

Human Rights Commission

Province of Newfoundland and Labrador

Report for 2002

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INTRODUCTION

The Human Rights Commission saw a number of changes in 2002. Three new Commissioners were appointed. They are Gilbert Thomas, Shirley Barr and Winston Green. The staff of the Commission prepared for the pending retirement of Gladys Vivian, the Commission's Executive Director since 1983.

The Commission accepted 100 new complaints in 2002. Five Boards of Inquiry were held during the year and seven complaints were settled prior to the commencement of Board proceedings. The most notable Board decision was that of Gloria Sparkes v. The Department of Health and Community Services - a decision which ordered the Department to eliminate the wait lists for the provision of Applied Behavioural Analysis to autistic children. By the end of 2002, Government had not determined whether to appeal the decision.

As we move into a new year the Commission looks forward to the challenges of upholding the promises of the Human Rights Code in a climate of fiscal prudence.

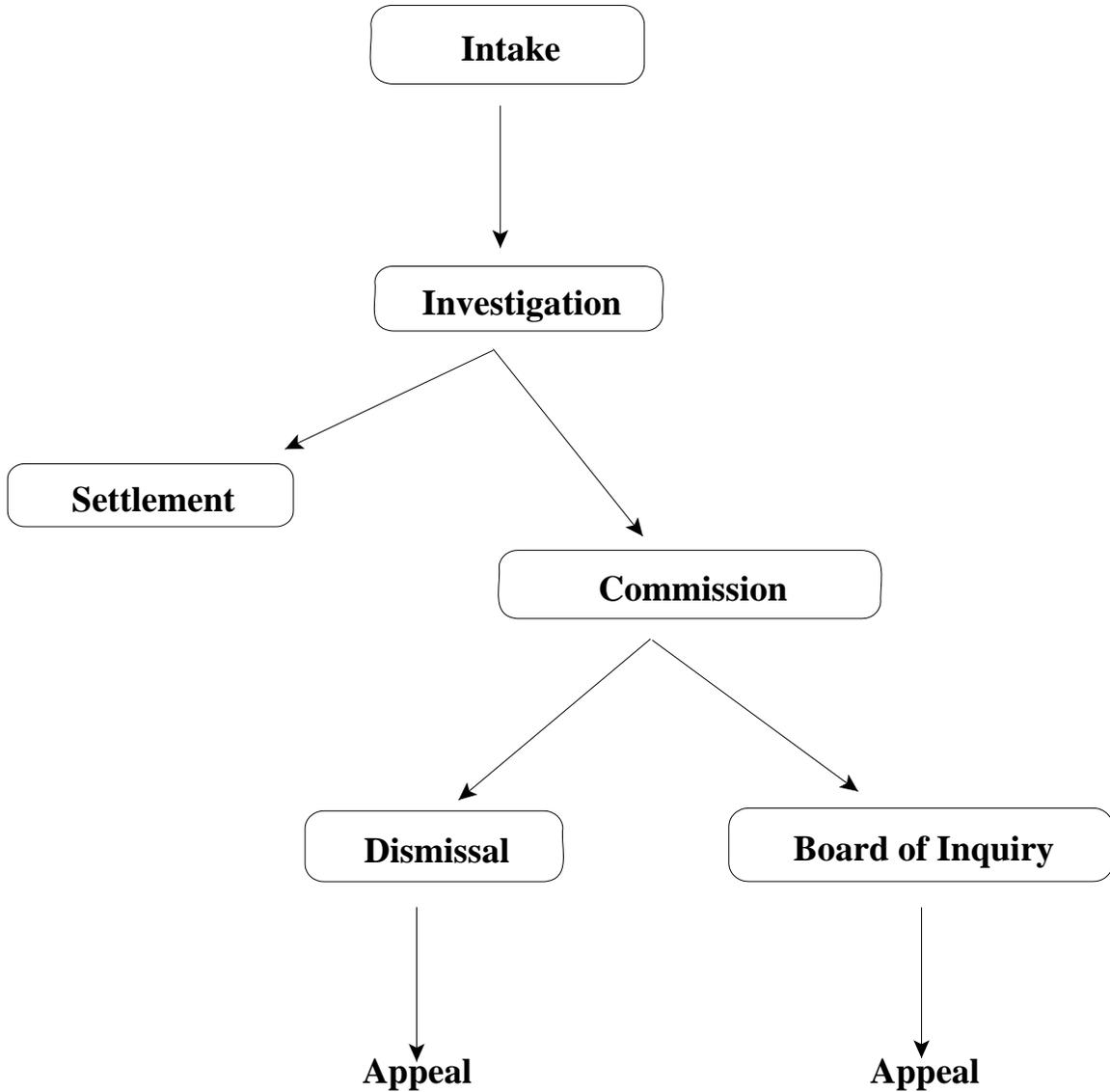
BARRY FLEMING
(Acting) Executive Director

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 ...
SOME CASE SUMMARIES

***FROM OUR FILES
SELECTED CASE SUMMARIES***

The following case summaries are representative samples of the types of complaints which the Commission dealt with in 2002.

- **Section 6:** *Services*
Areas: *Sex and Marital Status*

A man filed a complaint with the Commission when he was refused financial assistance to obtain board and lodging accommodation. The complainant said the reason he was refused assistance was because the landlord, who lives in the house and rents rooms, is a female and he is a male. He says he was told that this meant they were a family - presumably a common-law couple. The man said there was another single female renter on the premises and he was not in any kind of relationship with either of the women. He noted that he found the accommodation to be suitable and that he wished to rent the room.

The respondent replied with an offer of settlement which included that the financial assistance would be approved and that the complainant would receive an explanation and an apology from the respondent.

The Commission approved settlement of the complaint.

- **Section 6:** *Services*
Area: *Sexual Orientation*

A man filed a complaint with the Commission alleging he was discriminated against at a local business on the basis of sexual orientation. He says while a clerk was assisting him in finding a telephone number, a security guard walked by and asked "who are you calling - the washroom?" In his complaint, the man said he felt the security guard was attempting to cast shadows against his character by insinuating a connection between himself and some washroom activities. He says the location has a "washroom history and reputation in recent years". In a second incident, the man alleges he was called a faggot and a queer.

