

# Human Rights From Manitoba

*A Newsletter Of  
Human Rights  
Developments in  
Manitoba*

Volume 1, Number 7, Mid Summer, 1999

THE MANITOBA  
HUMAN RIGHTS  
COMMISSION



LA COMMISSION DES  
DROITS DE LA PERSONNE  
DU MANITOBA

**Flashing Light Alert**

## ***Photosensitive Epilepsy***

### **What is Photosensitive Epilepsy?**

Epilepsy can be described as a tendency to have seizures (including convulsions). It is a condition occurring in one of out every two hundred people. Evidence suggests each of us has a seizure threshold. Photosensitive Epilepsy involves seizures caused by a *flickering or flashing light source*. About one in four thousand people have this condition, to differing degrees.

### **Reasonable Accommodation**

Employers and businesses are obliged under The Human Rights Code to reasonably accommodate special needs related to a disability. Epilepsy is considered a physical disability under The Code.

The reasonable accommodation sought by people with Photosensitive Epilepsy is to ask businesses to *minimize the use of strobing and flickering lights*. Such lights are often used as attention-getters or for decoration.

### **What Can You Do?**

Please minimize the use of strobe or flickering lights.

If a customer tells employees he or she is having or could have a problem with flashing lights, *the proper action is to temporarily turn the lights off*.

**For more information about Epilepsy:  
Epilepsy Manitoba, 825 Sherbrook Street,  
Winnipeg MB R3A 1M5. Phone: 783-0466.**

## Northern office moves to Otineka Mall in Summer, 1999!

### **Inside:**

*Past discrimination in the North surveyed in new study: p. 3*

*Settling For The Best: recent settlements are a good guideline for what is against The Code, and what types of settlements are achieved to resolve complaints: p. 4*

*The North's '98, a review of the year from our office in the North: p. 6*

*Rainbow Stage: a new wheelchair seating pricing policy is implemented, giving people a great set of pricing choices for seats: p. 7*

*Recent settlements of the pre-complaint variety: p. 7, 8*

*New staff: a new Manager of Compliance and Mediation, and a new Human Rights Officer specializing in mediation: p. 9*

*Website--stats and more: p. 10*

### **Human Rights From Manitoba**

*is produced by The Manitoba Human Rights Commission. Editor: Victor Schwartzman*

*Our sincere thanks to Translation Services (Department of Culture, Heritage and Citizenship) for its excellent service in preparing the French version of this newsletter.*

*Write us at: 7th Floor  
175 Hargrave Street  
Winnipeg MB  
R3C 3R8.*

## Manitoba Human Rights Seminar



## ***Human Rights for Employers***

***New Seminars on Sept. 29, Nov. 18  
Winnipeg, Norwood Hotel, 8:30 AM - 4 PM***

***A full day, business-oriented seminar specifically for employers, to answer questions on topics including employers' rights, pregnancy, dress codes, sexual harassment, and accommodating religions and disabilities.***

***Get your questions answered by the staff who resolve complaints!***

***Cost: \$25 per person (includes lunch, coffee/tea breaks). Print materials provided. Please call 945-3007 to register or get more information.***



# Opening the door to secrets from the past

## **VICTIMS OF DISCRIMINATION URGED TO TELL THEIR STORY**

by Sukh D. H. Khokhar

***Have you ever experienced an incident of racism or any other form of discrimination in Northern Manitoba?*** If you have, and would be willing to share your incident so that others may learn from it, here is an opportunity to tell your story.

**The privacy of the individuals will be totally protected, as we will not use the real names and places in our documentation.** We will, however, seek permission from the individuals to use their information as educational tools.

The Thompson Multi Culture Centre is collecting personal stories of discrimination in the North, based on: ***race, age, sex, sexual orientation, religion, marital/family status, income, disability and/or political belief.***

We will use these stories of discrimination to assess the nature and scope of racism and other forms of discrimination on minorities in Thompson and the outlying communities.

