

2001

THE MANITOBA
HUMAN RIGHTS
COMMISSION



LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA

The Manitoba Human Rights Commission

Bilingual Website

www.gov.mb.ca/hrc

Winnipeg

7th floor - 175 Hargrave Street
Winnipeg, Manitoba R3C 3R8

Ph: (204) 945-3007

Toll Free: 1-888-884-8681

TTY: (204) 945-3442

Fax: (204) 945-1292

e-mail: hrc@gov.mb.ca

Collect calls accepted

Brandon

Provincial Government Building
340 Ninth Street
Brandon, Manitoba R7A 6C2

Ph: (204) 726-6261

Toll Free: 1-800-201-2551

TTY: (204) 726-6152

Fax: (204) 726-6035

Collect calls accepted

The Pas

2nd floor - Otineka Mall
P.O. Box 2550
The Pas, Manitoba R9A 1M4

Ph: (204) 627-8270

Toll Free: 1-800-676-7084

TTY: (204) 623-7892

Fax: (204) 623-5404

Collect calls accepted



**ATTORNEY GENERAL
MINISTER OF JUSTICE**

Room 104
Legislative Building
Winnipeg, Manitoba, CANADA
R3C 0V8

His Honour
The Honourable Peter M. Liba, C.M.
Lieutenant-Governor of Manitoba

Sir:

May it please your Honour, it is my pleasure to present to your Honour, the
Annual Report of The Manitoba Human Rights Commission for the year 2001.

Respectfully submitted,

Gord Mackintosh
Minister

THE MANITOBA
HUMAN RIGHTS
COMMISSION



LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA

The Honourable Gord Mackintosh
Minister of Justice and Attorney General
Legislative Building
Winnipeg, MB R3C 0V8

Sir:

We are pleased to forward to you, the Minister responsible for administration of *The Manitoba Human Rights Code*, the Annual Report of the Manitoba Human Rights Commission for the calendar year ending December 31, 2001.

Janet Baldwin
Chairperson

Table of Contents

<i>The Human Rights Code</i>	2
<i>Message from the Chairperson</i>	3
<i>Executive Director's Report</i>	5
<i>Complaint Process</i>	8
<i>Introduction</i>	9
<i>Settlements</i>	10
<i>University Monitoring Reports</i>	16
<i>Raising Awareness</i>	18
<i>Regional Reports</i>	20
<i>Advisory Opinions</i>	21
<i>2001 Commissioners</i>	22
<i>Organizational Chart</i>	24
<i>Statistics</i>	25

Manitoba Human Rights Code

In 1987 the provincial government passed the current Manitoba Human Rights Code. Protection under *The Code* extends to all ages. It prohibits unreasonable discrimination on the following grounds:

- Ancestry
- Age
- Ethnic background or origin
- Religion or creed, or religious belief, religious association or religious activity
- Nationality or national origin
- Sex, including pregnancy, or circumstances related to pregnancy
- Gender-determined characteristics
- Sexual orientation
- Marital or family status
- Source of income
- Political belief, political association or political activity
- Physical or mental disability

Members of other groups, which have been historically disadvantaged but are not listed above, may be able to file a complaint on analogous grounds.

The mandate of the Manitoba Human Rights Commission is to achieve equality of opportunity and freedom from discrimination in the areas of housing, employment, contract and services available to the public. Although many of these activities fall within provincial jurisdiction, complaints against certain federally regulated entities, such as airlines, banks, telecommunications, crown land set aside for the exclusive use of aboriginal people and the federal civil service, should be filed with the Canadian Human Rights Commission.

The Manitoba Human Rights Commission is authorized to mediate and investigate complaints of discrimination, to refer matters to adjudication, to issue binding opinions and to educate the public and promote human rights issues.

Mission Statement
The Manitoba Human Rights Commission is mandated to achieving equality of opportunity and freedom from discrimination.

Board of Commissioners

Janet Baldwin
Chairperson

Jerry Woods
Vice-Chairperson

Commissioners

Dr. Armarjit S. Arneja

Kemlin Nembhard

Roberta Frederickson

Yvonne Peters

Randal Smith Q.C.

Dianne Frith

Fausto Yadao

Robin Dwarka

Minister
The Honourable
Gord Mackintosh

Message from the Chairperson

My First Year

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.”
Universal Declaration of Human Rights Article 1

I was honoured to be appointed Chairperson of The Manitoba Human Rights Commission in February, 2001, succeeding Ken Filkow, Q.C. Appointed with me were Jerry Woods, as Vice-Chairperson, and Robin Dwarka and Fausto Yadao, as Commissioners. Retiring from the Board with Ken, were Cheryl Dumont, Vice-Chairperson, and Fred Arrojado, Commissioner. Kemlin Nembhard had left previously to work with CUSO in Kenya. I should like to thank the retired Commissioners and particularly Ken Filkow, who had served as Chair for thirteen years, earning both provincial and national recognition.

The Board of Commissioners establishes Commission policies, determines the disposition of all complaints, and directs the activities and programs that the Commission undertakes, to fulfill its triple mandate of enforcement of *The Human Rights Code*, public education and the promotion of human rights. The Board met seven times in 2001. Case management and timelines continued to improve under our new Manager of Investigation and Mediation, Donna Seale. While twenty-one cases were referred to adjudication, no adjudications were heard in 2001. The much-publicized cases in regard to foreign medical credentials were referred to pre-hearing, multi-party mediation, reflecting the cost-effectiveness of mediation and the Board's emphasis on systemic as well as individual issues.

The Commission has expanded its education programs, including its most successful employment seminars. The educational focus in 2001 was on youth, culminating in the 1st Annual Youth Awareness Conference in November.

The Board has taken a more proactive approach to the promotion of human rights, through letters to the editor and media releases, such as that issued immediately after the tragedy of 11 September, warning of the dangers of stereotyping and backlash.

The Commission made a presentation to the Review Panel on Common-Law Relationships in Manitoba, supporting the right of same-sex couples to adopt, the extension of family property laws to common-law couples, and the right of same-sex couples to choose to marry. The Commission urged the Government of Manitoba to intervene in the cases challenging the restriction of marriage to heterosexual couples, if and when they reach the Supreme Court of Canada.