The respondent denied that any disparaging comments or innuendos were made in the first incident. The respondent further stated that in the second incident the complainant approached a staff person unprovoked, and began to behave in a verbally aggressive manner, and to threaten physical aggression.

The complaint was dismissed by the Commission.

- **Section 6:** *Services*

Area: *Sex*

A woman complained against five respondents on behalf of her daughter because female hockey was not accepted as an eligible sport for the Winter Games while male hockey was a participating sport. During the course of the investigation the respondents included female hockey as a full and participating sport in the Winter Games including participating in the opening and closing of the games.

The Commission was of the opinion that a reasonable resolution had occurred and dismissed the complaint.

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

A woman filed a complaint on behalf of her son who has a physical disability. In her complaint, the woman stated that her son was unable to attend the same school as his friends when moving from elementary school to junior high school because the “feeder school” is not wheelchair accessible. The respondent had designated another accessible school for the complainant’s son which the complainant felt would be detrimental to her son because of the separation from his friends. The respondent submitted that it had met its duty to accommodate the complainant’s son by providing him with transportation to and from a barrier free junior high school so that he could access the educational programming provided by the respondent.

The complaint was dismissed by the Commission.

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

A woman complained on behalf of her daughter alleging discrimination because the school day was shortened during a strike. The daughter was assigned a one-on-one student assistant and when student assistants commenced a strike, the respondent advised that the daughter could only be accommodated at school in the mornings.

The respondent denied the discrimination and submitted that they fulfilled their duty by accommodating the complainant’s daughter to the point of undue hardship.

The complaint was dismissed by the Commission.

- **Section 9:** *Employment*

Area: *Physical Disability*

A woman filed a complaint stating that she had been employed with the respondent for six years and during that time she did not receive any complaints about her work performance. One day she became ill at work and informed her supervisor that she needed to go home. The complainant said there was no objection at the time and she went home. When she returned to work the next day, her employment was terminated. The reason given for the termination was because her work was “not up to standards” and because she had “walked out”.

The respondent stated that the complainant had been a dependable employee for five or six years and missed very little time from work. Because of this, they overlooked the fact that the complainant was slow in the performance of her duties.

The respondent said the complainant resented that she had not been appointed to one of three available supervisory positions. After that, her behaviour deteriorated to the point where some staff asked that they not be scheduled to work with her. The issue of her behaviour and attitude was discussed with her on more than one occasion but matters did not improve. The respondent regrets having to terminate an employee who had worked with him for so long but felt that he could no longer tolerate the behaviour that the complainant had displayed during the last few months.

The complainant abandoned her claim for damages and the parties agreed to settle the complaint for a letter of reference.

- **Section 9:** *Employment*
 Area: *Age*

A woman who worked as a Crisis Intervention Worker filed a complaint when she was terminated after six months of employment alleging age discrimination. The complainant said she was subjected to numerous comments by the respondent that she looked young for the position she held. Also, she was told that she looked immature and that patients would not accept her youthful appearance. The position held by the 24-year-old complainant required her to counsel women and families involved with abusive situations. She was also responsible for counselling callers who phoned the crisis line.

The respondent replied by saying she was aware of the complainant’s age when she hired her and that any references made about the complainant’s age were a direct correlation to her lack of maturity. The respondent further states that the complainant’s lack of experience both life and work related became increasingly evident as she continued in her position and that she also had difficulty taking advice and following directions. Thus, the complainant was terminated from her position after careful observation because she was deemed unsuitable for the position.

The complaint was dismissed by the Commission.

- **Section 9:** *Employment*

Area: *Sex*

A man submitted a request to his employer for a special assignment of duties (parental leave with pay) under a clause in the Collective Agreement. His request was denied. The man filed a complaint with the Commission against his employer and his union stating that males should be entitled to the same benefits as females with respect to parental leave as provided for in the Collective Agreement. The respondents interpreted the clause to apply to female staff and that it was only the female member who may decide to share the benefit with a male partner if, and only if, he happened to be also employed with the respondent.

The matter was settled when the employer and the union agreed to amend the clause in the Collective Agreement providing for males to access a special assignment of duties in relation to parental responsibilities provided he will be the primary caregiver for the child.

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

A man filed a complaint with the Commission saying that he had been employed for three years on projects with the respondent and that he was not recalled because he had a bad flu which caused him to miss two weeks of work without pay. He says he provided a medical note to his employer at the time.

The respondent replied by saying that they did not refuse to recall the complainant because he had been ill while working on the project. Rather, they chose not to rehire him because he missed approximately nineteen days of work, ten of which were without excuse or written documentation, i.e., doctors' note. Other factors for not rehiring him were his poor work performance for which he had been given both verbal and written warnings, his work ethic, his general insubordinate attitude, as well as his threats against the supervisor.

The complaint was dismissed by the Commission.

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

A man filed a complaint when he was terminated from his job after 11 years of employment. He says prior to his termination he suffered episodes of manic depression. He is of the opinion that problems with his work which stemmed from his illness resulted in his termination. The respondent replied by listing a chronology of events outlining issues which ended with the termination of the complainant. The list included rudeness to staff, causing a disturbance at a function hosted by the respondent, refusing to leave a building and that he was alleged to have grabbed the gun of one of the RCMP officers attempting to physically remove him from the building.

The complainant failed to respond to several attempts by the Investigating Officer to reach

him and the complaint was dismissed by the Commission.

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

A woman who had worked as an instructor on contract with the respondent for two years filed a complaint with the Commission when she was not granted a contract for a third term. She says her contract was not renewed because she was required to leave work in March of her second term for pregnancy related medical reasons. She says when she discussed the third year contract with the respondent in August, she was advised that her contract would not be renewed because he felt her maternity leave would be disruptive to students.