We are undertaking this initiative to examine the sensitive issues surrounding race relations through a major study, ***Discovering the Many Faces of Discrimination in Northern Manitoba.*** This study is sponsored by the **Department of Canadian Heritage and the Multicultural Grants Advisory Council.**

We believe the information gained in the study will enable us to assess the extent of the problem of racism and discrimination in Northern Manitoba. When completed, this compilation could be a powerful testimony of human rights violations. It will contribute to the development of appropriate and progressive strategies needed to address this social cancer. We also hope that this

exercise will initiate a healing process for the victims of discrimination. We believe it empowers people to know their rights and options. Hopefully, telling their stories will also encourage people to seek help and take other appropriate action.

We will select some incidents for radio broadcast in the form of interviews. The interviews will be combined with professional tips from The Manitoba Human Rights Commission on the rights and choices available to individuals who have been or are being discriminated against. A selection of articles will be featured in the newspaper as a *Faces of Discrimination* series designed to create community awareness and sensitivity. We will also select a few incidents for video productions, which would be used as a resource.

We have established an advisory committee of five very accomplished, community-minded professionals. They will provide direction and guidance to the Multi Culture staff in coordinating this project. They will also oversee the process of documentation, media publication and video production. The advisory committee consists of: **Mr. Brian Wilson**, former Superintendent of the Mystery Lake School Division, **Mr. Art Merasty**, President of the Ma-Mow-We-Tak Friendship Centre, **Constable Paul Mann** of the RCMP Thompson Detachment, **Ms. Susan Morgan** of the Northern Regional Cabinet Office, and **Ms. Dianna McGavin** of the Residential Tenancies Branch.

The Manitoba Human Rights Commission office in The Pas will be involved in this project, to provide information when participants are being interviewed and in the creation of videos. The Regional Human Rights Officer, Don Pranteau, has set monthly visits in Thompson. The next scheduled trips are: **June 15 and 16, July 13 and 14, and August 17 and 18.** While in Thompson, Don will work out of the Thompson Multi Culture Centre.

**To obtain more information or to be interviewed  
please call (204)-677-3981.**



## Commission

## Settlements:

# Settling

by **Dianna Scarth**  
Executive Director

Over half the complaints registered with the Commission each year are settled between the parties with the assistance of Commission Staff or its Counsel.

Human rights legislation is intended to be *remedial*: its purpose is not only to provide a means for compensating a Complainant who has suffered unreasonable discrimination, but also to take steps to help prevent the discrimination from being repeated. Settlement discussions and agreements focus on the underlying purpose and philosophy of *The Code*.

Although the Commission's policy is not to publish identifying information about complaints, we believe in occasionally publishing enough information to inform the public about what conduct is considered discrimination, and what types of settlements parties to complaints have considered acceptable. Following are some recent complaints, and how they were resolved.

### **Pre-complaints**

The Commission has developed a range of approaches to assist in reaching settlements. At the very beginning of a complaint, our **pre-complaint** procedure may be used. After a possible Complainant first contacts us, but before a complaint itself is drawn up, there can be a window of opportunity to resolve the complaint quickly and relatively informally. The pre-complaint procedure is tried on potential complaints which are relatively straightforward. For it to work, the Complainant and Respondent must agree to attempt to resolve the matter quickly and informally. All settlements reached through this process are documented. We do not close our file until the steps which have been agreed upon have been completed.

### **Harassed in a bakery**

One example of a pre-complaint occurred after a woman, *Sonya*, employed in a bakery complained that the owner

of the business had been approaching her and making inappropriate sexual comments in a "joking" manner. For example, he dropped breadcrumbs into her blouse pocket as a "joke." *Sonya* told him his actions were unwelcome, but he refused to stop.

