

Human Rights Commission

Province of Newfoundland and Labrador

Report for 2005/06

The Honorable Tom Osborne
Minister
Department of Justice
P.O. Box 8700
St. John's, NL
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Dear Sir,

As Vice-Chair of the Human Rights Commission it is my pleasure to present to you the Commission's Annual Report for 2005-06.

Respectfully submitted,

GILBERT THOMAS
Chair (Acting)

TABLE OF CONTENTS

THE COMMISSION AND STAFF.....	1
INTRODUCTION	2
FUNCTIONS OF THE COMMISSION.....	3
THE COMPLAINT PROCEDURE	4
THE COMPLAINT PROCESS	5
STATISTICS	6
DECISIONS FROM THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR.....	8
BOARD OF INQUIRY ACTIVITY.....	10
SECTION 21 (4) APPLICATIONS.....	14
FINANCIAL STATEMENTS	15
CONTACTING THE HUMAN RIGHTS COMMISSION.....	16

THE COMMISSION AND STAFF:

As of March 31, 2006 the members of the Human Rights Commission were:

Gillian Butler, Q.C. Appointed March 28, 2006 – Expiry March 27, 2011	- Chair
Gilbert Thomas Appointed October 8, 2002 – Expiry October 7, 2007	- Vice-Chair
Shirley Barr Appointed October 8, 2002 – Expiry October 7, 2007	- Commissioner
Winston Green Appointed October 8, 2002 – Expiry October 7, 2007	- Commissioner
Jorge Villanueva Appointed March 28, 2006 – Expiry March 27, 2011	- Commissioner
Mary Ennis Appointed March 28, 2006 – Expiry March 27, 2011	- Commissioner

The members of the Commission staff were:

Barry Fleming	-	Legal Counsel/Executive Director (Acting)
Anna Dwyer Started June 27, 2006	-	Human Rights Specialist
Daniel Peyton Started December 5, 2006	-	Human Rights Specialist
Colleen Murphy	-	Secretary
Jocelyn Walsh	-	Secretary

INTRODUCTION

The Commission experienced a significant increase in the number of complaints received for the reporting period – fiscal 2005/06. 117 complaints were received as compared to 100 complaints for the previous reporting period. This provided significant challenges in light of the fact that the Commission's two Human Rights Specialists were recruited during the reporting period. Despite the relative inexperience of staff, the Commission was able to close 126 files during the year. The challenge for the next year will be to ensure that staff continue to receive adequate training and supervision to provide timely and effective processing of complaints.

Three new Commission members; Gillian Butler, Q.C., Chair, Mary Ennis and Jorge Villanueva were appointed near the end of the fiscal year. The general public and Commission staff will benefit greatly from the insight, experience and vigor of these new members. A note of thanks to departing Commission members, Joan Myles and Roland King for their many years of service to the Commission.

A new panel of adjudicators was appointed to act as Boards of Inquiry on November 5, 2005. The terms of the previous panel had expired on January 26, 2005 thus creating a minor backlog of cases. The Commission was able to schedule and dispose of 10 complaints which had previously been forwarded to Boards of Inquiry. Parties to a complaint can still expect an eight to ten month delay in having a matter commence before a Board of Inquiry.