The Commission also addressed the Senate Standing Committee on Human Rights, which was mandated to “examine issues relating to human rights, and to review the machinery of government dealing with Canada's international and national human rights obligations.” I spoke about the impact of the Manitoba Commission on the evolution of Canadian human rights, our initiatives and challenges that we face. In its first report, “Promises to Keep: Implementing Canada's Human Rights Obligations”, the Senate Committee proposed a greater dedication of resources to human rights promotion and education, as well as legislation and policy review.

In October, 2001, the Commission held a Strategic Planning session to highlight priorities for the next few years. A Board/staff committee was then established, to develop goals, objectives and an action plan. A priority for the Board was the continuing review of Commission policies, interpreting the provisions of *The Code*.

*“Every bigot
was once a
child free of
prejudice.”
Sister Mary
de Lourdes*

Another concern identified was the need to review, update and perhaps expand *The Human Rights Code* itself. In this connection, the Legislative Review Committee was revived, with Commissioner Yvonne Peters as Chair. This Committee developed a legislative proposal, which recommended procedural amendments and the addition of “social condition” as a protected ground under *The Code*. This addition would address discrimination on the basis of poverty and homelessness, and would recognize that discrimination is often based on the intersection of a number of characteristics. This proposal was presented to the Minister in November, 2001.

The Canadian Association of Statutory Human Rights Agencies (CASHRA) at its annual meeting in May, 2001, had urged the provincial, territorial and federal governments to include “social condition” as a protected characteristic in their human rights legislation. CASHRA also intervened in the case of *Gosselin v. A.G. of Québec*, before the Supreme Court of Canada, in regard to the former differential welfare provisions in Québec. The Manitoba Commission is an active participant in CASHRA. I was pleased, if surprised, to be elected second Vice-President at my first meeting, as the host of the 2003 Annual CASHRA Conference, to be held in Winnipeg from 25-28 May, 2003, on the theme of Aboriginal human rights. CASHRA is increasingly speaking out on national human rights issues, for example, in a news release at its December meeting in regard to the impact of anti-terrorism and security measures on human rights.

Looking forward to 2002, the Board will continue to emphasize systemic issues and will consider the greater use of Commission-initiated complaints to address systemic discrimination. It will continue to focus its educational efforts on youth, developing seminars for school administrators on topics such as harassment and homophobia. The Commission will endeavour to further equality rights in all appropriate fora. The Board will review alternative models of complaint disposition, to improve efficiency and to allow the Board more time to discuss policy issues. The Board hopes to complete its policy review in 2002, and to review *The Code* on a continuing basis to ensure that Manitoba’s human rights legislation meets the changing needs of the community.

I should like to thank my colleagues on the Board and in particular, my vice-chair, Jerry Woods, for their support. I should also like to acknowledge the work of all the Commission staff and in particular Debra Beauchamp, Policy and Program Analyst, without whom many columns and presentations would not have been written; Dianna Scarth, our dedicated Executive Director; and Aaron Berg, legal counsel, for his guidance through my first year.

Janet Baldwin

Executive Director's Report

Overview

2001 was a year of new challenges as well as substantial changes to both the Board and the staff of the Commission.

*"This is the promise of human rights - to endow every man and woman with the ability to make the most of their potential and create for themselves and their communities a better world."
Kofi Annan*

Changes to the Commission staff began when three long time employees, Walter Budge, Ida Erickson and Frieda Brereton, retired. Their colleagues wish them good health and happiness in the future. The Commission hired two new human rights officers and added two members to its administrative support staff. Also, an intern in the Aboriginal Public Administration program accepted a one-year term position as a human rights officer and a communications coordinator was brought on staff. Finally, two secondments were undertaken; a human rights officer and a Manager of Investigation and Mediation.

As well as new people, there were many creative and exciting initiatives taking place. A strategic planning meeting set the stage for commissioners and staff to collaboratively set goals and objectives for 2001 and beyond. The broad goals reached were for the Commission to become more proactive in promoting human rights, for it to expand and strengthen public education programs, to review and update its policies, and to continue to improve its complaint resolution processes.

As we work towards our goal of more proactive promotion of human rights, we are continuing to focus on *Outreach activities*, which help raise public awareness of *The Code* and the Commission's activities. The human rights officer based in The Pas expanded the number of satellite offices in that region from two to four. He now regularly visits Swan River and Dauphin each month, in addition to Thompson and Flin Flon, while continuing to travel extensively to many other small communities in Northern Manitoba. When a human rights officer position became vacant, the decision was made to hire an Aboriginal person to focus on making the Commission's services more accessible and meaningful for Aboriginal people in the Winnipeg area. Adopting the model used in Northern Manitoba, this officer regularly attends the offices of the Manitoba Metis Federation, the Aboriginal Centre and the municipal offices in St. Laurent.

The Commission undertook a number of other outreach activities in partnership with the Canadian Human Rights Commission, including joint advertisements, speaking engagements, displays at community events, and the awarding of an annual Human Rights Commitment Award. Manitoba is the only province in which the federal and provincial commissions are located in the same building, an arrangement we believe serves the public more effectively.

Another goal, which emerged from our strategic planning process, was to expand and strengthen our public education programs. With this goal in mind, The Commission embarked on several important new *public education initiatives* during the year.

In November, we introduced a new monthly Bulletin, MHR Connections, which is available online, by fax and by regular mail. This new publication has received very positive responses, and is an effective way for the Commission to distribute timely information about human rights issues.

“The world is so fast that there are days when the person who says it can’t be done is interrupted by the person who is doing it.”

Anonymous

Focusing on human rights in the education system was another major initiative of the Commission. Over 230 students from across Manitoba attended our first Youth Awareness Conference in November. The conference was so successful that it will be held annually to celebrate International Human Rights Day. During the conference, we became very aware of the extent to which bullying and harassment have become serious issues in the everyday life of many young people. One conference workshop titled “Bully Alert” was videotaped and served as a basis for a video produced by the Commission. The final phase of this project will be realized in 2002, when the video becomes part of an interactive feature on the Commission’s Website. The video is also available free to schools and youth groups

Another goal set out by the Commission in its strategic planning session, is to continually improve its complaint resolution process. Year end statistics in *complaint resolution activities* provide some encouraging statistics.

A total of 315 matters were resolved during the year. (i.e. formal complaints and pre-complaint resolutions), an increase of 34 over last year. Another positive outcome was that settlements were reached in 37% of the matters resolved, making the investigative process unnecessary. An additional 12% of the matters resolved were settled in mid-investigation. Therefore, settlements comprised 49% of the 315 resolved complaints.