The respondent denied the discrimination. The respondent says the other candidates were chosen strictly from an assessment of credentials of all available candidates for the position. The respondent provided information showing that nine employees had taken maternity leave and returned to their positions over the past five years.

The complaint was dismissed by the Commission.

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

A woman filed a complaint against her employer and her union when she did not accrue seniority for the time she was off work because of pregnancy and maternity leave.

The respondents replied to the complaint by stating that they would restore the complainant to the level of seniority she was estimated to have reached if she had not taken maternity leave. The parties signed a settlement agreement stating that the complainant would be credited with seniority at the rate of 138.5 hours per month for the period she is on maternity leave, up to a maximum of one year. The number of hours was arrived at by applying the average number of hours the complainant had worked during the previous calendar year.

The Commission approved the settlement of the complaint.

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

A man filed a complaint against his employer and the insurance company providing the employee benefit's program. In his complaint, the man said he had been employed for two years when the company where he was employed was purchased by a new company in July 2001. He says the new company agreed to hire the employees and assume a non-interruption of rights and benefits which included paying the same wages, pension benefits and insurance benefits. The benefits, he says, were to be effective from the date of hire.

Three months after the new company took over the business, the complainant injured his neck. Medical expenses including physiotherapy and chiropractic services were paid by the insurance company. Short Term Benefits were also paid for 16 weeks. At the end of 16 weeks, the complainant applied for Long Term Disability Benefits. These benefits were denied by the insurance company and his drug coverage was cancelled at that time. He was advised he did not qualify because he did not serve the 13-week waiting period to become eligible under the plan. The employer responded by stating that they did not purchase the Company but rather bought some of the inventory and some of the fixed assets of the Company. This respondent agreed that the employees were offered employment but they did not agree to assume a non-interruption of rights and benefits.

The complaint was dismissed by the Commission.

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

A man filed a complaint against his employer after he was injured on "his regularly scheduled lunch break" by a tow truck that had become dislodged resulting in a fractured jaw, lacerations to his neck and chin area and major damage to five teeth. The man felt he was discriminated against because his employer filed an injury report with Workers' Compensation rather than permit him to use accumulated sick leave. The man says he would receive 100 percent salary while off on sick leave, in comparison to 80 percent of his salary while off on Workers' Compensation.

The respondent denied the discrimination saying the complainant was injured while on duty and, therefore, is entitled to compensation as established by the *Workplace Health, Safety and Compensation Act*.

The Commission dismissed the complaint noting the issue is a disagreement over the timing of the accident rather than discrimination because of a disability.

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

A man who admitted submitting inappropriate billing to the respondent for professional services performed filed a complaint alleging discrimination on the basis of a mental disability. The man said his mental disability, a Bipolar Mood Disorder, was a factor in the billing. After being convicted of fraud and repaying several thousand dollars for the over billing, the complainant was permitted to resume his professional services after signing a contract with the respondents limiting his billing practices.

Three years after signing the contract, the complainant's lawyer requested a review of the contract with proposed amendments. In replying to the request, one of the named respondents requested a current medical from the complainant's physician. The complainant alleged both the contract and the request for medical documentation were discriminatory.

The respondent's position is that the complainant was treated differently because he had a long and admitted history of "defrauding the plan", and not because of a mental disability. The agreement permitting the complainant to resume billing required that he be monitored including seeing a psychiatrist once a month who would report on the fitness of the complainant to practice.

The complaint was dismissed by the Commission.

- **Section 9:** *Employment*
Area: *Sex*

A man filed a complaint with the Commission against his employer alleging that the grooming standards outlined in the Company dress code discriminates against him on the basis of sex. The man was not permitted to wear an earring while at work or to wear his hair below his collar. The respondent's policy permitted females to wear studs and small earrings and to wear their hair longer. It was the complainant's position that the grooming policy implemented by his employer was unfair and constituted discrimination.

The Commission dismissed the complaint.

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

A man who had quadruple bypass surgery for coronary artery disease filed a complaint saying he suffered serious fatigue and was refused accommodation by his employer. Initially, the man said he was accommodated but a change in personnel resulted in a withdrawal of the accommodations which included permitting him to teach early morning classes and the assignment of classrooms near

his office. The complainant said he was offered an early retirement package rather than provide the minor accommodation. However, the offer of a retirement package was withdrawn and the man then availed of sick leave. After the sick leave benefits terminated, the complainant was without salary. The complainant sought to obtain reinstatement of the accommodation of his teaching schedule; reinstatement of sick leave; reimbursement of lost salary and benefits and general damages.

The respondent's position was that there was a considerable degree of accommodation. His course load was reduced resulting in costs to pay another instructor, and where possible the complainant was assigned morning courses. The respondent denied an offer of earlier retirement.

The complaint was dismissed by the Commission.

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

A man who sought medical attention for stress related symptoms filed a complaint against his employer when he was suspended from his part-time job because of attendance problems. The complainant said his attendance problem was related to his mental disability. The complainant provided documentation from a psychologist verifying he was fit to return to work. The respondent agreed to permit the complainant to return to work upon signing a Last Chance Agreement by both himself and his Union.

The Union refused to sign the agreement unless the complainant would sign a waiver in favour of the Union, protecting them from any action by the complainant in this matter.

The complainant refused to sign the waiver, therefore, the Union refused to sign the Last Chance Agreement. The respondent, thus, refused to permit the complainant to return to work. The complainant alleged his employer was unreasonable and discriminated against him on the basis of mental disability.

The Commission dismissed the complaint.

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

A woman filed a complaint with the Commission when she did not have a job to return to after maternity leave. While the woman was on leave, the employer declared bankruptcy. Another company acquired some, or all, of the business including the building, the equipment and the staff with the exception of the complainant. The complainant was told that her name had not been submitted to the new employer for the hire but the Branch Manager had submitted the name of her maternity replacement.

The respondent took the position that it was not a successor employer and that it had selected

the most capable employees to meet business requirements. Only 72 of the approximately 93 employees of the former employer were hired by the new company. The respondent noted that the former employer had recommended that the performance level of the maternity replacement was far superior than that of the complainant.