*Sonya* was a single parent who was concerned about losing her job. She requested that the Commission pursue her concerns informally. The owner was contacted and the Complainant's allegations discussed with him. He apologized to her for the incidents and gave his assurance that the behaviour would stop. He also agreed to attend one of the Commission's educational workshops dealing with human rights legislation for employers. The Complainant was satisfied with this resolution and in a follow-up contact several weeks later she said that the workplace environment had remained positive since the informal resolution had taken place.

### **He wanted to see her tattoo**

*Lisa* had been employed as a waitress in a restaurant when the manager learned that she had a tattoo. The manager knew from comments she had made that the tattoo was located in a private area. He should have known that she would be embarrassed and upset by any request to see the tattoo, given its location. Instead, he called her into his office, closed the door and demanded to see the tattoo. *Lisa* refused and left his office. She felt very uncomfortable and by the end of the shift was in tears, worried that she may have done something wrong. (This is a common reaction for victims of harassment.) She resigned from her position later that day.

The restaurant owner was contacted and agreed to review the incident with the manager. The owner then advised the Commission that he was prepared to offer the Complainant a \$2,000 settlement, and to establish a policy which would require all staff who were promoted or hired as managers to attend human rights educational programs. The Complainant had asked for compensation for lost wages and for some assurance that managers would receive education in human rights legislation. She was satisfied with the settlement offer.

# For The Best

Sexual harassment continues to be such a serious problem that it represents approximately 25% of all complaints filed with the Commission each year. Complainants who call the Commission about harassment frequently state that they are not only concerned about their own circumstances, but want some assurance that other people will not experience the same harassment they endured.

As illustrated by some of the situations in this article, the conduct may be unintentional or meant as a “joke.” But the objective standard when assessing includes not only what the alleged harasser *intended*, but whether that person *should or ought to have known* that the conduct was unwelcome. The key facts which are considered when investigating sexual harassment complaints are whether the conduct or comments were “unwelcome” and whether in cases where the alleged harasser is in a position of authority over the Complainant and has made a sexual solicitation or advance, he or she ought reasonably to have known the comments or actions would be unwelcome. These examples also illustrate that it is the owner of a company who is usually legally liable for failing to establish a harassment-free workplace.

## Directed mediation

Pre-complaint is informal, at the very beginning of the complaint process. At the other end of the process, after reviewing the facts of a complaint investigation the Board of Commissioners may refer the complaint to mediation. If directed mediation fails, the complaint may be referred by the Board to adjudication.

A recent example of directed mediation involved an allegation of discrimination in employment on the basis of

gender (pregnancy). *Mary* alleged that she had been required to resign from her position as an accounting clerk five days after she had been hired because her employer had learned that she was pregnant. The employer took the position that *Mary* had not been terminated because she was *pregnant* but because she had been *dishonest*.

The employer maintained that when she was asked for a commitment she would be available during their busiest season, she had not disclosed her pregnancy. According to *Mary*, however, although she was informed of the busy time, she was not specifically asked for a commitment.



***Resolving a complaint isn't always this pleasant, but settlements bring closure to the complaint and help bring it for the parties.***

The Board took the view that a potential employee has no obligation to disclose her pregnancy during a pre-employment interview, nor should the employer ask if she is pregnant. *However, if she was specifically asked whether there was any reason she would be unavailable at a certain time period, she had a duty to answer the question honestly.*

Following a directed mediation, the complaint was resolved. The Complainant received \$2,000 in general damages and the right to be notified in advance for the next two years about any open positions at the Respondent's facility for which she may be qualified. As well, her personnel file was cleared of any reference to the matters which had led to the complaint.

We will continue to provide regular summaries of recent settlements in each newsletter. Anyone who may have concerns or questions about the information in this article should feel free to contact me at 945-3020.

***Look for another pre-complaint story, about Rainbow Stage, on the next page over.***



by Elizabeth Bennett

The 1998 Northern Manitoba statistics increased over 1997. Our office in The Pas received 739 intake contacts and 21 possible complaints. We provided a lot of information, including fulfilling 62 requests for literature. Normally we have two staff, a Human Rights Officer and myself. But for the greater part of 1998, The Pas was staffed only by myself. Then Don Pranteau was hired as the new Human Rights Officer for the Northern Region. He has made a long-term commitment to work at the Commission.

