

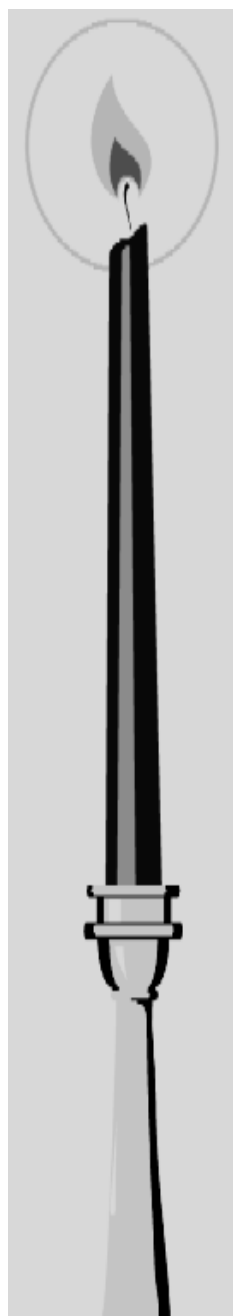
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***Human Rights
From Manitoba***

*A Newsletter Of Human Rights
Developments in Manitoba*

Volume 1, Number 9, Winter, 1999



***May the new millennium
be a thousand years
of universal human rights***

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CLEA HUMAN RIGHTS DAY EVENT IN WINNIPEG: PLEASE SEE PAGE EIGHT.*



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

Employer seminars

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. Print materials provided. Atmosphere is confidential and informal.

Cost: \$25 per person (includes lunch and lifestyle breaks). Call 945-3007 to register or find out more!

**New Seminars on:
February 23, May 3, June 14, 2000
in Winnipeg, at the Norwood Hotel
8:30 AM - 4 PM**

Human Rights From Manitoba

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Get on our mailing list
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Public presentations: Can we talk?



Since The Commission first opened its doors in 1970, Human Rights Officers have conducted speaking engagements on request. We provide information on **The Code**, discrimination, and our processes for resolving complaints.

Last year, we reviewed our policy on speaking engagements, to focus our energies more efficiently.

One result is the Employer Seminar. The programme is successful because it carefully targets its audience. At the same time, we cut back on speaking engagements to less than twenty people, or where there

was no target audience (potential Complainants or Respondents).

The result has been slightly fewer but more productive presentations. In 1998, we provided 110 presentations (37 to employers/businesses, 40 to groups of potential Complainants, and 33 to schools or universities). To date in 1999, we have made presentations 65 times (25 to employers/businesses, 18 to potential groups of Complainants and 22 to schools or universities).

Call us if you would like to know more about our services.

Our Northern office is now in the Otineka Mall

On October 15, 1999, in a great way to start the next thousand years of human rights, the Commission office in the North officially moved from the Provincial Building in The Pas to the Otineka Mall.

Moving to the Mall increases the visibility of the Commission in the community. The office is now located in a common meeting place, allowing our office and its services to be seen every day by many people. For example, someone without a reason to have visited the Provincial Building may not have seen or heard about our services. But just about everyone in The Pas stops by the Otineka Mall to shop or meet someone.

On hand for the opening were Dianna Scarth, Executive Director of the Commission (centre), Don Pranteau, our Northern Human Rights Officer, and Elizabeth Bennett, our Northern Intake Officer.

To provide more convenient service for Northern residents, Don will spend one day each week at the offices of the Manitoba Metis Federation (phone: 623-5701). Once a month he is also at the Friendship Centre in Flin Flon, and the Multicultural Centre in Thompson.

Anyone who has a human rights question or wishes to file a complaint should call for an appointment with Don. You can also just drop in, and staff at those Centres will book an appointment with him. Each Centre also has available written material on human rights issues.



