

Human Rights Commission

Province of Newfoundland and Labrador

Report for 2000-2001

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THE COMMISSIONERS

The Human Rights Commission is composed of five members appointed by the Lieutenant Governor In Council. The following is a brief background on the Commissioners:

Joan F. Myles, B.Sc., LL.B, Chair

Ms. Myles was called to the Bar of Newfoundland in 1983. She received a Bachelor of Laws degree from Dalhousie University in 1982.

Joan F. Myles, B.Sc., LL.B joined the firm Benson Myles as an associate in September, 1995 after having practised law for twelve years in the private sector, as corporate counsel for a large Newfoundland public utility and as Legal Director for the Law Society of Newfoundland.

Her preferred areas of practice are administrative law, secured financing, commercial and residential real estate and wills and estates. In her practice she advises clients in the cable broadcasting and banking businesses on administrative, regulatory and commercial lending issues. She also advises companies and individuals on real estate acquisitions and dispositions, as well as individuals with estate planning and wealth management planning requirements.

Ms. Myles has served as an elected member of the Avalon Consolidated School Board and an appointed member of the Provincial Advisory Council on the Status of Women. She served ten years as an appointed lay member of the Newfoundland Medical Board. She is currently a member of the Panel of Adjudicators of the Royal Newfoundland Constabulary Public Complaints Commission that investigates and hears complaints by the public against police officers, and has been a member of that panel of adjudicators since 1993. Ms. Myles is a member of the Canadian Bar Association and the Alternate Dispute Resolution Subsection of the Newfoundland Branch. She also recently became the Director of Communications for the Canadian Transport Lawyers Association.

During her tenure as Legal Director of the Law Society of Newfoundland, Ms. Myles conducted investigations of complaints against lawyers, presented results to the Complaints Authorization Committee and managed the complaints hearing process. She also worked on the Committee that reviewed the discipline process and recommended reform of that process through revision and amendment of the *Law Society Act*.

In addition to carrying on her law practice, in July 2000, Ms. Myles accepted an appointment as Chairperson of the Newfoundland Human Rights Commission. The term of this appointment is five years. The provincial *Human Rights Code* prescribes the functions of the Commission. Its primary function is the investigation of complaints of discrimination and harassment.

Calvin Patey, Vice-Chair

Calvin Patey completed his contract as the Director of Education for the Labrador School Board in 2001, and he is presently self-employed. He holds a Master of Education, in Curriculum-Secondary English, from Memorial University of Newfoundland, and Graduate Studies in Educational Administration at OISE-University of Toronto. He is a Life Member of the Newfoundland and Labrador Teachers' Association and received the Association's Barnes Award for Professional Development in 1988. He has been a member of the Newfoundland and Labrador Arts Council, the Melville Public Library Board and the Happy Valley - Goose Bay Arts Council. Mr. Patey has been a co-ordinator of the Labrador Arts Festival and has been involved in the Provincial High School Theatre Festival at regional and provincial levels. His most recent voluntary activity was membership on the Board of the Health Labrador Corporation, where he was instrumental in raising funds for the installation of art throughout the newly opened Labrador Health Centre.

Bert Riggs, Commissioner

A native of Grand Bank, Bert Riggs is a graduate of Memorial University, holding the degrees of Bachelor of Arts (Honours) and a Bachelor of Education. He is currently on leave from his position as Archivist with the Centre for Newfoundland Studies at MUN, attending the University of Toronto, where he expects to complete a Master of Information Studies degree in April 2002. Riggs spent ten years (1980-1990) on the Board of the Newfoundland-Labrador Human Rights Association, a volunteer-based education and advocacy organization, and served for five of those years as President. 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. In April 2000 he was appointed to a four-year term as a lay Benchler with the Newfoundland Law Society. He writes a weekly column, which documents some aspect of Newfoundland history, for the St. John's Telegram. He has been a member of the Human Rights Commission since 1989.

Carol McDonald, Commissioner

Carol McDonald is retired from the business community having been self-employed for many years. Some of her business experiences 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.

Roland King, Commissioner

(Information not available)

“Human Rights are about enhancing our right to be equal and protecting our right to be different.”

Michael Ignatieff, *The Rights Revolution*

EXECUTIVE DIRECTOR'S COMMENTS

It is my privilege to submit the 2000 - 2001 Report for the Human Rights Commission. I welcome the appointment of two new Commissioners. Joan Myles, an associate lawyer with the firm Benson Myles, has been appointed Chairperson and Roland King, Manager of King's Fishery, has been appointed Commissioner. I also extend to Jane House, our outgoing Chairperson, best wishes in her retirement.

The Commission accepted 183 complaints for investigation in 2000 and 2001. One hundred and sixty-five files were closed for the two-year period as staff endeavour to continue reduction in the time frame for concluding investigations. Over the past two years, complaints have been closed at an average of 33.5 weeks per complaint. This time frame measures the length of time from the date of receipt of the complaint to the date the Commissioners made a decision on the matter. Seventeen and a half per cent of the complaints closed by the Commission, or 28 complaints, were ordered to Boards of Inquiry over the two-year period.

I would like to take this opportunity to thank staff and Commissioners for their dedication and hard work. During this time of fiscal restraint, staff have persisted in maintaining quality and timely service. With limited resources, difficult choices often have to be made. One choice we have had to make is to concentrate our energy and resources on dealing with complaints. I hope, as the Commission moves forward, that we can begin to expand our focus to include a public awareness campaign and educational programs. The Commission must have a presence in all communities throughout the Province of Newfoundland and Labrador. By communicating and interacting with our stakeholders, we can continue to advance the principle of equality for everyone.

Our Commission, as a member of the Canadian Association of Statutory Human Rights Agencies (CASHRA), supported a Resolution in 2001 asking all Provincial Governments in Canada and the Federal Government to improve protections for those who are disadvantaged by poverty, by including "social condition" as a protected ground in their respective human rights legislation. CASHRA is an Association established to link Human Rights Commissions throughout Canada. Each year a national conference is hosted by one of the member Human Rights Commissions. Our Commission will be requesting, from Government, financial support to host this annual conference in Newfoundland and Labrador in the near future.

The Human Rights Commission celebrated its 30th anniversary in 2001. The legislation creating the Commission was proclaimed law in 1971 and the first Commission was appointed at that time. The legislation has been amended several times since 1971 to improve protections afforded to residents of this Province. As we move into a new year, we look forward to continued improvements in human rights legislation and once again we will urge Government to act upon the Commission's 1997 recommendations for substantive amendments to the legislation we enforce.

