



FREEDOM FROM DISCRIMINATION • EQUALITY OF OPPORTUNITY

ANNUAL REPORT 2006

THE MANITOBA  
HUMAN RIGHTS  
COMMISSION



LA COMMISSION DES  
DROITS DE LA PERSONNE  
DU MANITOBA

# The Manitoba Human Rights Commission

**Bilingual Web-site**  
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## **Cover**

*Photo: "Assiniboine Art Action"*

*Photographer Lily Rosenberg captured this chaos of colour on the parched mud banks of the Assiniboine River in Winnipeg. The colours on the surface represent the beauty found in our diversity and the importance of both recognizing our difference and appreciating it. The cracks caused by the receding waters reveal a sad truth that we can be overwhelmed, and divided by powerful forces, whether natural or made by us, in such forms as racism, sexism, ageism or homophobia. The underlying landscape of earth and mud, influenced by the rise and fall of a river, remind us that, at our core, we are all basically made of the same stuff and that there is a powerful strength and resilience to be found in our common human roots and in our mutual responsibilities to each other.*

*The Commission would like to thank the anonymous person or persons who took the time to both notice the beauty in the shapes formed on the banks of the Assiniboine River, and to add colour to the mosaic.*

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# HUMAN RIGHTS CODE (MANITOBA)

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*The Code* prohibits unreasonable discrimination in employment, housing, contracts and services available to the public, on the following grounds:

- Ancestry
- Nationality or national origin
- Ethnic background or origin
- Religion or creed, or religious belief, religious association or religious activity
- Age
- 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



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Members of other historically disadvantaged groups may also be able to file a complaint. Publicizing a sign or statement that indicates or advocates discrimination is also prohibited.

Most employers, landlords or service providers that are located in Manitoba are regulated by provincial law and so are bound by Manitoba's *Human Rights Code*. Some private businesses, such as airlines, banks, and telecommunication enterprises, as well as the federal civil service and many First Nations governments and organizations, however, are regulated by federal law. Complaints against them must, therefore, be filed with the Canadian Human Rights Commission under federal human rights law.

The Manitoba Human Rights Commission enforces the anti-discrimination provisions of *The Code*. It is authorized to mediate and investigate complaints of discrimination, to refer matters to adjudication, and to educate the public and promote human rights issues.







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**ATTORNEY GENERAL  
MINISTER OF JUSTICE**

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

His Honour  
The Honourable John Harvard  
Lieutenant-Governor of Manitoba

Sir:

May it please your Honour, it is my pleasure to present to you, the Annual Report of The Manitoba Human Rights Commission for the year 2006.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Dave Chomiak'.

Dave Chomiak  
Minister



THE MANITOBA  
HUMAN RIGHTS  
COMMISSION




LA COMMISSION DES  
DROITS DE LA PERSONNE  
DU MANITOBA

The Honourable Dave Chomiak  
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, 2006.



Janet Baldwin  
Chairperson

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# CHAIRPERSON'S MESSAGE

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Following the 35th anniversary of human rights legislation in Manitoba in 2005, 2006 marked 35 years since the foundation of the Manitoba Human Rights Commission in 1971. In 2006 we were delighted to welcome Mzilikazi Ndlovu to the Board of Commissioners, replacing Roberta Frederickson, and the first new appointment to the Board since 2002. I should like to thank Roberta for her service to the Commission. Mzi is a Zulu from Zimbabwe and a recent immigrant to Winnipeg. His appointment further enhances the diversity of the Board.

The mandate of the Commission is the protection and promotion of human rights in Manitoba. The Board determines the disposition of all complaints of discrimination, which have not been settled, withdrawn or abandoned. There has been an exponential increase in the number and complexity of both individual and systemic complaints, without any increase in financial or human resources. In 2006, the Board directed 38 complaints to mediation and/or adjudication, which is somewhat over 20% of Board dispositions during the year.

The Commission continues to support mediation and conciliation as an alternative to adjudication not only to cut costs but to build relationships. We were, for example, pleased that a settlement was reached between the Rainbow Harmony Project and Camp Arnes, balancing freedom of religion and the right to protection against discrimination on the basis of sexual orientation.

In response to the remaining complaints about discriminatory barriers to accessing residency positions faced by international medical graduates, Manitoba decided to allow international medical graduates to participate on an equal basis with Canadian graduates in the first round of the matching process for residency positions, rather than only in the second round, starting in 2007. It is hoped that this decision will increase the representation of international medical graduates in Manitoba, and that any remaining issues will be resolved in mediation.

Mediation commenced in regard to the complaints by the Elizabeth Fry Society against the Government of Manitoba about the treatment of women incarcerated at the Portage Correctional Centre alleging systemic sex discrimination in that services and facilities for male prisoners are better than those for women as well as the failure to accommodate the special needs of pregnant women and new mothers, Aboriginal women and women with disabilities. This is the first mediation about the treatment of prisoners in a provincial system in Canada.

***“The poor are not just the rich without money. The poor are powerless. Basically that’s what poverty is all about.”***

***In the Public Interest: The first 25 years of The Public Interest Law Centre***

Two substantive adjudication decisions were handed down in 2006, both dealing with hockey. The first was the much publicized Pasternak case, in which Adjudicator M. Lynne Harrison held that the Manitoba High Schools Athletic Association rule prohibiting girls from trying out and playing for their high school boys' hockey team if the school has a girls' team, constituted unreasonable sex discrimination, and strongly encouraged the Association to review the rule as it applies to other sports. The Commission was pleased with the ruling and applauds the girls' courage in standing up for their human rights. The Association has filed an application for judicial review of the decision, but it is hoped that it will respect the adjudicator's order in the meantime.

The second adjudication decision also found in favour of the Commission and the complainant, on the basis of reprisal when the Brandon Youth Hockey Association refused to let an 11 year old boy play hockey for any of its teams because his father had an active human rights complaint against the organization.

Two complainants filed for judicial review of the dismissal of their complaints by the Board, including one of the marriage commissioners who had refused to perform same-sex marriages on religious grounds. The Manitoba Court of Appeal upheld the dismissal of a previous judicial review of a sexual harassment adjudication in favour of the complainant.

The Commission sometimes seeks to intervene in cases of public importance. In 2006 the Manitoba and Saskatchewan Commissions intervened jointly in *Council of Canadians with Disabilities v. Via Rail* before the Supreme Court of Canada in support of the appellant, arguing that human rights principles should be applied to the purchase by Via Rail of a number of "Renaissance" rail cars which were inaccessible to persons with disabilities using personal wheelchairs.

Sometimes complaints which are withdrawn bring issues to the Commission's attention, such as references to the church and Christian principles in a public school division's Belief and Mission Statements. Deb Beauchamp, Policy and Program Analyst, and I corresponded and met with the School Board, and later attended the Division's Strategic Planning Conference to communicate the Commission's concerns. Contrary to some media reports, we engaged in a respectful and productive dialogue with a view to bringing the Division's Belief and Mission Statements into full compliance with *The Code*. Concerns have also been raised about religious exercises and instruction in other public school divisions, and their impact on those who do not adhere to a particular or any faith.