When all the methods used by the Commission are combined, the average time taken to resolve these 315 matters was 103 days.

Human rights complaints vary greatly in scope and complexity, and the Commission is committed to offering the parties involved a range of complaint resolution processes. In some circumstances, mediation and conciliation offer advantages. With the pre-complaint conciliation process, there is the possibility of resolving human rights issues at the earliest possible opportunity, usually within days of a complainant’s initial contact with the Commission. Intake staff resolved 88 of 315 matters during the year by way of pre-complaint conciliations, in an average time of 30.3 days. An additional 12% were resolved through pre-investigation mediations, which were, on average, completed within 51 days. In total, 37% of the matters resolved were settlements reached prior to the commencement of an investigation.

Mediation and conciliation offer other advantages in addition to timeliness. Some settlement possibilities may be available only at an early stage and not later in the process. For example, the opportunity to be re-instated in a particular position may have been lost by the time an investigation has concluded. Commission mediators have also noted that respondents at a pre-investigation stage seem more willing to undertake human rights education, which in turn may prevent future complaints. Finally, the consensual nature of resolutions reached through mediation and conciliation is consistent with the remedial purpose of human rights legislation.

Investigations continue to be a fundamental and important method of dealing with complaints, as evidenced by the fact that 140 investigative reports were prepared during the year. The average length of an investigation in 2001 was 8.15 months. Investigative reports are reviewed by the Board of Commissioners, which may decide to terminate proceedings or to refer a complaint to a hearing before an independent human rights adjudicator. The Board terminated proceedings on 27% of the matters resolved and referred 7% to adjudication.

One important objective reached during the year was the achievement of a substantial reduction in withdrawn and abandoned complaints. During 1992-1995, (inclusive) the percentage of these complaints ranged from 29% to 51%, whereas settlements in those years ranged from 15% to 23%. In the year 2001, however, those figures have been reversed; settlements were reached in 49% of the matters resolved, while only 14% had been withdrawn or abandoned.

Although the volume of complaints registered this year is comparable to last year, the percentage of complaints based on disability continues to steadily increase. In 1998, 1 of every 4 complaints filed was based on disability; by 2001, the number has risen to 1 of every 3. A substantial increase in disability complaints is a trend noted by other commissions across the country. Not only has there been an increase in disability complaints, but also the allegations raised have become increasingly complex, and there are more complaints based on mental disability than was the case in the past.

“I can’t understand why people are frightened of new ideas. I’m frightened by the old ones.”
John Cage

The vast majority of complaints continue to occur in employment. This trend was noted in 1999 and, at that time, the Commission embarked on a series of employment seminars. These seminars have become the foundation of the Commission’s education programs. In the coming year, as part of our strategic plan, these seminars will be updated so that they offer employers the latest in human rights information.

The Commission has accomplished a great deal in 2001 and has set the stage for the successful achievement of its goals in the coming years. I would like to acknowledge the hard work and enthusiasm shown by Commission staff, and to thank the Board, particularly Janet Baldwin and Jerry Woods, for their guidance and support throughout the year

Dianna Scarth

Complaint Process

Manitoba Human Rights Commission

When the Commission is First Contacted

- The intake unit is the first point of contact when someone calls the Commission
- The person may be provided with information on the Commission and the *Human Rights Code* or directed to another agency if the matter does not fall within *The Code*.
- After establishing that the complaint falls within the Commission's jurisdiction, the intake staff will attempt, in some cases, to resolve matters informally, usually over the telephone. This is called a pre-complaint resolution.
- If pre-complaint conciliation is not appropriate or does not result in resolution, a written complaint will be prepared, registered and sent to the respondent.

After a Complaint has been Formally Registered

- The parties are offered an opportunity to resolve their complaint through a voluntary resolution process called pre-investigation negotiation, which is facilitated by one of the Commission's specially trained mediators.
- All pre-investigation negotiations are confidential and are conducted on a neutral, without prejudice basis.
- Complaints not resolved by pre-investigation negotiation will proceed to a full investigation by the Commission's investigators. The investigation may include interviews and documentation review.
- Once an investigation is concluded, investigators prepare a report of their findings and make a recommendation to the Board of Commissioners as to whether or not a complaint should proceed further.
- At any time during the investigation process, the parties may explore voluntary resolution with one of the Commission's mediators.

Once a Complaint has gone to the Board of Commissioners

- The Board is free to accept, reject or modify investigators' recommendations.
- The Board may dismiss a complaint.
- The Board may direct mediation to be undertaken to settle a complaint.
- The Board may ask the Minister of Justice to appoint an independent adjudicator from an established roster.
- The adjudicator convenes a public hearing, hears the evidence and issues a written decision as to whether there has been a contravention of *The Code*.

Introduction

Activities

A total of 485 files were opened in 2001. Files are opened when a complainant requests that an allegation, which appears to have the basis for a complaint and falls within the jurisdiction of the Manitoba Human Rights Commission, be pursued.

Pre-complaint resolution was attempted with 399 files and 88 of these were resolved successfully. In another 133 files, the complainant decided not to pursue the complaint after receiving additional information regarding the other party's position. The average length of time that a file spent at the pre-complaint stage in 2001 was 30 days.

*“Freedom, like peace, is indivisible. I must protect my neighbour’s rights in order to safeguard my own.”
Tommy Douglas*

Of the total files opened in 2001, 241 resulted in formal complaints being filed with the Commission.

During the year, the mediation team was assigned 133 formal complaints for the purposes of pre and mid-investigation negotiation. 32 of those complaints were resolved successfully. Pre-investigation negotiations were, on average, completed within 51 days in 2001, while mid-investigation negotiations took, on average, 78 days.

The investigation team was assigned 181 formal complaints in 2001. During the year, the team completed investigations and prepared investigation reports with recommendations to the Board of Commissioners on 140 complaints. These reports were then reviewed and considered by the Board of Commissioners and determinations were made pursuant to *The Code* (either that the complaint be dismissed or that it be referred to directed mediation or adjudication). Another 33 complaints were either settled during investigation, withdrawn or abandoned by the complainant. The average length of an investigation in 2001 was 8.15 months, a substantial decrease from the average in 2000.