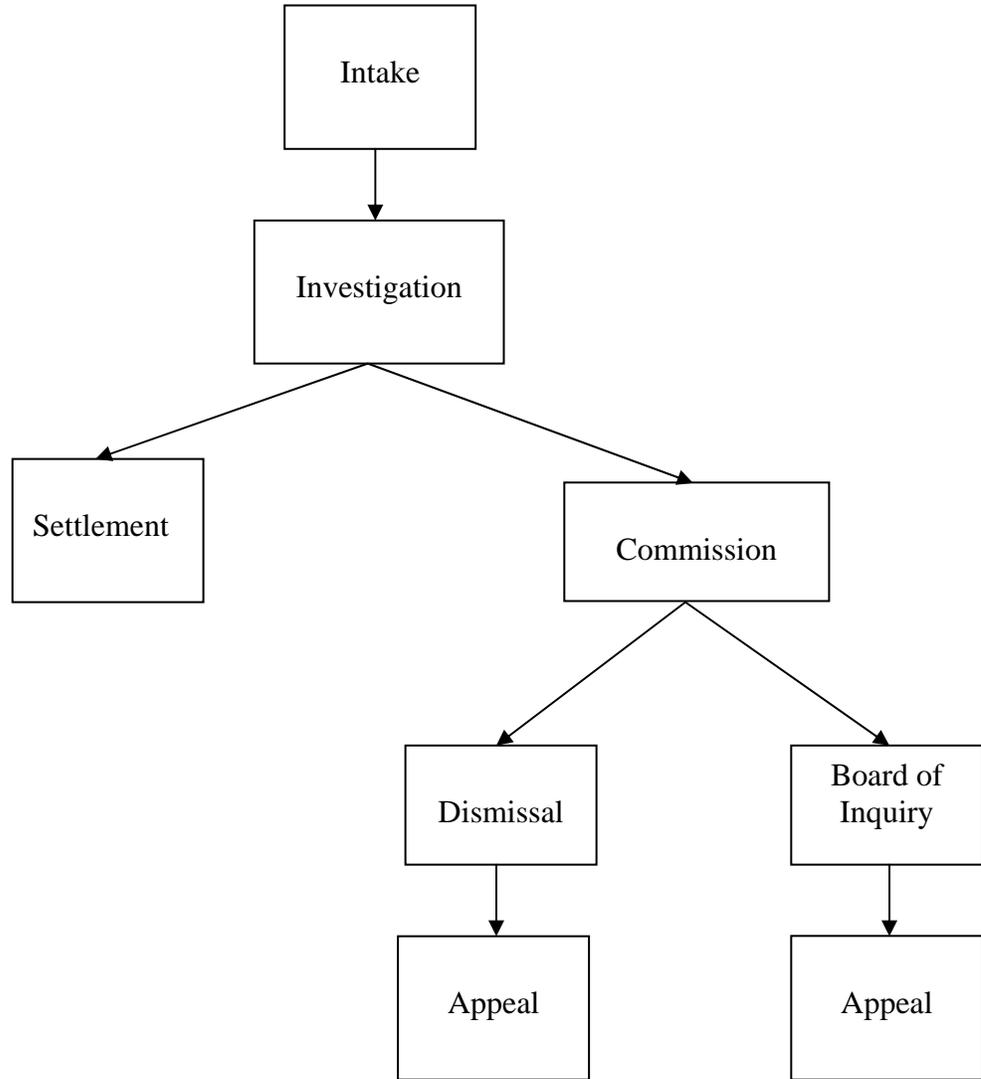
Finally, the Commission received significant clarification on the importance of the *Human Rights Code* in fighting discrimination which emanates from government statutes or regulations. As noted later in the Report, the Court of Appeal in *Human Rights Commission v. Workplace Health, Safety and Compensation Commission* declared that a Board of Inquiry could determine that a provision in a statute could not operate to justify discriminatory conduct or practices.

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.

STATISTICS:

The following chart outlines the number and grounds of complaints received by the Human Rights Commission in 2005.