A neighbourhood safety committee had previously brought concerns about police services to Aboriginal residents to the Commission. In 2006 the Commission announced the establishment of the Racialized Communities and Police Services Project in partnership with independent researchers from the University of Winnipeg, to examine racial profiling in policing in Manitoba and to develop strategies to support bias-free policing. A round table discussion was held on this topic, and a joint press release was issued. This was the third community consultation held by the Commission, and three neighbourhood consultations are planned.

Some complaints have raised questions of racial profiling by stores, which is of particular concern to the Commission in view of the proposed amendment to *The Public Health Act* in regard to Non-Potable Alcohol and Inhalant Abuse. The Commission has developed guidelines for retailers, emphasizing the importance of respecting human rights when attempting to control the sale of intoxicating substances.

Externally the Commission was a founding member of the Manitoba Council of Administrative Tribunals, which held its First Annual Conference in 2006.

The Commission also continued to play an active role in the Canadian Association of Statutory Human Rights Agencies (CASHRA). Dianna Scarth, our Executive Director, and I attended the National Human Rights conference, titled "The Next Wave: The Future of Human Rights in Canada", and the Annual Business Meeting in Fredericton. We also hosted the meeting for staff of commissions, to share best practices, in October. Dianna Scarth and I also attended the CASHRA mid-year meeting in December at the Ontario Human Rights Commission, held in conjunction with a round table discussion hosted by Rights and Democracy to engage Canada's human rights agencies in international co-operation for the promotion of human rights.

I continue to serve on the Local Advisory Board of the University of Winnipeg's Global College.

As I contemplate the end of my second term as Chairperson of the Commission in 2007, I am pleased with the improvements to our complaints investigation process and the increased number of systemic resolutions, such as the adoption of individual functional assessments rather than automatic standards by Driver and Vehicle Licensing, and the settlement of the international medical graduates' complaints against the College of Physicians and Surgeons in regard to the conditional licensing system. Our educational programs have expanded, particularly those focused on youth, despite the lack of a dedicated staff position. We have embraced our mandate to promote human rights, through press releases, presentations to governmental committees and interventions in significant human rights cases at the Supreme Court of Canada, such as the *Reference re Same-Sex Marriage* and the *Council of Canadians with Disabilities v. Via Rail*.

I regret, however, that our proposed legislative amendments to *The Human Rights Code* have not yet passed, despite ongoing meetings of the Working Group of Commission representatives and departmental officials, chaired by the previous Minister of Justice. We thank the Honourable Gord Mackintosh for his understanding and support of the Commission's work, and welcome the Honourable Dave Chomiak as Attorney General and Minister of Justice. We trust that he will advance these amendments, particularly the inclusion of "social disadvantage" as a protected ground under *The Code*, as a small step to addressing issues of poverty and homelessness.

It has been a pleasure and a privilege to work with all the members of the Board and staff of the Commission and the community of human rights advocates. I should like to thank Fausto Yadao, whose appointment to the Commission expired on December 31, 2006 and who is unable to accept reappointment for personal reasons; his contributions to the Board and the Issues and Communications Committee have been invaluable. I particularly want to acknowledge the support of Jerry Woods, Vice Chairperson, who personifies his spirit name "Fire Bear"; and Dianna Scarth, our outstanding Executive Director.

*Janet Baldwin*  
Chairperson

# EXECUTIVE DIRECTOR'S REPORT

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2006 will be remembered by many as the year in which an adjudication of complaints filed by twin sisters concerning their ineligibility to try out for their high school boy's hockey team received extensive coverage in both the local and national media. The adjudicator's ruling, which supported the complainants and the Manitoba Human Rights Commission, established an important principle concerning equality based on sex, but the public may have been left with misconceptions about the majority of issues which human rights commissions deal with on a daily basis.

A major trend in human rights complaints has been the increase in volume of complaints based on physical and mental disabilities, the ground most often cited in complaints filed in 2006 (41.5%). This was a continuation of a pattern which has developed over the past five years, when disability complaints have consistently represented 37-42% of the total. That figure reflects a national trend, and it may be contrasted to the 1990's when the volume of disability complaints received was typically just under 20%.

The Commission uses complaint data to plan proactive educational and promotional initiatives, such as workshops, seminars, policy development, research and court interventions. In view of the significantly high number of disability complaints, Commission staff conducted eight half-day workshops for managers of the Workers Compensation Board to assist them in dealing with new policies concerning re-employment of persons with disabilities. Workshops on the topic of reasonable accommodation were offered within the Commission's Employment Seminars, and were also delivered to government departments and private sector employers. The Commission intervened in the Supreme Court of Canada in support of the Council of Canadians with Disabilities against Via Rail for its purchase of rail cars that were inaccessible to wheelchair users. As well, a youth conference workshop titled *Making it Happen* was developed to raise awareness of the barriers, which people with disabilities face in their daily lives.

Complaints, which alleged discrimination based on ethnic origin and/or ancestry, constituted the second highest group of complaints, at 21%. This figure has fluctuated between 15% and 21% over the past five years. The Commission and University of Winnipeg's Racialized Communities and Police Services project was initiated at the request of a group of inner city residents who alleged racial profiling by the City of Winnipeg Police. In October 2006, the first of a series of community consultations was held to obtain information about the personal experiences of members of racialized groups. It was attended by representatives of over 30 organizations and the Winnipeg Police Service.

***"In the End, we will remember not the words of our enemies, but the silence of our friends."***

***Martin Luther King Jr.***

The number of formal complaints received (297) was the highest since 1990, and when that figure is combined with the pre-complaint resolutions, the Commission's workload once again approached its all-time high reached in 2004.

One of the greatest challenges currently facing the Commission is the level of resources available to deal with systemic complaints. Individual complaints generally deal with one person's allegations of discrimination, although they may sometimes have systemic ramifications. On the other hand, systemic complaints raise allegations of discriminatory treatment of large groups. In 2006, the Commission was dealing with systemic complaints, which raised a wide range of issues including the accreditation of foreign-trained doctors, the treatment of incarcerated women in provincial institutions, social assistance levels paid to families who care for disabled adults, the under-representation of women in faculty and administrative positions at a university, and the government's use of institutions for mentally disabled adults. Systemic complaints require extensive research and investigations, but resolutions have a great impact in addressing large scale patterns of discrimination.

The Commission continued to make employers and youth the major targets of its educational programs. There were approximately twenty half-day seminars offered to employers, including a new "Bites and Rights" lunch hour seminar which was successfully launched in Brandon. The Commission's major youth initiatives were its three youth conferences for senior level students in Winnipeg, Brandon and Thompson, and the introduction of a new *Rights of Youth* publication with information about youth rights in the Criminal Justice System. The publication was one of an ongoing series produced in partnership with the Ombudsman and the Children's Advocate.

In looking to the future, priority will be given to creating opportunities for the community to provide input into the Commission's activities, by way of community consultations and perhaps the development of new online methods of communication. The Commission will also continue to make education for youth a priority - existing programs will be reviewed to determine how they might be expanded within the level of resources currently available. Systemic complaints afford great opportunities to remove barriers to equality faced by disadvantaged groups, and although such complaints are resource intensive and challenging to investigate, the Commission is committed to creating flexible and creative approaches to achieve the most effective resolutions possible.

As the end of Janet's Baldwin's second term as Chair approaches, I would like to acknowledge the many significant contributions she has made to the Commission's activities and to human rights in Manitoba during the past seven years.