Directed mediation is the last opportunity for a settlement between the parties. It is a process, which occurs after a full investigation of a formal complaint has been completed and the Board of Commissioners has determined that the complaint will not be dismissed and that directed mediation ought to occur. 37 formal complaints were referred to directed mediation in 2001 with 8 of those cases being resolved successfully. Directed mediations were, on average, completed within 109 days.

When all of the options noted above are combined, and a time calculated, the average time to process complaints in 2001, from the pre-complaint attempt to directed-mediation, was 103 days or just over 3 months.

During 2001, no adjudication hearings were held.

In all, during 2001 the Commission resolved 315 matters (either at pre-complaint or after a formal complaint had been filed). As a result, the Commission resolved more matters than became formal complaints in 2001 (315 resolved; 241 formal complaints filed). Of those 315 matters that were resolved during this year, 118 were resolved prior to an investigation being commenced (i.e. in pre-complaint or in pre-investigation negotiation). This means that 37% of the matters resolved by the Commission were resolved prior to an investigation even being commenced.

As of December 31, 2001, the Commission’s caseload was 352 files.

Settlements

Disability

Pre-complaint - Informal

Allergies may be a Disability

Strong odors, including the scent of perfumes, can cause problems for some people. The complainant in this case reported that she had a serious allergy to perfumes.

In the past, her employer had been good at controlling perfume in the workplace. Recently however, it appeared that this resolve was weakening. She called the Commission.

“My disability is that I cannot use my legs. My handicap is your negative perception of that disability and thus of me.”

Rick Hansen

An intake staff member contacted the employer who agreed to re-emphasize to all employees the serious, physical problems perfumes caused this employee. He put information in each pay envelope and addressed the subject at the following staff meeting. He also told his supervisors to take a pro-active approach and to talk to any employee wearing perfume.

The complainant was satisfied with this outcome.

Mediation

Duty to Accommodate Employee with Depression

A woman was hired as a manager trainee in September. In November, she was diagnosed with depression and was put on medication. Her doctor suggested that she take three weeks off work to allow time for the medication to work.

The woman advised her supervisor of her situation and requested accommodation. She claimed she told the supervisor that she knew that this was a lot of time off, and she was willing to come in part time over the next three weeks. She offered the supervisor the documentation from her doctor but said the supervisor told her it wasn't necessary.

Apparently the supervisor then spoke with the district manager and allegedly informed the woman that they would have to hire someone else as the manager trainee. Furthermore, she no longer had a full time position but rather was given an “as needed” part time job and her salary was reduced.

She contacted the Commission and said that she no longer wanted to work there and was looking for other employment. The concept of reasonable accommodation was explained to her and she decided to pursue a complaint.

The Respondent agreed to enter into a negotiated settlement with the complainant. As a result of mediation, the respondent agreed to pay the amount of \$331.11 net to the Complainant for lost wages, update the complainant's record of employment, and write a letter of reference. The Complainant agreed to these terms.

Pre-complaint - Informal

Saying "Sorry" Not Enough

When a new manager was accused of sexually harassing a female employee, he apparently first denied the allegations and, then responded that he didn't know his conduct bothered her.

*"We must remember that a right lost to one, is lost to all."
William Reece Smith, Jr.*

The woman had reported to her supervisor that the store manager referred to her as "babe, sweetheart and honey", tickled her and touched her inappropriately. Although the manager apparently said he was sorry, the woman refused to accept the apology, claiming she could not continue to work with him. She was offered a transfer but felt this was unfair as, at her present location, she could walk to work. She resigned without notice. She did not want to work there but talked to an intake staff member about the manager's alleged behaviour.

When employers are aware of, or ought to be aware of, harassment in the workplace, they have a duty to stop or prevent it from re-occurring. After discussing the situation with Commission staff, the Company agreed to send its managers to the Commission's Employment Seminar.

The complainant immediately found work elsewhere. However shortly thereafter, the manager resigned and the woman was offered a position at the original location. She accepted and was satisfied with the outcome.

Mediation - Shuttle Negotiation

Pregnancy Results in Reduced Hours

The complainant was a twenty-year-old woman who had worked full time as a waitress in a restaurant for almost two years. In early January she discovered she was pregnant and informed her employer. She claimed that other employees warned her that the boss did not like visibly pregnant waitresses working in the restaurant.

By April the complainant's hours had been reduced. By the end of the month, she maintained that she had confronted her employer, telling him she would have to resign since she could not live on three-hour shifts. She received her record of employment, which stated she had been laid off due to shortage of work. She alleged there was no shortage of work and claimed that new waitresses had been hired recently.

Discussions took place with a Commission mediator who met separately with the complainant and the respondent. A settlement was reached and the woman received \$200.00 in general damages from her former employer.

Age

In Manitoba there is no age restriction on discrimination. Both young and old are protected under all the articles covered within *The Code*.

Pre-complaint - Informal

Mandatory Retirement Discriminatory

The complainant, who was turning 65 in December, felt pressured to retire. She claimed that her supervisor repeatedly made comments to her regarding early retirement. Furthermore, she alleged that the company owner advised her to retire that year and had her meet with the company's financial advisor.

“People only see what they are prepared to see.”

*Ralph
Waldo
Emerson*

The woman was not ready to retire. She had planned to work at least one more year.

The Commission contacted the employer who subsequently provided written confirmation that it would not be their practice to compel employees to retire.

The complainant was satisfied with this outcome and plans to retire next year.

Mediation - Face to Face Negotiation

Application Form Reveals Age

A fifty-one year old man alleged that he faced differential treatment in employment on the basis of his age. He filed a complaint with the Commission.

Three jobs with one employer were vacant. The complainant had applied for all three positions over a course of a few months. He alleged that he had a number of years experience, which met the requirements for these employment opportunities.

He noticed, however, that when filling out the application forms, he was requested to put down dates as to when he attended secondary school.

According to the complainant, all three positions were filled and he did not receive one interview. Since he had revealed his age in the application form, he believed that he was discriminated against on the basis of his age.

A Commission mediator brought the two parties together and an agreement was mediated. The employment application was amended and the request for dates regarding secondary school attendance was removed. The respondent also agreed to give the complainant assistance when applying for positions. For example, the complainant was to receive feedback on his resume and application, and a debriefing if he was unsuccessful.