<i>SECTION</i>	<i>GROUND</i> S	<i>NUMBER</i>
9	Physical Disability	41
9	Mental Disability	11
9	Marital Status	1
9	Sex	12
9	Age	8
9	Sex/Pregnancy	2
9	Sexual Harassment	6
9	Race	2
9	Religious Creed	1
9	Social Origin	1
9	Sexual Orientation	1
9	Political Opinion	1
6	Mental Disability	4
6	Physical Disability	16
6	Marital Status	1
6	Sex	2
6	National Origin	2
12	Sexual Harassment	2
15	Retaliation	3
	<i>TOTAL</i>	117

The Commission closed 126 files in 2005. They were closed in the following manner:

	<u>Number</u>	<u>Percentage</u>
Dismissed	81	64%
Referred to Boards of Inquiry	12	10%
Settled	19	15%
Withdrawal	<u>14</u>	<u>11%</u>
	126	100%

Complaints by Gender:

Males	-	58
Females	-	59

**DECISIONS FROM THE SUPREME COURT OF NEWFOUNDLAND AND
LABRADOR**

1. *Human Rights Commission v. Workplace Health, Safety and Compensation Commission et al (2005) 250 Nfld. & PEIR 124 (NLCA)*

Three women filed complaints with the Human Rights Commission alleging that they were discriminated against on the basis of their marital status. An amendment to the *Workplace Health, Safety and Compensation Act* provided retroactive benefits to persons who lost their spouses to workplace accidents and remarried after April 1, 1985. The three Complainants had remarried before April 1, 1985 and thus were not entitled to the benefits bestowed by the amendment. The Board of Inquiry ruled that it did not have the authority to grant a remedy that would have the effect of declaring void a piece of provincial legislation. The Commission appealed the decision to the Trial Division which confirmed the Board of Inquiry ruling. The Commission subsequently appealed to the Court of Appeal.

The Court of Appeal released its decision on September 23, 2005. The majority ruled that the Board of Inquiry and the Trial Division were in error in holding that the Board of Inquiry had no jurisdiction to grant a remedy in this case. While the Board of Inquiry could not issue a general declaration that a provision of the *Workplace Health, Safety and Compensation Act* was inoperative, it could determine that a provision of another statute could not operate to justify what was otherwise discriminating conduct. The majority remitted the complaints back to the Board of Inquiry for a ruling on the merits of the complaint. The minority judgment would have confirmed the decisions of the Board of Inquiry and the Trial Division.

On February 10, 2006 – prior to the Board of Inquiry releasing its decision on the merits of the complaints – Government announced that it would amend the *Workplace Health, Safety and Compensation Act* to provide the retroactive survivor benefits to 58 women (including the three complainants) for a total financial contribution of three million dollars. The Decision eliminated the need for the Board of Inquiry to rule on the merits of the complaints.

2. *Newfoundland Dental Board v. Human Rights Commission (2005) 249 Nfld. & PEIR 296 (NLTD)*

Nine foreign trained dentists filed complaints with the Commission alleging that they were discriminated against on the basis of their national and social origin

by the Dental Board when it refused to grant them general licenses in January 2001 unless they undertook an expensive educational undertaking. The dentists held geographically restricted, but clinically unrestricted licenses. The effect was that they could perform all forms of dentistry but only in designated geographic areas. The Dental Board had negotiated a Mutual Recognition Agreement with other dental regulators in Canada which permitted those dentists with unrestricted licenses prior to July 1, 2001 to practice anywhere in Canada. It was the prospect of not being able to avail of this benefit because there were geographic restrictions of their licenses which precipitated the dentists' human rights complaints.

The Board of Inquiry found that the dentists, who had practiced in the Province an average of 15 years, were competent. The requirement that they undertake an expensive educational undertaking was unnecessary and adversely affected their practice. This requirement stemmed from the fact they were foreign trained. The Board found that the dentists had been discriminated against on the basis of their national and social origin and ordered the Dental Board to retroactively grant them general licenses so as to permit them to gain the benefit of the Mutual Recognition Agreement. The Dental Board subsequently appealed the decision.

In a decision dated August 1, 2005 the Trial Division dismissed the appeal. The Court confirmed all aspects of the Board of Inquiry's decision including the remedy imposed upon the Dental Board. The Dental Board has not appealed the decision and has granted the dentists their general licenses.