*Dianna Scarth*  
*Executive Director*



# COMMITTEE REPORTS

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## **Executive Committee**

Chair: Janet Baldwin (Chairperson)  
Jerry Woods (Vice-Chairperson)  
Ajit Kaur Deol (Commissioner)  
Robin Dwarka (Commissioner)  
Elliot Leven (Commissioner)  
Yvonne Peters (Commissioner)  
Dianna Scarth (Executive Director)  
Sarah Lugtig (Legal Counsel)  
Debra Beauchamp (Policy and Program Analyst)

## **Issues & Communications Committee**

Chair: Jerry Woods (Vice-Chairperson)  
Janet Baldwin (Chairperson)  
Robin Dwarka (Commissioner)  
Mzilikazi (Mzi) Ndlovu (Commissioner)  
Dr. M.V. Naidu (Commissioner)  
Fausto Yadao (Commissioner)  
Dianna Scarth (Executive Director)  
George Sarides (Assistant Executive Director)  
Debra Beauchamp (Policy & Program Analyst)  
Patricia Knipe (Communications Director)  
Beatrice Watson (Outreach Liaison Officer)

## **Policy & Legislative Review Committee**

Chair: Yvonne Peters (Commissioner)  
Janet Baldwin (Chairperson)  
Jerry Woods (Vice-Chairperson)  
Elliot Leven (Commissioner)  
Sheena Rae Reed (Commissioner)  
Dianna Scarth (Executive Director)  
Sara Lugtig (Legal Counsel)  
Debra Beauchamp (Policy & Program Analyst)

## **Executive Committee**

The Executive Committee, chaired by Janet Baldwin, met five times in 2006. In addition to reviewing financial and personnel matters, it dealt with reconsideration of complaints and provided direction to staff on ongoing concerns, strategic planning, and matters relating to the Canadian Association of Statutory Human Rights Agencies (CASHRA), interventions by the Commission in human rights cases, media releases, correspondence and emerging issues.

It continued to correspond with Manitoba Health on the extent of coverage for sex-reassignment surgery. After assessing the information in light of federal/provincial cost sharing in health, the Executive decided not to recommend a Commission-initiated complaint at that time.

The Committee also continued to correspond with Manitoba Health on the issue of continued access to Cholinesterase Inhibitors medication, such as Aricept, for residents of personal care homes with cognitive impairments.

The Committee corresponded with the Garden Valley School Division (a public school division) regarding concerns about references to the church and Christian principals in the Division's Beliefs and Mission Statement. Chairperson Baldwin and staff met with the School Board and later made a presentation at the Division's Strategic Planning Conference, communicating the Commission's concerns and answering questions.

### **Issues & Communications Committee**

The Issues Committee, chaired by Jerry Woods, held four meetings in 2006. It considered matters relating to the commission's communications, such as its monthly *Connections* Bulletin, and its education initiatives, including youth conferences and employment seminars.

The committee oversaw the Commission's role in the Racialized Communities and Police Services Project ("RCAPS") a joint initiative with the University of Winnipeg to examine racial profiling in policing in Manitoba and to develop strategies to support bias-free policing. A roundtable discussion on police services to members of racialized communities was held by the Commission in October and a joint media release by the organizations and groups in attendance and RCAPS was released in November.

On the recommendation of the committee, the Commission decided to withdraw its participation in the activities of the Non-Potable Alcohol and Inhalant Abuse Committee. The Commission had reservations about the potential for discrimination in services on the basis of ancestry and disability in connection with the new legislation regulating the sale of products containing such substances and with respect to whether information sessions with retailers would sufficiently emphasize the obligation to avoid discrimination and stereotypes when controlling the sale of intoxicating substances.

The committee continued to look for innovative ways to fulfill the Commission's mandate with respect to human rights education and promotion, despite the lack of a dedicated education staff position.

***"You cannot escape  
the responsibility  
of tomorrow by  
evading it today."***

***Abraham Lincoln***

### **Policy & Legislative Review Committee**

The Policy and Legislative Review Committee, chaired by Yvonne Peters, met once this year. Committee representatives also met several times with the Minister of Justice and his staff to review and discuss legislative proposals for amendments to *The Human Rights Code*.

The proposal to add disadvantaged economic and social condition as a protected ground under *The Code* was amended to a recommendation that “social disadvantage” be added as a protected ground. The committee continued to propose a number of administrative amendments, and recommended that the protected grounds be amended to clarify that discrimination on the basis of gender identity is prohibited. The committee also continued to recommend an amendment to the harassment section and to the provisions prohibiting discriminatory signs and statements, the latter to more effectively address hate messages.

# COMPLAINT PROCESS - OVERVIEW

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## **Pre-Complaint Resolution Process**

This is a voluntary, without prejudice process whereby the Commission mediators attempt to resolve an issue between a complainant and a respondent, prior to the filing of a formal complaint of discrimination under *The Code*. In 2006, 45 were resolved successfully in the pre-complaint process.

## **Mediation**

The Commission encourages parties to attempt to resolve a complaint if they wish to do so, at any stage of the process, whether prior to or during an investigation. In 2006, 262 files were assigned to the three staff mediators at the pre and mid-investigation stages. Sixty-eight complaints were resolved successfully in 2006 at these two stages of the process (47 in pre-investigation and 21 at mid-investigation).

## **Investigation**

Each complaint that is not resolved in the mediation process is assigned to the investigation team, that collects, reviews and analyzes evidence. Upon completion of the investigation, a comprehensive Investigation Assessment Report is prepared, making a recommendation to the Board of Commissioners for determination pursuant to *The Code*. In 2006, the investigation team was assigned 227 formal complaints to investigate and the team completed Investigation Assessment Reports on 155 complaints. During 2006 the average length of an investigation, including the written report was 9.23 months. In addition to the investigation reports, the team prepared 55 reports with respect to complaints that were either withdrawn or abandoned.

## **Board Directed Mediation**

Pursuant to s.29 (2) of *The Code*, the Board of Commissioners may cause mediation to be undertaken between the parties where the evidence obtained during the investigation is sufficient to substantiate a contravention of *The Code*. In 2006, 38 files were referred to directed mediation. In 2006, 26 cases were voluntarily resolved at this stage and in 4 other cases, the Board determined that the offer made by the respondent in the mediation process was reasonable, the complainant rejected the offer and the file was closed.

## **Adjudications**

Pursuant to s.29 (3) of *The Code*, the Board of Commissions can refer complaints to adjudication, either directly or after board directed mediation is not successful. In 2006, 7 files were referred to adjudication and 2 adjudication hearings were completed. In addition, 12 files which were referred to adjudication were resolved by legal counsel in advance of the hearing scheduled to take place in 2006.

***“Do the right thing.  
It will gratify some  
people and astonish  
the rest.”***

***Mark Twain***

# SETTLEMENTS

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Pre-complaint resolution is an opportunity to have a situation addressed before a formal complaint is filed and can lead to an early settlement.

Mediation is a voluntary process of dispute resolution offered after a complaint is received. If mediation takes place before or during the investigation process, it is conducted on a confidential basis.

It is important to note that during mediation, no assessment of the validity of the complaint is made. Mediation can result in an acceptable resolution of the issues in a shorter time frame than a more formal investigation, and usually involves the individuals directly affected.

Board-directed mediation takes place after an investigation by a human rights officer. In these cases, the board has determined that the complaint has enough support in the evidence to proceed further.