Lisa Moule, Opasquia Times

One Stop Human Rights

***The Manitoba Human Rights Commission
and the Canadian Human Rights Commission
are now both at: 7th Floor, 175 Hargrave Street, Winnipeg!
Please join us for our Open House, starting at 1:30 p.m. on
December 9! Phone us for more information.***

**Can an employer discriminate on the basis of religion when hiring?
 An Adjudicator's decision in *Schroen v. The Steinbach Bible College* establishes new law, but only in a unique employment situation.**

Discrimination in hiring: new law?

By Dianna Scarth
 Executive Director

An important Adjudication decision has been released in a complaint involving an employee who was fired because of her religion.

When a religious institution may insist that religious conformity is a necessary job qualification is a difficult issue. What makes the new Adjudicator's decision important is that for the first time a religious qualification has been upheld with respect to an *administrative position* (accounting clerk).

The new decision

Donald R. Knight Q.C. was the independent Adjudicator designated by the Minister of Justice to hold a hearing.

The complaint had been filed by Ms. Esther Schroen against the Steinbach Bible College. The College had

terminated her employment after learning she was not of the Mennonite faith.

Adjudicator Knight noted that "...this case involves the rights of one religious group and the religious freedom of an individual."

Ken Filkow Q.C., Chairman of the Manitoba Human Rights Commission, stated that: "The Commission disagrees with the adjudicator's decision, but decided to accept the recommendation of its legal counsel not to apply for judicial review."

The College

The Bible College is a small, private Manitoba school funded and operated by three Mennonite church groups. It requires all employees to share their religious principles. Any prospective employee is required to sign a *Statement of Faith* document, confirming belief in the faith. Ms.

Schroen was offered a job by the Bible College as an accounting clerk, and signed the Statement of Faith. Two days after she was hired, she told the College that she had previously converted to the Mormon religion. The Board then fired her on the basis of religious nonconformity.

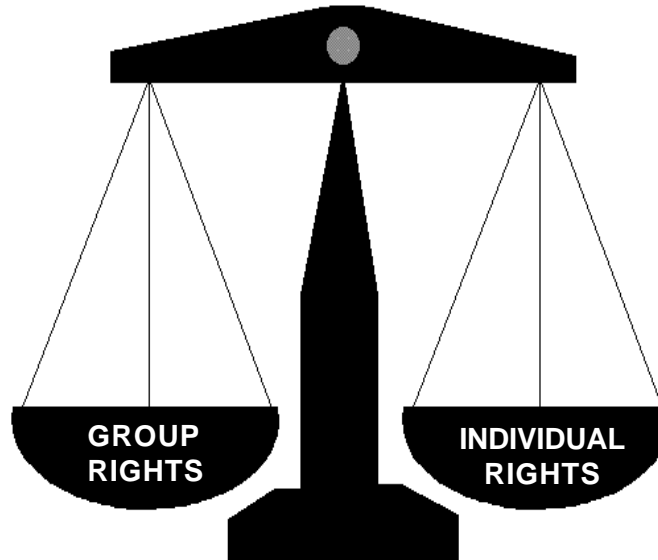
Discrimination found

The Adjudicator found that the termination of Ms. Schroen was solely based on "her religious belief and religious as-

sociation," and that the action taken by the Bible College was discriminatory.

However, under **The Human Rights Code** discrimination *maybe* reasonable if it can be shown to be reasonably related to the work duties. The Adjudicator noted that the Bible College was a unique setting where the

Read the Schroen decision on our web site



responsibilities of all support staff include interacting on faith matters with students. For example, all staff are expected to have students in their homes for Bible study sessions, and to discuss faith matters with students at school.

The Adjudicator accepted the testimony of religious experts that in such a small religious college the gap between faculty and staff is very narrow. The Adjudicator also noted that Ms. Schroen's Mormon beliefs were diametrically opposed to **aspects of** the teachings of the Evangelical Anabaptist faith.