Ancestry

Pre-complaint - Informal

Apology Extended and Employee Returns to Work

The complainant is Arabic. He was hired as a chef at a local restaurant. On his first day of work, he alleged that he experienced rude comments about his country of origin from a co-worker. He said he reported these comments to the head chef, who in turn spoke to the co-worker. He claimed the head chef then

apologized and told the Complainant to go home and he would call him the next day. After two days of not hearing from the restaurant, the man called the Commission.

The management of the restaurant was contacted. The executive chef met with the Complainant and apologized again. The Complainant agreed to resume work and the co-worker also extended his apology.

Mediation - Shuttle Negotiation

\$5000 Harassment Settlement

Under *The Code*, harassment is defined as a course of abusive and unwelcome conduct or comment on the basis of the grounds outlined in Section 9(2). In the following case, the complainant alleged he was harassed on the basis of his ancestry.

The complainant is of Metis ancestry. He worked for a contractor in a position, which was described as highly responsible, stressful, and dangerous. He began working at this job in June 2000. He said that about two months later a new area manager was hired.

“Freedom is that instant between when someone tells you to do something, and when you decide how to respond.”

Dr. Jeffrey Borenstein

The complainant said he began experiencing harassment from the new manager almost immediately. He claimed that every day for almost one month, this man called him a “savage” and would refer to him as “savage” rather than use his name.

At first the complainant said he tried to laugh it off but he eventually confronted the manager, asking him why he was referring to him in this way. According to the complainant, the manager replied in a loud voice “because that’s what you are.”

In January of 2001, the complainant alleged he was told that the company was hiring another person. He claimed he was informed that he appeared nervous on the job and was asked to resign. According to the complainant, no one had questioned his performance before.

Believing he had no choice, the man resigned his position. He contacted the Commission and filed a complaint, stating he was subjected to harassment in the workplace because of his ancestry.

Mediation between the two parties took place and an agreement was reached. The Complainant received \$5000 as general damages (representing compensation for loss of dignity, and injury to feelings) and received a letter of apology.

Pre-complaint - Informal

Family Status

Failure to Accommodate - Take Two

The complainant was a single father with a four-year-old daughter who had special needs because of a disability. Shift work was difficult, if not impossible for him, since his daughter received day services from a child care agency. With an hourly wage of \$8.50, the complainant could not afford to hire someone after hours, especially since the child required someone with special needs training.

He had contacted the Commission the year before when he was placed on rotating shift work. At that time, the company agreed to accommodate his needs. However, once again the man was scheduled for the evening shift. He returned to the Commission saying he believed that because of his family status, his employer had once again failed to accommodate him. He agreed to have the Commission attempt another pre-complaint resolution with his employer to resolve this re-occurring problem.

After discussions with one of the Commission's intake staff, the employer agreed to permit the complainant to remain on day shift until some other suitable childcare arrangements were possible.

Mediation - Shuttle Negotiation

Negotiation Results in \$18,000 Settlement

A woman had worked for a retail company for over eleven years as a payroll administrator. She took maternity leave and requested an additional unpaid leave. She returned to work nine months later.

“Challenges are what make life interesting; overcoming them is what makes life meaningful.”

Joshua J. Marine

One month prior to her scheduled return, she alleged that she had requested a temporary schedule accommodation. She asked if she could work evenings enabling her to be at home when her husband was working. She said that her request was refused. She claimed that her employer said that the evening shift was not possible because she would not be available to the supervisors. She contended that she called a second time with a suggested compromise, requesting five hours on the day shift and a further three hours in the evening. Her mother, she said, was willing to look after the child in the mornings.

Apparently this was not a reasonable solution for the employer. The complainant was called and informed that they were working on a severance package of \$10,000.

The woman brought her concerns to the Commission. She believed that the refusal to provide her with a temporary altered work schedule was a failure to accommodate her special needs based on family status.

The employer was willing to enter into settlement negotiations. Meetings took place and an agreement was reached, which included a positive letter of reference, a revised record of employment and a sum of \$18,000. The financial settlement was broken down into \$8,000 as compensation in lieu of reasonable notice and approximately \$10,000 as compensation for legal fees, financial losses and injury to dignity, feelings and self-respect.

Source of
Income

Pre-Complaint - Informal

Student Denied Apartment

A student said her application for an apartment was denied because of her source of income, which was a student loan. She said this refusal was not based on personal merit and that no effort was made to do a reference check to verify if she had ever had a problem paying her rent. According to the woman, the caretaker told her that they had problems with students in the past.

The student called the Commission and the owner was contacted. He agreed to attend the Commission's workshop for landlords and was sent a copy of the Commission's Housing Guidelines. The complainant was satisfied with this outcome and found an apartment elsewhere.

Religion

*“Conquering
any difficulty
always gives
one a secret
joy for it
means
pushing back a
boundary line
and adding to
one’s liberty.”
Henri
Frédéric
Amiel*

Pre-complaint - Informal

Duty to Accommodate Religious Observances

The complainant is a member of the Church of Latter Day Saints. A part time sales employee advised her employer that she was unable to work Sundays due to her religious beliefs. Her employer accommodated this request. She claimed, however, that when a full time supervisory position came up she was passed over. She said her manager told her that her lack of availability on Sundays was inconvenient. The complainant said she had informed her manager that she would work Saturdays and felt it was unfair to deny her a promotion because of her religion.

The employer was contacted by an intake staff member to discuss the matter. As a result, the Complainant was upgraded to full time and received a modest salary increase. The employer agreed to send representatives from the company to the Commission's next employment seminar.

Board Directed Mediation

Mandatory Meeting Causes Problems

The complainant has a deep commitment to her religion and attends services every Sunday morning and Wednesday evening. She worked part time at a hair salon and also operated her own hair styling business in her home.

The owner of the Salon called a staff meeting on a Sunday morning and the complainant told him she could not attend due to her commitments at church. He told her to try because the meeting was “mandatory.”

She did not attend the meeting. On her return to work the following Wednesday she claimed she was fired because she had not been at the Sunday meeting.

During the investigation, the respondent alleged that his employee's dismissal had nothing to do with religion. He said that he had concerns about the complainant for some time. He contended that when he asked her to work additional hours, she refused. As well, he says he suspected that she was taking away his customers by providing services for them at her home. The complainant denied this. She produced two customers who said they had asked her to book them into her home and she refused because they were the respondent's clients. When it came to extra hours, the Complainant stated that the work was on Sundays and she could only work after 1:00 p.m. She says she worked Sunday afternoons for several months.