In 1998 our service also was improved by our office obtaining a toll free number (1-800-676-7084). This will make it easier for clients to contact us.

A big event for our office was hosting an Open House in conjunction with Human Rights Day celebrations to allow the public to meet our new Human Rights Officer and to assist in making contacts with businesses. **Arrangements were also begun to relocate our office to the Otineka Mall, to provide more visibility of the Commission to the public.**

We handled a wide variety of cases in 1998. Below are some samples which give a good idea of the types of complaints handled and how they were resolved.

**Hiring Questions**

A new business got off to a wrong start in 1998 by making asking inappropriate questions of possible employees during a hiring interview. The illegal inquiries included: *How many children do you have? How old are they? Are you planning on having any more children? What's*

*your husband's name? What does he do for a living?* Questions were also asked about what arrangements applicants made for childcare.

The following questions were all asked of a native female job applicant, one question after another: *Do you have a criminal record? Have you ever been arrested? Have you ever been in jail? Can I verify this information?* The questions did not appear to be asked of non-Native job applicants.

We talked with the business about **The Code** and how it applies to the hiring interview process. Questions that try to get at a potential employee's marital status, whether they have children and if so how many--these and other questions are against the law. The owner of the business agreed to conduct future pre-employment interviews properly, in compliance with human rights legislation.

**Age limit on store shoppers**

A retail store manager decided to post signs stating that children

# 1998-- Settlements & More From The North

under the age of 12 were not permitted in the store, unless accompanied by adults. There was a problem with shoplifting, and this was the store's solution. The store employees were very uncomfortable posting these signs and contacted us. It was good that they did, as it prevented a possible complaint in the future. The signs were not legal because there was no justification for singling out people under 12.

We spoke with the manager and provided information on human rights legislation. We noted that the signs would be contrary to our legislation. The manager agreed to deal more effectively with the problem by getting help from the police on shoplifting and crime prevention.

***More information on the move to the Otineka Mall in our next issue!***

## ***Pre-complaint leads to wheelchair seating improvement***

# **Rainbow Stage: That's the ticket!**



Winnipeg's Rainbow Stage has always had good seating for wheelchair users. The Wheelchair seating is located in the red (front) top price section. It would be next to impossible to provide seating in the other three lower ticket price sections (blue, green and yellow).

Recognizing that this provided no ticket price choice for wheelchair users, the pricing policy has been to apply the next lower (blue) section price to the wheelchair accessible row.

This issue was recently raised with Rainbow stage through the Commission's pre-complaint process when the ticket price policy was questioned.

As a result, Rainbow Stage has now changed their approach to provide ticket price choice for wheelchair patrons. Starting this coming season, wheelchair patrons will have the choice of tickets at the yellow (lowest price), green and blue section prices. The wheelchair seating will now be subdivided, with the lower priced tickets for the outside seats, green seats next, and centre area seats at the blue section price.

Rainbow Stage has now set the stage for other facilities to re-examine their approach to equality when access can not be provided to the full range of seating areas.

## **And *More* Pre-Complaints**

One of the values of the pre-complaint process, which involves trying to resolve a complaint before it is formally drafted, is that it saves everyone a lot of time. If both parties to a complaint agree on a resolution, everyone wins. This process has also saved the Commission a significant amount of staff time.

**In Thompson, a woman had surgery for breast cancer.** On her return to work, she advised her employer she would not be able to wear a portion of the company uniform, which was similar to a jacket. The manager insisted she wear the garment as part of company policy on uniforms for staff. Our Northern Office contacted the employer, and with his agreement discussed the matter informally. The result was that the woman was not required to wear the garment. That was the only resolution the woman had sought.