The decision concludes that considering the unique role of staff at the College, and the unique culture within the College (its philosophy, mission, faith, beliefs, and ethics) the requirement that an accounting clerk share the religious faith of the Bible

College is a bona fide and reasonable requirement, necessary to achieve the religious objectives of the College.

Reaction of the Commission
Ken Filkow Q.C., Chairman of the Manitoba Human Rights Commission, said of the Adjudication

[The Commission] will be formulating a policy position and will seek legislative amendments to ensure that religious belief is not utilized to wrongly justify a narrow and discriminatory hiring process.

decision: "The Commission disagrees with the Adjudicator's decision, but decided to accept the recommendation of its legal counsel not to apply for judicial review." **The Human Rights Code** only provides a right of judicial review if there have been procedural or jurisdictional errors. Such errors were not present in this case.

Because of "continuing concern about the ruling, the Commission will take steps to ensure that religious belief is not utilized to wrongly justify a narrow and discriminatory hiring process," Mr. Filkow added. The Manitoba Human Rights Commission has interpreted this decision as stemming from the unique situation at the Bible College, in that all employees are expected to involve themselves extensively in the religious lives of the Bible students.

However, the Commission is concerned that the decision may be used by some employers to attempt to justify a narrow and discriminatory hiring process. Therefore, the Commission will formulate a policy position and seek legislative amendments to ensure that religious belief is not inappropriately used in hiring and employment situations.



Nursing infants in public

Breastfeeding in public is an important issue which has increasingly come under review. The latest example is a complaint for which the Board of Commissioners has asked the Minister of Justice to appoint an independent Adjudicator. It is expected the hearing will be held in early 2000, unless the parties come to a voluntary resolution before the hearing.



The specific issue in the case involved a mother who needed to nurse her child. She was in an antique store. She alleged that the

The nursing issue is about the needs of mothers and infants, and the responsibilities of service providers and employers.

seating offered her was not acceptable, and that the store failed to reasonably accommodate her. The Respondent denied the Complainant's version of the facts. The Board of Commissioners believed the case deserved further consideration at an Adjudication hearing.

The hearing will be open to the public. When handed down, the Adjudicator's decision will be posted on the Commission's web site, with hard copies available upon request. Other legal decisions are also available on the website.

The law on breast feeding in public continues to evolve. Although at present there is no absolute right to nurse in public, cases have recognized a mother's right to breastfeed in public in certain circumstances.

What are your rights and responsibilities as a nursing mother, or as a store owner or other service provider? What is reasonable depends on the facts behind each



case.

In recent years, the Commission has supported two complaints involving the right of nursing mothers to be accommodated. These cases involved nursing in a shopping mall food court, and on public transportation. Settlements were achieved in both complaints.

The Commission supports increased public awareness and acceptance of the needs of a nursing mother and infant.

Managing the complaint process



by Noël A.J. Badiou
Manager, Compliance and Mediation

One of The Manitoba Human Rights Commission's objectives is to process complaints in a timely, thorough and efficient manner. Previous newsletters have reported on the pre-complaint resolution option at Intake and the increased use of mediation. This article will address the impact these have had on the complaint process.

Strategic planning

In September, 1998 the Commission began a series of strategic planning sessions. The purpose was to identify ways of reducing the length of time required to process complaints.

Some of the goals that were set included the implementation of a mediation option before and during the investigation of complaints, focusing on completing work on all cases that were older than one year. Another goal was for the Commission to have only current cases (all matters no more than one year old from the date of the file opening) by the end of 1999.

New mediation options

New mediation options were developed and implemented on a one year pilot basis from the beginning of March, 1999. The new options

included assessing all potential and actual complaints for the possibility of a negotiated settlement, and attempting to bring the parties together to discuss a settlement where possible.

When a complaint is registered and served, under the pilot programme, Respondents are contacted to determine whether they are interested in a possible settlement. This process occurs after the Respondent is first notified of the complaint, and before an investigation is undertaken. Mediation can also be explored if it becomes appropriate, during an investigation of a complaint where the parties state they wish to discuss a settlement.