*Sincerely yours,
Gladys Vivian
Executive Director*

FUNCTIONS OF THE COMMISSION

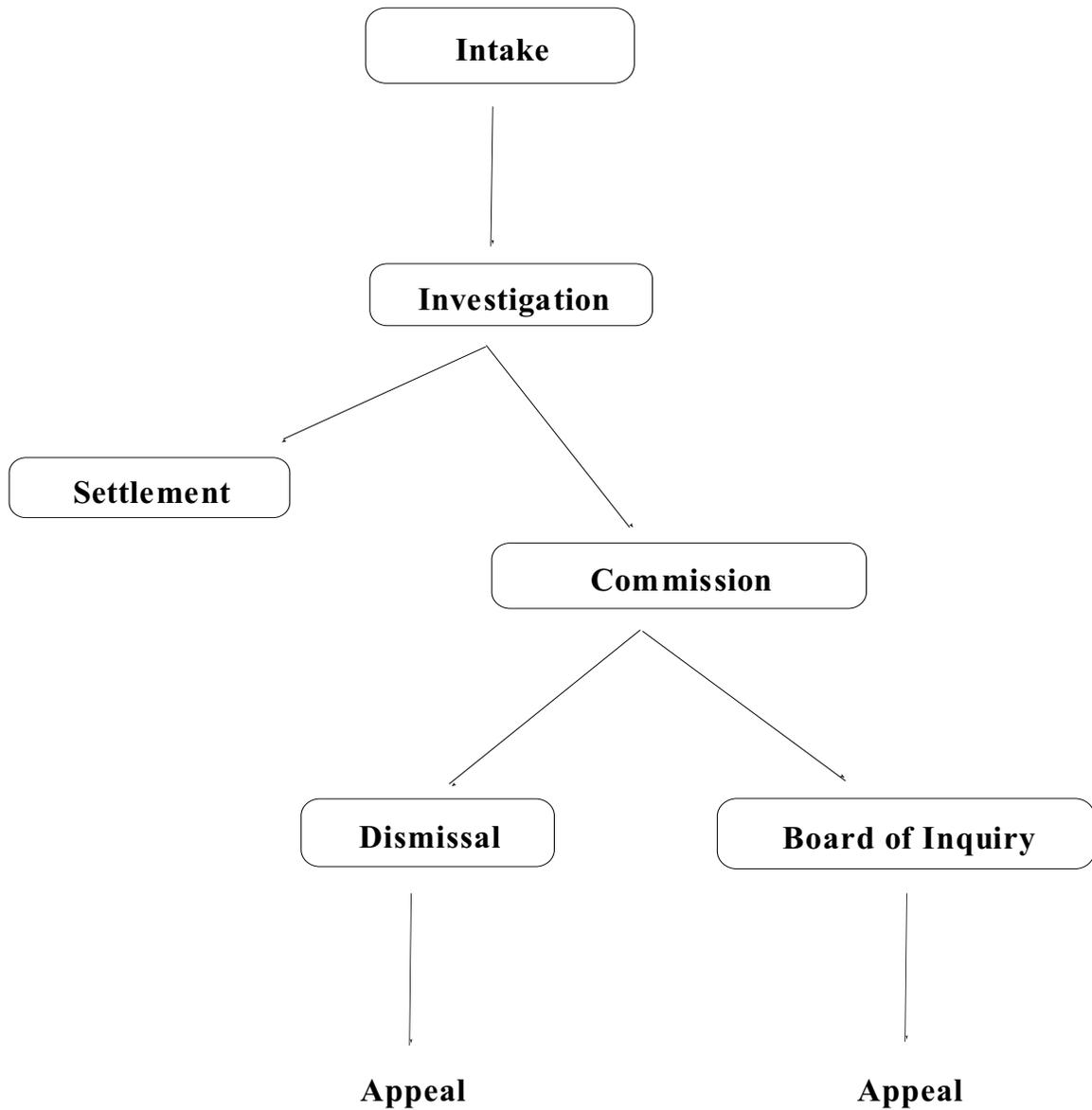
The Commission shall:

- ▶ 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.

“Where, after all, do universal human rights begin? In small places close to home ... Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity, without discrimination.”

Eleanor Roosevelt

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 ...
SOME CASE SUMMARIES 2000-2001***

***From Our Files
Selected Case Summaries 2000-2001***

The following case summaries are a representative sample of the kind of complaints which have been brought to the Commission over the past two years.

- **Section 6: Services**

Areas: *Physical Disability and Mental Disability*

A woman filed a complaint on behalf of her son who has a hearing impairment and has been diagnosed as having dyslexia. In her complaint, the woman stated that her son received special help at school for one hour per day. She was of the opinion that he required a student assistant or special needs teacher for several hours per day.

The respondent's position was that given accepted guidelines and available resources, the boy was provided a reasonable level of intervention based on his identified needs.

The Commission dismissed the complaint stating there did not exist a reasonable basis in the evidence to warrant forwarding the complaint to a Board of Inquiry.

- **Section 6: Services**

Area: *Mental Disability*

A woman filed a complaint on behalf of her 11 year old son. The son has a below normal I.Q. and is unable to read and write. The complainant stated that her son was being pushed through the grades without grasping the body of knowledge for each grade. She was of the opinion that her son was being discriminated against because the school board refused to implement Spell Read Canada, an available reading program which she thought would help him to read.

The Commission, in dismissing this complaint, made it clear that the respondents have a duty to accommodate the son's disabilities when providing him with educational services. However, the principle of accommodation to the point of undue hardship does not oblige service providers to present a perfect solution. Accommodation already in place included individual reading instruction under the Early Success Reading Program; one-on-one instruction with a Special Education Teacher; adjustment to the regular classroom routine; and an emphasis on building self-esteem.

- **Section 6: Services**

Areas: *Physical Disability and Mental Disability*

A woman filed a complaint on behalf of her son stating he required the services of a speech

language pathologist to properly access his education. She had requested the respondents provide her son with the services of a speech language therapist on a one-on-one basis for up to two hours per day.

The respondents' guidelines provided for one-on-one speech therapy to certain students. The complainant's son did not meet these criteria. The respondents were already accommodating the boy's needs by providing a challenging needs teacher; a non-categorical special education teacher; a classroom teacher; and a student assistant.

The Commission dismissed the complaint.

- **Section 6: Services**

Area: *Physical Disability*

A man filed a complaint after having his driver's licence suspended because of a vision impairment. The complainant noted that he had cataracts removed from his eyes which improved his sight considerably. He appealed to a Review Committee and this Committee ruled that the licence should not be reinstated.

As a result of this complaint, the respondent agreed to individually assess the complainant but the complainant rejected this offer. The Commission dismissed the complaint noting the respondent had a legitimate concern for highway safety.

- **Section 6: Services**

Area: *Physical Disability*

A woman filed a complaint on behalf of her son who has Cerebral Palsy, which affects his ability to move and speak.

The respondent informed the complainant that her son would have to go to school one hour later in the morning or return home one hour earlier in the afternoon because it was unable to provide the needed student assistant time. The boy, according to the mother, required an assistant to be with him at all times. At the time the complaint was filed, the boy had an assistant for two and a half hours per day and then a Challenging Needs Teacher would take over. The mother thought this unsatisfactory as she was of the opinion her son required an assistant in addition to the teacher in order to meet his physical and educational needs.

The boy is prone to seizures; his gastrostomy tube requires constant checking; and he is in diapers. The mother was of the opinion the teacher was unable to teach and also monitor her son's physical requirements.

The respondent stated that it has provided significant resources including a regular classroom

teacher; a special education teacher; a student assistant for four out of five hours per day; and a Criteria “D” teacher.

The complaint was dismissed by the Commission.

- **Section 6: Services**

Area: *Marital Status*

A woman filed a complaint when her social assistance benefits were discontinued after she had a visit from an investigator representing the respondent. The investigator deemed her to be living in a common-law relationship with the father of her two children. The woman alleged she was no longer living in a common-law relationship and appealed the decision but without success.

The investigation by the Human Rights Commission did not reveal any evidence that would indicate that the conclusion reached by the respondent was not reasonable. The complaint was dismissed.

- **Section 6: Services**

Area: *Sex*

A woman filed a complaint on behalf of her son who applied, without success, to participate in an Extensive French Program. The complainant alleged the selection criteria discriminated on the basis of sex. Twenty-six girls applied for the program and 13 boys. The respondent said because 2/3 of the applicants for the program were girls, they selected 2/3 girls for the program and 1/3 boys. The respondent put the 26 applications from girls into a hat and picked 20, and the 13 applications from boys were put into a hat and 10 were selected for the program.

Both the respondent and the Commission obtained expert opinions. The experts addressed whether the probability of selection would be any different for one individual than it would be if selections were made randomly from within two subgroups (male and female), if the allocation of available positions between the two groups is made proportional to the subgroups within the application process. The conclusion was that the probability of being chosen is the same regardless of which of the two methods were used, namely, 10/13. The Commission dismissed the complaint.