The complaint was dismissed by the Commission.

- **Section 9:** *Employment*
Area: *Sex*

A woman filed a complaint with the Commission stating that she had applied for a labourer's position with the respondent and although she was qualified for the position she was not hired and only males were hired. The project was to construct 80 feet of wharf and the complainant stated she had five years of experience doing this type of work. The complainant alleged that when she inquired to the reasons why she was not successful in obtaining employment on the project, she was told by the respondent that women were not considered for the job and that the work was too heavy for women.

The respondent denied any discrimination on the basis of gender. The respondent stated that applications were invited for the position and when the applications were reviewed, the most qualified applicants were hired.

The complaint was dismissed by the Commission.

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

A woman who was employed for approximately two years as a bar tender filed a complaint alleging discrimination on the basis of physical disability. The complainant said she advised her employer that she would be absent from work for four days as she was having day surgery which required a resting period. The complainant said she was terminated after being absent for two days and was told by the respondent that her position would be eliminated as they would be going to part-time staff only.

The respondent replied to the complaint by stating that they informed the complainant during a meeting two months previously that if profits did not increase staff would be laid off or expected to take a cut in pay. The respondent said the complainant made it clear during this meeting that she would not take a reduction in either pay or hours. Thus, the complainant was laid off and the termination had nothing to do with the complainant's disability.

The complaint was dismissed by the Commission.

- **Section 9:** *Employment*

Area: *Physical Disability*

A woman who was employed as a crisis intervention worker filed a complaint after her employment was terminated alleging discrimination on the basis of physical disability. The complainant said she suffered from scoliosis which required her to take two weeks off work over the Christmas holidays. A doctor's note verifying she was absent for medical reasons was given to her employer. The complainant was terminated in the month of February.

The respondent's position was that the complainant who was working a probationary period was deemed unsuitable for the job. The respondent said the complainant exercised poor judgement during several incidents and this combined with her taking leave without accumulating it, providing insufficient notice of impending leave and her overall lack of accountability and responsibility, lead to her termination.

After an investigation of the matter, the Commission dismissed the complaint.

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

A man filed a complaint with the Commission alleging the termination of his employment constituted discrimination on the basis of physical disability. The man had been employed for approximately a year when he injured his knee on the job. The injury was reported immediately, as required, to the nursing station at which time the complainant says he was advised a doctor's appointment would be arranged for him. Three days later the complainant was given a lay off notice by his supervisor. The complainant alleged that his supervisor told him that his name had been submitted to the superintendent as an employee to be kept on. The complainant further alleged that the superintendent had told his supervisor that he, the complainant, "had laid himself off". The complainant believed this was said because he had visited the nursing station.

The respondent's position was that the complainant was one of several employees scheduled for lay-off during the wind down of employment at the site. They say the end of the project was well known among the employees. The respondent further noted that there was no evidence that the complainant had hurt himself and no evidence to verify that he had visited the nursing station. This coupled with the fact that the complainant had worked four ten-hour shifts prior to his lay off does not indicate that the complainant had an injury.

After an investigation, the Commission dismissed the complaint.

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

The complainant who is deaf said in his complaint to the Commission that he was refused work on a Job Creation Project because of his disability. The complainant stated that he received a telephone call asking him to report for work three days later. He arrived at the work site accompanied by an interpreter but was told he may as well leave as the government representative did not arrive to sign documents.

The complainant who was already employed on another project that paid less money and required further travel said he called again to inquire about the new project after three days. He was advised that three people had already been hired and that he could not transfer from one Job Creation Project to another. The complainant said after checking further he learned that he could transfer. He then filed a complaint with the Commission alleging he was not hired because of his physical disability.

The respondent denied the discrimination and stated that they had excluded the complainant because he was already employed on another project.

After an investigation, the Commission dismissed the complaint. The complainant appealed the Commission's decision to the Trial Division of the Supreme Court. A decision is pending from the Court.

- **Section 9:** *Employment*
Area: *Sex*

Two women who were hired as labourers on a construction site were terminated approximately a month after being hired. They both filed a complaint alleging they were terminated because of their sex. In their complaint, the women said on their first day on the job they were told by a co-worker that he was surprised to see them there because women were usually not hired. According to the women, the co-worker said they were hired only because of the insistence of another person who stated they must be hired because they are steelworkers. The women stated in their complaint that they were told when terminated that the termination was because of poor workmanship and lack of mechanical aptitude. The complainants said their work had always been approved of and no problems had been brought up prior to their termination.

The respondent denied the allegations. They stated that if they discriminated on the basis of gender they would not have hired females. The respondent stated that the complainants were hired based on their experience, qualifications and their interviews, however, their work performance did not meet expectations, therefore, they were terminated.

The complaints were dismissed by the Commission after investigation.

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

A woman filed a complaint alleging discrimination on the basis of physical disability when her employment was terminated after approximately three years of employment as a Medical Secretary. The woman said she developed a “rotator cuff illness” in her shoulder which made it difficult and painful for her to reach upwards for charts, files and other items. She requested accommodation that things be placed at a lower height. She says this was not done and her request simply became a joke about her height. The complainant said when she pressed for an explanation after being told she was dismissed because of work performance, the respondent said “To tell you the truth I’m sick and tired of listening to you ‘ooh and ah’ when you’re in the exam room with me and having to reach for things for you”.

The respondents denied the allegation of discrimination and stated that they did comply with requests for accommodation. They provided her with a special chair, considerable leave time for medical appointments and time off work for rest after steroid injections. As well charts were pulled for her and additional filing cabinets were purchased to further loosen charts for filing. The respondents went on to say that the complainant was dismissed because of her increasingly intolerable, negative and antagonistic attitude toward staff and patients. In addition, the respondents said that the complainant’s work performance had also deteriorated as she booked patients improperly, missed call backs and provided inappropriate information to patients.

The complainant withdrew her complaint after an investigation by the Commission. The withdrawal was approved by the Commission.