In 2006, 46% of the files were closed after a settlement. The following are examples.

## **Employment**

A technician, who had worked for a company since 1997, was diagnosed with epilepsy in 2001 and resigned his position as time was required to establish a treatment regime. Two years later he re-applied for work at the same company. He subsequently attended an apprenticeship program because he had received a note from his doctor saying that he could no longer do rotating shift work as changing sleeping patterns could trigger more seizures. He said he worked out a work schedule for this new position with his supervisor.

In early 2006 however, his employment was terminated. He said he was told that it was due to performance issues and his not passing courses. He believed it was because of his epilepsy. He filed a complaint citing his employer's failure to accommodate his disability.

The respondent employer expressed an interest in a voluntary resolution so there was no need for a formal response or investigation. Shuttle negotiation took place by telephone and the mediator helped the parties reach an agreement. The main terms of the agreement included a letter of reference, \$1500 in general damages, and an agreement by the company to send at least three supervisory staff to the Commission's workshop, *Human Rights in the Workplace*.

***“Not everything that is faced can be changed, but nothing can be changed until it is faced.”***

***James A. Baldwin***

## **Housing**

In an effort to provide suitable housing for her 19 year old son, a mother negotiated the purchase of a mobile home, which was located in a mobile home park. The seller had indicated to her that any potential buyer needed to meet with the owner of the park. The woman and her son met with the owner. According to the woman, she told him that her son and two other young men would be living in the three bedroom mobile home. She says they reached a verbal agreement.

The seller of the mobile home however, rejected her offer to purchase saying that the owner had changed his mind and was not going to allow “three boys” to move into the park. When she contacted the owner for an explanation, she said he told her that he would be looking for trouble if he allowed three young guys to move into the park and at that age all they do is party. She and her son filed complaints with the Commission citing differential treatment based on age in the area of housing.

An investigation took place and it was recommended that board directed mediation take place. The owner held the common belief that all young men party, but to assume that the partying is inevitable and that it would involve disruption to the park is not a bona fide and reasonable cause to not enter into the lease agreement.

Shuttle negotiations took place and the parties reached an agreement with both complainants collectively receiving the sum of \$2,000 as general damages.

## **Services**

A complaint was filed when it was alleged that a community choir group made up largely of members of the lesbian, gay, bisexual and transgendered community was denied access to a Christian summer camp that also rents its facilities throughout the year to the general public. The camp denied access believing that the goals of the group were contrary to the guidelines set out in their Code of Conduct and Statement of Faith. Two complaints, one by an individual and the other by the group, were filed on the basis of differential treatment based on sexual orientation in the service area.

A mediated settlement was reached prior to adjudication and, at the request of both the respondent and the complainants, a joint statement was released to the media. The settlement and statement reflected a resolution to the complaint filed by the Rainbow Harmony Project, and an individual choir member, Joe Stephanson, against Camp Arnes.

With the assistance of the Manitoba Human Rights Commission, Camp Arnes adopted adjustments to its policies and practices that addressed the Rainbow Harmony Project’s concerns and reflected Camp Arnes’ stated respect for the inherent worth of all individuals.



# LEGAL PROCEEDINGS

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In 2006 there were two human rights hearings. Other legal proceedings included a Manitoba Court of Appeal decision upholding a Court of Queen's Bench decision, the Commission's intervention in a case before the Supreme Court of Canada and two judicial review applications initiated by complainants.

## Adjudications

### **Amy and Jesse Pasternak v The Manitoba High Schools Athletics Association**

In their complaints, it was alleged that the Manitoba High Schools Athletic Association Inc., contravened section 13 of *The Human Rights Code* by subjecting Jesse and Amy Pasternak to differential treatment based on their sex (female). The sisters were denied the opportunity to try out for the high school men's hockey team because the MHSAA rules do not allow females to play male high school hockey if there is a female team at the same school.

In a preliminary hearing, Adjudicator M. Lynne Harrison dealt with three objections to her jurisdiction to hear these complaints. The first was that the complaints were directed at the wrong party. The second was that the MHSAA appeal process had not been exhausted. The final was that the MHSAA does not provide services to the public. She concluded that the MHSAA is properly named in the proceedings, that the issue at hand was whether the MHSAA rules were discriminatory and not whether any appeal was pursued, and finally, that the services the MHSAA provides to high school students are public in nature, and therefore do fall within the scope of *The Code*. Following this decision, the human rights hearing into the complaint itself took place from June 19 - 29, 2006.

On September 22, 2006 Adjudicator Harrison released her decision and found that the MHSSA was not justified in refusing to let girls try out for the boys' high school hockey team. Although the MHSAA argued during the hearing that women's hockey would suffer should the girls be allowed to play on a boys' team, Adjudicator Harrison found that there was no objective evidence that women's hockey would suffer, that boys would take over girls teams or that boys would end up being disadvantaged as a group when it comes to opportunities to play hockey. The same issues arose in 1988 when the Ontario Women's Hockey Association prohibited Justine Blainey from playing for a men's team and similar concerns were expressed at that time. Adjudicator Harrison wrote that she "expected to hear evidence to indicate that such concerns had been shown to be justified over time." She noted that this evidence was not introduced.

***"Dreams are today's answers to tomorrow's questions."***

***Edgar Cayce***

In her decision Adjudicator Harrison found the girls had suffered sex discrimination because of the rule and that the Association had not succeeded in justifying its position. She ordered that the MHSAA remove its requirement that girls can only try out and play for the girls' hockey team if the school has a girls' hockey team, that Amy and Jesse Pasternak receive one-on-one coaching for loss of skills and one session of hockey camp appropriate to their age and skill, and that each receive a sum of \$3500.00 to compensate for injury to their dignity and self respect.

The Manitoba High School Sports Athletic Association has filed for judicial review regarding the decision.

### **Hank Richard v the Brandon Youth Hockey Association**

In a ruling released on October 16, 2006, Adjudicator M. Lynne Harrison wrote that the Brandon Youth Hockey Association (BYHA) violated *The Code* when it refused to let an 11 year old boy play hockey for any of its teams, because his father, Hank Richard had an active human rights complaint against the organization. Mr. Richard's original human rights complaint, filed on behalf of his son against BYHA, alleged that his son had been discriminated against on the basis of his ancestry in the allocation of ice time during games. This original complaint was subsequently dismissed by the Manitoba Human Rights Board of Commissioners on the basis that there was insufficient evidence to support it. While it was still before the Commission however, the BYHA refused to let the boy play on any of its teams.

Adjudicator Harrison determined that the actions of the Brandon Youth Hockey Association amounted to reprisal under Section 20 of *The Human Rights Code*. Section 20 prohibits retaliation by denying another person a benefit, hurting that person in some way or threatening to do so, because that person has filed or may file a human rights complaint or otherwise participated in human rights processes.

Although the BYHA denied that its actions were based on reprisal, Adjudicator Harrison disagreed and ordered that the BYHA pay the sum of \$2,000.00 to Mr. Richard in trust for his son to compensate him for injury to dignity, feelings and self-respect. She also ordered that the BYHA refrain from refusing to register players, and from transferring players, on the basis of complaints under *The Human Rights Code*.