- **Section 6: Services**

Area: *Physical Disability*

A woman filed a complaint on behalf of her daughter who has been “declared legally blind”. The woman said she was shopping at a department store with her daughter. When the sales clerk saw her daughter printing her name in large print on the back of a cheque she refused to take the cheque.

After leaving the store, the woman telephoned and spoke with a Customer Service

Representative. She asked if the store cashed cheques and was told that they cashed all cheques.

The respondent said the problem arose because of mis-communication about a new cheque changing policy. It noted that others who wanted to cash cheques on that day were also turned away. The respondent apologized for the incident and offered a gift certificate. The Commission thought a board of inquiry, on the facts of this complaint, would unlikely order a greater remedy. The complaint was dismissed.

- **Section 6: Services**

Areas: *Physical Disability and Mental Disability*

A mother complained on behalf of her 32-year-old severely handicapped daughter who is unable to attend to any of her personal needs and requires 24-hour care.

The complainant and her husband had provided the required care for 32 years. However, the complainant, herself, became disabled as a result of a car accident and the complainant's husband has had several heart attacks. As a result, they were required to sell the family home and reside with a son.

The mother applied to the respondent for independent living arrangements for the daughter. However, the available funding would only cover 12 hours of home support. This was inadequate to meet the daughter's requirements.

The complaint was settled when a suitable roommate was found for the complainant's daughter and the funding provided on this basis was enough to provide 24-hour care.

- **Section 6: Services**

Area: *Physical Disability*

A man filed a complaint against a private post-secondary school and a government department when he was unsuccessful in obtaining interpreting services to attend an educational program at the school. The cost for the service requested was between \$30,000 and \$36,000. Both respondents took the position that they had accommodated the complainant to the point of undue hardship.

The Commission dismissed the complaint against the school agreeing it would not be required to lose money on the services it provides. The Commission also dismissed the complaint against the department, accepting that it had already provided funding for one previous program and thus, within available resources, had accommodated to the point of undue hardship.

- **Section 6: Services**

Area: *Physical Disability*

A woman filed a complaint against a condominium corporation alleging discrimination because of its objection to her parking in the handicap parking places at the entrance to the condominium

building. The woman resided in a condominium owned by her daughter.

The respondent stated it is required, by law, to provide parking spaces for visitors to the building including handicap parking. Also, each condominium has its own parking place that is purchased by the occupant along with the condominium. The complainant's parking place is near the entrance.

The complaint was dismissed by the Commission.

- **Section 7: *Rental of Accommodations***

Area: *Sexual Orientation*

A man filed a complaint against his landlord after receiving a three-month notice to vacate an apartment. He alleged he was being evicted because of sexual orientation after the respondent became aware he was living in the apartment with his same-sex partner.

The investigation determined that the respondent had evicted the complainant in order to provide an apartment for a relative. The Commission dismissed the complaint.

- **Section 7: *Rental of Accommodation***

Areas: *Physical Disability and Mental Disability*

A woman filed a complaint against her landlord after being evicted from her apartment. The woman, who has physical and mental disabilities, believed the landlord made inappropriate judgements about her disabilities when evicting her. The complaint was settled when the respondent agreed to pay the complainant a cash settlement that included general damages and moving expenses.

- **Section 9: *Employment***

Area: *Sex/Pregnancy*

The woman filed a complaint against her employer when the respondent advised her that she could not be accommodated by removal from her front-line duties during her second pregnancy. The complaint, dated August 2000, stated that the complainant had requested that her employer put in place a policy to recognize pregnancy in the institution, and to remove her from front-line duties during her first pregnancy, in January 1999. No policy was put in place but the complainant was removed from front-line duty and placed in a 9:00 a.m. to 5:00 p.m. position. She retained her regular salary and was not given a job title or description.

In August 2000 when the complainant was three months pregnant on her second pregnancy, the complainant requested similar accommodation. The respondent advised there was no other position available.

The investigation revealed the respondent had presented the complainant with three possible options. None of the options were deemed acceptable to the complainant. The Commission dismissed the complaint and accepted that the respondent had accommodated the complainant to the point of undue hardship. The complainant's objection to one of the offered accommodations was the fact that co-workers would have to alter their work. Since accommodation, by its very nature, requires modification of existing duties and obligations, this was not an acceptable reason to reject this option. The Commission agreed with the respondent's position that it is not required to establish a position which is surplus to its staffing needs.

- **Section 9: *Employment***

Area: *Physical Disability*

A woman had been employed with the respondent for nine years when she incurred an injury at work. While the complainant was still in receipt of Workers' Compensation, she received a letter from the respondent stating she would be terminated if she did not return to work within two weeks. The complainant had not been cleared to return to work by her physician, so she did not return to work.

The parties settled the complaint for a cash settlement.

- **Section 9: *Employment***

Area: *Mental Disability*

The complainant was employed by the respondent for 14 years and had received good evaluations and promotions. In February 2000, she was transferred to a new location where she says she was subjected to "demeaning and derogatory comments and a lack of respect" by the manager. In her complaint, the woman stated that she was called stupid and incompetent which caused her to become depressed and suffer anxiety attacks. While she was on sick leave, the complainant was asked to attend a mediation meeting in order to assist in her return to work. On the advice of her doctor, the complainant did not attend the meeting. Her benefits were cancelled and she was told she was not ill because she did not have a physical illness. The complainant says she resigned her position because she became so distressed with her employer's attitude towards her.

The parties agreed to settle the complaint for a cash settlement including pay in lieu of notice and general damages. The respondent also provided the complainant with a letter of reference.

- **Section 9: *Employment***

Area: *Mental Disability*

The complainant commenced employment with the respondent in 1998 as an accountant. Shortly after commencing his employment he began treatment for anxiety, depression and social phobia.

The complainant's duties included providing informational and instructional sessions to groups on new accounting procedures. Because of his phobia, he was unable to meet this job requirement and commenced sick leave. The complainant requested that he be permitted to return to work on an Ease-Back Program. The respondent refused stating the complainant must perform all of his duties.

The parties agreed to settle the complaint. The complainant would return to work in a different position; he would return to work under a four week Ease-Back Program; the respondent would provide guidance and information to other staff on social phobia; the respondent would permit the complainant a reasonable amount of time from work to access mental health professionals; and the complainant would return to work as soon as reasonably possible upon the advice of his doctor.

- **Section 9: Employment**

Area: *Religious Creed*

A man employed through a Job Creation Project filed a complaint alleging discrimination on the basis of religious creed. The complainant is a Jehovah's Witness and he says when his supervisor became aware of this he started to ridicule him. He says the supervisor told him his religion is nothing but a cult and that "I should be more like him and have Jesus in my heart".

When the complainant complained to the owner of the company about his supervisor's comments he was told to take his tools and go home.

The parties agreed to settle the complaint for a cash settlement for general damages.

- **Section 9: Employment (Volunteer)**

Area: *Sex*

A woman filed a complaint when she was unsuccessful in her efforts to obtain a position as a volunteer firefighter. In her complaint, the woman said the town had 34 male volunteers and no female volunteers. Initially, the complainant had been informed that a position would be available for her but it was later offered to a male.

The parties settled the complaint with an agreement that the complainant would be welcomed as a full and equal member of the town's volunteer fire department upon successful completion of training.

- **Section 9: Employment**

Area: *Marital Status*

A woman who had been employed as a maintenance manager filed a complaint alleging discrimination on the basis of marital status. The complainant had commenced living in a common-

law relationship with the respondent's estranged husband.

The investigation revealed that the respondent's husband along with a partner had set up the company registering the business in the names of their wives. The respondent named in the complaint, upon hearing of the affair between her husband and the manager "took over the company", fired her husband and later terminated the complainant's employment.