BOARD OF INQUIRY ACTIVITY

The current panel of adjudicators which acts as Boards of Inquiry were appointed on November 4, 2004. While the panel did not issue any decisions for the reporting period, quite a few complaints were scheduled to be heard. To protect the privacy of complainants and respondents only those cases which took place before a public Board of Inquiry will be identified by the full name of the parties. What follows is a summary of the panel's activities for the reporting period.

1. ***Sean Ryan v. City of St. John's and the Canadian Union of Public Employees***

Mr. Ryan alleged that his employer, the City of St. John's and his union, the Canadian Union of Public Employees discriminated against him on the basis of his mental disability. Mr. Ryan suffers from a bipolar disorder. He was terminated from employment on December 1, 1998. An arbitration panel subsequently ordered that Mr. Ryan be reinstated into his former position. As part of the process associated with Mr. Ryan's return to work a Memorandum of Understanding was negotiated between his union and his employer which imposed conditions of employment. Mr. Ryan alleges that both his termination and the terms of the Memorandum of Understanding were discriminatory.

Twenty-two days of hearings were conducted during the 2004-05 reporting period. An additional five hearing days took place from April 4-11, 2006. The adjudicator ordered the parties to file a series of written submissions throughout 2005-06 and a decision is pending.

2. ***E.B. v. D.H.C.S.***

E.B. alleged that he was fired as a home care worker because a client of his employer preferred the person hired to replace him while he was on a disability leave. The hearing was scheduled for May 4-6, 2005. Prior to the commencement of the Board of Inquiry the Commission and the parties settled the complaint for \$5,000 general damages.

3. ***L.M. v. T.N.S.***

A woman alleged that her former employer discriminated against her on the basis of her gender when it failed to make better paying work available to her. The complaint was scheduled to be heard on May 17-18,

2005. The Complainant had moved to the North West Territories, gained meaningful employment, and no longer wished to pursue the complaint.

4. ***J.L. v. S.P.***

A woman alleged that her former employer discriminated against her on the basis of a physical disability. The matter was scheduled to heard on June 21-22, 2005. Prior to the commencement of the hearing the Complainant was notified by Commission Counsel that as the Respondent had ceased operations, the likelihood of recovery of any damages awarded by the Board of Inquiry was remote. The Complainant sought independent advice on the issue and decided to withdraw her complaint.

5. ***Sharon McEvoy v. Best of Care Ltd. and the Department of Health and Community Services***

Ms. McEvoy alleged that her employer, Best of Care Ltd., discriminated against her on the basis of her sex (pregnancy) when it acceded to the wishes of a client and permanently hired the Complainant's replacement while she was on maternity leave. The Complainant alleged that she was a competent home care worker prior to her pregnancy and that there had never been an issue with the quality of her work. She also alleged that as the Department of Health and Community Services provided funding for the home care services, it was responsible for any award of damages awarded by the Board of Inquiry.

The hearing took place on July 12-13, 2005 and a decision is pending.

6. ***C.C. v. C.C.***

A man complained that his employer had discriminated against him on the basis of a physical disability (irritable bowel syndrome) when he asked for a different work assignment from his employer – a service industry provider – to accommodate that disability. The request was denied. Prior to scheduling a Board of Inquiry, the Commission and the parties were able to settle the complaint without an admission of liability, but with the payment of \$7,500 general damages.

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

Nineteen female Licensed Practical Nurses filed complaints with the Commission alleging that the staffing schedule negotiated between their employer and union discriminated against them on the basis of their gender. The staffing policy provided for “male positions” for which only males could work and “person positions” which were available to males and females. As a result the female Licensed Practical Nurses had less chance to work and gain seniority. After the Commission’s referral of the complaints to a Board of Inquiry, the employer and union agreed to change the policy. The only issue remaining was what, if any, damages the Complainants might be awarded.