**In Winnipeg, a woman told us that her employment benefit entitlement was being reduced because of her marital status.** She had recently married. Her husband also worked for her employer. The company owner said it was unfair the couple should receive extra coverage because they were married. We contacted the owner, who essentially said she was misunderstood. The woman's benefits were not reduced.

**Also in Winnipeg, a woman who has arthritis contacted us.** She had moved into an apartment building which has a heavy front door and an inside security door requiring a key, which she found difficult to use. The building owner, after contact, installed an automatic door opener on the outside door, and provided the woman with a push button access code to use instead of the inside door key.



## **And still more pre-complaints!**

### **Housing Problems**

The Complainant was both physically and mentally challenged. The apartment block he lived in had many residents who were either elderly or physically disabled. The complaint was that the landlord did not provide automatic doors at the entrance to the building. Given the physical condition of many of the people in the building, opening the doors was an issue. Several requests had been made for automatic doors by the residents.

The Respondent said its building did not function as a treatment facility. The building design itself was relatively free of architectural barriers, and included several suites specially modified for disabled tenants. The Respondent did not consider it necessary to install automatic doors.

The investigation showed not only that the facility had no automatic doors, but also lacked ramped access to the entrance from the parking lot. After the provisions of The Code were reviewed with the Respondent, it agreed to install automatic doors and the ramp.

Given the high number of people with disabilities in the apartment block, the Respondent decided to conduct a physical needs assessment of its other housing units as well, to identify any barriers to entrance access. It also planned to make changes incrementally within budget.

The Complainant was satisfied with this resolution, which also assisted both other people in the block, and residents in other buildings owned and operated by the Respondent.

### **Drug Testing**

The Commission considers it to be against The Code to have blanket drug testing.

A business had an application for employment which required job seekers to agree to a drug screening test--not just as part of the hiring process, but at any time afterwards, during employment. The Complainant alleged this was systemic discrimination on the basis of disability and other grounds covered by The Code.

The Respondent, it turned out, believed that a pending court decision would soon allow drug testing. The Respondent was gathering signatures for the drug testing, anticipating changes.

The court decision, however, supported current human rights law regarding drug testing. Consequently the Respondent agreed to revise their employment application form so it contained no reference to drug testing whatsoever. The Complainant was satisfied, and considered the matter resolved.



### **Jeannette Roque**

Jeannette has been with government since 1980, and with us for fourteen years. "My decision to retire at this time was not an easy one. I have enjoyed working for the Commission and support the work they are doing towards eliminating discrimination and creating an equal opportunity society. I have always believed that one is not born with prejudices, one is taught."



# New Staff

**Noël A.J. Badiou**  
**Manager of Investigation and Mediation**



I graduated from high school in Notre Dame de Lourdes, Manitoba, and pursued an Arts degree at le Collège Universitaire de Saint Boniface. I then enrolled at l'Université de Moncton (New Brunswick) in the Faculty of Law, and received an LL.B. in 1988.

I moved to Halifax, Nova Scotia, where I articulated and practiced law with a small firm in downtown Halifax. I returned to Winnipeg in 1990 where I practiced law with the firm of Perlov, Stewart, Lincoln. In 1997, I accepted the position of Complaints Investigator/Counsel to the Complaints Investigation Committee in the Discipline Department of the Law Society of Manitoba.

I joined The Human Rights Commission in March of 1999. Human rights issues have always been very important to me. We are all members of the human family and are entitled to mutual respect from others. A person should not be judged by how that person is perceived but rather on the person's own merits. I am thrilled to be a part of an organization that promotes "equality of opportunity and freedom from discrimination."

**Jean Boyes**  
**Human Rights Officer (Mediator)**



In March, I transferred from the Department of Family Services to the Commission to join the Mediation Team in a one-year pilot project. The goal of the project is to demonstrate the viability of utilizing mediation as an alternative to investigation in some kinds of human rights cases. My expertise was developed in the field of family mediation and related forms of conflict resolution, so

the content of the cases at the Commission presents some new challenges. Here is how I describe the changes in my new professional environment.