- **Section 9:** *Employment*
Area: *Age*

A man filed a complaint against the respondent when his employment was terminated after 11 years of service alleging discrimination on the basis of age. The man who was 57 years old said he was called into the boardroom two weeks before he was to commence his vacation and was terminated. He said the Chief Executive Officer suggested he take a lay off and said “we all reach this point in life”. The CEO noted performance problems with over and understocking certain stock items. The complainant stated that his employer had brought in a new computer system and that he had not been provided training which he believed was because of his age.

The respondent replied by advising and illustrating the numerous efforts made to enhance the complainant’s computer skills. They also illustrated serious problems with the complainant’s work performance which did not improve over time. After reviewing the respondent’s reply and consulting with a lawyer, the complainant said he wished to withdraw his complaint.

However, no withdrawal form was signed and after several reminders the complaint was dismissed as abandoned.

- **Section 9:** *Employment*

Area: *Mental Disability*

A woman filed a complaint with the Commission after she was unsuccessful in obtaining an offer of employment at a Call Centre. The complainant alleged she was discriminated against on the basis of mental disability. The woman said she informed the interviewer that she had been off work for several years in the 1990's because of depression and anxiety. She believed this was the reason the respondent did not offer her a job. The complainant also said she informed the interviewer that because of her responsibility in caring for her elderly mother she would be unavailable to work shift work.

The respondent's position in the matter was that since the complainant was unavailable for shift work and could not cope with stress, both of which are good faith qualifications for the position she applied for, therefore, the complainant was not hired. Also, the respondent said they had numerous other candidates who were more suitable for the position.

The complaint was dismissed by the Commission.

- **Section 12:** *Harassment*
Area: *Mental Disability*

A man who had been employed with the respondent for 16 years filed a complaint with the Commission alleging harassment about his use of sick leave. In his complaint, he said he was called into a supervisor's office, in front of a witness, and called an abuser of sick leave after going over management's acceptable use by one day. The complainant said he was off work for five days because of a serious stress-related incident at his place of employment. He noted that he attended EAP counselling while off work to deal with the incident.

The respondent took the position that discrimination or harassment should not be said to have occurred based on a management official having met with the complainant to discuss sick leave usage. The respondent said the meeting was not "a course of vexatious comment or conduct" and that "the apparent transitory effect of stress" which the complainant said occurred as a result of an incident at work should not be considered to be a disability under the Code.

The complainant was unable to assist the Commission in contacting the witness referenced and the matter was dismissed by the Commission.

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

A woman who was employed as a domestic and utility worker filed a complaint against her supervisor and employer alleging that she had been subjected to sexual harassment by her supervisor. The complainant listed several behaviours which she deemed to be sexual harassment including that the supervisor would go to her area four or five times a night and stay for long periods of time; that the supervisor looked down her blouse as she bent over to empty the garbage can; and that the supervisor put his hand on her lower back and that he rubbed his groin into her buttocks as he reached above her to check for dust or a light. The complainant said when she complained to the employer she lost shifts as she had not been called into work by the respondent.

The employer responded to the complaint by stating that they had completed an internal investigation which did not reveal any information to substantiate the allegations of sexual harassment. The respondent noted that the complainant is a temporary employee who would be called on a daily basis subject to her qualifications and seniority. The respondent advised that the complainant refused to work on shifts if the supervisor named in the complaint was also working. The respondent said the complainant was then offered day shifts but sometimes refused them and often could not be reached. The respondent said they took reasonable steps to accommodate the complainant but they were not acceptable to her.

The Commission dismissed the complaint after conducting an investigation. The matter has been appealed to the Trial Division of the Supreme Court by the complainant.

- **Section 13:** *Sexual Solicitation*

A woman had been employed for about a month when her employment was terminated. She then filed a complaint with the Commission alleging sexual solicitation. In her complaint, the woman said she caught the respondent looking up under her short loose shirt while she was standing on a chair to reach something; that the respondent had said to her that many girls have worked here and left but none had affected him the way she did; that the respondent put his hand on “my backside” and “rubbed himself up against me”; and that the respondent asked her if she could keep a secret if anything happened between them.

The complainant said she was frightened by the respondent’s actions. She says she then overheard some girls say the only way to get fired here is to steal something so she stole money from the video lottery machines. She later confessed to the theft and was fired.

The respondent denied the allegations saying he was not even in town when some of the incidents were alleged to have occurred. This was supported by documentation. The investigation was unable to substantiate the allegation of sexual solicitation and the complaint was dismissed.

- **Section 15:** *Retaliation*

A lawyer filed a complaint with the Commission on behalf of a client who had earlier filed a complaint alleging he had been the subject of discrimination on the basis of mental disability. The lawyer noted that his client was advised several years ago that his billing practices from 1992 to 1997 would be audited. He says this audit was commenced approximately four years prior to this complaint and had remained uncompleted until his client filed a complaint with the Human Rights Commission. Shortly after filing the complaint, his client was notified that the audit had been completed. The lawyer says that the audit was inactive for a significant period of time and was revived after the filing of a human rights complaint. Thus, he says, it would appear, based on the timing of these events, that the audit is being processed in retaliation for his client filing a human rights complaint.

The respondent replied to the complaint by stating that quarterly status letters were sent to all persons with audits in progress. In keeping with this directive the respondent says letters were mailed out in January 2002 and April 2002. The second letter was dated April 1, 2002 and had been mailed out prior to the respondent being notified of the human rights complaint which was filed with the Commission on April 1, 2002.

The Commission dismissed the retaliation complaint.