The Commission accepted that the respondent had established that the complainant was terminated for cause after documenting a series of performance problems.

The case was dismissed.

- **Section 9: *Employment***
Area: *Marital Status*

A woman commenced employment with a home support service agency as a care giver. She was assigned to work in the home of a female client of the agency. On her second day at work, the complainant was contacted by her employer and told she could no longer work in the home. The reason given for her withdrawal was that she was married to the brother of the client's husband.

The parties settled the complaint by agreeing that the respondent's policy against an in-law of the client or client's spouse being employed to provide home support services shall no longer be enforced; that the respondent complete a review of the home care support policy with the intent of examining and possibly further revising home care policy; and that interested officials and organizations involved in the provision of home support services are to be advised of the revision in policy.

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

A woman incurred a serious work related injury shortly after commencing employment with the respondent in 1990. As a result of the injury, she was unable to return to full-time employment. The respondent paid her for the hours worked and the Workplace Health and Safety Commission paid her for the additional unworked hours under the Extended Earnings Loss Program. This arrangement permitted the complainant to retain her permanent full-time status and benefits.

In 1999, the respondent advised the complainant she would either have to return to work on a full-time basis or accept a permanent part-time position. When she was unable to obtain medical clearance to meet the respondent's requirements her status was changed to permanent part-time resulting in lost benefits including seniority, pension, sick leave and annual leave.

The parties settled the complaint with the respondent, agreeing that the complainant will have the option to contribute to the pension plan.

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

A woman whose employment was terminated after 13 years with the respondent filed a complaint alleging discrimination on the grounds of mental disability. The complainant had applied for educational leave and approval was granted by the respondent. The complainant then cancelled the leave, which was to commence in January 2000, because the program start date was postponed. Shortly thereafter, the complainant left work on stress leave. When the respondent discovered the complainant was attending school full-time while on sick leave, her employment was terminated. The complainant alleged this was discriminatory because the stress she suffered was work related.

The Commission dismissed the complaint. The complainant has appealed the Commission's decision to the court.

- **Section 12: *Harassment***
Area: *Sex*

A woman who was hired for summer relief work filed a complaint against her former employer after she was subjected to incidents and comments that she said constituted sexual harassment. In her complaint to the Commission, the complainant said the lunch room walls were covered with pictures of scantily-clad females; there were graphic pornographic magazines lying around; men were making cat-calls and moaning sounds of a sexual nature; men were discussing their sexual activities including who had the largest genitals. The complainant's employment was terminated after she complained about the sexual harassment.

The parties settled the complaint for a cash settlement.

- **Section 12: *Harassment***
Area: *Sex*

A woman was employed by a food services agency and was placed in an institution to work as a cook. While working in this institution, the complainant dated another employee for approximately two years. She then broke off the relationship. The complainant alleged the former boyfriend, who resented the ending of the relationship, commenced harassing her. She said in her complaint: "He would come into the kitchen and call me a whore and ask who I was screwing now". She said he gave her notes in which he made derogatory comments. Other incidents included phoning her at home and writing letters, accusing her of being involved sexually with several other residents of the institution, accusing her of giving him venereal disease and called her a loser, etc.

The complainant said she had been off work on stress leave for three months when she filed the complaint with the Human Rights Commission. During that time she says the institution did an internal investigation and found no evidence of improper conduct. She was of the opinion that the matter was not viewed as sexual harassment.

The complaint against the institution where the complainant was employed was resolved through a cash settlement while the complaint against the food services agency was dismissed since that agency had no control over the employee perpetrating the harassment.

- **Section 12: *Harassment***

Area: *Sex*

A woman reported that she had been subjected to sexual harassment of a verbal and physical nature by her supervisor during the 17 years she worked as a waitress with the respondent. Examples of the harassment included: grabbing her between the legs; pinching her thigh and leaving a bruise; opening her mouth with his hand and putting his tongue in her mouth; walking up to her and massaging her back; putting his hand up her sleeve and moving it towards her breast; making comments about the size of her breasts; telling her to lose weight so she would have “a body to go with your tits”. When she objected to these actions, the complainant said he called her “a nobody”, “a loser” and “you’re a number - waitresses are a dime a dozen”.

When the complainant brought this harassment to the attention of other supervisors, she was told there was nothing they could do.

The Commission negotiated a settlement between the parties, which included a requirement that the complainant be supervised by someone other than her current supervisor (or his wife, who was also employed in a management position with the respondent); that the perpetrator of the harassment be reprimanded and disciplined for his actions; that the respondent provide a mediated return to work; that employees receive training on sexual harassment; that the complainant receive financial compensation for loss of benefits; and that the complainant continue to receive her salary until her return to work.

- **Section 12: *Harassment***

Area: *Physical Disability*

A woman who was employed with the respondent as a nurse had restrictions placed upon her return to work following a work related injury by her physician. The complainant was unable to perform the full duties of her position, resulting in harassment from her co-workers and discrimination by her employer. She said the respondent refused to arrange the schedule to accommodate her needs and several staff members made negative comments because she was seeking accommodation.

The parties agreed to settle the complaint, with the respondent paying the complainant a cash settlement and providing information on human rights to all staff members and to management.

- **Section 12: *Harassment***

Area: *Sex*

A woman resigned her position with the respondent after approximately eight years of employment and filed a complaint with the Human Rights Commission. In her complaint, the woman said she had been subjected to sexual harassment for the last year of her employment by the manager. At the time she was being trained as assistant manager. Some of the incidents outlined in the complaint included the manager discussing his marriage and how he and his wife had grown apart; the manager suggesting that they stay in town overnight and spend some time together; the manager putting his arm around her and kissing her on several occasions; the manager saying her husband did not treat her well and she deserved finer things that he could give to her; the manager becoming upset when she refused a birthday gift; the manager telling her he had deep feelings for her; the manager objecting to her joking with other male staff, etc.

The complainant agreed to a cash settlement.

- **Section 15: *Retaliation***

A man and a woman filed complaints against their employer alleging discrimination in employment on the basis of marital status. Both complainants were employed with the respondent and were of the opinion that they were discriminated against in the provision of employee benefits. The Commission dismissed the complaints.

The complainants were later terminated by the respondent for non-disciplinary reasons. Each complainant then filed a second complaint alleging the terminations constituted retaliation since their positions had not been declared redundant.

The Commission dismissed the retaliation complaints. In dismissing the complaints, the Commission noted that considerable time had elapsed from the dismissal of the human rights complaints to the time of termination and during that time the complainants had been treated as most other employees, including being provided with promotional opportunities. Also, the complainants had taken civil action against the respondent and that pleading did not reference problems associated with the filing of the human rights complaint. The Commission's decision is being appealed by the complainants to the court.

STATISTICS
2000-2001

Complaints Received in 2000 by Section and Ground

<i>Ground</i>	Services	Rental of Accommodations	Employment	Harassment	Sexual Solicitation	Retaliation	Pay Discrimination	
<i>Section</i>	6	7	9	12	13	15	11	Totals
<i>Race</i>			3					3
<i>Religion</i>			2					2
<i>Sex</i>	1		9	7				17
<i>Marital Status</i>	2		19					21
<i>Physical Disability</i>	5	1	27	2				35
<i>Mental Disability</i>	3		6	1				10
<i>Political Opinion</i>								
<i>Color or Ethnic Origin</i>								
<i>National or Social Origin</i>								
<i>Age</i>			4					4
<i>Pay Discrimination</i>							1	1
<i>Sexual Orientation</i>		1	1	1				3
<i>Retaliation</i>						4		4
<i>Sexual Solicitation</i>					1			1
<i>Totals</i>	11	2	71	11	1	4	1	101

***Complaints Closed by the Commission
By Section - 2000***

	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
<i>Section 6</i>	6	2		1	9
<i>Section 7</i>	2				2
<i>Section 8</i>				1	1
<i>Section 9</i>	36	10	6	12	64
<i>Section 12</i>	2	4	2		8
<i>Section 13</i>		1			1
<i>Section 15</i>	3				3
<i>Totals</i>	49	17	8	14	88

“All human beings, whatever their cultural or historical background, suffer when they are intimidated, imprisoned or tortured ... We must, therefore, insist on a global consensus, not only on the need to respect human rights worldwide, but also on the definition of these rights ... for it is the inherent nature of all human beings to yearn for freedom, equality and dignity, and they have an equal right to achieve that.”