From 1977 to 1999, my professional identity was that of "Jean, the Family Court Social Worker." Assisting parents and children experiencing family transitions and the resulting conflicts was interesting and often heart-wrenching work. One of the ways of intervening in family problem-solving is mediation as an alternative to litigation and legal negotiations. I started taking workshops and courses on mediation in 1983 and have been an advocate for this as "appropriate dispute resolution" ever since. At the Human Rights Commission, the challenge is to apply mediation skills to assisting Complainants and Respondents in arriving at a mutually satisfactory resolution to their conflict. In the first few weeks I have already learned a great deal and met terrific staff. I hope to contribute significantly to the resolving of many human rights complaints.



En Français S.V.P.

## Welcome to the Manitoba Human Rights Commission

The Manitoba Human Rights Commission is the agency responsible for carrying out the provisions of **The Human Rights Code**. The Commission is authorized to accept and investigate complaints of discrimination and to attempt to settle substantiated complaints; to issue binding advisory opinions; and to carry out educational activities.



[About Us](#) - [Complaint Process](#) - [Publications](#) - [Offices](#) - [Links](#)  
[Journalism Awards](#) - [Advisory Opinions](#) - [Legal Proceedings](#) - [Statistics](#)

**Our bilingual website** has been very active since it was first made available to the public in August, 1997.

Tom Pieczonka is the staff person who looks after the website.

The most popular pages included links to other websites, **The Code** itself, information on legal proceedings, general information about The Commission, and statistics.

*The introductory page to our website, above. Note the easy point-and-click interface.*

### Some website hit stats:

**1998:**  
Oct. 1654  
Nov. 2055  
  
Dec. 1559  
**1999:**  
Jan. 2426  
Feb. 2542  
Mar. 3398  
April 2824

### LINKS TO OTHER SITES



#### Human Rights Commissions

- |   |   |
|---|---|
| <a href="#">The Canadian Human Rights Commission</a>            | <a href="#">Quebec Human Rights Commission</a>                    |
| <a href="#">Manitoba Provincial Government</a>                  | <a href="#">Nova Scotia Human Rights Commission</a>               |
| <a href="#">British Columbia Human Rights Commission</a>        | <a href="#">New Brunswick Human Rights Commission</a>             |
| <a href="#">Alberta Human Rights and Citizenship Commission</a> | <a href="#">Prince Edward Island Human Rights Commission</a>      |
| <a href="#">Saskatchewan Human Rights Commission</a>            | <a href="#">Newfoundland and Labrador Human Rights Commission</a> |
| <a href="#">Ontario Human Rights Commission</a>                 |   |

#### Other sites of interest

- [Canadian Human Rights Reporter](#)
- [Access to Justice Network](#)
- [Atlantic Human Rights Centre](#)
- [Global Applied Disability Research and Information Network](#)
- [Media Awareness Network](#)
- [Media Awareness Network's Portrayal of Diversity](#)
- [The Integrated Network of Disability Information & Education](#)

*Links to many other websites is our single most popular website feature.*



## Legal Proceedings

Where a complaint is not dismissed or voluntarily settled through mediation and the Commission is satisfied that further proceedings are appropriate, The Code provides for the referral of such cases to an independent Board of Adjudication consisting of one member selected from a panel of adjudicators which have been appointed by the Lieutenant Governor in Council.

#### Decisions

- [The Caron Decision](#) NEW
- [The Evans Decision](#)
- [The Vogel Decision](#)

*The latest legal opinions form another very popular page on our website.*

**Questions about human rights? In Winnipeg, phone 945-3007. In Northern Manitoba, phone 627-8270 (The Pas). In Western Manitoba, phone 726-6261 (Brandon). Western toll free: 1-800-282-8069. Northern toll free: 1-800-676-7084. Our bilingual website address is: [www.gov.mb.ca/hrc](http://www.gov.mb.ca/hrc)**