***STATISTICS
2002***

***Complaints Accepted for Investigation
By Section and Area
2002***

<i>Area</i>	Services	Employment	Pay Discrimination	Harassment	Sexual Solicitation	Retaliation	
<i>Section</i>	6	9	11	12	13	15	Totals
<i>Sex</i>	3	15		2			20
<i>Marital Status</i>	3	2					5
<i>Physical Disability</i>	2	37					39
<i>Mental Disability</i>	4	14					18
<i>Age</i>		4					4
<i>Sexual Orientation</i>	1			1			2
<i>Sexual Solicitation</i>					2		2
<i>Pay Discrimination</i>			9				9
<i>Retaliation</i>						1	1
<i>Totals</i>	13	72	9	3	2	1	100

***Complaints Closed by the Commission
By Section - 2002***

	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
<i>Section 6</i>	4	1		13	18
<i>Section 9</i>	32	9	1	4	46
<i>Section 12</i>	2	1			3
<i>Section 13</i>		1			1
<i>Section 15</i>	1				1
<i>Totals</i>	39	12	1	17	69 *

* The 2 day December meeting of the Commission with an agenda of 22 complaints to be actioned was postponed until January.

**Complaints closed by the Commission
By Ground and Section - 2002**

Section 6 (Access to Services)

Ground	Dismissed	Settled	Board of Inquiry	Totals
<i>Sex</i>	1	1		2
<i>Marital Status</i>			3	3
<i>Physical Disability</i>	1			1
<i>Mental Disability</i>	1		1	2
<i>National or Social Origin</i>			9	9
<i>Sexual Orientation</i>	1			1
Totals	4	1	13	18

Section 9 (Employment)

Ground	Dismissed	Settled	Withdrawn	Board of Inquiry	Totals
<i>Sex</i>	9	3		1	13
<i>Marital Status</i>				1	1
<i>Physical Disability</i>	17	5	1	1	24
<i>Mental Disability</i>	5				5
<i>Age</i>	2			1	3
Totals	33	8	1	4	46

***Complaints closed by the Commission
By Ground and Section - 2002***

Section 12 (Harassment in an Establishment)

<i>Ground</i>	Dismissed	Settled	Withdrawn	Board of Inquiry	Total
<i>Sex</i>	2	1			3
<i>Total</i>	2	1			3

Section 13 (Sexual Solicitation)

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

Section 15 (Retaliation)

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

***BOARDS OF INQUIRY
UPDATE***

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

1. *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 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 convened several days throughout 2002 and is scheduled to conclude in January 2003.

2. *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.

A settlement proposal was submitted to the respondents for consideration. However, an agreement could not be reached and the Board of Inquiry is to reconvene on April 29 and 30, 2003.

3. *Carol Evans v. Health Care Corporation*

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 upheld the decision of the Adjudicator.

The matter was appealed to the Court of Appeal. It is scheduled to be heard in January 2003.

4. *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 licenced practical nurses (LPN). The complainants say there are two groups of LPN positions. One group is referred to as person LPN, 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.

Settlement negotiations are ongoing in this matter.

5. *Laetitia Jesso v. Mote's Enterprises 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 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 Adjudicator Annette Bennett heard this complaint in August 2001. She released a decision in 2002 dismissing the complaint as unfounded.

BOARDS OF INQUIRY

UPDATE

*(The following is an update on Boards
of Inquiry reported as being appointed
in 2000 - 2001)*

1. *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. The matter is pending.

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

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 bother, Calvin, saying her services were no longer required. Ms. Moyles 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.

Adjudicator Maeve Baird heard the complaint in August 2001. She released her decision on March 7, 2002 dismissing the complaint and stating the complainant had not established a prima facie case of discrimination on the basis of sex.

3. *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 her 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 heard this matter in April 2002. Her decision was released on October 16, 2002 upholding the complaint and ordering the respondents to pay general damages in the amount of \$2,000.

4. *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 heard this matter in March 2002. His decision is pending.

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

Betty Randell of Corner Brook filed two complaints with the Commission 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".

Chief Adjudicator Judy Morrow heard both complaints in September 2002. In her

decision released on May 1, 2002, Ms. Morrow dismissed the complaint on the basis of age, sex and marital status and upheld the complaint of retaliation. The Board ordered that Ms. Randell be given employment by the respondent with back pay to a point in 2000, compensation for general damages and interest.

6. ***Jacqueline Mayo v. Iron Ore Company of Canada and United Steel Workers of America Local 5795***

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. On 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.

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

In a decision released on April 15, 2002, Adjudicator Picco found that Ms. Mayo had been discriminated against and ordered that she be compensated in the amount of \$8,862.58 including lost wages, airfare and general damages. Both the Iron Ore Company of Canada and the United Steel Workers of America Local 5795 were found to be jointly and severally liable to the complainant.

7. ***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 scale than her male counterpart.

Chief Adjudicator Judy Morrow is scheduled to hear this matter on January 22, 2003.

8. ***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.

Adjudicator Valerie Marshall heard this matter in August 2002. A decision is pending.

9. *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.

In a decision released on April 25, 2002, Adjudicator Marshall dismissed the complaint stating that the complainant had failed to establish a prima facie case.

10. *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 was scheduled to hear this matter in April 2002. However, the parties reached a settlement prior to the hearing convening.

11. *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.

This matter was heard by Adjudicator Mary O'Brien. A decision is pending.

NEW BOARDS OF INQUIRY

(Appointed in 2002)

1. *Dana Whiffen v. Tavel Limited and National Sea Products*

Dana Whiffen was employed as a fish grader with Tavel Limited at a fish plant operated by National Sea Products in Arnold's Cove. She was removed from her position when a fisherman complained that the complainant and her sister-in-law, who was also employed with the respondent, were not grading his fish fairly because he had been in an altercation with Ms. Whiffen's husband a few years earlier. Because of this complaint, Ms. Whiffen was given a temporary assignment at another plant while her work was reviewed. The review found no irregularities in Ms. Whiffen's work yet she was informed that the respondent did not want her grading fish in the plant any more because some fishermen would stop bringing their fish to the plant.

The second respondent took the position that it was justified in not wanting the complainant to continue as a fish grader under the circumstances, in order to prevent the threatened impact on business, if fishermen were to withhold fish from the plant.

The first respondent took the position that the issue is not one of Ms. Whiffen's marital status per se, but in any case it had tried to accommodate Ms. Whiffen by investigating the grading of fish by the complainant and writing to National Sea Products to say that there was no evidence of improper grading. Further, Tavel Limited indicated that it wished to reinstate Ms. Whiffen. National Sea responded by threatening to withdraw from the grading contract. Because of this threat, Ms. Whiffen was not permitted to return to her fish grading position.

