation	Employment	Harassment		Sexual Solicitation	Retaliation	Total
				Sec. 8	Sec. 12			
<i>Race</i>	1		1					2
<i>Religion</i>			3		1			4
<i>Sex</i>	1		20		2			23
<i>Marital Status</i>	1		41					42
<i>Physical Disability</i>	8		30	1				39
<i>Mental Disability</i>	2	1	9					12
<i>Age</i>			1					1
<i>Sexual Solicitation</i>						2		2
<i>Retaliation</i>							1	1
Totals	13	1	105	1	3	2	1	126

Complaints filed under each section of the Human Rights Code in 1998

<i>Section</i>	<i>Number</i>	<i>Percent</i>
6	17	17.34
7	2	2.04
9	73	74.49
11	4	4.09
12	2	2.04
<i>Total</i>	98	100.00%

Complaints filed under each section of the Human Rights Code in 1999

<i>Section</i>	<i>Number</i>	<i>Percent</i>
6	13	10.3
7	1	.8
8	1	.8
9	105	83.3
12	3	2.4
13	2	1.6
15	1	.8
<i>Total</i>	126	100.00%

Complaints filed under each ground in 1998

<i>Ground</i>	<i>Number</i>	<i>Percentage</i>
<i>Race</i>	<i>3</i>	<i>3.06</i>
<i>Religion</i>	<i>1</i>	<i>1.02</i>
<i>Sex</i>	<i>38</i>	<i>38.77</i>
<i>Marital Status</i>	<i>4</i>	<i>4.09</i>
<i>Physical Disability</i>	<i>25</i>	<i>25.51</i>
<i>Mental Disability</i>	<i>18</i>	<i>18.36</i>
<i>Political Opinion</i>	<i>1</i>	<i>1.02</i>
<i>Age</i>	<i>3</i>	<i>3.06</i>
<i>Sexual Orientation</i>	<i>1</i>	<i>1.02</i>
<i>Pay Discrimination</i>	<i>4</i>	<i>4.09</i>
<i>Total</i>	<i>98</i>	<i>100.00%</i>

Complaints filed under each ground in 1999

<i>Ground</i>	<i>Number</i>	<i>Percentage</i>
<i>Race</i>	<i>2</i>	<i>1.6</i>
<i>Religion</i>	<i>4</i>	<i>3.1</i>
<i>Sex</i>	<i>23</i>	<i>18.3</i>
<i>Marital Status</i>	<i>42</i>	<i>33.3</i>
<i>Physical Disability</i>	<i>39</i>	<i>31.0</i>
<i>Mental Disability</i>	<i>12</i>	<i>9.5</i>
<i>Age</i>	<i>1</i>	<i>.8</i>
<i>Sexual Solicitation</i>	<i>2</i>	<i>1.6</i>
<i>Retaliation</i>	<i>1</i>	<i>.8</i>
<i>Total</i>	<i>126</i>	<i>100.00%</i>

Complaints Closed By The Commission By Section In 1998

	<i>Dismissed</i>	<i>Settled</i>	<i>Withdrawn</i>	<i>Board</i>	<i>Total</i>
<i>Section 6</i>	<i>6</i>	<i>3</i>	<i>1</i>	<i>1</i>	<i>11</i>
<i>Section 7</i>		<i>1</i>			<i>1</i>
<i>Section 9</i>	<i>31</i>	<i>13</i>	<i>5</i>	<i>7</i>	<i>56</i>
<i>Section 11</i>		<i>3</i>			<i>3</i>
<i>Section 12</i>	<i>3</i>	<i>1</i>	<i>1</i>	<i>2</i>	<i>7</i>
<i>Section 13</i>		<i>1</i>		<i>1</i>	<i>2</i>
<i>Total</i>	<i>40</i>	<i>22</i>	<i>7</i>	<i>11</i>	<i>80</i>

Percentage action by Commission

Board	13.75 percent
Withdrawn	8.75
Settled	27.50
Dismissed	<u>50.00</u>
	100.00 percent