The Dalai Lama, New
York, USA, April
1994

**Complaints closed by the Commission
By Ground and Section - 2000**

Section 6 (Access to Services)

Ground	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
<i>Physical Disability</i>	4	2		1	7
<i>Mental Disability</i>	2				2
Totals	6	2		1	9

Section 7 (Rental of Accommodations)

Ground	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
<i>Sexual Orientation</i>	1				1
<i>Mental Disability</i>	1				1
Totals	2				2

Section 8 (Harassment of Occupant)

Ground	Dismissed	Settled	Withdrawn	Board of Inquiry	Total
<i>Physical Disability</i>				1	1
Total				1	1

***Complaints closed by the Commission
By Ground and Section - 2000***

Section 9 (Employment)

<i>Ground</i>	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
<i>Sex</i>	12	3	2	4	21
<i>Physical Disability</i>	13	4	4	3	24
<i>Age</i>	2			3	5
<i>Mental Disability</i>	3	1		1	5
<i>Marital Status</i>	3	1		1	5
<i>Religion</i>	1	1			2
<i>Race</i>	1				1
<i>Sexual Orientation</i>	1				1
<i>Totals</i>	36	10	6	12	64

**Complaints closed by the Commission
By Ground and Section - 2000**

Section 12 (Harassment in an Establishment)

Ground	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
<i>Religion</i>			1		1
<i>Sex</i>	1	3	1		5
<i>Physical Disability</i>		1			1
<i>Sexual Orientation</i>	1				1
Totals	2	4	2		8

Section 13 (Sexual Solicitation)

	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
		1			1
Totals		1			1

Section 15 (Retaliation)

	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
	3				3
Totals	3				3

Complaints Received in 2001 by Section and Ground

<i>Ground</i>	Services	Rental of Accommodations	Employment	Harassment	Sexual Solicitation	Retaliation	
<i>Section</i>	6	7	9	12	13	15	Totals
<i>Race</i>							
<i>Religion</i>							
<i>Sex</i>	1		9	1			11
<i>Marital Status</i>	4		2				6
<i>Physical Disability</i>	3	2	34				39
<i>Mental Disability</i>	4		5				9
<i>Political Opinion</i>							
<i>Color or Ethnic Origin</i>							
<i>National or Social Origin</i>	9						9
<i>Age</i>			2				2
<i>Sexual Orientation</i>	1						1
<i>Retaliation</i>						1	1
<i>Sexual Solicitation</i>					4		4
<i>Totals</i>	22	2	52	1	4	1	82

Note: Includes 1 re-opened file # 2048

***Complaints Closed by the Commission
By Section - 2001***

	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
<i>Section 6</i>	6	1		2	9
<i>Section 7</i>	3	1			4
<i>Section 9</i>	28	12	5	6	51
<i>Section 11</i>				1	1
<i>Section 12</i>	3	1		2	6
<i>Section 13</i>		1		1	2
<i>Section 15</i>				2	2
<i>Totals</i>	40	16	5	14	75

“Human rights are the expression of those traditions of tolerance in all cultures that are the basis of peace and progress. Human rights are foreign to no culture and native to all nations.”

Kofi Annan, Secretary General of the United Nations

***Complaints closed by the Commission
By Ground and Section - 2001***

Section 6 (Access to Services)

<i>Ground</i>	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
<i>Marital Status</i>	2				2
<i>Physical Disability</i>	2	1		1	4
<i>Mental Disability</i>	1			1	2
<i>Sex</i>	1				1
<i>Totals</i>	6	1		2	9

Section 7 (Rental of Accommodations)

<i>Ground</i>	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
<i>Physical Disability</i>	2	1			3
<i>Marital Status</i>	1				1
<i>Totals</i>	3	1			4

***Complaints closed by the Commission
By Ground and Section - 2001***

Section 9 (Employment)

<i>Ground</i>	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
<i>Sex</i>	1			2	3
<i>Physical Disability</i>	17	10	2	1	30
<i>Mental Disability</i>	7	2	2	1	12
<i>Marital Status</i>			1	1	2
<i>Religion</i>	1				1
<i>Race</i>	2			1	3
<i>Totals</i>	28	12	5	6	51

Section 11 (Discrimination in Pay)

	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
				1	1
<i>Totals</i>				1	1

**Complaints closed by the Commission
By Ground and Section - 2001**

Section 12 (Harassment in an Establishment)

Ground	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
<i>Sex</i>	2	1		1	4
<i>Physical Disability</i>				1	1
<i>Mental Disability</i>	1				1
Totals	3	1		2	6

Section 13 (Sexual Solicitation)

	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
		1		1	2
Totals		1		1	2

Section 15 (Retaliation)

	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
				2	2
Totals				2	2

***BOARDS OF INQUIRY
UPDATE***

*(The following is an update on Boards of Inquiry
reported as pending in the 1998 - 1999 Report)*

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

The decision of Chief Adjudicator Mary O'Brien was released to the Commission on February 16, 2000, upholding the complaint of Lori Allen of St. John's. Ms. Allen filed a complaint with the Commission in July 1997 alleging that her employment as a secretary/hair technician with Klien's Hair Care was terminated when she refused David Warren's sexual advances. Ms. O'Brien's decision awarded Ms. Allen compensation for lost wages in the amount of \$1,300 plus interest and \$4,000 compensation for loss of dignity and self-respect.

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

Chief Adjudicator Mary O'Brien upheld the complaint of Walter Winsor, which alleged discrimination on the basis of age in a decision dated February 3, 2000.

Walter Winsor from Freshwater, Placentia, filed a complaint with the Human Rights Commission alleging he was denied a job because of his age. When Mr. Winsor and two younger men approached Terrance Penney, the owner of Provincial Demolition, the younger men were hired but the complainant was not. Mr. Winsor said he was told that age was a factor in the decision not to hire him.

Mr. Penney denied the allegation and said Mr. Winsor was not hired because he was of the opinion that Mr. Winsor was unable to do the job and not because of his age.

Mr. Penney did not attend the Board of Inquiry which was held in October 1999 and was not represented by legal counsel. Ms. O'Brien in her decision upholding the complaint, awarded Mr. Winsor \$2,467.50 for lost wages.

3. *Miguel Padron v. Abbey Management*

Chief Adjudicator Mary O'Brien upheld the complaint of Miguel Padron in a decision released on September 26, 2000. 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 Board of Inquiry was held October 19 - 20, 1999.

Ms. O'Brien found that Mr. Padron suffered ongoing verbal harassment and awarded him \$2,000 for injury to dignity and self-respect.

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

Chief Adjudicator Mary O'Brien upheld Ms. Winter's complaint in a decision dated February 3, 2000.

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 terminate the employment of the woman who was hired to replace her while she was on maternity leave. The Board of Inquiry was heard on December 15, 1999.

In her decision upholding the complaint, Ms. O'Brien awarded Ms. Winter lost wages in the amount of \$7,500 and \$3,000 compensation for mental anguish associated with her termination.