The matter is scheduled to be heard in January 2003 by Adjudicator Valerie Marshall.

2. *Robert Peach v. College of the North Atlantic*

Robert Peach has been diagnosed through professional assessment as being dyslexic. He is considered by his assessments to be intellectually capable, but is hampered by extreme weaknesses in reading, spelling and writing skills. Mr. Peach says that prior to enrolling at the College of the North Atlantic in 1997 in the Architectural Engineering Technology Program, he wrote to inform them of his disability and to request accommodation. Mr. Peach said in his complaint that he had undergone additional assessments after enrolling in the program and requested the necessary accommodation. Mr. Peach said the College did not provide the necessary accommodation, and as a result, he had difficulty completing his studies in Architectural Engineering Technology.

The respondent takes the position that it has not failed to provide reasonable accommodation and outlines the efforts that have been made. It is noted that the course of study which Mr. Peach is enrolled in is a difficult one, and the College therefore "denies any relationship between the substance and/or quality of the accommodations provided to the complainant and the complainant's failure to complete the Architectural Engineering

Technology Program thus far”.

Annette Bennett has been appointed to Adjudicator this matter.

3. ***Theresa Quilty v. Workplace Health, Safety and Compensation Commission and Her Majesty the Queen in Right of Newfoundland and Labrador as Represented by the Ministry of Labour***

Betty Stacey v. Workplace Health, Safety and Compensation Commission and Her Majesty the Queen in Right of Newfoundland and Labrador as Represented by the Ministry of Labour

Anna Haby v. Workplace Health, Safety and Compensation Commission and Her Majesty the Queen in Right of Newfoundland and Labrador as Represented by the Ministry of Labour

The three women filed individual complaints against the respondents.

Theresa Quilty’s husband died in a workplace accident in 1969, following which she received widows’ benefits until she remarried in 1970. Her benefits were subsequently restored in the mid 1990’s following a settlement in a successful human rights complaint on the basis of marital status. Ms. Quilty filed this complaint after she received notification of the new Workplace Health, Safety and Compensation Commission (W.H.S.C.C.) legislation which allows for retroactive payments to beneficiaries who remarried after April 17, 1985, but not to those who remarried prior to that date.

In May, 2001, the Workplace Health, Safety and Compensation Commission Act was amended to allow for persons who remarried on or after April 17, 1985 to receive payments retroactive to that date. Ms. Quilty received a letter from W.H.S.C.C. in May 2001 stating that because she remarried prior to April 17, 1985 that she would not be eligible for retroactive payments. Ms. Quilty believes that her marital status prior to April 17, 1985 is being held against her unfairly. She is of the opinion that she should be entitled to retroactive payments back to April 17, 1985, in order to be treated the same as those women who married after that date.

Betty Stacey’s husband died as a result of an industrial disease in 1960, following which she received widows’ benefits from W.H.S.C.C. until she remarried in 1962. She also received children’s benefits following her husband’s death, and these benefits continued after she received notification of the new legislation which allows for retroactive payments to beneficiaries who married after April 17, 1985, but not to those who remarried prior to that date.

Anna Haby’s husband was killed in a workplace accident in 1973. She received

widows' benefits until she remarried in 1975. Her benefits were subsequently restored in the mid 1990's following a successful human rights complaint on the basis of marital status. She too filed a complaint with the Commission after being notified of the new legislation in May 2001.

The Workplace Health, Safety and Compensation Commission says that a 1990 amendment to their Act "provides entitlement to compensation for surviving dependent spouses who remarried on or after April 17, 1985, but the legislation did not provide compensation for spouses who remarried prior to that date. The W.H.S.C.C. says that such legislation has not been found to constitute discrimination on the basis of marital status in other Canadian jurisdictions. The W.H.S.C.C. states that it notified the affected spouses of the May, 2001 amendment, but argues that in doing so it was acting on its lawful interpretation of recent legislative amendments, rather than on its own discretion. The W.H.S.C.C. says that if retroactive benefits are to be paid in the circumstances of these complaints, it will have to be a decision of the Newfoundland and Labrador legislature.

The Ministry of Labour denies that the three complainants have been discriminated against. This respondent argues that the distinction between those who remarried prior to April 17, 1985 versus those who remarried after that date is a temporal one, or simply based on a specific date, rather than marital status itself. This respondent states that "date of remarriage" is not a prohibited ground of discrimination under the Human Rights Code.

It is further argued that this distinction also does not "contribute to a violation of their human dignity nor stigmatize the complainants that they are less deserving of concern, respect or consideration simply because they remarried prior to April 17, 1985". The Ministry of Labour puts forward examples of previous decisions in its response to support this point of view.

A third argument put forward by this respondent is that the Workplace Health, Safety and Compensation Commission would face undue hardship if it were forced to pay retroactive benefits in this circumstance. The Ministry of Labour says that providing "retroactive survivor benefits for the pre 1985 group of approximately 70 persons could constitute an undue financial hardship" for the W.H.S.C.C. which faces a serious cash flow shortfall of \$9.7 million for 2001. This respondent submits that the principal sum involved would be approximately \$3.5 million including interest.

The matter is scheduled to be heard in February, 2003 by Adjudicator Gillian Butler.

4. *Dr. Peter Bass v. Newfoundland Dental Board*
Dr. Anthony Bloom v. Newfoundland Dental Board

Dr. Anne Hornett v. Newfoundland Dental Board
Dr. Peter Hornett v. Newfoundland Dental Board
Dr. Philip Keith v. Newfoundland Dental Board
Dr. Rehan Malik v. Newfoundland Dental Board
Dr. Dulach O'Brien v. Newfoundland Dental Board
Dr. Charles Mitchell v. Newfoundland Dental Board
Dr. Vincent Rice v. Newfoundland Dental Board

Nine individual complaints were filed by dentists practising in rural Newfoundland and Labrador against the Newfoundland Dental Board alleging discrimination on the basis of national origin. The nine dentists have been practising in rural areas under a Provisional Licence for periods ranging from 16 to 24 years. All have been practising under a clinically unrestricted licence during this time. This Provisional Licence allows a dentist to perform all the procedures as a dentist who has a General Licence. The only difference is that those dentists with a Provisional Licence are geographically restricted as to where they can practice and as a result they have only been permitted to practice in designated under-serviced areas, e.g. rural Newfoundland and Labrador.