Complaints Closed By The Commission By Section In 1999

	<i>Dismissed</i>	<i>Settled</i>	<i>Withdrawn</i>	<i>Board</i>	<i>Total</i>
<i>Section 6</i>	<i>10</i>	<i>1</i>	<i>9</i>	<i>3</i>	<i>23</i>
<i>Section 7</i>				<i>1</i>	<i>1</i>
<i>Section 9</i>	<i>35</i>	<i>18</i>	<i>1</i>	<i>59</i>	<i>113</i>
<i>Section 11</i>				<i>1</i>	<i>1</i>
<i>Section 12</i>	<i>1</i>				<i>1</i>
<i>Section 13</i>				<i>1</i>	<i>1</i>
<i>Total</i>	<i>46</i>	<i>19</i>	<i>10</i>	<i>65</i>	<i>140</i>

Breakdown by percent

Board	46.4
Withdrawn	7.1
Settled	13.6
Dismissed	<u>32.9</u>
	100.0

***BOARDS OF INQUIRY
UPDATE***

1. *Lori Allen v. Klien's Hair Care and David Warren*

Lori Allen from St. John's filed a complaint with the Commission alleging she was sexually harassed by David Warren. Ms. Allen said her employment with Klien's Hair Care was terminated when she refused Mr. Warren's advances.

The complaint was heard by Chief Adjudicator, Mary O'Brien, February 1999. A decision is pending.

2. *Walter Winsor v. Provincial Demolition and Terrance Penney*

Walter Winsor from Freshwater, Placentia, filed a complaint with the Human Rights Commission alleging that he was denied a job because of his age. When Mr. Winsor and two younger men approached Mr. Penney, the owner of Provincial Demolition, the younger men were hired but the complainant was not, and his complaint stated he was advised that age was a factor. Mr. Winsor stated he had been discriminated against on the basis of age.

Mr. Penney reported that Mr. Winsor was not hired because he has no experience in the field of demolition and because he felt Mr. Winsor was unable to do the job. Mr. Penney said he formed this opinion because Mr. Winsor was dressed inappropriately for the job. Mr. Winsor was not wearing a hard hat or construction boots. He arrived at the work site wearing loose clothes and flip flops. Mr. Penney said when Mr. Winsor was asked to submit a resume, he did not do so. According to Mr. Penney, Mr. Winsor was not hired because he felt Mr. Winsor was unable to do the job and not because of his age.

The complaint was ordered to a Board of Inquiry by the Human Rights Commission. The hearing took place in October 1999. A decision is pending. The respondent did not attend the hearing and was not represented by legal counsel.

3. *Miguel Padron v. Abbey Management*

Miguel Padron from St. John's filed a complaint with the Commission alleging he had been discriminated against by his landlord because of his race. Mr. Padron, who is Cuban, alleged he was called derogatory names by the caretaker of the apartment he rented from Abbey Management, and when he complained to the landlord, he was given an eviction notice.

The complaint was heard on October 19-20, 1999, by Chief Adjudicator, Mary O'Brien. A decision is pending.

4. *Jeannine Winter v. NetWorth Management and Robert Patten*

Jeannine Winter from Wabush filed a complaint with the Commission alleging her former employer, Robert Patten, discriminated against her on the basis of sex by refusing to take her back to work when she was ready to return from maternity leave. Ms. Winter's complaint said Mr. Patten would not lay-off the woman who was hired to replace her while she was on maternity leave and told her there was no job for her.

The complaint was heard in Labrador City by Chief Adjudicator, Mary O'Brien, on December 15, 1999. A decision is pending.

5. *Nettie Ryan v. Health Care Corporation of St. John's*

Nettie Ryan filed a complaint with the Commission alleging discrimination on the basis of sex and physical disability. Mr. Ryan said she was hired by the Health Care Corporation in the Spring of 1997 as a part-time temporary Domestic Worker. In October of the same year, her shifts were reduced. When she inquired about this, Ms. Ryan was told it was because of something in her file from a period she was employed at the Grace Hospital from 1978 until 1989. Ms. Ryan was of the opinion that the items referred to were absences from work because of problems with two pregnancies and because of migraine headaches.

The respondent advised the Commission that Ms. Ryan was terminated from her part-time domestic position because of her previous attendance record.

The complaint was not settled during the investigation, and the Commission ordered the appointment of a Board of Inquiry. Glen Picco has been appointed to adjudicate the complaint. The hearing is scheduled for April 10-11, 2000.