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

Adjudicator Mary O'Brien upheld the complaints of 33 women against the Fogo Island Co-operative Society in a decision released in May 2001. The women, who are members of the Co-op, were refused employment in 1999 because their spouses either refused to sign or violated exclusive marketing agreements with the Co-op. Ms. O'Brien stated that she would reconvene to hear further evidence and submissions as may be necessary regarding remedies unless the parties reach a written agreement with respect to remedies, which agreement must be approved by the Board of Inquiry. The Board of Inquiry is scheduled to reconvene in January 2002.

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

The decision of Adjudicator Maeve Baird was released to the Commission in March 2001, upholding the complaint of Gladys Tulk of Ladle Cove. Ms. Tulk who was employed as a home care aide for Roseanne Wellon was terminated after she became pregnant.

This decision is significant in that it establishes the Department of Health and Community Services as an employer where a person is hired to provide home support services with funding provided by that Department.

In addition to ordering compensation against the Department of Health and Community Services for lost wages plus interest, Ms. Baird also orders both respondents to pay Ms. Tulk \$2,000 for emotional damages for hurt feelings and injury experienced by her as a result of the discrimination she experienced.

This decision was appealed to the Trial Division of the Supreme Court. A decision was released on March 4, 2002 which confirmed the original outcome.

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

The decision of Adjudicator Valerie Marshall was released to the Commission on November 1, 2001 upholding the complaint of Eric Salter against the Department of Forest Resources and Agrifoods. Mr. Salter of St. John's was employed as District Manager in Forest Ecosystem from 1978 until May 1996 when he was terminated and told his position had been abolished. Upon hearing that his position had not been abolished and a younger person was actually performing his duties, Mr. Salter filed a complaint against his former employer alleging discrimination on the basis of age. Mr. Salter was 55 years of age at the time of termination and eligible for a pension. The respondent denied the allegation but after hearing all the evidence presented, Ms. Marshall upheld the complaint. Her decision states that a case of age discrimination was established on the balance of probabilities and the respondents' reasons are pretextual.

The Board shall reconvene for the purpose of determining a remedy. A date has not yet been set.

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

Adjudicator Gillian Butler dismissed the complaint by Carol Evans in a decision released October 3, 2000. Ms. Evans worked in health care for 30 years. She was refused a promotion to a position of lead hand with the porters because of her sick leave record over the 30-year period. Ms. Evans had the most seniority and would have otherwise qualified for the promotion. Ms. Butler's decision stated that under the circumstances, particularly in a health care centre, an employer is not acting contrary to the protection offered by human rights legislation in considering an applicant's excessive sick leave record over a period of several years when determining the best candidate for a promotion.

The decision was appealed to the Trial Division of the Supreme Court. A decision released by the court on April 4, 2001, dismissed the appeal of the Commission and ruled that the Adjudicator was correct in her decision to dismiss the complaint.

The matter has been appealed to the Court of Appeal.

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

Chief Adjudicator Mary O'Brien had been initially assigned to hear this complaint on May 17, 2000. The matter has been reassigned to be heard by Adjudicator Glen Picco. The hearing is pending.

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 licensed 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 allege the respondent has set a

quota for male LPNs and only males are called in to fill these positions. As a result, junior males are moving ahead in seniority over previously senior females. As these males gain more seniority than the females, in addition to being called in to fill male LPN positions, they are subsequently being called in to fill the LPN person positions.

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

Adjudicator Mary O'Brien dismissed Ms. Fiech's complaint alleging discrimination on the basis of pregnancy in a decision released on April 25, 2001.

Ayesha Fiech of St. John's had filed a complaint alleging she was refused employment in a contractual position with Memorial University of Newfoundland because she was pregnant. Ms. O'Brien's decision said the evidence did not support the allegation that the complainant's pregnancy played any role in the hiring decision.

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

Adjudicator Annette Bennett heard this complaint in August 2001 and a decision is pending.

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 the 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 allegations 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 following Boards of Inquiry that were referenced in the 1998 - 1999 report were cancelled after the parties agreed to settlements in their respective complaints:

1. *Nettie Ryan v. Health Care Corporation of St John's;*
2. *Bridget Skehans v. Department of Works, Services and Transportation;*
3. *Alice Murphy v. Pentecostal Senior Citizens' Home;*
4. *Judy Shea and Brian Johnson v. Memorial University of Newfoundland and the Department of Human Resources and Employment;*
5. *Darcy Russell v. Canadian Action Group.*

The following Board of Inquiry that was referenced in the 1998 - 1999 report has been discontinued because of the death of the respondent:

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

NEW BOARDS OF INQUIRY

(Appointed in 2000 - 2001)

1. *Rodney Chaulk v. Department of Education and the Avalon East School Board*

Rodney Chaulk has Cerebral Palsy, which confines him to a power chair. His wife also has a disability. She suffers from arthritis and dislocated hips, which prevent her from walking long distances. Mr. and Mrs. Chaulk have a 5-year-old daughter attending Kindergarten. The respondents provide busing services for students residing beyond 1.6 km. from their school. The Chaulk family live within the 1.6 km. of the school and are thus deemed ineligible for the service.

Mr. Chaulk filed a complaint alleging discrimination on the basis of disability in the provision of a service. The parties reached a settlement prior to the Board of Inquiry convening.

2. *Malgorzate Zuberek v. Memorial University of Newfoundland*

Mrs. Malgorzate Zuberek filed a complaint against Memorial University of Newfoundland. The matter was ordered to a Board of Inquiry by the Human Rights Commission, however, a settlement was reached between the parties and approved by the Human Rights Commission prior to the convening of the Board of Inquiry.

3. *S.T. v. G.W.*

Ms. S.T. filed a complaint against her former landlord after she was evicted from her apartment. The complaint alleged discrimination and harassment on the basis of physical disability and marital status. Ms. S.T. said she began having problems with the respondent after it became public knowledge that her common-law partner was HIV positive.

Ms. S.T. has not responded to attempts to convene the Board of Inquiry and it is believed she may have abandoned the complaint.

4. *Francis Walsh v. Reddigan Enterprises and Michael Reddigan*

Mr. Walsh was employed as a crew member on a fishing boat by the respondents. He incurred an injury while working aboard the boat and was absent from work and in receipt of Workers' Compensation Benefits. Since he was unavailable to go fishing, Mr. Walsh said the respondent told him to collect his gear and go home. Mr. Walsh understood that he was terminated because of his injury.

Adjudicator Valerie Marshall released her decision in May 2001 upholding Mr. Walsh's complaint. Ms. Marshall ordered that Mr. Walsh be compensated for lost income plus general damages in the amount of \$3,500.

The respondent did not attend the Board of Inquiry. He has appealed the decision to the Trial Division of the Supreme Court.

5. *Brenda Lewis v. Eastern Residential Support Board*

Ms. Lewis had been employed with the respondent for 9 years as a counsellor for physically and mentally delayed individuals. Her regular home closed and after a period of rotating to other homes, Ms. Lewis requested an opportunity to bump into a particular home. The respondent refused the request stating that a male staff person was required in this home.

The parties reached a settlement prior to the Board of Inquiry convening.

6. *June Janes v. Health Care Corporation of St. John's and the Newfoundland Association of Public Employees*

Ms. Janes commenced employment as a licenced practical nurse (LPN) at the Waterford Hospital. Three male LPNs were hired at the same time. In her complaint, Ms. Janes stated that the males had accumulated 300 to 400 hours more seniority than her because of a practice followed by the Health Care Corporation and agreed to by the Union. Ms. Janes says the Health Care Corporation has established male LPN positions and person LPN positions. Only males can work in the male LPN position while males and females work in the person LPN positions. As a result of this practice, male workers receive more work than females, and therefore, move ahead of females on the seniority list.