## **Manitoba Court of Appeal**

### **Thorvaldson Care Homes Ltd. v the Manitoba Human Rights Commission**

The Manitoba Court of Appeal upheld a Court of Queen's Bench decision, which affirmed a finding of sexual harassment involving a female employee of a personal care home. In October 2005, Madame Justice Colleen Suche rejected the argument that the procedure followed by the adjudicator during the hearing of the complaint was unfair to the respondent. Thorvaldson Care Homes Ltd. filed an appeal of Madame Justice Suche's decision and raised the same procedural issues before the Manitoba Court of Appeal.

Thorvaldson Care Homes Ltd. had alleged that during the human rights hearing in March 2002, Adjudicator Arne Peltz relied on hearsay evidence and improperly proceeded when the Commission had failed to disclose certain documents. Madame Justice Colleen Suche had found that Adjudicator Peltz had taken care not to rely on hearsay evidence and that the Commission was not required by law to disclose all documents in its possession as long the respondent had sufficient information to know the case against it. Madame Justice Suche dismissed, with costs, the application for judicial review by Thorvaldson Care Homes. Her decision was appealed.

The Manitoba Court of Appeal heard the argument presented on behalf on Thovaldson Care Homes Ltd. again on October 13, 2006 and immediately dismissed it with costs, indicating that there was no merit to any of the grounds of appeal.

In his original decision, Adjudicator Peltz found that a female worker was sexually harassed by a co-worker while working at a personal care home and subsequently fired from her job. In his ruling, Adjudicator Peltz found that the caretaker of the personal care home subjected Jeanette Budge to sexual harassment and that management was aware of the problem and failed to take action.

Adjudicator Peltz had ordered that Thorvaldson Care Homes Ltd. pay Ms Budge 12 weeks wages plus \$4,000 in general damages for injury to dignity, feelings and self respect and that a harassment policy, acceptable to the Manitoba Human Rights Commission, be prepared and adopted. The Commission was also granted a monitoring order since the harasser was still employed at the home at the time.

## **Supreme Court of Canada Intervention**

### **Council of Canadians with Disabilities v. Via Rail Canada Inc.**

In late 2000, VIA Rail paid \$29.8 million to purchase 139 "Renaissance" rail cars no longer required for overnight train service through the Channel Tunnel between England and France. These cars were inaccessible to persons with disabilities using personal wheelchairs. VIA saw the Renaissance cars as a unique opportunity to substantially increase the size of its fleet at a comparatively moderate cost. The Council of Canadians with Disabilities (CCD) applied to the Canadian Transportation Agency complaining that many features of the Renaissance cars constituted undue obstacles to the mobility of persons with disabilities. Making its way through the courts, the case went before the Supreme Court of Canada in 2006.

The Commission, with its counterpart in Saskatchewan, was granted intervener status and argued that human rights principles must be applied and applied consistently, by all government agencies entrusted to protect them.

In its written submission, the Prairie-based commissions noted that human rights principles can be applied in a flexible manner that responds to a unique context. The commissions also emphasized that service providers have an obligation to engage in an appropriate process to assess accommodation issues for people with disabilities, including the obligation to gather concrete information of any cost, safety or other hardships that they later allege prevent them from implementing measures to ensure equal access to their service.

### **Judicial Review**

Two complainants filed for judicial review after their cases were dismissed by the Board of Commissioners.

# RAISING AWARENESS

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The Commission continues to fulfill its mandate concerning education and promotion of human rights. *The Code* states that “it is important that educational programs assist Manitobans to understand all their fundamental rights and freedoms as well as their corresponding duties and responsibilities to others.” Although resources to accomplish this remain limited, it has advanced understanding by sustaining its outreach activities, public presentations, education workshops, youth conferences, round table discussions and new publications.

As a result of the intense media coverage surrounding the human rights hearing *Pasternaks v The Manitoba High Schools Athletic Association*, the Commission recognized the need to clarify its role in the adjudication process as well as in the enforcement and promotion of human rights in the province. A *Guide to a Human Rights Hearing* was written and widely distributed to the media.

The partnership with the Office of the Ombudsman and the Children’s Advocate resulted in a fourth *Rights of Youth* publication, *Criminal Justice*. The publication of the next four topics is expected early in 2007.

The number of employment seminars was increased and a new lunch time session *Bites and Rights Series*, was introduced. Approximately 700 people registered for workshops, which were held in Winnipeg, Brandon and Thompson. Outreach presentations about human rights protections and the commission were delivered to an additional 2000 people.

The Commission’s three youth conferences for senior level students continue to be successful. Since their inception in 2001, the Commission has reached almost 2000 students through its youth conferences.

The Commission also provided information booths at such events as Gay Pride, Brandon Career Symposium, International Women’s Day and Law Day.

## **Manitoba Human Rights Commitment and Youth Awards**

With its valued partners, The Canadian Human Rights Commission and The Manitoba Association for Rights and Liberties, The Manitoba Human Rights Commission once again hosted the International Human Rights Day Award Luncheon in December. This year’s Commitment Award recognized work that encouraged youth awareness and involvement in human rights. The Dr. Sybil Shack Memorial Manitoba Human Rights Youth Award acknowledged work that has an impact on the advancement of human rights as guaranteed in the *Canadian Charter of Rights and Freedom* and human rights legislation.

***“Education should not be the filling of a pail, but the lighting of a fire.”***

***William Butler Yeats***

The 2006 recipient of Annual Manitoba Human Rights Commitment Award was Chuck Duboff, an English teacher and the founder of the Maples Collegiate Unity Group, which for twelve years has been devoted to the elimination of racism in its school and community.

The 2006 recipient of the Sybil Shack Memorial Manitoba Human Rights Youth Award was seventeen year old Tasha Spillett, who has an outstanding record of involvement with human rights activities and is a founding member of the United Against Racism Aboriginal Youth Circle.

### **Racialized Communities and Police Services Project (RCAPS)**

The Commission announced the establishment of the Racialized Communities and Police Services Project, a partnership with researchers from the University of Winnipeg, to examine concerns brought to the Commission about police services to Aboriginal residents of a Winnipeg neighbourhood.

The Project's focus includes police services to both Aboriginal residents and members of other racialized communities in Winnipeg. The term "racialized communities" is used instead of terms such as "visible minorities," "persons of colour" or "non-white".

A roundtable discussion was held on the topic of bias free policing and 30 representatives from nearly 20 community groups, neighbourhood associations, the University of Winnipeg and the Winnipeg Police Service attended.

The RCAPS Project Committee is made up of representatives of the University of Winnipeg and the Manitoba Human Rights Commission. University of Winnipeg representatives include Dr. Sandra Kirby, Chair of the Department of Sociology, Dr. Mary Young, Director of Aboriginal Student Services and Helmut-Harry Loewen, Faculty Member of the Department of Sociology.

The RCAPS Project Committee is developing a number of project proposals to help identify any problems in the provision of policing services to Aboriginal and visible minority communities, and to assist in developing strategies that support bias-free policing services. Three community consultations are planned for the spring of 2007.



# COMMISSIONERS

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## Chairperson

**Janet Baldwin** has an LL.B degree from the University of London, and did graduate work at the University of Warsaw, Poland, and the University of Illinois (LL.M). She taught law at the University of Manitoba for 31 years. She also served as Chair of the President's Advisory Council on Women and as the Director of the Women's Secretariat, and revised the University's sexual harassment policy. She has been Chairperson of the Manitoba Human Rights Commission since 2001. She is a Past President of the Canadian Association of Statutory Human Rights Agencies, and a member of the Local Advisory Board to the University of Winnipeg's Global College. Janet is married and has two daughters.