The parties agreed that a determination by the Board of Inquiry on issues relating to the limitation period as contained in s.20 (2) of the *Human Rights Code* would facilitate a settlement of the damages issue. A hearing took place on September 13th to argue the issues and a decision is pending.

8. ***J.B. v. D.J.***

A woman alleged that her employer, a security institution, failed to accommodate her pregnancy when it could not find safe and productive work. A Board of Inquiry was scheduled for October 11, 2005 but prior to its commencement, the Commission and the parties were able to find an accommodation for the Complainant which provided work but addressed the Respondent’s operational concerns.

9. ***T.B. v. R.***

A woman complained that her former employer failed to accommodate her disability (depression) by firing her while she was pregnant. The Complainant alleged that the employer acted precipitously in firing her because it did not afford her sufficient time off to accommodate her condition. The Board of Inquiry was scheduled for February 14-17, 2006. Prior to the commencement of the Board the Commission and the parties settled for an award of \$4,000 general damages.

10. *Ann Hooper v. Canadian Corps of Commissionaires*

Ms. Hooper alleged that she was sexually harassed by her supervisor and co-workers while she worked at one location at which the Respondent provided security services. Specifically she alleges that she was subject to displays of pornography and sex toys which she found offensive. Officials of the Respondent deny the allegations. A hearing was held on March 7-9, 2006 and a decision is pending.

SECTION 21(4) APPLICATIONS

Section 21(4) of the *Human Rights Code* permits a complainant to apply to the Supreme Court of Newfoundland and Labrador, Trial Division, for an order compelling the Commission to forward his/her complaint to a Board of Inquiry. Two decisions on these applications were released in 2005/06.

1. ***Stevens v. Newfoundland and Labrador Human Rights Commission (2005)***
250 Nfld. & PEIR 351

Ms. Stevens filed a complaint with the Human Rights Commission alleging that the Workplace Health, Safety and Compensation Commission discriminated against her on the basis of a physical disability when the WHSCC clawed back a pension purchased by Ms. Stevens from her employer in the early 1990's. Ms. Stevens alleged that the decision of the WHSCC had an ongoing effect on her income. The Commission dismissed her complaint. On appeal, Mr. Justice Adams concluded the Human Rights Commission was correct in determining that Ms. Stevens' complaint fell outside the six-month limitation period as found in s. 20(2) of the *Human Rights Code*.

2. ***Francis v. Newfoundland and Labrador Human Rights Commission (2006)***
253 Nfld. & PEIR 254

Ms. Francis filed a complaint with the Commission alleging that her employer, CHC Composites, discriminated against her on the basis of her gender and aboriginal origin by failing to pay her at a wage scale equal to a Caucasian male's. After an investigation, the Commission dismissed her complaint. Ms. Francis appealed the decision of the Commission. The Court ruled that the Investigator gave the parties ample opportunity to respond to the Investigation Report and acted reasonably when it dismissed the complaint.

FINANCIAL STATEMENTS

Expenditures and revenue figures included in this document are based on public information provided in the “Report of the Program Expenditures and revenues of the Consolidated Revenue Fund for Fiscal Year ended 31 March 2006” (unaudited)

		<u>Actual</u>	<u>Estimates</u>	
		<u>\$</u>	<u>Amended</u>	<u>Original</u>
		\$	\$	\$
2.3.04.	HUMAN RIGHTS			
01.	Salaries.....	236,199	236,300	252,400
02.	Employee Benefits.....	2,533	2,800	2,600
03.	Transportation and Communications.....	14,709	15,300	28,000
04.	Supplies.....	3,764	4,500	4,000
05.	Professional Services.....	18,063	18,600	27,800
06.	Purchased Services.....	40,180	41,200	47,200
07.	Property, Furnishings and Equipment	<u>598</u>	<u>600</u>	<u>-</u>
	Total: Human Rights	<u>316,046</u>	<u>319,300</u>	<u>362,000</u>

***CONTACTING THE
HUMAN RIGHTS COMMISSION***

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