The Board of Commissioners directed that mediation should take place and if no agreement could be reached, an adjudicator would be appointed. An agreement was reached. The Respondent agreed to pay the Complainant \$1500 in general damages for loss of self-respect and dignity.

University Monitoring Reports

University of
Winnipeg

The University of Winnipeg has provided the Manitoba Human Rights Commission with hiring data and information concerning recent employment equity initiatives. These initiatives have been undertaken during the year with a view to advancing its stated objective of "...improving the status of all women on campus in matters concerning their equitable treatment." This information was provided for the first time, pursuant to the terms of a settlement agreement, to be included in the Commission's Annual Report.

The University has implemented employment equity initiatives at both the recruitment and hiring stages. Employment advertisements now contain an employment equity statement and are distributed beyond the usual university network. Eight employment equity consultants have been recruited, and are participating in selection boards in accordance with a process, which has been set out in the collective agreement between the university and its faculty.

An important initiative by the University of Winnipeg during 2001, (for the first time,) was to undertake a diversity study. When the response rate to this voluntary study was low, extra efforts were made to provide further information and contact people on an informal basis. In the result, a very high rate of response was achieved. Information obtained through the diversity study has been used by the University of Winnipeg to create a database, which will be used by its Employment Equity Advisory Committee, to establish equity goals on a department by department basis. We will look forward to receiving information regarding progress in this area.

*"I skate to
where the
puck is going
to be, not
where it has
been."*

Wayne
Gretsky

Hiring data provided by the University on the last 4 years reflected some progress toward addressing the historic gender imbalance, which has existed within academic ranks at the University of Winnipeg. There were 24 "new Hires" within the academic ranks during the year. Eleven of those positions were filled by women. It is important to consider not just the number of women hired, but also to note the level at which they were hired.

Six of the 24 new hires were at the instructor level. Within that group, women were represented at the 50% level. However, when the 7 tenure-track positions that were filled during the year are considered, women filled only 2 of those positions. A much higher percentage of women were also hired to fill the non tenure-track term positions at the Assistant Professor rank (5 out of 9). It is a matter of concern to note that, although the number of women within the academic ranks has risen overall, the percentage of women hired to fill tenure-track positions was relatively low.

Two departments, History and Psychology, had been identified in 1997 as having a low number of female staff, as compared with the availability of qualified women in the external workforce. As of March 31, 2001, 5 of 19 (26%) faculty member in the History Department were women. In the Psychology Department 6 of 18 (33.3%) faculty members were women.

Within the year 2001, the University of Winnipeg adopted new approaches, which reflected its commitment toward achieving employment equity objectives. The extent to which these objectives have been achieved in the year 2002, will be considered in our next Annual Report.

For the third time, Brandon University has submitted hiring data for the previous year to the Manitoba Human Rights Commission. The data has been reviewed, and a summary is included in this annual report pursuant to a settlement agreement. The objective in reviewing the hiring data, and related information, is to determine whether progress has been made toward rectifying the under-representation of women in faculty and administrative positions at the university. It should be noted that the under-representation was found to exist in a statistical analysis undertaken by the Commission in 1997, which compared the availability of qualified women in the external workforce to the number of women in Brandon University on a department by department basis. The data showed that women were under-represented in all faculties at Brandon University at that time, with the exception of Nursing.

*“No matter
how far you
have gone on
the wrong
road, turn
back.”*

*Turkish
Proverb*

Hiring data provided for the year ending August 31, 2001, indicated a total of 19 “new hires”, of which only 7 were females. When the three positions, which were conditional on funding being obtained from an external source, are deleted, only 5 of the 16 (31%) faculty hired during the period under review were females. These figures may be contrasted with the previous year, when 18 of a total of 33 new hires were women (54%).

One particular concern, which was identified in previous annual reports, was the under-representation of women in the Faculty of Science. The most recent hiring data did not disclose any significant change. Of the 7 new hires within this faculty during the year, 6 were males and all were hired at the rank of assistant professor (although only one of those was the tenure track position). Of the 6 tenure track positions overall, only one was filled with a female. Therefore, the pattern of under-representation of women in the Faculty of Science has continued with no noticeable improvement during the year.

As noted previously, Brandon University has recognized that there has been a historical gender imbalance within the academic and administrative ranks at the University, and has undertaken to take steps needed to deal with the imbalance. As a smaller university in a rural setting, Brandon University faces unique challenges when recruiting and hiring faculty and staff. Nonetheless, the recruitment efforts, which have been employed to date, appear to have had marginal success at best. We would again suggest that consideration be given to the implementation of special measures if there is to be real progress in the areas of recruitment, hiring, and retention of women. Brandon University does not have a formal employment equity program. During meetings with university representatives, a number of possible initiatives were discussed which the University agreed to consider.

It was a matter of concern, as well, to learn that the anti-harassment and anti-discrimination policies of the university had been discontinued temporarily so that new policies could be created. Given the importance of such policies in a university setting, it would be a matter of great concern should the university not have such policies in place for an extended period of time.

In the Commission’s next Annual Report, we will review with interest the extent to which Brandon University has managed to develop equity targets to cover gender, visible minorities and persons with disabilities. This was a proposal to which senior administration within the University expressed commitment last year, but was an objective, which had not been, realized when the most recent data was submitted.

Raising Awareness

Introduction

Discrimination cannot be overcome by relying solely on the resolution of individual complaints. It is equally important to inform people as to their rights and responsibilities. *The Manitoba Human Rights Code* states that "it is important that human rights educational programs assist Manitobans to understand all their fundamental rights and freedoms, as well as their corresponding duties and responsibilities to others."

The Manitoba Human Rights Commission takes its educational mandate very seriously. In the past year it has continued to expand its educational activities.

Publications

On reviewing its newsletter *Human Rights from Manitoba*, the Commission decided to make a change in 2001. The quarterly newsletter was replaced by a monthly Bulletin called *MHR Connections*. This change has resulted in a more timely publication with information on human rights and the activities of the Manitoba Commission. Subscribers can receive *MHR Connections* by email, fax or in printed form, by mail.

"Even if you are on the right track, you'll get run over if you just sit there."