6. *Tobin et al. v. Fogo Island Co-operative Society*

Thirty-three individual complaints were filed by women alleging discrimination on the basis of marital status against the Fogo Island Co-operative Society. The women, who were members of the Co-operative Society for various number of years, say they were refused employment because their husbands sold fish to other buyers. Some of the complainants state that they were recalled to work after their husbands signed a declaration agreeing to sell their catch to the Fogo Island Co-operative Society. Some complainants said their husbands were workers on boats owned by someone else and had no control over when the fish were sold.

The complaints were not settled during the investigation and the Commission ordered the appointment of a Board of Inquiry. The hearing is scheduled to convene before Chief Adjudicator, Mary O'Brien, on Tuesday, March 28, 2000.

7. *Judy Shea and Brian Johnson v. Memorial University and the Department of Human Resources and Employment*

A Board of Inquiry was ordered by the Commission to hear two separate complaints filed against Memorial University and the Department of Human Resources and Employment. Both complainants have a hearing impairment and allege discrimination on the basis of physical disability. They say they were not provided with a sign language interpreter to access university courses and such denial of service constitutes discrimination contrary to the provision of the Human Rights Code.

The complaints were not settled during the investigation, and the Commission ordered the appointment of a Board of Inquiry.

The Board of Inquiry is to be heard by Chief Adjudicator, Mary O'Brien. The hearing is scheduled to begin May 30, 2000.

8. *Bridget Skehans v. Department of Works, Services and Transportation*

Bridget Skehans, who is employed as a temporary purser/deckhand on the Bell Island ferry, exercised bumping rights for a position on the MV Green Bay Transport. The MV Green Bay Transport contained one common living accommodation for all staff. Ms. Skehans, who was the only female on the ship, says her employer refused to accommodate her by providing a separate room on the ship or a room on shore. Her choices were to pay for her own accommodations or sleep in the same room with the male employees.

The complaint was not settled during the investigation, and the Commission order the appointment of a Board of Inquiry. The Board of Inquiry is to be heard by Chief Adjudicator, Mary O'Brien. The hearing is scheduled to begin on October 3, 2000.

9. *Alice Murphy v. Pentecostal Senior Citizen's Home*

Alice Murphy filed a complaint against her employer alleging discrimination in employment on the basis of sex. Ms. Murphy commenced employment with the respondent in 1995 as a Registered Nursing Assistant. A few months later, a male Registered Nursing Assistant was hired and the new employee was given preference in working with males. The complainant questioned this practice and the practice was eventually changed but by this time the complainant was behind the male in seniority.

The complaint was not settled during the investigation, and the Commission order the appointment of a Board of Inquiry. The Board of Inquiry is to be heard by Chief Adjudicator, Mary O'Brien. The hearing is scheduled to be heard on July 6, 2000.

10. *Gladys Tulk v. The Department of Health and Community Services and Roseanne Wellon*

Gladys Tulk of Ladle Cove, who was employed as a home care aide for Roseanne Wellon, filed a complaint with the Commission alleging discrimination on the basis of pregnancy. Ms. Tulk's employment was terminated when she became pregnant. In her complaint to the Commission, Ms. Tulk says that Ms. Wellon did not want the complainant lifting her because of the pregnancy.

The complaint was ordered to a Board of Inquiry by the Commission. The Board of Inquiry is to be heard by Adjudicator, Maeve Baird. The hearing is scheduled to convene on July 12, 2000.

11. *Eric Salter v. The Department of Forest Resources and Agrifoods*

Eric Salter filed a complaint alleging discrimination on the basis of age against his former employer, the Department of Forest Resources and Agrifoods, and the Public Service Commission. Mr. Salter said his position as District Manager in Forest Ecosystems had been made redundant in May of 1996, and he was terminated. The complainant said he later learned that a younger person had been placed in his position. His complaint to the Commission said he had been involved with his employer via the Public Service Commission as part of a Re-Employment Priority Program for redundant employees but was unsuccessful in finding other employment. In July 1998, Mr. Salter said he obtained information which led him to believe that age was a factor in his termination, and he filed a complaint with the Human Rights Commission.

The respondent stated that Mr. Salter's position had been declared redundant as part of a general downsizing pursuant to budgetary expenditures. The respondent said there were thirty-nine employees who were younger than Mr. Salter who were terminated along with six employees older than Mr. Salter and two who were the same age.

The Commission order the appointment of a Board of Inquiry. The Board of Inquiry is to be heard by Adjudicator, Valerie Marshall. The hearing is scheduled to begin on June 13, 2000.