Since March, a resolution was achieved through mediation in approximately 15% of the cases where a complaint was registered.

Positive results

The success of mediation and pre-complaint resolution (see earlier newsletters for a detailed description of these options) have had a positive impact on the number of cases in investigation. Mediation and the pre-complaint resolution have resulted in the resolution of cases at an early stage, and ac-

cordingly have decreased the cases being forwarded to investigation. This has permitted the Commission to focus its attention on completing work on older cases.

Older cases

In the Spring, 1999 the Commission identified approximately 138 cases as being older than one year from the date the file was opened.

Of those cases, 74 were completed with the file being either closed (61) or referred to Adjudication when a final settlement could not be achieved (13). This leaves approximately 66 of the originally identified cases to be completed before the end of this year.

Next objective: reduce investigation time

If the success of the pre-complaint and other mediation options continues, the Commission will be able to meet its goal of having a current caseload by the end of December, 1999. This means no cases older than one year. The Commission will then be in a position to move forward towards achieving our next objective: reducing the average length of investigations to six months.

Pre-Complaint Resolutions

Pre-Complaints are resolved before a complaint is even drafted, leading to fast service for all parties involved.

Carport closure

This Complainant is a quadriplegic who uses a power wheelchair. He lives in a mobile home park. The park allowed only open carports, but the Complainant wanted an exception so he could have safe, usable access between his parking space and his mobile home, during the winter. Following a phone call from our office, the home park agreed to accommodate the Complainant.

Restaurant access

The Complainant, who uses a power wheelchair, has a trained service dog. When she phoned the restaurant to reserve a table, she was informed her dog would not be allowed in. We phoned the owner and explained the nature of service dogs. He then agreed that animal assistants would be permitted in his restaurant.

Another recent case involved a restaurant and a wheelchair user who had an animal assistant. While restaurants, taxis and other service providers know about accommodating dog guides for people with vision disabilities, they sometimes do not know that the same consideration is required for the trained animal assistants of people with other disabilities (principally, those individuals who use a wheelchair or who have a significant hearing impairment).

CLEA's Human Rights Day Event

CLEA (The Community Legal Education Association) will hold its 11th Annual Human Rights Conference on December 9 and 10. The deadline for registration (December 2) may have passed by the time you read this-but if you want to attend, please try phoning 204-943-2382.

This year's event is being held at the Radisson Hotel in downtown Winnipeg. Guest speakers are **Allan Borovoy** and **David Matas**, both very well known for their work on human rights cases. There will be a dinner on Friday evening and presentation of the **1999 Manitoba Human Rights Achievement Awards** and the **1999 Human Rights Journalism Awards**. On Saturday there will be a panel discussion and concurrent workshops.

The World's Quite Possibly First Human Rights Word Find

T N E M S S A R A H Y B Z T
 D I S A B I L I T Y Q R N F
 I M R N F R K M X S I A G E
 S P E C O M P L A I N A N T
 C E D E Q P Z B C G M H E X
 R B N S A O U J E E V K B E
 I T E T T S S R R N N K T S
 M L G R E S P O N D E N T C
 I D E Y M V K U D E E N G I
 A C C O M M O D A T I O N F
 T H E C O D E K X Y E A K M
 E Q U A L I T Y I Q Y E S D

ANCESTRY
 HARASSMENT
 DISABILITY
 COMPLAINANT
 RESPONDENT
 ACCOMMODATION
 THE CODE
 EQUALITY

BFOQ (bona fide occupational qualification)
 SEX
 AGE
 PREGNANT
 ABUSE
 GENDER

Words are presented horizontally, vertically and diagonally, backwards and forwards. Send your *correctly completed* Word Find to Victor Schwartzman, Editor, c/o The Manitoba Human Rights Commission, and he will send you an Award Certificate!