## Vice-Chairperson

**Jerry Woods** is a proud member of the Couchiching First Nation and sits as Vice-Chair of the Manitoba Human Rights Commission and hosts all the Commission's youth conferences. His background in the labour movement and his expertise as a negotiator serve him well as a strong advocate for Aboriginal employment and human rights issues. He continues to work in the community as an activist and strives for equitable outcomes with a dedication to improving the quality of life for all people. Jerry's passion is golf, and his joy is his family - wife Cathy, their six children, and eight grand children.

## Commissioners

**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 on the Council of the Manitoba Bar Association, the Board of Directors of the Canadian Women's Health Network and chairing the Human Rights Committee of the Council of Canadians with Disabilities.

**Fausto Yadao** 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 College Task Force on Services to Aboriginal and Multicultural Communities. Fausto is a former Vice-President of the Philippine-Canadian Centre of Manitoba and is a past Commander of the Order of the Knights of Rizal, a community service organization within Winnipeg's Filipino community. He is a recipient of the Golden Jubilee Medal for community service. Fausto has two daughters and a grandson.

*“People are pretty much alike. It's only that our differences are more susceptible to definition than our similarities.”*

*Linda Ellerbee*

**Robin Dwarka** is the Director of Administration for Legal Aid Manitoba. She is a Certified Management Accountant (CMA) and has a Bachelor of Commerce (Honours) from the University of Manitoba. Robin is a founding member of the Manitoba Pan Handlers, a local steel band. Currently, she is active in the Caribbean community primarily through the building sub-committee of the Council of Caribbean Organizations of Manitoba and The Caribbean Folklorama Pavilion. Robin is a board member of the Manitoba Association for Rights and Liberties (MARL) and is currently its Treasurer.

**Elliot Leven** is a lawyer by profession and his preferred areas of practice are labour and employment law and Aboriginal law. He is an active member of Winnipeg's gay and Jewish communities. He is the Immediate Past President of Camp Massad of Manitoba, a board member of the Community Unemployed Help Centre, a member of the Law Society of Manitoba's Admissions and Education Committee, and a member of the Winnipeg Folk Festival's Communications Committee.

**Sheena Rae Reed** was born and raised in Flin Flon and her love of the North resulted in her returning to her hometown after receiving her Arts Degree from the University of Manitoba and studying two years of law. Once she returned to Flin Flon, she began working in social services and today she works with Child and Family Services. For the last seventeen years Sheena has coached girls' gymnastics and has been involved in Big Brothers/Big Sisters. She is also a board member of the Northern Women's Resource Centre in Flin Flon, the President of the Flin Flon Friendship Centre's Board of Directors and the President of the Manitoba Association of Friendship Centres.

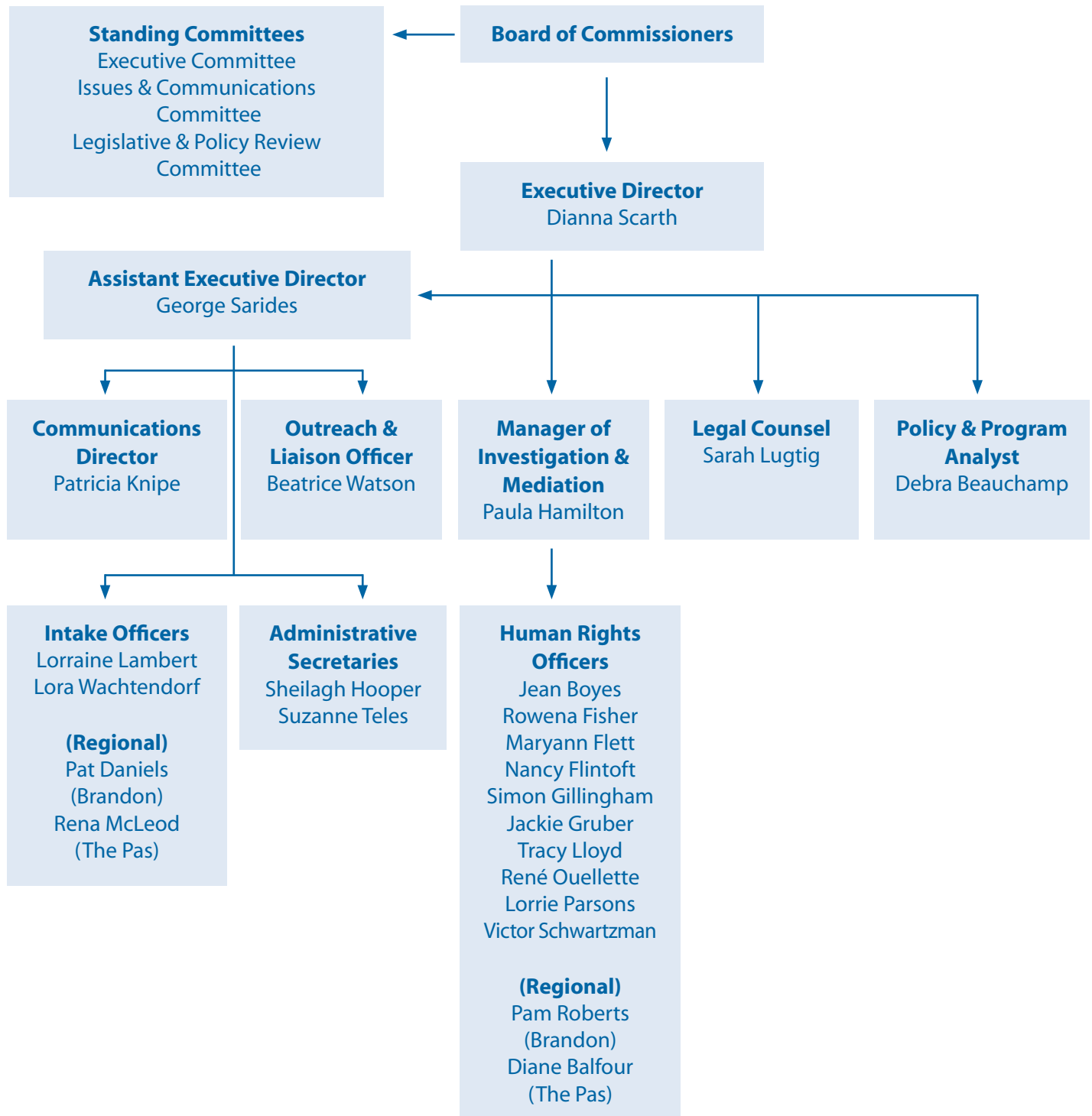
**M.V. Naidu** has been a political science professor at Brandon University and was recently awarded the status of Professor Emeritus. He is the recipient of many honours such as the Canadian government's citation for Citizenship and the Fulbright Scholarship grant. He founded the West Manitoba Multicultural Council, the Citizen's Committee for Medicare and the Civic Affairs Association of Brandon. He is also the past president of the Canadian Peace Research and Education Association and the Canadian Asian Studies Association. Professor Naidu was recently invited to the University of Rajasthan (Jaipur, India) for eight months and Dehli University for one-year, as a visiting Political Science Professor. He is editor of Peace Research, the Canadian Journal of Peace studies.