12. *Carol Evans v. Health Care Corporation of St. John's*

Carol Evans worked in health care for 30 years. She was employed for 28 years as a medical service aid at the Grace Hospital and for 2 years as a porter at St. Clare's Hospital. Ms. Evans says a position for lead hand with the porters became available and was to be given to the person with the most seniority. Ms. Evans says she had the most seniority but was refused the job because of her record of sick leave over the past 30 years.

The Commission ordered the complaint to a Board of Inquiry. The Board of Inquiry will be heard by Adjudicator, Gillian Butler. A date for the hearing is pending.

13. *Michelle Noseworthy v. Marie J. Green Law Office*

Michelle Noseworthy of Labrador City filed a complaint with the Commission alleging discrimination on the basis of mental disability. Ms. Noseworthy, who was employed as a secretary with Marie J. Green Law Office, says she required a period of absence from work because of stressful working conditions. Ms. Noseworthy says when her employer discovered that the medical problems were stress-related, her employment was terminated.

The Commission order the complaint to a Board of Inquiry. The Board of Inquiry is to be heard by Chief Adjudicator, Mary O'Brien. The hearing is scheduled to begin on June 20, 2000.

14. *Evely et al. v. Health Care Corporation of St. John's and the Newfoundland Association of Public Employees*

Fifteen women filed individual complaints with the Commission alleging discrimination in employment on the basis of sex. All complainants are employed at the Waterford Hospital in St. John's as Licenced Practical Nurses (LPN). The complainants say there are two groups of LPN positions. One group is referred to as person LPN positions, which can be occupied by males or females, and the other group of LPN positions is reserved for males only. The complainants say the hospital has set a quota for male LPN's and only males are called in to fill these positions. As a result, junior males are moving ahead in seniority above previous senior females. As these males gain more seniority than the females, in addition to being called in to fill male LPN positions, they are also called in to fill the LPN person positions.

The Commission order the complaints to a Board of Inquiry. The Board of Inquiry is to be heard by Chief Adjudicator, Mary O'Brien. The hearing is schedule to begin on May 17, 2000.

15. *Ayesha Fiech v. Memorial University of Newfoundland*

Ayesha Fiech of St. John's filed a complaint with the Commission alleging discrimination in employment on the basis of sex. Ms. Fiech alleges she was refused employment in a contractual position at Memorial University because she was pregnant at the time of hiring.

The Commission ordered the complaint to a Board of Inquiry. The hearing is scheduled to convene on February 1, 2000, before Chief Adjudicator, Mary O'Brien.

16. *Darcy Russell v. Canadian Auction Group*

Darcy Russell of St. John's filed a complaint with the Commission alleging discrimination on the basis of marital status against his former employer, Canadian Auction Group. Mr. Russell, who was employed as a yard manager, said in his complaint that he was called into the office and told that although his work performance was great, he was being terminated because of his common-law relationship with another employee who was being terminated.

The company responded that Mr. Russell posed a security risk had he remained with the company. They say Mr. Russell would be exposed to confidential information about the company, its plans and its employees. The respondent expressed concern that Mr. Russell's common-law spouse was quite unhappy with the company and that she might obtain confidential information related to their business plans.

The complaint was ordered to a Board of Inquiry by the Commission. The Board of Inquiry is to be heard by Adjudicator, Glen Picco. A date for the hearing is pending.

17. *Laetitia Jesso v. Mote's Enterprise and William Mote*

Laetitia Jesso filed a complaint against her employer, Mote's Enterprises Ltd. and William Mote, alleging sexual solicitation and sexual harassment. Ms. Jesso said she was hired by Mr. Mote to manage a convenience store. She said Mr. Mote gave her a 1% share in the newly formed business and named her as Vice President.

Ms. Jesso alleged in her complaint that Mr. Mote wanted to have an affair with her. She says he also wanted her to pick out house plans and to buy a new truck with him. She says Mr. Mote gave her six months to decide if she would have a personal relationship with him, and, when she refused, he terminated her employment.

The respondent denied all allegation of sexual solicitation and sexual harassment. The respondent said the complainant was hired on a trial basis to determine if she could adequately perform the duties of the position. He says her performance was unsatisfactory and her employment was terminated.

The complaint was not resolved during the investigation, and the Commission ordered the appointment of a Board of Inquiry. The Board of Inquiry is to be heard by Chief Adjudicator, Mary O'Brien. A hearing is scheduled to begin on September 15, 2000.