This matter has been combined with similar complaints listed under Evely *et al* is scheduled to be heard by Adjudicator Glen Picco in July, 2002.

7. *S. Dugas v. The Bombay Furniture Company of Canada*

Ms. Dugas filed a complaint against the respondent alleging discrimination in employment on the basis of mental disability. The matter was ordered to a Board of Inquiry by the Human Rights Commission. However, the parties reached a settlement agreement, which was approved by the Human Rights Commission.

8. *Marilyn Rose v. Her Majesty the Queen as Represented by the Ministry of Finance and the Health Care Corporation of St. John's*

Ms. Rose was employed with the second respondent for 18 years. In 1992 she incurred a back injury and after several unsuccessful attempts at Ease Back she was deemed unable to work again in her pre-injury position.

Ms. Rose was approved for Canada Pension Benefits. She also applied for disability benefits under the Government Pension Plan but was deemed ineligible. Ms. Rose said she was given the understanding that during the period she was doing the Ease Back, her employer classified her as a part-time employee and changed her pension benefits from the Public Service Pension Plan to the Government Money Purchase Plan.

The complaint was settled between the parties prior to the Board of Inquiry convening.

8. *Michelle Foley v. Fast Break Inc.*

Ms. Foley filed a complaint against the respondent alleging discrimination in employment on the basis of age. The Human Rights Commission ordered the complaint to a Board of Inquiry. The Board of Inquiry was cancelled, however, when the parties reached a settlement, which was approved by the Human Rights Commission.

10. *Kathryn Moyles v. Paul Pike and Department of Human Resources and Employment*

Adjudicator Maeve Baird heard the complaint of Kathryn Moyles in August 2001. A decision is pending.

Ms. Moyles was employed as a care giver for a young man, Paul Pike, who has a mental disability. She was the live-in supervisor for approximately seven years. In July 1999, Ms. Moyles commenced sick leave because of complications related to pregnancy. She was medically cleared to return to work on October 24, 1999. However, she received a letter from Mr. Pike's brother, Calvin, saying her services were no longer required. Ms. Myles says she informed Mr. Pike this was in contravention of the Human Rights Code and he withdrew the letter. Ms. Moyles returned to work but was given a lay-off notice shortly thereafter. In her complaint, Ms. Moyles stated that Calvin Pike had said everything was running smoothly at the house and if she got pregnant it would be an inconvenience.

11. *Dr. Julia O'Sullivan v. Memorial University of Newfoundland*

Dr. O'Sullivan filed a complaint against Memorial University alleging discrimination in employment on the basis of sex. The Human Rights Commission ordered the matter to a Board of Inquiry. The Board was cancelled, however, when the parties reached a settlement, which was approved by the Human Rights Commission.

12. *Betty Randell v. Corner Brook Pulp and Paper Limited*

Chief Adjudicator Judy Morrow commenced a hearing on September 11, 2001 into two complaints filed by Betty Randell of Corner Brook against Corner Brook Pulp and Paper Limited.

In her first complaint, Ms. Randell said she had been seeking employment at Corner Brook Pulp and Paper Limited for over ten years. Initially, Ms. Randell says she was told she was not qualified for available positions. Ms. Randell then attended school for several years completing an Environmental Engineering Technology Diploma. In November 1999, Ms. Randell again applied for one of ten available positions. Ms. Randell met the academic qualifications, passed the mill aptitude test and was granted an interview. She says she was told by the Human Resources Supervisor she had given an excellent interview but she was not offered a position. In her complaint, Ms. Randell stated that two of the men hired did not have a Technology Diploma. When she questioned why they were hired instead of her, she says the Human Resources Supervisor responded “quite frankly we like to get 30 years from our employees”. Ms. Randell was 42 years of age.

Ms. Randell filed a second complaint in October 2000 alleging retaliation against Corner Brook Pulp and Paper. Ms. Randell had applied for another position with the respondent. On October 10 she received a letter from the Manager of Administration stating that information contained in the Investigation Report borders on slander, if untrue, and “we feel at this time it would be in everyone’s best interest to put your employment application on hold”.

Both complaints were heard at the same time. Ms. Morrow expects to release her decision early in 2002.

13. *Jacqueline Mayo v. Iron Ore Company of Canada and United Steel Workers*

Adjudicator Glen Picco heard this matter in Labrador City during the week of October 23, 2001. A decision is pending.

Ms. Mayo applied for a position with the Iron Ore Company of Canada under its summer employment program for students. She states in her complaint that she met the criteria for the position, passed the required medical, and was told to report for work on May 2. She quit her job in St. John’s and returned to Labrador City. May 1 she was told by a representative of the Iron Ore Company of Canada that because of an agreement the Company had with the Union, she was considered too old for employment under the Student Opportunity Program.

14. *Barbara Guy v. Woodward's Limited*

Barbara Guy filed a complaint against Woodward's Limited alleging discrimination in employment on the basis of physical disability. The Human Rights Commission ordered the complaint to a Board of Inquiry. The Board of Inquiry was cancelled, however, when the parties reached a settlement which was approved by the Human Rights Commission.

15. *Marie Colbourne v. The Department of Justice and the Newfoundland Association of Public Employees*

Ms. Colbourne filed a complaint against her employer and her union alleging discrimination in pay. Ms. Colbourne is a Correctional Officer II with the Newfoundland and Labrador Correctional Centre for Women in Clarenville. Ms. Colbourne said she works back-to-back with a male lieutenant, and they both perform the same duties and have the same responsibilities. However, Ms. Colbourne is paid on a lower pay scale than her male counterpart.

Chief Adjudicator Judy Morrow is scheduled to hear this matter in June 2002.

16. *Gloria Sparkes v. The Department of Health and Community Services*

Ms. Sparkes filed a complaint with the Commission on behalf of her grandson, Brandon Sparkes, who had been diagnosed with autism. The attending physician referred him for the Applied Behavioural Analysis Program (ABAP) noting that this is the treatment of preference and that early intervention is critical. When Ms. Sparkes approached the respondent to have her grandson enrolled in the Autism Pilot Project, she was told the program was full and there were several people on the wait list.

The Human Rights Commission ordered the complaint to a Board of Inquiry. The respondent has since filed an application with the Court seeking to stop the Board of Inquiry from convening. Brandon has been placed in the ABAP and the respondent says the Board of Inquiry is moot.

17. *Clarence Scott v. Sun Construction Ltd.*

Clarence Scott was employed with the respondent as a flag person and general labourer for a ten-week period during the summer of 2000. A couple of times during his period of employment, he had to take a break from work to have some Pepsi. He is a diabetic and his blood sugar was low.

In October, he received a telephone call from the respondent noting they were looking for labourers and if he was interested to bring in his resume. Mr. Scott said when he took in his resume he was recognized as having been employed there before and was questioned about his diabetes. Mr. Scott's complaint alleges that the respondent's representative went on to say that he thought diabetics

were a hazard and a danger on the job. Mr. Scott was not offered the job.

Adjudicator Valerie Marshall heard this complaint in December, 2001.

18. *Tony Matthews v. The Department of Justice and Adult Corrections*

Tony Matthews has been employed with the respondent at Her Majesty's Penitentiary in St. John's since May 1978. At the time of filing his complaint with the Human Rights Commission, he had approximately 1200 hours of accumulated sick leave. Mr. Matthews stated that over the past year he had missed time from work because of stress related illness. Notes from his doctor were provided to his employer for these absences. Mr. Matthew's supervisor spoke with him about his use of sick leave and a week later he was given a letter. Mr. Matthews says the supervisor told him "you were absent for an excessive amount of time due to sickness" and "this represents an abnormal amount of days to be off work". The letter also stated that the use of sick leave "is of serious concern to us" and "I would expect to see an improvement in your attendance".