**Ajit Kaur Deol, O.M.** is an educator, a committed activist and forward thinking multicultural leader. She was a teacher at Edward Schreyer High School in Beausejour and Maples Collegiate in Winnipeg for many years. Ajit is credited with developing the Caroline McMorland School for the mentally disabled in Ontario. She has been on the Board of Directors of countless organizations and is currently a member of the Advisory Committee Punjab Foundation and a member on the Cabinet Committee on Agencies, Boards and Commissions. She is also a member of the Manitoba Citizenship Council, and a Director on the Board of the Seven Oaks School Education Scholarship Foundation and Seven Oaks General Hospital Foundation.

**Mzilikazi (Mzi) Ndlovu** was born and raised in Matshetsheni Tribal Trust Land, a reserve community near the town of Gwanda in Zimbabwe. After arriving in Winnipeg, he studied at the University of Winnipeg to pursue a liberal arts education, where he was instrumental in the *Food Bank* and *Safe Walk* Program initiatives and elected Vice President of the African Student Association. For many years he produced and hosted *The African Summit* on CKUW, the community radio station at the University of Winnipeg. He has freelanced for CBC, the Society for Manitobans with Disabilities and the Manitoba Association for Rights and Liberties. Mzilikazi currently works for Winnipeg Child and Family Services.

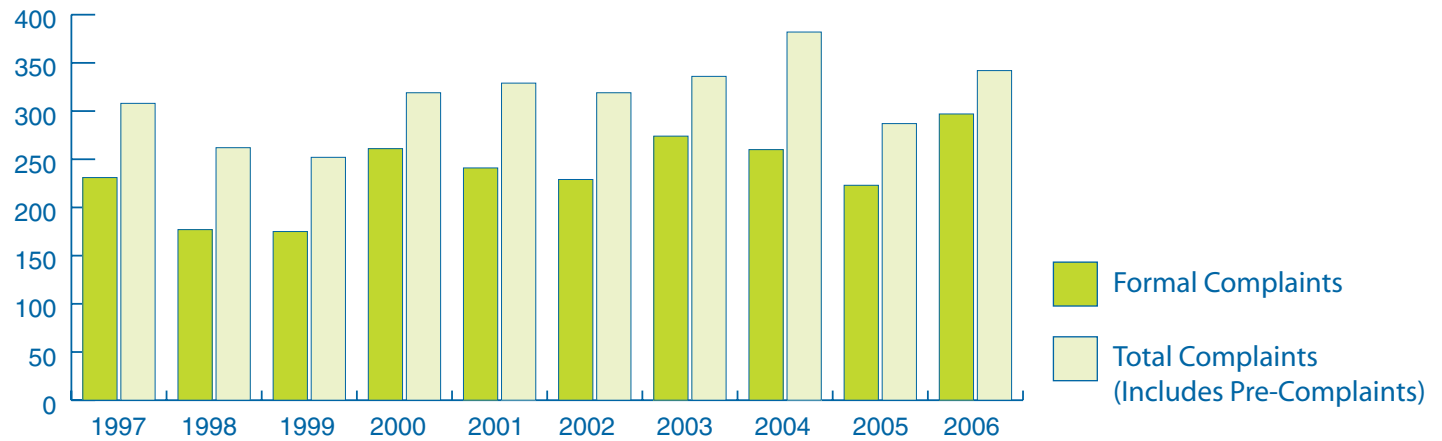
# MANITOBA HUMAN RIGHTS COMMISSION

## Organization Chart 2006



# STATISTICS

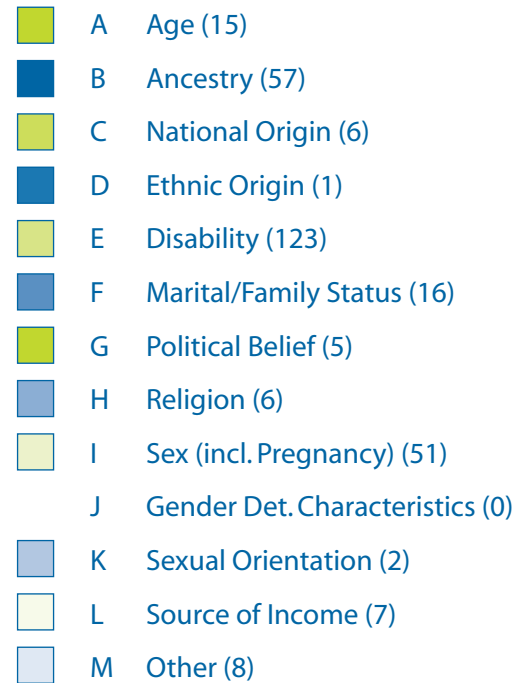
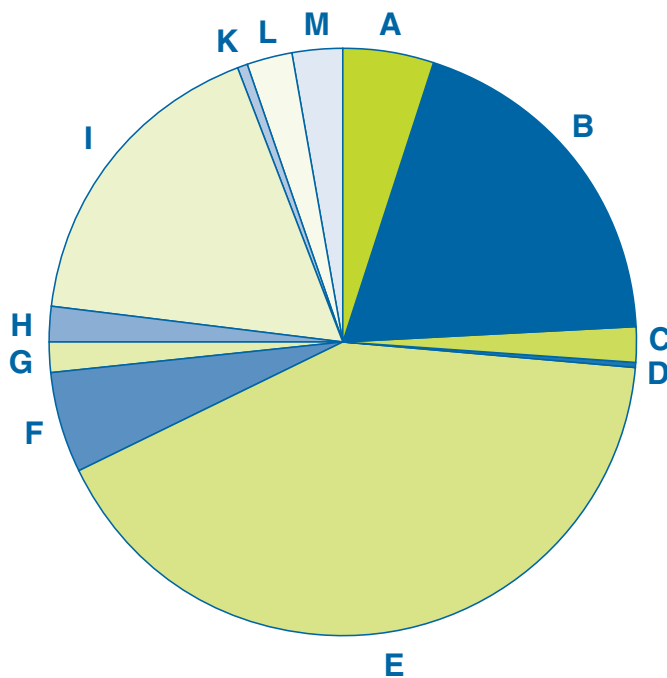
## Complaints Filed



## Number of Complaints

Year	Formal Complaints	Total Complaints (Includes Pre-Complaints)
1990	245	n/a
1991	265	n/a
1992	216	n/a
1993	149	n/a
1994	150	n/a
1995	169	n/a
1996	218	n/a
1997	231	308
1998	177	262
1999	175	252
2000	261	319
2001	241	329
2002	229	319
2003	274	336
2004	260	382
2005	223	287
2006	297	342