All nine of the dentists have graduated from recognized schools of dentistry in the United Kingdom and all are now Canadian citizens.

The Newfoundland Dental Board states that the Dental Act and the Dental Regulations under the Act, govern the granting of licences by the Newfoundland Dental Board.

When the complaints were first registered with the Board the legislation provided that in order to be licensed to practice Dentistry or Dental Surgery, it was necessary for applicants to show that he or she “holds a Certificate of Qualification of the National Dental Examining Board or its predecessor, the Dental Council of Canada, or has passed such other examination or examinations as may be prescribed by the Board”. This provision was under The Dental Act of 1970.

Under the 1983 Act, a restricted licence known as a “Provisional Licence” would be issued to anyone holding a “permit” under the 1970 Act; or to a person holding the qualification for a Provisional Licence as set out in the regulations. The purpose of a Provisional Licence was to allow for the provision of dental services to “under-serviced” areas of the Province where it was not possible to obtain the services of a person holding a General Licence. It was the Government who determined whether an area was “under-serviced”.

Because the complainants did not hold a Certificate from the National Dental Examining Board (NDEB) they did not qualify to receive a General Licence to practice

Dentistry within the province.

The nine dentists requested that the Newfoundland Dental Board convert their Provisional Licences to General Licences. In January 2001, the Board responded by requiring the dentists to do an examination to assess their knowledge and ability as dentists at a cost of approximately \$15,000. The complainants have expressed that if they are considered competent enough to be granted a licence to perform all the same procedures as someone holding a General Licence, then they should not have to write an exam and incur such costs to demonstrate a level of competency.

Chief Adjudicator Judy Morrow was scheduled to hear the complaints. However, the hearing was postponed when the respondent agreed that legislation would be implemented to settle the complaints.

5. ***Louise Summers v. St. John's Nursing Home Board and Newfoundland and Labrador Nurses' Union***

Louise Summers filed a complaint with the Commission against the respondents alleging that the practice of laying off staff based on seniority is discriminatory against disabled employees who are unable to accrue seniority at the same rate as non-disabled employees.

Ms. Summers began working as a full-time casual nurse at Hoyles Escasoni in July 1996. She also availed of shifts as a casual nurse at Glenbrook Lodge. In October 1997, Ms. Summers was injured in a car accident resulting in seven months of lost employment. When she was ready to return to work, she made three attempts at ease back which were unsuccessful. Ms. Summers then accepted a permanent .5 position where she remained until October 15, 2001. At this time, because of cut backs, she was told she had to move to another area. She was also told that because she was the junior nurse, she would be the person who would have to move or would be laid off if similar situations occurred. Ms. Summers' disability has placed her in a position whereby she is more vulnerable to lay-offs or internal transfers when restructuring occurs because she is employed in a half-time position earning half a year seniority each year.

The St. John's Nursing Home Board says to allow the complainant to accumulate seniority for times when she is not employed would be a violation of the Collective Agreement. Also, it would give her an unfair advantage over all other employees who receive seniority credit only for time worked. This respondent also noted that at the time of her injury, Ms. Summers was a casual employee and, as such, she had no obligation to report to work when called and the employer could choose not to call her. It was further stated that there is no guarantee or assurance that casual employees will work any set number of hours.

The Newfoundland and Labrador Nurses' Union did not submit a reply to the

complaint.

Glen Picco has been appointed to adjudicate the matter.

6. *Stephen Ransier v. Canadian Corps of Commissionaires*

Stephen Ransier filed a complaint against the respondent alleging discrimination contrary to the Human Rights Code because of a request for an applicant's date of birth on their application form. Furthermore, the applicant was required to sign the form indicating the accuracy and truthfulness of the details provided. Mr. Ransier is of the opinion that his refusal to provide this information placed his application in jeopardy and he filed a human rights complaint.

The Canadian Corps of Commissionaires took the position that their request for the date of birth on an application form does not contravene the Human Rights Code. They also state that Mr. Ransier's refusal to provide the date of birth does not place his application in jeopardy. The Corps reports trying to ascertain, in accordance with the Code, whether applicants are younger than 19 and older than 65.

Mary O'Brien will adjudicate the matter.

7. *Sharon McEvoy v. Best of Care Ltd. and Vincent Dalton and Her Majesty the Queen in Right of Newfoundland as Represented by the Ministry of Health and Community Services*

Sharon McEvoy was employed as a home care worker providing home support for Vincent Dalton, an elderly client, on April 17, 2000. On August 5, 2001, she commenced maternity leave and a replacement worker was hired to fill in for her while she was on leave. Ms. McEvoy stated that she contacted her employer, Best of Care Ltd., and informed Gloria White that she was ready to return to work on March 1, 2002 and later that same day she was contacted twice by Ms. White. On the first occasion Ms. White told her she would be returning to work on March 4, 2002. However, in the second telephone conversation Ms. White told her she would not be returning to work as the client's family had decided to retain the services of the replacement worker. In her complaint, Ms. McEvoy alleges the termination of her employment was because of her pregnancy.

The respondents denied any allegation of discrimination on the basis of pregnancy. The respondent's position was that the replacement worker was retained at the request of the client, an 81 year old man, who was more comfortable with the replacement worker because they had more in common.

Annette Bennett will adjudicate the matter.

***CONTACTING THE
HUMAN RIGHTS COMMISSION***

CONTACTING THE HUMAN RIGHTS COMMISSION

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P.O. Box 8700
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A1B 4J6
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20 Crosbie Place
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- By E-mail:*** humanrights@mail.gov.nf.ca
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