A few months later, Mr. Matthews received another letter requesting his doctor complete a medical report.

The matter was resolved prior to the Board of Inquiry convening.

19. *Shelly House-Borden v. Corner Taxi*

Ms. House-Borden was employed with the respondent for approximately three years. In November 2000 she filed a complaint with the Human Rights Commission alleging sexual harassment and discrimination. In her complaint, Ms. House-Borden states "the Manager and part-owner of the business, made a sexual advance by grabbing my two breasts from behind". Ms. House-Borden filed a sexual assault complaint with the police.

She said the day after the respondent's first court appearance both she and her husband were fired.

Adjudicator Mary O'Brien is scheduled to hear this matter in April 2002.

20. *Vivian Critch v. The Department of Justice*

Ms. Critch filed a complaint with the Human Rights Commission alleging discrimination and harassment on the basis of physical disability. She had been employed with the respondent for 22 years and had 1,695 hours of accumulated sick leave at the time she filed the complaint. Ms. Critch was absent from work because of a back problem for approximately two and a half months. She says the respondent's position that her use of sick leave was inappropriate constitutes discrimination and

harassment.

Adjudicator William Parsons is scheduled to hear this matter in March 2002.

21. *Tracey Rose v. Labrador Sales Ltd.*

Ms. Rose was employed in a full-time position with the respondent for approximately eight months as a cashier when she commenced maternity leave. Seven months, later when Ms. Rose contacted the respondent saying she was ready to return from maternity leave, she was told there were only two shifts a week available for her. The respondent advised her that two other people were hired after she commenced maternity leave.

Adjudicator Annette Bennett is scheduled to hear this matter in April 2002.

22. *Gary King v. Canadian Corps of Commissioners*

Mr. King filed a complaint against the respondent alleging discrimination in employment on the basis of race. The Human Rights Commission ordered the complaint to a Board of Inquiry. The Board of Inquiry was cancelled, however, when the parties reached a settlement which was approved by the Human Rights Commission.

23. *Sharon Gardias v. Atlantic Construction Training Centre Inc.*

Ms. Gardias was enrolled in a full-time training course with the respondent and was the only female in a class of 18. She filed a complaint with the Human Rights Commission alleging sexual harassment. In her complaint, Ms. Gardias complained about being subjected to pornography, about being touched inappropriately, about being subjected to males telling stories about their sexual activities, about being given a gift of a pen containing an image of a nude male, etc.

Adjudicator Mary O'Brien is scheduled to hear this matter in January and February, 2002.

PROMOTIONAL ACTIVITIES

The Human Rights Commission is mandated under Section 18 of the Human Rights Code to “promote an understanding of, acceptance of and compliance with this act.” For this reason, Commission staff regularly make presentations to groups in schools, workplaces, and to other audiences to explain how the Human Rights Code works. By taking this approach, the Commission has an opportunity to prevent complaints through education.



The Commission also works with other stakeholder organizations in the community by participating in special events or committees. For example, the Commission has participated over the past two years in the Committee for the Rights of Children and Youth, which is focused on ways to promote the rights of our younger and sometimes more vulnerable citizens.

Committee for the Rights of Children & Youth
L-R: Darlene Scott, Community Services Council; Jerry Vink, NF-Lab. Human Rights Association; Neil Penney, Canadian Heritage; Lynn Smyth, Assoc. Early Childhood Educators; Ivan Morgan, NF-Lab. Human Rights Association; Sean Murray, Human Rights Commission

The Commission has also been a participant in the Annual Human Rights Fair, which is organized primarily by the Newfoundland - Labrador Human Rights Association and funded through the Department of Canadian Heritage. This is a day-long event held at St. John’s City Hall featuring display booths and activities by dozens of local organizations that have an interest in human rights. The fair is primarily an educational opportunity for high school students, who are brought to the site, and are able to browse the fair, participate in activities, and attend seminars about human rights issues.

The media plays an important role in the promotion of human rights as well. In 2000-2001 a number of press releases were issued by the Commission. These press releases usually announce that a Board of Inquiry hearing is being scheduled, or that a decision has been released following a hearing. Commission staff have done media interviews about particular human rights cases and occasionally they may be called upon to speak more generally about human rights in Newfoundland and Labrador.

The following are examples of some of the groups, businesses, schools, and agencies which hosted presentations by staff of the Human Rights Commission in 2000 - 2001:

- Women Interested in Successful Employment, St. John's, Bay Roberts, & Carbonear
- Holy Trinity High School, Torbay
- Carol Auto, Labrador City
- Carpenter's Training Institute, Mount Pearl
- Injured Workers Association, St. John's
- Conference on Globalization of Fisheries, Fogo
- Kiwanas Club, St. John's
- O'Donel High School, Mount Pearl
- Holy Heart of Mary High School, St. John's
- Dunn Academy High School, St. Mary's
- Tourism Training Institute, St. John's
- Nortec College, St. John's
- Young Lawyers' Conference of the Canadian Bar Association, St. John's
- College of the North Atlantic, St. John's
- Bar Admission Course, St. John's
- Carbonear Hospital, Carbonear
- Academy Canada, St. John's
- Woodward's Training Academy, St. John's
- Booth Memorial High School, St. John's

“If you are planning for a year, sow rice; if you are planning for a decade, plant trees; if you are planning for a lifetime, educate people.”

Chinese Proverb

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

Reconfiguring our Concept of Disability
The Supreme Court of Canada Decision
in Mercier et al v. City of Montreal et al

On May 3, 2000 the Supreme Court of Canada in Mercier et al v. City of Montreal et al reconfigured the way in which the concept of disability is to be applied in human rights cases. At issue were three complaints of discrimination from employees or prospective employees with municipalities in Quebec. All three individuals had medical abnormalities or ailments (Crohn's Disease and anomalies in the spinal column) which did not result in any functional limitations in their day to day activities. All three individuals were denied employment. The central issue that made its way to the Supreme Court of Canada was whether these individuals were considered to be disabled under Quebec human rights legislation. The employers argued that because the employees did not have functional limitations, they were not disabled.

The Court rejected a narrow definition of disability. In doing so it stated that while different jurisdictions may define disability slightly differently from one another, the principles employed by the Court in its analysis were paramount to these minor differences in definition. The Court outlined the duties of Courts and Boards of Inquiry when assessing disability cases:

Courts will, therefore, have to consider not only an individual's biomedical condition, but also the circumstances in which a distinction is made. In examining the context in which the impugned act occurred, courts must determine, inter alia, whether an actual or perceived ailment causes the individual to experience "the loss or limitation of opportunities to take part in the life of the community on an equal level with others": McKenna, supra, at p. 163 and 164. The fact remains that a "handicap" also includes persons who have overcome all functional limitations and who are limited in their everyday activities only by the prejudice or stereotypes that are associated with this ground: British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights), [1999] 3 S.C.R. 868, 181 D.L.R.(4th) 385, at para.2.

It is important to note that a "handicap" may exist even without proof of physical limitations or the presence of an ailment. The "handicap" may be actual or perceived and, because the emphasis is on the effects of the distinction, exclusion or preference rather than the precise nature of the handicap, the cause and origin of the handicap, are immaterial. Further, the Charter also prohibits discrimination based on the actual or perceived possibility that an individual may develop a handicap in the future.

This decision is important because the Court concluded that it is not the precise nature of the disability or its origin or cause that is important, but rather the different treatment which results from the perception of the disability. When considering disability claims it is essential to consider whether, because of an actual or perceived disability, an individual has lost an opportunity to participate in community life like other members of society. The thrust of the prohibition against discrimination based on disability is to put an end to the "phenomena of handicapping", that is, the disadvantage experienced by persons with disabilities or those who are perceived to be disabled because of barriers, prejudice, stereotyping, social attitudes and fears.

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