## Formal Complaints Registered in 2006 - By Grounds



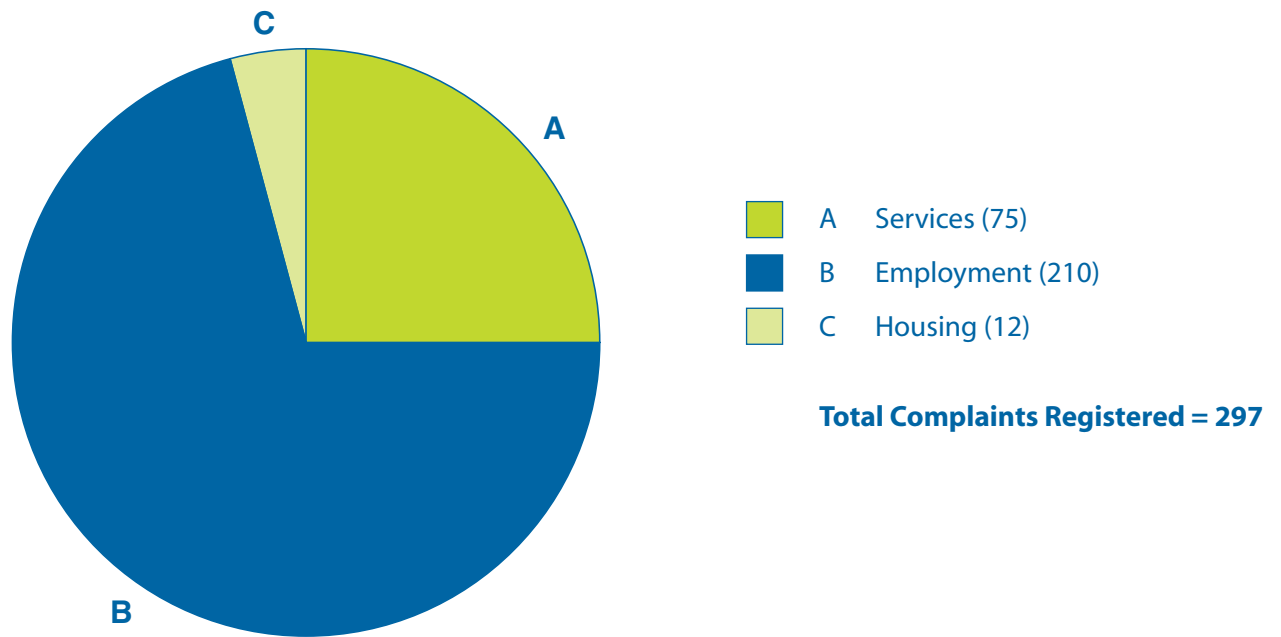
**Total Complaints Registered = 297**

## Files Closed by Grounds in 2006

Area	Pre-complaint Resolution	Pre-Board Settlements	Withdrawn / Abandoned	Dismissed by Board	Terminated / Offer Found Reasonable	Settled By Board Directed Mediation	Referred to Adjudication	Settled Prior to Adjudication
Age	4	4	5	8	0	2	2	0
Ancestry	6	3	7	22	0	2	0	0
National Origin	1	2	2	0	0	2	0	0
Ethnic Origin	0	0	0	1	0	0	0	0
Disability	15	33	23	39	2	13	1	3
Marital/Family	0	3	3	6	1	1	0	0
Political Belief	0	0	1	0	0	0	0	0
Religion	1	2	5	6	0	0	0	0
Sex (including Pregnancy)	14	18	6	24	0	6	2	8
Gender Determined Characteristics	0	0	0	0	0	0	0	0
Sexual Orientation	0	2	1	1	0	0	0	1
Source of Income	2	0	0	2	0	0	0	0
Other	2	1	2	5	0	0	2	0
<b>TOTALS</b>	<b>45</b>	<b>68</b>	<b>55</b>	<b>114</b>	<b>3</b>	<b>26</b>	<b>7</b>	<b>12</b>

**Total Complaints by Grounds 2006 330**

## Formal Complaints Registered in 2006 - By Area



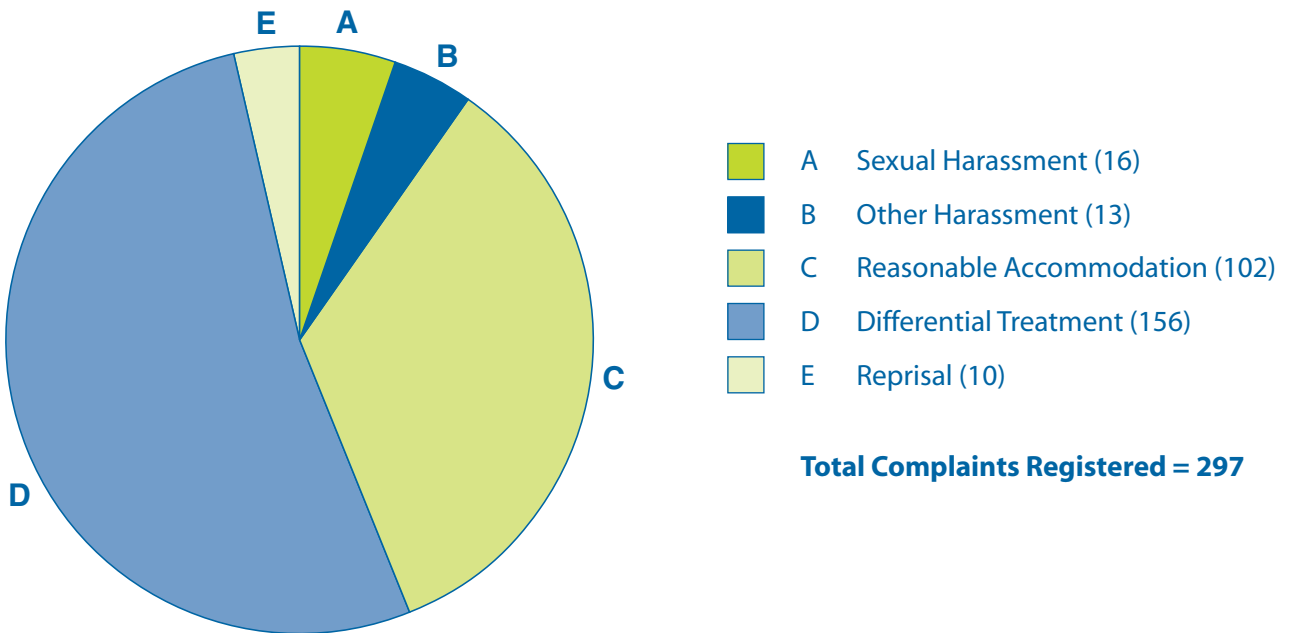
## Files Closed by Area in 2006

Area	Pre-complaint Resolution	Pre-Board Settlements	Withdrawn / Abandoned	Dismissed by Board	Terminated / Offer Found Reasonable	Settled By Board Directed Mediation	Referred to Adjudication	Settled Prior to Adjudication
Services	8	4	11	29	0	4	0	3
Employment	30	64	40	75	3	18	7	9
Contracts	0	0	0	0	0	0	0	0
Housing	7	0	4	9	0	4	0	0
Other	0	0	0	1	0	0	0	0
<b>TOTALS</b>	<b>45</b>	<b>68</b>	<b>55</b>	<b>114</b>	<b>3</b>	<b>26</b>	<b>7</b>	<b>12</b>

**Total Complaints by Area 2006 330**



## Formal Complaints Registered in 2006 - By Nature of Allegations



## Files Closed by Nature of Allegation in 2006

Nature of Allegation	Number of Complaints
Sexual Harassment	37
Other Harassment	17
Reasonable Accommodation	101
Differential Treatment	161
Reprisal	14

**Total Complaints by Nature of Allegation 330**