PROMOTIONAL ACTIVITIES

The Human Rights Commission is committed to preventive intervention. We believe we can prevent human rights violations through educational activities. In addition to conducting seminars and making presentations, the Commission staff are also available to discuss problems and issues with employers and landlords before they results in human rights complaints.

In 1998 and 1999, the staff at the Human Rights Commission conducted approximately 85 presentations and seminars throughout the province. In addition, the Commission released two new publications: *Annotated Human Rights Code* and *Policies and Procedures for Preventing Sexual Harassment in the Workplace*. To mark the 50th anniversary of the signing of the Universal Declaration of Human Rights, the Commission launched a web site which can be accessed at www.gov.nf.ca/hrc. The Commission participated in a Human Rights Fair, along with several other agencies, in December of 1998 and 1999. The Commission also contributed to the Newfoundland and Labrador Human Rights Association publication entitled, *Into a New Light: Respect and Dignity for All; A Literacy and Economic Rights Resource Reader*.

***AMENDMENTS TO
HUMAN RIGHTS CODE***

The following amendment to the Human Rights Code received Royal Assent on June 5, 1998:

28.1(1) Where a board of inquiry has begun to consider, review, hear and decide upon a matter that has been referred to it, and appointment of a member expires before he or she gives a decision, the appointment of that member shall, for the purpose of deciding upon the matter, be considered to have been extended and the member continues to have all the power conferred by this Act to consider, review, hear and decide that matter.

(2) Subsection (1) applies to extend the appointment of a member of a board of inquiry whose appointment may have expired before this section comes into force as well as to the extension of the appointment of a member whose appointment expires after this section comes into force.

The following amendments to the Human Rights Code received Royal Assent on December 14, 1999:

A BILL

AN ACT TO AMEND THE HUMAN RIGHTS CODE

Analysis

- | | |
|--------------------------------|------------------------------------|
| 1. S.21 Amdt.
Investigation | 2. S.25 Amdt.
Boards of inquiry |
|--------------------------------|------------------------------------|

*Be it enacted by the Lieutenant-Governor and House of Assembly
in the Legislative Session convened, as follows:*

1. Section 21 of the Human Rights Code is amended by adding immediately after subsection (4) the following:

(5) An application for an order under subsection (4) shall be made by way of originating application within 30 days of the receipt by the complainant of notice that the commission has declined to refer the complaint.

2. (1) Subsection 25(1) of the Act is amended by deleting the words “on the recommendation of the minister”.

(2) Subsections 25(5) and (6) of the Act are repealed and the following substituted:

(5) The Lieutenant-Governor in Council may terminate the appointment of a member of the panel for cause.

(6) Members of a panel shall be paid at rates fixed by the Lieutenant-Governor in Council.

***FROM THE
SUPREME COURT OF CANADA***

British Columbia v. B.C.G.E.U.; Two Steps Forward

In September 1999 the Supreme Court of Canada released its decision in British Columbia v. B.C.G.E.U. (British Columbia Government Employees' Union) in which it ruled that the aerobic standard used by the Government of British Columbia to test the fitness of forest firefighters discriminates against women. The decision represents a step forward for all those who analyse the application of human rights legislation to employment situations because the Court articulated a new framework for conducting that analysis. The decision also represents a step forward for equality seekers because it illustrates the requirement for vigilance in applying human rights principles when public safety is an issue in setting employment standards. This comment expands upon these advancements.

Prior to the decision in B.C.G.E.U., all claims of discrimination in employment had to be subjected to an initial analysis of whether the alleged discrimination was direct or adverse effect. Direct discrimination occurs when a group identified by a prohibited ground of discrimination (race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, physical disability or mental disability) is targeted for different treatment. For example, the employment rule that airline pilots must have 20/20 vision targets the vision impaired as being unqualified for that job. Employers could defend a claim of direct discrimination by showing that the employment rule is a good faith occupational qualification, that is, that the rule was implemented without ulterior motives or in bad faith and that it is reasonably necessary for the safe and efficient performance of the job.

Adverse discrimination occurs when a neutral employment rule has adverse consequences for an employee who is a member of a group characterized by a prohibited ground of discrimination. For example, a rule that says all employees must wear hard hats is neutral. It does not target members of any group. This neutral rule, however, does have a negative impact on members of religious groups which must wear a head dress as part of their religious observances. Employers facing a claim of adverse effect discrimination can attempt to establish that they have accommodated the effected employees to the point of undue hardship.