Will Rogers

News releases were also used to educate and inform the public. Releases dealt with such topics as supporting proposed changes to legislation allowing same sex couples the same legal rights to adopt as heterosexual couples; a response from the Commission following the tragedy of September 11th; and the First Annual Youth Awareness Conference.

Website

www.gov.ca/hrc

The Commission's website regularly attracted people, with the number of "hits" per month continually increasing. On average, the website received 5816 hits per month in 2001, more than 700 per month more than last year. Brochures, fact sheets, decisions, advisory opinions, *The Manitoba Human Rights Code* and the *Connections Bulletin* are available on the website. An interactive site designed specifically for students and featuring videos on such topics as bullying and harassment and a monitored chat room will be available in 2002.

Seminars

In 2001, the Commission's educational activities included six different seminar topics. They were: A full day Employment Seminar and half day seminars on the following topics: Human Rights Issues for Non-profit Organizations; Reasonable Accommodation in the Workplace; Harassment in the Workplace; and Human Rights Issues for Rental Agencies, Property Owners and Apartment Managers. A lunch time seminar on Recent Developments in Human Rights Law was also available for lawyers, law students, human resource professionals and anyone who is interested in developing a better understanding of human rights legislation and its impact.

A total of 244 people attended the seminars throughout the year.

Outreach

The Commission continues to place a high priority on educational presentations. These activities are at times pro-active and at other times a response to a request. In total, 144 presentations were delivered throughout the province, some to individuals and others to schools or training centres, businesses, labour organizations and community groups.

Reaching young people was a priority for the Commission in 2001. Of the many presentations given by the Commission staff, 41 took place at Manitoba schools and training centres. As well, schools continue to request the many human rights videos, which are available through the Commission.

Youth Conference

*“Never be bullied into silence. Never allow yourself to be made a victim. Accept no-one’s definitions of your life; define yourself.”
Harvey Fierstein*

In an effort to educate young people about human rights issues, the Commission organized a very successful Youth Awareness Conference in November.

Over 230 students from across Manitoba came to Winnipeg to attend. They travelled from the North, representing schools from such places as Thompson, Lynn Lake, Flin Flon, Oxford House, and Snow Lake. Rural communities such as Beausejour, Killarney and Altona also sent students.

This one-day conference was in celebration of International Human Rights Day and consisted of workshops, panels and presenters dealing with human rights topics. Discussions centred on discrimination and harassment on the grounds of ancestry, age, sexual orientation, disability, and other topics covered in *The Human Rights Code*. Workshop topics include “Working Blues” (employment), “Bully Alert” (harassment and bullying), “Backlash” (September 11th aftermath) and “Nothing to Cheer About” (harassment in sports).

The Conference had an Aboriginal focus, with a number of Aboriginal speakers taking part. Elder Nelson James of Rousseau River offered words of guidance. Rosanna Deerchild, former columnist for the Winnipeg Sun and current news producer at the Aboriginal Peoples Television Network, delivered the keynote address. Each spoke from the vantage point of growing up and working as an Aboriginal person in Manitoba. Over lunch, the students were entertained by Ian Ross, also known as “Joe from Winnipeg.” He spoke of who Ian Ross really is, and how his alter ego Joe from Winnipeg came to be. Jerry Woods, Vice Chair of the Commission was master of ceremonies. The conference concluded with door prizes, the viewing of student made videos and the announcement of the winner of the video competition, which was École Communautaire Aurèle Lemoine.

The conference and the Bully Alert Workshop formed the basis for a video presentation, which will be available on the new interactive student website in 2002.

Awards

The 2001 Manitoba Human Rights Commitment Award was given to Hersch Zentner, who was presented with the award by The Honourable Gordon Mackintosh, Minister of Justice, at the 13th Annual Human Rights Day Conference hosted by the Community Legal Education Association. The Manitoba Human Rights Commission and its partners, the Canadian Human Rights Commission and CLEA, give this honour to individuals who have shown a long time commitment to advancing human rights in Manitoba.

In 1984, Mr. Zentner began teaching students in the River East School Division about the Holocaust. He continued this work after his retirement in 1992. Since then he has visited over seventy Manitoba schools per year.

Mr. Zentner is one of the founding members of the Jewish Heritage Centre of Western Canada and has served on a provincial cultural advisory committee for the Social Studies curriculum since 1999.

Regional Reports

The Manitoba Human Rights Commission has two regional offices. Each office has one human rights officer and one intake worker. These offices are located in The Pas and Brandon.

Brandon

“The world is a dangerous place to live, not because of the people who are evil, but because of the people who don’t do anything about it.”

*Albert
Einstein*

From October to December a new Human Rights Officer in Brandon expanded outreach into the community with the intention of increasing the profile of the Commission. She contacted and spoke with community groups, businesses and individuals who, up to this point, did not have much contact with the Commission.

The staff at the Brandon Office gave a total of 10 educational presentations, speaking with over 230 people. Besides Brandon itself, these presentations were given in Souris, Melita, Dauphin and Roblin and the participants ranged from high school students to city managers.

Once again in 2001, the Brandon office celebrated International Human Rights Day on December 10th with an open house and candle lighting ceremony. Former Commissioner and Brandon City Councilor Marion Robinson and the Commission staff spoke to those who attended about the importance of recognizing and cherishing human rights.

The Pas

The Pas Office also had a productive year. The Human Rights Officer expanded his satellite offices to include monthly visits to Swan River and Dauphin. In Swan River the Friendship Centre provides office space. The Regional office of the Manitoba Metis provides space in Dauphin.

The human rights officer also continues his monthly visits to Thompson and Flin Flon.

Fourteen educational presentations were given in the North, with staff visiting both schools and businesses and reaching over 200 people. Participants ranged from students and teachers to managers and employees. Besides Thompson, Swan River and Dauphin, the staff also gave these presentations in Snow Lake, Grand Rapids, and Gillam.

The staff at The Pas office continues to provide education to many large employers including Manitoba Hydro, Inco, Keewatin Community College and the Aseneskak Casino.

Advisory Opinions

**Advice
Available**

“There are many ways of going forward, but only one way of standing still.”
Franklin D. Roosevelt

The Human Rights Code provides for advisory opinions to be issued by the Manitoba Human Rights Commission. These opinions assist businesses, government departments, organizations, unions, and others in determining whether something they are doing, or planning to do, would contravene *The Code*.