In B.C.G.E.U. the Supreme Court adopted a unified approach for analysing claims of discrimination which should prove easier than that previously outlined. The Court reaffirmed that all human rights claimants must establish a prima facie case of discrimination. A prima facie case is one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the employee's favour in the absence of an answer from the employer. The Court stated that once a prima facie case of discrimination is established, the employer can establish a good faith occupational qualification if it can show;

- a) the employment standard or rule was adopted for a purpose that is rationally connected to job performance;

- b) the particular standard or rule was adopted in an honest and good faith belief that it was necessary to the fulfilment of that legitimate work related purpose; and
- c) the standard or rule is reasonably necessary to the accomplishment of that legitimate purpose. This includes a requirement to demonstrate that it is impossible to accommodate without undue hardship.

The adoption of this analysis marks a step forward in our understanding and application of the good faith occupational qualification defence to claims of discrimination. It eliminates the requirement that the type of discrimination be identified at the early stages of the process. In certain fact situations, this identification has proven difficult and confusing.

The Supreme Court's decision in B.C.G.E.U. is also a step forward in our understanding of the insidious ways in which discrimination can creep into the process of setting employment standard. The facts of the case illustrate this point. Tawney Meiorin had been employed for three years as a member of the Initial Attack Forest Fire Fighting Crew. The evidence established that she competently performed her duties but when the Government adopted a new series of fitness tests for forest fighters she lost her job. Ms. Meiorin passed three of the fitness tests but failed a fourth. The test was designed to assess her aerobic capacity and required that she run 2.5 kilometres. She failed this test by taking 49.4 seconds longer than was prescribed as an acceptable standard. The court acknowledged that the evidence established that Ms. Meiorin's failure to pass the test did not pose a serious safety risk to herself, her co-workers or the general public when she was doing her job.

The facts of the case illustrate that large numbers of individuals can be eliminated from employment opportunities when public safety is used as a reason to enforce restrictive employment standards which lack a proper evidentiary base. The conclusion of the Supreme Court of Canada represents a step forward in promoting diligence in the establishment of employment rules.

M. v. H. Ground Rules for Same Sex Couples Separation

In May 1999 the Supreme Court of Canada, in M. v. H., ruled that Section 29 of the Ontario Family Law Act which limited the scope of that Act to heterosexual couples violated Section 15 of the Charter of Rights and Freedom and was thus inoperative. In so doing, the Court stated that gay couples are no different than heterosexual couples in their ability to share loving unions and suffer tragic consequences when those unions disintegrate.

The Court proceedings used initials to identify the parties instead of the couple's full name to shield them from the vast publicity the case generated. H and M met in 1980 while on vacation in Tibet. When they returned to Toronto they co-habited and started an advertising business. In 1992 they split up under acrimonious circumstances.

All provinces have legislation which sets the ground rules for marriage and common law breakdown. The Ontario Family Law Act was available to these types of couples to facilitate the economic consequences of divorce or separation. When M was left penniless after her break-up with H she launched an action under the Family Law Act. The presiding judge ruled that Section 29 which defined spouse as referring to only heterosexual couples was unconstitutional. The Ontario Court of Appeal and the Supreme Court of Canada agreed.

The Supreme Court stated that same sex relationships face significant pre-existing disadvantages and vulnerability which is exasperated by the Family Law Act. It noted that the interests affected by the legislation is fundamental, namely, the ability to meet basic financial needs following the breakdown of a relationship characterized by intimacy and economic dependence. The Court observed, "... general social reality does not detract from the principle that dependencies can and do develop irrespective of gender in intimate conjugal relationships."

The decision is a harbinger of pending changes in provincial and federal legislation which discriminate against same-sex couples. It is an open question as to whether these changes will occur voluntarily or through judicial pronouncement.

THE COMMISSIONERS

E. Jane House, Chair

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 retired as a teacher at the Newfoundland School for the Deaf in 1999, where she worked for 23 years. 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 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.

Calvin Patey, Vice-Chair

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.

Bert Riggs, Commissioner

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 Telegram*, both of which document some aspect of Newfoundland's history, people and culture.

Carol McDonald, Commissioner

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 business 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.

Elizabeth Calloway, Commissioner

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.

***CONTACTING THE
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