When an application for an advisory opinion is received, it is assessed to ensure that an advisory opinion would be appropriate. The Commission will only issue an opinion where the application of *The Code*, relevant caselaw and policy to the facts is clear.

In 2001 the Commission issued one formal advisory opinion and declined to issue another. Additional requests for formal opinions were satisfied through consultation and guidance from Commission staff.

The Manitoba Nurses Union requested an advisory opinion with respect to specific standard provisions of collective agreements that it had entered into with various employers and regional health authorities. The first issue was whether providing seniority accrual to members who were active employees, and not to those who were on leave for reasons of disability, extended illness, or injury/condition that resulted in leave on Workers' Compensation for greater than two years, was discriminatory. The Commission determined that this was unreasonable discrimination on the basis of disability, provided the member's extended illness, injury or condition would be considered a "disability" under *The Code*.

The Nurses Union also requested an opinion as to whether allowing members who were on unpaid educational leave to accrue service, with attendant vacation accrual and salary increment entitlement, but not those on unpaid leave for reason of illness or injury, was discriminatory. The Commission determined that this did not unreasonably discriminate against members with disabilities. The Applicant advised that a key consideration in the granting of educational leave was the relevance of the study to the member's current or possible future employment. The Commission concluded that providing some compensation as incentive or recognition to employees undertaking studies that might result in a benefit to the employer was reasonable, and did not wrongfully discriminate against those on leave for reasons of disability or extended illness.

Another application for advisory opinion concerned provisions of four collective agreements, which provided for supplemental benefits to Employment Insurance for employees on maternity or adoption leave, but not to those on parental leave. Biological fathers, therefore, were not entitled to a leave with supplemental benefits to Employment Insurance following the birth of their child. The Commission decided not to issue a binding opinion in this matter, as it was not sufficiently satisfied that this did not result in discrimination contrary to *The Code*.

2001 Commissioners

Commissioners represent the geographic, cultural, social and economic profile of Manitoba. They are appointed for a three year term and serve on a part time basis. There are ten Commissioners, including a Chairperson and a Vice-Chairperson.

Chairperson

Janet Baldwin became the new Chairperson of the Commission in 2001. She taught law at the University of Manitoba for 31 years. Janet was involved in equity and diversity issues at the University, where she served as Chair of the President's Advisory Council on Women and Director of the Women's Secretariat. She revised the University's sexual harassment and human rights policies. She was also a member of the Canadian Association of University Teachers and University of Manitoba Faculty Association Status of Women committees. Since 1999, she has represented retirees on the Board of the University of Manitoba Faculty Association. Currently, Janet is a member of an Agency Liaison Team for the United Way Community Investment Allocation. She is married and has two children.

Vice-Chairperson

Jerry Woods joined the Board of Commissioners in 2001 and was appointed Vice Chair. He is a proud member of the Couchiching First Nation. Jerry has been a labour and social activist all of his working life, which began when he was only fifteen years old. Over the following twenty-five years, he worked as a papermaker at the Boise Cascade papermill in Fort Frances, Ontario. For twenty of those years he served as an Officer with the Local Union. In 1989 he became a full time National Representative for the Communications, Energy and Paperworkers Union. Jerry was transferred to Winnipeg in 1992.

Dr. Amarjit S. Arneja was born in Punjab, India and immigrated to Winnipeg in 1973. He has been a Commissioner since 1994. He is an Associate Professor of Medicine at the University of Manitoba and is active in clinical practice, teaching and research. He has been a Director of the Manitoba Tennis Association for many years and is the past editor of its newsletter. He is presently the Director and Trustee of the India Association of Manitoba and is actively involved in cultural, community and temple organizations.

Randal Smith, Q. C. was called to the Bar in 1980 and received his Queen's Counsel in 1991. He is Counsel with the Aboriginal Law Group of the Federal Department of Justice. Randal is a Past President of the Manitoba Bar Association.

Dianne Frith graduated from the University of Manitoba in 1990 with a Bachelor of Arts degree majoring in French. She lives in Winnipeg and is employed at Faneuil Group as a Quality Assurance Agent. Dianne is active in her church and community events.

Roberta Frederickson is a Shop Steward with the Canadian Auto Workers and was appointed to the Commission this year. She is a long time employee with the Fort Garry Hotel in Winnipeg and has extensive experience in workplace issues. Her interests include human rights and she now teaches Winnipeg CAW members about human rights law and related issues. Roberta has one daughter.

Yvonne Peters has a Bachelor of Arts and a Bachelor of Law from the University of Saskatchewan and a Bachelor of Social Work from the University of Regina. She practices equality rights law in Winnipeg, providing legal consultation and advice to unions, community groups, human rights organizations, the corporate sector and governments. Her community work includes serving as a member of the Equality Rights Panel of the Court Challenges Program and sitting on the Board of the Women's Health Clinic.

Kemlin Nembhard graduated from the University of Winnipeg with a Bachelor of Arts majoring in Environmental Studies, Social and Economic Studies and Geography. She works as a Women's Health Educator for the Canadian Women's Health Network. She is on the Board of Herizons and is an active volunteer with CHO!CES. Kemlin is very involved in the social justice movement, especially on anti-racism and women's issues. She also works on alternative economic issues. In January 2001, Kemlin went to Dar Es Salaam, Tanzania on a two year work project with CUSO. She resigned as Commissioner at that time.

New

Fausto Yadao is a new appointment to the Commission and is the former Dean of Student Affairs at Red River College. He was also the Director of Regional Centres and Distance Education. In 1990 he led the Red River Task Force on Services to Aboriginal and Multicultural Communities. Fausto has been an active volunteer member of Age and Opportunity, the Manitoba Museum of Man and Nature and the Philippine-Canadian Centre of Manitoba. He is a member of the Refugee Committee at St. Charles Parish Church.

Robin Dwarka is the newest appointment to the Board of Commissioners. She is the Director of Administration for Legal Aid Manitoba. Robin is a Certified Management Accountant (CMA) and has a Bachelor of Commerce (Honours) from the University of Manitoba. She is a member of Toast Masters International and is treasurer and a performing member of the Winnipeg Steel Orchestra. She is also a representative of the Trinidad and Tobago Society to the Council of Caribbean Organizations of Manitoba.